

NOTES

BOSNIA-HERZEGOVINA—VANCE-OWEN AGENDA FOR A PEACEFUL SETTLEMENT: DID THE U.N. DO TOO LITTLE, TOO LATE, TO SUPPORT THIS ENDEAVOR?

I. INTRODUCTION

Thousands of deaths, over two million refugees and displaced persons, starvation, rape, torture, and ethnic hatred plague the former Yugoslavia as factions battle over the homeland.¹ Since the hostilities began in June 1991, conflict has escalated as the situation rapidly spirals out of control despite international efforts to restore peace to the embroiled regions. Springing from seeds of ethnic hatred and mistrust, the land-grab in Bosnia-Herzegovina between Croatians, Serbians, and Bosnian-Muslims threatens to engulf the entire Balkan peninsula.² Attempting to reach a negotiated political

¹ *Special State Department Briefing on Report to Congress on Human Rights Practices for 1992*, Fed. News Service, Jan. 19, 1993, available in LEXIS, Nexis Library, Curmt File [hereinafter *Report to Congress*] (special briefing by Patricia Diaz Dennis, Asst. Sec. of State for Human Rights and Humanitarian Affairs). By July 1992, there were more than 2.25 million reported Yugoslavian refugees and displaced persons making this "the largest refugee crisis in Europe since the Second World War." *Wide-ranging Sanctions Imposed Against Yugoslavia*, U.N. CHRON., Sept. 1992, at 5, 6.

² Joy Aschenbach, *Bloody Balkans Set to Blow Again*, ATHENS (Georgia) OBSERVER, Feb. 18-24, 1993, at 13A. The Balkans are currently comprised of 10 independent states: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Greece, Macedonia, Romania, the European part of Turkey, Yugoslavia (formerly the republics of Serbia and Montenegro) and Slovenia. The Yugoslav conflict, while tragic, is "only the latest in centuries of fighting" in the Balkans. *Id.*

Skirmishes in Macedonia and Kosovo, both of which border Serbia to the south, are likened to those in Croatia and Bosnia, which escalated into war. The once autonomous province of Kosovo, mostly Muslim, is cited as a "virtual powder keg," where "Serbian nationalists view Kosovo . . . as a kind of Serbian Palestine." *Id.* The stationing of UN peacekeeping forces along Macedonia's borders with Albania and Kosovo underscores fears that the war in Bosnia "could spread into Kosovo and Macedonia, thus pulling Albania, Bulgaria, Greece and Turkey into the struggle." *Id.*

The Krajina Serbs in Croatia have made demands for independence from Croatia despite UN advice to drop such demands in order to reach a durable peace settlement with Croatia.

settlement over Bosnia's future, international mediators Cyrus Vance and Lord David Owen persist with peace talks, facilitating the means through which the warring factions can work through their disputes diplomatically and reach a compromise solution. Meanwhile, from those who believe that talk of peaceful settlement only codifies the Serbs' "ethnic cleansing" campaign, calls continue to go out for the deployment of military troops to force an end to the unmerciful conflict in Bosnia-Herzegovina.³ While the tragedy currently taking place sparks ugly comparisons to the evils of the Holocaust,⁴ unequivocal acceptance of the Vance-Owen Geneva Peace Plan remains the best hope, albeit a remote hope, for restoring lasting peace to the region.⁵

Robert Mauthner, *UN, EC Push for Autonomy Solution*, FIN. TIMES, Feb. 17, 1993, at A2.

³ Carol Giacomo, *Clinton to Make Bosnia Crisis Top Foreign Priority*, Reuter Lib. Rep., Jan. 21, 1993; *The Land of the Demons* (ABC television broadcast, Mar. 18, 1993) (noting "more and more people in the West . . . argue for military intervention in some form") [hereinafter *Land of the Demons*].

⁴ The current tragedy's similarity to the Holocaust is exemplified by reports of the rapes of more than 20,000 Muslim women, beatings in detention camps, and purposeful starvation and torture. *World News Tonight With Peter Jennings* (ABC television broadcast, Oct. 22, 1992) (report by Diane Sawyer). Mohamed Sacirbey, Bosnian Ambassador to the UN, made the comparison to the Holocaust in Nazi-Germany, stating, "one needs to realize that what we see happening here is no different than what we saw 50 years ago when Jews and others were massacred. . . ." *Id.*

The United States has submitted several reports to the UN detailing substantiated accounts of the atrocities, including the mass rapes of Muslim women and children. James Bone, *US Reveals Catalogue of Bosnia Atrocities*, TIMES LIMITED, Oct. 23, 1992. The U.S. State Department's annual report to Congress on human rights, released Jan. 19, 1993, issued the Department's most devastating criticism in the seventeen years it has been documenting human rights conditions around the world. This criticism was aimed primarily at the Serbian forces. *Report to Congress*, *supra* note 1. The report describes "widespread systematic atrocities, including the rapes and killings of civilian victims to the extent that it probably borders on genocide." *Id.*

⁵ The peace plan was orchestrated by Cyrus Vance of the United Nations and Lord David Owen of the European Community, Co-Chairmen of the Geneva Process, the second stage of the International Conference on the Former Yugoslavia. *See infra* notes 73-77 and accompanying text. The first stage of the plan provides for the division of Bosnia-Herzegovina into 10 semi-autonomous provinces governed by constitutional principles. Under the proposed plan, Serbs would obtain 43% of the territory, Muslims would obtain 25% and Croats would obtain 15%, with a tenth province under Muslim-Croat control yet to be decided. Dijana Vrbanić, *Croatian Weekly Says Geneva Plan Ratifies Serb Conquest*, Reuter Lib. Rep., Jan. 21, 1993.

The Vance-Owen team, acting under the auspices of the United Nations (UN) and the European Community (EC), settled into the crux of the peace settlement process over a year after the outbreak of conflict in the former Yugoslavia. The mediators embarked upon an agenda of international peace and negotiations to promote the framework for a constitutional, territorial settlement that would draw all parties together. Despite the tremendous efforts of Vance and Owen, the success of this unique endeavor remains to be realized, in large part due to the fact that the UN's hesitant and often equivocal actions make an eventual peaceful settlement of the Bosnian conflict dubious. Tracing the UN's haphazard response to the Yugoslav crisis, marked more by "improvisation and ingenuity than by steadfast determination and willingness to make or risk some sacrifices,"⁶ it is clear that the UN did too little, too late, to foster the Vance-Owen agenda, thus provoking the international community to consider ways to impose peace.

II. FACTS

A. *The War in Yugoslavia—Background*

Four of the six republics comprising the Socialist Federal Republic of Yugoslavia declared independence between June and October of 1991.⁷ The initial declarations from Croatia and Slovenia resulted in armed conflict with the Republic of Serbia, as well as the Yugoslav People's Army (JNA), which previously resisted the republics' efforts to establish a loose confederation of sovereign states.⁸ Although the JNA is officially the army of the federal

⁶ Paul Szasz, *Introductory Note, Documents Regarding the Situation in the Former Yugoslavia*, 31 I.L.M. 1421 (1992).

⁷ 1991 U.N.Y.B. 214, U.N. Sales No. E.92.I.1. Croatia, Serbia, Slovenia, Montenegro, Macedonia and Bosnia-Herzegovina are the six republics that made up the Socialist Federal Republic of Yugoslavia prior to its dissolution. Croatia and Slovenia unilaterally declared independence on June 25, 1991, following earlier referendums in both republics. *Id.* Macedonia proclaimed its independence on September 8 by referendum, and Bosnia-Herzegovina declared its sovereignty on October 15 by assembly vote. *Id.*

⁸ See Nesho Djuric, *Ethnic Rivalry Threatens Bosnia-Herzegovina Republic*, UPI, Oct. 15, 1991, available in LEXIS, Nexis Library, UPI File (describing the Serbs' drive to maintain political and economic control over Yugoslavia through a centralized federal system). Croatia and Slovenia attempted to negotiate the establishment of a loose federation with the Serbs prior to their declarations of independence, accusing Serbia of trying to dominate the entire country. David Mutch, *News Currents*, CHRISTIAN SCI. MONITOR, June 25, 1991, at 2.

Although the 1990 multi-party elections, held in Yugoslavia for the first time since 1945,

government, it lacks the control of a civilian authority and has been dominated by the Serbs since the outbreak of conflict.⁹ Within two days of Croatia's and Slovenia's declarations of independence, the Serb-dominated JNA stormed Slovene territory in an attempt to crush Slovenia's independence bid.¹⁰ This act of aggression, spurned by communist-run Serbia's quest for all of Yugoslavia's 8.3 million Serbs to live in a "Greater Serbia,"¹¹ was the catalyst that launched the war.¹²

As violence in Croatia escalated over the next several months, the European Community assumed a monitoring and negotiating role in an effort to bring peace to the region and prevent an all-out war in the Yugoslav federation.¹³ The EC Monitor Mission (ECMM) made up of personnel from the twelve EC members, served as a channel of communication

brought down the 45-year reign of one-party communist rule in Yugoslavia, nationalist regimes came to power in the republics and revived age-old ethnic and political strife throughout the country. Jelana Pejic, *Yugoslavia: Time is Running Out*, Inter Press Service, June 25, 1991, available in LEXIS, Nexis Library, Currnt File.

⁹ See *Report of the Secretary-General Pursuant to Paragraph 3 of Security Council Resolution 713*, U.N. Doc. S/23169 (1991) [hereinafter *Oct. 1991 Report*] (relating Vance's report, following one of his early missions to the former Yugoslavia, that there is no central authority in Yugoslavia that enjoys the support of all the republics).

¹⁰ Marcus Tanner, 'Slovenia is at War', INDEPENDENT, June 28, 1991, at 1.

