

## CHAPTER 1

### ETHNIC CLEANSING AND THE PLIGHT OF REFUGEES

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#### The War in Outline

1.1 War broke out in the former Yugoslavia in 1991 as a result of rising nationalism exploited in the first instance by President Milosevic of Serbia and taken up with a vengeance by President Tudjman of Croatia. Tito had subdued nationalist and ethnic rivalries and fears by carefully crafted federal arrangements designed to balance the ethnic groups within Yugoslavia.

1.2 Beginning in Kosovo in 1987, Milosevic abandoned caution in the pursuit of political advantage and his actions led first to the dissolution of the federal political structure and then to secession first by Slovenia, then Croatia and then Bosnia. Slovenia and Croatia embraced independence eagerly; Bosnia was left no choice.

1.3 In response to the claims of the Croatian and Slovenian republics for independence, Serbia went to war. The war in Slovenia lasted only a matter of weeks and in Croatia approximately six months, between July and December 1991. Slovenia, homogeneous in its ethnic population, separated relatively unscathed; Croatia lost a third of its territory to rebel Croatian Serbs backed by the Yugoslav National Army (JNA), 10,000 people were killed, hundreds of villages were destroyed and 250,000 people were driven from their homes.

1.4 The European Community recognised Croatian independence on 15 January 1992<sup>1</sup> at the same time that Croatia accepted a peace plan brokered by Cyrus Vance, the UN Special Envoy. Four sectors, UN Protected Areas (UNPAs), were established inside Croatia, monitored by 14,000 UN troops. In May and August 1995 three of these four sectors were retaken by Croatian forces, causing almost the entire Serbian population of the region (over 200,000 people) to flee.

1.5 The United States supported and encouraged Bosnian independence but remained unwilling to back up its recognition of Bosnia with the use of ground troops. At the Lisbon Conference in February 1992, there was an acceptance by the European Community of the ethnic divisions of Bosnia and no attempt made to establish a constitution or to begin from the assumption that Bosnia was a unified state.<sup>2</sup> A referendum was called on the matter of independence for Bosnia but no plans were in place for the implementation of a favourable vote. After the referendum on 29 February 1992, when the people of Bosnia<sup>3</sup> voted in favour

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1 Germany recognised Croatian and Slovenian independence on 18 December 1991, leaving the European Community little choice but to follow. This decision abrogated the principle of the Hague Conference that a comprehensive political settlement was necessary in the whole of the former Yugoslavia. See Chapter 4.

2 Woodward, Susan L, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, pp. 196-97, 280-81.

3 The Serbs, who constituted one third of the population, refused to vote in this referendum.

of independence, Bosnia-Hertzevovina declared independence on 3 March 1992. In April, fighting broke out between the Bosnian Government army and Bosnian Serb paramilitary forces. The Bosnian Serbs were strongly supported by President Milosevic<sup>4</sup> and within weeks 70 per cent of Bosnian territory was in the hands of the rebel Serbs. Over the next three years the Serbian forces besieged Sarajevo, 200,000 people were killed, most towns and villages in Bosnia suffered extensive damage and over 2 million people were displaced from their homes.

1.6 From April 1993 to March 1994 a separate war was waged in western and central Bosnia by the Bosnian Croats against the Bosnian Government. It was resolved with the diplomatic assistance of the German Government through the Washington Accords, March 1994, which established a Croatian-Muslim Federation.

1.7 The wars have been characterised by a succession of broken promises and agreements as well as massive and violent attacks on the civilian population and attacks on UN peacekeepers. In particular, in 1995, the taking of 400 UN hostages, the Serbian assaults on and taking of the UN designated Safe Havens of Srebrenica and Zepa and the attacks on Goradze and Bihac led to a Croatian counter offensive which retook the Krajina in August 1995 and advanced 4,000 square kilometres into central Bosnia. At the same time NATO formed a Rapid Reaction Force which would be able to focus greater military effort onto the protection of both UN forces and the Safe Havens. The UN and NATO resolved the cumbersome dual key system of decision making necessary for authorisation of air strikes and the US Congress began to bring pressure to bear by threatening to lift the arms embargo on Bosnia. Finally, after the attack on the market place in Sarajevo on 28 August,<sup>5</sup> NATO decided upon a bombing campaign against Bosnian Serb targets beginning on 29 August 1995. The bombing campaign, the successful Croatian offensive and determined diplomatic pressure applied by the special envoy of President Clinton, Richard Holbrooke, quickly brought the parties into peace negotiations.

## **International Humanitarian Law**

1.8 In its first report on human rights to the Parliament in 1992, this Committee made note of the civilising power of government and law.<sup>6</sup> Nevertheless, it concluded that oppression and human rights abuses occur most often where leaders have wielded power unfettered by the effective checks and balances of constitutional arrangements and democratic processes.

1.9 International law likewise seeks to create order and civilised and humane interaction between states. It is an evolving body of law which is not yet capable of strict enforcement and therefore it relies on the willingness of nations to abide by the commitments they have made in the signing of treaties. In the arena of international human rights,

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4 Over 80,000 troops of Bosnian Serb origin were transferred from the Yugoslav National Army (JNA) to the Bosnian Serb Army, giving them an large, instant, trained and equipped army.

5 This attack was blamed on the Bosnian Serbs who had been besieging the city for three years; however the Committee was presented with articles written by journalists in Sarajevo who claimed that from an examination of the trajectory and the impact of the shells, there was some doubt about this interpretation. See Exhibit 21.

