

**AFTER DAYTON:
Lessons of the
Bosnian Peace Process**

A Council Symposium

COUNCIL ON FOREIGN RELATIONS

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Ruth Wedgwood, *Editor*

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Preface

The Yugoslav wars seem to continue. Conflicts in Bosnia, Croatia, and Slovenia ravaged the early 1990s and ultimate defeat did not deter Belgrade from lashing out again in 1999 against the ethnic Albanians of Kosovo. The bombing campaign by the North Atlantic Treaty Organization (NATO) against the Milosevic regime succeeded and the ethnic Albanian community of Kosovo has begun the process of return. But military victory has been followed by a difficult peace that presents a crisis of nation-building. How can Kosovars, with help from the West, construct a civil society in the wreckage of a bitter war, with a ruined infrastructure and economy, an absence of government institutions, and a deadly antagonism among the ethnic communities of Serbs, Roma, and Albanians? The international organizations assigned to help in the task face great difficulties—how to jump-start economic projects, quell continuing ethnic skirmishes on the ground, democratize a repressive communist society, and deal with a muddle of sovereignty and autonomy. Kosovo is to have effective autonomy yet remain part of the Belgrade regime; its problems are of intense international interest yet it lacks any separate international voice.

Many of these problems were worked on in Bosnia as well, and applying the lessons learned there may help those who have to confront the challenges of Kosovo. For that reason, the Council on Foreign Relations has decided to make available the record of a detailed assessment of the Bosnian peace process conducted by the Council and Yale University. It is a snapshot from Bosnia, which is still an ongoing effort, taken approximately one year into the process. The coincidence of timing gives a useful analogy to Kosovo, where the same splintering of communities has taken place.

Some lessons emerge from the Bosnian experience: it is naive to expect antagonistic

communities to reintegrate immediately after the conflict; it is extremely difficult to revive economies that have not privatized and remain controlled by nationalist political parties; the arrest of war criminals early in the process is necessary to give confidence to more liberal political elements; and building ethnicity into the transitional structure of government may be a necessary derogation from classical liberalism.

In particular, the Bosnian process should inoculate the international community against believing its own rhetoric. The idealistic goals and aspirations of a peace process and the sometimes fatuous promises of cooperation from the former antagonists should not be confused with what is really achievable. The practice of “second-best”—or third or fourth best—should guide us on the ground in these raw circumstances. Bosnia teaches that international agencies often find it hard to act in a timely way, with sufficient force and police, and with attention to the real levers of power in the societies they are trying to reconstruct.

The explosive chain letter of the Balkans—in which one conflict melds into another—may not yet be completed. The refugees from one war are often displaced into areas overtaken by yet another crisis, and few of the uprooted families of the former Yugoslavia have been able to go home. The West’s determination to reverse ethnic cleansing in Kosovo represents a new commitment by NATO and the Organization for Security and Cooperation in Europe (OSCE) and the European Union (EU), as well as by the United Nations. Looking at the lessons of the past, we may be able to avoid detours in the future.

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Introduction

Ruth Wedgwood

The war in Bosnia flattened the fizz in the West's post-Cold War champagne. After winning the Cold War and ending the division of the European continent, the West could be forgiven a moment's heady delusion that history was over, forgetting that societies might fracture in other ways. Ironically, it was the most liberal of the central European communist regimes that was to shatter apart. The Yugoslavia of Marshal Tito, champion of decentralized workers' self-management, founder of the Non-Aligned Movement, darling of the West as the only central European leader to survive a confrontation with Stalin, proved the most delicate in the moment of transition from the hegemony of communism. Testament to Tito's great political skill, or an unmasking of his authoritarianism, or perhaps evidence of the inability of any communist regime to fully assimilate the angers left from the raw civil conflict between fascist Ustashi, royalists, and communist Partisans in the Second World War, Tito's death in 1980 left Yugoslavia without a center of gravity. Ethnicity became a new divide in postcommunist Yugoslavia and a warning about how other societies might rupture. Leaders of each cultural community exploited nationalism as a political principle, manipulating the core of worthy feeling on which it may draw. Serbian intellectuals called for a revival of Serb nationalism in the mid-1980s, Muslim leaders talked of the future of Bosnia as an Islamic state, Croatian politicians looked back to a period of wartime independence that was violent and illiberal, and Slovenian entrepreneurs openly preferred the economic company of neighbors in Italy and Austria and wondered why they were roped to less-developed regions. Each dissented from the cosmopolitan ideal that there might be a multiethnic "Yugoslav" identity. Old-school

political leaders wanted a string to pluck, to retain power after communism's fall, and to announce their importance as new men. The easiest way to mobilize the demos was the siren song of nationalism.

Nationalism is not always illiberal. Indeed, in the nineteenth century, the nationalism of the Italians, the Greeks, and other old or created peoples helped to overthrow empires; nationalism was a subversive principle that countered imperial power. This was certainly true in the dissolution of the Austro-Hungarian and Ottoman empires in the early twentieth century, and it will remain for historians to estimate how important nationalist resistance was in undermining communism's empire in the Soviet Union and central Europe. Stripped of an imperial opponent, though, resurgent nationalism is often less attractive.

The fabric of Yugoslavia began to unravel in the mid 1980s. The land of the "southern Slavs"—with its two alphabets, three religions, four languages, five rivers, and six republics—had a constitutional framework that delicately balanced the interests of its several "constituent peoples." Since the Second World War, Croats, Slovenes, Macedonians, Montenegrins, Muslims, and Serbs had co-existed in a political structure that decentralized power to the six republics and checked the weight of Serbia by carving out the autonomous provinces of Vojvodina and Kosovo, with their large Hungarian and Albanian populations, within the Serb state. Tito's 1974 constitution was read by some to preserve a legal right of national secession as well. After Tito's passing, an ominous rise of Serb nationalism undermined Belgrade's claim to represent an international Yugoslav personality. The political devices of a conglomerate state—a "consociational structure," as political scientists put it—no longer served its constitu-

ents well. The collective rotating presidency and consensus decision-making of Yugoslavia became unworkable as it was increasingly Serb-dominated. Belgrade's precipitous action in 1989 in stripping Kosovo and Vojvodina of autonomy, taking over three of the eight votes in the Yugoslav collective presidency, stunned the other republics. Just as the Russian empire would soon dissolve into independent states, with grave suspicion of Moscow entertained by the Baltics, Georgia, the Ukraine, and the Turkic republics of central Asia, so too independence movements gained momentum in the Yugoslav republics of Slovenia, Croatia, Macedonia, and Bosnia. Post-Tito Yugoslavia was called a Serb empire, and independence became seen as a necessity. After Germany's dramatic reunification in 1989, Bonn and other European capitals also found it hard to deny the right to self-determination claimed by the constituent Yugoslav republics—even at the cost of splitting apart a country that had worked successfully for 40 years. A new nationalist sensibility and celebration of national cultures was seen from abroad almost in a harmless literary light, as a new springtime in Zagreb and Ljubljana.

But after formal declarations of political independence by the breakaway republics, words quickly turned to violence. Fighting broke out in 1991 in Slovenia, in a confrontation between federal Yugoslav border guards and the local militia. Slovenia had no Serb minority, and this may have helped truncate the conflict. But violence escalated in Croatia, in the traditionally Serb provinces of Western Slavonia and Eastern Slavonia, after Zagreb also declared independence from Belgrade. The Yugoslav People's Army and the Serb militia attempted to gain control of these Serb areas of Croatia and weld them to the Serb republic, and the intense fighting with Croat militia brought back the battle scenes of World War II. The

siege and bombardment of Vukovar, a once graceful river port on the Danube, left a scene of destruction that is still astonishing. And on the idyllic Adriatic coast, the Yugoslav army and navy shelled the historic fortress town of Dubrovnik, dismaying all Europeans who had enjoyed the area as a seaside resort.

A new Europe, distracted by Maastricht political ambitions for a common foreign and security policy, resisted the idea that acting as midwife to four new republics in Yugoslavia might destabilize rather than improve matters. In particular, the 15 members of the European Community gave little heed to the urgent plea made by international negotiators and UN Secretary-General Javier Perez de Cuellar that international recognition of the breakaway republics should be deferred, to allow negotiations for a looser Yugoslav federation. The European Community belittled the warning that diplomatic recognition of the secessionist republics would shatter negotiations and block any recasting of republic boundaries, as well as forestall international guarantees to reassure national minorities "trapped" within the newly self-determining states. The macabre Yugoslav joke—that *you* should be a minority within *my* republic, instead of the other way around—played out in the rapid descent into violence. Claims for the legitimacy of self-determination have no natural limit. Although the script was more innocent in Slovenia, the declarations of independence in Croatia and Bosnia precipitated the panicked counter-declarations of resistance and self-determination by Serb minorities. In Bosnia, the Croat minority also broke away from the Sarajevo government, preferring to cast its fate with the new Republic of Croatia. Croatian President Franjo Tudjman ominously announced that Croatia had the right to protect the interests of Bosnian Croat communities.

The breakup of Yugoslavia threw Bosnia's future into the air, for Bosnia was a "mini-Yugoslavia" in its own right. The republic's ethnic *mélange* was stable so long as each ethnic community in Bosnia could ally with its siblings in other republics—Bosnian Croats with Croatia, Bosnian Serbs with Serbia. But Bosnia on its own had no stabilizing keel.

Bosnia and Herzegovina has existed, for centuries, as a complicated patchwork of Serb, Muslim, and Croat communities, living cheek by jowl in country villages and urbane cities such as Banja Luka and Sarajevo, with a relatively high rate of intermarriage among communities. Mountain terrain and a limited road network forced Bosnian travelers to pass through varying ethnic communities to reach market towns, highways, railheads, and the commerce of the Sava and Drina Rivers and the Adriatic Sea. The complicated scatter of nationalities in prewar Bosnia forbade any practical claims to separation or territorial autonomy. Each small *opstina*, or county, might have an ethnic plurality or majority but no contiguous swathe of territory could be labeled Serb, Croat, or Muslim.

After the fighting in Slovenia and Croatia, the Sarajevo government of Bosnia announced a referendum on independence in early 1992. A majority of voters favored a split from Belgrade, but Bosnian Serb communities protested the referendum and boycotted the vote. They argued that Bosnia's constitution required a decision by consensus, that in a profound choice such as independence, each national group had the right to withhold its consent. Independence would not be legitimate unless a majority of the Bosnian Serb community also favored it. At a minimum, said Serb representatives in the *opstinas* near Banja Luka and Pale, the areas with majority Serb populations must be permitted their own version of self-

determination and the right to affiliate with Belgrade.

European leaders did not press the point with Sarajevo's independence-minded leadership. Bosnian President Alija Izetbegović remains famous in diplomatic circles for a comedic question and answer:

Question: "President Izetbegović, there are 100,000 soldiers from the Yugoslav People's Army stationed in Bosnia. When you declare independence, how will you control these troops?"

Answer: "I will order them out."

Needless to say, the Yugoslav forces didn't leave. A doe-eyed Europe seems to have confused juridical theory with military facts on the ground. In a mood of European solidarity, the Bosnian Muslims also entertained the illusion that after the international community recognized Bosnia and Herzegovina as an independent republic, Europe would guarantee their territory. The rest, unhappily, is history. After Bosnia's declaration of independence, additional Serb troops came over the border and the Yugoslav troops present in Bosnia were redesignated as members of the armed forces of "Republika Srpska"—the newly self-proclaimed autonomous Bosnian Serb republic. A Serb campaign to consolidate territory was mounted with barbarous bloodletting and ethnic cleansing by military and paramilitary groups such as Arkan's Tigers. Any understanding of the Serb constitutional claim was lost in the sea of blood that washed over Bosnia, although in the course of reconstruction after the conflict it may be wise to pay some heed to the nature of the original complaint.

The puzzle of the old Yugoslavia was that, although national identities remained an important part of the culture, the scattering of people on the ground was intricate and workable. Populations were sometimes

intermingled by deliberate strategic choice. For example, Serb fighters were recruited in the old Austro-Hungarian empire to live in the border area of the Krajina as a buffer against the Ottomans, in what is now Croatia. Economic migration was also at work: Muslims lived in the cities and towns as traders and merchants, Serbs farmed in the countryside, and Croats worked as farmers and tradespeople in Herzegovina and Central Bosnia. In peacetime, this complementary pattern of settlement was mutually convenient. But in civil war, the intermingling brought brutality. Ethnicity was equated with loyalty, and once in conflict, all sides entertained the strategic worry that a neighbor living nearby might pose a threat. The secessionist desire of the Serb and Croat communities to consolidate mono-ethnic territory lit the tinderbox for a war of carnage.

After fighting began in Bosnia in March 1992, every conciliatory effort failed. The Serb terror tactics of the war had a dismaying logic—winning territory for an “ethnically pure” state by forcing out neighbors of any different descent. And the role of the United States in Europe was brought home again in stark terms. The new Europe of the Maastricht Treaty might hope for a common foreign and security policy, but it could not agree on any means to suppress the conflict.

The Bosnian war went on for more than three years, bringing shocking events: the bombardment of cities, the sniper attacks against civilians, the slow strangling of civilian centers reached only by occasional UN relief columns, the gross mistreatment of prisoners of war, and barbarity toward civilians on all sides. The role of the Serbs in beginning the fighting and their ruthless attempts to consolidate territory throughout the war should not preclude attention to the humanitarian violations (albeit of a substan-

tially lesser scale) that occurred in other quarters of the war.

The delivery of aid to civilians caught in the conflict was the main objective of the peacekeeping missions of the United Nations and the European Union. Persistent attempts were made at a diplomatic solution, bringing the combatants together in the midst of the bitter fighting, mulling over proposals such as the Cutileiro Plan, the Vance-Owen Plan, the Invincible Plan, and the Contact Group Map, in the several years before the principals got to Dayton. These diplomatic proposals were frustrated by parties who quite shamelessly lied about their intentions, disputed known facts, and gamed their agreement so that there would always be a spoiler. Often the parties thought they could do better if only they staged one more spring offensive, or sought foreign help in the fight, and international voices encouraged them in the belief. The slough of the war also reflected the West’s indecision. The unwillingness of the international community to threaten obstinate parties with military force left negotiators little to work with. A distinguished diplomat has remarked of the peace process that diplomacy without force is like baseball without a bat. Sweet reason alone doesn’t carry far in the Balkans.

The parties’ appetite for war was also sustained by outside backers. The Bosnian Serbs were supported with money and materiel from Belgrade and points farther East. The Croats obtained arms from western Europe—supplies and men crossed regularly from Croatia into Bosnia to bolster the rump Bosnian Croat community of “Herceg-Bosna.” The Bosnian Muslims were reinforced by arms delivered from friends in the Middle East when AWACs went on holiday, sometimes splitting the booty with Croat intermediaries. The Bosnian Muslims had misplaced expectations that the world would

finally intervene to enforce their territorial claims on behalf of a “multiethnic society,” perhaps not understanding that ground combat in difficult terrain is a great deal to ask of democracies that value the lives of their soldiers.

The United Nations’ humanitarian efforts are celebrated and controversial. The peacekeepers of the UN Protection Force (UNPROFOR) saved thousands of lives by delivering aid to stranded areas in conditions of winter siege. But the limited mission and vulnerability on the ground of the lightly armed UNPROFOR also meant that the United Nations was seen as a hobbled Samaritan. At the beginning, UNPROFOR had a limited mandate from the UN Security Council—merely to escort relief convoys. Even that purpose could be frustrated, however: food for civilians was often hijacked by the partisan fighting forces. Seeking to avoid the provocation of any side, UNPROFOR too often was forced to retreat and sometimes even took measures that compromised individual civilian lives, such as the decision to jacklight the Sarajevo airport landing strip—a measure deemed necessary to obtain Serb permission to land relief planes even though it exposed Sarajevo citizens trying to escape.

UNPROFOR was later given a broader mandate to protect several Bosnian cities. This was a disastrous failure, because of inadequate forces. To protect civilians facing bombardment from Serb artillery in the surrounding hills, the UN Security Council declared five Bosnian cities to be “safe areas.” UNPROFOR lacked the troops, in number, readiness, and armaments, to protect resident civilians from Serb attacks. Secretary-General Boutros Boutros-Ghali warned the Security Council that safe areas made sense only if an international force of 34,000 soldiers was deployed to defend them; UN members were willing to provide only 7,000.

A diffident attitude toward the use of force was also at work. Most troop-providing countries were unwilling to use counterbattery to suppress Serb artillery bombardments for fear of provoking the Serbs against them. It is a poorly kept secret in UN military operations that the national defense ministries of troop-donating countries control their contingents’ actions on the ground. A UN force commander has limited discretion in the disposition of forces because of national veto power. A “dual key” arrangement between the force commander and the UN political representative also stymied realistic methods to suppress Serb bombardments, and UN officials discouraged the equipment of peacekeepers with the caliber of weapons necessary to counter serious threats. The fall of Srebrenica in July 1995, transforming a “safe area” into a scene of slaughter where thousands of executions were carried out by Serb forces, will stir the pot of moral responsibility for a long time to come.

In addition, the United Nations did not stop Bosnian military forces from misusing the safe areas as springboards for attacks against the Serbs and siting military targets within the civilian enclaves. Goradze, for example, contained a large armaments factory. The United Nations refused the request of UNPROFOR commanders to have the safe areas demarcated, so that it would be clear where fighting was permissible and where it was forbidden. Rather than admit the safe areas were unworkable, the United Nations maintained the fiction that the law alone would protect civilian lives.

The conflict might have been nipped in the bud if NATO or the United Nations had responded with a robust show of force early in the war, when the Yugoslav army bombarded Vukovar and Dubrovnik, or when the Serbs began their ethnic cleansing campaign in Bosnia. At the time, Yugoslavia was still seen as a European problem. The Security

Council was only beginning to try out its greater post-Cold War powers and was limited by the varying sympathies of its members. Even the political views of NATO members were in tension, though the pattern was more complicated than the historical association of Germany with Croatia and France and the United Kingdom with Serbia. The right of the United Nations to authorize the collective use of force to end the fighting in a civil conflict—without the consent of the parties—was also at the time unprecedented. It has recently been proposed that recognizing such a power in the Security Council, for use on extraordinary occasions, is one of the necessary lessons of the Bosnian war.

After three years of conflict, NATO did intervene in the summer of 1995 and changed the immediate course of events. NATO air power and the Croatian ground offensive in western Bosnia and Western Slavonia persuaded the Serbs to come back to the bargaining table, agree to a cease-fire in September and October 1995, and then take part in peace negotiations in Dayton, Ohio, in November 1995. Proximity diplomacy was conducted, with no symbolic subtlety, at a major American air force base. The Dayton Accord was a mixture of belt and suspenders: crafted to win the consent of the parties, with Slobodan Milošević and Franjo Tuđman signing on behalf of their Bosnian protégés, but also held in place by a Security Council resolution with mandatory authority. Resuming the war became illegal. NATO troops, together with contingents from Russia and other cooperating states, ferried into Bosnia and separated the combatants, cantoning troops and warehousing weapons.

Bosnia's challenge is to transform a cease-fire into a real peace and rebuild an integrated state. Some argue that the best chance for stability and peace is to recognize

that the eggs are broken and allow the three ethnic communities of Bosnian Serbs, Croats, and Muslims to live separately, even in a formal partition—at least until Bosnia's traditional economic integration restores some working relations. Others argue with greater hope—though hope outrunning fact has proved dangerous in the Balkans—that the whole genius of Bosnia was its multiethnic existence, its complicated cosmopolitan admixture of peoples, religions, and empires. Partition would perpetuate the war's ethnic cleansing and legitimize aggression. And from a realist's point of view, a plan for formal partition would not yield a stable peace. The map agreed to at Dayton did not leave viable independent territories, and Muslims, Croats, and Serbs alike would want widened corridors, defensive buffers, and territorial gains.

The Dayton Accord is a document of chameleon colors, an exercise in the art of the possible, giving some leeway to each of the warring parties and humoring all the quarreling schools of international physicians. Bosnia's political future and government will depend on the execution of Dayton on the ground—whether Dayton's centripetal or centrifugal tendencies have greater play. Hence the worry that the West may grow impatient and inattentive.

At Dayton, the Bosnian Serbs won recognition of Republika Srpska as a Bosnian Serb "entity" within the larger state of Bosnia and Herzegovina. New legal categories came tumbling onto the Dayton runway. As an "entity," Republika Srpska is not an independent country; it is not entitled to a seat at the United Nations and can't deal directly with the International Monetary Fund or the World Bank. But it is given the power most often associated with sovereignty—the right to maintain its own army and police force, governing the Bosnian *opstinas* bordering Serbia within a contiguous territory and a

Serb political structure. Along with self-governance as an “entity,” the Dayton Accord permits Republika Srpska to have a “special parallel relationship” with Yugoslavia—now consisting of the republics of Serbia and Montenegro—and in a first defiant act, the Bosnian Serbs and Belgrade entered an *ultra vires* mutual defense pact.

Republika Srpska includes most of the areas under the control of the Bosnian Serbs at the time of the September 1995 cease-fire, just under 49 percent of the territory. The Bosnian Serb entity is shaped like a pair of saddlebags, with the university town of Banja Luka in the west near Croatia, and strategic towns such as Srebrenica and Zepa in the eastern Drina Valley bordering Serbia. The brutal tactics of ethnic cleansing ensured the flight of Muslims from these Drina Valley towns with historically large Muslim populations, and few dare move back. The ski resort Pale in the Sarajevo suburbs initially served as the Bosnian Serb capital, later moved to Banja Luka. The two halves of Republika Srpska are linked by a narrow corridor in the north, along the Sava River and the border with Croatia, passing through the disputed choke-point town of Brčko. Republika Srpska is probably not viable as an independent state, but the local autonomy of the “entity” affords the Bosnian Serbs self-governance (and domination) in crucial functions such as education, media, and the local economy, as well as control of the army and the police. The Bosnian Serbs exercise a day-to-day veto over refugee returns through their control of the police, whose members have not been purged since their wartime frontline work of ethnic cleansing.

A theoretical Muslim-Croat coalition is the backbone of Bosnia’s second “entity”—a “federation” that governs the southern and central parts of Bosnia and Herzegovina. The early wartime alliance between Muslims and Croats in fighting the Serbs was the

supposed political basis for a federation, but Muslims and Croats quickly lapsed into fighting each other in 1993. Each ally attempted to ethnically cleanse central Bosnia to exclude the other. In 1994, the federation was organized on paper with American diplomats as the midwives, but it was a still-born product. Bosnian Croats allow little interference with their control of traditionally Croat areas, which they dignify as “Herceg-Bosna.” The continuing tension and de facto partition between Muslims and Croats in the city of Mostar (which the Bosnian Croats consider the capital of Herceg-Bosna) shows the federation’s deep-rooted problems. The Muslim-Croat Federation can enter a “special parallel relationship” with Croatia, although there is no treaty provision for a special parallel relationship with any foreign Muslim states.

The Bosnian Muslims and other “Bosniacs” who sided with the Sarajevo government during the war gained two major things at Dayton. The first is international recognition of Bosnia and Herzegovina as an independent state within its old boundaries. The territory of Bosnia and Herzegovina, at least as a formal matter, consists of the two entities. The national government sits as “a thin roof” over the entities, with some important theoretical functions—acting on behalf of Republika Srpska and the Muslim-Croat Federation in foreign affairs, foreign economic policy, central banking, and representation in international institutions. International financial institutions such as the World Bank and the International Monetary Fund must channel all assistance through the national government in Sarajevo. The national government could also act, if the three ethnic communities were in consensus, on a series of integrative measures, including proposals for common license plates, a common currency, common travel documents, integration of telephone systems and

power grids, and even an interethnic police force and other direct means of knitting back together the fractured parts.

The Bosnian Muslims still brandish the ideal of a multiethnic state, or at least a grudging logroll between ethnic communities, but the structure of the national government largely yields paralysis. A collective presidency of Bosniac, Croat, and Serb presidents, a House of Representatives, and an aptly-named House of Peoples are to make decisions on national questions, although in practice they cannot. The international community enjoys an unusual role as observer and guarantor, with international members appointed to domestic bodies such as the Constitutional Court, the Human Rights Chamber, the Commission for Displaced Persons and Refugees, and the Central Bank. Whether the national government will ever become truly functional is another matter. Any important decision requires the agreement of all three ethnic communities. Each of the three presidents can veto a decision that prejudices the “vital interests” of one community. The Bosniac, Croat, or Serb delegations in the House of Peoples can also veto decisions that conflict with a national community’s vital interests, subject only to a limited power of review by Bosnia’s constitutional court. There is no majoritarianism—and Bosnia’s rule by consensus would be paralyzing even in an amicable society. In its first phase, the national government functioned only on paper. At the end of 1997, a new “High Representative” of the international community—responsible for overseeing the Bosnian national government—began to impose by force majeure a series of “interim arrangements” when the three-hatted presidency was in stalemate on crucial issues, introducing, for example, safe-travel auto license plates that omit a traveler’s place of origin, common international travel documents, a common currency, and a

common telephone area code. To make things work at the national level will require a much greater degree of cooperation among the nationalist political leaders, or the continuation of mandatory “gauleiter” powers by the international community. There is a sign of hope in the pledge made on November 14, 1999, before the UN Security Council by the three members of the Bosnian presidency to create a multiethnic border patrol, a joint peacekeeping unit, and a secretariat for the presidency. But promises have been more often broken than kept in Bosnia.

The deep skepticism of the Bosnian Serb and Croat communities toward the new national government can be seen in one key piece of stage business at Dayton. The Serbs and Croats gained a change in the name of Bosnian state, from the “Republic of Bosnia and Herzegovina” to the unadorned “Bosnia and Herzegovina”—as if to say the state is only a geographical area rather than a political community.

National elections were held in Bosnia under international supervision in September 1996. Many think this was a mistake. The wartime parties still controlled the police and the media and denied opposition groups any media access or the safety to campaign in local towns. Even with these obstacles, opposition leaders managed a surprisingly strong showing in Serb and Muslim areas. Regional loyalties have crosscut the power of sheer nationalism. Many voters in the Banja Luka area opposed the eastern Pale Serb nationalists. Local elections have provided some cheer, at least on paper: displaced Muslim and Croat minorities have chosen officials in Republika Srpska by absentee ballot, and some minority winners have begun to carry out symbolic public acts, even though they cannot safely reside in their own electoral districts in the Serb entity. Elections for a new Bosnian Serb

parliament displaced the nationalist Serb party—the Serb Democratic Party, or SDS—from control of a parliamentary majority for the first time, with the selection of Prime Minister Milorad Dodik, a far more cooperative figure apparently interested in ending Republika Srpska’s international isolation. But Momcilo Krajišnik and his successor, Nikola Poplašen, both SDS candidates, served as the Serb members of the national presidency and posed a challenge to any cooperative decision-making, only recently replaced by Živko Radišić.

Bosnia’s economy shows some signs of life, at least in the federation, with the reconstruction of schools and hospitals, the opening of small businesses, and earnings sent home by Bosnian refugees abroad. But a key mark of failure is the absence of private-sector activity. Almost no foreign investment in industry has been made in the machine tools, automobile assembly, or electronics industries that had an important place before the war. (The reopening of a Volkswagen assembly plant, at the urging of the German government, is a rare exception.) The continued control of the economy by a party-dominated government is a large part of the problem; international investors have many other choices and are not attracted to an area where party permission is necessary to make a profit, especially when the renewal of civil conflict still looms. The Bosnian economy closely resembles what was often called in the 1960s “false development”—boosted by the stimulus of foreign aid that is not sustainable over time. An economy that has lost a highly skilled and educated industrial workforce will take decades to recover, even if the peace is stabilized.

The economy is also lopsided. International aid has been granted preferentially to the Muslim-Croat Federation. International and American officials argue that the Serb

failure to cooperate in the return of minority refugees has been disqualifying, and that there was no point in strengthening the Pale regime. With the election of Biljana Plavšić as president, a selective program of aid was begun for the few Serb towns that might permit the return of refugees. The desire of international policymakers to have leverage on the decisions of Serb *opstinas* is understandable. Like that of the federation, the Republika Srpska economy has not been privatized, and the economic and political influence of local government remains dominant. Acts that bolster the Serb economy may strengthen an illiberal government. At the same time, without any economic stimulus, the area’s prewar industrial and agricultural enterprises and even small businesses cannot recover, and demobilized combatants as well as the public in Republika Srpska are likely to remain bellicose.

A second problem is corruption. Black-market enterprises dealing in cigarettes and stolen cars festoon Bosnian towns with the Capone-like presence of black Mercedeses. Both entities’ governments also lack transparency. “Official” corruption thrives: for example, the Bosniac government insisted for over a year on levying a 90 percent “social tax” on any monies paid to local employees, even in humanitarian operations for the removal of anti-personnel land mines. Millions of dollars appropriated by the international community to remove land mines left from the war could not be spent because of this standoff. “Unofficial” corruption also exists. One international aid official recalls a dismaying dinner with a federation official in charge of the reconstruction of housing. The dinner companion tried earnestly to persuade the aid official to cancel the purchase of roof tiles from Bosnian plants, even though local purchasing stimulates the economy. The aid official was dumbfounded—against a familiar background of corruption in developing economies—when the

developing economies—when the federation official dragged him from the dinner table to come out to the parking lot, opened the trunk of his car, and held forth on the quality of the roof tiles his own company could import from Italy and Austria.

The other major disappointment is refugee return. The soldiers of NATO and cooperating countries who were deployed in the Implementation Force (IFOR) and the Stabilisation Force (SFOR) deserve the highest praise for serving in difficult conditions, often without the ability to communicate with the local population. They have faithfully patrolled the Inter-Entity Boundary Line to ward off confrontations and have supervised the build-down of arms. They have provided security for international relief workers and the United Nations' unarmed police monitors (the International Police Task Force, or IPTF) and made it possible for them to operate without a paralyzing fear of intimidation from the vigilante forces and illegally armed police of both entities. A typical example: a Spanish armored personnel carrier, lumbering down the highway, came to the assistance of a UN police monitor from Minneapolis, Minnesota, who was trying to protect the safety of a prisoner jailed in a local ethnic vendetta. Even though the IPTF monitor lacked communications equipment interoperable with the NATO forces and had to explain the problem to the Spanish commander by sign language, the support was effective. Still, refugee return is a wholesale project. How to protect the safety of the thousands of minority refugees who might wish to return to their villages in the scattered valleys of a mountainous landscape, where vigilante forces operate off the roads and homes are blown up at night, is a much more difficult, if not impossible, task. An effective apparatus of informants and surveillance to permit the apprehension and exemplary punishment of hooligans is hard to put together in a for-

eign environment, as any former colonial power knows. The creation of positive economic incentives for villages and *opstinas* that choose to be welcoming is a more practical route to follow.

Bosnia is still rife with stories of frustration and, occasionally, a passivity that recalls the early days of UNPROFOR. A striking example lies in the Croat village of Stolac, where the UN high commissioner for refugees funded the reconstruction of homes of former Muslim residents. Each day the Muslim refugees were bused in to work on their homes. Local police attempted to waylay the buses on the highway but were rebuffed by the IPTF monitors. At night, the restored Muslim homes were demolished again. The IPTF asked to have an office in Stolac so that they could keep an eye on things; permission was refused by the local Croat authorities, and the reconstruction project was derailed.

One lesson of the Bosnia effort is the difficulty of gaining a fast start on the civilian side, with disparate agencies, and the ability of the nationalist parties to play one agency off against another. Simple coordination of strategy is difficult to achieve among international organizations with no common boss or reporting system. And the international organizations leading the effort have demonstrated only a gradual willingness to assume the “gauleiter” powers often necessary to sidestep local nationalist leaders. Although the Security Council and NATO subordinated the local military to international control, acting under Chapter 7 of the UN Charter, the international implementation of civilian measures has lacked muscle. The confusing array of international civilian officials on the ground—the high representative, the chairman of the OSCE Mission, and the UN secretary-general's special representative—sought cooperation from Serb, Croat, and Bosniac officials. But

where cooperation was withheld, few international officials were willing to remove the disruptive local officials or to bypass their nominal authority. Generalizations are overbroad, of course. Police chiefs have been booted from office for failure to cooperate with police monitors. In late 1997, several television stations were seized to allow a political voice to the more moderate Serb faction of Mrs. Plavšić. And the second high representative, Spanish diplomat Carlos Westendorp, in 1999 removed the Serb member of the national presidency for failure to cooperate. But for the most part, international representatives faced with obstinate noncompliance by entity officials have found it hard to move forward. They had no occupation government in Bosnia, or even the direct ability to cut out the obstructive portions of the existing nationalist governments. Ironically, the early use of democratic elections made it harder to displace nationalist officials, since they could claim a popular mandate.

The Council on Foreign Relations and Yale University believed it would be productive to convene an international conference to examine the Bosnian peace process, to examine what worked well or not so well, and to see if broader lessons could be drawn for international reconstruction. Participants came from Europe and the United States, and from many vocations: scholars, nongovernmental and relief organizations, the administration and Congress, the UN diplomatic community, and intergovernmental organizations. Ruth Wedgwood, professor of law at Yale Law School and director of the Project on International Organizations and Law at the Council on Foreign Relations, chaired the conference, with the collaboration of Paul Dubinsky, associate director of the Schell Center for Human Rights.

The conference brought together participants including Kofi Annan, shortly before

his election as the seventh secretary-general of the United Nations, then serving as undersecretary-general for peacekeeping operations; Judge Antonio Cassese, president of the International Criminal Tribunal for the former Yugoslavia; Ambassador Robert Frowick, the head of mission in Bosnia for the OSCE and chairman of the Provisional Election Commission for Bosnia; Christine Wallich, the World Bank's director for Bosnia and Herzegovina; Soren Jessen-Petersen, head of mission in Bosnia for the UN high commissioner for refugees; Stojan Cerović, co-founder of the Belgrade opposition magazine *Vreme* and nephew of famed Yugoslav dissident Milovan Djilas; Misha Glenny, author of *The Fall of Yugoslavia: The Third Balkan War*; Muhamed Sacirbey, Bosnia and Herzegovina's ambassador to the UN; Vladislav Jovanović, the Federal Republic of Yugoslavia's ambassador to the United Nations; and Ivan Šimonović, deputy foreign minister of Croatia.

Brookings Institution political scientist Susan Woodward, author of *Balkan Tragedy*; Tel Aviv University political theorist Yael Tamir, author of *Liberal Nationalism*; Sarajevo-based UN political analyst David Harland; legal adviser to the International Conference on Yugoslavia Paul Szasz; New York University professor Theodor Meron, adviser to the war crimes tribunal and author of *Human Rights in Internal Strife: Their International Protection*; Colonel Alan Stolberg of the Naval War College, who spent part of the war in Sarajevo; James Schear of the Carnegie Endowment for International Peace and former adviser to the special representative of the secretary-general in the former Yugoslavia; Kings College lecturer James Gow, author of *Legitimacy and the Military: The Yugoslav Crisis*; Julie Mertus, co-editor of *The Suitcase: Refugees' Voices from Bosnia and Croatia*; Balkans correspondent Laura Silber

of the *Financial Times*, who is also co-author of *Yugoslavia: Death of a Nation*; Schell Center for Human Rights Senior Fellow Ruti Teitel; and Yale professors Bruce Ackerman, Douglas Rae, and W. Michael Reisman also took part.

The purpose of the conference was not to assign responsibility for the outbreak of the war, either among the Serb, Muslim, and Croat leaders, or in the default of international actors. Nor did we wish to endlessly debate the question of whether the international community should have intervened forcibly at an earlier stage to quell the fighting. The purpose was to look forward from the Dayton Accord, to ask what the difficulties of the peace process were and how they might be cured. Our intention was not to provide a beggared technocratic fix; no one can act effectively in Bosnia without some understanding of the parties' motivation and points of view, even where these were formed by the war. Our aim was to see what the international community should be doing differently in politically complex environments such as Bosnia. As such, our glimpse of Bosnia may be salient as well for new reconstruction tasks such as Kosovo.

Among the questions discussed were the following:

- Should ethnicity ever serve as a basis for representation in national institutions in a postconflict situation?
- Does conducting elections in the aftermath of a conflict help transform national politics?
- Do strategies exist for safe refugee return into cleansed areas when policing is still in the hands of local nationalist leaders?
- Can economic aid be targeted to avoid corruption and political misuse, and to induce compli-

ance with international standards?

- Was the halting use of force by the United Nations during the conflict the result of a morally witting view—that an international organization cannot take responsibility for the collateral consequences of force?
- Has the international war crimes tribunal operated effectively and had a positive effect on events on the ground? Was a criminal tribunal the best approach, rather than a truth commission? Should arrests of war criminals be carried out early in the process, even if it appears to require risky security operations?

The first panel of the conference set the historical background of the Dayton peace accord. James Gow pointed to the long-standing conflict between two state-building conceptions of Yugoslavia—pan-Serb versus pan-Slav. Yugoslavia was heralded by some as a state in which all Serbs would live together, and by others as a loose union for all southern Slavs, including Croats, Muslims, and Macedonians, sharing a common language, with latitude for mutual self-determination. The competing projects of state-building meant a constant tension between centralism and decentralization. In Tito's Yugoslavia, despite the federal structure of the six republics, strong central control was maintained through the communist parties of the republics; after Tito's death, that hidden device fell away. When Yugoslavia dissolved, the international community had three objectives of its own: stemming the flow of refugees, limiting the expansive ambitions of Croatia and Serbia, and defending existing borders in the belief that territorial stability quells conflict. *Financial Times* correspondent Laura Silber, who cov-

ered the war on the ground, joined Gow in the judgment that the Dayton Accord represents stalemate—not an abandonment of the warring parties’ conflicting goals, just an acceptance that this is all they can get for now. Limited progress on refugee returns and the halting progress in economic reconstruction, including limited Western influence over Republika Srpska because little aid is given to its economy, are two of the looming problems.

UN analyst David Harland, who lived through the war in Sarajevo, argued that Dayton “more or less ratified the situation on the ground” at the end of the war, awarding each party the territory and autonomy it already enjoyed. The international community, said Harland, decided plainly against any “forced implementation” of the policies of refugee return or freedom of movement across the Inter-Entity Boundary Line. Dayton saw several early difficulties: failing to provide NATO protection for Serbs living in the Sarajevo suburbs when control of the area was transferred to the Bosnian government, thus allowing ethnic purges to continue in the immediate aftermath of the new peace accord; the high representative’s unwillingness to establish any independent television media to counter nationalist propaganda before the first elections; and no attempt at refugee returns in *minority* areas, including nonstrategic pockets of territory where returns might have been less fiercely resisted. In addition, the OSCE failed to anticipate that the election rule allowing “future residency” voting would permit the Serbs to attempt to stack the polls by coercing Serb refugees to register in contested towns, and thus was unable to maintain an accurate vote count in early elections.

Susan Woodward argued that NATO’s activity on the ground has been limited by what is practical. The international commu-

nity has a solid history of success at interpositional peacekeeping but doesn’t know how to legitimate new governments or change the psychology of local residents. Furthermore, a gap exists between resources and authority: the international organizations with aid and assets are not those in charge of a political strategy. Relying on Bosnia’s state institutions for the distribution of economic aid was a questionable avenue; a “bottom-up” implementation, distributing monies through nongovernmental organizations, would avoid bolstering the apparatus of nationalist governments. Each side continues to seek its wartime goals, albeit by political means, Susan Woodward noted. In the Muslim-Croat Federation, political power is strongest at the cantonal level where nationalist political parties have great influence. And there is no regional strategy for refugee return, so displacement of one group continues to block another’s return.

The second set of speakers looked at a question of legitimacy, in political principle and in popular perception. Dayton established a constitution for Bosnia and Herzegovina but did not propose its ratification by any local political process or referendum. The Dayton constitution uses ethnicity as an organizing principle for national institutions, providing seats in the Bosnian presidency, the House of Peoples, and the House of Representatives based on the representative’s ethnicity. Is it ever permissible for a democratic society, much less an internationally sanctioned constitution, to build its institutions on ethnic principles of representation?

Julie Mertus argued that the idea of a constituent nation—*narod* in Serbo-Croatian—has been at the center of Yugoslav constitutional theory. The “nations” of Serbs, Croats, Slovenes, Macedonians, Montenegrins, and Muslims were the foundation stones of the Yugoslav federation, including the right of any national republic

to block collective action. “Nationalities,” or *narodski*, the members of other minority nations whose homelands are elsewhere, were also recognized in the 1974 constitution. But in the new Bosnian constitution set out by Dayton, only Bosniacs, Croats, and Serbs are recognized as constituent peoples. The 1994 Muslim-Croat Federation agreement recognized only two constituent nations, Muslims and Croats, demoting Bosnian Serbs who lived in the area before the war to “others.” Political theorist Douglas Rae noted that the Dayton constitution excludes pluralism by “hardwir[ing] the alliances which are to compose the system, in the very definition of the institutions.” No multiple identity of voters is expressed through interest groups as farmers, businesspeople, or parents. Rather, ethnic identity governs the political structure, which “in advance rules out most of the substance of democratic activity.” The other difficulty of governing under the Dayton constitution is the ethnic veto, permitting a “passive tyranny” in which government fails to act. UN legal expert Paul Szasz, a former adviser to the International Conference on Yugoslavia, noted that the Western legal experts assigned to help draft constitutions for the parties throughout the peace process were initially shocked by the idea of drawing a constitution along ethnic lines. “We could not see how that could be reconciled with modern human rights principles.” But, Szasz noted, “We found out that all the parties, including the Muslims, Serbs, and Croats, expected us to draw up a constitution along those lines. That point was not in debate.” Still, there are no palatable rules to determine who belongs to an ethnic group, and insufficient accommodation of voters who choose to identify themselves in non-ethnic terms.

Israeli political philosopher Yael Tamir took a less grudging view of nationalism, arguing that liberal states should be allowed

to take ethnic identity and nationality into account in structuring representation in order to remain relevant to the way people see themselves. National identity is not just another taste or preference, like being an opera-lover, argued Tamir; nationality is important in a more constitutive way, part of “the ability to be the person one wants to be, or to belong to the group one feels affiliated with.” The identity of a representative may also be important, Tamir pointed out, to bring to bear the shared experiences of a national group, as well as for a group’s symbolic presence and a sense of inclusion and self-government.

Belgrade opposition journalist Stojan Cerović, editor of *Vreme* magazine and nephew of Yugoslav dissident Milovan Djilas, added a claim about transition. The Dayton constitution should be seen as “something very temporary,” argued Cerović. To stop the war, it “was absolutely necessary to make an arrangement that everybody on all sides would sign,” and each side was dominated by nationalists. “I’m afraid that we cannot wait to get liberal, really the best kind of liberal people in power in that part of the world,” Cerović quipped. At the same time, a Bosnian identity did exist before the war, and if the people of Bosnia are given enough time, cohesive forces might prevail. Before the war, you could not tell the difference between Serbs and Croats, even if you knew a person’s name. It was not a clash of civilizations, Cerović said, but what Freud might call “the narcissism of minor differences.”

Finally, American political theorist Bruce Ackerman issued a warning about the casual use of terms. “Ethnicity” as a term arrived after the Second World War, displacing an older vocabulary in which political theorists spoke of “races,” including such archaic phrases as the “Italic race.” The idea of a “nation,” however, is rooted in the

eighteenth and nineteenth centuries and conveys three liberal and worthy ideas—popular sovereignty, equality, and secularism. In the context of Bosnia, the idea of “nation” is refracted, since the identified differences are in part religious, not linguistic or territorial.