¹¹ Pejic, *supra* note 8. The Serbian Democratic Party (SDS) stated that it had nothing against Croatia's and Slovenia's independence, "provided that Serbs have the right to live in one country, be it Yugoslavia or Serbia." *Id.* Of the 4.68 million people in Croatia, 85% are ethnic Croats and 11.5%, or about 600,000, are ethnic Serbs. Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 A.J.I.L. 569, 569 (1992) (providing a thorough delineation of the events comprising Yugoslavia's dissolution through mid-1992). Ninety percent of Slovenia's 1.94 million population are ethnic Slovenes, while Croats, Hungarians, and Serbs make up a small minority (including 300,000 Serbs). *Id.* Bosnia-Herzegovina has a population of over 4.1 million, comprised of 40% Bosnian-Muslims, 32% (over one million) ethnic Serbs, and 18% Croats. *Id.* The Serbs did not initiate their quest in Yugoslavia until January 1992. See *infra* notes 42-43 and accompanying text.

¹² Pejic, *supra* note 8.

¹³ 1991 U.N.Y.B. 214, *supra* note 7 (describing the EC's introduction into the conflict and peacekeeping efforts thereafter). An EC Ministerial Troika mission (ECMM), dispatched to Yugoslavia to facilitate a truce and the return of all forces to their previous positions, worked out a cease-fire agreement on July 31, 1991, with the aid of the Conference on Security and Cooperation in Europe (CSCE). Jonathan Landay, *Presidency Agrees on Proposed Truce Plan*, UPI, July 31, 1991, available in LEXIS, Nexis Library, UPI File. See also *Policing Yugoslavia*, TIMES (London), July 31, 1991.

between opposing forces to organize cease-fire arrangements.¹⁴ However, the attempt to promote agreement among factions separated by ethnic hatred and mistrust proved futile,¹⁵ as numerous cease-fires failed to take hold, and violence increased in Croatia due to active support of Serbian fighters by the JNA.¹⁶ The EC efforts were plagued by the parties' irreconcilable demands, conflicting chains of command on both sides, dissension over the withdrawal of armed forces from regions in Slovenia and Croatia, and security considerations with respect to the non-military, unarmed ECMM.¹⁷ As regional negotiations undertaken in conformity with Chapter VIII of the UN Charter¹⁸ failed to restore peace, the UN Security Council responded to calls for reinforcement of the EC Mission by convening its first meeting to assess the situation on September 25, 1991, exactly three months after Croatia's and Slovenia's declarations of independence.¹⁹

At its first meeting to address the Yugoslav crisis, the Council unanimously adopted Resolution 713, expressing "deep concern" over the fighting in Yugoslavia, the heavy loss of life, and, in particular, the consequences for the border areas of neighboring countries.²⁰ As a remedy, the Resolution

¹⁴ *Oct. 1991 Report*, *supra* note 9, at 6.

¹⁵ Andrew Clark, *Yugoslavia: Fragile Cease-fire Holds in Croatia*, AUSTRALIAN FIN. REV., Oct. 10, 1991.

¹⁶ *Report of the Secretary-General*, U.N. Doc. S/22991 (1991). Negotiations were attempted at an EC-sponsored peace conference in Brussels on Aug. 27, 1991. *Id.* Moving to The Hague, Netherlands, the Conference on Yugoslavia convened on Sept. 7, 1991, with the goal of resolving a peaceful settlement of the conflict. *See generally* Weller, *supra* note 11 (outlining the EC's response to the outbreak of fighting among Croats and Serbs).

¹⁷ *Oct. 1991 Report*, *supra* note 9.

¹⁸ Article 52(2) provides that Member States entering into regional arrangements "shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council." U.N. CHARTER art. 52(2).

¹⁹ In response to letters from the international community requesting that the United Nations reinforce EC efforts due to the rapidly deteriorating situation in Yugoslavia, a meeting of the United Nations Security Council was convened on September 25, 1991. Letter of Sept. 19, 1991, U.N. Doc. S/22903 (Austria); Letter of Sept. 19, 1991, U.N. Doc. S/23053 (Canada); Letter of Sept. 19, 1991, U.N. Doc. S/23057 (Hungary); Letter of Sept. 19, 1991, U.N. Doc. S/23069 (Yugoslavia).

²⁰ S.C. Res. 713, U.N. SCOR, 3009th mtg., U.N. Doc. S/23067 (1991). The Council unanimously adopted the five-nation draft proposed by Austria, Belgium, France, the USSR, and the United Kingdom. *Id.* The resolution noted that "the continuation of this situation constitutes a threat to international peace and security," recalled the principles "enshrined in the Charter," and stated in the CSCE declaration of September 3 "that *no territorial gains or*

called for the immediate implementation of a complete embargo on all deliveries of weapons and military equipment to Yugoslavia.²¹ Although meant to curb the escalating violence and cut off outside weapons support for the factions involved, the Council's action instead tipped the balance of power. It solidified the *Serbs'* already powerful military advantage, given their control over most of the country's armaments as well as the federal army, and its position as the tenth biggest arms producer in the world.²²

B. Initial Vance Involvement

Despite the Council's declaration that territorial gains brought about by violence were unacceptable, the war's first forced evacuation occurred in early October 1991, as the Serb-dominated federal army moved 5,000 Croats from a village in the city of Vukovar.²³ The migration came shortly after the appointment of Cyrus R. Vance, former U.S. Secretary of State, as the Secretary-General's personal envoy to Yugoslavia.²⁴ Stepping in amidst the EC-sponsored peace process and the tenth failed cease-fire in

changes within Yugoslavia brought about by violence are acceptable." *Id.* (emphasis added).

²¹ *Id.* The resolution provided that under Chapter VII of the Charter, "for the purposes of establishing peace and stability in Yugoslavia," a general and complete embargo was to be implemented immediately by all States "on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise." *Id.* para. 6.

²² Nick Thorpe, *Yugoslavia: Croatia Digs in for Long War*, OBSERVER, Oct. 13, 1991, at 13. Bosnian Ambassador to the UN, Mohammed Sacirbey, stated that the balance of power between the Muslims and Serbs was tipped such that the Muslims had 2 tanks, 24 artillery pieces, and no planes, while the Serbs had more than 300 tanks, 400 artillery pieces, and at least 60 planes. Remarks of Ambassador Mohammed Sacirbey Before the American Jewish Committee Ambassador's Forum Luncheon (Oct. 22, 1992), available in LEXIS, Nexis Library, Currnt File [hereinafter Sacirbey address].

²³ Derek Brown, *Yugoslavia: Army Steps up Drive to Gain Control of Croatian City of Vukovar*, GUARDIAN, Oct. 18, 1991, at 8. The evacuation came in response to the army's ultimatum to withdraw from the village of Ilok, situated in Vukovar, Croatia. Croatian officials' requests for Vance's intervention to stop the evacuation from the village were to no avail. *Id.*

²⁴ *Oct. 1991 Report*, supra note 9, at 2. The appointment of Vance was the result of a September 25, 1991 Security Council resolution inviting then Secretary-General Javier Perez de Cueller to offer his assistance in peace-making efforts and to report back as soon as possible. *Cyrus Vance to Visit Yugoslavia as U.N. Chief's Envoy*, Reuters Oct. 9, 1991.

Vance served as Secretary of State for just over three years under U.S. President Jimmy Carter, resigning in 1980 after opposing a decision to launch an armed rescue mission to free Americans being held hostage in Iran. *Id.*

three months, Vance commenced a "fact-finding" mission in Yugoslavia to sound out the parties on prospects for future negotiations.²⁵ By this time, the conflict had forcibly displaced approximately 300,000 persons,²⁶ emergency relief convoys delivering food and medicine were turned back,²⁷ and Croatia had begun to mobilize troops to create the Croatian National Army.²⁸ The Serbs, steadfast in their determination to create and maintain a federation encompassing all ethnic Serbs in Yugoslavia, maintained at least ten private militia comprised of extremists and freelancers, or Serb 'irregulars,' standing ready to defend Serb autonomy within Croatia.²⁹

Although the Security Council did not act with respect to the Yugoslav conflict over the next two months,³⁰ Vance maintained an active role at the request of the Secretary-General. Embarking on two subsequent missions to Yugoslavia in October and November 1991, Vance held discussions with the parties concerning the feasibility of deploying a UN peace-keeping operation in Yugoslavia, and arranged yet another cease-fire agreement.³¹ In

²⁵ *Oct. 1991 Report*, *supra* note 9, at 3, 5. In addition, Vance attended sessions of the Conference on Yugoslavia at The Hague at the invitation of its chairman, Lord Carrington of Britain, and pursued contact with leaders of all factions involved in the Yugoslav conflict. *Id.* at 3.

²⁶ *Id.* at 7. After his first mission to Yugoslavia, from Oct. 11 to 18, 1991, Vance reported extensive humanitarian problems despite the numerous cease-fires, including approximately 300,000 forcibly displaced persons, a high rate of civilian casualties, and the destruction of housing and facilities. *Id.*

²⁷ Graham Barrett, *Yugoslavia: Convoy Fails to Break Serb Siege*, THE AGE (Melbourne), Oct. 15, 1991, at 7.

²⁸ Thorpe, *supra* note 22. Convoys delivering emergency aid to eastern Croatia, despite EC escort, turned back after coming under Serbian fire. In order to supplement the local police and national guard, Croatia began to mobilize troops, forbidding men age 18-52 from leaving the country. *Id.*

²⁹ *Yugoslav War Lords Form Militias in Brutal Conflict Haunted by Nazism*, Agence France Presse Oct. 15, 1991. The Serb militia declared their aim to defend Serbs in Croatia and to liquidate "Croatian Neo-Nazis." *Id.* The militia, some branding a black flag with the words "Liberty or Death," were reportedly no longer taking prisoners, but shot Croatian soldiers falling into their hands because they believed some of their men had been tortured to death by Croats. *Id.*

³⁰ Action by the Security Council is symbolized by the adoption of a resolution. ROBERT E. RIGGS & JACK C. PLANO, *THE UNITED NATIONS: INTERNATIONAL ORGANIZATION AND WORLD POLITICS* 84 (1988).