6 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, December 1992, p. 2.

international law sets standards, agreed on by the international community, that are basic requirements for the treatment of human beings throughout the world.

1.10 In relation to the conduct of war there has evolved a series of principles and customary practice<sup>7</sup> which in this century have been codified into treaties, International Humanitarian Law - the Hague Conventions and the Geneva Conventions.

### The Law of Armed Conflict

1.11 The existence of this body of law presumes that war has limits; that war is not, or should not be, the unleashing of undisciplined or uncontrollable forces unaccountable to the international community. The Hague Conventions (1907) and the four Geneva Conventions (1949)<sup>8</sup> as well as the Additional Protocols to the Geneva Conventions (1977) set out the internationally agreed principles and codify international customary law. These laws are based on certain fundamental and longstanding concepts of military action concerning the conduct of warfare:

- (a) **Military necessity**, the legitimate application of force to obtain a military objective. Military objectives and the degree of force required to achieve them, however, are defined and limited by the Law of Armed Conflict.
  - (i) Lawful combatants can only use such force as is necessary to achieve a military objective;
  - (ii) The use of such force cannot include actions prohibited by the Law of Armed Conflict, eg the killing of prisoners of war;
  - (iii) The use of such force must result in the least expenditure of life and damage to property.
- (b) **Humanity**, forbids any attack on an enemy which inflicts unnecessary suffering, injury or destruction.
  - (i) The force used must not exceed the minimum required to achieve the military objective;
  - (ii) There must be a valid military objective;

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7 It may seem to be a contradiction in terms to discuss the rules of war; an argument is often made for the absurdity of attempting to apply rules to a situation which represents the breakdown of diplomacy. Nevertheless, there have been recurrent efforts to establish the limits of violence permissible even in war, dating back at least to the fourth century and St Augustine's views on what constituted a just war and the responsibilities of the individual soldier. These concepts were developed by St Thomas Aquinas and other medieval scholars who developed the ideas of the legitimate authority, just cause, right intention and proportionality as defining a just war. After the formation of the International Red Cross in 1863 the first serious attempt to codify the rules of war was made. The Red Cross formulated the first *Geneva Convention for the Amelioration of the Sick and Wounded of Armies in the Field* in 1864.

8 The four Geneva Conventions deal respectively with: I, relating to the treatment of the wounded and the sick in the field, II, relating to the treatment of the wounded and the sick at sea, III, relating to the treatment of prisoners of war and IV, relating to the treatment of civilians. The two Protocols deal with: I, the Protection of the Victims of International Armed Conflicts and II, the Protection of Victims of Non-international Armed Conflicts.

- (iii) Any destruction of property must contribute to the defeat of the enemy;
- (iv) Wanton killing and wilful infliction of suffering as revenge is prohibited.
- (c) **Proportionality**, means that a commander is not allowed to cause damage and inflict suffering which is disproportionate to the military need.
- (d) **The distinction between combatants and non-combatants**, armed forces (combatants) and civilians (non-combatants) have long been distinguished and treated differently. It is the commander's responsibility to identify non-combatants and ensure that international humanitarian law is followed in relation to them.
- (e) **Non-discrimination**, the law is binding on all sides of a conflict and without regard to race, colour, religion, sex , birth etc.<sup>9</sup>

1.12 Where it appears to be applicable, Articles of the Geneva Conventions will be listed in this Chapter. The international organisation which developed them and monitors their implementation is the International Committee of the Red Cross (ICRC).

*Article 4(2) of Geneva Protocol II*

*[T]he following acts against... [civilians] are and shall remain prohibited at any time and at any place whatsoever:*

- (a) *violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;*
- (b) *collective punishments;*
- (c) *taking of hostages;*
- (d) *acts of terrorism;*
- (e) *outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault;*
- (f) *pillage; and*
- (g) *threats to commit any of the foregoing acts.*

1.13 Not only have all sides to the conflict in the former Yugoslavia perpetrated gross abuses of humanity, they have also broken almost all the principles and regulations of customary international law and treaty law dealing with armed conflict. In the former Yugoslavia action has not been confined to military objectives and it has not been conducted

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<sup>9</sup> These definitions are taken from one of the manuals developed for the Australian Defence Force, *Operations Law for RAAF Commanders*. The Committee understands that currently each of the services operates on its own operations manuals; however a Defence Force wide document has been prepared but is as yet unpublished.

in such a way as to limit the damage to life and property. No distinction has been drawn between combatants and non-combatants. The objective of ethnic cleansing has ensured that rather than offering protection as required under the Geneva Conventions to the sick and wounded, prisoners and civilians, participants in this war have deliberately targeted them for attack.

## Ethnic Cleansing

1.14 The most terrible and inexplicable aspect of the war in the former Yugoslavia is the deliberate, systematic and relentless program of genocide called ethnic cleansing. It has been carried out by both Serbs and Croats, although the Serbian leadership and forces in Bosnia must take the blame for the predominant role in initiating the process, in openly promoting it, in the numbers encompassed by it and in the unrepentant duration of their commitment to it despite international condemnation.