The historical role of cultural and political nationalism was also the subject of a conference keynote address by British author Misha Glenny. *Political* nationalism has not always been a potent force in the Balkans, argued Glenny, though there are examples of ethnic expulsions within memory. A million Muslims were expelled from Russia in the mid-nineteenth century after the Crimean War. The Treaty of Lausanne ended the Greco-Turkish war in 1923 with the forcible expulsion of a million Greeks from Turkey and 380,000 Turks from Greece. This mandated movement of populations left many individual Greeks and Turks economically bereft and isolated, since they had lived all their lives in the other country. The self-determination celebrated by Woodrow Wilson at the Versailles peace conference forgot to take account of the problem of minorities living within majority areas. In Yugoslavia, the mixture of Muslim, Croat, and Serb populations in Bosnia and the balance of Albanians and Slavs in Macedonia were sustainable because those republics were equilibrated by the larger balance of power within Yugoslavia. But the end of Yugoslavia put these smaller political balances in jeopardy. The collapse of Yugoslavia from 1989 to 1991 must also be viewed through the lens of great powers’ sympathies and interests, Glenny argued. The presence of the United Nations should not distract us from the play of national interest. “The great powers have not gone away,” Glenny said. “It’s just that now they’ve created a very expensive and nice mechanism called the United Nations, and they do everything through there. But who decides UN policy?”

Even if nationalist feelings are accommodated in a postwar constitution, the memory of ethnic violence from the war is unerased. The effective prosecution of war crimes is a key concern in the reconstruction of Bosnia and Herzegovina—what to do about leaders and followers who engaged in notorious crimes of ethnic violence, violating the laws of war and international humanitarian law. The question of war crimes was addressed by another distinguished panel. Can the trial of war crimes be used as a way of stabilizing the peace, rather than provoking antipathy? One cannot assume that invoking a history of atrocities will necessarily strengthen a postwar *modus vivendi*; for example, in the September 1996 elections, Serb television broadcast vivid photographs of the suffering of some Serb civilians as a way of rallying nationalist opinion for the ballot box. In the transition of Eastern Slavonia to Croat control from UN administration, Croat authorities misused the threat of war crimes arrests to cause the flight of most Serb males. In the Rome agreement of the Dayton Implementation Conference, it was agreed that local arrests should not be made for war crimes unless the matter was first approved by the International Criminal Tribunal in the Hague. An international war crimes tribunal has a far greater credibility, able to prevent the misuse of war crimes trials as a political weapon. Even so, the importance of establishing an effective public presence and demonstrating neutrality should not be neglected in an international tribunal.

The International Criminal Tribunal for the former Yugoslavia was created by the Security Council in 1993, long before the Dayton peace negotiations, and has conducted business in the Hague ever since. The tribunal’s legal work and the peace process were importantly linked, argued Antonio Cassese, the tribunal’s first president. The

Hague indictments and arrest warrants issued against Serb nationalist leaders Radovan Karadžić and General Ratko Mladić allowed their exclusion from the Dayton negotiating process. Dayton provided in turn that persons under indictment could not hold public office, thus excluding Karadžić and Mladić from future political leadership in Bosnia. No amnesty was given at Dayton, even though many observers had speculated that a peace agreement could not be reached without it. The Dayton accord “restated and even spelled out” the obligation of the parties to cooperate with the tribunal, and Yugoslavia and Croatia agreed to act as guarantors of their protégés’ compliance. The Muslim-Croat Federation and Republika Srpska are bound directly by the Dayton Accord, something that even Security Council resolutions may not accomplish, argues Cassese.

The Hague is the appropriate place to deal with “system criminalities,” Cassese suggested, when war crimes are committed on the order of leaders or with their acquiescence. Theodor Meron argued that an important purpose of the tribunal is to “decollectivize guilt” and advance reconciliation. The tribunal has developed a code of international criminal procedure and has used it to brand offenders as outlaws. But, Meron noted with a greater skepticism than Cassese, “the tribunal has had no major impact either positive or negative on peace-making” because of the international reluctance to enforce its decisions.

Professor Ruti Teitel argued that because the Hague tribunal has not arrested the most important defendants from the Bosnian war, its major achievement is the impact of the indictments. But the narrow lens of a criminal trial is not necessarily the best way of setting out what happened; truth commissions have their own virtues. Professor Michael Reisman argued that a pragmatic po-

litical model of international law will take account of the limited ability of the great democracies to mobilize their populations for risky enforcement actions, and that unpleasant compromises may be necessary. The Hague tribunal was set up to advance peace on the ground, even though its juridical personnel demand a rule-bound enforcement of its orders.

Another extraordinary quartet of panelists addressed the problems of refugees, peacekeeping, and economic reconstruction. Soren Jessen-Petersen, the first Sarajevo mission head for the UN high commissioner for refugees (UNHCR), noted that very few refugees have been able to resettle in the places from which they were purged; the Inter-Entity Boundary Line “has become a wall that is blocking people.” But a gradual process of confidence-building may help, Jessen-Petersen argued, with inter-entity visits, inter-entity bus service, economic common areas such as the famous crossroads market on Route Arizona near Brčko, and refugee returns in nonstrategic areas and in the zone of separation patrolled by NATO. A regionwide strategy for refugee return will also be necessary, since one group of refugees has often displaced another.

Colonel Alan Stolberg of the U.S. Naval War College, who was stationed in Sarajevo in 1995, noted the dilemma of military force in peacekeeping operations. When the purpose of intervention is humanitarian rather than strategic, participating countries shrink from firepower that might cause “collateral damage” to civilians. In the Bosnian war, Serb artillery bombardments savaged Sarajevo—yet were not suppressed by UN forces for fear of harming Serb civilians. Western forces were even reluctant to use aircraft to respond to tank fire directed at their troops, and Dutch troops in Srebrenica lacked the standard issue 20 mm guns on armored per-

sonnel carriers, leaving them underequipped as well as undermanned in the face of a Serb assault. Refugee return and the arrest of war criminals are missions that can be performed effectively, Colonel Stolberg argued, but one must be willing to accept the chance of civilian and military deaths, as well as a chance of expanding the conflict through retaliatory actions. The delicacy of the use of force was well illustrated in one heated conference exchange. “[A]re we willing,” Stolberg asked, “to accept the possibility that people who are resisting the return of refugees will have to be killed?” Or that “civilians in the area—because these are built-up areas, this is occurring in towns—will have to be killed or their homes destroyed unintentionally?” The chief of mission for the UNHCR immediately replied, “I don’t think any of us would ever ask the military to go in there and kill so that we can move forward, or go in there and kill so that we can return people. We are talking about a flexible, pragmatic use of what is there—an overwhelming presence.” Whether there is a real difference between military bluff and military force, whether deterrence can be used to carry out enforcement without an unacceptable cost to civilian lives, remains a crucial question for Bosnia and similar missions. Since the conference, of course, well-planned raids by allied troops have succeeded in arresting a significant number of fugitive war criminals. Limited violence has resulted; for example, one defendant was killed while violently resisting arrest and another was wounded; one British peacekeeper was slightly wounded; and retaliatory grenades were thrown into Dutch headquarters, wounding two soldiers. But the capture of Karadžić and Mladić on war crimes charges has been deferred for fear that their arrests will be accompanied by costly fire-fights unless the right circumstances are present.

World Bank Bosnia director Christine Wallich looked at the bank’s programs to restore economic growth in Bosnia. Unemployment has been reduced from 90 to 50–60 percent or less. The wartime loss in Bosnia was enormous, with 70 percent of bridges, 60 percent of schools, and 40 percent of the housing stock destroyed. Water, power, and schools have been restored. Five billion dollars was targeted for reconstruction over 3 to 4 years, although that is only a portion of what rebuilding will require. The Marshall Plan kept Europe alive in the immediate aftermath of the Second World War, but the bulk of investment capital that rebuilt Europe was generated from internal sources. In Bosnia, too, domestic sources of capital will be crucial. Privatization and methods of internal cost recovery are key to a sustainable recovery. Wallich also focused on how to combat the problems of corruption in the distribution of aid, providing credit arrangements rather than give-aways, supplying capital goods for reconstruction rather than consumer commodities, and opening up the bidding process to competitors to prevent local bid inflation. On the question of aid to Republika Srpska (RS), Wallich noted that there was an embargo on the RS until March 1996, and the World Bank was not active until after the embargo was lifted. The imbalance “in part” is accounted for by donor preferences—the Japanese, Russians, French, and British have “targeted” their support of RS, and “other donors less so.” The lopsidedness of economic aid has been questioned by some Bosnia veterans, including the former deputy supreme allied commander in Europe, General Charles Boyd, who undertook a research trip to Bosnia in 1997 on behalf of Secretary of Defense William Cohen and the Speaker of the House. The imbalance has also been questioned by a Paris military studies center

headed by a former French commander, General Michel Cot.

James Schear, a former adviser to the UN Special Representative in Bosnia, tackled interim policing—how to provide local security in a postconflict situation. A renewed police force is needed to prevent the reign of hooligans and criminals and to protect returning refugees from retaliatory action. Reforming the police structure in Bosnia is especially difficult, because the police have been the enforcement arm of nationalist political structures and were often the shock troops of ethnic cleansing during the war. In some other postconflict situations, the problem has not been as difficult, Schear noted. In Somalia the police were a revered institution, and in Haiti the police cooperated with UN forces to avoid local retribution. In Bosnia, the local police forces have little incentive for good behavior because the creation of mono-ethnic communities is favored by their political bosses.

The attempt of the international community to monitor Bosnian police operations—through the unarmed multinational personnel of the International Police Task Force—has been earnest but often unavailing. The IPTF can ask questions, report lack of cooperation, and seek backup from NATO forces. The IPTF has secured the agreement of the federation to downsize its police force, has instructed both sides in principles of democratic policing, and is vetting force members for misconduct in the war. The IPTF and NATO have dismantled most of the mobile “checkpoints” that police in Herceg-Bosna and in Republika Srpska used as a method of extortion and deterring free movement. But Republika Srpska has been relatively uncooperative in police reform, and the police forces on both sides are still bankrolled by the local political structures. The parties have been unable to form an inter-entity police that might enjoy the confidence of all communities, except

communities, except for a frustrating attempt by the European Union in the city of Mostar, where Croat-Muslim patrols worked very poorly.

An obvious mid-level security gap has opened between NATO forces and the IPTF. How to fill the gap with a muscular police presence is the question—NATO troops are not trained for police work, and the advisory functions of the IPTF are well intentioned but flaccid. Monitoring the local police also requires a greater intrusiveness than other parts of peacekeeping; an international monitor must ask police chiefs to reveal and alter police rosters, patrol plans, and the progress made on investigations, and must be able to enforce demands. The IPTF does not have the legal authority, language capacity, or force on the ground to take over policing functions and is deployed in vulnerable and isolated offices throughout Bosnia.

Finally, in a diplomatic roundtable, the head of the OSCE mission in Bosnia and the UN ambassadors of Bosnia, Croatia, and Yugoslavia discussed the future of the Balkans. Ambassador Robert Frowick, the first head of the OSCE mission, argued that the Dayton process worked “better than anticipated, although the parties have a long way to go” on freedom of movement, expression, and a politically neutral environment. The first elections suffered “imperfections and stress and strain” that would “unfortunately, but likely be the case in elections . . . held only a matter of months after the formal end of the horrific inter-ethnic warfare.” The design of the balloting allowed refugees to vote where they would like to reside in the future, a type of electoral “freedom of movement,” even though state authorities tried to manipulate the registration. The exclusion of Karadžić from the election was a “boost to the integrity” of the process. Apart from elections, OSCE is tasked to work on democratization, human rights, arms limita-

tion, and confidence-building measures. In future crises in Europe, NATO should meet the military threat, together with Russian and central European troops, while allowing the OSCE to take the lead “in peace-building with respect to the civil sector” under Security Council authorization, engaging the United States, western Europe, central Europe, and Russia. OSCE’s span from west to east makes it an ideal structure, if equipped for this level of responsibility.

Ambassador Muhamed Sacirbey of Bosnia argued that the Dayton Accord was deemed acceptable by the Sarajevo government largely as a way to stop the war and end the tremendous toll on the Bosnian population. Sarajevo assumed that the aims of a multiethnic society would be pursued by the West in a peaceful environment. “While the international community failed to intervene to stop the war, we thought they would at least intervene resolutely in peace to support human rights and pluralism,” Sacirbey observed. But the Inter-Entity Boundary Line “has become sort of a demarcation line.” “NATO has succumbed to the belief that separation prevents explosive mixtures.” The long-term prospects for peace are “mixed at best,” claimed Sacirbey, because the peace agreement as implemented on the ground has “further cemented the status quo, the consequences of ethnic cleansing,” and this situation encourages radicalism. The common institutions of the national government are a “very thin roof” over two separate communities, and “this common roof is being used as a way to avoid any action at the bottom” in the “real reintegration of the country.” In addition, Sacirbey complained, Serb obstruction in the common institutions in Sarajevo is “marginalizing” the ability of Sarajevo to emphasize punishment of war crimes, refugee return, and arms limitation. Bosnia’s future in Europe will depend on adhering to European

standards of pluralism, human rights, and democracy. Questioned on the flight of Serbs from the Sarajevo suburbs after Dayton was signed, Sacirbey argued that the Serb policy of ethnic cleansing to create a mono-ethnic state had to be distinguished from “other acts where minorities may have been harassed or even worse,” for these were not part of Bosniac policy. Sacirbey noted that Muslim refugees from places like Srebrenica “feel no inclination to accord the Serbs any particular rights because they feel like they are so deprived themselves.” The real question is at the local level, and here, Sacirbey seemed to admit, the national Bosniac authorities have no direct control. “What can the government in Sarajevo do? Frankly there is very little they can do beyond what they have done.”

Ambassador Ivan Šimonović of Croatia complained that the label “Balkans” was a misnomer, since Croatia “is a central European and Mediterranean state,” and the word might be used to connote a “belligerent, perhaps barbaric” frame of mind. The Croatian ground offensive led to Dayton by changing the balance of power on the ground. Dayton could be considered “an extremely interesting social, political, and legal experiment” if there was “not so much blood and tears in Bosnia and Croatia.” Šimonović wondered if it is ever “possible . . . as an act of interested parties, to have a resurrection of a collapsed state under some sort of international tutelage.” The interest of Bosniacs in a unified state had to accommodate “the legitimate interest” of Croats and Serbs in “the protection of a national group.” Indeed, even after Dayton, Šimonović argued, the separate structures of Herceg-Bosna are necessary to Bosnian Croats because the Sarajevo government “was almost entirely under the control of Bosniacs.” Implicit in Šimonović’s argument, as in the earlier analysis of eth-

nicity and liberal government, was the claim that “Croat” interests are distinct.

Dayton is not a final outcome, Šimonović argued. “[W]e all knew that the institutions being built in Dayton would not last forever.” There is “a permanent need to exert pressure from outside and to pour in resources, to prevent the federation from falling apart or to prevent the central state falling apart and to enable it to function.” The freedom of movement proclaimed at Dayton is thwarted by a territorial map that forbade ethnically cohesive territory. Still, the institutional growth since Dayton is positive. Šimonović pointed to a problem of “some atrocities” in Operation Storm, the Croat offensive on the Krajina and Western Slavonia in 1995, but argued that 12,000 Serb refugees had returned to the area.

Ambassador Vladislav Jovanović of Yugoslavia noted that the success of Dayton depended on a “balanced” implementation in all its elements, both “unitarist” and “separatist.” Yugoslavia normalized relations with Croatia, Macedonia, and Bosnia and Herzegovina, but normalization also requires “equal treatment of all local players within Bosnia.” The lack of economic aid to Republika Srpska by the international community may “feed the discontentment or reservation among a large portion of the population.” Yugoslavia also wished to be free of the “outer wall of sanctions” that prevents its participation in international financial institutions. The stabilization of Bosnia depends on the outside environment and regional economic cooperation throughout the Balkans, including Bulgaria, Romania, and Albania. In addition, the Balkan countries should be able to link themselves with the Visegrad group in a “wider space of Europe.” When asked about Yugoslav bankrolling of Bosnian Serb military forces, and whether Yugoslavia could have strengthened the attempt of Republika Srpska’s president,

Biljana Plavšić, to maintain civilian control of the army, Jovanović said he didn’t know that RS military officers “were or are paid” by Yugoslavia, but affirmed that “the element of a state which was too much present during the war should be reduced in size and importance.”

Since the Yale convocation, the war in Kosovo has reminded us that the destructive genie of ethnic nationalism is still afoot, and that the Belgrade regime has been undeterred by the defeat of Serb forces in three previous wars. In Bosnia itself, the extension of the NATO commitment, trading “end dates” for “end states,” has been an important development—apprising the parties they cannot easily outwait the demands of Dayton. Bosnia is still assessed by most observers on the ground to be in a fragile state. If only to prevent the war from flaring up again, NATO troops need to remain on the Inter-Entity Boundary Line. Neither side in the war was pleased by the territorial map drawn at Dayton: the boundary line comes too close to Sarajevo for Bosniac tastes, the Sava River corridor between the two halves of Republika Srpska is too narrow for Serb tastes, and the consignment of the choke-point town of Brčko to international administration has left both sides unhappy. No one is confident in the present atmosphere that the situation will remain peaceful without the mindful presence of a NATO force. The war in Kosovo only drives the point home, since the ambitions of Belgrade remain unsatisfied.

By anyone’s measure, Bosnia is much better off now than it was in 1995. Preventing the war from restarting is a simpler military mission than trying to end a second round of fighting. And having chosen Bosnia as a venture worth its honor, NATO and the West would look fickle and foolish in abandoning a continuing deployment of marginal size. No war or political event ever

goes quite as planned. The U.S. military needs to retain the flexibility and strength to triage its efforts appropriately. But that only argues for evaluating a peacekeeping mission on a step-by-step basis, without announcing one's strategy to adversaries.

An inevitable tension arises between the intensity and the duration of a mission. If NATO has avoided the countryside missions of patrol and reconnaissance that might be necessary to protect returning refugees in a hostile environment, it also has avoided allied casualties and made it easier to sustain political support for a longer-term deployment. That may be a wise judgment. The hope is that a growing economy and the passage of time will begin to take Bosnians' minds off the war. Just as street criminals begin to let go at a certain age, realizing that they have only so much time in their lives, in some civil conflicts weariness may set in, leaving the parties willing to work things out. This happened in Mozambique, in Central America, and even in Somalia. Perdurance on the part of NATO may allow the parties to get on with things. At the same time, with its mission of separating the wartime combatants well in hand, NATO should be able to remix its force structure for more active support of the civilian missions of refugee return, police reform, and the arrest of war criminals.

In addition, lately a more active posture has been demonstrated by the civilian representatives of the international community. UN High Representative Carlos Westendorp imposed solutions when the political parties would not agree. This is closer to the "gauleiter" model used with success in the UN transitional administration in Eastern Slavonia by Jacques-Paul Klein, and in the administration of the town of Brčko by Robert Farrand. The shift from an advisory model to a more imperative authority is overdue and prevents the parties from stall-

ing for advantage. The model for civilian administration in Kosovo and other conflict transitions must take a lesson from this. An excessive deference to the quarreling factions does not build real democracy and fails to provide enough sinew to knit the body politic back together.

For critics of the Dayton Accord who argue that partition is inevitable and that partition should be undertaken sooner rather than later, the simple answer is that this solution prejudices the conclusion in a most unnecessary way. As Cerović observed, a common Bosnian identity was shared before the war. Though the Balkans are not inhabited by classical liberals, we don't know to what extent tempers in the opposing communities may moderate in the interest of economic revival. Partition is not acceptable to the Muslim and Bosniac community, which would sooner reopen the war. Even if new boundaries could be negotiated for an ill-advised partition, NATO peacekeepers would still be required to separate the factions.

Dayton allows the evolution of a structure that is more separate or less, depending on what the traffic will bear. The Bosnian national government may be made to work; or the "special parallel relationships" permitted under Dayton with Zagreb and Belgrade may remain the stronger force. Both could evolve at the same time—a reformed Zagreb and Belgrade might see an advantage in cajoling their Bosnian protégés into acting responsibly within a Bosnian national government. In an economically shattered, landlocked country, it makes sense to display the chance of restoration and joining Europe economically as the powerful elixir it can be. In Greece, the leadership of Prime Minister Costas Simitis dampened Greek nationalist sentiments toward Macedonia, ending the disastrous embargo that was hurting northern Greece as much as Mace-

donia; Greece came to prefer economic growth and closer integration into Europe over the atavistic pleasures of an imagined territorial dispute. It would be mistaken to prejudge Bosnia as well. Nationalism and separatism is only one of the elements at play in the Balkans. Memory also recalls the long history of balance, and the pleasures of a prosperous economy.

Has Dayton Worked?

Kofi A. Annan

Two decades ago, near the end of his long life, Chairman Mao granted an interview to an eager young journalist who asked him a number of questions. The last of these was “What, in your view, was the result of the French Revolution?” The chairman leaned back for a moment, reflected, gazed intently at the young man, and said, “It is too early to tell.”

Now, after Dayton, we ask ourselves, has the peace process worked? I think that it has been working, but whether it has actually worked is too early to tell. While much, perhaps more than we could have expected, has been achieved, the most crucial phase of implementation of the Dayton provisions has only just begun. However, the population, terrorized by four years of fighting, has slowly begun to pick up the pieces of its shattered life, to gradually cover the scars of war, and, with increasing pace, fill the craters in the roads.

Dayton has succeeded in stopping the war in Bosnia and Herzegovina. By and large, the cease-fire has held. The overwhelming military presence and power of IFOR [Dayton’s multinational military Implementation Force] has, so far, prevented a large-scale resumption of hostilities.

But has the threat of war disappeared? I believe not.

The deliberate and organized destruction of houses, the continued though reduced ethnic cleansing, and the persistent obstructions to freedom of movement all provide a potential trigger for renewed violence. If these and other political problems are still festering when NATO forces withdraw, they would almost certainly become military flashpoints in a short time. And even IFOR may prove insufficient to prevent a return to the battlefield over the emotionally charged

arbitration of Brčko. The absence, in the Dayton Agreement, of a solution to this problem has not made matters easier. Already, both the Bosniacs and the Bosnian Serbs have reiterated their willingness to wage war to retain control of this critical area. For the Bosnian Serbs, the Posavina corridor in Brčko provides for the contiguity of the territory of the Republika Srpska. For the Bosniacs, Brčko represents a strategic imperative of the [Muslim-Croat] Federation to have access to the Sava River, and Europe beyond. Both sides have attempted to alter the region’s ethnic composition prior to arbitration: the Bosnian Serbs have settled a large number of their displaced persons in the area, and the Bosniacs have actively encouraged the return of refugees to strategic places, although adequate conditions of security and safety remain outstanding. Finally, it cannot be ruled out that the continued flow of weapons into the area will prompt one or another of the parties to seek to recover lost territory or to exact, once and for all, a resounding defeat on the other side.

Despite these threats, there is, with isolated exceptions, no fighting today. Yet, the purpose of Dayton was not merely to stop the war. The purpose was, and remains, to assist the parties in restoring a stable, democratic, and unified state in Bosnia and Herzegovina.

Reconciliation and restoration will require that leaders at the national and at the entity-levels devote themselves to a process of healing the divisions that led to so much suffering in the war. Unfortunately, despite the three parties’ numerous declarations reiterating their commitment to the concept of the unified country envisaged by Dayton, compliance by the parties is often only achieved through international appeals and

concerted pressure. At least two of the parties, either openly or by their actions, demonstrate an intention to govern themselves independently. In addition, the intolerance shown and the intimidation tactics used by the nationalist political parties of all sides have reinforced the impression that they have not yet achieved a common vision of what Dayton represents and have not yet developed the common will to see joint institutions develop.

Human Rights: The Stumbling Block

Part of the elections envisaged in the Dayton Agreement were held in September 1996. The atmosphere in which the election process occurred was not ideal. But the elections were, in the words of Ambassador [Robert] Frowick [the OSCE head of mission in Bosnia], “what our historical and political context has allowed us.”

The federal elections represented a significant milestone in the world’s efforts to restore stability to Bosnia and Herzegovina. They provided the parties with an opportunity to establish democratic institutions that will be responsive to the needs of the population. Municipal elections will be one indication of whether this democratic process can take hold. These elections will pose a great challenge, since the issues of freedom of movement and the right of return of refugees will once again have to be confronted. Currently, only some 250,000 out of approximately 1.5 million displaced persons and refugees have returned to Bosnia spontaneously. Most of these have returned not to their former homes, but rather to areas of their ethnic majority in which they feel safe. Displaced persons and refugees have on the whole been unable, or unwilling, to cross the Inter-Entity Boundary Line [IEBL]. This has cemented ethnic and political separation along the IEBL and also within the federation. If, under these conditions, European

countries start the forcible return of refugees, the situation can only worsen.

Given these circumstances, the Bosnian government will be hard pressed to accomplish the overwhelming tasks of reviving the economy, repairing destroyed infrastructure, resuming economic production, and providing jobs for a largely unemployed population. Donors will remain reluctant to commit funds for reconstruction until they are assured that stability has truly returned to Bosnia and Herzegovina. Private investment will not be forthcoming. At the same time, unless the international community provides resources to rebuild community projects and infrastructure that cut across ethnic lines, the trend toward separation will accelerate.

The United Nations International Police Task Force [UNIPTF], in cooperation with IFOR, has been helpful in stabilizing the situation in Bosnia and Herzegovina. UNIPTF has been working with both entities to persuade them of the necessity for the police to accept principles of democratic policing and respect for the human rights of citizens, regardless of their ethnicity. This has not been an easy task, as police in many parts of the country have been directly involved in abuses of power and human rights. Under present arrangements, UNIPTF is obliged to bring such abuses to the attention of those who, in many cases, are the perpetrators or instigators of the actions, and ask them to investigate themselves. Obviously, many such investigations do not go very far. We are currently examining ways to address this situation.

To achieve fully the goals of the Dayton Agreement, a major objective of the international community must be to promote, under strong international supervision, respect for human rights among the various authorities in Bosnia and Herzegovina. Concurrently, every effort should be made to consolidate and strengthen national institutions to up-

hold human rights, particularly minority rights, when the international supervision terminates. Unless this central problem is addressed, there will not be a firm foundation on which to build a sustainable peace in Bosnia. While Dayton has dealt extensively with the issue of human rights, it did not assign a lead agency or organization this responsibility. Thus, there has not been a unified and coherent approach in dealing with the complex human rights questions in the country. This must become a priority.

Toward a Durable Peace

Despite these challenges, I remain hopeful that, given time, a sustainable momentum toward reconciliation and peace can be achieved in Bosnia and Herzegovina. A sign of progress has been that, despite the success of the nationalist parties in the federal and cantonal elections, a significant minority of the population of both entities voted for opposition parties. We cannot and should not become impatient that only patchy progress has been achieved. We must remain constantly involved and encourage the parties, by incentives and disincentives, to work toward creating democratic and unified institutions in Bosnia and Herzegovina. Peace will not be durable unless it is accompanied by justice. Those individuals who have been indicted by the International Criminal Tribunal must be brought to trial. Significantly, the Paris Conference has established a link between the availability of international financial assistance and the degree to which all the authorities of Bosnia and Herzegovina fully implement the peace agreement, including cooperation with the International Criminal Tribunal.

The stabilization period agreed upon in Paris in November 1996 offers an opportunity to redouble efforts to ensure the full implementation of the Dayton agreement. It has underlined to the authorities of Bosnia and Herzegovina that the extent of international

support for the peace process (including financial assistance) depends upon the strength of their own efforts.

The Paris Conference provides us with the chance to show the Bosnian people by our continued presence that the world has not forgotten them. It will help enable us to instill confidence in the population that, if they wish to return to their original homes, their leaders will be held accountable for their safety and security. It should allow the opposition parties the necessary space to broaden their political base and become credible voices in determining the future of their country.

Progress in these areas, along with enhanced activity in the area of human rights and security that only a continued military presence can provide, may create a climate more conducive to reconciliation than anything that we have been able to achieve so far. But it will be able to do so only if a responsive and representative political structure comes into place and if the international community, the Bosnian people, and their government work to bring about that reconciliation.

There are some people who will wonder if the effort required to bring Bosnia back to life is worth it. The only answer I can offer is, what are our options? If we allow partition to become inevitable, would we be willing to face the consequences? Would we be willing to see Bosnia become another Gaza? Would we really prefer to bear the costs—political, financial, and moral—of our own inaction?

Our Imperatives

We must move forward to establish the municipal governments on which so much depends. We must ensure that all levels of government are elected and activated, that the Council of Ministers and the ministries they will run are mounted and prepared to face the huge challenges before them. That

the Constitutional Court, once fully constituted, will develop its own rules and procedures and have the capacity to deal with the caseload confronting it. That the International Criminal Tribunal, so spurned by the parties, is accorded the measure of respect, support, and cooperation it merits. That the federation's future, the cornerstone to Dayton, is not allowed to disintegrate.

But what is first needed is that we put a halt to the house-burnings that have scarred Prijedor and other areas. Secondly, we must ensure far greater freedom of movement than has been granted thus far. Thirdly, we must create the more conducive climate which I have described. The first two of these, clearly, depend on the strength, size, and the mandate that is given to the IFOR follow-on force. The third will take, among other things, time. We must hope that the climate will offer a hospitable environment for free and fair municipal elections. But we must also realize, once and for all, that rushing this vital process will only push people into majority areas, solidify separation, ratify ethnic cleansing, and reinforce the IEBL as a de facto border.

It is important that we realize that we are not in the midst of a hostile takeover. We cannot just walk in and cut a quick profit. And we cannot just walk out after a bad quarter, cut our losses, and throw all to the wind. We cannot downsize this problem out of existence. It must be solved, and only we can solve it. And that will take time.

We might not need a Marshall Plan for the Balkans, and it seems unlikely that one would be forthcoming if we did. But a micro-Marshall Plan—comprehensive and flexible, if far smaller—is what we should be moving toward. It is, in my view, what is needed. *The Economist* carried an interesting comparison to the question at hand: a survey of Germany eight years after the fall of the Berlin Wall. It spoke of the euphoria of 1989

and the rougher reality of 1996. It said that, despite optimism, energy, effort, and the best will, "Germany may be unified, but it is not yet one. To make it truly so will take a lot more time and money." We can only imagine what will be needed for Bosnia.

I do not believe that what we are aiming to do is beyond our resources, our reach, or even our grasp. I believe that we should not lose faith, or hope. We will need both patience and realism as we persevere—though not, I hope, as much of either as Chairman Mao might have implied.

The Path to Dayton

Panelists:

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David Harland, Senior Political Officer,
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Herzegovina

Laura Silber, Former correspondent, *Fi-
nancial Times*

Susan Woodward, *Moderator*, Senior
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of London, and author of *Balkan
Tragedy*

James Gow:

I will try to give a sense of the back-
ground to the Yugoslav war of dissolution.
There is a lot of doubt in people's minds
about what Dayton was, and whether or not
it can be judged a success. One shouldn't
think of Dayton as being a 15-minute solu-
tion. Dayton is a long-term process.

I will look at what Yugoslavia was, the
process of dissolution, the onslaught of war,
and the reasons for the engagement of the
international community. Experts on Yugo-
slavia will be offended because there is
never an audience that can agree on the de-
tails of what went on.

Yugoslavia was an amalgam of two
ideas created at the end of the First World
War. One idea, arising from the independ-
ence of Serbia from the Ottoman Empire in
the nineteenth century, was a state in which
all Serbs would live together. The second
idea, emerging primarily among Croatian
intellectuals and other south Slav intellectu-
als in the Habsburg Empire, was a state in
which all south Slavs, sharing largely com-
mon features and often speaking the same
language, would be able to live together.
Yugoslavia would be a framework for their

mutual self-determination. When Yugosla-
via was formed it was of course not impos-
sible that it could fully meet both of these
requirements.

The initial Yugoslav kingdom—the
Kingdom of Serbs, Croats, and Slovenes—
was formed in 1918 largely as an extension
of the existing Serbian monarchy. It made
others, particularly Croats inside that
country, unhappy.

The rest of the history is one of tension
between centralism and decentralization—
trying to strike a balance which would
achieve what both communities wanted—
i.e., a state in which all the Serbs would live
together, but one in which the others would
feel comfortable.

When Yugoslavia came to a point of dis-
solution in 1991, for the Serbs it was the
ending of a state in which they all lived to-
gether. For the others it was a continued
movement of self-determination. Tito's
Yugoslavia, communist Yugoslavia, was a
compound of peoples and of territories. The
territories derived from historic territories
incorporated in the Ottoman and Austro-
Hungarian empires. The communists, as a
way of putting Yugoslavia back together af-
ter the Second World War, sold the mean-
ingless idea of nation-state formations.
These were intended as a marketing device
and never intended to have any real content.

In Tito's Yugoslavia, by a process of
economic and political exchange, power was
devolved from the center to communist par-
ties in the six nation-states—the republics of
Serbia, Croatia, Slovenia, Montenegro, Ma-
cedonia, and Bosnia-Herzegovina. Eventu-
ally, ten years after Tito's death, there was
no possibility of achieving the necessary
consensus between the leaderships of those
parties and states on the way ahead for the

Yugoslav federation. Through the 1980s there were tensions, led primarily by Slovenia and Serbia, about the future. Various other states lined up on one side or the other of the argument, or fell in between. The economic, social, and political crisis began to generate or resurrect localized tensions in some ethnic communities, particularly at the point of elections in 1990, where the results largely went in favor of nationalist parties. Lots of people became afraid.

That is the essential background for what Yugoslavia was and how it came into a process of dissolution. There is, however, a difference between dissolution and war. We have to understand certain key features about the conflict as a war of dissolution. It has been a clash of state projects. On the one side, there have been embryonic states from the Yugoslav federation seeking to achieve their independence: Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia. Against that is a project initiated by the Serbian government in Belgrade with assistance from elements of the Yugoslav People's Army to achieve a new set of borders which would incorporate territories from Croatia and from Bosnia-Herzegovina in which Serb populations resided. There is an essential clash of state projects—between a state in which all the Serbs will live together with or without others (I think essentially *without* others), and the other states arising from territories which composed Tito's Socialist Federal Republic of Yugoslavia [SFRY].

Long before the actual starting date of June 25, 1991, preparations for war were already underway. In January 1991 Serbian President Slobodan Milošević warned European Community ambassadors what would happen if Yugoslavia went into the phase of dissolution. Serbia's intentions were well understood from the very beginning, although the extent and scope of the likely conflict were misjudged.

The war in Bosnia has been the focal point of the war of dissolution. It has been a war between the government of Bosnia-Herzegovina on the one hand, to preserve the whole territory which was their state within the Socialist Federal Republic of Yugoslavia—and Serb forces working in association with and under the aegis of Belgrade to create the new borders of the new Serb entity. An essential part of this strategy has been ethnic cleansing—the idea that, if you are to create a new set of territories which have a core loyal population, you need to remove those who would be disloyal either through guerrilla or terrorist activity or even simple political opposition. The war was in essence a project to create a new set of borders in which there would only be those who would be described as loyal. The essence of ethnic cleansing is not to kill everybody but to kill and mutilate enough to make others realize that they should go away.

There is a subtext to the war in Bosnia and this is the ambition of Croatia. Croatia has always had an ambiguous role—trying to establish its own state borders and its own sovereignty within the situation and keep on the right side of the international community, while seeking to carry out the same kind of project as the Serbs within Bosnia-Herzegovina, particularly in the area known as Herceg-Bosna in western Herzegovina.

The position of the Bosnian government was ostensibly to protect the multicultural traditions of the whole state of Bosnia-Herzegovina. Whatever it was to begin with, it clearly evolved into a mission to preserve and protect the Muslim community within Bosnia-Herzegovina. There are many indications that the trend was even to support the creation of a Muslim entity rather than the genuine preservation of Bosnia-Herzegovina as a whole.

Into this context, I'd like to insert the international community, to correct some misunderstandings. The international community's presence in the Yugoslav territories has been almost entirely for security policy. We look at the question of humanitarian intervention, the essence of the UN engagement with UNPROFOR, the United Nations Protection Force, without realizing that a lot of the time the humanitarian label was a marketing device. As a marketing device, humanitarian aid went down very well. You could explain to families why soldiers were being sent off. You could explain to the general public why a certain activity was taking place. In fact there was a series of important security policy questions facing the member states of the European Community, the United Nations, and NATO, all of which exercise elements of their own security policy through those multilateral organizations. It is important that these should be understood.

First, having taken an initial step it was important not to fail. States value credibility for their own well-being.

Second, there was an immediate outflow of refugees from the former Yugoslavia to countries of the European Community. There was a need to take the sting out of the war, to stanch the flow of refugees out of the region.

Third was the question of containment. The conflict in Bosnia-Herzegovina countered the state border-changing projects of Serbia and then Croatia without necessarily involving others in the war. This was an extremely difficult and complicated situation where the resources were not going to be available to achieve a clear outcome. It was also important to contain the conflict to the region of Bosnia and Herzegovina, rather than allowing the conflict to move into the southern tier of the Yugoslav territories at the end of 1992.

Finally—and I think this is the crucial question for anybody trying to grapple with issues of Dayton—the international community had an interest in preserving the borders of a state once it had been accepted into the family of nations. It is a cardinal principle of international society that borders will not be changed as a result of the use of force. The international community spent a lot of time in 1992 and 1993 trying to think of a way around this problem. If they could have recognized the dissolution of Bosnia-Herzegovina at that stage, I think they would have done so, but every time they came up against the same stumbling block.

To understand the framework for Dayton is to understand that the security policy interests that initiated involvement have only intensified. This remains the framework for looking at the legacy of the war, the continuing problems associated with the peace implementation process, and any idea of Dayton, Dayton II, or consolidation.

The war ended because there was a stalemate. There was a balance of interests both within the international community and on the ground in Bosnia. There is little that has changed since Dayton. There is no prospect of immediate return to armed hostilities on a widespread scale, but there is every prospect of a series of localized incidents. The real question is not what is going to happen tomorrow but for five years ahead.

Laura Silber:

In 1995 we were all sitting in Dayton, Ohio, and wondering whether the parties would get a peace agreement. We sat in a room at Wright-Patterson Air Force Base, full of junk food, and thinking, “what’s going to come of it?” We thought it would fail—the parties were threatening it would fail. Then, finally, as you know, it didn’t fail.

Dayton was an argument behind the scenes between a European and an American

concept. Dayton tries to be everything to all three parties. That is the essential problem of Dayton. On one hand, you have the Croats and Muslims, who are together in a formal federation but have different goals. On the other hand, the Serbs in Republika Srpska have other aims. In long-term visions there is very little overlap, little to allow one united goal.

When you go to Bosnia, clearly it's very different than it was in the war. When we look at what Dayton has achieved, it's obvious that there is very little fighting. We have had some bad incidents, but the war is over. People can move relatively freely. I was talking about this with a member of the IPTF, the International Police Task Force. He said that freedom of movement is much better. "Now we can go anywhere." What we're talking about actually is that the *internationals* can move much more freely. But travel of local citizens from entity to entity is still very difficult. This is going to be one of the major issues in the so-called consolidation period.

What else has Dayton achieved? You have the presidency, the three co-presidents, with Alija Izetbegović at the head of it. But each time the presidency even meets, it's a political tug-of-war. You only get a result if the international community is there in the person of either the high representative [formerly Carl Bildt and Carlos Westendorp, now Wolfgang Petritsch] or people from the Office of the High Representative or the Americans who will knock a few heads together. This is how every single thing is achieved.

Dayton did not represent a change of political will amongst the parties. It was an acceptance of what was, that there was a stalemate. It's a calculated statement that "This is what we want for now." There's no sense that the leaders are actually ready to say, "We will abide by Dayton," and if they

say it, they all disagree on what Dayton is. When there's less fighting, we'll see this clash of political wills. We see it in the form of impasse in the presidency, which for now is the only institution which has even met, and it's not even functioning.

On November 14, 1996, I was in Paris at the meeting of the Peace Implementation Council. We were no longer wondering whether Dayton would fail, but we were wondering what we were doing there; even the participants were wondering. In a sense this was a restatement of what hadn't been done in Dayton. The only thing that was new was perhaps a greater stress on economic conditionality for aid. There was no sense of a new vision because everyone is waiting to learn what the extent of military engagement will be.

The September 1996 elections were supposed to give legitimacy to the parties. In fact they didn't do anything but confirm in power the very same leaders who had waged the war, with the exception of Radovan Karadžić, who under Dayton couldn't stand in the elections. But Radovan Karadžić still wields power behind the scenes. You have indicted war criminals behind the scenes not only amongst the Bosnian Serbs, but also amongst the Bosnian Croats. That is something else that hasn't been achieved with Dayton.

We will see a greater attempt to call attention to what hasn't been achieved in Dayton particularly on the part of the Muslims. There's very little sign that there will be any compliance from either the Serbs or the Croats on arresting war criminals. You have some symbolic gestures but certainly no real indication that they intend to comply.

More significantly there has been almost no progress on the right of return for refugees. This is going to be the single most important issue. There will be clashes—I don't mean a return to war—on the borders be-

tween the entities. We've seen this since the first attempts by the refugees to return. It's in the interest of the Bosnian Muslim leadership to call attention to these clashes, while the Serbs will say these are provocations. For the international community it's obviously in their political interest to say, "We're having these refugees go back," and then see what happens. The Serbs will always respond. So we'll see more and more conflicts with the attempts by the refugees to return across the Inter-Entity Boundary Line to Republika Srpska, the Bosnian Serb republic.

This will be a real flashpoint. We'll see it grow and then wane, as a result of political pressure. We saw in the Paris Implementation Conference an attempt by the European and American representatives to say, "Oh, it's more and more the parties' responsibility." In fact, it's not nearly at a point where the parties are going to say, "OK. We agree. Let's just abide by Dayton." So as the military phases out—obviously, we will have a smaller force—there will be a greater need for political and economic engagement.

As the interest of Western governments decreases, in fact the need for their involvement will remain as great, because there is no political resolution in sight yet. This represents a grave danger.

There has been little progress in economic reconstruction. Aid has been effectively stopped because the West does not want to give it to the Bosnian government, which is now the caretaker government until a central government is formed. Also, only one percent of the total aid pledged has been given to Republika Srpska. In the eyes of the West, that's the stick for the Bosnian Muslims and for the Serbs. But as we look at Republika Srpska, it's not a very effective stick. They say, "Well we've only got one percent of the aid. So cut it off. If we don't get a million dollars, it doesn't make much of a difference to us." It's a difficult card to play. The Bosnian government, or the Mus-

lims, whatever that political entity, can say with some real justice, "Well, if you stop the aid, then there will be no progress. The whole political momentum which you were hoping to gain will be stalled."

Those are some of the dilemmas that are going to be posed to the international community in the post-Dayton period. It's very unrealistic to expect anything from the municipal elections. There is a very big problem. The Organization for Security and Cooperation in Europe still has not straightened out what the rules are. The P2 election form in controversy allowed refugees to go back and vote anywhere they wanted to live in the future. It also gave the Serb authorities the license to manipulate within the letter of the agreement, trying to tip the scales in disputed towns such as Brčko and Srebrenica, which were predominantly Muslim before the war, so that with the election they would become predominantly Serb. If the OSCE mandate is extended, which it is likely to be, the OSCE obviously will abolish the P2 form.

But there's still the question of freedom of movement. How will the Muslims travel to Srebrenica to vote? How will they go and cast their ballots? And even if the election is violence-free in the way that the elections of September 1996 were, how will successful minority candidates take office? We'll be faced with a series of local governments in exile. That's going to be another big issue.

Until there is some sort of vision, we can expect a muddle-through. There is a real need for effort and sustained attention by the international community. One of my fears is that, as there are other crises throughout the world, particularly now in Africa, there will be less and less of an appetite to give the required attention to Bosnia. This will play to the hands of the various leaders on the ground who see that they can wait out a year, and then wait out another year and then say, "OK. Now we can finish up what we

started.” If not by war, then by political means. Until there is some reconciliation of the various visions of Bosnia and of former Yugoslavia, there is no reason to expect any sort of lasting peace in the region.

Susan Woodward:

One of the elements of the story that Laura Silber has been telling is how the international community is trying to enforce an agreement that is only partially of interest to those who actually signed it, namely the three parties of Bosnia. How do you get a presidency of three persons to work together when they don't have the same interests? The initial problem was how to get three persons to sit around a round table. Think about the difficulty of that. It took a very long time—eight hours of simply moving around.

David Harland is an extraordinary resource. What has been reported publicly is often very different from what's happening on-the-ground. This is particularly true in North America and the United States, even more so than in Europe. There are often very, very different stories.