³¹ The parties signed the Geneva Agreement, thereby agreeing to an unconditional cease-fire, on November 23, 1991. *Letter Dated 24 November 1991 From The Secretary-General Addressed to The President of The Security Council*, U.N. SCOR, U.N. Doc. S/23239 (1991)

Resolution 721, the Council endorsed Vance's efforts, although it would not consider a peacekeeping operation until the warring parties complied with previous agreements.³² This formidable task, compelling the parties' compliance, was left to Vance, acting on behalf of the Secretary-General.³³

Following Vance's fourth mission to Yugoslavia in December,³⁴ the Council adopted Resolution 724 on December 15, 1991, confirming that the conditions for establishing a UN peacekeeping operation in war-torn Yugoslavia still did not exist.³⁵ Additionally, the Council called on all States to fully cooperate with the arms embargo, strongly urging "all States and parties to refrain from any action which might contribute to increasing tension."³⁶ Notably, Resolution 724 approved Vance's detailed proposal for a peacekeeping operation in Yugoslavia, provided in an earlier report of the

[hereinafter *Nov. 1991 Cease-fire*]. This agreement was the fourteenth thus far since the conflict began. *UN Peacekeeping Operation for Yugoslavia in Question, Cease-fire Must First be Respected*, U.N. CHRON., Mar. 1992, at 72.

³² S.C. Res. 721, U.N. SCOR, 3018th mtg., U.N. Doc. S/Res/721 (1991). Specifically, the Council would not consider the deployment of a UN peacekeeping operation until all parties fully complied with the November cease-fire agreement, which called for the removal of Croatian blockades of all JNA barracks and installations, and the immediate withdrawal from Croatia of blockaded military personnel and weapons. *Id.* para. 2.

³³ *Id.* para. 1. The Council took the position that, when and if the Secretary-General recommended that conditions were right for the deployment of peacekeeping troops, it would act "without delay." *Id.* para. 4. In his December Report, the Secretary-General made it clear that only upon Vance's decision that the necessary conditions existed for the establishment of a peacekeeping operation in Yugoslavia would he recommend the establishment of such a force. *Report of the Secretary-General Pursuant to Security Council Resolution 721*, U.N. SCOR, para. 14, U.N. Doc. S/23280 (1991) [hereinafter *Dec. 1991 Report*]. In December, the Council endorsed the Secretary-General's decision to send Vance on another mission, "to carry forward preparations for possible deployment of a peace-keeping operation." S.C. Res. 724, U.N. SCOR, 3023rd mtg. para. 3, U.N. Doc. S/Res/724 (1991).

³⁴ *Dec. 1991 Report*, *supra* note 33 (outlining Vance's four missions to Yugoslavia to date). The Report illustrates the magnitude of Vance's responsibilities and the pivotal role he had already assumed by his fourth trip, as he orchestrated numerous discussions in Yugoslavia concerning the withdrawal of troops, weapons, and military equipment, and urged that humanitarian assistance be provided as soon as possible. *Id.* at I.4. Clearly no longer a secondary player, on his fourth mission Vance convened meetings with such infamous leaders as Slobodan Milosevic, President of the Republic of Serbia, and Radovan Karadzic, President of the Serbian Democratic Party of Bosnia-Herzegovina. *Id.* at Annex I.

³⁵ S.C. Res. 724, *supra* note 33. The Council based its determination that conditions were not right for the deployment of a peacekeeping operation on the Secretary-General's conclusions, which again were based on Vance's conclusions. *Id.*

³⁶ *Id.* at para. 7.

Secretary-General.³⁷ Outlining the functions and deployment of a UN force, Vance's initial "concept," received UN endorsement and thereafter became known as the "UN peacekeeping plan."³⁸ Thus, within five months of the outbreak of conflict, Vance's initial fact-finding role in the Yugoslav conflict took on a whole new dimension. Vance was transformed into a primary orchestrator of negotiations to achieve the necessary conditions for the deployment a United Nations Protection Force (UNPROFOR).³⁹

Despite the cease-fire implementation agreement signed by the Croats and Serbs at Sarajevo in early January⁴⁰ and the eventual deployment of the

³⁷ *Id.* at para. 1. Vance's "concept for a United Nations peacekeeping operation in Yugoslavia" envisaged 10,000 persons deployed in certain areas of Croatia, to be designated "United Nations Protected Areas" (UNPAs). *Id.* at Annex III. The proposal specifically delineated UNPAs and foresaw the withdrawal of the federal army from these regions. *Id.*

³⁸ See, e.g., Blaine Harden, *Die-hards in Serb-led Yugoslavia Army Called Threat to Peace Plan*, WASH. POST, Jan. 10, 1992, at A16. This "peacekeeping" plan, primarily addressing the withdrawal of the JNA from Croatia and the demilitarization of UNPAs, is separate and distinct from the "peacemaking" Geneva Peace Plan negotiated since September 1992 over the future of Bosnia.

³⁹ S.C. Res. 724, *supra* note 33, at Annex III. Vance engaged in discussions with leaders of all sides, concerning not only the feasibility but the facilitation of deploying a UN peacekeeping operation in Yugoslavia. Such an operation focused specifically on the lifting of blockades by Croatia, and the withdrawal of JNA personnel, weapons, and military equipment from Croatia. *Id.* Vance's efforts were complemented by the continuing Conference on Yugoslavia, which was working on a peaceful political settlement. *Id.*

By the time it enacted Resolution 743, the Security Council decided to establish the UNPROFOR in accordance with Vance's plan, requesting the Secretary-General to "take the measures necessary to ensure [UNPROFOR's] earliest possible deployment." S.C. Res. 743, U.N. SCOR, 3055th mtg. para. 2, U.N. Doc. S/Res/743 (1992). The Council adopted Vance's stated function of UNPROFOR as "an interim arrangement to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis." S.C. Res. 724, *supra* note 33, Annex III, para. 1, *cited with approval* in S.C. Res. 743, U.N. SCOR, 3055th mtg., para. 5 (1992).

⁴⁰ On January 2, 1992, an Implementing Accord at Sarajevo was signed, concerning modalities for implementing the unconditional cease-fire agreed to by the parties in November 1991. S.C. Res. 727, U.N. SCOR, 3028th mtg., para. 2, U.N. Doc. S/Res/727 (1992) (welcoming the signing of the Accord); see also *supra* notes 31-32 and accompanying text (concerning November cease-fire agreement). To promote compliance with this Accord, the Council authorized the dispatch of fifty military liaison officers to Croatia in early January 1992, while the EC continued efforts to negotiate a political resolution of the crisis. S.C. Res. 727, U.N. SCOR, 3028th mtg., para. 3 (1992). This military liaison was increased to 75 officers by resolution on Feb. 7, 1992. S.C. Res. 740, U.N. SCOR, 3049th mtg., para. 3, U.N. Doc S/Res/740 (1992).

UNPROFOR to Croatia,⁴¹ the eruption of conflict elsewhere in Yugoslavia demanded the Council's and Vance's attention, as the Serbs expanded their quest for a "Greater Serbia" by proclaiming their own state within the borders of Bosnia-Herzegovina.⁴² Unfortunately for the Muslims in Bosnia, the UNPROFOR's mandate was limited to the situation in Croatia in accordance with Resolution 743, despite the location of its headquarters in Sarajevo, the capital of Bosnia-Herzegovina.⁴³

⁴¹ S.C. Res. 749, U.N. SCOR, 3066th mtg., U.N. Doc. S/Res/749 (1992) (approving the Secretary-General's implementation plan for UNPROFOR's deployment by mid-May). Troops were deployed to four sectors in three United Nations protected areas (UNPAs) in Croatia, despite the continuing tension and reports of daily breaches of the January cease-fire. *Report of the Secretary-General Pursuant to Security Council Resolution 743*, U.N. SCOR, paras. 2,3, U.N. Doc. 23777 (1992). UNPROFOR is comprised of units from Argentina, Bangladesh, Belgium, Brazil, Canada, Columbia, Czechoslovakia, Denmark, Egypt, Finland, France, Ghana, Ireland, Jordan, Kenya, Luxembourg, Nepal, the Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, the Russian Federation, Sweden, Switzerland, the United Kingdom, and Venezuela. *Security Council Establishes Force to Handle Yugoslav Crisis*, U.N. CHRON. June 1992, at 16. By April of 1992, 8,300 members of UNPROFOR were deployed, and by July 23 of that year, almost all of the 14,000 members were in place. This established the second largest peacekeeping operation in the UN's history, behind that of the UN Transitional Authority in Cambodia (UNTAC). *Id.* at 15.

⁴² *Serbs Declare State Inside Bosnia, Yugoslav Truce Holds Amid Fears of New Combat Zone*, CHI. TRIB., Jan. 10, 1992, at C3; see *supra* note 11 and accompanying text (discussing the Serbs' quest for a "Greater Serbia" and providing the make-up of Yugoslavia's population). In April 1991, Vance embarked on his seventh mission to Yugoslavia, this time to the region of Bosnia-Herzegovina, at the invitation of the President of the Security Council. *Note by the President of the Security Council*, U.N. SCOR, U.N. Doc. S/23802 (1992).

In response to the violence in Bosnia-Herzegovina, the EC expanded its mediation efforts, to discuss constitutional arrangements for Bosnia-Herzegovina undertaking negotiations with the Bosnian-Muslims, Croats, and Serbs of Bosnia under the auspices of the Conference on Yugoslavia. S.C. Res. 752, U.N. SCOR, 3075th mtg., U.N. Doc. S/Res/752 (1992). However, due to escalating violence in the region, particularly the killing of one of its members, the EC Monitor Mission completely withdrew its monitors from Bosnia in May 1992. *Further Report of the Secretary-General Pursuant to Security Council Resolution 749*, U.N. SCOR, para. 7, U.N. Doc. S/23900 (1992) [hereinafter *May 1992 Report*].

