

**WHEN SKELETONS COME OUT OF THE CLOSET: IMPLICATIONS OF THE BOSNIAN GENOCIDE DECISION FOR SERBIA’S EVENTUAL EU ACCESSION**

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I. INTRODUCTION

The year 2007 marked a high point in the international law arena: on February 26, 2007, the International Court of Justice (ICJ) issued a decision regarding charges of genocide in Bosnia during the early 1990s. In the 171-page *Bosnian Genocide* decision, the ICJ applied the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) for the first time in the history of international law. Bosnia and Herzegovina (Bosnia) brought the case sixteen years ago against Serbia and Montenegro (Serbia). Bosnia claimed that Serbia was accountable for the genocide committed in Bosnia after the demise of the former Socialist Federal Republic of Yugoslavia. In its final judgment, the ICJ held that Serbia violated its obligations under the Genocide Convention by failing to act to prevent genocide in the Bosnian town of Srebrenica in July 1995; however, since the court found no specific intent, the ICJ held that Serbia itself did not commit, conspire to commit, or incite the commission of the crime of genocide. Furthermore, the ICJ found that Serbia had violated its obligations under the Genocide Convention by failing to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY); Serbia refused to extradite war...
criminal General Ratko Mladic who was primarily responsible for the Srebrenica massacre.9

This Note discusses the effect of the Bosnian Genocide decision on Serbia’s past and future cooperation with the ICTY, which is a prerequisite for the country’s accession to the European Union (EU). A renewal of conflict in the Balkans, however limited, would be devastating for the region and beyond. It would be a serious blow to Europe, raising the specter of increased refugee flows. The EU has a direct and obvious interest in preventing further chaos in the conflict-prone Balkans: an economic interest in developing markets and trade routes with the region, and a security interest in protecting its frontier against criminal activity, instability, and refugee flows. It is crucial, however, that the EU stands firm in imposing the penalties for Serbia’s ongoing obstruction of international law, including suspending of Serbia’s EU accession process and conditioning pre-accession financial assistance on Serbia’s unequivocal cooperation with the ICTY.

This Note is comprised of six parts. To ensure a clear understanding of the Bosnian Genocide decision and its implications for Serbia’s accession to the EU and European security, Part II of this Note sets out the history of the Balkans with special emphasis on the war resulting from the demise of Communist Yugoslavia. Next, Part II examines the Genocide Convention by focusing primarily on provisions contained in articles II, IV, V, VII, and IX, as those provisions were applied by the ICJ in Bosnian Genocide. Finally, the overview concludes by outlining the history of the ICJ, with particular attention paid to the court’s jurisdiction, as this element was heavily disputed by Serbia (the respondent) in Bosnian Genocide. Part III analyzes the procedural posture of the case from 1993 to 2007. Special emphasis is given to the language in the judgment requiring Serbia to take preemptive measures to prevent genocide and extradite war criminals. Part IV shortly maps out Serbia’s accession process from 2005 through the end of 2007. It also points out key economic and security issues Serbia faces on its path to the EU.

9 Bosnian Genocide, supra note 1, para. 471.
Finally, Part V analyzes the potential effects of Serbia’s eventual accession on European security in light of Serbia’s continued failure to comply with the *Bosnian Genocide* judgment. This Note concludes with the strong message that Serbia’s unconditional cooperation with the ICTY should be a mandatory prerequisite before the country is allowed to further integrate with the EU. Dropping this condition for Serbia’s accession is unacceptable, as it would convey to the rest of the world that rules and standards do not matter to the EU.

II. BACKGROUND

A. Balkan History

1. Early History

Looking at the history of the Balkans reveals that hostilities are not new to the region; the crisis of the 1990s “reflects the conflicts of the past.”

People of Slavic descent first began emigrating from Eastern Europe to the Balkans in the sixth century. These early settlers were the ancestors of present-day Serbs and Croats, which means that the two groups have ties of kinship and were, in fact, originally one people. The Slavic peoples were originally entirely pagan, but one group of Slavs, the Serbs, settled in the east, an area increasingly targeted by Catholic Orthodox missionaries from Constantinople. Another group, the Croats, settled to the west, in an area which became increasingly Roman Catholic. The expansion of the Ottoman

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10 In the context of this Note, Balkans is the historic and geographic name used to describe the region of southeastern Europe, encompassing the countries of Albania, Bosnia, Bulgaria, Croatia, Greece, Macedonia, Montenegro, and Serbia.


14 BENNETT, supra note 12, at 17; JUDAH, supra note 13, at 9, 43–44.

15 BENNETT, supra note 12, at 17.
Empire into the region of Bosnia and surrounding area in the fifteenth century brought Islam into this religious mix. The Ottoman rulers did not force its people to convert to Islam but rather encouraged Christian members of the Ottoman Empire to change their faith by providing “economic and political benefits [for] conversion.” In Bosnia, it has been estimated that many people became Muslims. It was at this point that the region of Bosnia became a diverse mix of Muslim, Roman Catholic, and Orthodox inhabitants.

For centuries, Christian Europe felt threatened by having a large Islamic state in the heart of Europe. After Slavs from Serbia got involved in an 1875 rebellion in Bosnia, Russia saw an excellent opportunity to weaken the Ottoman Empire and intervened, helping free its Slavic neighbors from the Ottoman regime.

“[W]ars may occur between ethnic, religious, racial, or linguistic groups. Since religion, however, is the principal defining characteristic of civilizations, fault line wars are almost always between peoples of different religions.” Catholic Croats, Bosnian Muslims, and Orthodox Serbs represent three different world civilizations: the West, the Islamic world, and the Orthodoxy. When unrest broke out in the region in the 1990s, each group could depend on the support of neighbors that shared their faith. For example, Germany was the first to recognize Croatia after it declared independence, followed by Austria, Italy, and the United States. Even the Vatican sided with Croatia: “the Pope declared Croatia to be the ‘rampart of [Western] Christianity’ and rushed to extend diplomatic recognition to the . . . state[ ] before the European Union did.”

Even though the Balkans region has always been divided along religious lines, its people were all of Slavic descent and spoke variations of the same language. For hundreds of years, however, the Slavic groups of the Balkans

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16 Id. at 18–20.
17 Id. at 19.
18 Id.
21 JUDAH, supra note 13, at 66–67.
23 Id. at 282.
24 Id.
25 JUDAH, supra note 13, at 7–8; BENNETT, supra note 12, at 16–19.
were ruled by large foreign empires; the Serbs and Bosnians lived under Ottoman rule, while the Croats were controlled by the Austrians. Regardless of their religious differences, a growing movement of “South Slav” nationalism began in the early twentieth century as a response to this centuries-long history of foreign rule. The movement aimed to unite all the Southern Slavs (Yugoslavs) into an independent nation. Serbia’s goal was to be the dominant state that would carry out the unification of these peoples. Serbian leaders envisioned the state as a way for them to exert their power and dominance over a larger portion of territory, rather than an opportunity for Slavic brotherhood and unity.

In 1908, Muslim Turkey began to regain some of its power and an alarmed Austria resolved to annex Bosnia before the new Turkish regime could regain control over it. Strong popular opposition to the annexation developed in Russia, and Serbia, closely related to Bosnia geographically and ethnically, was outraged by the annexation. Serbia had long desired Bosnia because “Serbia’s most direct route to the sea—the economic obsession which was the core of modern Serbian nationalism—lay through the province.” The bitter resentment that the annexation caused among Serb and South Slav nationalists led to the growth of revolutionary groups and secret societies dedicated to the overthrow of Austrian reign in Bosnia. Tensions ultimately escalated in the assassination of Austrian Archduke Francis Ferdinand by a young Serbian assassin, Gavrilo Princip, while visiting Sarajevo on June 28, 1914. Austria-Hungary declared war on Serbia one month later, triggering the outbreak of

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26 BENNETT, supra note 12, at 19.
27 See id. at 24 (referring to Habsburg control of Croatia).
28 See JUDAH, supra note 13, at 92–93 (describing political factions, including the Southern Slavs, during this time).
29 Id. at 94.
30 See id. at 56–57 (providing historical context for the Serbian vision of a Slavo-Serbian empire, a Greater Serbia).
31 Id.; BARBARA JELAVICH, HISTORY OF THE BALKANS: TWENTIETH CENTURY 109–10 (Cambridge Univ. Press 2008) (1983) (“The greater Serbian goal . . . was thus a state based not on strictly ethnic principles, but on the acquisition of lands that had historic associations or that had at some time been under the jurisdiction of the Serbian Orthodox church.”).
32 JUDAH, supra note 13, at 91–93.
33 See id. at 92 (describing certain Serbs as “bitter about the annexation”).
35 JUDAH, supra note 13, at 95–96.
36 Id. at 95–97.
World War I. At its outset, World War I was a dispute between Serbia and Austria-Hungary, with the other great powers joining in later due to previously-formed strategic alliances.