David Harland has worked under three entirely different United Nations regimes as political adviser in Sarajevo. He has a long experience of what it means to be living in that situation. First he was political adviser to Victor Andreas, the head of United Nations Civil Affairs in the Sarajevo office, then political adviser to Assistant Secretary-General Hedi Annabi and General Rupert Smith, in the follow-on period, a different period in 1995 than it was in 1993 and 1994, and now he serves as political adviser to the Secretary-General's special representative in Bosnia-Herzegovina, Iqbal Riza, under UNMIBH [UN Mission in Bosnia-Herzegovina], the UN operation that accompanies the IFOR deployment.

David Harland:

While I do work for the UN, what I will present is a personal view. The UN's perspective is that Dayton is a fine thing and that “We are actively seized of the matter.”

My view is that Dayton has failed to achieve its full potential—for reasons which have partly to do with the non-actions of the international community.

When I was a student 15 years ago in New Zealand, advertisers were trying to promote a nonalcoholic whiskey called Clayton's. The advertisement for Clayton's featured a man at a bar saying, “I'll have a Clayton's. It's the drink I have when I'm not having a drink.” In my view, Dayton is the peace agreement you have when you're not having a peace agreement.

I will speak a little bit about the chronology of the events that led to the Dayton Agreement and how that shaped expectations. The final process to end the war and to get to Dayton began on August 28, 1995, when a shell landed in a Sarajevo marketplace, killing many dozens of people. The famous “keys” were turned that initiated air strikes. That contributed to a loss of territory by the Serbs, taking them to Dayton when they were at a military disadvantage for the first time. The last battle of the war was fought on October 11, 1995.

During the weeks that followed the bombing campaign at the end of August and through early September 1995, the Serbs lost a lot of ground. Instead of controlling three-quarters of the country, by October 11, 1995, they controlled only 49 percent of the country. That was convenient because the international community had said that in any peace agreement the Serbs would get 49 percent of the country. That was not a coincidence.

The day the war ended on the battlefield, the Croats had 21 percent of the territory, somewhat more than the 17.5 percent envis-

aged under an earlier peace proposal. The Bosniacs had 31 percent, not far from the 33 percent earlier envisaged.

When hostilities closed, none of the sides had achieved their basic war aims. The basic war aim of the Bosnian Serbs, as stated by Radovan Karadžić when the war began, was to create a single territory of Serbs, contiguous with the mother state, Serbia, and recognized as the Republika Srpska with its own army. When the war ended the Serbs had accomplished part of that. What they were offered at Dayton was almost a freezing of the status quo. The Bosnian Serbs had extraordinary autonomy and were de facto independent, but their independence was not to be recognized as such. The Dayton Agreement did not let Republika Srpska be officially recognized as an independent state but gave it almost everything else, including the right to raise its own army. *Mutatis mutandis*, the Bosnian Croats also wished a single territory contiguous with Croatia. The Serbs and Croats each had as minimum war aims the establishment of living areas for their people, detached from Bosnia-Herzegovina, to be attached to their mother states in some form of association.

The Bosniac war aim, of course, was to keep a united Bosnia-Herzegovina, which, of course, the Bosniacs would dominate as the most numerous community. The more unitary and centralized the political system, the greater the extent to which the Bosniacs would dominate it. The Bosniacs were frustrated as they went into Dayton, being far from meeting those basic goals.

Thus, in a way, Dayton ratified the situation on the ground. Everybody got, more or less, the territory they held on the ground. Everybody got, more or less, the degree of autonomy they already enjoyed. The arrangements were just formalized. But this is not a solution.

The international community decided fairly early on that it was not going to push

for any forced implementation of the more hortatory aspects of Dayton. Dayton speaks of laudable things, like refugees returning to their homes and freedom of movement across the Inter-Entity Boundary Line between Republika Srpska and the Bosniac-Croat Federation. But I am concerned that there never really was an intention to enforce and uphold these things. The international community in effect blessed the partition of the country without sprinkling the holy water of international recognition on it, perhaps because that would have been perceived as a recognition of ethnic cleansing. The compromise was to have high-sounding language in the constitution—which language might not be implemented.

There was no good faith at all among the parties. They never intended to implement anything and even now, much of our work focuses around what are the three sides doing to prepare for the next round of conflict, including the next round of armed conflict.

The international community has been faced with five specific areas in which Dayton has not been implemented. Implementation of these five parts of Dayton could have brought about a somewhat changed environment.

First was the transfer of Serb Sarajevo, the one-third of Sarajevo that was controlled by the Serbs throughout the war. When these territories were transferred at Dayton to Bosniac control, the Serb population left—it became almost 100 percent non-Serb at that stage, thanks to ethnic cleansing. Before the conflict these Sarajevo suburbs always had a slight Serb majority or at least a Serb plurality. When the actual day of transfer came, the Bosnian Serbs left.

My impression is that most people did not leave for the reasons that the nationalist politicians on both sides want to say. They did not leave because they didn't want to live with "dirty, stinking Bosniacs." They left because of fear. They left because they

were afraid of the Pale authorities who were burning the houses of people who refused to leave. Pale was terrorizing them, closing all the schools and all of the hospitals, and taking away all of the factory equipment. They were also afraid of what the Bosniacs were going to do when they arrived.

The international community did little to support the Serb population. The land forces of IFOR's headquarters are in Ilidža, which is one of the Serb suburbs. An extraordinary concentration of firepower was available close at hand, which the international community chose not to deploy.

It was the policy, not simply the lack of resources, but the policy of the international community, not to stop this exodus created by the terror of Serb extremists. The corollary, of course, is that Bosniac nationalists also wanted these people to leave. The international community was not putting sufficient pressure on the Bosniacs to issue an amnesty for men of military age, and so on. That was February 1996.

A second area of inaction was the proposal to establish independent television. The principal fuel to the fire of the wars of nationalist succession in Yugoslavia was the mass media. The high representative, Carl Bildt, had a mandate to establish an independent, open broadcast network, including setting up his own transmitters and allocating frequencies to them. Due to the objections of the three incumbent national sides, in February 1996, this project was diluted and postponed.

The third area of inaction is freedom of movement and return of refugees. This is a problem of resources. I agree that you can't have, and you could never have had, a situation in which IFOR would have protected the full return of refugees or everybody moving across the Inter-Entity Boundary Line. But there are, in fact, areas close to the IEBL which are very suitable for return.

For instance, the town of Trnovo, 20 kilometers south of Sarajevo, is in the zone of separation, a zone 2 kilometers on either side of the IEBL, patrolled by the NATO-led forces. Trnovo is surrounded on three sides by the Bosniac-Croat Federation. The only main road from it leads into the federation, and yet Trnovo was allocated to the Republika Srpska. The town had been largely destroyed, so few Serbs had moved into it. The original Bosniac inhabitants wanted to move back, but this was not aggressively supported by the international community. Similarly, a number of Serbs decided that they wanted to return to the town of Drvar, which had been 98 percent Serb before the war. Drvar was entirely uninhabited when the war ended, as the Croats who captured it did not immediately resettle the town, and it was eminently suitable for reoccupation by its original inhabitants. Even these pilot projects were stalled.

A fourth problem is the election rules. On April 22, 1996, the Provisional Election Commission read the line in Annex 3 of the Dayton Agreement which says that "A citizen who no longer lives in the municipality in which he or she resided in 1991 shall, as a general rule, be expected to vote in person or by absentee ballot, in that municipality . . .," and then created an election rule which says you can vote more or less *anywhere you want to* irrespective of where you used to live.

This election rule meant that the Serbs were able to create a Serb electoral majority in the twelve municipalities in the Republika Srpska that had Bosniac majorities before the war, by assigning Serbs from the Bosniac-Croat Federation to vote in those places.

One of the principles implicit in Annex 3 was that one should start to unravel ethnic cleansing by recreating in the legislative structures the demographic makeup of Bos-

nia prior to ethnic cleansing. The unfortunate effect of this rule was that exactly the opposite happened. As a result, 500,000 Serbs from the federation, instead of having to vote for the non-nationalist parties in the federation, were able to vote for Krajišnik in Srebrenica.

A fifth area of concern has been the conduct of the elections. The Provisional Election Commission [PEC] established an appeals subcommission to hear any complaints. An independent organization, the International Crisis Group (ICG), a nongovernmental organization, filed an official legal complaint saying that the number of votes cast on election day was suspiciously high. The complaint was found to be valid, but the OSCE and the PEC rejected the ruling nevertheless and destroyed the evidence by burning the ballots.

Given that the Provisional Election Commission was meant to produce an election list, it is hard to credit the claim that they didn't know within 300,000 people, which is 10 to 15 percent of the electorate, how many people were eligible to vote.

This raises the possibility of fraud. The ICG noted that there were several *opstinas* in which more than 100 percent of the population voted. When we went to a senior official of the Bosniacs' Party of Democratic Action (SDA) and said, "This looks suspiciously high," he replied, "Yes, yes, we cheated, but probably less than the other parties." This was a laudably honest answer, for the Balkans.

Dayton cemented in place an inherently unstable status quo. Dayton's full potential has not been reached partly because the international community has failed fully to implement even the weak provisions it contained.

Woodward:

The scenario David Harland ended with is probably the most likely scenario for the

future, if you're thinking in terms of 5 to 25 years.

Very few people now think that we're going to recreate, reintegrate, or knit together Bosnia and Herzegovina, despite what Dayton says and the spirit of Dayton. That isn't to say that it couldn't be done. But we're talking about probabilities.

The worst-case scenario is a resumption of war. This is something that people think is unlikely. The efforts by the Bosnian government to send back Muslims to homes in areas which are strategically important—to recapture territory—could cause war. It's not the only cause possible, but that one is clear. One begins to see in these current developments a scenario for a resumption of war. An explosion of violence in Kosovo also could then reverberate, with a reverse spillover. Resumption of the war is unlikely, though, because the large amount of money and political risk invested by outsiders in trying to end the war and prevent it from resuming will keep people engaged in the long run.

That leads to the current scenario: limping along with a kind of unstable, fragile peace, with an international presence on-the-ground. This shows not only in what we did at Dayton, but in what we have done over the last year.

Let me turn to what we are trying to accomplish and the way we are going about it. There are three hypotheses about what's happening on the ground.

The first one you can hear most explicitly from General [John] Shalikashvili, the chairman of the Joint Chiefs of Staff: that this is an agreement of the parties, and it's up to them to make their own peace. "It's their country," as the current language in Washington says. It's now being applied everywhere. "It's their problem. We have to let them own it." In other words, what's going on on the ground is what the parties want. Indeed, the three political party lead-

ers, as they did in October through December 1990, are collaborating in their efforts to achieve this.

The second possibility is that the United States, and to a certain extent the international community, wanted this outcome. There was an effective agreement to partition Bosnia and Herzegovina, but in a way that was face-saving for the international community with suitable rhetoric.

The third possible hypothesis, which I tend toward, is that we only know how to partition. This has nothing to do with the intentions of any of the parties or the international community. But at this stage—this might have been different three or four years ago—the institutional capacity that we have to solve these kinds of problems only leads to further territorial partition.

Let me go through the elements of what we are trying to do on the ground and where we are. Dayton is not just a political agreement, but more importantly, as operational types like David Harland like to say, it is a GFAP, a general framework agreement for peace. Notice they don't say Dayton Accord or political agreement, they say a "general framework."

What does the GFAP contain? It's basically four elements. The first is to consolidate the cease-fire. We're very good at separating forces. It's also true, of course, that the parties themselves wanted a cease-fire at that time, as David Harland has said. They may have wanted it because they want time to reconnoiter, to reorganize armies, to prepare themselves for the next stage. There is certainly evidence that that is taking place. Nonetheless, the separation of forces by the NATO-led IFOR was very successful. There is continuing destruction of weapons which are illegal. There is continuing monitoring of cantonment. There is an effort to move not only from Annex 1A, a very carefully worked-out arrangement of the tasks for

separation of forces and demobilization of the army, to Annex 1B, called "military stabilization," an attempt to implement by monitoring, the arms control agreements negotiated in January and February 1996 in Vienna and Stockholm. This is somewhat problematic given the "train and equip," or as the Bosnians prefer to say it, the "equip and train" program mandated by the Congress of the United States. That will cause some serious troubles for the stabilization force that follows IFOR, in what role they are to play. Is it to implement the arms control agreements? Or is it to "train and equip," to solidify and improve the quality of one of the two armies? There are, in fact, three armies, but we say that there is one federation army and one Serb army. Is it the task of the international force to improve the quality of the federation army within Bosnia?

In this first category of cease-fire, military commanders in the IFOR operation will tell you that they believe the cooperation among the military leaders of all three sides has been very good. This is particularly true in the confidence-building measures—based on the Helsinki Accords and the Conventional Forces in Europe negotiations—where you get people together, share information, and visit sites together. One could ask what that means when you see disagreements between military and political leaders continue within political camps. This is most blatant in the Serb case, in the negotiations to get rid of General Mladić, but it is not limited to the Serbs.

The second element of the GFAP is political institutions. We haven't yet told you much about the Dayton Accord's constitutional arrangements. The Muslim-Croat Federation was created in 1994 by the Washington Agreement. The Washington Agreement was negotiated by the United States with assistance from Germany, on the

basis of proposals coming largely from Croatian intellectuals from Central Bosnia, and it created a federation agreement between what we called Muslims—now called Bosniacs—and Croats. The hope was to stop the war in central Bosnia at the time. That agreement created a federation based on the right of two nations to self-determination within joint structures. The Dayton Accord is basically an attempt to extend the Washington Agreement to include the Serbs—not under the terms of the original Bosnian Croat proposal, but, nonetheless, it is simply extending it.

So what do we have? We have a country, at least in the sense of legal recognition—as David Harland said, in terms of reality, maybe two or three countries—but one internationally recognized country within the borders of the former Republic of Bosnia-Herzegovina, that has two entities. One of those two entities, however, is a federation between two nations. The other entity is one nation. The Bosniac-Croat Federation has a parliament. It is divided into cantons, what we might call “counties,” and below the cantons are municipal governments. The other entity, Republika Srpska, the Serb Republic, does not have cantons. It did not choose to introduce that middle level of authority. It has an entity parliament, and under that it has municipal governments. The municipal units in both entities are no longer administratively aligned with what were municipal governments before the war but are a continuation of an administrative and political tradition in which the *opstinas* were the key units of political power. The two entities are joined by what the Serbs like to call a “thin roof” or what the Office of the High Representative Carl Bildt calls “the common institutions.” The task, since the election of September 14, 1996, has been to create the political means by which these three parties, representatives of the three na-

tions of Bosnia and Herzegovina—Croats, Muslims, and Serbs—can work together.

The common government is a “thin roof” not because the Serbs call it that, but because the architects of Dayton wrote it that way. It was said by the Americans at Dayton that the only way that you could get these people to stay in one country, given the realities at the time, was to have a very decentralized state. The common institutions are basically to handle relations with the outside world. It’s not at all surprising that the first meetings, even before the elections, but certainly afterwards, saw fights over who would get which ambassadorial position. It matters. There is also a central bank which will, according to the Dayton Agreement, operate as a currency board for six years. The chairman of the central bank is appointed by the International Monetary Fund [IMF]. Any of you who know about currency boards know that means no monetary policy. It will simply be controlled by the strength of the dominant currency, which will either be, as it is currently, the Croatian kuna, which is used in one-third of the country, or the deutsche mark. The central bank and the customs authority are the only basic economic authority of this thin roof. They are all international operations otherwise. Not even defense functions are at this common level. Defense and all of the economic functions key to operating a government are at the entity level.

Then you come up from below. In the former Yugoslavia, local self-management was dominant. It was even more decentralized than what I have described, although the federal government was trying to recapture some powers in the course of the 1980s to make it more effective at managing the debt crisis in foreign trade. The former Yugoslavia had no capacity for economic management because it was overly decentralized. In fact, it was the World Bank and the IMF that were requiring recentralization

in the '80s to compensate for problems that were real. The World Bank representatives at Dayton decided that overcentralization must have been the problem, so let's structure Bosnia to compensate for that problem. The wrong lesson learned. Centralization is still true of Republika Srpska, but in the federation of Bosniacs and Croats, most of the powers that matter—schools, roads, and police—are at the cantonal level. The cantons are where the rural vote dominates over the urban vote, where the nationalist political parties on both the Bosniac and the Croat sides have their strength.

We will see, when the municipal elections are held, what that does to the formation of these institutions. Who will be ruling, who would win in the September 1996 national election, was predetermined by the Dayton Agreement, because all of the constitutional and electoral provisions which David Harland was citing create what we would call an “ethnically” defined political system, or what they would call a “nationally” defined system.

The presidency consists of three representatives, one for each nation. You can vote for your national candidate only in the entity representing that nation. If you're a Serb in the federation, and there are up to 250,000 Serbs in the federation, you cannot vote for the Serb representative of the presidency; you have to be living in Republika Srpska to do that. If you're a Bosniac who is living in Republika Srpska, you can't vote for a Bosniac or Muslim representative, and so forth. It is not surprising, therefore, that most Bosniacs did not cross over into Republika Srpska to vote in September 1996 because that would have denied them the most important vote. They will cross over when it does matter, at the local level.

Even in institutions like the central bank, Croats and Bosniacs, each representing national interests rather than individual busi-

ness or alternative interests, share one vote. The Serbs have one vote. Dayton defined every institution with an ethnic or national vote “representation.”

Finally, as was true in the Washington Agreement, Dayton has a long list of constitutional principles including universal and European conventions concerning human rights, to which this state must conform. This includes an ombudsman for human rights. There are other commissions, such as on property and transportation, with details I won't go into.

Let me then turn to the two other elements of the Dayton Agreement. Laura Silber has mentioned how the economic reconstruction program has not really gone far. Economic reconstruction is absolutely critical to the success of the Dayton Agreement, as well as to the classic forms of peacekeeping at the end of a civil war. Economic revival turns people away from war toward peace. The assumption is that you won't get peace if the economy doesn't revive and reconstruction doesn't take place. If demobilized soldiers don't have jobs, if you can't bring the urban, professional, skilled refugees back home, if there's nothing to bring them back home for, if there is 90 percent unemployment, and hyperinflation threatens, once humanitarian aid ends and the budget has to take over responsibility for salaries and safety nets, you return to the conditions in Yugoslavia of the 1980s that James Gow has just described—conditions which led to war in the first place. Economic reconstruction is the task of the outsiders.

It's very slow, because of institutional capacity. We do not know how to work other than through state institutions. We give aid to people whom we trust because they are sovereign—I hope you hear the irony in that sentence—and who will be able to repay the money we give them. Most of the people who are working in the field, or

who are trying to advise on how to end the war in Bosnia, say that what we need is a bottom-up strategy. Let's give lots of money to nongovernmental organizations and create them. Let's create civil society. Let's get citizens going at the local level. Let's forget about Sarajevo, Mostar, or Pale. A bottom-up strategy will wean these people away from war. We'll wean the war criminals and the regular criminals away from their profits, and so forth.

It's not working. We don't know how to do that. So by the middle of the summer 1996, when funds from the World Bank, which is really where most of the money has come from, were not flowing in fast enough to get people employed so they would vote the way we wanted them to vote in September 1996, countries began to shift to bilateralism. Now you have every country giving aid through their own aid agencies—a wonderful opportunity for the parties on the ground to play off one against the other and put a little extra money in their pockets. There are still fundamental disagreements among the major powers who provide the resources—the donors—about what the reconstruction policy should be. Should we give money to Bosnia at all because it is not stable yet? Hans Van den Broeck isn't so sure and he controls a good deal of money. Should we give money to the Serbs or just to the federation as the World Bank has done so far? In the last year 98.7 percent of all resources from the World Bank and other multilaterals has gone to the federation while 1.3 percent went to the Republika Srpska.

Should we, in fact, have a regional strategy? There's a second level of disagreement over regional strategy. What does it mean to be regional? The UN high commissioner for refugees says that there is no way they can deal with population returns and ameliorate the continuing possibility for further displacement unless we have a regional strat-

egy. The Serbs who will leave Eastern Slavonia and Croatia will probably go mainly toward Bosnia. They are not in Bosnia, but are critical for the Bosnian story. What about the exodus of Albanians out of Kosovo? We still don't have a unified regional view. UNHCR has one strategy. The Italian government has another strategy under their presidency in the EU [European Union]. The Commission of the European Union has another strategy. We do not have agreement.

Most importantly, the organizations that have the assets are not the organizations in charge of political strategy. The Office of the High Representative under Carl Bildt has a very well developed Bosnian Task Force for the Economy and very well developed programs in the regional areas. They don't have the money. The World Bank has money. It has a very different approach. One of its approaches, the approach of most donors, is to give priority to projects which will transform this country into a market economy. So we have to create a central bank first, even though we can't do it because of the political disagreements that Laura Silber has talked about. Until we have a central bank we can't have commercial banks. We can't have investment into regular industries, let alone the hope of foreign direct investment, which will be the essential key to reviving this economy, until we have a commercial banking system and we don't have a commercial banking system. In other words: if we choose to put money into employment or first to reform the economy, economic reform always seems to take priority.

Let me turn to the fourth and final element of the next period and that is internal security. Members of the NATO-led force say it's not their job to police. It's not their job to protect human rights. It's not their job to help develop civil rights. If this is one country, it is the internal security apparatus, in a positive sense, that has to be developed

to protect individual rights, including political and civil rights, and human rights.

The international police task force run by the UN has as its main task not only to monitor these internal security forces, but also to reform the police. By tradition, the international police task force is not armed and cannot perform traditional police functions.

If, as Laura Silber and David Harland have described, the three parties are still fighting the war, though so far not in military terms, and none of them have achieved their political goals, that they are still at a stalemate, the police are going to continue to be instruments of state-building projects. The police cannot be community servants, as we insist on training them. We may train them, as we did in Germany in September 1996 and in Washington in November 1996. We may insist on police downsizing. But the police at the moment are reserves for the militaries. We cannot change what they do until we decide what is the political outcome in Bosnia and Herzegovina.

We are moving, in fact, toward two elements. The military side is called “stabilization.” The civilian side is much less ambitious. I wish Ruth Wedgwood were right that it’s Dayton II. Everyone says we need a Dayton II, but no one is willing to do it. We have a program called the consolidation plan, on the assumption that in the first 12 months we’ve basically done what was necessary and now we need just to give it some time. What I think you’ve heard from all four of us in different ways is that is simply not the case. So while we may not be headed for a serious breakdown, it’s not at all clear where we are headed—it’s just guessing on everyone’s part.

The fact that President Clinton decided on November 14, 1996, that we would stay 18 months has not allowed enough time to define a new mandate for this period—al-

though 18 months is much better than 12 because we really could decide how to learn from the lessons of the first year and make some improvements. As I’ve just heard upon return from European capitals, the main motive of this implementation is hope that time and economic reconstruction and resources will bring peace and reintegration to Bosnia and Herzegovina. In the meantime, we will not change what we’re doing, but how we’re doing it. We will increasingly use “conditionality”—stopping the progress of economic reconstruction when we want to get a political outcome, not really contributing to economic revival, and strengthening the coordinating power and resources of the Office of the High Representative. But the latter is not something the Americans have signed on to. In other words, we have created a situation that will continue to be highly unstable, in which monies will probably decline rather than increase, and in which there will be no parties on the international side willing to make the hard choices about what political animal they have created in the Balkans. This will certainly not allow the refugees to come home.

What we’ve seen since Dayton is even more displacements than there are returns. The net return to homes is almost zero. Not only will the refugees not be able to come home and, therefore, Germany will become an increasingly important actor not only with its combat troops of 5,000 on the ground—a new development—but in its pressures to get refugees home. We’re likely to see another wave of returning refugees. This could well revive quarrels within the NATO alliance, one of the few successes of the Dayton Accord. And everyone, as they have over the last years, will look to Washington.

Question:

Mr. Harland, was it possible to find a solution which the international community

would support and implement that would have brought about something other than the “apartheid” system which now exists in Bosnia and would have led to greater integration of Bosnians? Also in the summer of 1995, in your view, would Republika Srpska have been defeated and Bosnia reintegrated if the military offensive of the Bosnian army had not been stopped?

Harland:

I’m not a great military expert, and like all nonmilitary experts I have strong opinions on military matters. My understanding is that it was all over for the Serbs on October 11, 1995. There was a feeling that Banja Luka, the largest city in the Republika Srpska, might have been exposed to direct attack, perhaps within about 72 hours. It was all over. The Serbs had to stop the Croatian army as it moved up the narrow Vrbas canyon, and they had failed to do so. The Croats had established armored artillery on the high ground in the area known as Manjača, immediately south of Banja Luka. The Serb army was largely diverted further west facing the Bosniacs in the Prijedor area, not realizing that the Bosniacs were not about to attack. They also had some units wasted up on the northern border with Croatia, where the Croats were sending probing attacks on the river.

So, yes, as a nonmilitary expert with strong views, I believe that the Serbs were in deep trouble. I think that the fall of Banja Luka would have led to an Operation Storm situation with a mass exodus of the Serbs. The really interesting strategic question is whether Milošević could have afforded that, and whether he would have been obliged to send his divisions over the Drina. But that, of course, is speculation. I don’t know.

The first question is one that interests me. Under the Dayton Agreement there are a lot of things the international community could have done which would not have rein-

forced ethnic cleansing, and which would not have supported the nationalistic agendas of the parties. Somebody said that there had been very few returns of refugees. It’s worse than that. The three areas of control are more ethnically pure now than they were when the peace agreement was signed.

As I mentioned, the international community is partly implicated in the failure to establish some structures of multiethnic living. They failed to get a grip on the media. Instead of creating a security environment in Sarajevo, where several more tens of thousands of Serbs might have wanted to stay as a multiethnic city, they preferred not to intervene decisively. Instead of running the immediate risk of an election which would have created a Bosniac mayor of a town in the Republika Srpska, with all the logistical difficulties that would imply, initial election rules were established which guaranteed that the results of ethnic cleansing would be effectively endorsed.

Even though Dayton didn’t offer a lot, it offered a number of small steps which would have created a useful core for the re-establishment of a multiethnic state. I don’t see in Bosnia any options other than a multiethnic state further integrated than the one we have at the moment, or a military conclusion in which one party is ethnically cleansed. The latter option is a real possibility.

Silber:

If the offensive had not been stopped, it would have meant an end to any sort of Serb presence in Bosnia and Herzegovina. So, if we talk about wanting a multiethnic Bosnia, clearly that offensive should have been stopped. If the idea was to have Muslim and Croat domination over Bosnia and Herzegovina, then it could have gone on. I think that’s a central point of what the goals were at the time. It was retaining a Serb presence.

Gow:

This is extremely pertinent to discussions about what's going to happen in the future. In any discussion about a return to major armed hostilities, there has to be a basic understanding of a series of essential military factors.

The answer to the question you posed is "no." The Bosnian army could not have gone on and accomplished the kind of things you're talking about. It accomplished what it did achieve largely because it had backing from the United States and from Croatia. Croatia, with assistance from the United States, had been able to put together an army capable of strategic-level as well as operational-level missions. The Bosnian army to date is still not capable of managing a series of coordinated operational-level missions, and is not going to be able to do so for some long time ahead, irrespective of equipment or training. This is especially true because the Bosnian army continues to put the focus on, as Susan Woodward said, equip first, rather than train. So, we're looking at a period of a few years before there is going to be that kind of capability.

I believe that the decision had already been taken by the Croats with a lot of encouragement from the United States, and in face of a series of mutinies in the ranks as they were moving up past Glamoč, to call off the operation on Banja Luka, and this was planned well ahead. That decision was taken by the end of August, by the time the NATO air strikes began. So, when we're looking at October 11, 1995, the decision was already taken before the end of August 1995 not to support the move toward Banja Luka. Milošević at that stage and any time afterward would not have been able to resist giving support to any operations which were East of the Brčko line. The Yugoslav army would have been deployed in that instance, I think.

Question:

I have one question for David Harland which I won't ask him according to his wishes, and that is, "Who did fire the shell in the Sarajevo marketplace? And was the shell fired or thrown?" I won't ask that question. The question I would like to ask is about the equip-and-train program. Do you see the equip-and-train program as dividing the federation even more than it's supposed to be bringing it back together? Especially seeing how there are squabbles between the Croats and Muslims on how they're going to divide up the equipment, how the equipment is going to be controlled, who is going to share the training, who's going to hold the tanks, and who's going to hold the munitions—which is a really interesting question. If one side has the tanks and the other side has the munitions, who has control? Is equip[ment] and training actually helping the federation?

Harland:

Who fired the famous shell on August 28, 1995? And is the equip-and-train program, EAT, for short, going to strengthen the federation or weaken it?

There is substantial evidence that the Serbs fired the shell.

To answer the second question: No, equip[ment] and train[ing] certainly does not strengthen the federation. Given that one of the goals of the American equip-and-train policy is to strengthen the federation, it's ironic that it has increased the divisions between the Croats and Bosniacs. As for the practical question, will one side get the munitions and the other the training, or will one side get the equipment and the other side get the ammunition for it? No, that's not going to be a problem. In fact, the allocation of weapons and ammunition between them has

already been largely decided. Most of it is going to go to the Bosniacs.

Question:

Why are there not more resignations or protests? George Kenney is the main person we know who did that. What is the main effect of that? Some very sensible people have incredibly bad faith toward the thing and yet there is very little resignation or protest.

Harland:

I arrived in Sarajevo near the beginning of the siege and while I have not always agreed with UN policy, I have stayed because it is, for me, the most interesting, important thing I've ever done with my life. It has completely changed my life.

Question:

Would Laura Silber and David Harland comment on the proposition that it was not the electoral law that was flawed, rather it was the way the reforms were manipulated to reinforce ethnic separation. Is it not the case that there really wasn't anything practically or morally wrong with offering the refugees the choice of voting either where they were or where they would like to live?

Silber:

I agree completely. The question was, was it just because of manipulation, and was there anything inherently wrong with allowing refugees the right to vote where they want to live? I think you're completely right. The problem was there was no political freedom to hold elections, but the international community had decided that they wanted to hold elections regardless of what the climate was like, regardless of whether the conditions were there. The conditions simply weren't there.

Everyone knew that the elections would be manipulated. I talked about it with the mediators and various European and Ameri-

cans three months before the elections, and everyone was aware the elections would be manipulated. Yet, I think they were hoping that somehow it wouldn't become public or wouldn't be too gross. The fact of the matter is that the Serb authorities were particularly good at it. They calculated exactly how much would be needed to weight the local elections in their favor.

Personally, I don't see anything wrong with offering people the right to live where they wish. I do not think that the idea in Dayton was to hold people prisoner where they had lived before. If they simply didn't want to live there, they shouldn't have to. But the fact is, they never had the choice. People were handed forms and told that if they didn't register to vote in Brčko, they wouldn't be getting food. The refugees were manipulated. The refugees had no access to other information. It wasn't as if refugees living in Serbia said, "Well, I don't know, how is it if I went back into Zenica?" which is in the federation. That wasn't even a choice in their mind. There were refugees who wanted to go back to Drvar, and they weren't allowed to. Drvar is now under basically Croat control, but nobody lives there, although the Croats continue to burn the houses there just so no one ever returns. We have a situation where the refugees don't even know what is available. I think that is what the Serb authorities exploited.

I do agree that there is nothing wrong with being offered that choice.

Harland:

I would add that there is fault at both levels. First, the rules created by the Provisional Election Commission to elaborate what was said at Dayton turned the Dayton standard upside-down. Instead of reconstructing the prewar ethnic matrix in the new legislatures, they rewrote the rules. Second, the rules were then grossly manipulated by the Serbs.

For example, we discovered that the town council of Doboj had passed a law which said nobody could get humanitarian aid unless they filled out a P2 election form saying they wanted to vote where they were told to vote. When they were caught, the Serbs then said, “Oh, yeah. Sorry. We’ve retracted that.”

On election day, my boss and I went out to eastern Bosnia, to Foča, which has been renamed Srbinje—really, “Serbville.” The election rules said that if you were a refugee in Serbia, you could vote where you wanted to. Foča used to be almost exactly divided between Bosniacs and Serbs, so the Serbs registered thousands and thousands of people. There were, true to form, lots of buses with Serbs on them. We stopped these buses and the riders were all speaking in broad Ekavski, Serbian accents, which is an accent not used in Bosnia. They all had forms saying, “We want to vote in these places.” We asked them whether they intended to live there in the future, and they all laughed. They said, “No, no, no. We’ve been paid to do this. Or told to do this by the SDS.” It was an error on our part, followed by gross manipulation on the Serb part.

Woodward:

What we saw in the last 12 months is that the Dayton Accord did provide the parties themselves with some elements to continue to fight the war. Each side is using political means to continue seeking the goals that they fought for during the war. I see no reason to expect any change in the coming 12 months or 18 months in the new Clinton plan, or 24 months in the French plan, or in 10 to 20 years as most Europeans expect. The parties are doing it in nonmilitary ways. Maybe we think that is a success, given the circumstances.

While we have lots of examples of manipulation of the election process, in fact, all

three sides, all three victorious parties—the Croat HDZ, the Muslim SDA, and the Serb SDS—used the election rules to increase their political control, homogeneous control, where they wanted. Consider a small but nonetheless important example. President Izetbegović, worried that he would lose Sarajevo, used that P2 election form very skillfully to guarantee a victory.

Much more important in terms of the fate of the federation, was the ability of the Croat party to use the P2 form to shift the balance in one of the two mixed cantons. In the federation there are either Croat cantons or Bosniac cantons, except for two, Neretva and Middle Bosnia. The Neretva canton, which includes Mostar, is very important to the Croat concept of a Croat state, Herceg-Bosna. The Croats used the P2 form to shift the balance from an evenly mixed to an overwhelmingly Croat canton. This is one of a number of examples of how at every point of the Dayton Agreement—we can talk about whether that’s in the nature of the agreement itself or the way it’s being implemented—but in every element from the way displaced persons and refugees can return, to the use of economic aid and political institutional form, each party is selecting out that which they can use to maximize where they are going. Therefore, we see increasing partition and stalemate on the ground.

Silber:

There’s one issue that none of us brought up, I guess because it’s one of the things that Dayton decided it couldn’t resolve and that is Brčko. The arbitration on the status of Brčko is going to be coming up, and is going to be key. Again, no one knows how to resolve it.

Woodward:

I would tell you to watch and see whether we do try to resolve it or whether

we find, yet again, another delay mechanism—the consequence of which will be to keep us on the ground much longer.

Nationalism and the Liberal State

Panelists:

Stojan Cerović, Editor, *Vreme* (Belgrade opposition newspaper)

Julie Mertus, Assistant Professor of Law, Ohio Northern University Pettit College of Law

Douglas Rae, Professor, Department of Political Science and School of Management, Yale University

Paul Szasz, Adjunct Professor, New York University School of Law, and former Legal Adviser, International Conference on the Former Yugoslavia

Yael Tamir, Lecturer, Department of Philosophy, Tel Aviv University

Bruce Ackerman, *Moderator*, Sterling Professor, Yale Law School

Julie Mertus:

We've come a long way since the 1920s rallying cry of the "Kingdom of Serbs, Croats and Slovenes." If there had been bumper stickers at that time, they would have read "Three tribes, one nation." Whether all people in the region believed or desired the implications of the slogan is another story, but the strategic and political rallying cry at the time was clearly "Three tribes, one nation." That is very different from what we have today. Now we have several nations, splintered and divided more than ever before. One of the slogans in the region today, on the streets in Belgrade—again not believed by all people and certainly not followed by all people—is very different. The slogan is "The people have become the nation." Or "The people has happened." Or, depending on your translation, "The nation has happened."

It's a little tricky. Those of you who are from the region might be very comfortable with this, and translators might be uncom-

fortable because the same word is often involved both for nation and for people, *narod*. For those who are not familiar with this concept, when I speak of nation here, I speak of *narod*, meaning a people united by real and imaginary commonalities such as culture; I do not speak of a state. I'm not talking about the American idea of nation as state. The land we once called Yugoslavia has moved progressively toward institutionalized ethnonational absolutism.

Dayton is best understood not as a static document but as a process that hopefully will lead to something else. We've not heard very much hope here, and I'm afraid that I'm not going to provide very much hope. But I will raise some additional questions. I'll sketch the development of ethnonational identity over three time periods: first, constitutional development in the period from 1946 to 1974; second, the period of collapse in the 1980s, though it's very difficult to put dates on it; and, third, the impact of war.

First, constitutional development. Yugoslavia had three major constitutional moments in the period after the Second World War, and before what we could call the collapse: 1946, 1963, and 1974. I'll note the official classification in these time periods, though it did not necessarily reflect how people were identifying themselves. The classifications were also trying to spur an identity. To begin to understand how people behave and, in particular, their resistance to concepts viewed as foreign or otherwise "illegitimate," it is important to look at official identity through time and compare it to Dayton, which is very different indeed.

Let's start with the 1946 constitution of Yugoslavia. Sovereignty under the 1946 constitution clearly rested with the people. The federal constitution did not actually name the constituent nations of Yugoslavia;

that was left to the consensus at the time, the republics' constitutions, and other laws. But at the time of the 1946 constitution, there were five "nations." They were popularly called "nations" or *narod*: Serbs, Croats, Slovenes, Macedonians, and Montenegrins. Other groups were deemed to be "national minorities," not "nations." As Zoran Pajic explains, there were "hosts" and there were the "historical guests."

It was a little bit different in the 1963 constitution. Minorities were redesignated as nationalities—*narodnosti*—because national minority was seen as demeaning. The word *narodnosti* doesn't quite translate into English. It means, more or less, nationalities. It invokes a concept of someone who has a national homeland someplace else—so, Albanians, Hungarians, Turks, Slovaks, Czechs, and Russians, groups which have a national homeland someplace else. In Yugoslavia at that time, it was very common to hear the two terms used together: *narod* and *narodnosti*. Another important point, through the 1963 constitution, is that Muslims were added as a constituent nation.

The 1974 constitution was a turning point as national differences became "constitutionally enshrined." The division by nation became extremely important. Article 1 of the constitution defined Yugoslavia as "a federal state having the form of a state community of voluntarily united nations and their Socialist Republics." Note the possessive. In this new constitution the republics *belong to* the nations. Of course, there was a big problem: many people lived in the wrong place—they lived outside their supposed nations. Sovereignty under the 1974 constitution changed a bit, too. It now rested "in the rights that the nations and nationalities exercised in the socialist republics and in the socialist autonomous provinces." A new character springs into action under the 1974 constitution, and that is the "working people." Article 244 says that "nations, na-

tionalties, working people, and citizens shall realize and ensure [their] sovereignty."

Power under the 1974 constitution became further decentralized, at least on the face of things. Each of Yugoslavia's six republics had a central bank, separate police, educational, and judicial systems. So did Serbia's two autonomous provinces, Kosovo and Vojvodina. But in reality, because of the tight control of the centralized Communist Party, Yugoslavia operated as a unitary state to a great degree even after this 1974 constitution. This would portend and shape possibilities for "liberal" and "democratic" social change in the future. There was little sense of "civic identity" or any sense of "civic pride" because there simply was not much a citizen could do to change his or her fate through the formal political and social process. The party was appointing the politicians. You could go and check off the ballot but few people could fool themselves that they were really voting—the attitude was that the party would take care of everything. At the same time, although there was a centralized unitary state, economic and political perks were distributed by the Communist Party based on nation. The division of benefits and burdens based largely on "nation" would also prove extremely important in the future.

Four other important attributes of the 1974 constitutional system: First, there were ethnic quotas, popularly known as "national keys." This was a proportional representational system. Second, there were ethnic rights—for example, people could use their own language in public places and in all stages of education. Third, there was a strange system of consensus—if you've studied Dayton, this might sound familiar. This complicated system effectively prevented any decision from being adopted if opposed by any single federal unit (and federal units, remember, were largely defined by national status). After a while, this sys-

tem of consensus became a bit of a joke. The real authority lay in the hands of the party and the sham of consensus actually decreased political thought, discussion, and deliberation. Finally, under the constitution there were prohibitions against “propagating or practicing” national inequality and incitement of national, racial, or religious hatred or intolerance. This might sound like a hate-speech rule but as implemented it led to very repressive measures, not in line with the notion of a liberal state.

Despite the many ways in which the 1974 constitution directly or indirectly involved the concept of nation and nationality, people at this time did not identify themselves primarily through these terms, but instead held to a “Yugoslav identity.” Yes, some people did identify themselves as being part of nations. And amid their ambiguity, the national system of 1974 was extremely important in distributing political and economic perquisites.

At the point of the collapse we see a sorting-out process according to nation. First, sovereignty was used as a rhetorical device. Each side, each group was said to have its own sovereignty. Nationality was also used as a rhetorical device. The most brilliant master of this is Milošević himself. In 1987, he went to Kosovo and said, “No one shall ever beat you again. No one shall beat Serbs.” Milošević and his supporters created and successfully manipulated a situation that defined the years to come: Serbs were entitled to see themselves as the victim against the “other.” Not surprisingly, in the first real elections, nationalism became the mechanism for political differentiation.

Nationalism was certainly not the only force pushing Yugoslavia toward illiberal repression. There was also economic collapse, tremendous insecurity, and a lack of institutions and mechanisms to fill the po-

litical and social void. At the time of collapse, the actions and reactions of international monetary institutions fostered nationalist bureaucratic competition, and, I would add, intense corruption.

The aggression that began in 1991 and 1992 led to the demonization of the other, not just through propaganda, but through what people saw and what they experienced. War led to a further closing of the ranks. People had to decide what they were: Serb, Croat, or Muslim. If you chose something else, you had no power, and, frequently you had no choice but to exit. This scenario left many people in a bind: the many children of mixed marriages; people of other ethnolinguistic groups (such as Albanians, Hungarians, or Roma); people who wanted to choose another identity (say, European or Yugoslav); and those who were against the choosing process altogether.

War also accomplished physical ethnic segregation. The diaspora played an increasingly important role in the closing of the ranks. There was a backlash against anything different and potentially challenging to the nation, such as feminists, minorities, draft dodgers, pacifists, Yugoslavists, and the vast number of “others.”

In Dayton, there’s been a change in terminology. Dayton does not mention nations and nationalities except in referring to international treaty documents in the refugee chapter. Rather, the preamble of the constitution of Bosnia and Herzegovina talks about Bosniacs, Croats, Serbs, as constituent peoples, along with “others.” So the national minorities, or the *narodnosti*, the nationalities, have been demoted to “others.” The constitution of the Muslim-Croat entity, the Federation of Bosnia and Herzegovina, makes clear that there are only two constituent nations, Muslims and Croats. Serbs are “others.” They’ve definitely been demoted. Not surprisingly, given the past use of the

terms *narod* and *narodnosti*, all groups demoted to lesser status under Dayton are wary of their future under the agreement.

Although not using all of the language of the past, Dayton cements the national divide by structuring and dividing the government clearly by the signifiers: Serb, Croat, and Muslim. The role of consensus and “ethnic veto” is seen throughout Dayton. While consensus didn’t work very well before in the period of breakdown, consensus was accepted in Dayton as a political maneuver that benefits Serbs. Had the Dayton presidency operated by a majority rule, Muslims and Croats could always outvote Serbs, Serb negotiators reasoned, refusing to sign the agreement without preservation of the ill-fated “consensus” scheme of old. The Dayton Accord could not have been negotiated by the parties at the bargaining table without including the division of government by the three groups—Serb, Croat, and Muslim—and preserving the notion of consensus. However, these very attributes that put Dayton together may likely pull it apart.

Dayton is not just a static document but a process that is being implemented. Will Dayton lead to strict segregation based on ethnic or national principles? Could Dayton possibly open a path to citizenship rights regardless of ethnicity or nation? Can Dayton be implemented in a way that promotes civic egalitarianism or will it inevitably lead to a further closing of the ranks? If Dayton codifies the results of a war that has debased and dehumanized the other, as I believe it does, how can it possibly lead to respect for law and a culture of human rights? Will the transnational mechanisms created by Dayton and the international and regional mechanisms triggered by Dayton establish a just peace and promote the enforcement of legal norms? Some people in the region think and say that the conflict in Yugoslavia was the end of World War II, because that war never really ended in Yugoslavia; its issues were

still on the table. Dayton does not settle all the issues or promote reconciliation, but it only further cements national separation. So can there be Kant’s vision of “perpetual peace”?