### *Article 85(4) of Geneva Protocol I*

*[T]he following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:*

- (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;*
- (b) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination.*

1.15 Ethnic cleansing is racism. In the current Balkans war it has occurred coincidentally with a marked rise in racism in Europe. Justice Marcus Einfeld noted that European nations, in accepting the Bosnian Serb argument that they had to have their own ethnically pure country, condoned a principle that racial or ethnic purity was a valid criterion for national organisation. This, he believed, was a thesis that encouraged racism in Europe.<sup>10</sup> Dr Hadzimajlovic from the Bosnian Council of New South Wales also believed that the failure of the World, through 'pretended ignorance, passive bystanding and silent monitoring of the disarmed thousands being murdered, maimed or displaced touches all with a degree of guilt'. He stated that:

History has proved many times that peoples' silence and lack of action during the commission of a crime encourages crime to proliferate and take on more cruel forms. ... Throughout its long history, the most important feature of the Bosnian state is the variety of nations, religions and cultures living for most of the time in an exemplary manner reflecting tolerance and mutual respect. ... You can clearly see

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10 *Evidence*, 30 October 1995, p. 97.

that the aim of the aggressors in Bosnia is to kill and destroy that multicultural, multireligious and tolerant spirit of the country.<sup>11</sup>

1.16 Ethnic cleansing began in Eastern Slavonia in May 1991. The massacres of civilians in Vukovar were a prelude to and a prototype for what was to happen in Bosnia in the following year. According to Helsinki Watch, 2,000 Croatian civilians captured after the fall of Vukovar remain missing. Between May and November 1991 the Serbian army overran one third of the territory of the Republic of Croatia, Eastern Slavonia and the Krajina. These were the areas which contained large numbers of Serbs (over 50 per cent of the people of the region) who had lived there for generations.

1.17 In 1992 the United Nations designated these captured areas as United Nations Protection Areas (UNPAs) in four sectors - North, South, East and West. At this time, however, 250,000 Croats or 40 per cent of the population were driven from the Serb occupied areas.<sup>12</sup> Throughout the period of control by the self-styled Republic of Serbian Krajina (RSK) in the UNPAs, the United Nations High Commissioner for Refugees (UNHCR) and other international monitors reported continuing lawlessness in the region: no due process, poor conditions in prisons - ill-treatment of prisoners, overcrowding and insufficient food, forced labour and harassment and intimidation of non-Serbs.<sup>13</sup> All these areas with the exception of Eastern Slavonia were retaken by the Croatian army in 1995.

*Article 50 of Geneva Convention I*

*Grave breaches....shall be those involving any of the following acts, if committed against persons or property protected by the convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.*

1.18 This pattern of ethnic cleansing was repeated in Bosnia over and over again. Towns or villages were bombarded by federal army artillery, the paramilitary units moved in, homes and other buildings were burned or dynamited, people were either killed or rounded up and driven from the villages. Ed Vulliamy, in *Seasons in Hell: Understanding Bosnia's War*, (1994) described the work of the Serbian forces around Banja Luka:

[T]hugs were sent to rob, dynamite, kill and torture which would produce queues of people anxious to flee. ... [L]ife could be made so awful for the Muslims and Croats in Banja Luka that people would pay their life savings to be ethnically cleansed, which was the political goal in the first place.<sup>14</sup>

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11 *Evidence*, 30 October 1995, pp. 75-76.

12 Australian Croatian Congress *Submissions*, p. S87.

13 United States State Department, *Country Reports on Human Rights Practices, 1994*, Section on Croatia and UNHCR, Information Notes on the former Yugoslavia, No. 3/95, March 1995, pp. 1-3.

14 Ed Vulliamy, *Seasons in Hell: Understanding Bosnia's War*, Simon and Schuster, 1994, p. 94. The Serbian National Federation provided the Committee with a critique of Vulliamy's book which argued that it was overstated in its claims; however the Committee notes that Mr Vulliamy is a longstanding and

The federal army and Bosnian Serb paramilitary units captured 60 per cent of Bosnia within six weeks. By the end of May 1992, half a million people had been driven from their homes in Bosnia; by the end of the summer the number had more than doubled.<sup>15</sup>

*Article 59(1) of Geneva Protocol I*

*It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.*

1.19 Throughout 1994 and 1995 safe havens set up by United Nations resolutions in Sarajevo, Tuzla, Gorazde, Zepa, Srebrenica and Bihac were frequently bombarded and blockaded. Harassment and expulsion of civilians continued largely unabated. In Sarajevo over 10,000 people have been killed and nearly 60,000 have been wounded. The bombardments and the lack of food, water, gas and electricity made life so difficult for people that they continued to leave. It is estimated that only 20 to 30 per cent of the original inhabitants of Sarajevo remain in the city.

*Article 60 of Geneva Convention IV*

*The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended*

1.20 In Bihac the population was reduced to starvation. Only 10 per cent of the necessary food supplies were allowed through by the Bosnian Serbs and the Krajina Serbs who surrounded the enclave. UNHCR reported in July 1995:

The atmosphere in Bihac is desperate. Almost everyone you see in the street is thin and haggard looking. They have lost all hope and the psychological stress they are experiencing is enormous. The most affected are the elderly and the children. They have no money left as they have not received pensions for three years. A mother of six told how sometimes she has to go out of her house in order not to hear the children crying of hunger.<sup>16</sup>

*Article 49 of Geneva Convention IV*

*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the*

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respected journalist, that most of his accounts are first hand (he was one of the first Western journalists to enter Omarska Camp in 1992) or they are taken from interviews with the victims themselves. Moreover the Committee believes that there is sufficient weight of corroborating evidence for Mr Vulliamy's views and it was not persuaded by the counter argument.