On December 1, 1918, after the end of World War I, the Serb nationalists achieved their long-standing goal of creating the Kingdom of Serbs, Croats, and Slovenes (Kingdom). This Kingdom combined the territory of the present-day countries of Slovenia, Croatia, Bosnia, Montenegro, Serbia, Kosovo, and Macedonia. However, the Kingdom “was de facto created as the result of a Serbian mini-expansion as a stage in the process which began in the nineteenth century”; it soon became an “extension of the . . . Serbian army [base] for its eventual role in some future conflict.”

2. Modern History

In January of 1933, Adolf Hitler came to power in Germany and hoped to build ties with Yugoslavia as a strategic move towards gaining the natural resources necessary for Nazi expansion. However, since Yugoslavia refused to submit to Nazi rule, Germany invaded Yugoslavia in 1941.

Lead by Josip Broz, better known as Tito, the Yugoslav Communist Party units fought against Nazi occupation. In order to fight the German advance in eastern Europe, Tito had to accept support and assistance from the Allies. On March 1, 1945, the Yugoslav Communist Party changed its name and became known as the Yugoslav People’s Army (YPA), consisting mostly of Serb soldiers and army officers.

37 See id. at 97–101 (detailing the outbreak of war).
38 See id. at 106 (“[T]he Kingdom of Serbs, Croats and Slovenes was declared on 1 December 1918.”).
39 See id. at 107 (mapping these boundaries).
41 Id. at 223.
42 GLENNY, supra note 34, at 435.
43 See id. at 485–88 (describing the invasion and resistance).
44 Id. at 486.
45 Id. at 929–30.
Following World War II, the Kingdom fell under the Soviet communist sphere of influence. The monarchy was abolished in 1945, and the newly formed government was known as the Socialist Federal Republic of Yugoslavia (SFRY), consisting of the republics of Bosnia, Croatia, Serbia, Montenegro, Macedonia, and Slovenia along with the autonomous provinces of Kosovo and Vojvodina. Tito, adhering to Marxist ideology and skeptical of nationalism, managed to suppress ethnic dissent and conflicts between nationals of the Yugoslav republics. Communist rhetoric told the story of a peaceful Yugoslavia where people of different ethnicities would live in harmony and cooperation. The Communists vowed never to allow any one nation to dominate Yugoslavia the way the Serbs had dominated the Kingdom. Although little evidence suggests that there was ethnic tension in Tito's Yugoslavia, this was less an indication that people were living in harmony and unity and more an indication that Tito's repressive tactics instilled a fear of expressing true sentiments.

Following Tito's death in 1980, Yugoslavia suffered economic hardship and scandalous corruption; great unhappiness with an inefficient government

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47 See BENNETT, supra note 12, at 51–53 (detailing communist influences after the Second World War).
47 See Tim Judah, Yugoslavia: 1918–2003, BBC HISTORY, Feb. 4, 2003, http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia_03.shtml (stating that the majority of those who died during the “war years” were nationalists).
51 Cf. id. (“Tito’s forces ... offered an ideal—a dream of ‘brotherhood and unity’—that would link the nations or peoples of Yugoslavia.”).
52 See GOJKO VUCKOVIC, ETHNIC CLEAVAGES AND CONFLICT: THE SOURCES OF NATIONAL COHESION AND DISINTEGRATION: THE CASE OF YUGOSLAVIA 106 (1997) (citing Edward Kardelj, Address on Proposed Constitution (Radio Belgrade broadcast Dec. 5, 1945)) (“The old system of hegemonistic greater-Serb cliques ... has been done away with. The Federative People’s Republic of Yugoslavia has grown out of the voluntary unification of our peoples according to the principles of self-determination and equality of rights.”).
53 See MICHAEL IGNATIEFF, BLOOD AND BELONGING: JOURNEYS INTO THE NEW NATIONALISM 20–21 (1993) (stating that under Tito, “[t]he society marched forward, willingly or unwillingly, under the banner of ‘brotherhood and unity.’ To call yourself a Croat or Serb first and a Yugoslav second was to risk arrest as a nationalist and a chauvinist.”).
54 See id. at 93–54 (describing the “ruins of Yugoslavia” after Tito’s death); see also id. 40–47 (detailing the chaotic conditions after Tito’s death).
and failing economy, coupled with a desire to find someone to blame, made the population of Yugoslavia primed for the introduction of an extremist leader in Tito's wake. By the late 1980s, Serbian nationalist Slobodan Milošević had risen to power. Starting in 1987, Milošević "endorsed a Serbian nationalist agenda" and "exploited a growing wave of Serbian nationalism in order to strengthen centralised rule in [Yugoslavia]." Milošević denied allegations that he exploited Serbian nationalism in his rise to power. In a 1995 interview with Time magazine, he said:

All my speeches up to '89 were published in my book. You can see that there was no nationalism in those speeches. We were explaining why we think it is good to preserve Yugoslavia for all Serbs, all Croats, all Muslims and all Slovenians as our joint country. Nothing else.

Milošević's rose to power amidst growth of nationalism in all the former Yugoslav republics following the collapse of communist governments throughout Eastern Europe.

When Mikhail Gorbachev renounced the "Brezhnev Doctrine" in 1989, the resultant collapse of communism in Eastern Europe, as well as the termination of the Cold War, unleashed repressed nationalist desires.

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55 See id. at 40-47 (describing the state of unrest at the time).
56 See GLENNY, supra note 34, at 626-28 (describing the political power and aims of Serbian President Slobodan Milošević).
59 Id.
60 IGNATIEFF, supra note 53, at 4–10.
61 See JOHN SPANIER, AMERICAN FOREIGN POLICY SINCE WORLD WAR II 353 (12th ed. 1992) (1960) ("Gorbachev announced that socialist countries had no right to intervene in each other's affairs. The clear implication was that the Brezhnev Doctrine was dead."). The "Brezhnev Doctrine" asserts that any communist state may intervene in the affairs of another communist state to prevent its "subversion" by the West. Id. at 215, 393. Gorbachev affirmed that he would not intervene to prevent the end of communist regime in Eastern European countries. Id. at 393.
62 See IGNATIEFF, supra note 53, at 4–10 (discussing the rising tides of nationalism following the Cold War and the fall of the Berlin Wall).
3. **Collapse of Communism in Eastern Europe**

By 1991, Croatia and Slovenia had begun making plans for secession from Yugoslavia. On June 24 of that year, the prime minister of Yugoslavia, Ante Markovic, issued an unambiguous warning to both the Croats and Slovenes: "The federal government will counter unilateral secession with all available means." One day later, citing economic drain by the Serbian-controlled SFRY, the richest republics of the federation, Slovenia and Croatia, declared independence. On June 27, the Yugoslavian army attacked the Slovenian militia, and soon joined the Orthodox Christian Serb minority in their hostilities against the Roman Catholic Croats in Croatia. After Slovenia and Croatia seceded, Slovenes, Croats, Muslims, and Macedonians exited the YPA, leaving it more dominated by Serbs than ever before.

Shortly thereafter, on October 15, 1991, the Bosnian Parliament declared its independence from Yugoslavia as well. In January 1992, the Bosnian Serbs, led by aggressive nationalist Radovan Karadzic, organized a Bosnian Serb Republic as a way of preventing the official separation of Bosnia from Yugoslavia. The European Community and the United States recognized Bosnia's independence by April 7, 1992. Immediately after, Bosnian Serbs, backed by the YPA, declared independence from the newly recognized state

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64 *Id.* at 89.