⁴³ *Report of the Secretary-General Pursuant to Security Council Resolution 749*, U.N. SCOR, para. 2, U.N. Doc. S/23836 (1992). Following a subsequent mission to Bosnia-Herzegovina, Vance informed the Secretary-General that the deployment of a peacekeeping force to Bosnia-Herzegovina was not feasible, "given the limitations on human, material, and financial resources, and especially in view of the current widespread violence." *Id.* para. 27. In addition to the difficulties UNPROFOR encountered in Sarajevo, where the situation greatly slowed its abilities, the operation faced numerous other obstacles which hindered its effectiveness. See generally, *May 1992 Report*, *supra* note 42, paras. 18-24 (enumerating the

C. *Yugoslav Conflict Engulfs Bosnia-Herzegovina*

Over the next several months, the situation in Bosnia-Herzegovina rapidly deteriorated despite the cease-fire agreement reached in April 1991.⁴⁴ The Council's already shaky peacekeeping and humanitarian efforts in Croatia were further threatened by reports of widespread violations of international humanitarian law, the Serbs' continued mass forcible expulsion and deportation of Bosnian-Muslims in the region,⁴⁵ the imprisonment and abuse of civilians in detention centers, and the wanton devastation and destruction of property.⁴⁶ Determining that the situation in Bosnia-

specific difficulties encountered).

⁴⁴ *Report of the Secretary-General Pursuant to Security Council Resolution 749, supra* note 43, Annex II (providing in pertinent part that the three parties agree: to declare an immediate and total cease-fire on all territory in Bosnia-Herzegovina; "to stop all activities that can provoke fear and instability among the population;" "to suspend all mobilization and remove all artillery;" and "to disband all irregular armed forces, in accordance with an agreed timetable"). The impossibility of implementing this cease-fire agreement was shortly realized. *May 1992 Report, supra* note 42, para. 7.

In June of 1992, facilitated by UNPROFOR, the parties to the conflict concluded the *Agreement of 5 June 1992 on the Reopening of Sarajevo Airport for Humanitarian Purposes*, which called for a cease-fire in order to facilitate the reopening of the Sarajevo airport and the delivery of humanitarian supplies. *Report of the Secretary-General Pursuant to Security Council Resolution 757 U.N. SCOR, Annex, U.N. Doc. S/24075 (1992)*. However, "[a]rtillery, mortar, tank and small-arms exchanges have taken place on each day since the United Nations flag was raised on 29 June and the airport was opened by the first flight carrying humanitarian aid." *Further Report of the Secretary-General Pursuant to Security Council Resolutions 757, 758, and 761, U.N. SCOR, at para. 6, U.N. Doc. S/24263 (1992) [hereinafter July 1992 Report]*.

⁴⁵ *May 1992 Report, supra* note 42. Secretary-General Boutros Boutros-Ghali stated:

All international observers agree that what is happening is a concerted effort by the Serbs of Bosnia-Herzegovina, with the acquiescence of, and at least some support from, JNA, to create "ethnically pure" regions in the context of negotiations on the "cantonization" of the Republic in the EC Conference on Bosnia-Herzegovina.

Id. para. 5.

In addition to the more than 900,000 persons displaced from Croatia, at the time of Vance's arrival on April 14, 1992, an estimated 184,000 persons had been displaced from Bosnia-Herzegovina. By April 20 of that year, this number had grown to 230,000, and by May, over 520,000 persons had been displaced from Bosnia. *Id.* para. 15.

⁴⁶ *See, e.g., S.C. Res. 752, supra* note 42 (expansion of UNPROFOR mandate); S.C. Res. 757, U.N. SCOR, 3082th mtg., U.N. Doc. S/Res/760 (1992) (general sanctions imposed); S.C. Res. 758, U.N. SCOR, 3083th mtg., U.N. Doc. (June 8, 1992); S.C. Res. 760, U.N. SCOR,

Herzegovina and other parts of the former Yugoslavia constituted "a threat to international peace and security," the Council imposed general sanctions on the Federal Republic of Yugoslavia, comprised of Serbia and Montenegro, invoking Chapter VII of the UN Charter in Resolution 757.⁴⁷

Since the UNPROFOR's establishment, the Security Council primarily expended its efforts to deal with the situation on the ground, enforcing, expanding, and reinforcing UNPROFOR's mandate to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis.⁴⁸ Attempting to deal with escalating violence in Bosnia-Herzegovina and the task of facilitating humanitarian assistance to the besieged regions,⁴⁹ the Council deferred the task of negotiating an overall political settlement of the conflict to the European Community, urging the three communities in Bosnia to participate in the ongoing discussions.⁵⁰ Thus, the EC, acting under the auspices of the Conference on Yugoslavia since September 1991, continued talks with the three factions to achieve a settlement and added the job of negotiating constitutional arrangements for Bosnia-Herzegovina. Because Vance's peacekeeping plan, proposed in the

3086th mtg., U.N. Doc. S/Res/760 (1992); S.C. Res. 761, U.N. SCOR, 3087th mtg., U.N. Doc. S/Res/761 (1992) (demand that all parties and others concerned cooperate fully with UNPROFOR and international humanitarian agencies and organizations and take all necessary steps to ensure the safety of their personnel); S.C. Res. 762, U.N. SCOR, 3088th mtg., para. 2, U.N. Doc. S/Res/762 (1992) (expanding UNPROFOR's mandate); S.C. Res. 764, U.N. SCOR, 3093rd mtg., U.N. Doc. S/Res/764 (1992) (authorizing UNPROFOR to protect humanitarian assistance); S.C. Res. 771, U.N. SCOR, 3106th mtg., U.N. Doc. S/Res/771 (1992).

⁴⁷ S.C. Res. 757, *supra* note 46 (adopted by a vote of 13 to 0, with two abstentions). Following the dissolution of the Socialist Federal Republic of Yugoslavia, Serbia and Montenegro created the Federal Republic of Yugoslavia, referred to as "rump" Yugoslavia.

⁴⁸ See *supra* note 46.

⁴⁹ See, e.g., *July 1992 Report*, *supra* note 44, para. 18 (describing the desperate situation emerging in Bosnia-Herzegovina as "one of the worst humanitarian emergencies of our time").

⁵⁰ Repeatedly, the Security Council deferred settlement of the dispute in Bosnia to the EC, noting the continuing role that the EC played in achieving a peaceful solution in Yugoslavia through the Conference on Yugoslavia, commending its efforts, and demanding that all parties concerned cooperate fully with the efforts of the EC "to bring about urgently a negotiated political solution respecting the principle that any change of border by force is not acceptable." S.C. Res. 652, U.N. SCOR, 2918th mtg., U.N. Doc. S/Res/652 (1992); S.C. Res. 727, *supra* note 40; S.C. Res. 740, *supra* note 40; S.C. Res. 743, *supra* note 39; S.C. Res. 749, *supra* note 41; S.C. Res. 757, *supra* note 46; S.C. Res. 762, *supra* note 46; S.C. Res. 764, *supra* note 46.

midst of the Serb-Croat conflict, primarily dealt with the facilitation of UNPROFOR for Croatia, the Council made only sporadic mention of the Vance/UN peacekeeping plan in the months following its endorsement.⁵¹ Despite the EC's year-long attempt to negotiate a solution to the conflict in its "Balkan backyard," a political settlement between the factions never materialized.⁵² A workable mandate could not be defined, making peacekeeping impossible and prompting the UN to place itself at the negotiating table to advance, at least in principle, a political solution to the crisis.

Thus, over a year after conflict erupted in the former Yugoslavia, the International Conference on the Former Yugoslavia (London Conference), successor to the Conference on Yugoslavia, ushered in what was hoped to be a fresh chapter in the peace process—the building of a new diplomatic machinery.⁵³ Secretary-General Boutros-Ghali anticipated that the London Conference would "create a new momentum,"⁵⁴ organized to remain in

⁵¹ Referring to the Serb-Croat conflict in Resolution 762, the Council urges "all parties and others concerned to honour their commitments to effect a complete cessation of hostilities and to implement the United Nations peace-keeping plan" (citing the Vance plan of December 1991; see *supra* note 33) (emphasis added). S.C. Res. 762, *supra* note 46, para. 2. In Resolution 764, the Council stressed "once again the imperative need to find an urgent negotiated political solution for the situation in Bosnia and Herzegovina." S.C. Res. 764, *supra* note 46.

⁵² *Report of the Secretary-General on the International Conference on the Former Yugoslavia*, U.N. SCOR, U.N. Doc. S/24795 (1992), reprinted in 31 I.L.M. 1549, 1558 (1992) [hereinafter *London Conference Report*]. Beginning in February 1992, the EC Conference on Yugoslavia convened ten rounds of talks on Bosnian constitutional arrangements between the three main Bosnian political parties. *Id.* A preliminary "Statement of Principles" for new constitutional arrangements for Bosnia-Herzegovina was agreed to at the fifth round on March 18, 1992, and supplemented by additional human rights principles at the sixth round on March 31, 1992. *Id.* However, these agreements were soon denounced, and despite later talks no subsequent agreements materialized. *Id.* The decision by Conference Chairman Lord Carrington to step down in mid-August formally signified the EC's failed year-long attempt at peace-making. David Gardner, *Where Community Went Wrong: Mistakes Were Made, but EC-established Principles Will Hold*, FIN. TIMES, Aug. 26, 1992, at 2.