15 Pat Reed, *Sarajevo: Spontaneous Repatriation to a City under Siege, 1992 to 1995*, Center for the Study of Societies in Crisis, Texas, p. 8.

16 Quoted from Margaret Piper, *Executive Director's Report on her Visit to Former Yugoslavia, 5-12 August 1995*, Refugee Council of Australia, September 1995, p. 5.

*Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.*

1.21 In July 1995 the Bosnian Serb forces overran the safe havens of Srebrenica and Zepa. In Srebrenica, General Mladic organised the expulsion of the entire non-Serb population from the enclave. Women, children and the elderly were loaded onto buses, draft age men were kept behind. Bosnian Serb soldiers were reported to have boarded the buses and demanded money and jewellery from the displaced people. In a week 29,000 people were displaced to Tuzla. UNHCR officials described the people as 'exhausted, dehydrated, malnourished and shocked.'<sup>17</sup>

Words cannot describe the heart-breaking scenes of human suffering I witnessed in Tuzla. At the airbase and in the collective centres I visited I saw countless women in a state of shock, crying in despair because they do not know whether their menfolk are still alive ... I heard about all the atrocities and violence committed by the Bosnian Serb Army.<sup>18</sup>

*Article 76(1) of Geneva Protocol I*

*Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.*

1.22 The fall of Srebrenica was accompanied by massive abuses of the population - executions, beatings and rape. Many of the separated men, between 6,000 and 12,000, are believed to have been killed. The Bosnian Serb authorities continue to refuse access to international organisations to inspect the alleged grave sites or to interview the possibly detained men.<sup>19</sup> However the International War Crimes Tribunal has consolidated evidence from the refugees from Srebrenica and as a result further indictments and international arrest warrants have been issued against the Bosnian Serb leadership of Radovan Karadzic and Ratko Mladic. A spokesman for the Tribunal, Mr Christian Chartier, in announcing the warrants, said that the attack on Srebrenica was 'one of the bloodiest acts of the Yugoslav war' in which 'many thousands were slaughtered in only ten days.' One of the Tribunal's judges, Judge Fuad Riad, said:

[A] truly terrible massacre of the Muslim population appears to have taken place. The evidence tendered by the prosecutor describes scenes of unimaginable savagery: thousands of men executed and buried in mass graves, hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mother's eyes, a grandfather forced to eat the liver of his own grandson. These are truly scenes from hell, written on the darkest pages of human history.<sup>20</sup>

1.23 Even after the international outcry over the fall of Srebrenica and Zepa, the process of ethnic cleansing continued. UNHCR reported on the continuing expulsion of

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17 UNHCR, Information Notes on the former Yugoslavia, No. 8/95, August 1995, p. 2.

18 High Commissioner for Refugees, Sadako Ogato's description of her visit to Tuzla, *ibid.*, p. 3.

19 *ibid.*, p. 3.

20 Agence France Press, 16 November 1995.



people, Muslim and Croat minorities, from the Serb held town of Doboj. Between 20 and 24 September 1995, 1,241 people had been forced out of the town.

The expulsions were carried out in a brutal manner. Muslim and Croat families were ordered to leave their homes immediately and to assemble at a stadium. There, they were robbed of their belongings by Serb men in military uniform. After this they were driven to the front line, told to come out of the buses and walk through the forests to the other side. This 10-15 mile walk took place during the night time. A number of the elderly are reported to have died of exhaustion. Others were physically mistreated and beaten up.<sup>21</sup>

1.24 Croatian forces have also been guilty of ethnic cleansing. The position of the Croatian Government appears to have been ambiguous in this matter. They have been more susceptible to international pressure and more desirous of preserving their international reputation but at the same time have sought to take advantage of the war to extend Croatian control into Bosnian territory. In a test of their human rights *bona fides* - their willingness to cooperate with the War Crimes Tribunal in the Hague - so far they have been found wanting.<sup>22</sup> From early 1993 to 1994 the Croatian forces in Bosnia went to war against the Bosnian Government and participated in a process of ethnic cleansing throughout western and central Bosnia. The Croatian army (HV) in conjunction with the Bosnian Croatian Army (HVO) sought to clear all non-Croats from areas that had been designated as predominantly Croatian by the Vance-Owen Plan. All Muslims in Mostar the largest town in Herzegovina were driven across the river from the western to the eastern side of the town. In April 1993 120 civilians were massacred in Ahmici. Detainees<sup>23</sup> in camps run by the Croatian forces in Bosnia have been treated with great cruelty. The Washington Agreement of March 1994 brought about a ceasefire between the Bosnian Government and the Bosnian Croatian forces with preliminary discussions taking place on a possible federation.

1.25 In May, August and September 1995 the Croatian army moved into the UNPAs to reclaim Croatian territory lost in 1991. At the same time the Croatian army assisted the Bosnian Government forces in retaking territory in western Bosnia. In the process of retaking Sectors West, North and South most Croatian Serbs, approximately 200,000 people, have been 'cleansed' from the Krajina region and thousands of Serbs have also left the recaptured areas in northern and western Bosnia. Over 50,000 Serbian refugees have fled ahead of the fighting in western Bosnia. They moved to Banja Luka and then on to Serbia.