66 Weller, *supra* note 49, at 570 ("[The Yugoslavian Army], supported by a column of heavy armor . . . , attacked the provisional Slovenian militia.")

67 *See* Nier, *supra* note 65, at 311 (describing "factors [that] ha[d] combined to result in open conflict between the ethnic Serb minority within Croatia, the Yugoslav Army, and the Croatian security forces").

68 *See id.* at 312 (describing how Serbs "gain[ed] control of over one-third of Croatia").


71 Bosnia and Herzegovina, http://www.state.gov/r/pa/ei/bgn/2868.htm (last visited May 25, 2009) ("Full recognition of Bosnia and Herzegovina's independence by the United States and most European countries occurred on April 7, and Bosnia and Herzegovina was admitted to the United Nations on May 22, 1992.").
of Bosnia, and this regional tension quickly escalated into the worst conflict in Europe since World War II. Bosnian Serbs and Croats began to see their Muslim neighbors differently. “Serbs and Croats under the influence of war psychosis have now revived their dangerous belief that Moslims remain at heart Orthodox or Catholic Christians who will at some future point return to the fold, willingly or otherwise.” Soon, people stopped calling themselves Bosnians, instead identifying themselves as Bosnian-Serbs, Croats, or Muslims. The Serb minority announced the formation of a separate “Republika Srpska” (RS) and an army led by YPA General Mladic soon occupied two-thirds of Bosnia’s territory, hoping that it would later be absorbed into greater Serbia.

Immediately after international recognition of Bosnia, Serb forces crossed the Drina from the Serbian border and laid siege to Muslim cities on April 7 and 8. All of Bosnia was swallowed in war by mid-April.

A pattern of destruction of Bosnian towns and villages soon became clear: the YPA would set up road blockades around towns and warn Serb inhabitants to evacuate. Then, the YPA would subject the remaining Muslims and Croats to intense artillery fire, forcing the civilians to hide for days, until they were “softened up sufficiently by the [YPA]’s artillery, [and then] paramilitary groups would move in” and start their campaign of killing and destruction.

It appeared that these paramilitary groups were essentially commanded by the Serbian government, despite no formal link with Belgrade.

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72 See Carol J. Williams, Regional Vote in Yugoslavia Risks Conflict, L.A. TIMES, Mar. 1, 1992, at A1. The YPA “purged its top ranks of moderates and non-Serbs just two days before the referendum” for Bosnian independence, and “the pro-Serbian presidency that commands it ha[d] vowed not to pull troops out of Bosnia even if voters decide to secede. Bosnia [was] home to about 1.35 million Serbs and most of Yugoslavia’s defense industries” at the time. Id.
73 GLENNY, supra note 63, at 142.
74 Id. at 143.
75 JUDAH, supra note 13, at 204–05.
77 See id. at 193 (referring to Bosnian Serbs’ “focus[ ] on gaining international recognition for their own state . . . and its eventual union with Serbia”).
78 Id. at 129.
79 Id.
81 Id. at 73–74.
82 Id. at 79.
Ethnic cleansing was carried out in Serb-held areas of Bosnia until only a few thousand Muslims and Croats were left in all Serb-occupied regions. Cultural relics were similarly purged from the area:

The Serbs, furthermore, were guilty of the complete eradication of Muslim cultural monuments—mosques, libraries, and the like—in territory under their control. The apparent scorched-earth approach of the Serbs to Muslim cultural and religious structures suggests either a total lack of control by Serb leaders over extremists, or an obsession with removing all signs of Muslim presence.

Bosnians shared a multiethnic cultural world "symbolized over centuries by bridges, libraries, artistic treasures, and the Catholic, Orthodox, Muslim, and Jewish houses of worship [built] side by side and sharing the same skyline in Mostar and Sarajevo." These acts of violence sought to eliminate any evidence of the existence of that shared culture between Croats, Serbs, and Bosnian Muslims in Bosnia.

In addition to the tactic of cultural destruction, Bosnian-Serb militias used detention camps and ethnic cleansing in their war effort. During the war, as many as 6,000 Bosnian-Muslims were incarcerated in the notorious Omarska Camp where guards "regularly and openly killed, raped, tortured, beat and otherwise subjected prisoners to conditions of constant humiliation,

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83 "The term 'ethnic cleansing' has frequently been employed to refer to the events in Bosnia and Herzegovina . . . ." Bosnian Genocide, supra note 1, para. 190. General Assembly Resolution 47/121 refers to "the abhorrent policy of 'ethnic cleansing,' which is a form of genocide," as being carried on in Bosnia and Herzegovina." Id. (quoting G.A. Res. 47/121, pmbl., U.N. Doc. A/RES/47/121 (Apr. 7, 1993)). Ethnic cleansing "is in practice used, by reference to a specific region or area, to means 'rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area.'" Id. (quoting The Secretary-General, Interim Report of the Commission of Experts Established Pursuant to Resolution 780, ¶ 55, delivered to the Security Council, U.N. Doc. S/35374 (Feb. 10, 1993)).

84 BURG & SHOUP, supra note 76, at 174.


86 Id.

87 BURG & SHOUP, supra note 76, at 12, 32, 171–81.
degradation, and fear of death. One survivor from Omarska recounted his experience:

The worst event was when I watched one young man as they castrated him. Right now I can hear his cry and his prayers to be killed. . . . His executioner was his friend from school. He cut his body and he licked his blood. He asked him just to kill [him] and to stop all that suffering. All day and all night we heard his prayers and his crying until he died.

On May 20, 1992, the war began a new phase when General Mladic was named commander of the newly formed army of the RS. In the next few days, General Mladic started directing a number of large-scale shelling attacks at the outskirts of Sarajevo, beginning a Serb siege of the city that would last until the summer of 1995.

4. Srebrenica Massacre

Srebrenica was one of the few pockets in western Bosnia that remained outside the control of the Serbs during the fighting between 1992 and 1995. While the residents of Srebrenica were holding their position, they were cut off from the world and needed humanitarian assistance badly. Help came from French General Phillippe Morillon, United Nations Protection Force commander for Bosnia. Concerned about the safety of over 60,000 civilians in Srebrenica, General Morillon entered the town on March 11, 1993, without

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88 NAIMARK, supra note 70, at 160 (citing ICTY Tribunal Update 78 (Apr. 6–11, 1998)).
90 BURG & SHOUP, supra note 76, at 131.
91 Id. at 131–32.
92 See HONIG & BOTH, supra note 80, at xvii ("Except for a few days in April 1992, Muslims remained in control of Srebrenica through three years of war.").
93 See id. at 80 (discussing the deteriorating situation after Srebrenica was cut off from the outside world).
permission from the United Nations.\textsuperscript{95} His actions on that day led to the creation of the first U.N. “safe area” of the thirty-mile radius around Srebrenica.\textsuperscript{96} At the time the Security Council passed the Resolution to establish the safe area, Srebrenica was facing increased attacks from Serb paramilitary forces and was near surrender.\textsuperscript{97} However, implementing the safe zone proved to be a difficult task. While initially 34,000 troops were called for,\textsuperscript{98} nations were unwilling to provide troops; by the summer of 1995, Srebrenica was guarded by only 750 Dutch soldiers.\textsuperscript{99} Since, due to the lack of resources, the area could not be connected to land controlled by the Bosnian government, it remained “a vulnerable island amid Serb-controlled territory.”\textsuperscript{100}

On July 11, Srebrenica fell to the Serbs, and its citizens were either killed or forcefully displaced from the area.\textsuperscript{101} In 2004, the U.N. High Representative for Bosnia, Paddy Ashdown, had the Government of Republika Srpska form a commission to investigate these events.\textsuperscript{102} The committee released a report in October 2004 with the names of 8,731 confirmed missing and 7,800 known dead persons from Srebrenica.\textsuperscript{103} Dragan Cavic, the President of Republika Srpska, acknowledged in a televised address that Serb forces killed several thousand civilians in violation of international law and called the Srebrenica

\begin{footnotes}
\footnotetext[95]{ROHDE, supra note 94, at xv.}
\footnotetext[96]{The “safe area” was created when the Security Council passed Resolution 819 on April 16, 1993. S.C. Res. 819, ¶ 1, U.N. Doc S/RES/819 (Apr. 16, 1993); see HONIG & BOTH, supra note 80, at 85–97 (discussing the entry of Morillon into Srebrenica and the subsequent creation of a safe area).}
\footnotetext[97]{See ROHDE, supra note 94, at xv (noting Srebrenica’s crumbling defenses and several attacks).}
\footnotetext[98]{HONIG & BOTH, supra note 80, at 116.}
\footnotetext[99]{ROHDE, supra note 94, at 5.}
\footnotetext[100]{Prosecutor v. Krstic, Case No. IT-98-33-T, Judgment, ¶ 13 (Aug. 2, 2001).}
\footnotetext[103]{Id.}
\end{footnotes}
massacre "a dark page in Serb history." On November 10, 2004, the government of Republika Srpska issued an official apology.