Douglas Rae:

I’ve been struggling the last five years with a manuscript on a single city in which I have lived for nearly 30 years, so this topic is a great relief to me. It’s a place I’ve never seen and I’m therefore able to think about it with great conceptual clarity and simplicity.

The Bosnia and Herzegovina constitution is a wondrous and strange document. I want to ask two questions: First, what manner of constitutional democracy is this to be, and where does it fit in the larger genus of such systems? Second, is it credible to suppose that it will achieve its chosen and nearly impossible task? That task is to allow three groups, after all they’ve been through, to live in a democratic space without working tyranny one upon the others, or two upon one.

Where does it fit? The constitution announces in Article I, Section 2, that this is indeed to be a democratic state, replete with electoral accountability and the rule of law. It is a strange instance of both. We learn immediately that it is to have three parts, namely a national republic known as Bosnia and Herzegovina, a subordinate federation known as the Federation of Bosnia and Herzegovina, and, not least, an included Serb republic. The federation and Serb republic are known in the English text as “entities.” The national parliament is to be bicameral, with a House of Peoples and a House of Representatives. The House of Peoples is to consist of three blocs of five representatives, five Croats, five Bosniacs, and five Serbs. The House of Representatives is also elected in three blocs, not strictly by identity but in a way which is obviously designed to produce three blocs of 14 persons. The presidency is

plural. It's a wonderful thought for an American to consider. The three members of the presidency—one dare not say 'presidents'—each hold veto power against the others. The presidency is urged to act by consensus but no mechanism for accomplishing consensus is provided. A constitutional court, standing above the presidency and the national assembly, is composed of two persons from each of the blocs and three foreigners. The introduction of foreigners is an interesting effort, it seems to me, to produce uncertainty about alliances. The central bank is structured in much the same way as the constitutional court.

What sort of constitutional democracy is this to be? The most obvious feature seen from this distance is that this constitution hardwires the alliances which are to compose the system, in the very definition of the institutions. People are to be represented as Serbian Orthodox, Catholic Croat, or Muslim, and not as farmers, businesspeople, parents, and children. The choice of an associative structure in advance rules out most of the substance of democratic activity. The real substance of constitutional democracy consists of defining and redefining alliances over time as issues shift and leadership does its work. One must treat this as a fairly special case. Not without relatives—one thinks of Cyprus, Nigeria, South Africa, for example. It is remarkable in its hardwiring of alliances and still more remarkable in its creation of consensual conditions, that is, veto points among and within all the institutions so that explicit coercion of one bloc against the other is filtered out.

Will this document work to achieve its remarkable and difficult task, which is to allow these ethnic and religious communities to live in a democratic space without tyrannizing one another? The brief answer, I'm afraid, is no. It cannot accomplish that. The longer answer requires that we distin-

guish between two types of tyranny: one is active, the other passive. Active tyranny would consist, for example, of the government captured by Serbian impulse, throwing Muslims in the river. Passive tyranny would occur where a Serbian citizen had fallen into the river and the government decided, after lengthy discourse, to leave him there. Acting to wrongly harm, on the one hand, failing to undo harm on the other. This constitution is a masterpiece of protection against active tyranny. It is of course for the same reason a near invitation to disaster where passive tyranny is in question.

Let us look at the constitutional minefield which faces legislative action under this document. I'll read from Article IV, Section 3, Clause e of the constitution. Those of you who think about more standard parliamentary institutions will find this remarkable.

A proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serbian Delegates selected in accordance with paragraph 1(a) above. Such a proposed decision shall require for approval in the House of Peoples a majority of the Bosniac, of the Croat, and of the Serb Delegates present and voting.

It is a system of absolute, mutual veto among the blocs. That arrangement is reproduced in each portion of the institutional structure. The presidency also has a system of mutual vetoes and one imagines that deadlock will be commonplace. The constitutional court will therefore become a very important institution.

Well, the question is when is it okay to have an automobile with three brake pedals? When is it okay to have a governmental system organized that way? I would suggest that there are two conditions, each separately sufficient, which make such a system work-

able. One is that all relevant parties must be more or less satisfied with the status quo, so that none is seized by an urgent need to use government as a mechanism of change. We may guess that this condition is not satisfied. Or second, the environment is stable so that no external shocks demand the attention of government as a steering mechanism. For example, no economic instability, no novel cultural conflict. Neither of these conditions are met. The system's performance to date suggests that neither condition is likely to be met.

There are remarkable accomplishments. I did some research on the recent elections and discovered that in some parts of Bosnia and Herzegovina they have solved the turnout problem which plagues American elections of recent years. Our turnout rate in the last presidential election was just about 50 percent. There are sections of Bosnia and Herzegovina where the turnout rate is recorded at 103 percent. I'll leave it at that.

This constitution is a symbolic document which concludes a conflict and ushers in a new phase of change. It almost surely cannot be a working document for governance.

Paul Szasz:

Recent decisions by the U.S. Supreme Court have held that legislation or other governmental actions may generally not take race into account—for example, in drawing the boundaries of congressional districts, even to ensure that citizens of various racial or ethnic groups are equitably represented. Although not everyone agrees with these recent constitutional decisions, there is probably agreement that in a democratic state the constitution and other laws and the government itself should be substantially blind to racial, ethnic, and religious distinctions. As Douglas Rae mentioned, if you take account of these distinctions in allocating political power or other advantages, you must necessarily disregard other ones, such

as economic status, occupation or profession, gender, or sexual orientation. Whatever distinctions you embody into legislation, these may be considered unimportant, even ridiculous, by others and it is for that reason that the U.S. Constitution, as interpreted by the Supreme Court, has forbidden legislation that is so constructed.

Let me now read to you some provisions of the constitution of Bosnia and Herzegovina [BH] and of the Federation of Bosnia and Herzegovina, which is one of the two constituent entities of the BH state. Incidentally, the term “entities” was one that required a good deal of negotiation, with many alternatives, in English and in Serbo-Croatian, proposed and rejected during almost four years of negotiations. I will first read from the federation constitution, which was completed in March 1994, some 18 months before Dayton. Article I(1) states,

Bosniacs and Croats, as constituent peoples [along with Others] and citizens of the Republic of Bosnia and Herzegovina . . . transform the internal structure of the territories with a majority of Bosniac and Croat population in the Republic of Bosnia and Herzegovina into a Federation

“Bosniacs,” incidentally, is the euphemism for Muslims, a term first introduced in this federation constitution to suggest that that party is broader than just one sectarian group. Then we get to federation constitution Article IV, Section A, Clause 6:

There shall be a House of Peoples, comprising 30 Bosniac and 30 Croat Delegates, as well as Other Delegates, whose number shall be in the same ratio to 60 as the number of Cantonal legislators not identified as Bosniac or Croat is in relation to the number of legislators who are so identified.

The mathematicians among you will recognize that as the number of “Others” increases in the cantonal legislatures they can start to predominate in the House of

Peoples of the federation. If more and more of these others are elected at the cantonal level, eventually there could 120, 150, or 200 others in that House, while the number of Bosniacs and Croats is limited to 30 each.

Turning now to Dayton, the question is to what extent these ethnic categories are hardwired into the constitution for Bosnia and Herzegovina. The preamble states,

Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine the Constitution of Bosnia and Herzegovina is as follows

There is, of course, no truth in that statement. These peoples did not do any determining. The Dayton Accord is a treaty between the Bosnian, the Croat and the Yugoslav governments—not an agreement among the three Bosnian peoples. It was largely imposed on them and on the three governments by the United States and by the other Contact Group members. It was not subject to any referendum or any popular approval in any organ of Bosnia and Herzegovina.

Article IV of the Dayton constitution states,

The Parliamentary Assembly shall have two chambers: the House of Peoples and the House of Representatives The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).

It seems that it was not enough to say that the last five are from the Republika Srpska—it was emphasized that these must be Serbs. Article IV continues:

The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

It should also be noted that this equal partition of seats in both houses of the Parliamentary Assembly in no way reflects the distribution of the population, which before the war was 44 percent Muslim, 33 percent Serb, 17 percent Croat, and 6 percent other.

As you see, these two constitutions are definitely not blind to ethnicity. In a sense the constitution of the Bosnian state is less blatantly ethnic than the federation constitution, but it at least implicitly relies on the ethnic character of its two constituent entities. In other words, to some extent it takes into account that the Republika Srpska is almost 100 percent Serb and that the federation is Muslim and Croat. However, in another sense the Dayton constitution is more ethnically exclusive. Except in the preamble, the Dayton constitution takes no functional account of the “others,” while the federation constitution does so for several purposes—such as the composition of the House of Peoples.

Some of us from Western states who were assigned to assist the Bosnians in drafting a constitution—starting in March 1992 before the Republic of Bosnia-Herzegovina had even become independent and the war had started, and continuing through the Vance-Owen Plan negotiations from October 1992 to May 1993, the Invincible Plan in the summer of 1993, the federation constitution in March 1994 and finally the Dayton constitution in November 1995—were initially shocked by the idea of a state structured along ethnic lines. We could not see how such a concept could be reconciled with the modern human rights principles that have been articulated since the end of the Second World War. However, we found that all the parties, including the Muslims but especially the Serbs and the Croats, expected us to structure the constitution along those lines. That point was not really in debate. There was a lot of debate

about how power should be distributed among these peoples, and especially on how to determine in which geographic areas each would have majorities. But it was never disputed that the constitution would have to take into account the special place of each of those peoples.

The immediate objection we raised was, “How does one establish the ethnic character of a given person—whether as a voter or as a candidate? How does one know whether someone is Muslim, or Serb, or Croat?” We saw three possibilities: First, the classification could be entirely subjective. One is a Serb if one chooses to be a Serb. Presumably—but not necessarily—this would mean that the next day the same person could call himself Muslim. Just like in the United States, one can at any time switch between being a Democrat or a Republican. It did not seem advisable to us to base constitutional distinctions on so uncertain a basis.

The second ground for classification could be objective criteria. One could say that a person is a Serb who has a Serb parent, perhaps the father. Or whose language is Serb—though the distinction between the languages used in Bosnia is minimal, except that Serbs use the Cyrillic script. A person’s name may be suggestive. Religion, of course, is the really distinctive characteristic: Serbs are Orthodox, Croats Roman Catholics, and Muslims are followers of Islam. But, if any or all of these criteria are to be used, it would be necessary to establish courts or boards to determine into which category any disputed individual belongs. That was done for many decades in South Africa as part of the apartheid system, and that country was much criticized for it. It seemed impossible to install such a system in Europe at the end of the twentieth century.

The third possibility is to let each group decide. Let the Serbs decide who is Serb, and the Muslims who is Muslim. However,

this too is not unproblematic. In the first place, does the group have power to include and/or to exclude? Can a representative of the Serbs go out into the street, question someone and then say, “You are a Serb. You belong in the Serb army and must pay Serb taxes.” To which the accosted individual might reply, “I’m not a Serb. My mother was a Muslim, and my wife is a Croat. I don’t consider myself Serb!” “Too bad, but by our standards you are a Serb. So, come along!” Or, should a group merely have a power to exclude—to say to someone: “We appreciate your application, but you are not Serb enough for us.”

These are the technical difficulties in deciding to what group a voter or a candidate belongs. But, to decide whom an official represents, it may not be enough to determine that he is a Serb. Rather, the question might have to be: “Was he elected by Serbs?” That would make it necessary to establish separate electorates, every member of each having been properly classified. In most primaries in the United States, a Republican can only vote in her own primary, and crossovers are not permitted. In some places the Dayton constitution seems to assume that anyone elected from the Republika Srpska represents Serbs, though—as I have pointed out—in some provisions it is specified that he must himself be a Serb.

These conceptual difficulties are part of the reason that the election rules, which are first sketched in Annex 3 to the Dayton Accord, were—as David Harland said—then distorted in the rules elaborated by OSCE and even further in their actual implementation. It was very hard to determine into which group each voter should be classified and to make a system work that is based on ethnicity without having a legal structure to determine ethnicity.

The third problem I will mention is that of the “others.” These really are of three quite different kinds. First, there are persons

who belong to minorities, such as Jews or Hungarians or Italians—and thus clearly do not belong to any of the specified constituent peoples. Second there are the persons of mixed heritage, who cannot easily be classified unless one arbitrarily follows either the ethnicity of the father, or possibly of the mother. Third, there are the people who simply want to opt out. They say: “A plague on all your houses. I don’t want to be a Muslim, or a Serb, or a Croat!” In the 1991 census, some people identified themselves as Bosnians, or Yugoslavs, or even as Eskimos, to indicate that they did not wish to play this classification game.

The size of the first two kinds of others is essentially fixed. If someone is of mixed parentage, that cannot be changed. But the third group—those who wish to opt out—is entirely variable in size. Right now, under current tensions, it is small; but it could grow large in more relaxed times, and that is why some of the formulae built into the federation—but not into the Dayton constitution—could lead to a government dominated by the others.

The people we were talking to, the official representatives of the three ethnic groups, were never interested in the position of the others. It was the international community (largely the United States) which insisted on introducing into the federation constitution the various provisions for recognizing the others and for having them represented. At Dayton there was no such insistence; the emphasis was on getting an agreement fast, and recognizing the others would have been a complication, potentially with all the local parties. Consequently there is no protection for the others in the Dayton constitution.

These are some of the technical and legal problems that arise out of giving serious place to ethnicity or nationality in a modern constitutional system. There are other diffi-

culties too, but this should give you a sense of the issues we faced as we tried to design acceptable constitutions for Bosnia.

Stojan Cerović:

I will try to defend Dayton a bit. I’ve heard in my country and here many kinds of criticisms of the Dayton arrangement. I agree that Dayton is a legalization of a political reality. In Dayton it’s not clearly said how Bosnia can survive and even whether Bosnia will survive. It’s not clear, looking at Dayton and the Bosnian constitution, how Bosnia might survive at all. But I do believe that this arrangement was an absolutely necessary step.

To illustrate the situation at Dayton, I’m going to tell you an anecdote I heard about what happened a long time ago when the Austro-Hungarian empire occupied Bosnia after the Berlin Congress in 1878. They found the country in considerable disorder. They were especially impressed by the amount of corruption and bribery of state officials. The Austro-Hungarian authorities immediately decided to ban any type of corruption. But people resisted because it was a deeply rooted custom to corrupt and to bribe officials. So they continued. The situation became even worse, because, aside from corruption, the whole legal system became discredited. So, the Austro-Hungarian government decided to do something else. They legalized bribery, passing a regulation that specified precisely the denomination of bribes that could be received by any official for any sort of service. I believe the idea was to revoke this legislation after the people got used to the new law and learned to respect it.

What is the point here? Evidently, nationalism in Bosnia now, just as bribery then, cannot be simply banned. It was absolutely necessary to make an arrangement that everybody on all sides could respect. After the kind of war which we had in Bosnia, if

you remember the situation in 1995, it was almost unbelievable that representatives of all three sides would agree to sign the same blank sheet of paper. I believe that it was a necessary step for something that is coming after. The Dayton arrangement and Bosnian constitution should not be compared to the American constitution. It should be seen as something very temporary. Something with a function that's really just to stop the war—to freeze reality for a moment and create a situation in which that reality might be changed. The process has to be a long one and it will be a long one, of course. It's a matter of patience and whether that process will get enough support in the international community.

I have heard two types of criticism of Dayton, a liberal criticism and a more conservative or realistic one. One set of critics says the Dayton arrangement basically accepted and legalized the division of Bosnia, the partition of Bosnia. In the Bosnian elections, the nationalist parties have won. That means that the Dayton process was, eventually, inefficient. It was morally unacceptable and wrong to negotiate with those nasty nationalists, the representatives of Republika Srpska, Croats and Muslims.

I find this criticism a bit romantic and really missing the point. In that part of the world, nationalism will be around for a while. Actually, in the foreseeable future, there is no hope that much better people will come into power anywhere in Bosnia, or Serbia, or Croatia. We have all sorts of nationalists—militant ones or less militant ones, more conservative, traditional, or more modern, pro-Western or anti-Western, any sort of nationalist—not only in power, but also in the opposition. We cannot expect to get perfectly liberal people in power right after such a terrible war. I am afraid that the process of reconciliation cannot wait for a new breed of leaders and for the decline of nationalistic feelings. On the contrary, rec-

onciliation will have to create this new breed of leaders at the end.

So, the international community had to deal with these nationalists. In the case of Mr. Milošević, it looks as if somehow Mr. Holbrooke or somebody else found a way to deal with this type of person. Milošević became a bit more cooperative. I don't say that he is trustworthy, but apparently he's delivering some things that he was asked to deliver. Still, I believe, that his type of person responds to pressure in the first place. In the lack of convincing threats, he would certainly cease to cooperate.

On the other hand, we have conservative critics saying, "In Bosnia a new reality has been created, which is basically a division. That process is going on. Let's give up the whole idea of keeping Bosnia together. It looks easier and more realistic to say that these people don't want to live together. So, let's divide Bosnia." I can admit that it is too late for multiethnic Bosnia to be recreated. The last opportunity to save multiethnic Bosnia was a couple of years ago. However, I believe that now, after Dayton, it is also too late to separate Bosnia completely. In the Dayton agreement the maps and borders of ethnic entities are drawn in a way that, at least for Republika Srpska but also for the other entity, it's hard to imagine how they can survive separately. There are some very narrow corridors. It's difficult for Republika Srpska to communicate between the Banja Luka region and the eastern parts near the Drina River. There are two corridors basically cutting Republika Srpska in three parts. There's also a corridor which is supposed to give Bosnia access to the sea, but basically that corridor is cutting the territory of Croatia. To think about division, to give up the Bosnian idea, and to accept partition would be an even more expensive project than to insist on the Dayton arrangement as it is. Widening one's own corridors and cutting off the other entities would become the am-

bition of each side and inevitably lead to new animosities, if Bosnia was to be fully divided.

There is a hope that after a while cohesional forces might prevail. There is a real hope for that. I don't think that it's romantic to dream about that even after this sort of war, because Bosnian identity still exists in a way. Serbs, Croats, and Muslims really belong to the same civilization pattern. Although some people say that Bosnia never really existed, we all know that what is really artificial and never existed is Republika Srpska, Greater Serbia, Greater Croatia, and the borders drawn in Dayton. Let's never forget that in this war a new reality was created by very strong and brutal forces. It took an enormous amount of violence to divide that country. We might hope that if the people in Bosnia get the chance with international support, and enough time, they might eventually accept living together again.

Yael Tamir:

I'm not an expert on Yugoslavia, nor a law professor or a UN official. As the only philosopher in this hall, I am in a minority. I am also in a minority as I am going to defend the idea of establishing "ethnic seats" in liberal democracies.

It is commonly assumed that liberal constitutions ought to be ethnically blind. The constitution of Bosnia and Herzegovina deviates from this principle, and it is criticized on this account. I will present here an argument in support of taking ethnic representation into account. My argument is not particular to the Yugoslav case. It bears on a whole range of different cases including the American one. Moreover, it is not restricted to the ethnic case; it applies to a range of cases including women's rights, minority rights, indigenous peoples' rights, and black rights.

If my argument is a sound one it is likely to gain legitimacy in the future. Regardless of what many political theorists think, the world is not adopting the American model according to which every constitution must be ethnically blind. Rather it moves in the opposite direction. More and more liberal states are encountering ethnic revival and will be forced to take national and ethnic considerations into account. One way of protecting the relevance of liberal values in a world in which ethnicity is playing a major role is to find ways of weaving ethnic demands into liberal constitutions.

One such demand is a demand for fair representation. Should this demand transform the traditional liberal approach to matters of representation? In order to answer this question one must first examine the bearings of liberalism on theories of representation: does liberalism entail a particular theory of representation or, at least, does it exclude some options?

It is interesting to note that liberalism does not demand any particular type of representation. It makes a very general demand that individuals should be treated as free and equal political agents entitled to equal concern and respect, but it does not specify the political institutions, the representative structures or the electoral systems entailed by this equality.

The liberal-democratic ideal of "one person, one vote" fails to determine crucial issues which are central to our ability to evaluate the constitution of Bosnia and Herzegovina. To begin with, it leaves undetermined the following question: on which end of the democratic process should equality be measured, that of the input or that of the output? Namely, must liberalism secure equality of voting rights or is it also committed to assure equality of influence over outcomes?

There is no general answer to this question; our evaluation differs depending on the nature of the outcomes. Commonly liberal-democracy seeks to ensure equality of inputs. It argues that conflicts over particular interests should be solved by allowing individuals equal participation rights in a fair decision-making process. As long as individuals have an equal opportunity to present their views in the public sphere and cast their vote, the fact that their preferences are outvoted may be unfortunate but not unfair.

And yet the inability to protect national cultural interests—even if that inability results from a fair political procedure—is seen as unjust. Think, for example, about the Canadian case. The kind of discrimination the Québécois suffer from is not grounded in a deprivation of equal political rights, or the ability to participate in the political process as equals. Rather, it has to do with the inability to influence the outcome of the process—with the failure to imprint Canadian political institutions with French culture, a failure that carries with it feelings of cultural insecurity or even cultural destruction.

The difference between cases that concern preferences regarding the preservation of identity and other kinds of preferences has to do in part with the fact that national-cultural interests are, by their very nature, restricted in their scope. That is, they are restricted to members of a particular group (though in some cases nonmembers may also have an interest in the protection of a set of national preferences). If this group constitutes a minority, such interests are unlikely to gain support in a fair democratic process. This is also true of the interests of some other groups such as opera lovers or vegetarians, who are likely to remain a minority. The crux of the matter then cannot merely be the size of group, nor the fact that a certain interest is likely to be permanently outvoted, but the nature of that interest.

National interests ought to acquire special protection because they reflect one's interests in preserving one's identity. Their frustration is seen as a threat not only to the possibility of pursuing one's preferences and goals but most importantly to the ability to be the kind of person one wants to be, to belong to the groups one feels attached to. It is this special feature that makes national interests (like other identity-related interests) particularly worthy of respect and explains the need to reconstruct political institutions in a way which will secure these interests.

It thus seems that when national-cultural issues are at stake, liberal equality demands extending equality not only to inputs but also to outputs. When national issues are discussed, individuals are to be allowed to have equal (or more precisely, proportional) influence on the outcomes. The fact that individuals ought to have equal influence on the outcomes of the political process leaves open the question of how these interests ought to be defended.

The issue that concerns us here derives from this general question. In examining justifications for ethnic representation we are in fact asking who can represent whom and under what circumstances. This is a question liberalism tends to ignore. Until recently liberal theories of representation embraced a rationalist, individualistic understanding of politics according to which representation was a matter of expressing the agent's opinions, preferences, and interests. Consequently, they tend to emphasize the reasonableness, personal honesty, and political accountability of representatives rather than their membership in particular groups. In recent years the communitarian-national bent in liberal theory marked a change of emphasis from "the politics of ideas or interests" to "the politics of presence," or "the politics of identity."¹ This change has not come from Yugoslavia. It was motivated by discussion of the Canadian case by Taylor

and Kymlicka and the feminist case by Young and Phillips, and has been discussed widely in the United States with regards to minority rights, indigenous people's rights, etc.

According to this view the role of representatives is not only to express preferences and ideas but also to give members of each group a public voice. It assumes that such a voice could be proclaimed only by members of the group, for four reasons.

The first reason is grounded in the role of shared experiences. It suggests that shared experience takes precedence over shared ideas, as "no amount of thought, no matter how careful or honest, could jump the barriers of experience."² It is thus assumed that "interests are better protected when we are represented by those who share our experiences and interests."³ As nonmembers do not share these experiences, they cannot properly express our needs and preferences.

The second reason is grounded in the importance of symbolic presence. Even if shared experiences are not necessary for defining and defending the particular interests and needs of members of a particular national group, it is still of immense importance that these needs and interests will be presented by members of that group. The argument in this case is rooted in the belief that an important aspect of having a voice is having a visible public presence. Having the group's interests represented by nonmembers will defy this purpose.

The third reason has to do with social and political inclusion. Once difference is conceived in relation to particular group identities, it is impossible to meet demands for political inclusion without also including members of these groups in the political institutions.⁴ In this case, like in the case of symbolic presence, allowing members to represent themselves is an integral part of achieving the desired end.

The fourth and last reason concerns the issue of self-government and self-determination. Political participation is one way of assuring self-rule and self-determination. For liberals, individuals ought concern themselves not only with end results—achieving their goals and protecting their interests—but also with the ways such results are achieved. If these goals and interests are achieved due to the action of external paternalistic forces, the status of individuals as autonomous and self-governing is undermined. Autonomous individuals must govern themselves.

For these four reasons, it is of immense importance that not only national interests will be taken into account but that the members of each national group will represent their own group. I do not wish to ignore the difficulty of defining the relevant groups, nor of constructing political institutions along these lines. If I had more time I would have said more about it. Yet, whatever the difficulties may be, we cannot ignore the importance of the need for recognition. This is especially true in the case of Bosnia and Herzegovina. We ought not, and cannot, impose on Yugoslavia an ethnic-blind or religious-blind constitution. We must take into account the importance of national and religious affiliations in the Balkans, as well as in other parts of the world and try to construct liberal constitutions that give assurances to members of national and religious groups, whether they constitute a minority or a majority, that their interests will be introduced into the political system.

If we will be attuned to the lessons that emerge from the Yugoslav case we will become more attuned to the limitations of the traditional liberal approach. Taking nationalism into account will not undermine liberal theory but enrich it, as it will make the political solutions it offers more applicable to the Yugoslav case as well as to many others.

There is of course no assurance that even a just arrangement, which takes national demands into account, will not be abused. No constitution can protect individuals from human cruelty and injustice. This is why states are measured not only by their constitutions but also by their political culture, civic education, and the level of civility among their members. It is certainly easier to draft a constitution than to achieve the latter goals. Hence, it will not be an exaggeration to claim that once a constitution is drafted, the work has just begun.

Bruce Ackerman:

I have a couple of remarks that expand on what Yael Tamir presented.

First a caution: There are a lot of words that we don't understand, that are being casually deployed. For example, the idea of an ethnic group, the very word, is a creation of the Second World War. If you look before that time, you will not find the vocabulary of ethnic groups. You will find a very elaborate racial vocabulary—the Italic race, the Aryan race, the Teutonic race. We can say in large measure that the word “ethnic group” is functioning the way old-fashioned racial categories were used.

I asked my class to identify their ethnic group. I suggest that you try this exercise. There was a good deal of bewilderment in the room. Is everybody a member of an ethnic group? A large amount of anxiety. Then a student with a sense of triumph wrote down that his ethnic group was “suburban.”

My question is especially appropriate for Yugoslavia because Yugoslavia is a refutation of a lot of what we think about ethnic groups. This is part of Paul Szasz's difficulty on the technical front. Inhabitants of the former Yugoslavia speak the same language. Certainly the difference between dialects is less than the difference between southern Mississippi and Maine. So what is the difference between Serb and Croat? The

thing that Paul Szasz was suggesting: “We know it if we identify your religion.” Weird. Religion as an indicator of ethnic group. Well, this is puzzling. So that's one word, ethnicity, that we don't understand at all. It's just a place holder for our ignorance.

Then there is the idea of the nation. Now that word does have a rich history, and it's a liberal history. The nation as a concept, as Liah Greenfeld has established in a wonderful book, has its roots in England, then France, then Russia and then Germany.⁵ Or Germany and then Russia—it depends on how you want to count Peter the Great. I would say Russia and then Germany.

The nation is associated with three basic liberal ideas. Popular sovereignty, that's what the nation is about. There is a people which has a will. The nation is associated with equality. It's against divisions by class, race, sex, gender, or anything like that. As members of a nation, we're all equal. And it's associated with secularism. The idea is that the fate of the nation, in the here and now, is the crucial matter of political understanding.

These are modern ideas—liberal ideas—which are all bundled up with the idea of nation. How these liberal ideas are applied to particular geographic entities is a deep puzzle, and, generally speaking, has a political explanation often of an illiberal kind. In Eastern Europe, for example, the transition from the premodern Ottoman empire and the Austro-Hungarian empire to the present was largely supervised by the communists. Of course, the Nazis helped.

Do we know what we're talking about then, in talking about national identity or group identity in Yugoslavia? Are Serbs and Croats, for example, two peoples merely because they worship God in different ways? How this idea of a nation, this liberal idea of a nation, how it applies to this case is very puzzling indeed.

Question:

As Paul Szasz pointed out, there is the concept of nationality and “others.” I would like to point out in that reference two paradoxes. One is that we’ve come full circle. The Jews have been the archetypic minority, one which all other minorities are struggling to define, as well as Hebrew scholars. But we find that Jews in Vojvodina in the context of this constitutionalization become not a minority, but “other”—those who happen to live there and remain. Jews are not defined as a minority. When we come to the nation of Israel, where if anywhere Jews are at home, still the defining elements are race, national origin, cultural and educational background. In other words we come full circle in terms of the definition of this minority. This really makes one wonder what is the defining element.

Now Paul Szasz mentioned a kind of constitutional moment of self-identification. One of the criteria for defining ethnic group and nationality is to have the group aware that it is so. In other words, at the moment that you are aware that you are something or another, you accept that minority or group. This is very important, because individuals are increasingly, particularly in the very interconnected global village in which we live, multiethnic, multicultural, and multilingual. What I’m trying to say is that, on the one hand, we are developing definitions in order to institutionalize and administer all these instruments. But, on the other hand, we’re creating new types of paradoxes.

Szasz:

When I mentioned self-identification, I meant merely one of three alternative devices for determining the classification of a given individual. This, the subjective one, is one of the possibilities. Each person is asked what he is. As a matter of fact, it was this device—explicitly specified in the 1991 Car-

ington Constitutional Principles—that has so far been actually applied in implementing both the federation and the Dayton constitutions. However, there are some difficulties with this device. For example, one of the Serb members of the original presidency of the Republic of Bosnia-Herzegovina later called himself a Muslim. He had two natures: he was a Serb with Islamic religion. So he could switch. It evidently isn’t possible to build a stable constitutional system on classifications that can be altered that easily.

There have been other constitutional exercises in which ethnic classifications were an option. In creating Zimbabwe out of Southern Rhodesia, the decision was to accept such a classification for the purpose of protecting the whites; this worked for a while, but not very well. Namibia, whose constitution I helped draft, absolutely rejected any ethnic classification and relied instead on assuring all citizens of a high level of human rights, and this has worked well so far. Incidentally, we found that in talking to any of the Bosnian parties they were mightily offended if we used the Namibian example. While continuing to slaughter each other, they loudly protested: “We are not Africans, but Europeans with 1,500 years of civilization! We forbid such comparisons.”

Without making the overt comparison, we tried in Bosnia too to assure everyone of the highest level of international human rights, as exemplified in the entire canon of post-Second World War human rights, from the Universal Declaration and the two covenants to the many other universal and European instruments. All these were incorporated by reference into both the federation and the Dayton constitutions. But the Bosnians were not satisfied with this assurance, and insisted also on including provisions to ensure that each of the three constituent

peoples has the political power to protect themselves against the two others.

Mertus:

The term “ethnic group” means something different in the context of the former Yugoslavia than you suggested. There are three types of groups: nation, nationalities, and ethnic groups. I want to give an example. Nation would be Serb, Croat, Muslim. Nationality would be Albanian, somebody who has a nation someplace else. Ethnic group is a group without a nation somewhere else, such as Roma (or gypsy). The term “Yugoslav” also appeared in some of the counting mechanisms. That points out how muddled and confused things are.

Tamir:

I want to say something in favor of conceptual ambiguity. There are lots of problems in defining nations and people and minorities, and what have you. But just think about the fact that we give religious rights to individuals despite the fact that if we would try to define what religion is, we’d find ourselves in great difficulty. The same is true for other problems. We speak about affirmative action to encourage blacks in positions of government. If we have to define what it is to be a black person we might get into a debate. All these concepts are always contested. The fact that you can’t give a clear definition is not a reason to say, “You know, it’s so complicated we should go back to individuals. We know what individuals are. That’s a simple solution.” I think that in spite of the ambiguity embedded in all those concepts, we should still take them seriously and try to struggle with them, but not to give up that easily.

Ackerman:

But there’s a difference between two sorts of concepts. In one sort, we have at least paradigm cases. The idea of religion, for example, is a concept of this kind. But do we have a paradigm case, a single paradigm case, of an ethnic group? Maybe we do, but I’m not so sure.

Question:

In his book *The Clash of Civilizations and the Remaking of World Order*, Samuel Huntington describes how there are going to be clashes between different cultures, as opposed to say clashes between different nations.⁶ Looking at this constitution, throughout all the criticism, it seems it is attempting to solve this exact problem. We’ve got different cultures trying to live together in one nation with a whole history of conflict—trying to keep their own intercultural conflict in check. I see what you’re trying to do and I think it’s a valiant effort. I don’t know how else you could create a nation in a place like this where there is such cultural conflict.

Cerović:

I read Samuel Huntington’s article “The Clash of Civilization” a couple of years ago.⁷ I met him at Harvard and I asked him about Bosnia. He said in Bosnia we have a clash of three civilizations. I think it’s more the case of what Sigmund Freud called the narcissism of minor differences. It’s true that we have three religions, but before this war you could not tell the difference, not even if you knew the name, especially between Serbs and Croats. Sometimes even Muslims had names that sounded perfectly Slavic, and they are really Slavic. The language is exactly the same. They have the same customs. Even on Sunday morning you could not tell the difference because they didn’t visit churches too much before the war. If you use Bosnia as an example, I believe Huntington’s theory is very questionable.

Ackerman:

I want to emphasize how puzzling this war is. This place is not the site of a struggle of civilizations. The Muslims, after all, were secular, urban, sophisticated people. To think of this as a war of civilizations from the Islamic side or from the Christian, given the limited cultural difference between the Orthodox Church and the Roman Catholic Church, rings peculiar. It is true that there's been this bloody war. It has to be explained, but I'm not convinced that the explanation is to be found through appeal toward like "civilization" or "ethnic group."

Question:

Some of you have a different notion of leadership. Yael Tamir brought it up nicely when she asked who can represent whom, under what circumstances, with what and plays which role with regard to the outside world? One of the many lessons the Yugoslav conflict taught the international community was the enormous dilemma—with whom to deal under which circumstances for which purposes. Obviously for those who were on the turf and were actually engaged in the act, they learned one lesson very quickly: Provide for a *fait accompli*, sue for a peace, and make yourself indispensable to deliver that peace. The international community managed to create the factors, and some who tried it are still in power. We have, in effect, created Milošević and Tudjman. How do you deal with this?

Cerović:

You know it's an even more complicated question than you put. It's not quite clear who's on the other side, on the side of the international community. It's a very vague concept. Where is international community? I do believe that it's essential to have a clear international authority and to make sure all sides in the region respect it. It's not only

Bosnia. For Bosnia it's very important to have in mind and watch all the time Serbia and Croatia as well, because they are still part of the game to a large extent. So, in the first place, we need strong international authority. I believe that the best representation of the so-called international community would be the United States.

It would be also very important not to have any sort of dispute about what should be done, because all sides in the conflict are very skillful in exploiting the differences on the part of the international community. It's also very important for them to know, to be sure, to get the clear message that there will be no reconsideration of the Dayton arrangement or whatever arrangement is on the table. It is what it is. Because they may hope to get some different options in a year or two.

To answer your question directly, I am afraid that it's a bit too late now. It's really true that the international community, whatever it is, had to deal with these guys. They are already created, you just cannot replace them. During the elections in Serbia, a lot of people in the opposition blamed you in this country and the other Western countries for supporting Milošević, for actually hoping that the party of Milošević will win. I believe that this is not true. Accepting Milošević as a partner in negotiations should not mean accepting him as a long-term partner. The international community should not give up the search for more credible partners and it should always try to support the liberal opposition in Serbia.

Mertus:

I think the regionalization of internal affairs in the new Bosnia is very important. There are elements in the Dayton Peace Accord that call for the Council of Europe, the OSCE, even UNESCO [the UN Educational, Scientific, and Cultural Organization] to

play some role in the constitutional accord. For example, Dayton creates the Office of Human Rights Ombudsman and, in its nascent stages, the ombudsman is to be an outsider. That could be one part of the answer to your question. Based on my own observations, within the area these kinds of regional interventions are seen as legitimate. One of the better features of Dayton appears to be some of the involvement by regional and international bodies in the internal affairs of Bosnia.

Question:

I am delighted to have the opportunity to ask a question that people on the ground in Bosnia have asked me when I travel. They look at all these UN Protection Force soldiers and they look at the international accord soldiers and they ask me, “What are all these foreigners doing here? Who brought them here? Under what international or other authority?” If I may add, in trying to answer the question, what are the differences in this kind of heavily armed intervention from what the Soviets did in Hungary, Afghanistan, and Czechoslovakia in 1968, which we all condemned?

Szasz:

As a career UN lawyer—even though no longer in service—I suppose I should answer this. The UN force, UNPROFOR, was there by decision of the Security Council, originally under Chapter VI and later under Chapter VII of the UN Charter. The Security Council is the organ created by the world community to deploy the force of that community. That is set out in the UN Charter, a treaty to which almost all states are parties. So, the distinction between UN forces in Bosnia, and Soviet intervention in Hungary or U.S. intervention in Panama, is that the former happened by decisions of the international community and the latter often against its opposition. It is by no means easy

to achieve a decision for the UN to deploy forces, because each of the five permanent members of the Security Council can cast a veto. This means that a minimum of 60 percent of the Council members must agree and no permanent member disagree that international intervention is necessary. Incidentally, UNPROFOR was originally sent to Bosnia as part of an altruistic effort, to make it possible for UN agencies and others to deliver humanitarian aid at a time when Sarajevo airport and most roads throughout the country were closed. The UN troops did achieve that, most of the time; sufficient aid moved so as to prevent starvation or deaths due to exposure or illness.

As for IFOR, that is a NATO force. The Dayton Accord, to which all the Bosnian factions are also parties, specified that if such an international force were established it would have a right to operate in Bosnia. All the Bosnian leaders agreed to that, and this constituted entirely adequate legal authority.

As to the moral authority of the international community to do what they did in Bosnia, it is clear that there were difficulties. But for the most part these were ones of inaction—when sometimes UNPROFOR or later IFOR did not intervene, perhaps because there was no mandate or, more often, because their actual strength did not permit it.

Ackerman:

I do want to suggest the relevance of a strategic point of view. Yugoslavia is the classic case of a local, regional power controlled by the Serbs who are surrounded by a large number of lesser powers. But if the Albanians, Slovenes, and Croats had gotten together, they would have had internal balance that would have checked the Serbs. So rather than talk about ethnic groups, what we have here is an effort by the Serbs to pick off the smaller powers one at a

time. This is an absolutely standard scenario. For the Serbs to succeed, each of the smaller units had to be picked off one at a time. And so the justification, insofar as there is one and it's very different from Hungary, is that because of the clever exploitation by the Serb entity of the "beggar thy neighbor" tendencies of the surrounding minor powers, there was a fundamental military imbalance which required a third-party intervention. So, I don't think that the analogy to Hungary is apt although the moral problem of why these local powers didn't get together is one of the unasked questions here.

Mertus:

I want to make a brief comment about why the smaller entities didn't get together. We could talk about that for a long time. But there was a crucial moment when Milošević and his supporters caused the revocation of the autonomous constitutional status of Vojvodina and Kosovo, and, at the same time, Vojvodina and Kosovo maintained their seat on the rotating presidency. Through this move, Belgrade effectively gained control over two additional seats in the presidency. That was one crucial moment we must remember in considering why smaller entities did not get together.

Question:

If I could just add something to what Paul Szasz said without being, I hope, in any way presumptuous, not being either a lawyer or especially a UN lawyer, but with the amateur eye of a policy specialist. There are a couple of important things to add. The first is that the mechanism of IFOR was coined under a Security Council resolution under Chapter VII of the UN Charter, with enforcement powers. In the case of UNPROFOR and IFOR, the decision was taken by the Security Council acting within its power in the face of what it determined to

be a threat to international peace and security. And under Chapter VII of the UN Charter, whenever the Security Council determines there is a threat to international peace and security, effectively it can make a law, at least from the perspective of a policy specialist rather than a lawyer. But what you get, both in the case of the former Yugoslavia and in a series of other cases, such as Somalia and Liberia in the course of the 1990s, is a situation in which the old principle of what constituted a threat to international peace and security—as what one state might do to another—shifted to a situation where there's a perceived responsibility to act based on what may be largely or partially internal situations. It was the decision of the Security Council's heads of state and governments at the January 1992 summit to re-interpret what constituted a threat to international peace and security. This provides both the political and, crucially, the legal basis for the steps of Security Council resolutions dealing with the former Yugoslavia and a number of other interventions.

Ackerman:

Well said for a lay person.

War Crimes and the Political Future of Bosnia and Herzegovina

Panelists:

Antonio Cassese, Former president, International Criminal Tribunal for the Former Yugoslavia

Theodor Meron, Professor, New York University School of Law

Ruti Teitel, Professor, New York Law School

W. Michael Reisman, *Moderator*, Myres S. McDougal Professor, Yale Law School

W. Michael Reisman:

Our panel is entitled “War Crimes and the Political Future of Bosnia and Herzegovina.” This poses a rather heavy obligation on the war crimes tribunal. Ordinarily, we expect courts simply to do justice. Here, manifestly, an explicit political objective has been imposed as well—that is, the relationship between this exercise in international criminal justice and the political future of Bosnia and Herzegovina. In this respect, the designers of this conference have picked out one of the critical questions that international lawyers and students of diplomacy have been asking themselves about the fascinating experiment in The Hague.

Antonio Cassese:

My comments will be divided into two parts. First, the Dayton Agreement and the International Criminal Tribunal for the former Yugoslavia—a short and sketchy assessment of the Dayton Agreement. Second, some modest reflections on the future of the tribunal and its possible role in Bosnia and Herzegovina.

It may surprise you but, at least as far as the International Criminal Tribunal for the former Yugoslavia is concerned, the Dayton Agreement was a major turning point, a real breakthrough, quite a positive event for us. Before the agreement was made, I remem-

ber, we at The Hague feared some sort of deal might be struck by the negotiating parties which would thwart our job, in particular by providing some sort of amnesty for alleged war criminals. In other words we feared that realpolitik might prevail over the interests and demands of justice. Quite the contrary is true.

Let me list seven points which, to my mind, show that the Dayton Agreement was very important to us.

First, even before the agreement was negotiated, something important happened. On August 28, 1995, an agreement was signed by Milošević, Karadžić, Mladić, and others to the effect that the delegation going to Dayton should consist of six people; three appointed by Belgrade and three by Pale—a joint delegation of Bosnian Serbs and Serbs. The delegation would be chaired by Milošević. The three men going there on behalf of Pale, the Bosnian Serbs, were Karadžić, Mladić, and Krajišnik. A few days after this agreement was made and signed by all the people concerned it became clear that it could not be implemented. Why? Because of the arrest warrants. Because we immediately sent arrest warrants from The Hague to Washington, D.C., to Paris, to Geneva, to Bern, and to London. The message we sent was very clear to all the authorities concerned: if two members of the delegation, Karadžić and Mladić, set foot on your territory they must be arrested. So the first important achievement was the exclusion of those two indictees, Karadžić and Mladić, from the negotiating process. I would call this an extrajudicial effect of our activity. They were not arrested but at least they were excluded from any involvement in the negotiations in Dayton.

Second, and I move on now to the actual text of the Dayton Agreement, no amnesty

was provided for people charged with war crimes or crimes against humanity.

Third, the obligation to cooperate with our tribunal, an obligation laid down in various Security Council resolutions taken under Chapter VII of the UN Charter and therefore binding upon all states, was restated and even spelled out in the Dayton Agreement.

Fourth, this obligation was extended to two entities that previously were not directly bound by it, namely the Federation of Bosnia and Herzegovina and the Republika Srpska. One might argue that, formally speaking, the two entities cannot be bound by Security Council resolutions, which can only address states, whether members or nonmembers of the UN. However, a better view is that the Security Council does have the power to address decisions to nonstate entities.