#### *Article 33 of Geneva Convention IV*

*Pillage is prohibited.*

*Reprisals against protected persons and their property are prohibited.*

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21 UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p. 5.

22 Despite assurances to the contrary, President Tudjman not only refused to hand over those indicted by the Tribunal, Tihomir Blaskic and Dario Kordic and four others, but also promoted one of them.

23 The Committee notes that there is a distinction in international law between prisoners of war and detainees, prisoners of war being combatants and detainees being a more generic term but most often used to denote non-combatants.

1.26 The Government of the Federal Republic of Yugoslavia estimated the numbers of refugees and displaced people in the current wave at 250,000. They also put the numbers of Serbs displaced by the war since 1991 at a further 400,000.<sup>24</sup> This submission lists the shelling of towns, the killing of civilians, the looting and burning of houses and churches, the arrest and incarceration of men of military age, the execution without trial of captured Serbs and the shelling of columns of refugees as features of Operation Storm in the Krajina. It reported the sighting of large numbers of bodies and the discovery of unmarked graves, often containing civilians, particularly elderly people.<sup>25</sup> These claims are repeated and confirmed by the UN Human Rights Action Teams which have been operating in this region. Both Helsinki Watch Croatia and Amnesty International confirmed that serious abuses had occurred.<sup>26</sup> UNHCR reported that nine weeks after the offensive, the human rights abuses of the Serb population of the Krajina continued.<sup>27</sup>

1.27 The submission from the Australian Croatian Congress put a different interpretation on the exodus of people from the Krajina. It claimed that prior to the military action, the rebel Serb leadership ordered the exodus of the remaining civilian population. They quoted the Croatian Foreign Minister, Mr Mate Granic:

We are happy that these territories are liberated and reintegrated into Croatia; Operation Storm commenced with an appeal to the Croatian Serbs to stay. But it is enough to read the Belgrade press to see how the exodus was organised. ... [w]e would have been much happier if there were no casualties, if there was no exodus of the Serb population, if there had been peaceful reintegration by respecting basic principles. Or, in other words, if it had come through negotiations.<sup>28</sup>

On the matter of looting, burning and the killing of civilians, the Australian Croatian Congress stated that these excesses had been condemned by the Government of Croatia and that the government had conducted investigations leading to arrests:

Authorities have jailed 24 suspects in connection with abuses, investigations have been launched in 611 cases of looting, 27 bombings, seven murders. A further 36 killings are being investigated to establish whether they occurred during legitimate military operations or not.<sup>29</sup>

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24 Federal Republic of Yugoslavia, supplied by the Embassy of the Federal Republic of Yugoslavia, *Submissions*, p. 1.

25 *ibid.*, p. 5-11.

26 This Committee believes that the expulsion of the Serbian people from any areas of Croatia or Bosnia is to be condemned and that all civilians have a right to be protected in times of war. However it believes the emotional and injured complaints made in the summary of the submission from the Government of the Federal Republic of Yugoslavia that Croatia has violated international law, committed war crimes and genocide are oddly hypocritical in the light of the behaviour of the Bosnian Serbs over the last four years.

27 UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p. 1.

28 Australian Croatian Congress *Submissions*, p. 4.

29 *ibid.*, p. 4.

According to UNHCR, the Croatian authorities reported to them that they had arrested 370 persons for looting houses, including 250 civilians, 70 police officers and 35 Croatian soldiers.<sup>30</sup>

1.28 UNHCR reported that on 23 August 1995 the UN Secretary General presented a report to the UN Security Council critical of the human rights abuses committed by the Croatian forces during Operation Storm. It concluded that 'given these violations it is clear that Croatia has not fulfilled its commitment to create conditions conducive to the return of those persons who have left their homes.'<sup>31</sup> On 4 September the Government of Croatia issued a Decree/Executive Order to allow the Government to take over all abandoned property in Sectors North and South in order to 'protect' it and put it to use to accommodate displaced persons and refugees. Serbs who wished to reclaim their property had to return to Croatia within 30 days. The decree has been approved by Parliament although the time limit has been extended to 90 days. This decree has been widely criticised by human rights organisations, the independent media, the opposition parties in Croatia as well as the Government of the Federal Republic of Yugoslavia. This Committee also considers such a time frame inadequate. According to UNHCR the Croatian office in Belgrade has been receiving 500 requests per day from Krajina Serbs who wish to return to Krajina.<sup>32</sup>

1.29 Finally, the Croatian and Bosnian Government offensives of August 1995 also saw the defeat of the Muslim rebel leader, Fikret Abdic. In 1993 he had set himself up as the leader of the 'Republic of Western Bosnia' in opposition to the legitimate Bosnian Government. However in November 1994 he joined the Bosnian Serbs and the Krajina Serbs, and mobilised over 7,000 men. The defeat of this group by the Bosnian/Croatian offensive caused the flight of 20,000 to 25,000 people from Velika Kladusa to a refugee camp near Vojnic in Sector North. Initially the Government of Croatia granted no access to international relief agencies in order to monitor people in this camp. There were reports that Croatian forces abducted 40 refugees and shot some refugees who left the camp. Refugees feared forced repatriations to Velika Kladusa.