The atrocities in Bosnia lasted from April 1992 until December 14, 1995, when the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Accords) officially ended the conflict in the former Yugoslavia. While Serbian President Milošević negotiated this peace agreement in the name of the Bosnian-Serbs, General Mladic was indicted by the ICTY for crimes stemming from the Srebrenica massacre.

But crucially, the Dayton Accords does not grant amnesty for the war crimes committed during the conflict—an omission on Milošević’s part that was to pave the way for his eventual prosecution. In sum, successful imposition of the Dayton Accords was critical to the suppression of fighting in Bosnia.

B. 1948 Genocide Convention

In 1948, moved by the grave atrocities and human rights violations committed by the defeated Axis Powers during World War II, the member states of the United Nations drafted the Genocide Convention. The U.N.

106 See The General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugo., Dec. 14, 1995, 35 I.L.M. 75 [hereinafter Dayton Accords] (documenting the terms of the agreement). To ensure that all parties to the Yugoslav conflict understood their obligation to apprehend indicted war criminals, the Dayton Accords included provisions that require all parties “to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law,” id. art. IX, and to ensure that “[n]o person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal... may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina,” id. Annex 4, art. IX.
108 Dayton Accords, supra note 106, Annex 7, art. VI.
109 On May 22, 1999, Milošević was indicted by the ICTY for war crimes, and crimes against humanity. Prosecutor v. Milošević et al., Case No. IT-99-37, Indictment (May 22, 1999). His trial ended without a verdict because he died during the proceedings. Prosecutor v. Milošević, Case No. IT-02-54-T, Order Terminating the Proceedings (Mar. 14, 2006).
110 Hurlock, supra note 11, at 304–05. See generally Genocide Convention, supra note 2
General Assembly, in its adoption, declared genocide to be a crime condemned by the civilized world.\textsuperscript{111}

\textit{1. The Provisions of the Genocide Convention}

Article II of the Genocide Convention defines genocide as follows:

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 its 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.\textsuperscript{112}

The Genocide Convention also deems acts of conspiracy, incitement, attempts, and complicity as punishable by law;\textsuperscript{113} and it further requires contracting nations to extradite alleged offenders.\textsuperscript{114} Finally, it establishes ICJ jurisdiction over all related claims arising between signatory parties.\textsuperscript{115}

Recognizing genocide as an international crime, the Convention is concerned both with the prosecution of individuals responsible for genocide and the effectiveness of legislation to punish genocide as implemented by the signatories.\textsuperscript{116} Article IV of the Convention applies the Convention’s terms to

\textsuperscript{111} Hurlock, \textit{supra} note 11, at 304.
\textsuperscript{112} Genocide Convention, \textit{supra} note 2, art. 2.
\textsuperscript{113} \textit{Id.} art. 3(b)–(e).
\textsuperscript{114} \textit{Id.} art 7.
\textsuperscript{115} \textit{Id.} art. 9.
both individual citizens and national leaders. While Article I imposes a broad obligation on states to prevent genocide, Article V requires the Contracting Parties to enact legislation that would impose penalties on individuals found guilty of genocide, and Article VIII allows states to ask the U.N. to take action to prevent and suppress genocide.

2. Jurisdiction Over the Crime of Genocide

The Genocide Convention requires that either a tribunal established where the act occurred hear the claim or that an international tribunal be established to adjudicate all claims arising between relevant parties.

3. The International Court of Justice

The United Nations Charter signed by member nations in 1945, provided for a tribunal, such as the ICJ, to exercise jurisdiction solely over claims arising between nations. The ICJ only has jurisdiction on the basis of consent, i.e., it has no true original jurisdiction. Jurisdiction is often a key question for the ICJ, due to frequent jurisdictional challenges by the respondent.

III. Bosnian Genocide Decision

On March 20, 1993, Bosnia instituted judicial proceedings with the ICJ against Yugoslavia, alleging that Yugoslavia had violated the Genocide Convention by directing, encouraging, and assisting Serb military and

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117 Genocide Convention, supra note 2, art. 4.
118 Id. art. 1.
119 Id. art. 5.
120 Id. art. 8.
121 Id. art. 6.
122 U.N. Charter art. 92.
123 Statute of the International Court of Justice, July 28, 1945, art. 34, para. 1 (stating "[o]nly states may be parties in cases before the Court").
124 Id. art. 36 (outlining ICJ's bases for jurisdiction).
125 See id. art. 36, para. 6 (anticipating disputes over the ICJ's jurisdiction).
paramilitary forces in carrying out genocide.\textsuperscript{126} Yugoslavia denied providing support and denied any involvement in committing or encouraging genocide.\textsuperscript{127}

In its application to the court, Bosnia also asked the court to order Yugoslavia to “cease and desist” in its violations of the Genocide Convention and customary laws.\textsuperscript{128} More specifically, Yugoslavia was to refrain from the acts of ethnic cleansing, mass rapes, destruction of communities and religious institutions, bombardment and siege of civilian population centers, starvation of civilian population, interference with delivery of humanitarian supplies, and any support of those who were engaged in military action against Bosnia.\textsuperscript{129}

\section*{A. Order for Provisional Measures: April 8, 1993}

In its order on April 8, 1993, the ICJ began by noting that Article IX of the Genocide Convention gives the court jurisdiction to hear disputes related to the application of the Genocide Convention in this case.\textsuperscript{130} The court determined that both Bosnia and Yugoslavia are responsible for fulfilling the commitments of the former Socialist Federal Republic of Yugoslavia, a signatory of the Genocide Convention.\textsuperscript{131} Furthermore, the court noted that Yugoslavia should “take all measures within its power to prevent commission of the crime of genocide,” and it should also make certain that any military or paramilitary troops under its control or influence, or supported by it, “do not commit any acts of genocide” against Bosnian Muslims or anyone else.\textsuperscript{132} The Srebrenica genocide happened two years after this order.\textsuperscript{133}


\textsuperscript{127} See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. \& Herz. v. Yugo.) 1996 I.C.J. 595, 605, 615 (July 11) [hereinafter Preliminary Objections] (Yugoslavia objecting that it “is not taking part” and is “not party to” the alleged events).

\textsuperscript{128} Order of Apr. 8, supra note 126, at 3–4, 6.

\textsuperscript{129} Id. at 7.

\textsuperscript{130} Id. at 4.

\textsuperscript{131} Id. at 15–16.

\textsuperscript{132} Id. at 24 (requiring Serbia to ensure “that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide . . . or of complicity in genocide . . . ”).

\textsuperscript{133} See supra Part II.A.4 (discussing Srebrenica genocide).
B. Jurisdiction: Judgment of July 11, 1996

By the order of July 14, 1995, the proceedings on the merits were suspended, while the ICJ heard the objection of Yugoslavia to ICJ jurisdiction over the case. The question presented by Yugoslavia's objections was whether Bosnia was a party to the Convention. The Court determined that Bosnia was a party for two reasons: first, Bosnia gave the Secretary-General of the U.N. a Notice of Succession, which the Secretary-General accepted as Bosnia's valid succession to the Genocide Convention, and second, by way of membership with the United Nations, Bosnia was entitled to "automatic succession." The court concluded that in either case, it was clear that as of the filing of the application on March 20, 1993, Bosnia had been a party to the Convention. The ICJ therefore had jurisdiction over the case.