Fifth, in the Dayton Agreement, Croatia undertook to ensure respect for all obligations by the Bosnian Croats. In other words, the Republic of Croatia became a guarantor of compliance with the Dayton Agreement by Bosnian Croats. The Federal Republic of Yugoslavia did the same with regard to the Republika Srpska. Therefore, two sovereign states undertook to ensure respect by the two entities for international obligations. If you look at the Dayton Agreement, you will find clear letters signed by Foreign Minister Granić of Croatia and Slobodan Milošević of the Federal Republic of Yugoslavia—letters sent by each of them to the various foreign ministers of the Contact Group states—in which they formally undertake to make sure that these two entities will comply with their international obligations. Any breach of those international obligations by the federation or Republika Srpska also entails a breach of an international obligation by Croatia or the Federal Republic of Yugoslavia. This is quite new.

Sixth, a novel feature of the Dayton Agreement is in Annex 4—the constitution of Bosnia and Herzegovina. Article 9 of the constitution provides for the removal from public office of people who have been indicted by the tribunal, who have failed to comply with an order to appear before the tribunal, or who are serving a sentence imposed by the tribunal. This applies in particular to Karadžić and Mladić. This is, as I say, quite new. This is a crucial provision intended to strengthen, to bolster, the Security Council resolution establishing the tribunal.

Seventh, probably the most crucial characteristic of the Dayton Agreement is that for the first time all these obligations were accompanied, and beefed up, by an important enforcement mechanism that was quite new. The commander of IFOR, as well as the high representative, Carl Bildt, were given the exceptional power to trigger the reimposition of sanctions against Belgrade and Pale in case of breach of the Dayton Agreement—the sanctions which had been suspended by the Security Council. One paragraph of the preamble to Security Council resolution 1022, which gave this extraordinary power, specified that the obligation to cooperate with the tribunal was one of the major undertakings of the parties. It was clear when the Security Council passed Resolution 1022 that they regarded cooperation with our tribunal as a crucial feature of the Dayton Agreement. As a consequence, a clear message was sent to Admiral Leighton Smith, who was then commander of IFOR, as well as to Carl Bildt, that they were free to trigger sanctions. To the best of my knowledge, this was the first time in the history of the Security Council that sanctions were not subject to veto because they could be triggered by those two people within five days of the submission of a letter.

A wonderful agreement. One flaw: we were critical before and after the Dayton Agreement of the fact that no police duties were granted to IFOR. IFOR, as you know, has decided that they should not act as, I use the French expression, *police judiciaire*, as a judicial police, as an enforcement agency for our tribunal. This was a major flaw. But if you look at the whole Dayton Agreement, you conclude that it really was quite an important piece of international legislation.

What happened after that? Well, most of the provisions I have just mentioned have not been implemented. Because of my judicial duties I will refrain here from speculating on why Dayton was so meritorious and supportive of the tribunal. Why realpolitik was set aside in the interest of justice and why then afterwards the Dayton Agreement was never implemented. Why this cleavage between a promise, a wonderful promise and the failure to keep this promise. I will leave these questions open and move on to the second part of my presentation.

The title could be “history repeats itself.” Faced with the inaction of IFOR and of the various countries involved, and, in particular, the failure of the three states and the two entities of the former Yugoslavia to execute arrest warrants, we thought that I, as president of the tribunal, should contact the various countries and leading personalities of the former Yugoslavia. I went to Zagreb, to Sarajevo, and to Belgrade to contact foreign ministers, ministers of justice, and so on.

In Croatia and in the Federal Republic of Yugoslavia, I said, “Why don’t you arrest all these indictees? These people have been indicted by our tribunal. You should arrest them and hand them over to us.” They said, “No, we can’t. You must understand our position. These people are regarded by our population as national heroes. How can we arrest our heroes? There would be rebellion if we tried to arrest and surrender them to you.”

Then I responded, “What you are saying reminds me of what happened in 1919–1920 in Germany. The Treaty of Versailles provided explicitly for the surrender by Germany to the Allies of all those charged with serious crimes against humanity or war crimes. When the Allies asked the Germans to arrest and surrender those people so that they could be brought to trial, the Germans replied, ‘This is impossible, because all the names on your list’—a list prepared by the British, the Americans, and the French—‘are national heroes to the German public. We can’t give them to you, we can only try to bring them to trial here in Germany.’”

As you know, eventually they were tried by the Supreme Court of Germany sitting in Leipzig—the Leipzig Court. What was the result? The Allies had established a list of 890 people allegedly responsible for appalling war crimes. Faced with German opposition and German refusal to deliver those people, the Allies reduced their list to 46. Only 11 of 46 were brought to trial. Six were convicted and five were acquitted. Among those convicted, only two got the highest penalty, which was four years’ imprisonment. It was a travesty of justice.

Whenever you are faced with the argument, “We can’t arrest our people and give them to you. We should try them ourselves. Give us your evidence and we will try to bring them to trial,” it’s clear that this is a way of circumventing the demands of international justice. I don’t claim that states should not try people indicted before their own national courts. The international court does not have exclusive jurisdiction. Unlike the Nuremberg tribunal, we have concurrent jurisdiction with the national courts. War crimes or crimes against humanity can be tried both by us and by courts, say, in Zagreb, in Sarajevo, or in Belgrade. However, we in The Hague should try the leaders and in particular, deal with what we call “system criminalities.” Systematic war

crimes are large-scale war crimes where the crime is not the result of the propensity for crime or the viciousness of a particular individual, but is the result of a whole policy: for example, where mass rapes are perpetrated with the acquiescence of the policymakers or where the policymakers, the leaders, issue orders to the effect that such crimes should be committed.

What is the proper role of the tribunal in the future? First, I think that we would like to act as a moral compass and indicate how people taking part in armed hostilities, in civil wars or international conflicts, should behave, with the result that if they misbehave they can be brought to justice. This is what we are trying to do at The Hague. In this respect let me quote a few lines from a judgment delivered after World War II by a Dutch court against a Nazi war criminal, the famous *Rauter* case.⁸ The court said that the task of the Dutch court is not confined to the punishment of infringements of Netherlands justice but is rather to give expression to the sense of justice of the community of nations which has been most deeply shocked by such crimes. I hope it's not an illusion "to give expression to the sense of justice of the community of nations." I think this is a crucial goal because it is a message to the international community that there will be no impunity for future leaders.

Second, our tribunal can play a useful pedagogical role. It is my impression talking to people in the former Yugoslavia that many civilians and even military people are either ignorant of what happened or refuse to admit that those atrocities were committed. Therefore the tribunal can play a pedagogical role in educating people, trying to open the minds of people, showing the people of the former Yugoslavia, the whole civilian population, that crimes were committed not by groups but by individuals. We can try to do what was done in Germany. It was called

de-Nazification. You know that in Germany this happened slowly. Young people were taken to Auschwitz and other concentration camps. They were shown films. They were taught what happened at school. The tribunal could be the first step in this direction, in educating people, trying to explain to people what happened.

Theodor Meron:

In the fall of 1997 the judges of the Hague criminal tribunal will have completed their four-year terms and another panel of judges will be elected. Our most distinguished president of the tribunal, Antonio Cassese, recently stated that if by September 1997, top and middle-level persons who have been indicted are not arrested and delivered up, the Hague tribunal might have to propose to the Security Council to terminate its mandate.

To hear such words from the most distinguished advocate of the tribunal is, of course, a very sad occasion. But I feel that his frank statement was also needed. Perhaps we need some kind of a shock treatment to determine where we all stand on the whole matter of the international criminal tribunal. We know that the tribunal was established by the Security Council to deal with deliberate and almost unprecedented violations of international human rights and humanitarian law. Of the 74 persons indicted for atrocities in the former Yugoslavia, one is currently being tried, and six are awaiting trial. None in custody, however, belongs to the category of top military officers or political officials who gave the key orders.

What were the objectives for which the tribunal was established? The first was to assign guilt to individual responsible persons, to decollectivize guilt and thus serve the process of peacemaking. Second, we hoped to establish some kind of deterrence against violations in the former Yugoslavia

and elsewhere. The tribunal was established while the conflict was going on. In contrast to Nuremberg, there was still a prospect of having an impact in Yugoslavia itself. The third goal was a normative one, to prevent the perception that even the gravest violations of international humanitarian law can go unpunished.

From its inception, the tribunal has been plagued by lack of cooperation from Belgrade, Pale, and Zagreb. Access to sites where atrocities were committed has been obstructed, hindering collection of perishable evidence. Witnesses, even some victims, have withheld their testimony from the investigators and the tribunal. The fact that not a single witness for the prosecution in the current Tadic case still lives in territory under the control of either Pale or Zagreb speaks to the ever-present fear of reprisal. I agree here with my friend Nino Cassese that the Dayton Agreement contains fairly robust language concerning compliance with orders of the tribunal, including the duty to surrender to the tribunal those under indictment.

Enforcement is quite a different matter, however. Two possibilities were considered: One was diplomatic, the other was military. Let us take the diplomatic first. Security Council Resolution 1022 of November 22, 1995, suspended sanctions against Belgrade and Pale but provided conditions for automatic reinstatement of sanctions within five days of the submission of a report of non-compliance, including in this case, noncooperation with the orders of the tribunal. Such a report could have been submitted either by Carl Bildt or by the commander of IFOR. As powerful a tool as this could have been, the fact is that very recently the Security Council rescinded the possibility of automatic reinstatement of sanctions. We do not have this tool any longer.

The other option was military. IFOR was granted, at least on paper, sufficient powers to arrest the principal indicted persons.

Given the military muscle that IFOR now has in Bosnia, it is a disgrace that the principal indictees have not been detained by IFOR, let alone delivered up to the Hague tribunal. Instead, they thumb their noses at the international community by continuing to appear in public places. I believe that they could have been captured without serious casualties, especially with the help of the intelligence community. I believe that the risk was well worth taking because Dayton has reversed neither the effective partition of Bosnia and Herzegovina nor Serb control over territory held at the end of the war. The Bosnian Serb leaders Mladić and Karadžić continue to be sheltered by Pale and I do not see any change on that.

A realistic assessment of the tribunal's future work can only be based on the trial of Tadic and the others in custody. Now, whatever their ethnicity, the number of persons being tried is not conclusive evidence of success or failure. But numbers, along with the seniority and responsibility of individual offenders, can produce a critical mass, one which I believe the tribunal has not yet reached. If IFOR could not carry out arrests with the firepower of 60,000 soldiers on the ground in the former Yugoslavia, surely no arrests will be attempted as IFOR dwindles and ultimately withdraws.

But there also have been some achievements. We hoped that the tribunal, by de-collectivizing guilt and individualizing responsibility, would aid the peace process. The tribunal's critics argued that the tribunal would in fact obstruct peace negotiations. How could one expect the leading actors in the peace-making process to agree to a formula which would compel them to leave their positions of responsibility and perhaps be targets of indictments and prosecutions? Others argued that this process is necessary to decollectivize guilt.

The irony is that both sides proved wrong. Because of the international commu-

nity's reluctance to implement its decisions, the tribunal has had no major impact either positive or negative on peace-making. I accept this as a general statement. But I agree with Nino Cassese, that the process had some positive effects on peace-making. There's no question that Karadžić's exclusion from Dayton allowed Milošević to accept aspects of the agreement, including the absence of an amnesty clause, that Karadžić himself would likely have rejected. There is some anecdotal evidence or suggestion that indictments against the Krajina Serbs may have put an end to continuation of rocket attacks on Zagreb. Yet the gravest atrocities of Srebrenica happened in July 1995 when the tribunal was fully operational and after the indictments of Mladić and Karadžić.

Paradoxically, while the main Yugoslav-related goals have not been achieved, the non-Yugoslav-related underlying goals, the normative goals, have seen some most significant achievements.

First, on the normative plane, without the establishment of the tribunal, the perception of impunity would have been confirmed.

Second, the tribunal has greatly advanced the state of international humanitarian and criminal law, in the Tadic case and elsewhere. The appeals chamber decision on jurisdictional issues is of tremendous importance for the development of international humanitarian law for both international and internal armed conflict.⁹ The tribunal confirmed the criminalization of rape on the international plane.

Third, the persons indicted by the tribunal are now branded with the mark of Cain, which serves as a measure of retribution. It instills in them a fear of travel abroad, for example, and the possibility that one day they may be arrested by either the international community or by adversary parties.

Fourth, without the developments on the former Yugoslavia, the Rwanda tribunal would not have been established.

Fifth, the tribunal triggered an unprecedented interest in the establishment of a standing international criminal court.

Six, it brought about the revival of international humanitarian law and encouraged many states to adopt national statutes granting competence to their national courts over violations of international humanitarian law and to negotiate agreements, for the first time ever in history, allowing for extradition of indicted persons not to another state but to the international tribunal.

Seventh, the evidence collected can one day be used by a national jurisdiction.

Eighth, the international investigation and prosecution of war crimes has proved feasible and credible.

And ninth, the tribunal prepared a comprehensive set of rules of evidence and practice which, in the words of the tribunal, are the first code of international criminal procedure.

Perhaps the realization that the tribunal's days may be numbered unless indicted leaders and perpetrators are arrested and delivered up to The Hague will shock the international community into action. Ending the tribunal before it has tried a substantial number of major culprits would be immensely embarrassing both to the international community and to the United States. It is this embarrassment more than anything else that can lend the tribunal a longer lease on its life. The tribunal should not be terminated before concluding the existing cases, any additional cases, and, where possible, more expeditiously issuing indictments of major, I emphasize, major culprits.

Unless custody over major persons is rapidly obtained, serious thought must be given to how best to insure that, through an appropriate mechanism, indicted persons

arrested in the future will in fact stand trial. One option is to devise a way of reconvening the tribunal. Another option is to encourage prosecutions by national courts since all states already have the competence to prosecute grave breaches of the Geneva Conventions. To facilitate both options, the prosecutors should organize the material in such a way as to facilitate access of national prosecutions to that material. Of course it is possible that in a few years Belgrade, Zagreb, or Pale might themselves have more responsible leaders, more credible systems of criminal justice, and might be ready to prosecute some of those indicted by the tribunal before their own courts. The prosecution could aid such efforts by also preparing a report of the historical record which would be analogous to a report of a truth commission.

Despite the difficulties encountered, it might be necessary to follow models similar to that of the Hague tribunal in the future. But from now on, we must more effectively support our international criminal tribunals with the necessary muscle, with the necessary police power. Just as there can be no national justice without police, there can be no effective international justice without arrests, subpoenas, investigations, and a reliable system of enforcement. Our inability to create such mechanisms, whether for other criminal tribunals or for the proposed permanent international criminal court, threatens all efforts to establish a system of international criminal justice. But we must not give up in despair.

Ruti Teitel:

I had the opportunity to attend the confirmation of the indictments of the Bosnian Serb leaders Radovan Karadžić and General Mladić. An image of the courtroom in The Hague seemed to define the nature of justice propounded there, as well as the tribunal's hopes and political circumstances. This

courtroom was entirely covered, wrapped, in bulletproof glass. There was only one courtroom at The Hague and even with the very few suspects in custody it had to interrupt its proceedings when they had the confirmation of the indictments. They had to interrupt the Tadic trial, because there was only one courtroom wrapped in bulletproof glass.

This is justice in a vacuum. It's really the rule of law in a vacuum, law in a bubble. It's not the first time that perpetrators have been protected by bulletproof glass. The case of Adolf Eichmann was notorious because of the concern that the victims would take some form of vengeance. Here, the entire court proceedings are vulnerable. The setting reminds us of the fact that these proceedings began in very unusual circumstances and suggests that the rule of law, the nature of justice here is extraordinary, transitional, and entirely different from what we've seen.

Despite similarities to Nuremberg and the World War II trials, there are signal differences. The purpose of the project was for justice to bring about peace. From the very beginning at the Hague tribunal, the powers invoked were Security Council powers, powers to preserve the peace, Chapter VII powers. After evidence of widespread persecution was exposed by the media, and three years of warnings of violations of humanitarian law, the Security Council established a commission of experts to investigate. The commission concluded that there was such evidence of ethnic persecution that a court of law was likely to find this to be genocide. We know about the massacres, torture, rape, destruction of civilian property, and terrorizing of people. But the idea that a court would be used to establish peace was extraordinary. It doesn't follow our intuitions. It was the first time that the Security Council has done something of this sort.

How does adjudication bring about international peace and security? This is a different order than that pursued at Nuremberg,

where first there was peace and then there was justice. It is entirely different from the postwar trials. How was the tribunal to do this? Pursuing justice before peace meant that the tribunal lacked the power that comes with traditional victors' justice. It doesn't necessarily have custody over the accused. It doesn't have access to the evidence. Though the Dayton Accord, as the president of the tribunal noted, obligates signatories to support the tribunal and to hand over suspected war criminals, in fact very little support has been given. The arrest powers are not explicitly stated. As we saw, despite repeated calls for the arrest of Serbian leaders, even when they were in proximity, NATO did its best to avoid confrontation.

So the inaction and the growing gap only serve to underscore that this was rule of law in a bubble. As tribunal president Cassese noted in a speech to the General Assembly, "the tribunal was a giant without arms or legs and the artificial limbs had to be the state authorities." The tribunal couldn't operate without their help. But how was that to happen? What was the expected relation between justice and the peace?

The central purpose, as Theodor Meron noted, was deterrence. This is a traditional purpose of criminal law and certainly has been a traditional purpose of war crimes trials. But massacres committed well after the tribunal's establishment certainly cast some doubt as to its effectiveness regarding deterrence. Beyond deterrence there was a much more ambitious hope of bringing on peace, the possibility that the tribunal, by individualizing responsibility, could break the cycle of ethnic retribution, or ethnic collectivized responsibility, collective guilt. Absolving nations of collective guilt through the attribution of individual responsibility could break the cycle.

War crimes trials allow this transition to peace and reconciliation from what was said

to be perpetual ethnic conflict. The tribunal has focused on ethnic cleansing. This term defines the Yugoslav conflict and certainly the tribunal has indicted on this basis. The indictments of Serb leaders for the massacres in Srebrenica say that there is evidence of genocidal intent to destroy ethnic and religious groups—ethnic persecution.

Ethnic persecution is being prosecuted as an international war crime, and this is part of a new normative understanding of accountability. Having an international tribunal prosecuting internal ethnic persecution is a move away from the traditional paradigm and signals an expansive and ambitious effort of international humanitarian law. A state's persecution of its own citizens is a crime in the international sphere. This ambitious humanitarian project is being frustrated by the cold peace. Most of those responsible for war crimes remain at large. The trial at The Hague is far away from the scene of the crime. What has ended up happening is that the processes of the tribunal have been largely limited to the processes of indictment.

At Nuremberg there was the possibility of trial in absentia. This is forbidden by the rules at The Hague. When the indictees are not present, the Tribunal cannot go forward other than to confirm and reconfirm indictments, as it has done. These public confirmation and reconfirmation proceedings do substitute in some small way for trials—they offer some form of public condemnation. Their main purpose is to express condemnation and to establish wrongdoing. The tribunal has certainly done this. These indictments may end up being the tribunal's only sanction because of the lack of political support.

By pursuing the truth about atrocities in the region, the tribunal has said that it is contributing to the effort to move toward peace. The Clinton administration has also

underscored, as Assistant Secretary of State John Shattuck has said, that establishing the truth about what happened in Bosnia and Croatia is essential not just to justice but to peace. Whether truth can in fact bring on peace is a debatable question. Despite the analogies made to the tribunal functioning as a truth commission, truth commissions throughout Latin America and South Africa followed *after* peace negotiations. They were critical features of successful transitions, but they, alone, did not bring about the peace. The traditional pattern is reversed. Just as war crimes trials have traditionally followed peace, it was not truth that brought about peace but rather peace that enabled the search for the truth.

Proceedings under these circumstances do not bring about the most expansive truth-seeking. Criminal proceedings are not aimed at establishing the truth of a contested event, but rather ascribe individual responsibility and pass judgment. Individuals should never be prosecuted simply as a means to establish the truth. An indictment is not a conviction, and justice demands a presumption of innocence. Historical inquiry in the region requires a broader lens than that of the individual trial. If truth were the UN's goal, the better course might well have been to continue the mission of the commission of experts in 1993.

I want to address a profound concern about the story being told by the tribunal of ethnic persecution. The story of an ancient and intractable enmity that can only be broken by individual trials offers the West a rationale for non-intervention. Traditionally war crimes trials have told a story that rationalized the victors' military policy and justified the victors' military intervention. The Hague tribunal makes the case for another sort of military policy: non-intervention.

Justice is seemingly pulled out of the political. The lesson of this tribunal is of

eternal atrocities, of justice without victors and without heroes. Instead there is a cycle of ethnic persecution, of essential perpetrators and victims. To the extent that the tribunal advances the normative function of condemning ethnic persecution, it appears to do so from a perspective detached from the struggle, that of an international tribunal presided over by nonvictors and neutrals. Within the international human rights community, this neutrality is thought to render The Hague superior to former war crimes trials.

Though the tribunal may appear imperious to the challenges traditionally leveled at victors' justice, this does not absolve the UN of grave questions of moral responsibility. Non-intervention does not leave the UN innocent. Rather, it is the failure to intervene which leaves the UN in moral question. This tribunal and these trials were convened during times of conflict and ongoing persecution. It was the UN's own creation of the safe havens that drew Muslims and Croats into concentrated enclaves, and these enclaves appear to have facilitated a significant part of the genocide that the tribunal now adjudicates.

This is a crime of omission, and, after Nuremberg, raises important questions of international criminal responsibility. After the Srebrenica safe haven massacres, there is a deep interest in holding public indictment proceedings to ascribe responsibility to Serbian leaders. Their continued absence from the courtroom, as well the lack of concern about their arrest, seems only to confirm a craven international neutrality.

Consider on a more positive note, the liberal hope that rule of law will somehow triumph despite the political vacuum. That despite the lack of intervention by the international community, somehow these normative constructions by an international law of universality, of crimes against humanity, would somehow rise above the political. But

what is the aim? Can we accept the more limited nature of the tribunal's justice?

I want to suggest that the aim is transitional. Extraordinary transitional contexts where national responses are impossible—such as in the former Yugoslavia and in Rwanda—justify an international tribunal of this sort. When the rule of law is restored, I propose that the indictments should be turned over to the effective states. The message of ethnic reconciliation is best enforced by pluralistic states committed to the liberal principles of dignity and equality under the law. In the meantime, a central aim of international criminal jurisdiction should be to aid in that transition.

Within the international human rights community, as Theodor Meron noted, there are those who believe that the tribunal can bring us closer to a permanent international criminal court. Even those opposing a permanent court might very well support an international criminal tribunal along the lines of the Hague tribunal—a court that would prosecute only the gravest offenses and would fill in only where the national systems of justice have failed. An international tribunal that is explicitly transitional, that will adjudicate justice only under those circumstances. Understood that way, the tribunal's carefully drawn indictments should be understood as bound and contingent within this political context and supported as a sort of global law that transcends the brutality of local power, to shore up the rule of law on an extraordinary basis.

W. Michael Reisman:

This is a very painful panel to listen to. It is hardly a celebration of the Hague tribunal, despite the fact that two of the three speakers have made a major investment in and are deeply committed to it. It's doubly ironic because this difficult appraisal is taking place in the Yale Law School, which was the

cradle for the concept of the Genocide Convention and of much of the modern law of armed conflict. Raphael Lemkin was a lecturer here when he was lobbying the United Nations to create the crime of genocide and to have it transformed into an international delict in the Genocide Convention.

The three speakers present a conflict of two fundamental conceptions, between which the tribunal has become the casualty. One of the conceptions is a pragmatic approach to international politics, which acknowledges that there will be much violence and that the great democratic states, which like to imagine that they provide the conscience or the platform for conscience in the world, have a limited capacity to mobilize their populations to bring about changes. As a result, the pragmatic approach seeks to secure management of conflict, a reordering of systems that have been broken up, and is quite willing to make deals that would be viewed as morally unpleasant. The pragmatic approach would look with satisfaction on the end of the Israeli-Palestinian conflict and would overlook the fact that Yasir Arafat has been raised from potential war criminal to international statesman. These are the prices of securing peace in this vision.

The other conception of international politics is one which is juridical, and believes that the fundamental values of law as prescribed by the international legal process can be effectively applied. If they are effectively applied they will transform the international system from the savagery of its current status to something approximating a developed and orderly domestic system. From the standpoint of the juridical approach, a war crimes tribunal with arms and legs that would make it effective, is indispensable.

Now it is quite clear that the Yugoslav tribunal was a product of the first conception, the more political conception. It was

designed, as Ruti Teitel and Judge Cassese pointed out, by the Security Council, operating under Chapter VII. It was viewed as something that would be a tool toward facilitating a peace. There was no long-term consideration of a larger purpose. At the same time, it recruited outstanding jurists, like Judge Cassese, who committed themselves to making it effective and operated within the legal approach to international politics.

The two approaches continue to conflict, with resulting curious compromises. We celebrate Dayton because Dayton excluded Radovan Karadžić and seemed to delegitimize him. We overlook the fact that while the puppet has been delegitimized, the puppeteer, Mr. Milošević, goes to Dayton and is legitimized. We view this as an achievement.

IFOR's unwillingness to play the role that would make the tribunal effective is not a result of a lack of will or some knavery, but is simply a response of the makers of IFOR who operate with a different conception than jurists apply.

Ruti Teitel concludes on a theme that I detect in all three of our speakers, should we be using this technique in the future and under what circumstances? Theodor Meron brings in the issue of truth commissions. Ruti Teitel expressed some doubts about them.

We jurists have to ask whether we are securing enough of an advance of humanitarian law, the law of armed conflict and the reduction of the savagery of internal conflict, to warrant continuing these experiments. Is the application of this particular model under these circumstances actually damaging international law, or not advancing the peace? If so, we might better address our attention toward other options. This question requires us to think through the fundamental objectives of the re-establishment of peace in the international political context and the

actual ingredients that are necessary. Inevitably it will require us to design programs that take account of political realities including the limited generosity and limited mobilization capacities of the great democracies on whom the system of human dignity in the world will ultimately depend.

The choices that our speakers have posed to us as well as their very candid and self-searching appraisal provide us with a very good basis for opening the floor to the questions.

Question:

All three speakers finish up with the problem of the pedagogical impact and the needs for the future. In that connection, is it not time perhaps that we stop comparing the tribunals in The Hague and Rwanda to Nuremberg? The jurisdiction is different, it's wider. Nuremberg was set up for specifically named criminals. It was adequately funded. I think one is stretching too far by looking back. Instead, let us look at this as a new innovation, particularly in the manner in which the tribunals were created. That leads me to a much more serious issue.

Despite the decision of the Appeals Chamber in the *Tadic* case, there is controversy over the question of war crimes in non-international conflict. Most of the offenses with which both tribunals are burdened are what might be called more serious war crimes. But the crimes that we're talking about are also much nearer to genocide and crimes against humanity. The commission of inquiry extended the definition of crimes against humanity much along the lines that I think Ted Meron would have approved of, away from Nuremberg into a wider concept.

Is it not time, perhaps, in both international and non-international conflicts, that we drop the phrase "war crime" with its technical meaning and merely refer to crimes against humanity? This would make the whole issue of national and international

jurisdiction much easier and less controversial than it now is.

Cassese:

I agree that the two tribunals, the tribunals for the former Yugoslavia and for Rwanda, are totally different from Nuremberg. However, we constantly have to refer to Nuremberg because of the wealth of experience which was built up there. It's an important source of inspiration for us in many respects. Therefore, although we are absolutely aware of the novelty of our two tribunals, I think that the reference to Nuremberg is important if only because it was the first international tribunal which applied international law to leaders, prosecuted leaders and brought them to trial for war crimes, crimes against humanity and crimes against peace.

I also agree with you that "war crimes" is an obsolete expression. Actually we in the Appeals Chamber tried to drop a hint that it would be proper to refer to "serious violations of international humanitarian law." It's a bit long. War crimes is more concise and punchy. But if we refer to "serious violations of international humanitarian law" we would cover those categories which are normally defined as "war crimes." This would apply to both internal and international conflicts. I don't agree with you that, in regard to civil wars, we should always speak about crimes against humanity. I don't agree, because even for civil wars we should have two categories: serious violations of international humanitarian law and crimes against humanity.

Let me give you an example. You may have rape committed by a soldier or a rebel against a civilian—or say pillage, torture, or serious ill-treatment of civilians by one of the conflicting parties, either by the central army or by the rebels: these I would regard as serious violations of international humanitarian law. If, however, you have mass

rape, extensive use of prohibited weapons such as chemical weapons, carpet bombing, or what we now call ethnic cleansing, by one of the contending parties, then I would refer to crimes against humanity.

Meron:

On drawing too much on a comparison to Nuremberg, I largely agree. I usually prefer to refer to the Hague tribunal as the first truly international tribunal. Not the second tribunal or the first tribunal since Nuremberg. We must make those distinctions clear while, as Nino Cassese said, fully drawing on the normative heritage of Nuremberg on which we greatly depend.

Non-international armed conflicts, as you have pointed out, are the most numerous conflicts and also the most brutal, bloody, and cruel. I would hesitate accepting your suggestion that we should proceed exclusively, if I understood you correctly, along the prong of crimes against humanity. First, because crimes against humanity, as Nino Cassese hinted, require proof of systematic and large numbers of violations. Second, because in grave breaches of the Geneva Conventions, we already have not only the right of universal jurisdiction, in fact, we have a duty of third-party states to prosecute violations. So I would strongly urge, as I have been trying to do in my academic writings, expanding to non-international armed conflict, the fundamental norms of international humanitarian law which in the past have been considered as limited to international war. I think that the importance of crimes against humanity in that context will greatly be enhanced in the future.

Teitel:

The central distinction with Nuremberg is the political one. On the normative level, the statute of the Hague tribunal incorporates almost verbatim the definitions of war

crimes and crimes against humanity as found in the Nuremberg Charter. It lists them that way because the tribunal is not creating these now. Half a century later, we're not having the Nuremberg problem of codifying crimes against humanity for the first time. We have a statute where these have been previously defined. That is part of what the tribunal is saying: these are established understandings of humanitarian law. What is entirely different though, is the political context.

Reisman:

The process of making international humanitarian law necessarily involves a large national input. Since states have adapted, and are already applying, this notion of war crimes, it very important to keep that and to keep a category that has some degree of elasticity so that when tribunals are established they can adapt it to contemporary circumstances.

Question:

Judge Cassese, you mentioned that you felt that *realpolitik* was set aside in that there was no deal granting amnesty to war criminals. But there is a sense on the ground that there has been, indeed, a *de facto* amnesty. My question has three parts: Was *realpolitik* really set aside? Without a law-enforcement component, isn't criminal legislation merely inspirational at best? Second, isn't it a dangerous and troubling message to the players here and to the world community when criminal legislation has no law-enforcement component? And third, should the tribunal continue if no law-enforcement component is mandated?

Cassese:

Realpolitik was set aside at the normative level. This is crucial because it is very important that we have some legal commands or guidelines. We lawyers, progres-

sive lawyers, think it is important to at least have legal standards. Think of the Universal Declaration of Human Rights. I remember when it was adopted, many a statesman and *realpolitiker* said, "Well, this is just a scrap of paper, a list of wonderful provisions that will never be legally binding." Still it was of crucial importance. Why? Because of the normative value, because of the impact, and because it set in motion a whole legislative process leading then to the Covenant on Civil and Political Rights. And so, too, the establishment of international bodies which are designed to scrutinize, to some extent, compliance with international human rights standards, although with limited powers. It was a great achievement that in Dayton, states undertook clear commitments in regard to the prosecution and punishment of war criminals.

We, as lawyers and judges and people interested in international justice, should always remind diplomats and statesman and politicians, "You undertook those commitments, you must live up to them." I think it's crucial to have these important undertakings because it's a reminder to those people that if they fail to comply with those undertakings, they're breaching international law. We have been talking about the states of the former Yugoslavia, but let us remember, the United States, Great Britain, France, Germany, and Russia are all contracting parties to the Dayton Agreement, at least to the framework agreement, and they are all also duty bound to ensure respect for those commitments. So we should also remind these countries that they have a legal and moral obligation to take some action, some robust action.

Now the dangerous message. I agree with your second point. If no enforcement measures are implemented this is a dangerous message to the international community, of course; it's a very bad message to the international community, a signal of impunity.

Karadžić, Mladić, and others who have been accused of horrendous crimes without arrest, all those people laugh at the tribunal. The message they receive is, “Well we can go on enjoying impunity.” I know that. But I think that we should draw the following conclusion from this message: let us put more pressure on states so that they take some action. Tell them that if they go on with their inertia, with their inaction, not only will we end in failure, the Rwanda tribunal will also be a fiasco—Rwanda has even more problems than our tribunal—and, what is even worse, the permanent criminal court will never be established.

Faced with all these problems, what should we do? Let us try for one or two more years. We can’t afford the luxury of giving in because it would be such a huge setback for the whole international community. For 20 years we would have no international criminal court, no criminal justice. That’s why we all have to work together and fight so that in spite of the huge problems we are facing every day, in spite of the lack of cooperation of some states of the former Yugoslavia, we achieve something. The alternative is so dramatic, I would say tragic, that we have to carry on and do something.

I’m terribly frustrated every day in The Hague, and any small achievement to me is wonderful. I am fully aware that it is a moral duty for us to set aside our frustration and do whatever we can. It would be a real tragedy for the international community to say, “Yes, we have to acknowledge that we have been defeated, that realpolitik is getting the upper hand, and that these cold monsters, the sovereign states, will carry on with full impunity—the various military or political dictators will go on torturing, maiming, and massacring people without being punished.” That would be too bad. We can’t afford to say this.

Question:

I am a former Nuremberg prosecutor and I have been waiting for 50 years to listen to this kind of a discussion. But aren’t we too pessimistic? Aren’t we putting the blame perhaps in the wrong place?

From a long-range perspective, Nuremberg was a stepping stone in a process which began, in fact, after World War I. We tried to establish an international criminal court when the King of Yugoslavia was assassinated. That failed completely, despite efforts by the League of Nations. The only real step forward was after the atrocities of World War II, where public outrage at what had happened inspired the political leaders to establish the Nuremberg court. The Cold War meant that for 50 years nothing happened and the outrages continued. People talked and talked at the United Nations and elsewhere, and did nothing. Even when Iraq committed acts of aggression and every crime in the book—killing their own minorities, poison gas, everything else—we responded by imposing sanctions on the Iraqi people, who are mainly innocent, and letting the guilty go free.

What I see here is the absence of political leadership and political courage which really depends upon the people. When the people themselves are outraged sufficiently to prevent these crimes, there will be less need for the courts. Until the people themselves begin to influence the political leaders, and insist upon support for the international tribunal in Yugoslavia and for a permanent court, these crimes will continue. The fault will lie not only with the political leaders but also those who put them and keep them in power.

Question:

It's clear from the discussion today that enforcement represents the Achilles' heel. My question is, How do you exert personal jurisdiction over these criminal defendants? Has it been reduced to placing a bounty on their heads? In a previous statement, Judge Cassese mentioned education and exposure. Is that enough? Theodor Meron also looked to IFOR. Is that in the scope of their mandate? How do we get our hands on these people?

Meron:

How to secure custody, and how to advance enforcement, are the most difficult questions. I wish I had an answer. Had we an answer, perhaps things would have been better. We need a combination of strategies. We have on the ground a force as powerful as IFOR with terms and mandates which do allow the arrest of indicted persons and these strange, bizarre rules of engagement—suggesting that they can only be arrested when encountered, when met. It is very difficult for the international community, and for us in this country, to accept this as persuasive. I believe that we could have done more.

We have, over the years, a record of sending federal marshals to quite a few Latin American states, grabbing people very successfully, and bringing them to justice in the United States without major international repercussions. Couldn't we do it in Bosnia with 60,000 people, with the pride of the CIA, and our intelligence agencies there. Now grabbing people or bringing them to justice through IFOR would be just one such strategy. Another would be a more effective use of international sanctions and international economic aid.

The problem is that the parties to the conflict in Yugoslavia no longer believe that we will be ready to use this threat of economic aid to enforce the decisions of the tribunal. We must have a renewed credibility.

We don't have that. It's a question of leadership, it's a question of media. We need some kind of a coordinated strategy without giving up in despair, but without being too optimistic and rosy, should the present context continue.

Teitel:

With respect to the bounty proposal, it's not so far-fetched. Under American law there are all sorts of ways that people arrive in the courtroom. The closest international analogy is the Eichmann case. Eichmann was kidnapped in Buenos Aires. There was a huge debate in the UN, and at the end Golda Meir apologized to the representative of Argentina. Nevertheless, justice took its course. The idea was that the invasion of sovereignty was trivial compared to the crimes that had been committed. That's one illustration, a historical illustration.

Further, there is the question of the power of the indictment and whether the tribunal should continue to issue its indictments no matter what's going on on the ground. Then the matter is up to the states about what sanctions could relate to those indictments. We have a watch-list in our own country. Chief Prosecutor Richard Goldstone has referred to the indictees as "living in an open-air prison." We shouldn't be too attached to traditional understandings of the stigmatization, condemnation, and sanction possibilities that would apply in ordinary circumstances. We have to think of this as extraordinary and that states should show their cooperation with the tribunal and condition as many sanctions, whether economic or personal, to the defendant concerning their indicted status.

Question:

We have talked about the role of justice, peace, and reconciliation. Judge Cassese mentioned that the tribunal has concurrent jurisdiction. What is the role for domestic courts in the prosecution of war crimes, since the tribunal, even if we gather a lot of indictees, will never be able to try them all? And more generally, what is the role that national legal systems will play in reconstruction and reconciliation in the region?

Cassese:

The domestic courts might play a huge role, not only in the former Yugoslavia. May I remind you that the Geneva Conventions of 1949 contain crucial provisions for so-called universal jurisdiction, and also impose a duty upon all contracting parties to search for and bring to justice or extradite people responsible for serious breaches of the Geneva Conventions, what we would call "war crimes." The provisions granting a crucial role to domestic courts had not been applied until 1994. For the first time, as the result of the establishment of our tribunal, a Danish court decided to apply those provisions. Since then it has been applied by Swiss, Austrian, and German courts. They've become aware of the huge role they might fulfill by applying the Geneva Conventions. These cases are against people who have allegedly committed war crimes or crimes against humanity in the former Yugoslavia.

An even more crucial role could be played by the domestic courts of states of the former Yugoslavia. However, I'm afraid they're fairly reluctant to take on such a role because of what I said before about national heroes. After we issued international arrest warrants against three leading military people from Serbia-Montenegro who allegedly committed a massacre in Vukovar, Eastern Slavonia, by killing 200 people in a hospital,

I went to Belgrade to discuss various issues and I raised with the authorities there the question of executing those arrest warrants.

They said, "Oh no, we can't execute the warrants. We can't arrest them because they are our nationals, but we could ask your prosecutor to provide us the evidence."

I said, "Good, good, excellent idea. What are you going to do with the evidence?"

They said, "Then we can decide whether or not to start proceedings in our courts against those three people."

I said, "You don't need this evidence because you have international arrest warrants. You are duty bound to start proceedings without even getting the evidence. Also you already have your own evidence."

They never started any criminal proceedings against those three people. While domestic courts have been granted a huge role by international law, and their role has been acknowledged in our own statute which provides for concurrent jurisdiction, for political reasons they refrain from taking any action or instituting proceedings against these internationally indicted people.

As for Croatia, when the question of Croatia's admission to the Council of Europe was discussed, we in The Hague were requested by the Council of Europe to send a memo on the cooperation of Croatia with our tribunal. We insisted that Croatia should start criminal proceedings against people who allegedly, I say allegedly, committed war crimes or atrocities in Croatia during Operation Storm in Krajina, or other war crimes. We should insist that domestic courts cooperate with the international tribunal and take some action in this area.

Meron:

I regard the role of national prosecutions as absolutely vital. Even if international criminal courts become a tremendous suc-

cess, we will never be able to prosecute before international jurisdictions a large number of people who have committed atrocities.

One of the main problems is to have in place statutes that enable us to do so. In the United States we do not have in place adequate tools for prosecuting people committing atrocities abroad. There is a new law, the 1996 War Crimes Act.¹⁰ The State Department took a very positive role in suggesting that the bill be expanded to encompass, for example, violations of international humanitarian law committed in non-international armed conflicts, but this is not what Congress has adopted.

Turning to the relationship between truth commissions and criminal prosecutions, it seems to me that this is an important addition that must be supported. In South Africa, for example, prosecutions are now under way against people for apartheid-related atrocities where they have not fully cooperated with the Truth and Reconciliation Commission by coming forward, stating openly their involvement and the involvement of others, and asking for pardon. In those cases, they have been prosecuted. We need some kind of workable, efficient relationship in the future between truth commissions and national prosecutions.

Refugees, Peacekeeping, and Economic Reconstruction

Panelists:

Soren Jessen-Petersen, Former director,
UN High Commissioner for Refugees,
Liaison Office to the United Nations,
New York

James Schear, Deputy Assistant Secretary
of Defense for Peacekeeping and
Humanitarian Assistance

Alan Stolberg, Colonel, U.S. Army, and
Chief of the Europe/NATO Division
Plans and Policy Directorate,
U.S. European Command

Christine Wallich, Director for Bosnia
and Herzegovina, World Bank

Paul Dubinsky, *Moderator*, Assistant
Professor of Law, New York Law
School

Paul Dubinsky:

We have looked at the problems in administering criminal justice at the tribunal at The Hague with respect to the former Yugoslavia. Even the strongest supporters of the tribunal would say that administering criminal justice is at most a necessary, but not a sufficient condition for allowing reconstruction in the former Yugoslavia and the return of civil society to that area. That is the subject of this panel. There are as many as two million displaced persons. Very few have had the opportunity to return home. They face the complete interruption of normal economic life and infrastructure, dangerous and intolerable levels of unemployment, and a constant fear and danger that even the peace will be disrupted.

Let's begin with the problem of almost two million displaced persons and refugees and the strains that were placed on Dayton. What can we expect to achieve out of Dayton?

Soren Jessen-Petersen:

For the majority of more than two million refugees and displaced persons, return to their homes is a promise but not yet a reality. In this war, refugees were not a by-product of the war. Forcible displacement was the very goal of the war. Another goal of the war was to dehumanize relations, and make sure that people could never live together again. For some, the goal of the peace is to prevent voluntary return, and for others to force return. Caught in the middle, as always, are innocent refugees and displaced persons—men, women, and children.

Those who started and waged the war are still in power. They still pursue their goals of separation and forcible displacement. Those who started the war have not been brought before the war crimes tribunal in The Hague; they still run around freely; most of them are still in power; if they're not in power, they are certainly pulling the strings, sending very important messages to those who are holding office that they have the blessing, the authority, to conduct in peace what the war was all about.

Separation is still the goal pursued even after Dayton. Dayton talks about integration. The leaders are involved in separation. Dayton also talks about reconstruction. While the World Bank and others are trying to mobilize support for reconstruction, which is absolutely vital if we are to have any hope of seeing millions of refugees and displaced persons rebuild their lives, those in power are busy continuing the destruction that they didn't complete before Dayton was signed. We talk about threatening to withhold reconstruction aid. Those on the ground are not worried, because they are busy de-

stroying the places, the homes of those who still want and hope to go back.

The UN high commissioner for refugees was given the task in Annex VII of the Dayton Peace Agreement to bring back people and thereby reverse the goals of war. While Dayton has achieved a lot, the fundamental causes behind this war have not been resolved in the peace agreement.

What then is the result? What is the balance sheet of return after Dayton? In numbers and figures it was modest and disappointing. During the first 12 months after Dayton only 250,000 people returned to Bosnia. In any other circumstance this would be an impressive figure. Even in Bosnia, where everything is done to obstruct return, and reconstruction has still not picked up in a significant way, that a quarter of a million people have gone back is in many ways encouraging. However, they have all come back to *majority* areas. We have seen virtually no return to minority areas.

A second reasonably encouraging result is that in the first year, through UNHCR's and other shelter-repair programs, close to 100,000 people had their homes repaired. We managed to repair more than 20,000 houses in UNHCR's program alone.