*Article 44 of Geneva Convention IV*

*[T]he Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.*

1.30 UNHCR reported a number of instances of the non-voluntary return of refugees and the refusal of governments to accept some refugees. For some time the Croatian Government has limited the number of Bosnian Muslims allowed to cross into Croatia, particularly from Banja Luka, on the grounds of lack of accommodation. At times it has also refused to shelter those Muslims who have managed to enter, shifting the responsibility to UNHCR.<sup>33</sup> On 22 September 1995 the Croatian Office for Displaced Persons and Refugees announced the revocation of status for refugees originating from areas of the Bosnian Federation, a decision likely to impact on 100,000 people.<sup>34</sup> Of the Serbian refugees from the Krajina region moving into Serbia, there were also reports of draft age males being forced

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30 UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p. 1.

31 UNHCR, Information Notes on the former Yugoslavia, No. 9/95, September 1995, p. 3.

32 *ibid.*, p. 3.

33 *ibid.*, p. 5.

34 UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p. 3.

back into Bosnia, of the failure of the Government of the Federal Republic to issue refugee ID cards and of the forced settlement of refugees in areas such as Kosovo, something against the wishes of the refugees and the people of Kosovo.<sup>35</sup>

1.31 These reports and these decisions must of course be understood in the light of massive inflows of refugees to countries which are ill-equipped economically to support them.

## **Detention Camps**

### *Article 13 of Geneva Convention III*

*Prisoners of war must at all times be humanely treated. Any unlawful omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded a serious breach of the present convention.*

1.32 All parties to the conflict in the former Yugoslavia were involved in the unlawful detention and mistreatment of the civilian population. Detention camps were a marked feature of the conflict. Forced detention assisted in the Bosnian Serb and Croat program of ethnic cleansing: civilians were subject to arbitrary arrest, evacuation from their homes and placement in detention. Their land was then occupied and controlled by the Detaining Power.

1.33 As the conflict in Bosnia progressed, it was no longer possible to regard detainees as 'prisoners of war'. The majority of detainees were civilians, who were held on the grounds of religious/ethnic difference, rather than any overriding military imperative. The ICRC was forced to extend its definition of detainees to include 'anyone detained as a result of the conflict.'<sup>36</sup> The ICRC believed this was tantamount to saying 'anyone belonging to an ethnic minority'.

1.34 It is a condition of the Third Geneva Convention and the more recent ICRC agreements signed by all parties in 1992, that all detention camps and detainees were to remain accessible to the ICRC or other recognised human rights organisations. These agreements were violated by all parties to the conflict. The ICRC's access to detention camps and detainees was frequently denied. Consequently, those detained were refused proper access to relief and medical aid. When the camps were opened to international scrutiny - often after months of negotiations - they were found to be overcrowded and the inmates in poor condition. Reports of physical abuse, rape, forced and dangerous labour were common, as was malnutrition and poor hygiene.

## **Violations by the Bosnian Serb Forces**

1.35 The Serbian forces had the more extensive and more prolonged system of detention camps. The majority of the victims were Muslims. However, what is known about the detention camps run by the Bosnian Serbs is as yet incomplete. They were kept secret throughout the worst period of their operation in 1992. When they were discovered and

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35 UNHCR, Information Notes on the former Yugoslavia, No. 8/95, August 1995, p. 5.

36 International Committee of the Red Cross, *Saving Lives: The ICRC's Mandate to Protect Civilians and Detainees in Bosnia-Herzegovina*, Special Brochure, Geneva, ICRC Publications, 1995, p. 10.

publicised in August 1992, film of the emaciated inmates of Omarska and Trnopolje so shocked the world that enormous pressure was brought to bear on the Serbs to close them. However the United States government estimated that there were still 135 Serb-run detention centres in Bosnia in January 1993. It has since been reported that as some closed, others, smaller and less obvious, continued and opened. The overall estimate of the number of detainees held by the Bosnian Serbs and in a number of camps in Serbia and Montenegro is still uncertain but a US Senate report of August 1992 put the number at 170,000 people who had been detained in camps across the country, the overwhelming majority of them Muslims in Serbian detention.

1.36 The UN Secretary-General, Mr Boutros Boutros-Ghali, reported to the Security Council in May 1994 on the Serbian camps of Omarska, Keraterm, and Trnopolje. These camps, he reported, were the site of 'massacres, torture and appalling living conditions.' Between May and August 1992 more than 6,000 adult males were taken to these three camps of whom only 1,503 were moved to Manjaca camp and a limited number to Trnopolje. The rest are believed to have died as a result of the appalling conditions and torture.

1.37 Survivors from Omarska described the living quarters in the 'rust coloured shed where thousands of men were crammed for twenty-four hours a day, ... living in their own filth and in many cases dying of asphyxiation.' Men were taken from this shed to be interrogated in what was known as the White House, a place of torture where hundreds of men were beaten or stabbed to death. Their bodies were disposed of down the mine shaft at Omarska.<sup>37</sup> The report of the Secretary-General stated that:

The concentration camp [Omarska] premises were sometimes so packed with people that no more inmates could be packed in. On at least one occasion this allegedly resulted in an entire busload of newly captured people being arbitrarily executed *en masse*.<sup>38</sup>

1.38 The women who were separated from the men and boys were taken to separate camps, often hotels, schools, cafes, saw mills or private homes where they were raped. Reports have been made by the Genocide Centre at Zenica of at least 17 rape camps. Ed Vulliamy listed some of the centres:

The most infamous rape camp was at Kod Sonje, a motel at Vogosca outside Sarajevo. ... Other cafes and motels were used in Doboje and Brcko, and schools were used at Foca and Kalinovik as well as at Rogatica. At the spa at Visegrad, the Hotel Vilina Vlas was used to keep women as well as being military headquarters. Women were reported killed there after being raped, and their bodies thrown into the Drina. In northern Bosnia, women were taken from the Trnopolje camp to be raped, and kept for that purpose at a saw mill near Kozarac.<sup>39</sup>

1.39 On the matter of the responsibility for these actions, the UN Commission of Experts concluded that:

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37 Vulliamy, op.cit., pp. 108-109.