C. The Applicable Law

Hearing allegations of genocide brought by one state against another for the first time in its history, the court had to decide the scope and meaning of different provisions of the Genocide Convention. Whereas Serbia argued that the only responsibility the Convention placed on the states was punishing the failure of preventing or punishing acts of genocide committed by individuals, the ICJ disagreed. It found that the Genocide Convention imposes an affirmative duty on the contracting parties not to commit genocide and other ancillary acts, such as conspiracy to commit genocide and complicity in genocide.

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136 Id. at 604–09 (Yugoslavia argued that Bosnia was not a party to the Convention).
137 Id. at 610–11.
138 Id. at 611–12.
139 Id. at 612.
140 Id.
141 See Bosnian Genocide, supra note 1, paras. 142–79 (detailing the dispute between Serbia and the court over the acts which comprise the crime of genocide).
142 Id. paras. 143, 179.
When Bosnia began presenting testimony before the ICJ, alleging that Yugoslavia had violated the Genocide Convention by directing, requesting, and assisting Serb paramilitary forces in carrying out systematic killings of Muslim citizens in Bosnia, Yugoslavia denied involvement in the war, and more specifically, denied providing any support or direction to Serb paramilitary troops in Bosnia. After hearing both parties, the ICJ issued an order directing Yugoslavia to take preemptive measures in order to prevent the crime of genocide.

D. Final Judgment: February 26, 2007

On February 26, 2007, the ICJ issued a ruling in Bosnian Genocide finding that Serbia did not commit, conspire to commit, or incite the commission of genocide, but that Serbia violated its obligations under the Genocide Convention by failing to extradite General Mladic to the ICTY and to comply with the court’s order to act to prevent genocide in Srebrenica in July 1995.

1. Questions of Proof

The court in Bosnian Genocide set a high standard of proof for its holding: “charges of exceptional gravity must be proved by evidence that is fully conclusive.” The court concluded that the mass killings, operation of the detention camps, and atrocities committed by the Serbian forces between 1992 and 1995 were not acts which were committed with the specific intent to destroy Bosnian-Muslims as a group. In the absence of the court’s finding that genocide occurred outside of Srebrenica, Bosnia’s argument that specific intent could be proven by the “pattern” of genocidal or potentially genocidal

143 Order of Apr. 8, supra note 126, at 3–7.
144 Id. at 21. But see The Secretary-General, Note by the Secretary General on the Situation of Human Rights in the Territory of the Former Yugoslavia, ¶ 31, delivered to the Security Council and the General Assembly, U.N. Doc. S/24516, A/47/418 (Sept. 3, 1992) (noting that there is no evidence that Yugoslavia took “effective measures to use their influence to put a stop to ethnic cleansing in Bosnia”).
145 Order of Apr. 8, supra note 126, at 8–9.
146 Bosnian Genocide, supra note 1, para. 471; see also id. paras. 186–267 (discussing the relevant body of facts and principles of law which the court considered and applied).
147 Id. para. 209.
148 See id. paras. 242–76 (recounting the evidence with respect to mass killings and specific detention camps); id. para. 277 (concluding the court’s opinion).
acts committed throughout the territory, against persons identified as belonging to a specified group, was unsuccessful.\textsuperscript{149} The court refused to draw any conclusions from the refusal of Serbia, the respondent, to submit unredacted versions of documents in its possession.\textsuperscript{150}

2. Serbia Did Not Commit Genocide

In a 13–2 decision, the ICJ found that acts committed at Srebrenica were acts of genocide.\textsuperscript{151} The court concluded that acts of systematic mistreatment and torture committed at Srebrenica fell within Article II(a) and (b) of the Convention and were committed with the specific intent to destroy Bosnian Muslims.\textsuperscript{152} However, the ICJ found that it had not been conclusively established that those atrocities were committed with the specific intent to destroy the protected group in whole or in part, as required by the Genocide Convention.\textsuperscript{153} The court stated that the legal definition of the “protected group” must be a positive one and not a negative one.\textsuperscript{154} Consequently, the ICJ inquired whether genocide was committed against Bosnian Muslims, and not against “non Serbs” as Bosnia claimed.\textsuperscript{155} Regarding the definition of what constitutes a “part” of the group, the court also concluded that priority must be given to the “substantial criteria,” i.e., “the part targeted must be significant enough to have an impact on the group as a whole” in order to decide whether a genocide had actually been committed.\textsuperscript{156}

The ICJ examined the evidence regarding a large number of claims, including: encirclement, shelling, starvation, deportation and expulsion, and destruction of historical, religious, and cultural property.\textsuperscript{157} The ICJ could not establish that many of the acts were specifically intended to destroy Bosnian-Muslims in whole or in part.\textsuperscript{158} As for the destruction of historical, religious, and cultural sites, the ICJ found conclusive evidence of the deliberate destruction of Muslim locations based on their historical, cultural, and

\textsuperscript{149} Id. paras. 207, 370–76.
\textsuperscript{150} Id. paras. 205–06.
\textsuperscript{151} Id. para. 471.
\textsuperscript{152} Id. paras. 297, 319.
\textsuperscript{153} Id. paras. 187, 319.
\textsuperscript{154} Id. paras. 194–96.
\textsuperscript{155} Id. para. 196.
\textsuperscript{156} Id. para. 198.
\textsuperscript{157} Id. para. 322.
\textsuperscript{158} Id. para. 334.
When Skeletons Come Out of the Closet

However, the court explained that such destruction was not committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, and thus did not fall within the categories of "acts of genocide" set forth in Article II of the Genocide Convention.

3. State Responsibility

Taking into account the preceding conclusions of the ICJ, the critical issue of the case remained whether Serbia was responsible for the acts of genocide committed at Srebrenica by the army of Republika Srpska, the secessionist entity of Bosnia.

ICJ jurisprudence allows states to be held responsible if persons, groups of persons, or entities engage in genocide, while acting in "complete dependence" on the state, of which those persons, groups of persons, or entities are merely the instrument. However, in *Bosnian Genocide*, the ICJ did not find that the person, or entities that committed the acts of genocide at Srebrenica had sufficient ties with Serbia to be considered completely dependent. According to the judgment, insufficient evidence was presented to establish that the Republika Srpska, its army, or any paramilitary units were completely dependent on Serbia in fact. Consequently, the acts of genocide at Srebrenica could not be attributed to Serbia, its organs, persons, or entities wholly dependent on it.

Finally, Bosnia presented overwhelming evidence corroborating the testimony about massive killings in Bosnia. Testimony also showed that the victims were predominantly Bosnian-Muslims, suggesting that the killings might have been systematically targeted. However, the ICJ found that Bosnia had not conclusively established that the mass killings of Bosnian Muslims were committed with the specific intent to destroy the protected group in whole or in part.

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159 Id. paras. 341–44.
160 Id. para. 344.
161 Id. paras. 376–77.
162 Id. para. 392.
163 Id. para. 394.
164 Id.
165 Id. paras. 242, 246–77.
166 Id. para. 276.
167 Id. para. 277.
4. Serbia Was Not Complicit in Genocide

In an 11-4 decision, the ICJ found that Serbia was not complicit in genocide under Article III(e) of the Genocide Convention applying the Convention’s terms to both individual citizens and national leaders.168 Having decided that the VRS could not be considered an organ of Serbia, the court next addressed the highly debated question of whether genocide could be attributed to a state based on the degree of direction or control that state has over a person or group of persons.169 The ICJ decided in an earlier case that for the conduct of persons or a group of persons to give rise to the responsibility of a state, it would, as a matter of principle, have to be proven that the state had “effective control” over such conduct,170 instead of the lower standard of “overall control” used by the ICTY in Prosecutor v. Tadic.171 The ICJ ultimately determined that Bosnia had not proven that instructions were issued by the Serbian authorities to commit the massacres and that Serbia did not exercise the required effective control over the VRS.172

The ICJ next examined whether Serbian state organs or persons knowingly furnished “aid or assistance” in the commission of the Srebrenica genocide.173 The presented evidence did not persuade the ICJ that Serbia supplied the responsible Republika Srpska leaders with “aid and assistance” in carrying out the genocide.174 The ICJ found that the facts were insufficient to conclusively show that the decision to eliminate the Muslim community’s male population in Srebrenica was brought to the attention of the Serbian authorities in Belgrade.175 The ICJ therefore could not find that Serbia was complicit in the genocide.176

168 Id. paras. 424, 471.
169 Id. para. 393.
170 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14, 65 (June 27); Bosnian Genocide, supra note 1, paras. 399-400.
171 Bosnian Genocide, supra note 1, para. 402 (citing Prosecutor v. Tadic, Case No. IT-94-1-A, Judgment, ¶ 145 (July 15, 1999)).
172 Id. para. 413.
173 Id. paras. 412-20.
174 Id. para. 422.
175 Id. para. 423.
176 Id. para. 424.
5. Serbia Violated the Obligation to Prevent Genocide

The ICJ found in a 12–3 decision that Serbia had violated its obligation to prevent genocide. The ICJ noted that states are obligated to employ all reasonable means to prevent genocide and failure to do so is a violation of the Genocide Convention. During the Srebrenica massacre, Serbia’s strong political, military, and financial links with the Republika Srpska put it in a position to influence the Bosnian Serbs who committed the genocide.