We identified 22 priority areas for return—to promote return to areas where return is possible. Working very closely with the World Bank, the European Commission, and others, we mobilized a lot of additional resources for those priority areas. Most of the quarter million people have been able to return as a result of the additional resources. These were significant and encouraging developments.

We have also worked in the transition from war to peace to build up the necessary confidence that must be the basis for any return. After a war and these kinds of atrocities, a war whose goal was to dehumanize relations, you cannot just have a peace agreement and say "you can go back." Con-

fidence-building becomes an essential part of any strategy. Through confidence-building measures we have been trying to punch holes in the wall that is running through Bosnia and Herzegovina. Unfortunately the Inter-Entity Boundary Line has become a wall that is blocking people.

Confidence-building measures include visits. We have tried to organize visits of displaced persons to their old homes. We have been blocked and obstructed in each and every initiative. But we have been able to bring a lot of people back to visit their places. We see that as an important first step in confidence-building.

We've have established some bus lines running across the Inter-Entity Boundary Line. This should not be UNHCR's business, but should belong to the authorities on the ground. It should be a right of people to go wherever they want. They should be able to get on a bus and just cross the boundary line. That has not been possible and we have had to go in and substitute. We have run up to 50 Inter-Entity Boundary Line crossings. Everyday we are bringing one to two thousand people back home, to look at their homes. Unfortunately they then return to where they are still displaced.

It is very important that these measures are not seen as an end in themselves. Visits are a beginning. Buses are a first step toward return. But for some of the parties, I would say these measures are seen as an end in themselves.

Where do we go from here? Our strategy is three-fold. First, we will continue to promote return to majority areas. Another 500,000 may be able to go back, once reconstruction picks up. Once the absorption capacity is there on the ground, return would be, relatively speaking, the easy part of our job.

Second, the heart and soul of Dayton is return of minorities, return to areas where people would now be a minority—hopefully

not forever, by the way. We will push return to minority areas. We see three ways of doing it, and are deeply engaged in this.

A. We want to push return to minority areas which have *less* strategic importance than other areas. We have seen a lot of violence in returns to areas of deep strategic importance. There are other areas controlled by the Serbs where we have been able to bring Bosniacs back, for instance in the Anvil, near Mrkonjić Grad. In those areas I see a hope, a chance of promoting return. It must be tried, and might work.

B. There are a number of places where, whether the authorities on the ground like it or not, people will have to come together because they will be driven by economic imperatives. I would call these crossroads. For example, Brčko is a crossroad. Despite all that is happening, on the ground the three parties are working together because economic imperatives are driving their collaboration. That would be our second strategy, identifying places where we will promote returns around the convergence of interests.

C. The most difficult and the most challenging is return near the zones of separation between the two entities. Why? Because people can literally see their houses. They have not moved more than 500 meters or so—maybe a couple of kilometers—and it should not be logistically difficult. Unfortunately the zone of separation has become a border. We have to push these returns in an orderly way, so that these zones of separation become zones of integration for the returnees.

The third part of our strategy is to look beyond Bosnia. Dayton focused on Bosnia, but in solving displacement you cannot limit it to Bosnia. In the region of the former Yugoslavia all the problems and all the solutions are linked. Unless we can promote the return of the Serbs to the Krajina in Croatia there will be no space for the return

of Bosniacs to Knol, or Banja Luka. Wherever you look on the map, all the problems are linked, and all the solutions are linked. We've been having discussions with all the leaders of the region, suggesting a regional plan. We want to broaden the scope of Dayton and broaden the geographic area. That is the only way to solve the problem of displacement in the entire region.

Finally, in Bosnia we have a unique opportunity in having authorities on the ground, whether one likes them or not. This is not the case in the Great Lakes region of Africa. In Bosnia, there is a local setup and there is an international setup. The international structure exists, and the players are coming together. A very strong international arrangement has developed. We have a unique opportunity while the military will be there to keep the peace, to create space and time for the civilian part of Dayton to be implemented. We hope that the continued presence of the military will not only keep the peace—it clearly will if they are there—but also that the military can be more forthcoming in assisting us with our tasks.

Dayton only talks about helping with freedom of movement and preventing interference with the freedom of movement. We would like to see a much more active involvement. If we don't get that support, there will be no return.

Building up alternative structures, alternative forces in civil society must be the goal. If that can happen, then elections might be for the people of Bosnia and not in favor of the leaders who took that country to war.

Alan Stolberg:

In March 1995 I was standing in a command post which UNPROFOR had in its residence in Sarajevo, during a relatively typical border attack by the Serbs. The Serbs had fired about five or six 120 mm mortars into the center of the old town of Sarajevo

about 800 meters from our post. General Rupert Smith's aide requested that we target and take out the mortars. He was in contact with the special representative of the secretary-general, Yasushi Akashi, who was in Zagreb at that time and he asked Mr. Akashi for his approval. Mr. Akashi came back and said, "It's fine as long as you can guarantee that no collateral damage will be a part."

Well, the problem was that the Serbs were firing these mortars from about four kilometers away. They were on the other side of a range of hills from Sarajevo. They would aim their mortars from a good old 120 mm mortar tube in a backyard of a house. One tube. They would fire about five or six rounds and then they would move their tube underneath some cover in the house. The house was not a detached structure. So, for us, if we were incredibly fortunate enough to locate the specific mortar which was doing that firing, it would have meant that we had to take out the whole block to get the mortar because it was on the other side of the engagement line.

I cite that because it is a typical problem which peacekeepers, and, more importantly, peace enforcers, have faced in the last few years.

My subject will be the military in peace operations, and the associated problems. The reason the military comes into an operation such as this is because there was a failure of the peace. We are there as a sort of "policing force." The most important question that I want to raise about the military, when it comes in to do something like this is, How much force can or should the military employ? Are the military, the contributory states, the international institutions (which are sponsoring the operation), and the world community at large—are we prepared to accept the potential consequences that the employment of the military will bring about? Does the will exist?

There is a spectrum of peace operations missions. At the low end is humanitarian assistance, such as American forces responding to Hurricane Andrew, the forces of Operation Sea Angel responding to humanitarian disaster in Bangladesh, and the forces of Provide Comfort in Turkey, where American and international forces went to the aid of the Kurdish community in northern Iraq and southeastern Turkey. Then there is traditional peacekeeping, a middle ground that the international community has done best in the military realm. For example, the separation of forces in Cyprus; the military observer missions in the Middle East; and nation-building in Haiti. Then we go to the upper end of the scale known as peace enforcement, such as Somalia and Bosnia, and missions of the same kind. The military has come in and employed force—the employment of force where triggers have to be pulled, where people have to be killed and casualties have to be taken.

I personally believe, as do many military people, in the employment of military force in operations of peace enforcement. This is very complex on the ground. Let me give you some examples.

In the late spring of 1995, a Serbian T-55 tank fired on a British outpost in the northern part of Bosnia around the Maglaj pocket. This T-55 tank was out in the open. It fired three rounds and injured six British soldiers, one of them critically. The issue was, "How do we respond?" Well, the first suggestion, which I made, was to bring in an airplane to simply take out the tank. This tank was not located near any civilian facilities; it was out in the open, in the clear. The UN command felt that it would appear to be too strong a response, but it would be all right to bring in an anti-tank team on the ground. There was a tremendous argument in the command post. I used to command anti-tank forces when I was an infantry platoon leader. The problem we had that night, at about nine

o'clock that night, was that not only was it dark, but also the Serb tank was 2,800 meters away and 1,000 meters higher in elevation, and it was dug in. So the likelihood of being able to take it out with an anti-tank missile was virtually nil. Of course, that's what happened and the tank remained. Then the UN forces and the British specifically said, "Next time we'll bring aircraft." The British could have used Lynx helicopters with TOW anti-tank missiles mounted on them. However, the British Ministry of Defense would not permit the mounting of the TOWs on the Lynx helicopters in Bosnia for the same reasons.

Example: The Dutch infantry battalion which went into Srebrenica was normally a 650-man, mechanized infantry battalion equipped with armored personnel carriers normally mounted with 20 mm guns—a very powerful weapon. The Dutch Ministry of Defense would not permit them to mount those 20 mm guns and bring them into the enclave. So the Dutch battalion in Srebrenica did not have the most important weapon, which they normally train with, to engage. When July 1995 came about, they had only hand-held weapons to resist the heavy weapons of the Serbs. I make no explanations here. I merely cite that conscious decisions are being made that demonstrate the will or lack of will to engage—which translates into the military ability to support a mission.

Example: The French in Sector Sarajevo were constantly being sniped at. During the time I was there, they would lose about one soldier every ten days to a sniper. The French felt that they could not go back with exceeding force. So instead of the probable American response, to use major weapons to take out a part of an area where we saw a sniper, they would fire one or two counter-sniper rounds, where the sniper had already

been gone for five minutes, and that was the end of the story. Not a very good deterrent.

Example: In May 1995, Serbian T-55 tanks and 20 mm equipped armored personnel carriers actually came into the suburbs of Sarajevo and fired directly at Muslim positions and at French positions. Easy to take militarily. A decision was made not to employ air attacks and not to employ the French 90 mm tanks, but to respond in a very similar "one for one" manner. One armored personnel carrier against one armored personnel carrier. The result was a standoff, and the Serbs were able to continue the employment of their heavy weapons.

Example: The blockade of Sarajevo blocked the primary logistics route used by UNHCR, a 13 km road between Kiseljac, a Muslim-held area, and Sarajevo proper. The Serbs blockaded that road with three wooden shacks manned by two Serbian policemen at each shack, along with some paramilitary and military teams that ran in between. The UNHCR convoys consisted of 10–15 trucks with Canadian or French armored personnel carriers protecting them. Obviously, if one desired, we could have confronted and gone through these road-blocks. The decision was made not to do that. The French and the Dutch chief of staff for Sector Sarajevo felt that would have worsened the situation and increased the problem. So the convoys would come in and the Serbs would pillage the convoys. They would steal vehicles. They would steal clothes. They would steal military equipment and the like. A fair amount of the assistance which the mandate required failed to reach the people in Sarajevo for those reasons.

Now the problems I just cited to you were not UN-caused problems. They were problems caused by the contributory states. At the same time, part of the responsibility

lies with the UN and part with the world community, including NATO.

I spoke of the shelling of Sarajevo and the potential of collateral damage. Another example came about in May 1995 when the fighting really intensified, and we had the opportunity to call in air strikes. Mr. Akashi stipulated that the only way we could call in air strikes would be if we had troops on the ground that had eyes on a specific target. We couldn't do it simply with intelligence collection from a standoff. We had to have a certain type of soldier on the ground who was designated a "target identification" person for aircraft. We obviously didn't have those everywhere, and we didn't have a lot of them. That clearly restricted the employment of force.

Now these are problems exhibiting a lack of will. When the will is there, the military has the capability of changing and affecting the situation.

After President Jacques Chirac was elected in mid-May 1995, there was a clear change on the part of the French forces. In late May there was a very famous incident where the French decided to fight back for the first time. On a bridge in downtown Sarajevo were two French bunkers. One night, in the middle of the night, a Serbian special forces unit dressed in French uniforms captured the bridge, and they captured 12 of the 13 French soldiers on the bridge. This was the first time they had actually confronted the UN forces like that. One French soldier escaped. He jumped in the river and swam back to his battalion. The French were incensed, and got permission from the ministry of defense to fight back. At six a.m. that morning a French infantry platoon and a tank platoon attacked that bridge. They killed four to six Serbian soldiers; they captured four, including one of the most-wanted war criminals in Bosnia at that time; and they captured the northern part of the bridge. They told the Serbs that if the prisoners held

in the southern part of the bridge were not released, they would attack and kill the remainder of the Serb soldiers there. That afternoon the Serbs released all the prisoners, withdrew from the bridge, and never attacked the French again. Sniping never killed another French soldier. This doesn't mean that a robust response works all the time, but clearly sometimes it does.

Another example would be the air strikes which NATO employed during the latter part of the summer of 1995. Air strikes alone didn't do the job, but the air strikes took out the heavy-weapon advantage which the Serbs had maintained. Military force can be employed, though it's complex.

Let's look at the problem now. Should IFOR go out and arrest the indictees? IFOR has the capability to do that. But is NATO, is the international community willing to accept maybe going in and killing 30 Serbian soldiers and taking 10 NATO casualties, and potentially expanding the conflict where you have other Serbs going out elsewhere in Bosnia and killing Muslim civilians and taking other hostages? Is that an acceptable risk? That question must be answered in detail before the military is employed.

Question: Should the military be employed today to protect the refugees as they try to return to their homes? The military has the capability to do that, but we may have to take out a hundred Serbs. We may have to destroy two city blocks as we do that and fight in urban terrain. We may have to take our own casualties. All of these things are doable. Is the will there? Has the decision been made to support such an action?

Hard problems must be addressed, not insurmountable problems, but very complex problems. Decisions are required and plans have to be made before the execution takes place. So I'll leave you with this: it's a very complex problem but it's one that the military can accept—not simply the American

military but the military in general. But there are consequences. Are we willing to accept those consequences?

Christine Wallich:

Close to 40 years ago, Hannah Arendt spoke in this room to an absolutely packed audience about another war and its aftermath. There were people sitting on the window sills and everywhere, talking about the question of crimes against humanity. So it is very fitting that the Yale Law School is hosting this conference and that we talk about Bosnia in this place.

I'm going to start by giving a provocative answer to the question "Has the peace process worked?" Perhaps it is the answer you'd expect me to give, but it's also the right answer to the question on economic reconstruction. "Has the Bosnian peace process worked?" The answer is "yes," although there have been a lot of ups and downs. The people working on economic reconstruction, whether donors, government authorities at any level, the NGOs, or the people of Bosnia working on the ground, have been doing so in a set of very difficult, complex political and economic circumstances. Clearly, progress in reconstruction, progress on the civilian front, has been a lot slower than on the military. But by any international standard—whether we look at Vietnam, Cambodia, or problem cases in Central America—what has happened on the ground in Bosnia in terms of reconstruction since the signing of the Dayton Accords has been quite extraordinary.

I don't want to suggest that one be complacent. There is a lot more to be done. To paraphrase Winston Churchill's famous remark of 1942, we're not at the end. We're not even at the beginning of the end. We are probably barely at the end of the beginning. I think it is important for all of us who think

about Bosnia and what still needs to be done, what lies ahead, to recognize this.

While the international community can do a lot—the international military community, the donor community, the human rights community, the many international actors who have poured their hearts, their money, and their energies into Bosnia—in the end it is the efforts of the Bosnians themselves that will make a difference, that will reconstruct the country. In the World Bank's view, and certainly from my own personal perspective, we're there to help them to do that, but we can't make it happen alone.

Let me talk about progress on the ground, and some of the challenges that lie ahead. The progress since the signing of the Dayton Agreement is visible to the naked eye of anyone who has been to Sarajevo. Clearly any one snapshot will show a very difficult picture. Bosnia was destroyed. Half a million livestock were destroyed. Industry production plummeted to close to zero. Practically 70 percent of the bridges were taken out; 60 percent of the schools were taken out; 40 percent of the housing stock was totally destroyed. Clearly one is not going to see a country that looks all back together again. As an example, economic growth rose from a very, very low level to 40 percent in 1996, quite a striking number. Unemployment is 50 to 60 percent, a horrifically high number, but down from 90 percent in 1995. There is heat. There is water. There is power back on a limited scale, sometimes just for a few hours, but it's back in almost every community. As Soren Jesen-Petersen said, housing repairs are underway, and schools opened in September 1996, many of them with repaired roofs, many of them now with textbooks. Health clinics are open and banks are working again, providing credit lines so that small-scale businesses can work. This is the beginning, the transition from a humanitarian

response by the donor community after wartime to reconstruction. Donors have tried to change the nature of their assistance. It's the old adage of "Don't give somebody a fish, give somebody a fishing line"—to change the nature of assistance to something that's more sustainable.

There is also progress on institution-building. This isn't as visible, or, to many, even sexy. It doesn't make a loud bang. But the central bank is on the way to being restored. Bank supervision is starting to be back in place. A tax administration is being reconstructed. The customs system is beginning to work. These are all small things, but vital if this country is to have a chance. Institution-building is key to this process and shouldn't be neglected by those who take a look at what's happening on the ground.

In terms of other challenges, Bosnia was a socialist economy before the war. The legacy was far less malign than in parts of the former Soviet Union. Bosnia was open to the outside world, and was a fairly market-oriented socialist economy. But the fact remains that there also is a lot of work to be done to create a transition in Bosnia to a market economy and small-scale privatization. A small-scale private sector is starting to spring up, largely financed with resources from remittances that many of the refugees abroad are sending home.

On what the donors have done: Here again there's been a good start. An aggregate of \$1.8 billion has been committed by 40 to 50 countries, and another 15 multilateral organizations like UNHCR and UNDP [the UN Development Program] and many of the NGOs active on the ground. The World Bank and the European Commission put together a \$5.1 billion reconstruction program. We targeted \$1.8 billion as being the amount that should be front-loaded to jump start the economy in the first year. Of that \$1.8 billion, about \$700 million has already been disbursed in a range of sectors from de-

mining, demobilization support, education, reconstruction, transport, and energy—all of the bread-and-butter reconstruction sectors which are important if we are to avoid mortgaging Bosnia's future.

When one looks at how much has been done, it's very important to compare this to the damage and the overall scale of what needs to be done. The estimates of damage in Bosnia vary widely, but people say between \$20 billion and \$40 billion of damage was done over the four years of war. If we look at the \$5 billion of external financing that might be available, that will only, under the best of circumstances, repair a quarter of the damage. As I said, half a million head of livestock were killed during the war. In the first year, there have been resources to import only 5,000 head. If we reconstruct the entire housing stock of Bosnia to its prewar levels so that refugees could come back, this would be a \$4 billion to \$5 billion effort. But overall, the scale of the housing program that foreigners will finance is only about \$600 million because other needs are also urgent. So there is no way that the external effort, unless complemented by domestic resources, will rebuild Bosnia to its prewar standard. This is something we all need to keep in mind when we ask ourselves, "Has enough been done? Is it happening quickly enough?" The needs are vast, and they have to be met not only over time, but by a combination of foreign resources and domestic effort.

We're working closely with the Bosnian government to set up mechanisms by which domestic effort can contribute. If we think back to Germany 50 years ago and the Marshall Plan, the nations of Europe got less than \$200 per capita. The bulk of the resources came from the domestic efforts of the European countries themselves. Think of how long it took to reconstruct Europe: even in the less damaged parts of Europe, it was well into the 1950s before things were back

to, I don't want to say normal, but to something that looked less bad than it had. So I think that scale is important, and a time perspective is important.

I don't want to sound complacent, and we're not—not the World Bank, and not the donor community. We are working to focus the donor effort on sustainability. The donor effort is going to be limited. Just as we had a reality check from the military side, we also need to have a reality check from the economic side. The world will not support Bosnia forever, and that's why it's absolutely critical to make the best possible use of the limited resources, the \$5 billion that we hope will be available over 3 to 4 years.

We are working very hard to define ways to make economic programs sustainable: this is a broad theme. One focus is on infrastructure. Clearly in the first two years, donors do most of the reconstruction. But in the medium term one needs to have some cost recovery. One needs to have appropriate pricing in the power sector. People need to pay for their water and gas, so that the operating companies can make a contribution to investments, because donors will not be there forever. We're working on pricing strategies, billing strategies, on all sorts of things that, again, don't make a big splash, don't even sound very interesting, but are critical if people's lives are to be improved for the longer term.

The same is true for the banking sector. Bosnia's banks were absolutely devastated by the war. But foreigners can't finance Bosnia's industries forever. So to strengthen the banks, to get them back on their feet, is another key objective.

A third major objective for the donor community is to revitalize Bosnia's war-damaged industries, and here privatization is a number one objective. The government, with its devastated fiscal position, just doesn't have the resources to put into indus-

try—even if it were a good idea to have the government support industry, which, as the experience of Eastern Europe has told us, it isn't.

The sustainability theme is a broad one. It covers everything from cost recovery to institution-building to privatization. It's really toward sustainable policies and institutions that one has to be headed and not just toward physical reconstruction alone, because reconstruction is the beginning. If it is to be sustainable we have to put mechanisms and policies in place in Bosnia that can keep the effort going when we donors are all gone.

Bosnians at all levels of government and civil society hold the future in their own hands. They need to make Dayton work. They need to put together government institutions at the entity level and the municipal level, so that donor resources can bear fruit. Again, we're working very closely with the governments, with the local communities, with civil society, and throughout the donor community to make this happen.

A great deal of the success will depend on the Bosnians themselves, and what happens to give donors the confidence that this is an effort worth supporting. The world is a very fickle place. Donor money can leave Bosnia as easily as it came. Actually that is a misstatement, it didn't come easily. There are so many demands on world resources, on humanitarian resources, that this window of opportunity is a critical one. We hope that what happens on the ground will give donors the confidence that Bosnia can absorb the resources transferred, and that they'll bear fruit. If that confidence is not there, then donors will surely shift their attention elsewhere. As I said, we are working in close collaboration with all of the NGOs, the humanitarian organizations, the European Commission, and over 60 other governments to try and make this happen. It's a world-

wide effort of cooperation. There are a lot of lessons to draw from our experience on how to make future efforts like this work. And, when we look back on what 50 years of peace have meant for the economic prosperity of Europe, we must recognize how important it is to make the peace process, and reconstruction, succeed in Bosnia.

James Schear:

I will comment on the nettlesome problem of public security in Bosnia's postconflict transition. All of us who support the Dayton Agreement are now fighting off despair and a sense of pessimism. Many metaphors have been used to describe the Dayton process. I liken it to a big, lumbering, jumbo jet which has started to roll down the runway. The pilots have the throttle on full. They're admiring how fast they are going but haven't reached the takeoff velocity. Some of the passengers are saying, "Well, perhaps we had better offload some baggage quickly"—free and fair elections, large scale repatriation of refugees. The pilots have done that, and now they're trying to veer onto a longer runway. This ungainly aircraft may take flight. It may not. I think you can make a good case that the plane was overloaded to begin with. No peace agreement, even one brokered in Dayton, Ohio, will deliver a quick settlement after four years of bitter fighting and warfare. The problem is that Dayton sets a high standard. Even though Bosnia is in many respects better off now than it was before, the peace process is lagging badly.

The optimist could argue, "Well, the best you can ever get is partial implementation." Peace agreements are always messy—look at Cambodia, look at El Salvador. Partial peace is probably the best we can do. The problem in Bosnia, I would submit, is that in a partial implementation you can't give something to everyone. You can't apportion the benefits of the peace to all the three par-

ties and say, "Well, we've done reasonably well." Partial implementation in Bosnia means that the separatists win. That's a very serious problem and it's going to dog our efforts.

Public security is one of the most important and difficult problems we face. Transitional law enforcement is always a big problem in any post-conflict situation, and Bosnia is not unique in this regard. As armies disengage, as we saw in the Bosnian federation in 1994, their constabulary functions atrophy. That creates a vacuum which bandits and criminals are very quick to fill. You have large numbers of unemployed soldiers hitting the streets who have weapons, cascading into the civil population. All of that makes for a very difficult law-enforcement problem.

Law enforcement institutions are not in a good position to pick up the slack. They tend to be dysfunctional in various ways. In Somalia law enforcement was a revered institution; it was not a political instrument for public control under Siad Barre, though it had no resources. In Haiti it was a predatory and reviled institution. Bosnia doesn't quite fit these traditional models. But in any case the dysfunction is such that you cannot count on local law enforcement for the delivery of public security services.

Outside intervenors are not in a much better position to provide law enforcement. Peacekeepers don't like to be policemen. They see it as a "slippery slope" into becoming embroiled in the conflict. There was a lot of truth in Alan Stolberg's comments about the constraints upon the use of force in civil strife. It's a serious problem, magnified by the fact that most UN operations inflict more casualties acting in self-defense than they sustain in those attacks. Certainly that was true in Cambodia, and very true in Somalia. It was true even in Bosnia during the 1992–1995 time frame. Sharp restrictions on the use of force constrain the ability of

peacekeepers to act as policemen. However, police monitors don't like to do policing either. Bosnia has all these problems, even before we factor in the separatist character of the conflict.

Humanitarian displacement has created gridlock around the country. The displaced communities of each side are preventing the return of the other. Displaced Croats living in Stolac prevent Muslims from coming back. Displaced Krajina Serbs in Banja Luka prevent Bosniacs and Croats from returning there. Srebrenica Muslims in greater Sarajevo create difficulties for local Serbs who choose to remain. You almost wish that you could blow a whistle and people would just move home all at one time like "musical chairs." Of course it's not that easy.

Another point about public security is that the three main actors in this drama in Bosnia don't match up very well. The three actors are IFOR, the International Police Task Force (IPTF), and the local police institutions. It's very difficult to match them up, to latch them together in a coherent way. IFOR and IPTF have had troubles in coordinating on public security. But the hardest relationship is between IPTF and the local law-enforcement agencies. Policing, even police monitoring, is much harder than traditional peacekeeping. It requires a degree of intrusiveness that really one doesn't see in other aspects of peacekeeping. If you're a police monitor, to do your job correctly you have to go into a police station and say, "Where are your duty rosters? Where are your patrol plans? What is the status of these five investigations?" You're trying to cajole and develop good rapport with your interlocutor and also have to be demanding and insistent. It creates a very difficult problem in how we do the policing work in Bosnia.

At the end of the day, we also have to ask, "What are the incentives for the local parties to cooperate?" In Somalia there were

enormous incentives because the Somali police had no resources. In Haiti, local police worried for their own survival. They were happy to invite in the local UN civil police, or the U.S. military police, because they needed protection. In Bosnia it's quite a different situation. Most of the local police are tolerated, if not respected, by the majorities in their areas. The problem is with the rights and protection of the minority. Also, the separatist police forces generally do not have a strong incentive to cooperate as a quid pro quo for the cooperation of other police. If the Bosniac police abuse Croats and Serbs in the federation, it just means more Serbs will go to Republika Srpska. This accentuates the tendency toward separation.

What's ahead? I would divide the challenges in public security into operational and institutional problems. On the operational side, municipal elections are very difficult to manage. Especially in divided municipalities such as Mostar and Brčko, if there is a forced repatriation or some outcome of the arbitration, that creates instability. You look at all these operational issues and they are forbidding indeed.

The institutional issues may be even harder: the restructuring of local police institutions. There's an effort to downsize Bosnia's 54,000 or so police corps in both entities. This will be hard to do in a postwar situation. There is an ongoing effort to vet personnel, to expose indicted war criminals and bad apples, and to remove them from the ranks of the police. This will be a very difficult task. The outcome is uncertain.

The critical element that we are lacking at present in the Bosnia restructuring effort is a sense of public accountability. You want to build this into a restructured police force. It was not actually a bad police force before the war. It worked well; its senior officers were university educated. The local popu-

lace generally respected the police and the crime rate was low. But the police became politicized during the war, and there is no tradition of accountability in the Bosnian police forces except, perhaps, accountability to party officials. The direct link between policing and party control has to be broken for any public security reform to take root in the garrison state which still defines postwar Bosnia.

Question:

Colonel Stolberg mentioned the lack of will of the international community. In May 1993 the international community set up six safe havens for the Muslims which were under threat of being overrun by the Bosnian Serbs. In September 1993 when the Bosnian Muslims overran Bosnian Croat towns in central Bosnia, the Croats were all kicked out by the same token. In August 1995, Bosnian Serbs were ethnically cleansed from very large swathes of territory in western Bosnia that were close to 96 percent Bosnian Serb. The UN did not set up safe havens for them. I would just like to know if this was a mere coincidence or if this was an attempt at policy.

Stolberg:

That's a very important question, because when the international community employs force, it has got to be a balanced employment of force if it's going to be successful. As you do know, the Bihac enclave existed in the northwestern part of Bosnia, but that encompassed primarily Muslim elements in the area. I really can't comment on what you said. I have no personal insight into this case; my involvement was in 1995. From my standpoint there has to be a balance in order for the use of force to be successful.

Question:

What do you do about corruption on the ground, and the hammerlock that traditional political parties have on the distribution of economic benefits as a way of enforcing control? And as a corollary to that, how do you get aid directly on the ground to the local communities to set up countervailing power?

Jessen-Petersen:

Christine Wallich will take care of the corruption, and I'll take care of whether we can give aid directly to the beneficiaries. During the war there was a major problem. It was our policy then—and it will always be our policy—that if we are stopped on the road by any of the fighting forces, demanding that a certain part of aid be handed over before we can move on, the instructions to our people on the ground are clear: You turn around and you don't give in. Realities always make that difficult. That was during wartime. It is extremely important that whatever we do now is aimed at building up local economies and local capacities. Our housing repair program is based on local procurement, local workforces, and therefore it is worked through local authorities. By working through NGOs, who actually monitor distribution, the aid reaches the beneficiaries. But we have to strike a balance, we have to work with the local authorities because the very goal that we have is to re-energize local capacities.

Wallich:

Corruption is on everyone's mind—with \$1.8 billion worth of aid flowing through Bosnia in a single year, and with institutions as weak as they are. At one level we are trying to ensure that aid resources are delivered directly to people. For example, tractors imported for enterprises should be sold, or provided through in-kind credit arrangements, not given away, because if you pay

for something, you're likely not to then re-sell it. If you have to pay back the money—e.g., the price of a cow over ten years—chances are you won't export it or sell it to somebody else. It will probably stay in its final destination if there is an in-kind credit arrangement or if there are actually some sales.

We have sometimes been accused by the humanitarian community of being unduly harsh in not giving away things to very vulnerable populations. But it's been shown time and time again that donated material ends up getting re-exported. You'll find donated food in the shops. If you sell something, even for a notional price, or if you have a small subsidized interest rate attached, it tends less often to be used for profiteering. We try not to finance too many free imports: things that can be resold straight away. We focus on reconstruction: gas meters that get installed, or heaters that get installed, or water pipes that have to be laid; you're not going to sell a lot of water pipes to Croatia or to Hungary.

Another typical problem is bid inflation—it's not so much corruption, but inefficient resource use. We do a lot of work through local contractors using local labor. As Soren Jessen-Petersen said, this is an objective. Only if you get money circulating again will you get the economy jump-started, and then donors can pull back sooner rather than later. But if you don't have a sufficiently competitive process domestically, you're likely to get bid inflation. One of the things we emphasize in our own procurement, whether it's civil works or goods, is international competitive bidding. Even if we think the goods will be procured locally, or if a local contractor will build a bridge, we open it to a Slovene contractor, we open it to a Hungarian, we open it to the Slovaks. The Macedonians are quite active in this. So you get groups competing who

are not part of the local clique of "I'll scratch your back, you scratch mine—it's my turn now." Sometimes just the fact of international competitive bidding will bring down prices. There is open competition, in-kind credit arrangements, and a focus on reconstruction as distinct from free imports. Lastly we have worked with governments to set up a procurement monitoring and audit unit. Again it sounds prosaic but this is like the General Accounting Office in the United States. It's currently staffed by a number of Dutch professional auditors to beef up the local government capacity. We see this as a critical beginning, building up a local capacity that any government would want—to ensure that scarce resources are used wisely because "there's only this much" and if they're used unwisely there won't be more.

Question:

In an ideal world, what would you like the international implementation force to do to aid the return of refugees to Bosnia? What types of tasks, and for how long would they need to perform them? And as a postscript to my question, the successor force will have a rewritten mandate. Is it politically feasible to include some of those duties in the new mandate? The situation with refugees is obviously not a success story, as you said yourself, and several actors have vital interests in having those powers written into the mandate.

Jessen-Petersen:

IFOR is not there on a humanitarian mission. Ironically UNPROFOR was there in the middle of war. We and UNPROFOR alone had to provide humanitarian assistance. Now we are in peacetime and you have a military force for whom humanitarian assistance is only a secondary priority. It is clear under Dayton that, upon request and provided that other responsibilities would

allow, IFOR can assist us. They can assist us with preventing interference with freedom of movement. I would like to see a much stronger focus on directly supporting the civilian task. One of the biggest challenges is creating conditions that allow for return. Return is a matter of reconstruction, parties on the ground, and getting rid of the leaders who are blocking it. It is also a matter of using this overwhelming presence to show that we are serious.

I agree that this is dangerous stuff; we know it, we were there in the middle of the war. It is dangerous but we have to be prepared to take some risks. So I would like to see a much more direct supporting task, not just as a secondary mission and upon request.

Stolberg:

From a military perspective, given the military forces that are available, this mission can be done. The issue that has to be addressed prior to giving the go-ahead is (1) are we willing to accept the possibility that people who are resisting the return of refugees will have to be killed; (2) are we addressing the possibility that civilians in the area—because these are built-up areas, this is occurring in towns—will have to be killed or their homes destroyed unintentionally; (3) are we willing to accept soldiers being killed or being injured; obviously that's a responsibility that goes along with the profession of arms. All of those consequences have to be considered before the military is charged with doing something like this. If we don't consider the consequences, if we don't plan for what the deaths might bring—including the potential expansion of conflict, hostilities, and renewed conflicts in other parts of the country—if we do not plan for that, it can blow up in our faces. It's a doable problem but it's complex.

Jessen-Petersen:

I don't think any of us would ever ask the military to go in there and kill so that we can move forward, or go in there and kill so that we can return people. We are talking about a flexible, pragmatic use of what is there—an overwhelming presence.

Stolberg:

Ideally that would be a wonderful way to see it happen, but that is not necessarily what will happen on the ground if we are going to make it work. People may have to be killed, buildings may have to be destroyed. That may be the only way to achieve some of this. If it is, we first have to decide if we can accept the consequences. We may endanger ourselves and the agreement. Most importantly, if we begin an operation and don't execute it fully because of the danger of casualties and destruction, we jeopardize our credibility.

Just before the conference, I had a chance to read the annual report for the World Bank and I was struck by one important clause which said that the bank's loan policies are not politicized, that they are based purely on economic and not political grounds. Of more than \$700 million of aid delivered to Bosnia, only about 1 percent reached the Bosnian Serb republic. And in the annual report, one of the key peacemakers according to the Dayton Accord—the Federal Republic of Yugoslavia—is not even listed and presumably received zero loans. I wonder if you can comment about the reasons for that and then reconcile that with to the allegedly nonpolitical statement in the annual report.

Wallich:

The Federal Republic of Yugoslavia [FRY], with all of its constituent republics, was in fact one of the Bank's largest borrowers before the war. We had activities in all of the republics, especially in the poorer

ones including Bosnia and Macedonia. One of the many results of the embargo on the Federal Republic of Yugoslavia has been that it has been unable to pay its debt service on World Bank loans, on International Monetary Fund loans, and on European Bank for Reconstruction and Development loans as well. All of these institutions have a policy of not lending into a situation of arrears, as we call it in financial terms. The outstanding arrears of FRY to the World Bank are now somewhere on the order of \$1.1 to \$1.4 billion. That amount of arrears has to be cleared, probably by some very imaginative means, before we, or the IMF, can begin to support them again. It's a complicated financial challenge. Some donors have been very targeted in their support of Republika Srpska, as you can imagine: the Japanese, the Russians, and several others, the French, the U.K. as well, and other donors less so. This accounts for the imbalance in part. There are also sectoral preferences. Some donors, like the Nordics, prefer to do the social sectors, while others see export opportunities for their own companies as being an impetus for their financial support for aid.

Getting back to Republika Srpska: There was an embargo until March 1996 on Republika Srpska, and most of the nonhumanitarian, non-NGO donor community was not active until the embargo lifted. Donors then took different tacks on how quickly they would mobilize support for Republika Srpska. In our own case, we were not active until after the embargo ended, but fielded several missions there immediately after the embargo was lifted. All of our projects have components for Republika Srpska in them. But clearly, as you say, there is a catch-up issue here, and there is an imbalance. By the way, there is also a geographic imbalance within the federation, with the Croat cantons

having received less than the Bosniac cantons, since they're less damaged.

Question:

Are funds going to Bosnia under the auspices of the World Bank as grants or as loans? And to the extent that they are loans, who are the debtors? Finally, what are the anticipated mechanisms for repayment of these loans?

Wallich:

There are some grants, and some loans. We have committed credits from our soft loan window called the International Development Association (IDA). We also have a bankable window—the World Bank. World Bank money comes on market terms for 20 years, while IDA money comes for 35 to 40 years depending on the country's per capita income, and carries an interest rate of 1/2 of 1 percent with a ten-year grace period. If I may use jargon here, the concessionality in the credits that are going to Bosnia is very high, precisely because Bosnia's per capita income is so low—it's on the order of \$500 to \$600 per capita. It was at one point before the war as high as \$2,400 per capita. So you see the devastation there.

Question:

Who signs the note?

Wallich:

Formally, all of our credits—and we have no choice here through our articles of agreement—must be signed by the sovereign state. There can be loans from the state to the entities, which in fact is typically the case for our own loans. There could also be loans to the power company, the gas company, to a municipality, or to a canton. But they enter or transit *through* the sovereign state, and then are typically on final loan to the beneficiary.

Nationalism and Dayton

Misha Glenny

In 1990, I published a book called *The Rebirth of History* (Penguin). And in it, I wrote, “There is no political or social force that can match the power of nationalism in eastern Europe.” Frankly, it was a fair thing to say at the time.

Many liberal commentators, both in the West and the East, were mapping out rather different visions of Europe at the time—utopian contours. I, and a few other people, started talking about how dreadful nationalism was and how it was going to do very bad things in eastern Europe. I was working for the BBC at the time, and I had a reputation for being quite mad, hence the epithet, Misha Bloomy. That’s what I was called when I was at the BBC.

When Yugoslavia broke up, everyone said, “He was right. He was right all along.” In fact, I wasn’t basing my remark on Yugoslavia, and in particular, Kosovo and Croatia, which were the two hot spots at the time. I was basing it on the revival in Bulgaria of populism at the expense of the poor, blighted Turkish minority, the murderous Romanian mob in Tirgu Mures that killed four Hungarians in a spree, the cracking up of the Czechoslovak Federation, the nasty little spats between the Poles and the German minority in Silesia, not to mention the one which we all do not really think about, and that was Crimea. I thought that I was talking quite sensibly, and that other liberal commentators—though I’m a liberal myself—who were much more optimistic and still bathed in the euphoria of 1989 were wrong.

I have to admit that at the time I wrote there could be no political or social force that could match the power of nationalism in eastern Europe, I was talking nonsense. Nationalism is not the most powerful political

or social force in eastern Europe, although I do not concede to the other liberal commentators that they were correct in being so optimistic.

It is my contention that *political* nationalism in eastern Europe—I draw a very careful distinction here between political nationalism and cultural nationalism—is, in fact, an extremely weak force, historically, in the Balkans. On certain occasions, when a certain political, economic, and constitutional constellation occurs, then you can get a bunch of unscrupulous people who are able to draw from the reservoir of cultural nationalism. All those rather nasty elements floating around in it can then be, through a delicate sort of chemical process, molded into rather toxic heavy water, political nationalism. Most of the time, historically, that has been impossible, and political nationalism has been a very weak force indeed. During large parts of modern Balkan history, the state has had to put enormous resources into creating a national identity because the masses, the peasantry in particular, showed very little interest in following nationalist ideologies.

I have to go back into history. In 1954, the great British historian A. J. P. Taylor wrote, “Macedonia and Bosnia, the two great achievements of the Congress of Berlin, both contain the seeds of future disaster. The Macedonian question haunted European diplomacy for a generation, and then caused the Balkan War of 1912. Bosnia first provoked the crisis of 1908, and then exploded into war in 1914, a war which brought down the Habsburg monarchy.”

Before we go into the implications of that for Yugoslavia today, let me mention just a little thing that happened in the few decades prior to the great eastern crisis of

1875–1878, which culminated in the Congress of Berlin. In 1856, the Treaty of Paris ended the Crimean War, bringing two decades of relative peace in the Ottoman empire. The Russians were extremely angry at having been humiliated in the Crimean War, and consolidating their position in the Caucasus and in southern Russia, embarked upon the largest example of nineteenth-century ethnic cleansing. They expelled one million Muslims from southern Russia and the Caucasus. These included people called the Circassians.

Many people have never heard of the Circassians and will probably never hear of them again, but they did have a very important role in these two decades from 1850 to 1870. Because they were Muslims, where did they go? They went to the Ottoman empire, a very sensible thing to do, the only Islamic empire with a foothold in Europe. I must say in defense of the Ottoman empire that it was the greatest haven for refugees in all of Europe. Not just in the modern period, but before the Enlightenment. They took in a lot of Christians, as well. On this occasion however, all the refugees were Muslims who had been run out of town by the rather unpleasant, but thankfully transient, ideologies of pan-Orthodoxism and pan-Slavism in Russia. They were very much traumatized.

They did not as a whole go to Anatolia and become poor peasants. Instead, they went to Bulgaria, Thrace, Bosnia, and Macedonia. They found that Bulgaria and Thrace in particular was quite a fruitful area. There were a number of peasants who were Slav and who were Orthodox. Because it was the Ottoman empire, it was possible to slap them about a little, and take their land and take their wheat. This is where the transformation comes from. The whole Circassian question is, in my estimation, the transformation of the normal peripheral struggles in the Ottoman empire—which involved

fighting here and there between people of different confessions, different nationalities, speaking different languages—into what became a program, an accepted practice, of ethnic cleansing and transfer of populations. The Circassian example is enormously important here.

At the same time as the Ottoman empire starts to break up, a principle is establishing itself of large-scale cleansing and land appropriation between people who identify not so much with national identities, although language was important on occasion, but with confessional identities. When all this blew up in 1875 to 1878, the Bosnians—the Serbian Orthodox peasantry and the Bulgarian Orthodox peasantry—did not revolt because they wanted to bring down the Ottoman empire. They were sick of the fact that they had no food to eat. They showed an extreme disinclination to respond to the urban enlightened ideologies of the nationalists. For the next 30 to 40 years, both the Bulgarians and the Serbs had to put an enormous amount of effort into trying to get people interested in the idea that they were Serbs or Bulgarians. It simply was not there. It does happen when the Turks withdrew from Macedonia in 1912–1913. And then, you get Sarajevo and the great power conflict in 1914.

Now, at all stages of the collapse of the Ottoman empire and the Habsburg empire, the great powers have had a very sticky, long finger in the pie. They bear considerable historical responsibility for what went on in the Balkans. Not only that, I will argue that they bear considerable historical and political responsibility for what happened in the Balkans from 1990 onward. The crux of the matter is nationalism.

The Yugoslav wars are not yet completed. We do not know which way it will go. We are not beginning a new chaotic, postcommunist era of nationalist conflict.

Remember all the potential conflicts that I mentioned, the Bulgarians and the Turks, the Romanians and the Hungarians, the Russians and the Crimeans: Have any of those blown up? They have not blown up, because the political leadership of those communities and countries decided that it was not in their strategic political interests to stir things up. Hungary, for example, has made a historic decision to let go of its political right to be a representative of the Transylvanian-Hungarians and the Slovak-Hungarians. This is the beginning of a process—it's extremely painful for the Hungarians to do—but they are doing it nonetheless. Russia did not use Crimea, although it had an opportunity to do so, and some of the Russian nationalist leaders in the Crimea did their level best to try to force Yeltsin to get involved in Crimea.

In Yugoslavia, however, the leaderships did decide to mobilize nationalism. Why? They did it for the following reason: we had come to the zenith of the problem that A. J. P. Taylor identified in the Congress of Berlin. It is no coincidence—with the slight exception of Czechoslovakia, which really is a different issue—that in 1918, 1919, and 1920, the only country in eastern Europe and the Balkans that did not buy into the Wilsonian principle of self-determination was Yugoslavia. There were two reasons for that: Bosnia and Macedonia. Bosnia and Macedonia could not survive the struggle—which was born of the specifics of demographic and historical conflict between Serbs and Croats—if Yugoslavia did not exist. That was the case after the Second World War, as well.

At the time, everyone thought that self-determination was basically a good thing. Self-determination, of course, does not take into account the difficulties of minorities. The great powers came up with some novel ways of sorting this problem out. In the 1923 Treaty of Lausanne, Lloyd George, in one of his more mischievous moves, encouraged

the Greeks to take a bit of Anatolia. The Greeks thought they could get Istanbul and recreate the Byzantine empire. Being told by the British to go and do it, the Greeks thought, "If we lose, the British will come in and save us."