⁵³ Judy Dempsey, *Carrington Resigns as EC Peace Envoy to Yugoslavia*, FIN. TIMES, Aug. 26, 1992, at 1. While the resignation of EC Conference Chairman Lord Carrington indicated the failure of a year-long mission, the London Conference was intended to act as a turning point in the peace process, to tackle the obstacles to a settlement of the disputes between the Croats, Bosnian-Muslims, and Serbs. *Id.*

⁵⁴ Steve Crawshaw & Tony Barber, *Inside Story: Peace? What Peace?*, INDEPENDENT, Aug. 30, 1992, at 17.

continuous session until a final settlement was reached.⁵⁵ The London Conference combined an unprecedented coalition of the United Nations and the European Community "to deal with a situation fraught with danger for international peace and security."⁵⁶

D. Teaming of Vance and Owen

EC envoy Lord David Owen entered the negotiating scene as Co-Chairman of the Steering Committee of the London Conference,⁵⁷ forming a joint effort with UN representative Cyrus Vance. Owen was charged with forging the EC's efforts through the Conference on Yugoslavia and heading up the activities of the United Nations in order to prepare the basis for a general settlement of the Yugoslav war.⁵⁸ Vance and Owen's assignment encompassed the formidable task of reconciling the three widely divergent views of the Muslims, Croats, and Serbs on the future of Bosnia-Herzegovina, which is fundamental to an eventual compromise solution of

⁵⁵ *International Conference on the Former Yugoslavia, Aug. 27, 1992*, U.N. Doc. LC/C4 Final, reprinted in *International Conference on the Former Yugoslavia: Documents Adopted at the London Conference*, 31 I.L.M. 1488, 1534 (1992) [hereinafter *London Conference Documents*]. The International Conference on the Former Yugoslavia envisaged two stages: (1) the London Conference, convening August 26 to 28, 1992; and (2) the Geneva Process, convening September 3, 1992, to meet in continuous session in Geneva until a settlement was reached. *Id.*

⁵⁶ *London Conference Report*, *supra* note 52, at 1552. The London Conference combined the efforts of the UN, the EC, the Conference on Security and Cooperation in Europe (CSCE), the Organization of the Islamic Conference (OIC), and other international organizations. *Id.*

⁵⁷ Chris Moncrieff, *Lord Owen Sets Off on Peace Trail*, Assoc. Press Newsfile, Aug. 30, 1992. Lord David Owen, a former Labour cabinet minister of the United Kingdom (UK), was one of the founders and subsequent leaders of the now-defunct Social Democratic Party of the UK. *Fitting Tribute*, FIN. TIMES, Aug. 26, 1992, at 13.

⁵⁸ *London Conference Report*, *supra* note 52, at 1552. The Permanent Co-Chairmen of the London Conference are the Head of State Government of the Presidency of the European Community, British Prime Minister John Major, and the Secretary-General of the United Nations, Boutros Boutros-Ghali. Vance and Owen managed the operational work of the Conference as Co-Chairmen of the Steering Committee, overseeing the work of six Working Groups on: (1) Bosnia-Herzegovina; (2) Humanitarian Issues; (3) Ethnic and National Communities and Minorities; (4) Succession Issues; (5) Economic Issues; and (6) Confidence and Security-Building and Verification Measures. *Id.*

the conflict.⁵⁹ A Statement of Principles emerged from the London Conference to serve as the basis of a future negotiated settlement, providing for: the cessation of fighting and the use of force by all parties; the non-recognition of advantages obtained by the use of force; respect for individual rights and fundamental freedoms as embodied in international humanitarian law; the condemnation of forcible expulsions and illegal detentions; respect for independence, sovereignty, and territorial integrity; compliance with Security Council Resolutions; the provision of humanitarian assistance; and cooperation in monitoring, peacekeeping, and arms control operations.⁶⁰ Additionally, the Conference generated a Statement on Bosnia, setting forth the provisions necessary for a political settlement in Bosnia-Herzegovina.⁶¹ Thus, Vance and Owen embarked on their mission to implement a negotiated settlement encompassing a comprehensive list of demands that seemed unrealistic in light of the past difficulties in securing a lasting agreement on the most basic principles.

Since the continuous joint UN-EC effort—referred to as the Geneva Process—began on September 3, 1992,⁶² humanitarian, military, and political aspects of the Yugoslav conflict remain at the top of the Vance-Owen agenda. The Geneva Process harmonizes efforts to promote a cessation of hostilities with efforts promoting a constitutional settlement in Bosnia-Herzegovina, thus unifying the previously dichotomized peacekeeping and peacemaking efforts of the UN and the EC.⁶³ In addition to overseeing the work of the chairmen of the six Working Groups, and their almost daily contact with the UN High Commissioner for Refugees,⁶⁴ Vance and Owen generated extensive diplomatic activities with the principal leaders of the former Yugoslavia, issuing public statements which addressed developments

⁵⁹ See *id.* at 1554. Although the three parties held divergent views on the future structure of Bosnia-Herzegovina, the Co-Chairmen believed that, given the intermingled population of Bosnia, there “appear[ed] to be no viable way to create three territorially distinct States based on ethnic or confessional principles,” and thus, the establishment of a decentralized state is the only “viable and stable solution that does not acquiesce in already accomplished ethnic cleansing.” *Id.* at 1559.

⁶⁰ *London Conference Documents*, *supra* note 55, at 1533.

⁶¹ *Id.* at 1537.

⁶² *London Conference Report*, *supra* note 52, at 1554.

⁶³ *Id.* at 1557 (describing the task of the Working Group on Bosnia-Herzegovina “to promote a cessation of hostilities and a constitutional settlement,” and remarking “that the two aspects of the work are closely related.” *Id.* at 1558.

⁶⁴ *Id.* at 1555.

as they arose.⁶⁵ While pursuing these efforts, the magnitude of the deteriorating situation in Bosnia-Herzegovina emerged from proliferating reports of the Serbs' campaign of "ethnic cleansing,"⁶⁶ wanton destruction of property,⁶⁷ and atrocious humanitarian violations.⁶⁸ Unfortunately, "unconditional" cease-fire commitments continued to do little to interrupt the violent situation on the ground, provoking grave concern that "irregular" elements seemingly outside the control of the warring factions would perpetuate the war indefinitely, irrespective of agreements reached at the negotiating table.⁶⁹

Back at the UN, the Security Council did nothing to implement its

⁶⁵ See *id.* at 1556. The subsequent declarations issued by the Co-Chairmen include: the joint declaration of Sept. 30, 1992 (issued by President Cosic of the Federal Republic of Yugoslavia and President Tudjman of Croatia, (annex II); statement of Sept. 30, 1992 (annex III) (noting the establishment of the Mixed Military Working Group in Sarajevo); statement of Oct. 13, 1992 (annex IV) (concerning the removal of Bosnian Serb combat aircraft from Bosnia-Herzegovina to the Federal Republic of Yugoslavia); joint statement of Oct. 19, 1992 (issued by President Cosic of Yugoslavia and President Izetbegovic of Bosnia-Herzegovina); joint declaration of Oct. 20, 1992 (issued by President Cosic of Yugoslavia and President Tudjman of Croatia); agreements with Croatia, the Federal Republic of Yugoslavia, Bosnia-Herzegovina and Bosnian-Serb representatives on deployment of observers at airfields in accordance with ban on military flights over Bosnia-Herzegovina. *Id.*

⁶⁶ Philippe Naughton, *Mazowiecki Says Ethnic Cleansing has Done its Job*, Reuter Lib. Rep. Oct. 23, 1992. Former Polish Prime Minister Tadeusz Mazowiecki stated that the human rights situation in the former Yugoslavia had not improved at all since he last visited the region in August 1991, due to the Serbs' expulsion of Muslims and Croats from their homes in northern Bosnia, while carrying out their campaign of "ethnic cleansing." *Id.*

⁶⁷ *Land of the Demons*, *supra* note 3 (placing the blame for the worsening situation on the Serbs, who were responsible for terrorizing innocent civilians and shelling "cities and towns into rubble").

⁶⁸ *UN Council "Appalled" by Attacks on Jajce Refugees*, Reuter Libr. Rep., Oct. 30, 1992. Growing reports of the atrocities in Bosnia-Herzegovina were submitted to the Council in accordance with its request of Aug. 13, 1992, for all States and international humanitarian organizations "to collate substantiated information" relating to the violations of humanitarian law being committed in the former Yugoslavia. S.C. Res. 771, *supra* note 46. The U.S. State Department was the first to submit a report in which it documented a campaign of "ethnic cleansing" against the Muslim population in Bosnia-Herzegovina, including charges of torture, rape, and wanton destruction of property. Norman Kempster, *New Study Cites Thousands of Bosnia Atrocities*, L.A. TIMES, Oct. 23, 1992, at A4.

⁶⁹ U.N. SCOR, 3134th mtg. at 17, U.N. Doc. S/PV.3134 (1992) [hereinafter Vance-Owen Report] (report of Vance on the situation in the former Yugoslavia, noting the unconditional cease-fire declared by the military commanders of the three factions in Sarajevo on Nov. 10, 1992, under the auspices of the UNPROFOR).

previous demands, despite the fact that its previously imposed sanctions regime⁷⁰ continued to be evaded and violated.⁷¹ Alternative action by the UN came in the form of a "war crimes commission," established to better assimilate the massive information and evidence of alleged war crimes being turned over to the UN.⁷² However, the alleged "criminals" were the very same leaders of the Yugoslav factions that Vance and Owen were assigned to pressure and cajole into a political settlement over the future of Bosnia-Herzegovina.

Most notably, the Geneva Process has produced a constitutional framework for Bosnia-Herzegovina, referred to as the Geneva Peace Plan. The Peace Plan disavows division along ethnic lines, yet aspires to coexistence through a decentralized government. The tremendous efforts of Vance and Owen to negotiate and elicit unequivocal acceptance of this plan by the Muslims, Croats, and Serbs in Bosnia persist month after month, as does the violence. While skeptics doubt that such a solution will ever materialize, the mediators will remain steadfast in their attempts, as long as the parties are willing to come to the table.