The court expressed that “the [Serbian] leadership, and President Milosjević above all, were fully aware of the climate of deep-seated hatred which reigned between the Bosnian Serbs and the Muslims in the Srebrenica region.” The court decided Serbia did nothing to prevent the genocide, despite their obligation to do so.

6. Serbia Violated Its Obligations Under the Convention by Not Extraditing General Mladic

By a vote of 14–1, the ICJ found that Serbia violated its Genocide Convention obligation to transfer individuals accused of genocide or related acts to the ICTY for trial. States have an obligation to provide necessary cooperation and assistance to the ICTY; the ICTY was created by the U.N. Security Council decision under Chapter VII which imposes binding obligations on all states. Specifically, Resolution 827 requires all states to “cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal.” Furthermore, the ICTY’s statute requires all members of the international community to comply “without undue delay” in “the arrest or detention of persons” indicted for war crimes and “the surrender or transfer of the accused to the International Tribunal.”

177 Id. para. 471.
178 Id. para. 430.
179 Id. para. 434.
180 Id. para. 438.
181 Id. paras. 438, 471.
182 Id. para. 471.
183 Id. paras. 445–47.
184 Resolution 827, supra note 8, ¶ 4.
185 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former...
Although some states and entities (e.g., Serbia) assert they lack the necessary domestic legislation to comply with the indictments and orders issued by the International Tribunal, Resolution 827 explicitly requires all states to take "any measures necessary under their domestic law to implement [its] provisions." 186

During oral proceedings, Serbia contended that its duty to cooperate with the ICTY was met "following the régime change in Belgrade in . . . 2000, thus implicitly admitting that . . . [it had not fulfilled its obligations] during the preceding period." 187 The court noted that there was abundant evidence suggesting that indicted General Mladić spent prolonged periods of time in Serbian territory without being arrested. 188 As Serbia's violation of its obligations under the Genocide Convention continued throughout the time of the final judgment, the court concluded that Serbia should immediately take effective steps to ensure full compliance with its obligation under the Convention to punish acts of genocide and transfer to the ICTY individuals accused of genocide. 189

7. The End Result

In Bosnian Genocide, the ICJ dealt with genocide in the narrow legal sense of that term, requiring specific intent to destroy a protected group in whole or in part. 190 This stands in contrast to the colloquial meaning of genocide, which is often used by the public and the media as shorthand for crimes against humanity in order to gather public support for intervention. 191 Legally, however, it is a specific intent that distinguishes genocide from other crimes against humanity and human rights abuses in general. 192 Thus, it was not sufficient to establish that Serbian forces deliberately and unlawfully killed


187 Bosnian Genocide, supra note 1, para. 448.
188 Id.
189 Id. para. 459.
190 Id. para. 187.
191 See, e.g., Nicholas D. Kristof, Op-Ed., Dare We Call It Genocide?, N.Y. TIMES, June 16, 2004, at A21 (urging the Bush administration's acknowledgement of "genocide" in Darfur but not using the Convention's definition).
192 Bosnian Genocide, supra note 1, para. 188.
Bosnian-Muslims in Srebrenica, without also establishing proof that the killings were committed with the specific intent to destroy Bosnian-Muslims.\textsuperscript{193}

By applying the specific intent requirement in such a rigorous manner and requiring evidence beyond any doubt, the ICJ makes it extremely difficult to prove state-sponsored genocide.\textsuperscript{194} Requiring direct evidence to establish specific intent makes genocide impossible to prove without unequivocal documentation and has the effect of reducing political pressure on future genocidal regimes. A state may commit all of the objective elements of genocide but could legitimize them on the basis of military strategy.\textsuperscript{195} It seems that the state will likely not be held responsible for genocide as long as its officials keep incomplete records that create doubt as to the actual intent. However, the ICJ explained that this stringent standard corresponds with the seriousness of the allegations.\textsuperscript{196}

The court’s refusal to infer intent from a pattern of abuse ultimately defeated Bosnia’s argument. Serbia’s connection to the Army of Republika Srpska (VRS) has been conclusively documented by the ICTY.\textsuperscript{197} Serbia’s connection with the VRS also appears to be confirmed by evidence which the ICTY permitted Serbia to withhold “in the interests of the good administration of justice.”\textsuperscript{198} After the decision, the New York Times reported that files, including the minutes of the Supreme Defense Council, a top decision making body in Yugoslavia during the 1992–1995 Bosnian conflict, addressed Serbia’s control and direction, “revealing in new and vivid detail how Belgrade financed and supplied the war in Bosnia, and how the Bosnian Serb Army, though officially separate [from Yugoslavia] after 1992, remained virtually an extension of the Yugoslav Army.”\textsuperscript{199} The ICJ’s approach kept important evidence like this from coming to light.

\textsuperscript{193} See id. paras. 188–89 (explaining the specific intent standard).
\textsuperscript{194} See id. para. 421 (describing the specific intent standard for finding state complicity in genocide).
\textsuperscript{195} See id. para. 422 (referring to military aid provided the Republika Srpska and the VRS, but not finding specific intent).
\textsuperscript{196} Id. para. 293 (quoting Prosecutor v. Krstic, Case No. IT-98-33-A, Judgment, ¶¶ 37–38 (Apr. 19, 2004)).
\textsuperscript{197} Id. paras. 238–41.
\textsuperscript{198} Id. para. 54.
The core difficulty of the *Bosnian Genocide* decision is clear: it is difficult to conceive of a state exhibiting the specific intent required by the Genocide Convention’s definition of genocide. For the near future, the court’s judgment in *Bosnian Genocide* leaves open the question of Serbia’s cooperation with the ICTY, which seems to be a strong precondition to Serbia’s eventual accession to the European Union.

IV. SERBIA AND THE EUROPEAN UNION

A. History of the EU

The idea of the European Union was born after World War II. In response to the threat of Soviet communism and military power, Western European nations united economic forces in an effort to secure peace, rebuild Europe, and counter the Soviet threat. The Union was founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states.

The launch of the Economic and Monetary Union in 1989, the creation of the official European Union with the Maastricht Treaty in 1991, and the launch of the Euro as its monetary unit in 2002 unified the member states both economically and politically.

While Western Europe unified, Eastern European countries, including the Western Balkans, remained under the control of the domestic communist parties until the disintegration of the Soviet Union in 1991. It was not until 1993 that the first steps were initiated towards the enlargement of the EU.

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200 See *Bosnian Genocide*, supra note 1, para. 421 (discussing the specific intent standard).
201 GEORGE A. BERMANN ET AL., EUROPEAN UNION LAW: SELECTED DOCUMENTS (2d ed. 2002).
202 Id.
205 See id. (referring to the introduction of Euro notes and coins in 2002).
into Central and Eastern Europe. The EU offered countries in Eastern Europe and the Western Balkans, including Serbia, the opportunity to join the Union. This offer was contingent upon their ability to "assume the obligations of membership by satisfying the economic and political conditions required."

In 2004, the EU expanded, accepting ten new members from Eastern Europe. A second wave of accession occurred in 2007 with the accession of Bulgaria and Romania. A third wave is expected to include the Western Balkan states of Croatia, Albania, Bosnia, Macedonia, Serbia, and Montenegro.