They go in. Naturally, they get whipped by the Turks, an absolute disaster. They turn around to the British, "So where are the war ships? Where's the army?"

The British said, "Sorry. It was your decision to go in, you know. You lost! Get used to the idea."

"But how are we going to sort this all out?"

The British and other great powers said, "Let's move over one million Greeks to Greece from Turkey and 380,000 Turks to Turkey from Greece." This brilliant idea was carried out on a confessional basis, incidentally. So there were hundreds of thousands of Muslims in Greece, who only spoke Greek and could not speak a word of Turkish, suddenly dropped in the middle of Anatolia. Anyone who has ever been in the middle of Anatolia would realize how distressing this was. And there were all these incredibly educated Orthodox Greeks, Pontic Greeks, a really extraordinary 2,000-year-old culture, suddenly being given something like an eighth of an acre of barren farmland around Thessalonika. These are doctors, lawyers, dragomans—people who had been running the Ottoman empire—who were told to farm a few chickens. This had a ferocious impact on the social structure of Greece—which, if you go to Thessalonika today, you can still detect.

What the great powers said is, "Look, you're not going to go to war again." With Greece and Turkey this is always a moot point, but it certainly did cut out a lot of the problems. The minority problem between Greece and Turkey is not nearly as bad now as it would have been if they all stayed in the same country. Because by now, the idea is

that self-determination is terrific and if you can move populations, all well and good.

So, we start doing this all over Europe. It's not just the Balkans. Ask a Pole what they think about transfer of populations and about how the great powers have been used to cutting up their country. As Susan Woodward rightfully pointed out, it is not that we want partition—because obviously we don't want a partition in Bosnia—but we don't know how to do anything else. We have been saying self-determination is a good thing. Yugoslavia was the one country which held out against this, and, for all of Tito's craziness, held out majestically, and gave people a pride and an identity which was very different from what happened to the people who had to muddle through under Hungarian or Czechoslovak neo-Stalinism.

The one country which survived everything couldn't survive 1989. I am known as a critic on this. I think the great powers were involved by sins of omission, but in some cases there was active encouragement by great powers and, indeed, the international community. The international community is the great powers. They may have different strategic, economic, and political interests in Yugoslavia, but they have not gone away.

It's just that, now, they've created a very expensive and nice mechanism called the United Nations, and they do everything through it. But who decides UN policy? Who does such scandalous things as setting up safe areas and then refusing to give the requisite amount of troops to defend those safe areas? Five members of the Security Council. In this case, China has to be excepted, because it didn't do anything on Yugoslav issues on the whole, but the four other permanent members of the Security Council have a great deal to answer for, as does Germany.

We have now come to the end of the process of self-determination. Those who

wanted the Serb and Croat states have got the Serb and Croat states. Good luck to them. But you still have the problem of Bosnia and Herzegovina, and you still have the problem of Macedonia. You haven't solved it, because the only mechanism you knew for solving it, Yugoslavia, has gone. It is no more, and regrettably, it cannot be reconstructed. So what happens? We get the Dayton Agreement.

I'm going to finish up with some extremely critical remarks about the Dayton Agreement.

In the Dayton Agreement is the constitution for Bosnia and Herzegovina. You've all read the constitution. What a wonderful document—civil rights, human rights, liberties all over. I'd be delighted if they introduced that constitution into my country, the United Kingdom. However, look closely at that document and what's missing? Not one mention of the army. That's very strange, isn't it? A nation-state is based on an army. That's the basic security guarantee of states in Europe. So we have to look elsewhere in the Dayton Agreement.

The only place in the Dayton Agreement where you'll find mention of the army is in the regionalization program that legitimizes two armies in the territory of Bosnia and Herzegovina. Two armies for Bosnia and Herzegovina. We know, of course, that we're really talking about three armies, but we have to pretend that the federation is working, so they are called two. But three armies really, each one identified with a national group, each one fundamentally hostile toward the others.

At the same time the Dayton Agreement says that all the refugees can go home. So off go the refugees, and who do they meet, Yoram who killed their mother or whatever. It's obvious what is going to happen here. They're not going back unless they are de-

fended by IFOR. And why won't IFOR do it?

IFOR is doing a terrific job, in my opinion. They are following their mandate. They insisted, because they knew what happens from the UN experience, that you don't police someone with a bad mandate. They said we want a mandate that is totally straight: We police the Inter-Entity Boundary Line, or zone of separation. If we come across war criminals, we pick them up. We're not going in anywhere.

They wouldn't like to do it, but they would be perfectly prepared to go in and take Karadžić. They would be perfectly prepared to go and put people back into their homes as refugees, if the commander in chief of the American army stood up, a priori, and said that he was going to take the political wrath for any consequences. President Clinton is not going to do that. So, don't blame IFOR and don't blame the Pentagon. Blame the political instances that created this policy. The Pentagon, in this case, is really just following orders, which is what an army should do.

I think it's time that the international community—the great powers—gets honest, and says, "Look, all that stuff about the return of refugees, that is just a bit of talk, really. You aren't going home." Then these poor people, who actually believe, and have a document to prove, that they have the right to go home, will be able to say, "Well, all right, they've partitioned the country. What are we going to be able to do about that?" And work from that premise. Otherwise you go in there and you settle it by force, which would be a very difficult thing to do. That's for the politicians to work out.

Someone was honest the other day. It's very rare that political leadership is honest in the Yugoslav business. Klaus Kinkel, of all people. Could you imagine it? Klaus Kinkel came to the Paris follow-up conference and said, "One year. The troops are out in one

year. Don't want to hear anything else about it. One year." Now, far be it from me to suggest, and I never would, that this may have something to do with the coalition crisis currently going on in Germany or the fact that there are a lot of refugees that certain people want out of the country and back in Bosnia. It could have to do with the fact that the Germans have had enough and they say, "Let's get on with the partition and stop all this pretending that we're going to send people back home."

One person whose job I do not envy is Ambassador Frowick, who is to organize the municipal elections. I think that we should all be straight about it and say, either partition and you're not going home, or we're going to make an enormous military effort and we're going to do it. State your choice, but don't say, "You're going home," when you know that you are lying.

My final point is Macedonia. In Macedonia, the Serbs have been gutted in the east. The greatest Serbian project is finished. They know that. Milošević knows that. Milošević also knows that there is one remaining question of irredentism in the Balkans which threatens a lot of violence, and that is the Albanian question. Milošević will get rid of Kosovo. He's certainly working toward it already. "What?" I hear everybody say, "Milošević get rid of Kosovo? But surely he loves the cradle of Serbian civilization." Well, he certainly didn't mind betraying a 300-year-old Serb community in the Krajina, did he? He let the Serbs be shot like rabbits by the Croats there. That was fine. He didn't mind about giving up territory in Bosnia and Herzegovina. Slobodan Milošević is not, of course, a nationalist.

So, what is Slobodan going to do? He has started doing it already. He signed a document with Ibrahim Rugova in Kosovo—a devil incarnate. Who mediated the Albanian-Serb agreement on the return of Albanians back to schools in Kosovo?

The Vatican. They did it. Milošević will get rid of Kosovo, but he's going to ensure that Serbia protects its interests through Macedonia. He will come to a deal with Macedonia, whereby the Albanians in Macedonia will have to stay in Macedonia, but Kosovo will be allowed to go to Albania. Inasmuch as Milošević and the Albanian leadership are beginning to try to sort this out without armed conflict, it is a good thing. It will, of course, mean changing borders. It will mean more transfer of population, and that is principally a bad thing, but we have bad choices left in the Balkans and not good choices.

Once that is sorted out—if the Albanian question ever is sorted out—then you will see, at the end of this century, the final triumph of a principle which began life in earnest at the beginning of this century and has led to a lot of misery for a lot of people. I don't think political nationalism in certain forms is over in Europe. We have a lot of problems in Europe which are not related to eastern Europe and the Balkans. But I do think that finally a process which began in the middle of the nineteenth century, based on a thoroughly disgraceful principle, which sees people as wanting to live apart, as opposed to wanting to live together—and which was not begun in 1989—that process has finally won, although the Bosnian situation remains an open wound. It is up to all of us to do something about it. If we look at our record over the past five years, we can't be too optimistic.

Question:

Regarding current affairs in Republika Srpska, the RS, how would you evaluate the position of Professor Plavšić, the president of the RS? Do you think that she's become independent enough not to rely on Dr. Karadžić? Or do you think that, in fact, Dr. Karadžić still commands, pulls the strings from behind the scenes?

Glenny:

It's a great shame that our good friend, Jovan Zametica, could not be here because he would have known what was going on there. I am not as closely involved with Pale leadership as Zametica, to be able to give you any real idea about that.

My own feeling is that Karadžić is politically dead and that the person who really pulls the strings in the RS is Momcilo Krajišnik. Plavšić is a useful person for him to put up and see whether he is able, at the moment, to irritate Mladić enough to get rid of him. Plavšić is not a politician of any great power, to my mind. The jury's still out on this, but I think that he's dead.

Question:

What is wrong with taking apart internal boundaries of one sovereign state? When Yugoslavia was taken apart, when those international frontiers weren't respected through the policy of recognition, what is wrong with, say, redrawing the internal boundaries of Croatia, Bosnia, and possibly Serbia?

There are two precedents here. One is the case of Ireland. When Ireland seceded from Great Britain, Northern Ireland was separated from Ireland. When India was partitioned, the two large provinces called Punjab and Bengal—majority Muslim states—were also partitioned. Why was this option never considered? I don't think international boundaries have the same sanctity as international borders.

Glenny:

In the case of Yugoslavia, borders made from the administrative boundaries of the republics seemed as good as any. But frankly here, members of the international community and the leaderships particularly of Serbia and Croatia were entirely cavalier with any principle. Germany's argument for rec-

ognition was that Germany itself had just gained self-determination—i.e., unification—and everyone else in Europe should have that right as well. Now this is simply not a relevant political parallel, the unification of Germany and the breakup of a federal multiethnic state in the Balkans. But it was a parallel which the Germans used.

Similarly, Tudjman and Milošević and the nationalist leaders inside Yugoslavia would use, simultaneously, historical, demographic, and strategic arguments to justify the redrawing of boundaries in the former Yugoslavia. There was no actual principle for how you go about doing this. Milošević wanted all Serbs in one state, which he now denies ever having said. I always wanted to ask him, at the time, “Does that mean that you’re going to go in and pick up some of the Serbs in Hungary and Romania? What do you mean by all Serbs in one state?” What he was arguing was, all Serbs in Yugoslavia in one state. He wanted large parts of Bosnia and Herzegovina, which were not naturally Serbian lands, for strategic purposes. He would use strategic and historical arguments. No one was discussing this in a principled fashion either inside Yugoslavia or outside Yugoslavia.

Everyone went berserk when the JNA, the Yugoslav army, moved into Slovenia. In fact the JNA did have a constitutional duty to secure the integrity of that state. What do you do when the state is failing and both internal and external factors are using disingenuous arguments to advance their political programs? It is very difficult to come up with a principled response.

Diplomatic Roundtable: The Future of the Balkans

Panelists:

Ambassador Robert Frowick, Former Head of Mission in Bosnia and Herzegovina, Organization for Security and Cooperation in Europe

Ambassador Muhamed Sacirbey, Permanent Representative of Bosnia and Herzegovina to the United Nations

Ambassador Ivan Šimonović, Permanent Representative of the Republic of Croatia to the United Nations, and former Deputy Foreign Minister, Republic of Croatia

Ambassador Vladislav Jovanović, Permanent Representative of the Republic of Yugoslavia to the United Nations

Ruth Wedgwood, *Moderator*, Professor, Yale Law School, and Senior Fellow, Council on Foreign Relations

Ruth Wedgwood:

It's fine for academics and aid workers to make predictions, but it's quite a different matter to be a party on the ground and have to figure out how to maneuver your way through the thicket. So we thought it might be interesting to close with what we have styled a diplomatic roundtable—it happens that everybody here is a diplomat, of one sort and another—to talk about the prognosis for the region and in particular for Bosnia and Herzegovina.

I am going to ask each of the panelists to give a short statement of how they see events evolving, then I'm going to put one impolite question to each of my indulgent panelists, and then we'll open it to the floor for questions. We'll begin with Ambassador Frowick.

Robert Frowick:

I have been hearing so many criticisms of OSCE that I will start by recalling a statement by Joseph Luns, when he was secretary-general of NATO and NATO was constantly under attack. What he said about NATO applies to OSCE—OSCE is like Wagner's music: it's not as bad as it sounds.

I am asked to review the events of this historic year in Bosnia and Herzegovina and look ahead at a vision of the future of the Balkans, as far as the OSCE perspective is concerned. Let me say at the outset, in answer to the central question of the seminar—“After Dayton: Has the Bosnian Peace Process Worked?”—I believe the process has generally worked, better than anticipated, although the parties have a long way to go to create the freedom of association, expression, and movement as well as the politically neutral environment that was envisaged in the Dayton Agreement.

OSCE was requested to take responsibility for three key tasks in Bosnia: (1) to supervise the preparation and conduct of the elections, (2) to contribute to democratization and a strengthening of respect for human rights, and (3) to extend OSCE auspices to negotiations on confidence- and security-building measures and arms limitations. In my opinion, considerable progress has been achieved on all three of these objectives. But in each case we are at an early stage of a process that will take a great deal of time. Any hope of eventual success will depend mainly on the stamina and will of the international community to stay the course in both military and civil peace-building efforts.

I'm told that there was sharp criticism of the process that resulted in the September 1996 elections, in particular the voting

regulations for refugees. I would like to present our perspective on that question in the OSCE mission and the Provisional Election Commission which OSCE established in Sarajevo early in 1996.

The peace agreement indicated that as a general rule the refugees and displaced persons would be expected to vote in person or by absentee ballot where they resided in 1991, that is, before the war. The displaced persons are the refugees that remained within the country. The commission preserved this right in its regulations for the 800,000 to 900,000 refugees and hundreds of thousands of displaced persons who were eligible to vote. But the agreement also stated that such citizens might apply to the commission to cast their votes elsewhere. Thus our regulations had to ensure this right as well. I took the position, as chairman of the commission, that we should emphasize the right of the individual voter to decide for himself or herself where to reside and thus to vote. Unfortunately, in too many cases state authorities arrogated to themselves the right to decide where the voters should cast their ballots. The electoral process thus suffered the imperfections and stress and strain that I, for one, had consistently indicated would unfortunately, but likely, be the case in elections that were being held only a matter of months after the formal end of the horrific interethnic warfare.

The essential facts in the country are that IFOR moved into Bosnia in the winter of 1995–96 with overwhelming strength, separated the combatants and their weaponry, generally stabilized the situation on the ground, and gave OSCE, UN agencies, the European Union, and others the chance to begin building a structure of peace. Of pivotal importance was the election of common institutions of government as the principal means of bringing the respective peoples back together again. That is, of overcoming the centrifugal political forces that had been

unleashed during the war in the military sense and that were continuing in a political sense. The electoral process created a collective presidency, a House of Representatives of Bosnia and Herzegovina, a presidency of Republika Srpska, a national assembly of Republika Srpska, a House of Representatives of the Federation of Bosnia and Herzegovina, and governing bodies for ten cantons—the ten cantons that are in the federation. The high representative is currently in a position to install the winning candidates into office and he is moving along that tortuous path slowly but steadily.

Early in the summer 1996, I determined that the integrity of the electoral process required that no one indicted for war crimes by the International Tribunal for the former Yugoslavia in The Hague and refusing to comply with an order to appear before that tribunal, should be able to participate in the campaign. On June 14, 1996, as the OSCE head of mission, it was my responsibility under the rules of the game to decide whether to recommend that the elections take place within the nine months specified in the treaty time frame or not, and I made that recommendation. I remember talking with my good friend Muhamed Sacirbey at that time about my *crise de conscience* in dealing with the issue, and about the fact that we had Radovan Karadžić holding the office of the presidency of the leading party of Republika Srpska. I said I didn't know what might be done about that but stay tuned, because I was going to do something.

I decided that Karadžić must either leave the presidency of the Serb Democratic Union, the SDS, or the SDS would not be able to participate in the elections. After some intensive efforts by myself and the lightning, decisive, highly publicized visit to Belgrade of Richard Holbrooke and his team, Karadžić in fact was removed from his public office both as the head of the party and the lingering position that he held as president of

Republika Srpska even after having transferred his powers to Mrs. Plavšić. This occurred on July 18, 1996.

Holbrooke and company were keeping me up all night on the telephone when they were in Belgrade working out that agreement. I had just come back from talking with Foreign Minister Primakov of the Russian Federation and the next morning we had the agreement—in the early hours of July 19, 1996, which was the day the campaign was to begin. It seemed to me the effect was to give a boost to the integrity of a process that really needed some boosts.

As the process unfolded, there were so many difficulties in the municipalities that in August 1996 I decided it would be necessary to postpone the local elections for a while. Planning for these has continued, even up to today, but agreement on their taking place has been effectively held up by Republika Srpska. At present, we are trying to gain agreement on an extension of the mandate to permit OSCE supervision of these critically important elections—in some ways the heart of the entire peace process.

Once the municipal elections are held, the OSCE mission to Bosnia and Herzegovina will be restructured to carry its work forward on two pillars of policy. First, democratization, which will represent the most important single mission activity in the years ahead, and I do expect OSCE to be involved in Bosnia and Herzegovina for quite some time. Democratization and human rights on one side, and secondly, regional stabilization questions on the other. That is, confidence- and security-building measures and arms limitations.

Looking well into the future I would like finally to offer some food for thought. I think that OSCE should be considered for a greater leadership role in dealing with future crises in Europe like that of Bosnia and Herzegovina. I believe the remarkably success-

ful 1967 concept of former Belgian Foreign Minister Pierre Harmel, that the Atlantic alliance should develop military forces capable of meeting any level of threat, through flexible response, and then on the basis of the stability thus established, should pursue diplomatic efforts to resolve underlying political problems—that this approach should be emulated in ways that suit the evolution of events in Europe. Specifically, IFOR-like military forces that include strong United States and allied, as well as Russian and eastern European units, should be responsible for military aspects of peacemaking. OSCE, under the aegis of the United Nations Security Council, with similarly strong United States, western Europe, Russian, and eastern Europe participation might be considered to take the lead in the future in peace-building with respect to the civil sector. At present, OSCE is not geared to take on this level of responsibility. But I think this is a concept that should be carefully considered during this period of transition from collapse of the bipolar post-World War II era to the shaping of whatever new and viable order may prove possible in Europe in the years ahead.

Muhamed Sacirbey:

What were the objectives behind the Bosnian government signing the Dayton peace agreement? What did we hope to achieve? First, of course, to stop the war. The war had taken a tremendous toll on the population. The death and suffering was at a point where the people of the country were thinking it was better to give up forever on the concept of a unified country, a multiethnic society, rather than continuing to try to persevere. There was a second objective, a much broader objective, and that is what I simply call winning the war through peace. No, it didn't mean that you dig in for five or ten years and restart the war. What it really

meant is that there were certain objectives that we thought the Western community fully supported, and we thought it would be easier for the Western community, the international community as Misha Glenny calls it, to implement these objectives in an environment of peace. While the international community failed to intervene to stop the war, we thought they would at least intervene resolutely in peace to see those particular principles and objectives implemented. In particular we thought that the concepts of democratization, full respect for human rights, and frankly, the superiority of an open, democratic, pluralistic society would be not only tolerated, but in fact supported by these very forces.

What are the results? First, the war has ended, and thankfully much of the suffering that the population has experienced. Obviously some of the population still feels that the struggle continues, particularly those who are deprived of their homes, those who still don't know the fate of missing relatives, and those who feel they have been deprived of justice. Nonetheless the physical suffering has been significantly reduced.

The rebuilding process has in fact been started. We could see more being done. But I think to a large extent the World Bank and other organizations have shown themselves in a very energetic fashion in Bosnia and Herzegovina—unprecedentedly so for the World Bank. Despite the fact that there aren't enough resources to rebuild the country to the point where we believe it needs to be, we can say that there has been at least a good start.

The problem with this process of rebuilding, with this process of reintegration, is that the process of reconciliation really has not taken place. It has not even started, and that's not just by accident. It's not because people somehow just can't stretch out and shake someone's hand. It's because there are clear objectives on the part of those

who are opposed to reconciliation. Those who started this war and who fought it for the purpose of ethnic separation are creating obstructions to reconciliation for the simple reason that, in an environment of reconciliation, they would go from being nationalist heroes to war criminals.

The greatest problem that we have seen as a result of the implementation of the Dayton Agreement is the selective application of the various elements of the Dayton Agreement itself. This, in many ways, is the selective vision of those who are responsible, from the outside, for implementing the Dayton Agreement. Their selective vision is based upon the following principles. First, that the people in this region are not capable of achieving the objectives of democracy, human rights, and a multiethnic society. That's why we hear all these stories about 600 years of ethnic strife and religious hatred. This effectively becomes a self-fulfilling prophecy. Many of the internationals have convinced themselves that it's easier to keep these different communities apart, because once you get them together it's explosive. So when we look at the Inter-Entity Boundary Line, established by the Dayton Agreement, it has become sort of a demarcation line [that] even the IFOR forces seem too anxious to enforce, because they fear that people who cross the line might in fact cause difficulty for their mission. This is a politically expedient, convenient approach.

A few months ago, I had the opportunity to sit in a meeting with President Alija Izetbegović and Admiral Joseph Lopez, the commander of the IFOR/NATO troops in Bosnia at that time. Admiral Lopez had just come in to take over the mission from Admiral [Leighton] Smith. In a very firm, confident voice, he said, "By the way, we're going to do more about making sure that war criminals are captured." He said, "If we come across them, we're going to make sure that we arrest them and take them in and de-

liver them to the tribunal. And we're going to increase our patrols and make sure that we're ever more vigilant and ever more active about making sure that we run into them." Maybe, but—and this is what I said to Admiral Lopez at this time—I said, "Please don't understand this as an insulting comment, but even a blind chicken gets a grain of rice every once in a while."

What are the long-term perspectives for peace? They are mixed at best. In many ways, the present situation has encouraged radicalism, because while on the one hand securing a lack of war, the peace agreement as it is implemented has also further cemented the status quo, the consequences of ethnic cleansing. Reconciliation and reintegration have not been given an opportunity to move forward. There seems to be a significant emphasis by those who are implementing the peace agreement, particularly the high representative, Carl Bildt, on creating the following picture: that you have on one hand the Republika Srpska, on the other hand the federation, and those two communities remain separated. There are two separate glasses, where the water does not spill over from one into the other. There is a common very thin roof. That roof is called the common institutions of Bosnia and Herzegovina.

Now maybe it isn't such a bad idea to build that common roof, but two things are happening. First, this common roof is being used as a way to avoid any action at the bottom, in terms of the reintegration of the two areas—the return of refugees. In effect it's being used as a substitute for the real reintegration of the country. On the other hand, at the level of the common institutions, the Pale Serb leadership is coming into various positions of authority in Sarajevo, and through these positions of authority, they in fact are mitigating, marginalizing, the ability of the Sarajevo government

to emphasize those aspects of the Dayton peace agreement which relate to things like the war crimes tribunal, return of refugees, and arms limitations. Therefore what's happening, is that this roof is being used now also as a way to minimize the support that our government can give to the war crimes tribunal. For instance, one of the questions that we'll have to ask ourselves, as part of this process of creating common institutions, [is] will the Pale leadership try to block Bosnia and Herzegovina from further complying with the war crimes tribunal's requests and demands? We already have incorporated in our laws, provisions to fully cooperate with the war crimes tribunal, and we are doing that on the ground. Will in fact this particular provision of our law either be eradicated, that is legally reversed, or will it be made null and void by nonapplication?

I want to give you one final vision. I think it's a very important vision here, and it corresponds to what Misha Glenny was speaking about. I don't always find myself in agreement with Misha Glenny, but his historical perspective is very interesting and rather accurate. The problem that I find with Misha's perspective is that in fact it is looking backward. We need to look forward. Maybe a hundred years ago, Europe could afford to think of itself in terms of small nation-states, that is mono-ethnic states. But with the modern era, obviously populations are moving around voluntarily and not just through the concept of ethnic displacement or ethnic cleansing. Therefore, in many European societies now you find large populations of non-Europeans, certainly people who were not born into the predominant population of that European state. If in fact the consequences of Bosnia mean that Europe prefers a mono-ethnic state, a purely mono-ethnic state, then one really needs to ask another question, and that is: what vision does Europe have of itself with, for one ex-

ample, six million Muslims living in France, or millions of Hindus living in the United Kingdom?

Clearly, we cannot base the future of Bosnia on historical factors of over a hundred years ago. But Europe still has not defined itself in terms of the Bosnian conflict. It seems to treat the entire area of southeastern Europe as a separate world. It almost seems enthusiastic about dealing with this part of Europe as a separate world, because frankly the European Union is a rather well-to-do economic club, and it doesn't wish to share this benefit, this prosperity with others. It can't say so because it just sounds, frankly, too crude and rude in today's society. So we hear arguments about how we've been fighting in Bosnia and the region for 600 years, we hear about our ethnic and religious differences, and it seems that somehow we are genetically defective. The rationalization being that is why our progress into the Western community and the European Community will be slowed down.

I don't accept that argument. But there's not much future that we can expect for peace in Bosnia unless Europe does develop a vision of itself and a vision of where Bosnia belongs in this Europe. Frankly we are too small of a country to dictate our own position in Europe without the input of the remainder of Europe and the Western community.

As a consequence, the real future for peace in the region, for peace in Bosnia and Herzegovina, is based upon our ability, that is the Bosnians' ability, to adhere to the standards of human rights and democracy evident in most western European countries and Western countries. On the other hand, Europe must see us as a part of them, and we must be very persistent in making sure that the principles they would apply to their own countries and their own populations are in fact also applied to Bosnia and Herzegovina. It's as simple as that. If not, then we've cre-

ated just another wall in the middle of Europe, and of course that wall eventually would also have to come down. At that time the costs may be even higher than they are today—for all of us.

Ivan Šimonović:

Let me start with the title of our panel: "The Future of the Balkans." I would like to ask, what does "Balkans" in this context really designate? If we use a geographical interpretation, then we would speak less about Croatia, which is bordering the Balkans, but is a central European and Mediterranean state, and we would be speaking about Bulgaria, maybe Romania, but certainly about Macedonia, Albania, Greece, and Turkey. The alternative is that the organizer is using the word "Balkans" for something else, possibly for the state of mind of the participants in the conflict in former Yugoslavia, designating them as belligerent, perhaps barbaric. Or that "Balkans" describes a situation of economic backwardness and permanent political instability. Although I do not agree with the use of the word "Balkans" as a negative stereotype, I want to put it clear: "Balkans" is not where Croatia belongs: neither geographically nor politically. Since I do not know what are the intentions of the organizers, I'll briefly address both the issue of the Dayton peace process, and the issue of the future of the Balkans.

Mark Twain once said that there is a simple solution for every complex problem, but it is usually a wrong one. This warning is very useful when applied to the problem of the conflict in former Yugoslavia and to the Dayton process. Dayton was a meeting not only of politicians, but of tendencies that were tearing apart, but also uniting Bosnia and Herzegovina for hundreds of years. Dayton has a lot of different dimensions, a lot of meanings. If there was not so much blood and tears in Bosnia and Croatia, we

could consider Dayton as an extremely interesting social, political, and legal experiment. Is it possible, not as an act of God, but as an act of interested parties, to have a resurrection of a collapsed state under some sort of international tutorship? Is it possible to replace a legal system with a new one created with the help of the international community, and to protect human rights by the threat of imported military power?

There has been a question raised whether Dayton has been moral, or whether it has been entirely a pragmatic solution. Although Dayton was basically pragmatic, there was also a moral element: it was not only buying time, it was buying human lives. It certainly did stop the war. But prerequisites for that success were not only peace negotiations, but the joint operations between the Bosnian army, including Croat and Bosniac components, and the Croatian army, which changed the balance of power on the ground. We all in Dayton knew that the institutions we were creating would not last forever. What was important was to have some sort of transitional solutions which would give Bosnia time and a fair chance. What would be the outcome was not known at the time, and is still unclear.

To make our estimation of the perspectives more reliable, I believe that we should analyze the hidden agenda of Dayton—the issue of interests involved. I would distinguish among three main circles of interests which met in Dayton. First, the most narrow circle, comprises interests of the three parties in Bosnia and Herzegovina: Bosniacs (or Muslims), Croats, and Serbs. Some obviously legitimate interests were publicly declared and defined, while there were some mutual allegations about a hidden agenda. The legitimate interest of the Bosniacs was the unity of the country within internationally recognized borders. Allegations have been made that the hidden interest is in a

unitarian state where the Muslim element would prevail and finally would lead to a Muslim state. On the other hand, concerning the Croats and especially the Serbs, the legitimate interest was the protection of equality of rights of national groups, while the allegations concerning a hidden agenda were that the institutional protection was being misused as a coverup and preparation for the carving up of Bosnia and Herzegovina.

The second circle consists of the interests of the neighboring states—the Federal Republic of Yugoslavia and Croatia. Certainly, their legitimate interest was to protect the Serbian and Croatian populations in Bosnia and Herzegovina and to ensure their own security and the security of the whole area. However, there were allegations about hidden ambitions to enlarge their territories into a “greater Serbia” or a “greater Croatia” at the expense of Bosnia and Herzegovina.

Finally, there was a third circle of interests, the interests of Contact Group members present in Dayton. Those interests were also rather different. There was the obvious and very legitimate interest in stopping the wave of refugees and to ensure peace and stability in the area. But there were also some other interests: for example to prove that there is still a great difference between the United States and emerging new Europe in their leadership capability when real problems are to be solved. Within the European Union there were different interests as well, based on traditional ambitions and competition over influence of individual states in the area. There was also the important interest of Russia to prove that it remains an unavoidable factor in international relations.

If we want to make our estimation of the perspectives reliable, we should keep in mind all the three mentioned circles of interests and observe the trends. First, concerning the sides in Bosnia and Herzegovina: the

process going on is encouraging. The realization of the military aspect of Dayton has been a full success. There is a steady progress of institution-building. But the chronic problem is a permanent need to exert pressure from outside and to pour in resources, in order to prevent structures from falling apart. The roots of instability are in the contradictory elements inbuilt in the constitution of Bosnia and Herzegovina and in the whole Dayton arrangement. In Dayton we have proclaimed the protection of human and national rights of every citizen of Bosnia and Herzegovina on the whole territory, and the freedom of movement. On the other hand, we were drawing corridors which enabled the direct communications of ethnic groups without a need to trespass through the territory of the other ethnic group. Another example: The decentralization and equal representation in central institutions provided for in the Dayton Agreement should prevent unitarian tendencies and domination of the largest ethnic group. On the other hand, the central institutions should keep the country from falling apart, taking into account strong secessionist tendencies, especially in Republika Srpska. Tension arising from such inherent contradictions is still present and the final outcome is still unpredictable.

Concerning the second round of interests, those of the neighboring states: the important ongoing process is normalization of relations. An agreement on normalization has been signed between the Federal Republic of Yugoslavia and Croatia.¹¹ Similar agreement is being negotiated between Yugoslavia and Bosnia and Herzegovina. Relations between Croatia and Bosnia and Herzegovina are good. The Joint Council for Cooperation has been created, facilitating strategic consultations on the level of the two countries. It is a composite structure because there are three parties included: Croatia, Bosnia and Herzegovina, and the federation.

Now, what is going on with the third circle of interests: those of the “big international players?” The European Union has formulated the conditions for countries in the region to cooperate with it. The conditions are that the countries fully respect all provisions of the Dayton Agreement and that there is close cooperation among countries in the region. There are different reactions to such a notion. Croatia emphasizes that we do not reject regional cooperation, but, on the other hand, that we want to cooperate also with our natural economic environment—over 60 percent of Croatia’s foreign trade is with the European Union. The United States is very present in Bosnia and its presence will necessarily continue; as a matter of fact, the present administration does not really have a free choice any more—Bosnia and Herzegovina and Dayton have grown into a test of efficiency and credibility of its foreign policy. Russia has its own difficulties and does not influence much. However, it seems its traditional support of the Serbs is not unconditional anymore.

If we would like to summarize, the developments are positive. The area of instability is slowly shifting eastward. After the dissolution of former Yugoslavia, Slovenia got off the hook first and is now successfully cooperating with the European Union. Now is Croatia’s turn. I believe that there is a fair chance that Bosnia and Yugoslavia will follow, though there are many problems remaining. Although reappearance of armed conflicts in Bosnia is unlikely, the country still depends on support from outside and its future is uncertain. In Yugoslavia, the problem of the Kosovo Albanians and their status is still wide open and, if not handled fairly and carefully, might lead to an explosion.

That brings me back to the issue of the future of the Balkans. I do believe that there will be some problems. It is not only an Al-

banian problem, the whole area is still—like it traditionally was—a powder keg. There might be some tensions between Greece, Albania, Macedonia, Yugoslavia, and Turkey. In addition to the postconflict settlement in the “Dayton countries” the situation in the broader area seems to require the international community’s preventive diplomacy effort.

Vladislav Jovanović:

I will try to express some elements of Yugoslav policy vis-à-vis the existing problems and the future which we are all prepared to embrace one day.

In this conference, we listened to much about Dayton. It was very tempting to interpret Dayton and to waste our energy in that kind of business. In our view, Dayton had two main objectives to achieve. It still has. One is to bring peace to Bosnia, and to allow that country to maintain its coherency. The second is to bring stability to the whole region. So Dayton and Paris, in spirit and in letter, mean a commitment by all of us to rid ourselves of the problems of the recent past and to restart a new life. In that respect, we think that the first and most important thing is to implement all provisions of the Dayton and Paris documents without any revision or any selectivity. The agreement is well balanced, and its implementation on the ground should be balanced as well. There are two main tendencies in its implementation, separatist and unitarist. Neither should be allowed. If either of them starts to prevail, the very delicate and fragile balance will be upset and many problems will arise.

Yugoslavia has a vital interest in seeing the peace in Bosnia being consolidated and lasting stability rooted. In that respect we’ve done much in order to facilitate the implementation agreement. We consider the normalization of our relations with the former Yugoslav republics as one of the major ele-

ments, and we have made a lot of progress in that respect. We have full and normalized relations with Macedonia, Bosnia and Herzegovina, and Croatia. We have no second thoughts with those three countries, and we are absolutely ready to resume not only normal voluntary relations with them but to accept any kind, any form of cooperation those countries are prepared for. Of course, implementation of the Dayton Agreement as well as normalization of processes around Bosnia requires one precondition, which is equal treatment of all local players within Bosnia and in the region of the former Yugoslavia. Equal treatment is indispensable. Without that, we risk seeing discrimination toward one side or another and the delicate balance to be upset.

Unfortunately, there is still room for further improvement in that respect. Republika Srpska is not equally treated in the reconstruction program. You have heard figures about that. It is not good, not only for Serbs in Republika Srpska but for Bosnia as a whole. You cannot build one country if you neglect part of the country, if you feed the discontentment or reservation among a large portion of the population. On the other side, Yugoslavia is one of the major contributors to the peace process, and is still discriminated against in some ways. Sanctions were lifted, but the so-called outer wall of sanctions is still maintained by one of the architects of Dayton. That country is expected to do away with the discrimination in order to allow Yugoslavia to play an even more positive role in the peace process.

Yugoslavia is still outside the activity of the United Nations and many other international organizations. The normalization of foreign relations with former Yugoslav republics was based on the principle that we are going to respect each other and refrain from any legal or political act which could be detrimental to the interests of the other

side. We haven't reached that point. The former Yugoslav republics, now independent states, are fully aware of that fact, and the agreements signed with us in the last couple months represent one form of progress.

The end of war in Bosnia, or the absence of war, is not sufficient for getting a stable, consolidating, and lasting peace. Together with the end of military war, other forms of war should be ended immediately. Propaganda war, mutual accusations or suspicions, and insinuations should be ended by all three sides and by other countries which are around Bosnia and Herzegovina.

We have also the fact that Bosnia consists of two entities and three constituent peoples. That fact should be respected to the end and in its entirety. If one or another element is underestimated, then we risk that the implementation of other provisions will be victim of a lack of respect for full equality. Reconstruction is one of the pillars of peace in Bosnia and Herzegovina. All reservations vis-à-vis Republika Srpska in that respect should be removed, for the sake of peace and prospects of full implementation of all provisions of Dayton. Once reconstructed, all parts of Bosnia and Herzegovina would start thinking differently than if they are in ruins and haunted by various ideas of confrontation.

But even if all sides in Bosnia and Herzegovina implement Dayton fully and unreservedly, there is still one limit. The problems of Bosnia and Herzegovina cannot be solved without taking into account what is going on *around* Bosnia and Herzegovina. A vital environment and positive developments would be conducive to the healthy development of the process of peace in Bosnia and Herzegovina itself. Our colleague from Croatia mentioned one initiative about regional cooperation. The Balkans are a fertile ground for other initiatives as well. We have the revival of the old idea of Balkan coop-

eration. There was an important conference in Sofia. There is another initiative of the European Union dealing with stability and good-neighborly relationship between all Balkan states. And there is an American initiative on south European cooperation. Yugoslavia has a positive approach on all those initiatives, and takes active part in conferences which were organized in relation to those initiatives.

We believe that only if we turn our eyes to the future, if we open ourselves unreservedly to regional cooperation, can we deserve to be a good candidate for entering one day into the European Union. This is a kind of apprenticeship. We used to live in one state which was Yugoslavia, for many reasons an economically complementary country. Other countries in the region are also complementary: Bulgaria, Romania, Albania. We should do more than we have done recently to encourage regional cooperation and to allow by such cooperation that local conflicts be more easily solved by their relativization or even marginalization.

There is another point which is a bit distant in the future, but also should be noted: Europe is organized in one part in the European Union and in other parts in some kinds of gray zones. The idea of regional cooperation is pushed, but even in a region like the Balkans, it is not enough to solve all problems. Cooperation *between* regions should be in store as well. If the Balkans as a whole, not only the former Yugoslav republics plus Yugoslavia, but all other Balkan countries, reach a high degree of cooperation, they could link themselves with the Visegrad group and promote stability in a wider space of Europe. In that respect the European Union could have a junior partner in building security and prosperity in Europe as a whole. But this is a matter which requires more time to discuss and probably is not of immediate urgency for us.

Wedgwood:

Let me ask Ambassador Jovanović two questions that are close to home, rather than a larger vision of a southern Balkan union. We've been reading lately that Mrs. Plavšić, the president of Republika Srpska, is engaged in a power struggle with Mladić—that she is attempting to force General Mladić to resign. There are also reports that much of the payroll of the army of General Mladić still depends on economic aid or other types of assistance from the Federal Republic of Yugoslavia. Is there something more that the Federal Republic of Yugoslavia could do to strengthen the attempt of Mrs. Plavšić to take civilian control of the army? We've also heard of the difficulties in providing secure policing in Republika Srpska for refugees who might want to return. The Serbs have so far not agreed to downsize their police force, or to purge it of people who were known war criminals during combat. Is there any way that the Federal Republic could be helpful in persuading the Republika Srpska to be more forthcoming?

Jovanović:

Those are very delicate questions. I will try to answer, although Yugoslavia is not part of Republika Srpska, and Republika Srpska is not part of Yugoslavia. The leadership of Republika Srpska doesn't have the best mutual relationship. Madame Plavšić is a strong-willed person who is proud for being a cold and an iron lady. Recently she made a statement that after the elections, after she was elected the president of Republika Srpska, the need for frequent consultation ceased to exist and that only occasionally contact would be necessary. Nevertheless, we continue to have regular, normal contact. The deputy prime minister of the federal government of Yugoslavia visited Pale twice recently. Once was before the decision on demoting Mladić and a group of

generals. The second time our press gave wide publicity to the decision of Mrs. Plavšić to change that group of generals. We don't have any formal confirmation that it was supported by us, but my judgment is that we are not opposed, at least to that action. We don't want to meddle into their internal affairs.

Whether the higher officers of the army of Republika Srpska were or are paid by Yugoslavia, I'm not in a position to tell you because I don't know. But irrespective of that, this is a time of peace, and military factors should cede to the civilian factor. If Bosnia and Herzegovina in both of its entities are to be governed by law, then normally the element of a state which was too much present during the war should be reduced in size and importance. This is our view, and I hope that it is the view of all other players in our region.

Wedgwood:

Peter Fitzgerald, who is the head of the UN International Police Task Force, has been trying to persuade both the federation and the Republika Srpska to downsize their police and purge any known violators of the law of war during the combat. The federation has agreed to downsize and to vet their police. So far the Republika Srpska has not agreed to do so. I thought perhaps the Federal Republic, which you represent, could be more helpful in persuading the Republika Srpska that this is indeed in their interest in civilianizing the situation.

Jovanović:

I am not informed, so I cannot tell you anything concrete. But one thing is certain, we do everything that is possible to convince the leadership in Pale to be consistent with Dayton, and to avoid creating any problems in its relations with the other entity. We continue to make that kind of gentle pres-

sure. Whether we will be successful I don't know.

Wedgwood:

My next question is for Ambassador Šimonović of the Republic of Croatia. I worry about the competition between the Croat-Muslim Federation within Bosnia and Herzegovina and the lingering vestigial Croat entity called Herceg-Bosna. Herceg-Bosna wielded power during the war, and has only gradually been ceding its authority to the federation. Croatian President Franjo Tuđman has suggested to the press that Herceg-Bosna would linger on until the federation is fully functional. Don't you have a chicken-egg problem: the federation will not get up and running so long as real power on the ground is exercised by Herceg-Bosna through border guards or police.

As a second question, in the 1995 Croatian offensive in the Krajina and in Western Slavonia, which in a sense helped end the war, there was wholesale flight by Serbs from those areas. Call it ethnic cleansing. Call it flight. There were many refugees generated. What is Croatia doing to give assurances to those Serbs that they can safely return home?

Šimonović:

On the first question, it's not only a matter of the relationship between Herceg-Bosna and the federation. The problem is related to the triangular relationship between Herceg-Bosna, the federation, and the central state. The position of Croatia is that it is necessary to protect the interests of Bosnian Croats—and prior to developing structures of a new central state which will reflect the Dayton Agreement, including constituent status and equal rights of all three peoples—they can be protected through emphasis on the federation. The following is the underlying idea. By the end of the war and prior to Dayton, we had the Republic of Bosnia and

Herzegovina as a central state, almost entirely under the control of the Bosniacs and a legally undefined structure called Herceg-Bosna protecting interests of Croats. The idea was that the federation should be strengthened because through the federation we will have representation not only of the Bosniacs, but of the Croats as well. Certainly, the ultimate solution is to finalize the process of institutional building of Bosnia and Herzegovina according to Dayton, with the composition of central organs on a parity basis.

Now let me come to the second question concerning the "Operation Storm." Yes, there have been some atrocities committed after the operation. There is a tendency for people to follow the principle of an eye for an eye rather than the principle of love and forgiveness. The position of the Croatian government is that those atrocities must be punished. It is certainly the role of a state to prevent such behavior, but if it occurs, then perpetrators should be punished.

Concerning the process of return, it is not an easy task. In some parts of Croatia that have been liberated during the "Operation Storm," notably in the so-called Krajina, we have a problem that no one is anxious to return there. Neither Serbs nor Croats. It was quite a poor area, and the Croats who were displaced in 1991 have found that living in Zagreb or at the Adriatic coast is much easier and more comfortable than in Krajina. The data indicate that no more than 10 percent of Croats have returned to Krajina, although it's now under full Croatian control. I'm afraid that it's going to be the case with the Serbs as well. I certainly expect that there will be some returns. After "Operation Storm" we have some 12,000 cases of return. It's a small number, but I do believe the number will increase.

The most important is that all refugees and displaced persons have a right to return

and that they are put in a position to freely decide, as their individual choice, whether they want to stay, or they want to leave. If they want to leave, they must have the possibility of disposing of their property.