38 Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780 (1992), S/1994/674, 27 May 1994, p. 41.

39 Vulliamy, op.cit. p. 199.

The secret police and the military police provided the concentration camp with interrogators and guards. For some of the most gruesome torture and killings of detainees, the assistance of paramilitary units and some locals was also called upon. Quasi-military intervention units were used to trace and capture the non-Serbian leadership. The latter units killed prisoners arbitrarily during transport to the Manjaca camp and arranged mass-killings of 'deported' prisoners in the Vlasic Mountain area.<sup>40</sup>

## **Violations by the Bosnian Croat Forces**

1.40 In May 1993, as part of the Bosnian Croat force (HVO's) program of ethnic cleansing an attack was launched against the Bosnian Army. The attack was seen to 'justify' the arrest and detention of thousands of Muslim men, women and children. HVO controlled detention camps were set up in the Mostar and Caplijina regions. Civilians were detained in the Rodoc Helidrome and the Gabela and Dretelj camps. The ICRC was denied access to all of these camps until the beginning of September, 1993. It was found that over 1,500 men were detained in each camp. Problems of overcrowding and improper detention facilities (in football stadiums or barns) contributed to the overall poor conditions of the HVO run camps.

1.41 At the Rodoc helidrome, the Human Rights Watch/Helsinki noted that male detainees were undernourished and forced to engage in labour of a militaristic nature: digging trenches, filling sandbags and setting mines, while in the direct line of fire. This directly contravenes Articles 49 and 50 of the Fourth Geneva Convention which state, respectively:

### *Article 49*

*The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war.*

### *Article 50.*

*Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.*

1.42 The Bosnian Croat forces and the Bosnian Serb forces, were both responsible for using detainees as hostages, an act which is in grave breach of Article 34 of the Fourth Geneva Conventions, which prohibits the taking of hostages. Detainees offered both forces bargaining power. Muslim or Croat prisoners were released by the Bosnian Serb forces on the condition that they were exchanged for Serbs held by the Bosnian Croat or Bosnian Government forces, and vice versa.

1.43 Even after the ICRC had successfully negotiated for the release of hundreds of detainees, the Bosnian Croat forces continued to violate Geneva Conventions. When the Gabela and Dretjeli camps were closed by the ICRC in 1993, the immediate repatriation of Serb and Muslim civilians to their homes was prevented. The Croat forces had razed (and at the time of writing are continuing to raze) those Bosnian towns which are due to be returned

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40 Final Report of the Commission of Experts, op.cit., p. 43.

to Serb control as part of the Dayton Peace agreement. Their 'scorched earth' policy not only violates the Geneva conventions, but in preventing the repatriation of Serb and Muslim civilians, it continues the Bosnian Croat Forces' program of ethnic cleansing.

### **Violations by the Bosnian Government and Muslim Troops**

1.44 The Bosnian Government was also responsible for the evacuation and detainment of civilians. Following the May 1993 attack by the HVO on the Muslim population, the Bosnian Government and Muslim troops detained at least one thousand Croatian prisoners in as many as twenty-three detention camps. In the Muslim controlled area of Mostar, there were reports that detainees were forced to work on the front lines. Many of them sustained massive injuries. Many died.

1.45 There were also reports of widespread malnutrition and starvation amongst the detainees. In a Human Rights Watch/Helsinki interview, a former Croatian detainee of the Muslim held detention camp in Konjic, claimed that half of a soldier's meal was used to feed eight prisoners. The deliberate obstruction of humanitarian aid was also reported in the village of Nova Vila, besieged by Bosnian Muslim forces. When the Bosnian Army finally agreed to allow for medical evacuations, the UN escorted convoy that arrived was promptly attacked by Bosnian Army forces, killing the driver and wounding five others.

1.46 Like the Bosnian Croat forces, the Bosnian government was active in the pillaging and burning of civilian property. The villages near Konjic were razed, preventing Croatian repatriation. As well, it is alleged (according to interviews conducted by Human Rights Watch/Helsinki) that the Bosnian and Muslim forces shot at civilians as they escaped from the villages around Travnik, Doljani and Donje Selo.<sup>41</sup>

1.47 It must be emphasised that *all* parties to the conflict were responsible for grave breaches of the Geneva Conventions; that all parties were involved in the forceful detainment and mistreatment of thousands of civilians, in the ongoing and brutal process of ethnic cleansing.

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41 Exhibit No. 21, Ivana Nizich, *Violations of the Rules of War by the Bosnian Croat and Muslim Forces in Bosnia-Herzegovina*, Hastings Women's Journal, Vol 5, No. 1, 1994, pp. 32-33. The author is a research associate with Human Rights Watch/Helsinki.