B. Serbia's EU Negotiations

At this time, Serbia is a potential candidate for EU membership. Although all Eastern European states were given an opportunity to join, if they so desire, the Stabilization and Association Process (SAP) or the process of integration that Serbia must go through to prepare for EU accession differs from the accession process offered to other Eastern states. Furthermore, the

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207 Presidency Conclusions, European Council in Copenhagen 13 (June 21–22, 1993) [hereinafter Copenhagen Council].
209 Copenhagen Council, supra note 207, at 13.
210 These countries included Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Treaty Concerning the Accession of the Ten New Member States to the European Union, Apr. 16, 2003, 2003 O.J. (L 236).
214 Copenhagen Council, supra note 207, at 13.
Stabilization and Association Agreement (SAA) constitutes the first step in the pre-accession process and it also imposes unique requirements on Serbia. For example, the SAA requires Serbia to cooperate with the ICTY by extraditing all fugitive war criminals located within its borders and emphasizes Serbia’s obligation to respect international law in general.

The SAA pre-accession negotiations with Serbia were officially opened on October 10, 2005. Since Serbia did not meet its commitments on cooperation with the ICTY, the European Commission decided in May of 2006 to suspend the negotiations. However, “the Commission stressed its readiness to resume negotiations as soon as [Serbia reached] full cooperation with the ICTY.”

Two years after the first unsuccessful round of negotiations, the Serbian authorities made progress, which “enabled the Commission to resume the
SAA negotiations [in June of 2007]." On November 8, 2007, Serbia and the EU initialed the SAA, which is viewed as a key first step towards membership. However, even though former chief ICTY prosecutor Carla Del Ponte made it clear that full compliance with the ICTY is a condition for actually signing the SAA, Serbia signed the Agreement on April 29, 2008. Even though "Serbia made significant progress on cooperation with ICTY, including the arrest of [General] Karadzic," the EU made it very clear that ratification and implementation of the SAA is still subject to Serbia's full cooperation with ICTY.

C. Pre-Accession Assistance and Serbia's Key Issues

Starting in 2007, Serbia began receiving pre-accession financial assistance under the Pre-Accession Instrument (IPA). The Serbian national allocation for 2007 amounts to €164.8 million. The main strategic objective of the IPA assistance to Serbia is to support the country in the transition from the status of a potential candidate to a candidate country and finally to full EU membership. IPA assistance will help Serbia meet the accession criteria by funding the economic, justice, and security-related criteria for membership, as those are presently the key problematic areas for the nation.

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223 Id. at 16.
224 Initialing the SAA means that the agreement "text has been settled and will not incorporate any [significant changes in the future]." But the agreement comes into effect only after signed. Igor Jovanovic, Serbia, EU Initial SAA, SOUTHEAST EUROPEAN TIMES, Nov. 8, 2007, http://setimes.com/cocon/setimes/xhtml/en_GB/features/setimes/features/2007/11/08/feature-01.
227 Id.
228 MIPD, supra note 219, at 3.
229 2007 Report, supra note 222, at 5.
230 MIPD, supra note 219, at 6.
231 Id.
232 See id. (noting Serbia's "limited capacity and resources").
1. Economic Issues

Due to a history of economic mismanagement and isolation, the democratic Serbian leadership faced overwhelming economic challenges when it assumed power after Milošević in 2000. In the final year of his rule, Milošević increased the money supply in order to fund reconstruction projects after the Yugoslav Wars, pushing the inflation rate to 79.6% in 2000. The country suffered from high levels of internal and external indebtedness: external debt in 2000 was $12.2 billion, or about 140% of Serbia’s GDP. Further, Serbia’s gross domestic product in 1999 was only forty-five percent of its 1990 level.

Even though there has been some economic improvement since 2000, Serbia is still far from having a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU.

The issue of long-term unemployment requires particular attention; unemployment in 2006 was twenty percent, with some forecasts predicting it could increase to over thirty percent by the end of 2009. Serbia’s National Employment Action Plan for 2006 “envisaged the creation of some 150,000 jobs by 2009,” but in order to accomplish that goal, Serbia called for more IPA support from the EU.

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234 Id.
237 WOEHREL, supra note 233, at 9.
238 See 2007 Report, supra note 222, at 45–46 (statistical data on Serbian economy).
239 Id. at 19.
240 MIPD, supra note 219, at 7.
242 MIPD, supra note 219, at 7.
2. Security Related Issues

EU member states are a prime target for organized crime.\textsuperscript{243} This threat to their security has an important external dimension: cross-border trafficking in drugs, people, and weapons. Such criminal activities are often associated with weak or failing states.\textsuperscript{244}

\textbf{a. Drugs}

Since it is located along the Balkan transit route, Serbia is an exchange “point for the transfer of heroin, cocaine, marijuana and synthetic drugs.”\textsuperscript{245} Ninety percent of the heroin in Europe comes from Afghanistan and is distributed through Serbia and neighboring countries.\textsuperscript{246} Since Serbia has not adopted a national strategy on preventing drug abuse and reducing supply, drug trafficking remains a serious concern.\textsuperscript{247}

\textbf{b. Human Trafficking}

Serbia has been recognized as a major source, transit, and destination country for human trafficking.\textsuperscript{248} Victims, mostly from Ukraine, Moldova, Albania, Macedonia, Bosnia, and Bulgaria, are transported through Serbia to various destinations in Western Europe.\textsuperscript{249} In the last seventeen years, over 200,000 people have been smuggled through the area.\textsuperscript{250}

Organized crime in Serbia has thrived through war, sanctions, poverty, and political instability, thus making it difficult to build a stable country that will

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\textsuperscript{244} JAVIER SOLANA, EUROPEAN COUNCIL, \textit{A SECURE EUROPE IN A BETTER WORLD 9} (July 20, 2003), \url{http://www.ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/reports/76255.pdf}.

\textsuperscript{245} 2007 Report, supra note 222, at 41.

\textsuperscript{246} EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION, \textit{MONITORING THE SUPPLY OF HEROIN TO EUROPE}, \url{http://www.emcdda.europa.eu/attachements.cfm/att62086_EN_emcdda_tds_herointrafficking_2008.pdf}.

\textsuperscript{247} 2007 Report, supra note 222, at 41.

\textsuperscript{248} Id. at 43.

\textsuperscript{249} Id.

\textsuperscript{250} The Balkans, Ten Years on: Europe’s Banlieue, \textit{ECONOMIST}, Nov. 26, 2005, at 50. Guns and stolen vehicles are also smuggled through the area. Id.
grow economically and assume a meaningful place in a united Europe. It appears that one of the most effective ways of dealing with organized crime within the EU, defending its security, and promoting its core values, is through strengthening institutions of justice and promoting the rule of law in the Balkans. Neglecting the above mentioned challenges would have severe consequences for southeast Europe and "a greater likelihood of political extremism, insurgency, and terrorism." 

V. THE IMPLICATIONS OF SERBIA’S EVENTUAL ACCESSION

The outbreak of conflict in the Balkans was a reminder that Europe still faces security threats and challenges. European security and prosperity increasingly depends on an effective multilateral system and integration, since it is in the EU’s interest that countries on its borders are well-governed and stable, especially countries to the east of the EU and Mediterranean. Weak governments, a history of conflict, and organized crime in those areas all pose problems for Europe. The eventual integration of Serbia as a new member state will increase European security by bringing the EU closer to troubled areas and developing cooperative relations. However, such progress cannot be accomplished without the rule of law. Establishing a system in which justice is administered openly and fairly requires that the local governments combat organized crime and corruption and hold war criminals accountable.