Pressuring the three groups to agree to the Geneva Peace Plan has proved to be an arduous feat. By January 1993, Vance and Owen achieved acceptance of the first stage of the Geneva Peace Plan, providing for the division of Bosnia-Herzegovina into ten semi-autonomous provinces in a decentralized country, to be governed by constitutional principles.⁷³

⁷⁰ See *supra* notes 20-21, 47 and accompanying text.

⁷¹ Vance-Owen Report, *supra* note 69, at 14-15. Vance reported that larger and larger quantities of embargoed oil continued to get through Serbia. *Id.* at 16. He reiterated that the arms embargo be "maintained and enforced," stating that "lifting the arms embargo not only would increase hostilities in Bosnia and Herzegovina, but could spread the conflict throughout the Balkan region." *Id.*

⁷² S.C. Res. 780, U.N. SCOR, 3122nd mtg., U.N. Doc. S/Res/780 (1992). The Commission of Experts includes experts from Canada, Egypt, Norway and Senegal and is headed by Dutch Professor Frits Kalshoven. J.T. Nguyen, *Legal Experts Named to Balkans War-crimes Panel*, UPI, Oct. 26, 1992, available in LEXIS, Nexis Library, Currrt File.

⁷³ See *supra* note 5. Although Bosnia's Muslim and Croat factions had previously accepted the first stage of the Geneva Peace Plan, the Serbs held up its ratification. Bosnian-Serb leader Radovan Karadzic conditioned initial acceptance of the Plan on approval of the de facto Bosnian Serb parliament. David Mutch, *Bosnian Serbs Vote For Peace Plan*, CHRISTIAN SCI. MONITOR, Jan. 21, 1993, at 2. On January 21, 1993, the parliament voted for the Geneva Peace Plan 55-15. *Id.*; see also *Bosnian Serbs' Peace Resolution*, N.Y. TIMES, Jan. 21, 1993, at A3 (text of Bosnian Serbs' resolution accepting the first stage of the Plan). Presented with an ultimatum by the international community, the Serbs were given the choice

However, once again, the situation on the ground contrasted markedly with the conciliatory tone at the negotiating table. Within a week of acceptance, Serbian forces hit the Bosnian capital of Sarajevo with the heaviest shelling that city had seen in months.⁷⁴ Fighting renewed in Croatia almost simultaneously, as Croats launched an offensive in Krajina to gain back disputed Serb-occupied territory.⁷⁵ Given the incessant fighting, an eventual peace settlement will have to be complemented with extraordinary efforts to ensure effective implementation in Bosnia.⁷⁶ Meanwhile, the possibility of outside military involvement is seriously contemplated, as leaders at NATO and the Pentagon draw up contingency plans for ways to intervene "if ordered to do so."⁷⁷

III. LEGAL BACKGROUND

The United Nations was established in the aftermath of World War II to replace the failed League of Nations,⁷⁸ which proved ineffective in con-

to accept the proposal unconditionally or risk world isolation and military intervention. Urban, *supra* note 5. The next stage of the Plan, yet to be resolved, primarily entails drawing up the map that would achieve this new federation.

⁷⁴ *Fighting Continues in the Former Yugoslavia*, CNN, Jan. 27, 1993, available in LEXIS, Nexis Library, Curmt File. In response to the renewed fighting in the face of the recently signed agreement, mediators stated that the Bosnian crisis was still "fixable" through diplomatic negotiation. CNN, World News, *Interview with Lord Owen*, Feb. 1, 1993, available in LEXIS, Nexis Library, Curmt File.

⁷⁵ Croatian President Franjo Tudjman vowed to gain back disputed Serb territory "with the help of the United Nations; if not, we will do it ourselves." Laura Silber, *Croatian Leader Vows to Take Over Serb Enclave*, FIN. TIMES, Feb. 1, 1993, at 5. The Croatian offensive succeeded across UN lines to secure the Maslenica bridge and Peruca dam, situated in one of four UN protected areas in Croatia, despite UN demands to halt. Laura Silber, *Stormclouds Gather Over Croatia's Sector West*, FIN. TIMES, Feb. 15, 1993, at A3. The renewed Serb-Croat fighting was fueled by heavy artillery taken back by Serbs from UN compounds under UN guard. *Id.*

⁷⁶ Robert Mauthner, *UN, EC Push for Autonomy Solution*, FIN. TIMES, Feb. 17, 1993, at A2. The North Atlantic Treaty Organization (NATO) is planning the deployment of up to 60,000 troops, as part of a massively strengthened UN peacekeeping force, if the parties sign the Geneva Peace Plan. *Id.*

⁷⁷ *Land of the Demons*, *supra* note 3.

⁷⁸ A combination of factors led to the demise of the League of Nations. Explanations of its failure include: procedural difficulties such as the requirement of unanimity in the Council and Assembly on substantive questions; failure of member states to support the League's principles; American defection; and the fundamental inability of a collective security system

fronting threats to world peace. To fulfill its role as the primary international organization charged with safeguarding international peace and security, and in order "to save succeeding generations from the scourge of war," the UN was bestowed with more comprehensive powers than the League.⁷⁹ The Charter confers "primary responsibility for the maintenance of international peace and security" on the Security Council, which acts on behalf of UN Members.⁸⁰ Although endowed with substantial enforcement powers, the Council never developed its "capacity to deal autonomously with threats to the peace, breaches of the peace, and acts of aggression," precluded by the hamstrung Cold War era.⁸¹ While the stalemate of the Cold War era is gone, functional Security Council enforcement mechanisms have not evolved.⁸² In their place, peacekeeping operations have emerged as the Council's primary tool for dealing with threats to peace and security.⁸³ Peacekeeping operations, though not specifically provided for in the Charter, build on existing provisions in Chapter VII whereby the Council, upon determining "the existence of any threat to the peace, breach of the peace, or act of aggression . . . shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."⁸⁴ In principle, dispatching peacekeepers to troubled regions

to keep peace. RIGGS & PLANO, *supra* note 30, at 13-14.

⁷⁹ U.N. CHARTER PREAMBLE. Article 1 of the Charter provides that the purpose of the United Nations is to maintain international peace and security.

⁸⁰ U.N. CHARTER art. 24.

⁸¹ Eugene V. Rostow, *Agora: The Gulf Crisis in International and Foreign Relations Law, Continued: Until What? Enforcement Action or Collective Self-Defense?*, 85 A.J.I.L 506 (1991) (stating that the Soviets' policy of expansion, the aggressive use of armed force, and the exercise of Security Council veto between 1945 and 1990 "prevented the development of the Security Council's capacity").

During the Cold War era, one of the five permanent members of the Security Council often vetoed measures it did not favor. *Id.* The five permanent members of the Security Council are China, France, the Soviet Union (replaced by the Russian Federation), the United Kingdom, and the United States. U.N. CHARTER art. 23(1).

⁸² Rostow, *supra* note 81 (stating that the coercive powers conferred on the Security Council have not yet become a working part of the process for managing the state system).

⁸³ UNITED NATIONS, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACEKEEPING 5* (1985).

⁸⁴ U.N. CHARTER art. 39. The process of peacekeeping has been described as "the act of peaceful third party intervention where the practitioner remains wholly impartial and uninvolved in the dispute of the parties concerned; where its terms of reference are founded on negotiation and mediation and not on enforcement action." Rosalyn Higgins, *UNITED NATIONS PEACEKEEPING: PAST LESSONS AND FUTURE PROSPECTS 14* (Annual Memorial

around the world serves the dual function as a neutral buffer between warring parties and a facilitator of conditions for the peaceful settlement of disputes through diplomacy and mediation. In practice, peacekeeping operations typically deal with regional conflicts "that potentially threaten international peace and security and where, often, power vacuums have resulted from the decolonization process."⁸⁵ As the UN may not intervene in "those matters essentially within the domestic jurisdiction of any state,"⁸⁶ it is logical that peacekeeping operations must have the consent of host governments.⁸⁷ However, in cases of threats to international peace and security, where the Council invokes Chapter VII, the situation is no longer "essentially within the jurisdiction" of the state concerned; thus, it is arguable whether, in that context, consent of the host government should be a precondition to the deployment of peacekeeping operations. Nevertheless, the prevailing unwritten rule remains that peacekeepers will not be sent into troubled zones without permission of states concerned,⁸⁸ regardless of how the conflict is labeled, thus indicating the primary concern is more for the troops' safety than sovereignty.

Recognizing the impracticalities of the United Nations handling every conflict that potentially threatens peace and security, Article 33 of the Charter urges parties to a dispute to resolve controversies themselves, through regional agencies or arrangements, "or other peaceful means of their own choice."⁸⁹

Whether a dispute should be handled by the UN or a regional organization

Lecture, David Davies Memorial Inst. of Int'l Studies, 1971).

⁸⁵ UNITED NATIONS, *supra* note 83, at 6-7.

⁸⁶ U.N. CHARTER art. 2(6).

⁸⁷ UNITED NATIONS, *supra* note 83, at 3.

⁸⁸ The precondition of consent for the deployment of peacekeeping operations is an unwritten rule in the sense that it is not provided for in the Charter, of course, as "peacekeeping" itself is not specifically delineated in the Charter either. However, it has become a "written" rule in the sense that virtually every analysis of peacekeeping operations stipulates the notion of consent as a feature, or prerequisite of such operations.