Wedgwood:

And in Western Slavonia, which is not so poor an area?

Šimonović:

In Western Slavonia, I would say, the rate of return will be considerably higher in comparison to other formerly occupied areas. But the highest rate of those who decide to stay in Croatia will be in Eastern Slavonia. I expect a real success there. With the help of the international community, and due to the existence of a credible threat, I believe that Eastern Slavonia will be successfully reintegrated in Croatia without the need to exercise force. I believe that the majority of Serbs from Eastern Slavonia will stay, prepared to equally share rights and burdens with all other citizens of Croatia. May I remind you: a considerable number of the Croatian Serbs sided with Croatia during the aggression and shared the destiny of the rest of its citizens.

Wedgwood:

This is a reference, I take it, to UN Transitional Administrator Jacques-Paul Klein, and the attempt to have Serbs stay in Eastern Slavonia when it has passed over to full Croatian control in a short while.

I have two questions for Ambassador Sacirbey. One is similar to the question I asked Ambassador Ivan Šimonović: There was cleansing in Bosnia during the war by all sides. Even after the war, one of the concerns was that Serbs in the Sarajevo suburbs did not feel secure, in part because the Pale Serbs frightened them and induced them to leave, and in part because they were not pro-

vided adequate police protection by the Bosnian authorities in Sarajevo. What is the Bosnia government doing now to assure Serbs that they could safely return to their old homes? You have some very striking interlocking problems. For example in Brčko, which is of strategic and economic interest to the Muslims, many of the refugees in fact are Serbs from the Sarajevo suburbs.

Sacirbey:

The term “ethnic cleansing” actually was invented by the Pale leadership at the beginning of the war to describe their policy of creating an ethnically pure state. Therefore I distinguish the attempt to achieve that policy from other acts where minorities may have been harassed or even worse. Obviously all minorities have suffered to some extent, but I always wish to emphasize that the policy of ethnic cleansing, really an act of genocide, was perpetrated by one set of authorities.

What is being done on that point right now? One of the issues that is not well understood is that in the Sarajevo region, even according to the International Police Task Force, the problem isn’t the local police, the problem actually is the other refugees. Maybe Bob Frowick can confirm this. Muslim refugees, who come from places like Srebrenica, feel no inclination to accord the Serbs any particular rights because they feel like they are so deprived themselves. According to Mr. Fitzgerald, whom I’ve spoken to about this extensively, the local police actually act very properly. So clearly there is, if I can use a term here, a psychological factor that needs to be addressed, to reinstall in the society the idea of a multiethnic integrated society. That frankly is a constant struggle, because we have two philosophies that are right now at odds in Bosnia. Not two or three ethnic groups, but two philosophies. One is the philosophy of a pluralistic soci-

ety, a multiethnic society, and the other philosophy is of ethnic separation, or mono-ethnicity. Unfortunately, the multiethnic philosophy seems to be running against overwhelming odds, in part because the other philosophy has been legitimized to some extent in the peace process. I don't just mean Dayton, but in the peace process. Frankly it is very convenient for some to support the status quo, which means to support the mono-ethnic policies.

Wedgwood:

If we could take it down from philosophy to practicality for a moment.

Sacirbey:

Well, practically, it's very easy because we now have a state that will consist of a presidency that will be representing three different communities. In all areas of authority those powers, those authorities will be represented. But remember that the real issue is at the local level. Will the local leaderships in fact view Bosnia once again as a multiethnic society or a mono-ethnic society? That's why the local elections are so critical to instill the process of return to the multiethnic philosophy. If you talk about the official level: What can the government in Sarajevo do? Frankly there is very little they can do beyond what they have done. What was always asked of President Izetbegović during the first year of the Dayton Agreement was not so much change this policy or that policy, but try to issue statements that reassure the Serb population. Obviously, you can only do so much of that or it starts even looking silly if it's a one-sided conversation.

Wedgwood

One last repartee before I turn to Bob Frowick. From the point of view of the Serb on the ground, a statement by President Izetbegović may not be reassuring if he's facing

local brigands and hooligans. One thought that has been offered is some kind of inter-entity police patrol. Serbs who might want to move back would have the assurance of Serbian participation in a mixed police presence, just as Muslims moving back to the RS might appreciate some kind of mixed police presence. One striking part of Dayton is that it leaves the police solely in the hands of the entities.

Sacirbey:

Anything that encourages inter-ethnic exchanges, whether it be at the level of the official powers or whether it be at the level of ordinary people, we would certainly accept. What you have just proposed, not only would we fully support, but we have in fact proposed. Unfortunately, as I said, there are two visions of Bosnia. One is as two separate glasses, the other one is as a big pitcher with basically two sides to that pitcher. I'm afraid that the way the peace agreement is now being enforced is as two separate glasses. We've really got to move toward creating a vision of greater integration.

Regarding the issue of crimes against Serbs, and it's important to note, especially since we've had Judge Cassese and others speaking, we've really tried to address that problem. Muslims who had been indicted for crimes against Serbs have been arrested and handed over to the international war crimes tribunal. That is an essential element of reconciliation and re-establishing the rule of law. Again, if it only works one way—if a handful of Muslims who as individuals may have been responsible for crimes are handed over, but none of the Serbs or for that matter none of the bigger parties responsible in the Croat community, then it creates a vision that this is just a one-sided game.

Wedgwood:

Now questions for Ambassador Frowick: Holding the municipal elections was a very

difficult problem because of the question of what to do with refugees who can't or don't want to return where they formerly lived. Do you let them vote where they now live or where they want to be in the future, the so-called P2 ballots? I take it you have decided to abolish the P2 ballots through the Provisional Election Commission. The consequence of all of this has been a delay in the municipal elections. I've heard some criticism that this delay simply consolidates the power of the nationalist political parties over the city administrations and the *opstina*. Not holding elections confirms nationalist power.

Second, we hear from the American government that we should look toward NATO as the main security architecture for the future of Europe, even central Europe and southward. NATO is the device to use to take care of minority problems. Yet the North Atlantic Council doesn't have any ethnic mediation or conciliation mechanism. Since you are one of the few Americans who has a long-time involvement in the OSCE, and in that office, as you say, you're only one-fifty-fourth American, do you see OSCE in fact filling a larger role than some people would currently paint for it?

Frowick:

Let's turn first to the question of the municipal elections. Yes, to some extent it is true that as long as we do not hold these local elections the authorities that emerge from the war remain in place. The longer this is the case, the less helpful it is to the peace process. We need to have local elections to see if we can induce some kind of movement forward toward greater pluralism. If you look at what happened in the September 1996 elections in Republika Srpska, which were so questionable, in the elections to the National Assembly out of 83 members there are some 18 Muslim and Croat depu-

ties. I was in Banja Luka when that body was inaugurated on October 19, 1996, and was quite struck by the fact that those Muslims were there. I think that there was also one Bosnian Croat elected. They didn't stay for all the activities, for example they got up and walked out when the oath was being taken to Republika Srpska. This was in reaction to Mr. Krajišnik's earlier disinclination to take the oath to the highest level of authority in Bosnia and Herzegovina. Nonetheless they were there for most of the ceremony. It was quite remarkable to see Mr. Sejfudin Tokić, a leading Bosniac Muslim representing the opposition Joint List Party, go to the podium and make quite an elegant speech. So it seems to me that's symptomatic of a certain advance in the political process over what we had sometime back. Now we need to try to stimulate movement in the same direction through the municipal elections.

One of the reasons why I tried after the September 1996 elections to go back and put the municipal voting on track again, to hold those elections before the end of November 1996, was precisely to keep up the momentum of the electoral process. To take advantage of the strategic presence in the country of IFOR troops, so that we would have some stability on the ground to hold those elections, and do that before there's a great downsizing of the whole international military presence in the country. We do appear to be headed toward another substantial although reduced military presence, probably on the order of 25,000 to 30,000. I think it's been stated rather officially at 30,000 troops. We need to get on with this as soon as we can, and I can tell you that in our mission in Sarajevo, the number one priority at the moment is working out an extension of the OSCE election mandate with Republika Srpska to achieve this.

Regarding NATO, I do think NATO is the nexus of a European security structure. That has to be the situation performance in crisis situations like Bosnia and Herzegovina. NATO is the nexus, but reaching out to some kind of a cooperative role also by Russian forces and by others in Europe, around IFOR-like military establishments. I gather in the follow-on force that is being envisaged, we're looking at forces from some 30 countries, 14 beyond the 16 member states of NATO.

Wedgwood:

Does OSCE have to be part of the brew because NATO doesn't have any developed mechanisms for conciliation or mediation among its members when they have minority problems.

Frowick:

Well, let me be clear on what I was trying to say, rather implicitly, in my final remarks. In the June 1991 CSCE [Council on Security and Cooperation in Europe] foreign ministers meeting, just as the Yugoslav situation was erupting, CSCE gave a mandate to the European Community to take the lead for Europe in dealing with the crisis. Secretary of State James Baker took the view that this was a European problem and should be handled by the European Community. On the basis of that mandate, we had Lord Carrington, then Lord Owen, and others working the issue. At the same time, it was understood that the United Nations should have a major role, so we basically had a UN-EC approach to deal with the diplomatic side of the problem. The Vance-Owen collaboration, for example.

Now I don't think that worked very well from 1991 to 1995, for many reasons. As someone who has spent many years in NATO, it seemed to me that unless the United States takes a leading role on the tough questions, we don't get from A to B.

The combination of reliance on the European Community and the United Nations was unable to end the war. Now it is true that it was only after French President Chirac issued his clarion call for the international community to become more vigorous in bringing an end to the war that the United States finally began stepping up to the mark. We had the Dayton negotiations. We brought peace to the country—at least the absence of war—and a chance to begin to strengthen the structure of peace in the country.

If we were to go into the future with IFOR-like military forces, dealing with crisis situations like Bosnia, we should consider strengthening OSCE to give it the lead. OSCE after all automatically has the United States heavily involved, as well as the European Union and the Russians and everybody else. Some people say you need a structure that has something like the Contact Group still operating as a steering board for action in Bosnia. All the members of the Contact Group are in OSCE. What I'm offering here is simply a theoretical vision of what might be useful in crises like this in the future: the combination of NATO at the center of IFOR-like military power and OSCE taking the lead diplomatically.

Question:

Would Ambassadors Frowick and Sacirbey comment on the citizenship provisions of the Dayton constitution? In addition to the provision for dual armies, this is potentially very problematic for the future. First, both entities are allowed to issue passports which are nominally the passports of Bosnia and Herzegovina; this seems to undermine the creation of a unified multiethnic identity. Second is the issue of dual citizenship. Under the constitutional provisions, subject to bilateral agreements, citizens of Bosnia and Herzegovina can also be citizens of another state. It doesn't take a rocket scientist to fig-

ure out if you're a Croat in Bosnia or a Serb in Bosnia which states those might be. Do you think in the long term these provisions can actually undermine the creation of the multiethnic unified identity that seems so important for a unified Bosnia in the future?

Sacirbey:

Regarding the passport issue you are interpreting it in a way that I wouldn't agree with. In fact, only the central government can issue passports. You are a citizen of Bosnia and Herzegovina, although as in the United States you can be a citizen of Ohio and the United States, you can be a citizen of the federation and Bosnia and Herzegovina, or a citizen of Republika Srpska and Bosnia and Herzegovina. I don't see that as a problem in the Dayton Agreement. Maybe we'll see it as a problem in the way that it's interpreted.

Regarding the issue of dual citizenship, I'm a dual citizen actually of the United States and Bosnia and Herzegovina, so inherently I do not see that as a problem. Unfortunately, in the circumstances of our situation, it can project itself as a problem, because some may believe that their primary expression is through citizenship in the country in which they do not live—i.e., in the Federal Republic of Yugoslavia or Croatia, rather than Bosnia and Herzegovina. We've accepted the concept of dual citizenship in the context of Dayton, so I'm not about to say we should get rid of it. But I think we have to be very careful about how it is applied. In particular, to what extent neighboring states may take advantage of it. It would be wise to limit the flexibility of the concept of dual citizenship so as not to create tension within Bosnia and Herzegovina. I don't think it's in anyone's interest to do that.

Frowick:

I would agree with what was just said. The focus of OSCE concern with citizenship related to use of the census of 1991 as the point of departure for preparing the elections. In my view this has been the most complex election process in all of history, in part because we have dual citizenship and we have three major political entities, the federation, Republika Srpska, and Bosnia and Herzegovina, at what might be called a republic level. We have all that divided by the Inter-Entity Boundary Line which separated 49 municipalities that existed before the war. We have different civilizations coming together from East, West, and deriving from the Levant. of these questions of dual citizenship do exacerbate this issue.

I'd like to make a comment about reconciliation. My friend Mo Sacirbey has made a statement that there really hasn't been an effective start to reconciliation. I think that OSCE along with many other international organizations has started that process. In OSCE, we've started at two levels. The elections and the opportunity to create joint institutions is one way of trying to overcome the centrifugal political forces and pull people back together again. We also have launched a number of initiatives at various strata of society. At the outset, I went to call on the religious leaders of the country to ask them if they couldn't work together to create a dialogue and try to see what they could do with their respective followers by preaching the sermon of reconciliation and peace. We at OSCE have taken many initiatives to try to bring religious leaders together and foster increased contact and the commencement of dialogue at successively lower levels through the faiths. We've done the same kind of thing with intellectuals, with women, with youth, with veterans' groups, with people in the arts. I think that cumulatively, although this is just a start, our work, on the

part of the OSCE, together with similar complementary activities by NGOs across the country and international organizations, have at least made a start toward reconciliation on a long-term process. But it's only a start, and this is why beyond the elections, OSCE's prime responsibility will be in the field of deepening this policy of reconciliation.

Question:

Could Ambassador Jovanović comment on Misha Glenny's remarks about the future of Kosovo and Macedonia? Do you think the Dayton peace accord has any impact on the situation there?

Jovanović:

This is the first time that I have seen Mr. Misha Glenny, although I know him by name, by reputation, and by his books. I have read two of his books. He is an extraordinary analyst, but I'm afraid that in the case of Kosovo, and partly of Macedonia, he has played with his own imagination more than with reality. The suggestion that Kosovo could be abandoned is the pure product of his fantasy. For Macedonia, I am not as much familiar. It is a different problem than between Kosovo and Yugoslavia, because of the different proportions of population, and different interests which Albania has in one or another republic or state. Those two questions are certainly complex and important enough that they should be kept in mind whenever we envisage the situation in the region. I agree with him that some other minority issues in the region are potentially dangerous. He mentioned some of them, and omitted others, but even those he mentioned illustrate the potential for crisis in the Balkans.

On the possible spillover of the crisis from Bosnia to Kosovo and Macedonia, I think that it is too late to speculate about that. First, in Kosovo we have a clear-cut

case of separatism and not of the refusal of the state to grant rights to the Albanian national minority or to prevent that minority from enjoying those rights. The problem is that the population, under pressure from the separatist leadership, avoids exercising the rights, which are not small. But now, more and more, both sides are becoming realistic. We already have some types of dialogue. There is one agreement which was cited by Mr. Glenny, between Milošević and Rugova—its implementation is underway. My impression is that we are going toward the resolution of the problem through dialogue and not toward a confrontation with such apocalyptic consequences as were suggested.

Question:

My question is for Ambassador Sacirbey. There's been a lot of discussion in this forum on the international military presence in Bosnia, first in the form of UNPROFOR, and then IFOR. There's been relatively little discussion of the international civilian presence. In Bosnia, we have a very unusual mix of players, and a greater number than in most recent conflict areas: the high representative's office, the UN in the name of UNMIBH, IPTF, UNHCR, OSCE, and even the EU administrator in Mostar. Do you think that the number and intermix of international civilian bodies has facilitated progress on the civilian side or not? What would be your prescription if you could have your hand at it, for future international civilian participation?

Sacirbey:

The UN has been mauled in Bosnia and Herzegovina. Both in the context of what's happened on the ground, but also its reputation. Unfortunately, I sometimes think that I'm a part of that as well as other officials from Bosnia and Herzegovina, and I'm a little bit saddened by it. Therefore I feel it's appropriate to speak up and talk about what

really is the right score so far as the UN is concerned. First, Bosnians were facing a war of extinction, we all know; I don't need to expand upon what was going on. The only way to address that problem was to confront those who were trying to promote that genocide, not only in places like Srebrenica, but in small towns and villages all throughout Bosnia and Herzegovina. When there was a failure to confront by the Western military forces, there was an outcry focused on UNPROFOR. In many ways UNPROFOR was more successful than it is given credit, because it managed to provide some relief, if not a real remedy. But both UNPROFOR and particularly the UN's civilian forces on the ground were really the tools of avoidance. They were there so that more resolute action need not be taken. UNPROFOR was there as an excuse so more resolute action need not be taken.

It's very tough, therefore, to give an appropriate judgment upon the UN civilian force except to say that, by and large, they were a very effective force, not only in doing the job given to them directly, in terms of humanitarian work or other similar types of work, but also in speaking out about the injustices and about what needed to be done. Many of them felt muffled by their official positions. In the future they shouldn't feel so muffled, because even under international law, you are supposed to speak out about the abuses going on. Many of you did.

When everything is said and done, history will judge the UN operation, including UNPROFOR, more positively than we have now. It will judge IFOR less positively, less successfully, because IFOR's job in separating the so-called warring sides has been a relatively easy one once NATO showed teeth. It was a rather simple job, especially since at least one of the parties was very much interested in seeing the country effectively separated and divided. The real trick

will be in what can be done to promote reintegration—that is, freedom of movement, arresting war criminals, and ensuring the safety of refugees as they come back. I'm afraid that IFOR/NATO seems to be avoiding that task and responsibility both on the ground as well as on paper. I'm not sure that is in anyone's interest, including IFOR and NATO, because ultimately the peace process will prove itself to be very hollow and without substance. Therefore we now need to have some more substance added to the process. Once again, while the UN and other NGOs can do quite a bit there, a lot needs to be done by the military forces on the ground, because in many ways and in many instances this is a military issue or police issue and not just an issue of humanitarian application.

Wedgwood:

Ambassador Sacirbey, isn't there a point of view that the current campaign of having organized Muslim expeditions crossing the Inter-Entity Boundary Line, the zone of separation, oftentimes armed in violation of Dayton, is going to be counterproductive to refugee return? It would be better to have returns be organized, orderly, done in a way where you can anticipate possible violence, instead of having what I take it are titular exercises of sovereignty, but which in fact may be provocative.

Sacirbey:

Bob Frowick said that reconciliation had started, and I agree with some of the areas he pointed to. For instance, right after the peace agreement was signed in Dayton, people were starting to move back and forth rather freely, some going to jobs across the line, some going to visit friends. But then, once IFOR had shown itself not to be such an aggressive or resolute force, many, particularly in Pale, took the view that "it's not so good to have this level of interaction, this level of

reintegration. Let's put a stop to it." The problem is that many of those that are opposed to this level of reintegration are now the very same people who are being elected and appointed to the central institutions. Therefore, you can't say that the central institutions are an example of reconciliation or reintegration, when the very people who wish to stop this process are using the positions in these central institutions as a way to stop it.

We fully agree that it is counterproductive to have these types of actions by Bosnian refugees trying to get back to their homes. Not that they are not entitled. But we do believe that it has provoked a very unfavorable response not only from the international community but from IFOR on the ground. Therefore, I think you will understand when I tell you these so-called incursions, as you put it, are not being sponsored by our government. Maybe there's some local-level official who has either been supportive or who has in some way facilitated, but the central government definitely takes the view that the return of refugees should be done in accordance with the UNHCR rules as they are established: You register that you want to return, UNHCR and IFOR help you return, and you don't go there with weapons. But if this is the way it is supposed to work then I think the refugees can rightfully demand a greater level of security. If they're not going to have weapons, they're not going to have their own police, and they can't trust the Republika Srpska police, for many good reasons as you know, then they have to demand of IFOR and other appropriate authorities that they be more robust in defending them. IFOR says that's not our job. Well when IFOR says it's our job to keep you from crossing the line, but it's not our job to help your security once you've crossed the line in accordance with the protocol that's been established, I think there is something wrong with that mechanism.

Question:

What about the role of the UN in Eastern Slavonia?

Šimonović:

The UN has been present in Croatia since 1992. It was first UNPROFOR, then it was UNCRO, and finally UNTAES. The problem with United Nations activity and with peacekeeping was that the mandate was not clear and that there was no real support for its implementation. Croatia was pushing for a clearer and active mandate, because we wanted to protect the non-Serb population from ethnic cleansing and share reintegration of occupied territories. A part of the UNPROFOR mandate was demilitarization, return of refugees, protection of human rights, and so on. Unfortunately, UNPROFOR was hopelessly inefficient. During its presence, we had 600 people murdered in the United Nations protected area in Croatia and the ethnic cleansing was completed. On the other hand, after "Operation Storm," when it was clear that Croatia is capable of using military means to achieve liberation and reintegration of the remaining occupied territory, UNTAES has proved very efficient. Now UNTAES has an active mandate—it is clear that Eastern Slavonia will be reintegrated, there has even been an agreement signed between the local Serbs and the central authorities on that issue.¹² The UNTAES mandate has been accepted by both the local Serbs and the Croatian government and supported by the international community, especially the United States. It seems that the United Nations forces can be efficient only if their mandate is clear, and if they have adequate support.

Question:

I would appreciate if Ambassador Šimonović and Ambassador Jovanović will give me an answer whether the issue of war reparations was addressed in the process of

mutual recognition between Croatia and the Federal Republic of Yugoslavia, and if Ambassador Šimonović could give me a comment on what currency is in official use in Herceg-Bosna.

Jovanović:

There is no room for speaking about reparations. From many legal points of view, when the Croatian parliament declared independence, it was then unilaterally in controversy with the federal constitution. Later on, when Croatian resistance to federal authority took the form of open rebellion, the role of the former Yugoslav People's Army was not that of an aggressor or occupying army. Only after Croatia was admitted as an independent state, recognized by the United Nations, could we talk about that. The war in Croatia ended in late 1991 with the adoption of the well-known Vance plan. So, legally speaking, we cannot speak about reparations in any respect. It was a war between paramilitary units in Croatia and the legal armed force of the only recognized state at that time, which was the federal People's Army. That army ceased to exist. We have had a reconfiguration of that space since that time. We have fully independent states plus one reconstructed entity, Yugoslavia.

Šimonović:

It is the deliberation of the Badinter Commission for arbitration, whose competence has been accepted by all successor states, including the Federal Republic of Yugoslavia, that the end of the Socialist Federal Republic of Yugoslavia was not brought about by secession, but rather by dissolution. This decision has been supported and acted upon by the international community and international organizations including the United Nations. The United Nations General Assembly even passed the resolution entitled "Situation in occupied

territories of Croatia," clearly identifying the act of aggression against Croatia and the aggressors.¹³ Therefore, from the perspective of international law, claims for reparations are well grounded.

Concerning the bilateral relations between Croatia and Federal Republic of Yugoslavia, in the Agreement on the Normalization of Relations, in Article 7, the principle of reparation is implicitly included. It is stated that everybody will be compensated for the damages or lost property, and since the same article, point 3, mentions active hostilities, compensations for the damages should be interpreted as war reparations. What will be the outcome in the sense of practical implementation remains uncertain and represents not only a legal, but also a political issue. Its resolution will depend on the work of a Joint Commission, provided for by the same article of the agreement, which is just being established. The commission will try to work out how people who got hurt during the war will be compensated.

Wedgwood:

What is the currency of Herceg-Bosna?

Šimonović:

It is not for me to answer this question. It should be addressed to Ambassador Sacirbey, who, representing Bosnia and Herzegovina, represents Herceg-Bosna as well.

Sacirbey:

Thank you, Mr. Ambassador.

Wedgwood:

You see, special parallel relationships can work.

Sacirbey:

A new central bank has been formed for Bosnia and Herzegovina, based upon the

legal continuity of the old central bank. That bank will act for the entire territory of Bosnia and Herzegovina. It will have one governor, who will be a foreign national for the first six years, and three vice-governors: one from the Republika Srpska and two from the federation. There will be one currency in use, one legal currency. It may be possible that the currency will have different names in different parts of the country. That is what has been advocated by some. But frankly what matters is that there is one unified monetary policy because that really is critical to the sovereignty of a country, but more importantly to its cooperation with the World Bank and the IMF when it comes to rebuilding of the country. I'm not going to get into the polemics of whether it is good to have two names, three names, five names, or one name, I'm just going to focus on the fact that there will be one legal tender.

Šimonović:

Unofficially, I'm informed that in Herceg-Bosna the most appreciated currency is the deutsche mark.

Wedgwood:

And the deutsche mark is not what it used to be.

NOTES

- ¹ See Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1995).
- ² *Ibid*, p. 52.
- ³ *Ibid*, p. 2.
- ⁴ *Ibid*, p. 6.
- ⁵ Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Mass.: Harvard University Press, 1992).
- ⁶ Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).
- ⁷ Samuel Huntington, "The Clash of Civilizations," 72 *Foreign Affairs* 22 (Summer 1993).
- ⁸ Trial of Hans Albin Rauter (Netherlands Special Court, S-Gravenhage, May 4, 1948, and Netherlands Special Court of Cassation, Jan. 12, 1949), 14 *Law Rep. Trials of War Crim.* 89 (UN War Crimes Commission 1949), reprinted in 16 I.L.R. 526.
- ⁹ Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Prosecutor v. Duško Tadic a/k/a "Dule," IT-94-1-AR72, Appeals Chamber, Oct. 2, 1995.
- ¹⁰ 18 U.S.C. § 2441.
- ¹¹ Agreement on Normalization of Relations, Croatia-Fed. Rep. of Yugoslavia, Aug. 23, 1996, UN Doc. A/51/318 S/1996/706 (Aug. 29, 1996), Annex, reprinted in 35 I.L.M. 1219 (1996).
- ¹² See "Agreement on Normalization of Relations, Croatia-Fed. Rep. of Yugoslavia, 23 August 1996, UN document A/51/351, S/1996/744 (Aug. 29, 1996), reprinted in 35 I.L.M. 1219 (1996).
- ¹³ UN GA RES 49/43 (Dec. 9, 1994).

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Ambassador Robert Frowick headed the Organization for Security and Cooperation in Europe's Mission in Bosnia and Herzegovina. He has previously held several ambassadorial positions in U.S. delegations to the Conference on Security and Cooperation in Europe (CSCE) and in 1994 was the Head of a CSCE Monitor Mission to the Republic of Macedonia. From 1982 to 1986, he was Political Adviser and Chief of the Political Section at the U.S. Mission to NATO in Brussels. During his U.S. State Department career, he served in diplomatic missions in Rome, Prague, Paris, Bucharest, and Montreal. He also worked for the U.S. Department of Defense from 1957 to 1958 and was a pilot in the U.S. Air Force. Ambassador Frowick was an Overbrook Fellow at Yale from 1958 to 1960. He was a Visiting Research Fellow at Stanford from 1975 to 1976

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Misha Glenny, writer and broadcaster, is currently completing a history of nationalism and great power activity in the Balkans entitled *History of the Balkans* (1999). He received a B.A. from Bristol University in 1980 and conducted postgraduate research at Charles University in Prague from 1981 to 1982. He was a Fellow of the Woodrow Wilson International Center for Scholars from September 1995 to July 1996, and of the World Economic Forum in Davos from 1993 to 1996. Among his many prestigious awards are the 50 Years Fulbright Distinguished Scholar Award (1996) and the Overseas Press Club of America Award (1993). His book *The Fall of Yugoslavia: The Third Balkan War* (1992) won the Cornelius Ryan Prize for Best Book on Foreign Affairs. He has also written *The Rebirth of History: Eastern Europe in the Age of Democracy* (1990) and many articles on the Balkans which have appeared in the *New York Review of Books*, the *New York Times*, and elsewhere.

James Gow is a reader in War Studies at Kings College, London. His books include *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (1997); *Legitimacy and the Military: The Yugoslav Crisis* (1992); *Peace-making, Peace-keeping: European Security and the Yugoslav Wars* (1992); and *Yugoslav Endgames: Civil Strife and Inner-State Conflict* (1991). Since 1994, he has been an expert adviser on military-political and international matters to the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia. Mr. Gow was also the first witness to testify before the tribunal. From 1997, he has been a member of the Expert

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David Harland is Senior Political Officer of the United Nations Mission for Bosnia-Herzegovina and adviser to the Secretary-General's Special Representative in Bosnia-Herzegovina. Dr. Harland also has served as senior political adviser to the commanders of the UN Protection Force in Bosnia-Herzegovina (UNPROFOR), Lt. General Sir Michael Rose and Lt. General Rupert Smith. He has lived in Sarajevo since 1993. He holds a Ph.D. in international relations from the Fletcher School of Law and Diplomacy at Tufts University and formerly served in the UN Environmental Program in Nairobi.

Ambassador Vladislav Jovanović is the Permanent Representative of the Federal Republic of Yugoslavia to the United Nations. Previously he was the Minister for Foreign Affairs of the Federal Republic of Yugoslavia and the Minister for Foreign Affairs of Serbia. His prior posts also include Deputy Assistant Minister for Multilateral Affairs in the Foreign Ministry, Ambassador of Yugoslavia to Turkey, and Minister-Counsellor in the Embassy of Yugoslavia to the United Kingdom. Ambassador Jovanović received his legal education from the University of Belgrade.

Theodor Meron is a Professor at New York University School of Law and was an adviser to the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia. Professor Meron is author of numerous books and articles, including *Human Rights Law-Making in the United Nations: A Critique of Instruments and Process* (1986); *Human Rights in Internal Strife: Their International Protection* (1987); *Human Rights and Humanitarian Norms as Customary Law* (1989); *Henry's Wars and Shakespeare's Laws* (1993); and *Bloody*

Constraint: War and Chivalry in Shakespeare (1998). He has also edited *Human Rights in International Law—Legal and Policy Issues* (1983–84).

Julie Mertus is Assistant Professor of Law at Ohio Northern University Pettit College of Law. She was Visiting Professor at Emory Law School, and was Visiting Fellow at the human rights program at Harvard Law School and an affiliate at the Harvard Center for International Affairs. She was formerly counsel to Human Rights Watch (Helsinki Watch), where she investigated human rights and war crimes in the former Yugoslavia and worked on issues related to the formation of the International Criminal Tribunal for the Former Yugoslavia. A 1994 recipient of MacArthur and Soros Foundation grants, she lived and worked in the region for over two years during the Bosnian war. She is the author of *Kosovo: How Myths and Truths Started a War* (1999), an exploration of the building of Serb and Kosovar Albanian national identity; co-editor of *The Suitcase: Refugees' Voices from Bosnia and Croatia* (1997); and author of *Local Action/Global Change*, a manual on women's human rights, which has been published by the United Nations in many languages. She has written extensively on human rights, eastern Europe, and related issues for such publications as the *New York Times*, Oxford University Press, and for opposition presses within Yugoslavia. Ms. Mertus has also taught in the political science and law faculties of the University of Bucharest, Romania (as a Fulbright Professor), New York University, Cardozo Law School, Smith College, SUNY Buffalo Law School, and Belgrade Women's Studies. She is a 1988 graduate of Yale Law School.

Soren Jessen-Peterson was the United Nations High Commissioner for Refugees' (UNHCR) Special Envoy for the former

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Ambassador Muhamed Sacirbey is the Permanent Representative of Bosnia and Herzegovina to the United Nations and its Special Envoy for the Implementation of the Dayton Peace Agreement. Previously, he served as Bosnia and Herzegovina's Foreign Minister and played a key role in negotiating the Dayton Accord. Before assuming these diplomatic posts, Ambassador Sacirbey held a variety of positions in business and finance, including Vice President and Manager of the Standard and Poor's Corporation and Senior Vice President for the Security Pacific Merchant Bank. He received his law degree from Tulane University and his M.B.A. from Columbia University.

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Glossary of Places and Terms

- Badinter Commission:** Arbitration commission appointed in 1991 by the European Community and chaired by Robert Badinter, former president of the Conseil Constitutionnel in France. It advised the European Community on which of the breakaway republics in the former Yugoslavia should be recognized by the member countries, although the European Community disregarded the advice.
- Banja Luka:** Largest Serb city in Bosnia and Herzegovina, located in the western portion of Republika Srpska, 200 km northwest of Sarajevo. In 1998 Banja Luka became the capital of Republika Srpska.
- Belgrade:** The capital of the Federal Republic of Yugoslavia and capital of Serbia, located at the confluence of the Sava River and the Danube, and political stronghold of Slobodan Milošević.
- Bosnia and Herzegovina:** Formerly known as the Republic of Bosnia-Herzegovina; recognized in the Dayton Agreement as Bosnia and Herzegovina with constituent “entities” of the Croat-Muslim Federation and Republika Srpska.
- Bosniac:** A term coined in the civil conflict to refer to citizens of Bosnia and Herzegovina who do not identify themselves as Croats, Serbs, or Muslims. In practice, most Bosniacs are Muslims.
- Brčko:** The major Bosnian port on the Sava River, formerly used for shipping to European markets. Control of the city and surrounding area was the subject of an arbitration under the Dayton Agreement (Annex 2, article V).
- Conference on Security and Cooperation in Europe (CSCE):** Organization whose name was changed to OSCE at the Budapest Conference in 1994.
- Contact Group:** Diplomatic consultative group comprising the United States, the United Kingdom, France, Germany, and Russia.
- Dayton Agreement:** Popular name for the General Framework Agreement (see below).
- Doboj:** City in the western portion of Republika Srpska, 116 km east of Banja Luka and 163 km north of Sarajevo.
- Drina River:** River on the eastern border of Bosnia and Herzegovina flowing into the Sava River.
- Eastern Slavonia:** An eastern portion of Croatia located in the Danube valley. The Serbs in the region attempted to secede from Croatia in 1991. The transfer of the area back to Croatian control was supervised by UNTAES (see below).
- Ekavski:** The dialect of Serbo-Croatian spoken by most inhabitants of Serbia. In 1991, the Serbian assembly designated the Ekavski and Ijekavski dialects as “Serbian” and the official language of Serbia.
- European Union:** Created from the European Community by the Treaty of Maastricht (November 1, 1993), the EU has attempted to create a unified foreign policy on behalf of the 15 member states.
- Federal Republic of Yugoslavia (FRY):** The Yugoslav federation, currently composed of Serbia and Montenegro.
- Federation of Bosnia and Herzegovina:** Croat-Muslim federation formed in 1994 at U.S. urging, which in turn became one of the two “entities” of Bosnia and Herzegovina under the Dayton Agreement.
- Foča:** Town in Republika Srpska on the Drina River located 77 km southeast of Sarajevo and 33 km upstream of Gradze. The Serbs refer to this town as Srbinje.

General Framework Agreement: Peace accord negotiated at Dayton between Alija Izetbegović (representing Bosnia and Herzegovina), Mate Granić (representing Croatia), and Slobodan Milošević (representing Yugoslavia). The agreement was signed by the parties in Paris on December 14, 1995, and was also witnessed by France, Germany, Russia, Great Britain, and the United States.

Glamoč: Former Bosnian Serb town located due west of Sarajevo near the border with Croatia.

HDZ (Croat Democratic Union): The main Croatian political party in Bosnia and Herzegovina, founded in 1990. The HDZ in Croatia is led by President Franjo Tuđman.

Herceg-Bosna: The term used to describe a de facto Croat government in Croat regions of Bosnia and Herzegovina. The Federation Agreement of 1994 was supposed to end the existence of Herceg-Bosna, but the Zagreb government has continued de facto to support the activities.

High Representative: A position created by Annex 10 of the Dayton Agreement to oversee implementation of the civilian aspects of the peace settlement. Under Article V of Annex 10, “[t]he High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.”

IFOR (Implementation Force): The multinational (largely NATO) military force deployed to implement the Dayton Agreement. IFOR was created by UN Security Council Resolution 1031 (1995) pursuant to Annex 1A of the Dayton Agreement. IFOR’s tasks included separation of the warring parties, supervising the cantonment of weapons, patrolling

the IEBL, and assistance in implementing the civilian aspects of the accord.

Ilidža: A suburb of Sarajevo and site of the Sarajevo airport, located 7 km west of Sarajevo center. Ilidža was held by Serb forces prior to the implementation of the Dayton Agreement.

Inter-Entity Boundary Line (IEBL): The boundary established by the Dayton Agreement between Republika Srpska and the Federation of Bosnia and Herzegovina.

International Development Association (IDA): An entity of the World Bank that gives loans at concessionary rates to developing countries.

International Police Task Force (IPTF): Police monitors appointed under the Dayton Agreement from UN member countries to assist in the restructuring of the local Bosnian police.

Krajina: Derived from the Serb-Croatian word for “end” or “frontier,” the Vojna Krajina was the border between the Austria-Hungarian and Ottoman empires, now an area of Croatia, located along the western and northwestern borders of Bosnia and Herzegovina. The Austrians encouraged Serbs who had been displaced by the Ottoman Turks to settle in the area and allowed them political autonomy.

Manjača: The high plateau to the west of the Vrbas River and south of Banja Luka.

Mostar: City located 133 km southwest of Sarajevo which functioned as the capitol of Herceg-Bosna. The destruction of a sixteenth-century Stari Most bridge connecting the largely Bosnian Croat west bank with the largely Muslim east bank of the Neretva River came to symbolize the dissolution of Bosnia-Herzegovina.

Mrkonjić Grad: Town located 68 km south of Banja Luka.

Operation Storm: Croatian offensive in 1995 to regain control of the traditionally Serb areas of Croatia, namely Western Slavonia and the Krajina.

Opstina: A local unit of government, roughly comparable to a county in the United States.

Organization for Security and Cooperation in Europe (OSCE): a pan-European security organization whose 55 participating states span the geographical area from Vancouver to Vladivostok.

Pale: Until 1998, the capital of Republika Srpska, Pale is located 17 km from Sarajevo. Prior to the Bosnian conflict, Pale was a small skiing village.

Posavina Corridor: A narrow corridor of land along the Sava River that links the two halves of Republika Srpska.

Republika Srpska: The Bosnian Serb entity within Bosnia and Herzegovina, recognized in the Dayton Agreement.

Sava River: River forming the northern border of Bosnia and Herzegovina, flowing eastward until it joins the Danube at Belgrade. The Sava was traditionally navigable to Brčko and beyond.

SDA (Party of Democratic Action): The largest Bosniac (and de facto Muslim) political party, founded in 1990 by Alija Izetbegović.

SDS (Serb Democratic Party): The largest Bosnian Serb political party, founded by Radovan Karadžić and Momcilo Krajišnik in 1990. The SDS has espoused a hard-line nationalism, and has opposed effective implementation of the Dayton Accord.

SFOR (Stabilization Force): A follow-on military force composed of troops from NATO, Russia, and other European countries. SFOR was authorized by UN Security Council Resolution 1088 (1996).

Socialist Federal Republic of Yugoslavia (SFRY): The name of Yugoslavia prior to its dissolution. For most purposes FRY is considered the successor state of SFRY.

Srbijne: The Serb name for the town previously known as Foča (see above).

UNCRO: United Nations Confidence Restoration Organization in Croatia (March 1995–January 1996), which replaced UNPROFOR in Croatia.

UNHCR: UN High Commissioner for Refugees.

UNMIBH: UN Mission in Bosnia and Herzegovina.

UNPROFOR: United Nations Protection Force (March 1992–December 1995), initially established in Croatia but extended to include Bosnia in June 1992 and the former Yugoslav Republic of Macedonia in December 1992. The operation was restructured in March 1995, at which time UNPROFOR was restricted to Bosnia.

UNTAES: United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium (January 1996–January 1998), designed to assist in the peaceful integration of these traditionally Serb areas into Croatia. UNTAES was led by U.S. Air Force Major General (ret.) Jacques-Paul Klein.

Vance-Owen Plan: A peace plan for Bosnia-Herzegovina negotiated by Cyrus Vance and Lord David Owen in 1993 that would have created 7 to 10 governmental units within Bosnia-Herzegovina, each with mixed populations.

Vrba Canyon: A narrow canyon along the Vrba River leading from Jajce and Mrkonić Grad toward Banja Luka. The Vrba Canyon represented the last physical barrier impeding the Croatian forces of Operation Storm from entering Banja Luka.

Washington Agreement: Agreement of March 1, 1994, which led to the establishment of the Federation of Bosnian and Herzegovina.

Western Slavonia: One of the traditionally Serb areas of Croatia.

Yugoslav National Army (JNA): The JNA was largely composed of Serbs prior to the dissolution of SFRY. The JNA remained loyal to President Milošević and attempted to prevent the secession of Slovenia, Croatia, and Bosnia-Herzegovina. After Bosnia-Herzegovina declared independence, JNA forces in the republic were redesignated as forces of Republika Srpska.

Zagreb: The capital of Croatia, located on the Sava River, 390 km west of Belgrade.

Zenica: Town located 77 km northwest of Sarajevo.

Glossary of Names

Yasushi Akashi: Special Representative for the UN Secretary-General in the former Yugoslavia from 1993 to 1995.

Carl Bildt: Former prime minister of Sweden. He became Co-chairman of the International Conference on the former Yugoslavia upon the resignation of Lord David Owen in 1995. Also served as High Representative in Bosnia and Herzegovina under the Dayton Accord from 1995 to 1997.

Peter Carrington: Co-chairman of the International Conference on the former Yugoslavia from 1991 to 1992.

Milorad Dodik: Prime Minister of Republika Srpska from 1996 to 1998; a relatively moderate figure.

Mate Granić: Foreign Minister of Croatia. He negotiated the Dayton Agreement on behalf of the Bosnian Croats.

Pierre Harmel: Former foreign minister of Belgium.

Richard Holbrooke: United States special envoy for the Balkans (now Permanent Representative of the United States to the United Nations). Ambassador Holbrooke negotiated the cease-fires and Dayton Accord in 1995.

Alija Izetbegović: Wartime leader of the Bosnian Muslims and founding leader of the SDA; Bosniac member of the presidency of Bosnia and Herzegovina.

Radovan Karadžić: Political leader of the Bosnian Serbs during the war. He was indicted by the International Criminal Tribunal for the Former Yugoslavia on July 25 and November 16, 1995. Under the terms of the Dayton Agreement he is ineligible as an indicted war criminal to serve in any public office.

Jacques-Paul Klein: Head of UNTAES (see above). When that mission completed its task, he became Deputy in the Office of the High Representative for Bosnia and Herzegovina, and later Special Representative of the UN Secretary-General for Bosnia and Herzegovina.

Momcilo Krajišnik: First Serb member of the presidency of Bosnia and Herzegovina.

Joseph Luns: Former Secretary-General of NATO.

Slobodan Milošević: Wartime president of Serbia; now President of the FRY. Milošević orchestrated the raised Serb nationalism in the 1990s, causing the dissolution of Yugoslavia.

Ratko Mladić: Military leader of the Bosnian Serbs during the war and commander of forces in Republika Srpska. He was indicted by the International Criminal Tribunal for the Former Yugoslavia on July 25 and November 16, 1995, and is allegedly responsible for the massacre at Srebrenica.

David Owen: Former Foreign Secretary in the U.K. government, and Co-chairman of the International Conference on the Former Yugoslavia together with Cyrus Vance.

Biljana Plavšić: President of Republika Srpska. She was chosen by Radovan Karadžić as his successor when he was forced to retire from public office. She eventually split with the SDS (Karadžić's political party) and formed a separate party.

Ibrahim Rugova: Albanian leader in Kosovo.

Rupert Smith: British Lieutenant-General commanding UNPROFOR troops in

Bosnia who ultimately called in the NATO air strikes after the fall of Srebrenica.

Sejfudin Tokić: Bosnian Muslim opposition leader.

Franjo Tudjman: President of Croatia.

Cyrus Vance: Former U.S. Secretary of State, served as Special Envoy of the UN Secretary-General from 1991 to 1992. Secretary Vance negotiated a peace accord to end the fighting in Croatia in 1992, and co-chaired the International Conference on the Former Yugoslavia from 1992 to 1993, seeking a peace accord in Bosnia-Herzegovina.

Carlos Westendorp: High Representative under the Dayton Agreement from 1997 to 1999.