In addition to the drug and human trafficking concerns, Serbia’s accession creates serious security threats for the EU. Large-scale aggression against any EU member state is now improbable; instead, Europe faces threats which are “more diverse, less visible and less predictable.” They include terrorism,

\[ \text{\textsuperscript{251}} \text{EDWARD C. MEYER & WILLIAM L. NASH, BALKANS 2010: REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS CENTER FOR PREVENTATIVE ACTION 3 (2002).} \]
\[ \text{\textsuperscript{252}} \text{Id.} \]
\[ \text{\textsuperscript{253}} \text{Solana, supra note 244, at 7–8.} \]
\[ \text{\textsuperscript{254}} \text{See supra notes 243–52 (discussing these issues in Europe).} \]
\[ \text{\textsuperscript{255}} \text{See supra notes 243–52 (stressing the importance of stability in that region).} \]
\[ \text{\textsuperscript{256}} \text{MEYER & NASH, supra note 251, at 51.} \]
\[ \text{\textsuperscript{257}} \text{See Solana, supra note 244, at 3 (noting that “[a] number of countries and regions risk becoming caught in a downward spiral of conflict, insecurity and poverty”); see also id. at 3–6 (citing “failed states and organised crime” as the third major threat to Europe).} \]
\[ \text{\textsuperscript{258}} \text{Id. at 4.} \]
proliferation of weapons of mass destruction, failing states, and organized crime.\textsuperscript{259}

Improved information and telecommunication technologies; the abolition of controlled borders; increased mobility of people, goods, and services; and increasing economic interdependencies have moved organized crime towards the globalized market.\textsuperscript{260} Transnational organized crime is a threat to states and societies, undermining human security and the fundamental obligation of states to provide law and order.\textsuperscript{261} Fighting organized crime is a necessary step within the efforts to resolve internal conflicts and to prevent the proliferation of arms and terrorism.\textsuperscript{262} Moreover, security is an essential element for EU membership, especially for a number of states and regions that, like Serbia, are affected by cycles of conflicts, insecurity, and poverty.\textsuperscript{263}

While Serbia's accession would benefit the EU by providing an opportunity for the EU to expand its markets and trade routes and to unite Europe peacefully after years of division and conflict, the costs of allowing Serbia to accede at this time would likely outweigh the benefits. If the EU extends its borders to envelop Serbia, it will need to prepare for more international crime, as organized crime is a greater problem in Serbia than many of the current member nations.\textsuperscript{264}

Progress in key reform, such as local self-government and the judiciary, and the fight against corruption and organized crime must be increased and aligned with European standards. The economic and political power held by organized crime groups "often makes them attractive to young people who are unable to find work in the legitimate marketplace, thus perpetuating the problem."\textsuperscript{265} The national strategy for fighting organized crime in Serbia has not yet been finalized; thus, fighting organized crime in Serbia remains a source of serious concern because "any country that fails to decisively address the problems of

\textsuperscript{259} Id. at 3–6.
\textsuperscript{260} See id. at 11 (discussing globalization and new threats to Europe).
\textsuperscript{262} Id.
\textsuperscript{263} \textit{IS SOUTHEASTERN EUROPE DOOMED TO INSTABILITY?} 2–5 (Dimitri A. Sotiropoulos & Thanos Veremis eds., 2002) (pointing to political instability, socio-economic problems, and security issues in Southeast Europe).
\textsuperscript{264} See supra Part IV.C (discussing problems and obstacles unique to Serbia).
\textsuperscript{265} MEYER & NASH, supra note 251, at 62.
organized crime and the lack of rule of law will remain a threat to the stability of the entire region."266

Institutions in Serbia will be successful in addressing security and crime issues only if they establish solid cooperation with the EU because, in their essence, the challenges that Serbia is facing go beyond its borders and send a ripple effect across Europe. This is true both for fighting organized crime, and prosecuting war crimes.

Pre-accession assistance could help Serbia meet these challenges and make sustainable progress in its efforts to become an EU member. However, it is in the EU's interest to provide the carrots and sticks that will keep Serbia on the path of political reform and progress. The carrots available to Serbia from the EU are abundant: in return for continued peace, stability, and political and economic reform, Serbia will earn closer association with European institutions, privileged political and economic relations, and favorable trade terms offered to member states. The primary stick at the disposal of the EU is conditionality—the linking of assistance to specific performance goals. Specifically, the EU should require that Serbia, under threat of losing its IPA assistance, demonstrate its full cooperation with the ICTY.

Given the scale of atrocities in the former Yugoslavia, if the EU continues accession talks with Serbia without its compliance with ICTY extradition requirements, the international community could perceive the EU to have granted de facto amnesty to major perpetrators. Not only will this establish a dangerous precedent within Europe, but it will also send a signal to future regimes throughout the world that they have nothing to lose by engaging in criminal acts like genocide.

To promote security and create long-lasting peace in the territory of the former Yugoslavia, the international community needs to provide an effective process for assessing guilt and bringing to justice individual perpetrators. In assigning individual criminal guilt, the collective guilt that characterized the years following World War II, and in part laid the foundation for the commission of atrocities during the recent conflict in the territory of former Yugoslavia, could be avoided.

The Treaty of the European Union obligates member states to respect the principle of democracy, human rights, and the rule of law, thereby promoting peace and stability among new members.267 Peace in Eastern Europe is critical

266 Id. at 63.
267 Treaty on the EU, supra note 203, art. F.
to EU stability because atrocities like the war in former Yugoslavia could easily destabilize the EU politically, economically, and socially.

It is of paramount importance that the EU suspends Serbia's membership talks and imposes conditions on IPA assistance until Serbia unequivocally complies with the ICTY and cooperates in the apprehension and extradition of indicted war criminals. The EU should be cautious, however. If Serbia does not have the attractive incentive of eventual EU accession and regional cooperation, it may again initiate conflict as it did during the Yugoslav Wars of the 1990s. Providing the option of EU membership and conditioning it upon Serbia's compliance with ICTY rulings and extradition requirements may be the only way to preserve democracy, to prevent further violence over nationalism, and to promote peace.

Conditioning Serbia's accession on compliance with ICTY will ultimately benefit Serbia. EU membership will improve Serbia's ability to combat crime because EU membership requirements, such as adoption of EU standards and legislation with regard to justice and home affairs, will likely improve the efficiency of both law enforcement and legal systems in the nation.

There can be no lasting peace in the territory of former Yugoslavia until all war criminals are arrested and brought to justice. Serbia should not be able to join the EU with all the rights and privileges that membership entails until it honors its obligations to the ICTY. The EU will fail a profound test of its moral, ethical, and political leadership if it does not act decisively to end the freedom of men who have committed and condoned grave and heinous crimes against humanity.

The international community, acting through the Security Council, has raised expectations that war criminals will be held accountable for the terrible atrocities they commit. If the accused are left free to continue to flout international agreements and international law, is there really any less likelihood of further violence in the former Yugoslavia? The failure to comply

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269 The list of legislation that each candidate must adopt prior to accession—the acquis communautaire—is available at Europa and Eur-Lex. See European Commission, Enlargement, How Does a Country Join the EU?, http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/negotiations_croatia_turkey/index_en.htm (last visited May 25, 2009) (detailing requirements for accession and providing links to chapters of the acquis).
with extradition destroys the deterrent value of the international tribunals by giving future tyrants a notice that they also have nothing to fear.

It is absurd to expect that thousands of victims in Bosnia could forgive and forget; if the architects of atrocities in Bosnia are left unpunished, current peace will be nothing more than an interval between cycles of violence.

VI. CONCLUSION

The Yugoslav violence of the 1990s has run its course. Thirteen years after the Dayton Accords ended the brutal war in Bosnia, democratic governments across the states and regions of the former Yugoslavia share a common ambition to join the EU.

Serbia has strong incentives to seek EU membership. In January 2007, neighboring Romania and Bulgaria joined the EU, two other neighbors, Croatia and Macedonia, are official EU candidates. Failure to make progress toward eventual membership could have a negative impact on Serbia’s prosperity, especially in attracting foreign investment needed to fix the crippled economy. Serbia would also forgo millions of Euro in IPA assistance that it would receive as it advances its status from “potential candidate” to “candidate.” As Serbia has the goal of attaining membership in the EU, EU officials must leverage this influence by repeatedly insisting that Serbia’s only path toward closer integration with the EU lies in Serbia’s cooperation with the ICTY.

Lip-service pledges of cooperation are not enough: unequivocal cooperation and unambiguous extradition law is needed. Belgrade must make real progress before the EU can focus on positive incentives and reward Serbia for its cooperation: offering money and the ultimate prize of admission to the EU club. This course of action is not only in the interest of justice but in the interest of European security and peace.

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270 See Accession of Bulgaria and Romania, supra note 211 (discussing Romania and Bulgaria joining the EU).

271 See SAP, supra note 215 (discussing EU accession candidates).