⁸⁹ U.N. CHARTER art. 33. Under Chapter VI, Pacific Settlement of Disputes, article 33(1) provides:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Id.

is determined on an ad-hoc basis, where "referral to one or the other hinges on the political circumstances of each case."⁹⁰ Both utilize the same means of dispute settlement, namely, negotiation, mediation, diplomatic pressure, cease-fire agreements, proposals, and appeals. Once a regional agency or organization attempts to handle a dispute, the Charter requires that the parties involved "make every effort to achieve pacific settlement of local disputes . . . before referring them to the Security Council,"⁹¹ while the Council "shall encourage" pacific settlement of local disputes through such regional arrangements.⁹² The European Community's handling of the Yugoslav dispute illustrates this practice, as the Council encouraged and endorsed the EC's continuing efforts to achieve a peaceful settlement, while maintaining its distance from the dispute settlement process for over a year. When the EC's efforts proved abortive, the UN inescapably committed itself to the settlement process in accordance with its mandate to maintain or restore international peace and security.⁹³ Building new diplomatic machinery, the UN formed a unique partnership with the EC, harnessing "the special commitments and concerns of a region," in order to revitalize and hasten a resolution of the crisis. Furthermore, the Charter provides for all Members "to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities."⁹⁴ However, such agreements never materialized, leaving the Security Council with no military force at its disposal. In the extraordinary event the

⁹⁰ RIGGS & PLANO, *supra* note 30, at 193 (stating "there are no clear guidelines for determining whether a dispute should be handled by a regional organization or by the United Nations").

⁹¹ U.N. CHARTER art. 52(2).

⁹² U.N. CHARTER art. 52(3).

⁹³ See *supra* notes 52-56 and accompanying text (describing the end of the EC's solo efforts and the subsequent joining of the UN and the EC to negotiate a political settlement of the Yugoslav conflict).

⁹⁴ U.N. CHARTER art. 43(1). Article 1 provides a primary purpose of the United Nations is:

To maintain international peace and security, and to that end: to take *effective collective measures for the prevention and removal of threats to the peace*, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlements of international disputes or situations which might lead to a breach of the peace.

U.N. CHARTER art. 1 (emphasis added).

Council decides military enforcement is warranted, it must utilize Member forces acting under its auspices. Thus, the Security Council remains more apt to impose obligatory sanctions "to give effect to its decisions,"⁹⁵ as the authorization of military intervention is not an easily workable alternative.

Although military and non-military sanctions were utilized in the Yugoslav conflict, the escalation of violence and atrocities accompanying the parties' utter evasion of the Council's sanctions make it clear that the situation in Bosnia has deteriorated beyond the point where such measures can make a difference. Sanctions against Serbia will not stop the war, nor will they restore Muslim and Croat territory taken by force or provide for the rebuilding of devastated Bosnia.⁹⁶ Yet placing reliance on such measures and repeatedly calling for the "tightening of sanctions" serves as a readily convenient response that enables the UN and the international community to forestall direct involvement.

IV. ANALYSIS

Widespread support of the Vance-Owen Geneva peace plan for Bosnia-Herzegovina rose from the ashes of the failed efforts of the European Community and the United Nations to effectively handle the Yugoslav crisis. As the situation spiraled out of control, the UN increasingly defended the Vance-Owen agenda of diplomacy and conciliation as the best hope for resolving the conflict. The UN thus allowed the peace process to serve as the scapegoat, hoping to shield attention away from the UN's own inept handling of the threat to international peace.

The EC's year-long solo efforts proved inadequate to negotiate a political settlement of the conflict in Yugoslavia. While the commitment of the EC to handle the crisis was meritorious, it was not realistic. The nature of the dispute simply did not lend itself to simple negotiation of a solution. Deep-

⁹⁵ U.N. CHARTER art. 41. This sanctions provision stipulates:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Id.

⁹⁶ Judy Dempsey, *First Light in Bitter Yugoslav Imbroglia: The War in Bosnia Goes On, But the London Conference has Made Headway*, FIN. TIMES, Aug. 28, 1992, at A2.

seeded animosity and distrust, coupled with the absence of a central authority in Yugoslavia, foretold that the parties were not likely to simply talk through their differences. Without a peacekeeping force to bring order and stability to the region, the charged situation did not permit a negotiated settlement of political differences. While some regional organizations are outfitted to compliment negotiation efforts with the dispatch of peacekeeping forces, the EC is not equipped to resort to peacekeeping.⁹⁷ Instead, the EC sent "monitors" to the region that proved incapable of little more than observing the escalating violence.

While the EC was the only organization that would, and did, attempt to handle the crisis at its inception,⁹⁸ it should have conceded within weeks that it was incapable of managing resolution of the crisis, given the real magnitude of the situation ready to explode. Although its efforts at diplomacy seemingly prevented mass bloodshed in Slovenia, a clash between the Serbs and Croats proved inevitable, as did the spread of conflict to Bosnia-Herzegovina. Additionally, incorrect assumptions in the early stages of the Yugoslav crisis plagued the EC's efforts to "handle" the situation, as misplaced appeals to the Yugoslav authorities and the federal army to restore order were based on the faulty assumption that there was such a central

⁹⁷ RIGGS & PLANO, *supra* note 30, at 194. Stating that the techniques of regional organizations do not differ markedly from that of the United Nations, including resort to peacekeeping in some form, the authors cite several regional organizations that have authorized peacekeeping forces. These examples include: the Organization of American States' (OAS) authorization of a peacekeeping force in the 1965 Dominican crisis; the Arab League's establishment of a peacekeeping force in Kuwait in 1961 "to ward off the threat of Iraqi attack"; the Organization of African Unity's establishment of a peacekeeping force in Chad in 1980; and the Arab League's formation of a peacekeeping force in Lebanon in 1976. *Id.*

⁹⁸ *Slovenia Asks Security Council to Discuss Conflict*, Reuters June 28, 1991. In response to a letter from Slovenian President Milan Kucan requesting an emergency meeting of the Council to stop the "aggression" against Slovenia, Secretary-General Javier Perez de Cuellar described events in Yugoslavia as an internal matter in which he could not intervene. *Id.*; *Slovenian President Asks for Emergency U.N. Security Council Meeting*, Agence France Presse June 29, 1991. Foreign Minister Jacques Poos, speaking for the Luxembourg Presidency of the EC, stated, "It is a European problem. It is up to the Europeans to find a solution . . . it is not up to the Americans or anyone else." *EC Reacts to Yugoslav Crisis, But Puts Off Reform Decisions*, Agence France Presse June 29, 1991.

authority in control.⁹⁹ Support for maintaining the "unity" and "territorial integrity" of Yugoslavia worsened the situation, delaying international pressures on the Serbs "to undertake timely reform toward a loose confederation while intensifying internal pressures for a complete break-up."¹⁰⁰ As the EC was the only organization involved first-hand in the developing crisis, it should have been the first to apprise the international community that the dissolution of Yugoslavia was inevitable, and that appeals to preserve Yugoslavia's unity were in effect reinforcing the Serb-dominated government and army's efforts to quash the republics' independence.¹⁰¹ Instead, the EC remained committed to continuing negotiations, establishing rudimentary cease-fires and espousing demands to stop fighting, which in effect bought the parties much needed time to mobilize forces, solidify their positions, and garner the loyalties of the fragmenting factions.

⁹⁹ Weller, *supra* note 11, at 569-572. In May 1991, when the leadership of the country's rotating presidency was due to change, Stipe Mesic, a Croat, was supposed to have assumed the federal presidency. However, Serbia, Montenegro, and two autonomous republics refused to approve Mesic, blocking the vote in favor of leaving the country without a president. *Id.* at 570. Additionally, the Serbian leadership had previously "had the army declare martial law, a move that had been explicitly ruled out by the federal presidency, which acted, or should have acted, as commander in chief." *Id.* Within weeks of the republics' independence declarations, it was reported that the central government lay in shreds. John Tagliabue, *Conflict in Yugoslavia; The Yugoslavia Blowup: The Center Comes Apart*, N.Y. TIMES, July 3, 1991, at A6.

¹⁰⁰ Zbigniew Brzezinski, *Bombs and Blather: The Strategy Deficit; Can Clinton Find America's Missing Foreign Policy?*, WASH. POST, Jan. 17, 1993, at C1. The United States led the initial call for respecting Yugoslavia's territorial integrity, qualifying this appeal, "We particularly call upon the central government and the Yugoslav army to end the bloodshed, to exercise restraint and to commence negotiations immediately." State Dept., June 28, 1991 (regular briefing by Margaret Tutwiler), available in LEXIS, Nexis Library, Currnt File. Additionally, support for maintaining the "territorial integrity" of the Yugoslav federation was voiced by the EC and its members, and the Conference on Security and Co-operation in Europe (CSCE). Weller, *supra* note 11, at 570.

Within days of the initial independence declarations, the Serb-dominated Yugoslav government outlawed Slovenia's and Croatia's independence declarations and ordered the federal army to seize control of the borders with Slovenia. *World News Summary*, Agence France Presse, June 27, 1991. The federal defense ministry stated the army would "take all necessary steps" to defend Yugoslavia's territorial integrity. *Id.*

¹⁰¹ Weller, *supra* note 11, at 570. This policy of proclaiming territorial integrity, precluding internal attempts at secession, "was perceived by the Serbian-dominated central authority as *carte blanche* for the forcible implementation of its goals to reunify the federation and consolidate its leadership within it." *Id.* at 572.

Although diplomacy efforts during the early phases of the Yugoslav crisis were crucial as the time for negotiations to prove successful could never have been more ripe,¹⁰² it should have been realized that the EC's mediation efforts could not succeed without complementary peacekeeping forces to fill the vacuum on the ground. Since the EC was steadfast in its determination to prove it could handle this crisis in its own backyard, the onus for failing to realize that regional efforts were not succeeding falls on the United Nations.

If the UN Security Council, acting within its mandate to *maintain* international peace and security, had dispatched a peacekeeping force to complement the EC's negotiation efforts when the initial chaos broke out, the chances of diffusing the Yugoslav powderkeg would have been much greater.¹⁰³ Despite Slovenian President Milan Kucan's request of the Secretary-General, within days of the outbreak of conflict, to convene an emergency Security Council meeting in order to stop the aggression, the Secretary-General responded that the Yugoslav situation was an internal matter in which he could not intervene.¹⁰⁴ Arguably, the Secretary-General's invocation of the non-interference principle enshrined in the Charter¹⁰⁵ was merely a strict constructionist interpretation of the situation, and not political. If the situation warrants, Article 99 empowers the Secretary-General to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."¹⁰⁶ At this time, many officials suggested that the

¹⁰² Immediately following Slovenia's and Croatia's independence declarations, both republics repeatedly emphasized that they were willing to discuss a looser Yugoslav confederation. *Yugoslavia is Such a Bother*, *ECONOMIST*, June 29, 1992, at 41 (noting the latest opinion poll in Slovenia put advocates of an immediate break at 44%, while 34% were in favor of continued negotiations; in Croatia, 50% advocated breaking away, while 45% did not).