## The Numbers of Refugees

1.48 UNHCR published figures for October 1995 on the number of refugees and displaced persons in the former Yugoslavia. These figures represent the beneficiaries of UNHCR programs for that quarter, September to December 1995, under categories of refugees, displaced persons or war affected persons. (See Table 1.1) They do not indicate the numbers of people from any area who have been made refugees over the course of the war. This would be a much greater figure as many people have been placed abroad and some have been repatriated or declassified. For example, the Australian Croatian Congress told the Committee that in the past four and a half years Croatia had cared for more than 1.1 million displaced persons and refugees.<sup>42</sup> The Government of the Federal Republic of Yugoslavia claimed that 650,000 Serbs had been displaced during the war.

**Table 1.1: UNHCR Beneficiaries in the former Yugoslavia, October 1995**

REPUBLIC	REFUGEES	DISPLACED PERSONS	REFUGEES, IDPS, WAR AFFECTED	TOTAL
Bosnia/Herzegovina			2,700,000	2,700,000
Croatia	228,000	197,000		425,000
Sector East		38,000		38,000
Sub-Total: Croatia	228,000	235,000		463,000
FYROM	6,500			6,500
Slovenia	24,000			24,000
Federal Republic of Yugoslavia	330,000			330,000
<b>GRAND TOTAL</b>	<b>588,000</b>	<b>235,000</b>	<b>2,700,000</b>	<b>3,523,500</b>

Source: UNHCR, Information Notes on the former Yugoslavia, No.10/95, October 1995, p. 6.

1.49 The Bosnian Council of New South Wales described the scale of the refugee problem in Bosnia to the Committee. Since 1992, 600,000 Bosnians or 30 per cent of the population are now living as refugees in 53 countries throughout the world, 17,000 children have been murdered, 80,000 children have been left without one or both parents, 30,000 women have been raped and 200,000 people have been wounded or disabled.<sup>43</sup> In Bosnia/Herzegovina, by far the area worst affected by the war, UNHCR estimates of the numbers of refugees for October 1995 were as follows:

42 Australian Croatian Congress *Submissions*, p. 5.

43 *Evidence*, 30 October 1995, p.74.



**Table 1.2: UNHCR Beneficiaries in Bosnia and Herzegovina**

REGION	DISPLACED	WAR AFFECTED	TOTAL
Banja Luka	222,840	100,278	323,118
Bihac	45,337	122,437	167,774
Eastern Bosnia	207,314	181,804	389,118
Sarajevo	139,857	300,338	440,245
Southern Bosnia	114,324	190,479	304,803
Tuzla	281,741	178,722	460,463
Zenica	286,014	329,416	615,430
<b>TOTAL</b>	<b>1,297,427</b>	<b>1,403,524</b>	<b>2,700,951</b>

Source: UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p.7.

**Table 1.3: The Extent of Ethnic Cleansing in Bosnia**

REGION	CENSUS	GROUP	CURRENT EST
Bihac	29,398	S	1,000
	6,470	C	5,000
	202,310	M	199,000
Northern Bosnia	624,840	S	719,000
	180,593	C	30,000
	355,956	M	37,000
Tuzla	82,235	S	15,000
	38,789	C	19,000
	316,000	M	659,000
Zenica	79,355	S	16,000
	169,657	C	115,000
	328,644	M	434,000
Sarajevo	157,526	S	MIXED
	35,867	C	455,000
	259,085	M	
W. Herzegovina	43,595	S	5,000
	245,586	C	320,000
	111,128	M	160,000
E. Bosnia	304,017	S	450,000
	40,638	C	(M/C)
	261,003	M	4,000
Enclaves	20,000	S	
	80,000	M	55,000

S - Serbian; C - Croatian; M - Muslim.

Source: UNHCR, Information Notes on the former Yugoslavia, No. 10/95, October 1995, p. 9.

1.50 Since 1991, for the whole of the former Yugoslavia, 3.5 million people have been displaced. Most of these people have remained in collective centres in Croatia and Serbia or have been billeted by private families for the duration of the war. Both Croatia and the Federal Republic have reached breaking point with the numbers of people they are trying to absorb. Over 50 countries have resettled refugees from the former Yugoslavia. Three quarters of a million people have been resettled in Europe, particularly in Germany, Sweden, Switzerland and Austria under what is known as temporary protection.<sup>44</sup>

**Table 1.4: Refugees from the Former Yugoslavia in Europe, 1995**

Germany	310,000
Sweden	115,000
Switzerland	85,000
Austria	80,000
Italy	55,000
Hungary	35,000
Turkey	30,000
France	29,000
Slovenia	27,000
Netherlands	22,000
Denmark	20,000
Norway	16,000
Fyrom	15,000
Luxembourg	12,000
Czech Republic/ Slovakia	10,000
United Kingdom	8,000
Albania	5,000
Belgium	5,000
<b>TOTAL</b>	<b>879,000</b>

Source: UNHCR: Information, August 1995, supplied by the Australian Red Cross.

1.51 The war in the former Yugoslavia has created a humanitarian disaster. It is the largest emergency which Europe has faced since the Second World War requiring the largest relief effort which Europe has had to mount. It has also tested the New World Order and the capacity of the United Nations to respond to conflict emerging from the disintegration of states. The following sections of the report examine that response both as a peacekeeping effort and as an humanitarian effort.

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44 *Evidence*, 30 October 1995, p. 111.