¹⁰³ In mid-1991, the factions had yet to mobilize troops, the republics were internally torn over what the future of the country would, or should be, the federal army was fragmented, and no one seemed to be in charge. Jill Smolowe, *Out of Control: In a Country Where all Sides are Consumed by Ancient Animosity, Even the Army Seems Incapable of Halting the Drive for Secession*, *TIME*, July 15, 1991, at 26.

¹⁰⁴ See *supra* note 100.

¹⁰⁵ The UN may not intervene in "matters which are essentially within the jurisdiction of any state." U.N. CHARTER art. 2(7).

¹⁰⁶ U.N. CHARTER art. 99. Former Secretary-General, Dag Hammarskjöld, invoked article 99 in the midst of the situation developing in the Congo in 1960, in response to a similar letter from the President and Prime Minister of Lumumba. UNITED NATIONS, *supra* note 83,

Yugoslav situation could potentially engulf the country in a brutal civil war if conflict was not immediately suppressed, and that the establishment of a peacekeeping force in the troubled region was the best chance to prevent open war.¹⁰⁷ Despite these prophetic warnings, the Secretary-General's decision that the situation was hands-off was likely prompted more by the belief that any attempt at UN action would be vetoed by the Soviet Union.¹⁰⁸

The notion that the international community found the decision of UN involvement beyond their reach calls into question just how far the UN has succeeded in overcoming the hamstrung Cold War era. Although the UN's initial decision of non-involvement likely involved a number of considerations, including the willingness of the EC to handle the Yugoslav conflict, this decision only delayed inevitable UN involvement, where urgent appeals of the international community prompted Security Council action within two months.¹⁰⁹ Thus, it is clear that if the UN had heeded the early alarms that the Yugoslav situation posed a threat to international peace and security, early UN involvement in the form of a peacekeeping force to complement the EC's negotiation efforts could have precluded the scale of the war that

at 218. In their letter, the leaders requested UN military assistance "to protect the territory of the Congo against the present external [Belgian] aggression which is a threat to international peace." *Id.* Conflict arose shortly after the Republic of the Congo gained its independence from the Belgian colonial administration. *Id.* at 215-217.

On two prior occasions where the UN decided an intrastate conflict warranted its involvement, the situation involved newly independent states where the government was unable to stop the spread of violence. In Cyprus in 1964, and in the Congo in 1960, peacekeeping forces were dispatched to areas "characterized by rising nationals, the creation of newly independent states, and the struggle of those states to consolidate their newly won statehood." JAMES M. BOYD, *UNITED NATIONS PEACE-KEEPING OPERATIONS: A MILITARY AND POLITICAL APPRISAL* 29 (Praeger Special Studies in Int'l Politics & Public Affairs, 1971). In both situations, the government was unable to prevent the spread of violence. *Id.* at 28.

¹⁰⁷ Marc Fisher, *Slovenia Nears Independence as Croatia Faces Civil War, 6-7 Leaders Said to See Croats Destined for War*, WASH. POST, July 20, 1991, at A1. A senior German official was quoted as saying "without a peacekeeping force, Croatia is destined to suffer civil war." *Id.*

¹⁰⁸ The obstacle is a clear Soviet message that Moscow will veto any attempt to use U.N. forces to settle an internal Yugoslav dispute . . . the Soviets will resist any move that could set a precedent for "internalizing" nationalist conflicts such as those that plague Soviet President Mikhail Gorbachev's government.

Id.

¹⁰⁹ See *supra* note 19.

unfolded, including the atrocities and forcible expulsions committed in the nine months prior to UN's deployment of a "protection" force.

While the EC may be the convenient scapegoat for failing to negotiate a settlement, the UN must be blamed for this failure. Declining to adequately support the EC's efforts greatly hindered chances for successful future negotiations, as the UN's inactivity enabled the parties to become entrenched in their positions in the months following the inception of fighting. The UN's inaction for three months, and hesitant action thereafter, exemplifies that the UN has not effectively bridged the gulf between theory and practice, where its espoused goal of "preventive diplomacy," or the "dispatching of envoys to trouble spots around the world to defuse political crises before they escalate into armed conflict," continues to be just a theory.¹¹⁰ When the UN did finally authorize the deployment of a peacekeeping force (UNPROFOR), it made no attempts to consolidate its efforts with the mediation efforts of the EC. This disjointed approach of handling the Yugoslav crisis, with the UN concentrating on "peacekeeping," while the EC struggled at "peacemaking," resulted in "a host of mutually incompatible and haphazardly constructed policies," which doomed both operations to failure.¹¹¹ The EC and UN's recognition of the republics' independence in the midst of war exemplifies this ad-hoc approach, as recognition only furthered the deepening mistrust and animosity already separating the ethnic

¹¹⁰ Andrew Bilski, *A Dangerous Date*, MACLEAN'S, Apr. 13, 1992, at 48 (quoting UN Secretary-General Boutros Boutros-Ghali). Fathered by previous Secretary-General Dag Hammarskjöld, the theory of preventive diplomacy was articulated in a report to the General Assembly:

Preventive action in such cases must, in the first place, aim at filling the vacuum so that it will not provoke action from any of the major parties, the initiative from which might be taken for preventive purposes but might in turn lead to a counter action from other sides. The ways in which a vacuum can be filled by the United Nations so as to forestall such initiatives differ from case to case, but they have this in common: Temporarily, and pending the filling of the vacuum by normal means, the United Nations enters the picture on the basis of its non-commitment to any power bloc, so as to provide to the extent possible a guarantee in relation to all parties against initiatives from others.

Introduction to the Annual Report of the Secretary-General on the Work of the Organization, June 16, 1959, to June 15, 1960, GAOR, 15th Sess., supp. no. 1A, at 4, reprinted in RIGGS & PLANO, *supra* note 30, at 134-135.

¹¹¹ Jonathan Eyal, *United Nations: Blue Flag of Inconvenience—Former Yugoslavia*, GUARDIAN, Jan. 29, 1993.

factions, throwing another wrench in already complicated negotiations for a political settlement.

In its first action concerning the Yugoslav conflict, the Security Council displayed its incomplete understanding of the underpinnings of the crisis by imposing a complete arms embargo on all deliveries of weapons and military equipment to Yugoslavia. Although meant to suppress hostilities, this move further exacerbated the situation, enabling the Serbs to overpower the Croats and Muslims due to their military advantage.¹¹² Imposing an arms embargo neither deterred the fighting, nor quelched animosity; rather, this action fueled the Bosnian Muslims' resentment of the UN's approach to the crisis, regarding the arms embargo as the removal of their ability to defend themselves against the well-armed Serbs.¹¹³

Although the imposition of general sanctions against Serbia and Montenegro signified that the Council has come to realize who were the real aggressors in the war, this move further destabilized a worsening situation.¹¹⁴ While the war had already begun to affect the country's fragile infrastructure and economy, the Council's action enabled the Serbs to blame the international community for their worsening situation. Where the country would have steadily deteriorated of its own accord, the UN's action muddied the waters by making the blame for horrific living conditions easier to shift to someone else, while doing nothing to lessen the factions' loyalties to their leaders. While the UN threatened, but failed, to "tighten" or enforce sanctions, in essence parading the language of strength without being prepared to use it, the Serbs' aggressive quest for a "Greater Serbia" was hardly deterred. Since the inception of fighting, the Serbs have steadily gained control over previously Croat and Muslim-dominated territory in Bosnia-Herzegovina, readying themselves for the ultimate line-drawing under the auspices of the Vance-Owen peace plan. The Muslims, tired of waiting for the UN to enforce peace, continue to witness more and more of their homeland being stripped away and their people dying, while they are ironically pushed to accept the Vance-Owen plan in the name of peace and security. Although the UN adamantly pushes for a peaceful settlement, it failed to facilitate conditions conducive to peaceful settlement.

¹¹² See *supra* notes 20-22 and accompanying text.

¹¹³ Carol J. Williams, *Bosnia's Leader Threatens to Quit Peace Talks; Balkans: President Izetbegovic Says 1,000 are Dying Daily in Serbian Siege as Geneva Deadlock Goes on*, L.A. TIMES, Jan. 26, 1993, at A6.

¹¹⁴ See *supra* note 47 and accompanying text.

V. CONCLUSION

Charged with the maintenance of international peace and security, the United Nations fell short of fulfilling this mandate when it virtually ignored the Yugoslav crisis until it had spiraled out of control. Once involved, the Council relied on the parties to the Yugoslav crisis to abide by its demands to cease fighting, withdraw, and adhere to the on-again, off-again cease-fires, ignoring the underlying realities of the crisis. Ethnic factions living side by side in Yugoslavia could not answer to the rule of law, when their sacred homeland was threatened, their brothers shot, and their sisters and mothers raped. The Council's demands and pleas, coming amidst the virtual dissolution of Yugoslavia, fell on deaf ears. If the UN had entered the scene much earlier, with a peacekeeping force in place before the war was in full force, negotiations over the future of the breakaway republics might have been more successful. Instead, the burden falling on Vance and Owen, to negotiate a settlement over Bosnia-Herzegovina, has become "a pathetic catch-up game, in which political and territorial concessions chase the victories achieved on the ground through the ruthless use of force."¹¹⁵

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¹¹⁵ Brzezinski, *supra* note 100.

