

Republika Srpska's 31st Report to the UN Security Council

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Executive Summary

Republika Srpska (RS), a party to the treaties that make up the 1995 Dayton Peace Accords and one of the two autonomous Entities that make up Bosnia and Herzegovina (BiH), is pleased to submit this 31st Report to the UN Security Council.

In Part I of the report, the RS once again emphasizes its commitment to the Dayton Accords, which have successfully ensured peace between BiH's three formerly warring constituent peoples—Bosniaks, Serbs, and Croats—for more than 28 years. This includes a commitment to BiH's constitutional order as well as its sovereignty and territorial integrity. It also includes an unshakable commitment to BiH's continued peace. The RS, moreover, is committed to seeing that the Dayton Accords—including BiH's federal constitutional structure and its democratic system for enacting laws—are faithfully implemented.

Part II outlines the rapid progress BiH's multiethnic leadership has made recently on BiH's EU integration and highlights key steps necessary for BiH to advance on the EU path. The RS welcomes the European Council's decision to recognize this progress by approving the beginning of BiH's EU membership negotiations, and it reiterates the RS's strong support for BiH's EU integration. Part II also explains why BiH's federal constitutional structure is not only consistent with EU requirements but is also important for Europe's security.

Moreover, Part II emphasizes that with BiH beginning EU accession negotiations, it is long past time to restore BiH's sovereignty and democratic self-government by closing the Office of the High Representative (OHR). As the EU has made clear, the presence of a foreigner claiming—without any legal basis—unlimited despotic powers over BiH is antithetical to BiH's EU path. It is also past time, Part II explains, to replace the foreign judges on the BiH Constitutional Court with judges who are BiH citizens, a reform the European Commission has identified among its 14 key priorities for BiH's EU integration.

In Part III, the RS examines efforts by the retired German politician who claims to be High Representative, Christian Schmidt, along with his supporters, to sabotage BiH's political progress and EU integration. Just five days after the European Council decided to open accession talks with the EU, Mr. Schmidt, willfully acting against the EU's clearly expressed objections, issued an illegal edict purporting to enact 114 amendments to the BiH Election Law. Knowing that his dictatorial powers are utterly incompatible with BiH's EU path, and having watched BiH's multiethnic governing partners prove how much they could accomplish on their own, Mr. Schmidt purposely created a political crisis to derail BiH's EU integration and provide him with an argument that BiH does not deserve sovereignty or to be governed by its own democratic institutions.

Part III also explains how Mr. Schmidt has also been persecuting citizens through a "statute" he imposed that establishes prison sentences for public officials who refuse to cooperate with his

illegal decrees. In a lawless attempt to overthrow a democratically elected leader, BiH officials—acting under pressure from Mr. Schmidt—indicted RS President Milorad Dodik based on Mr. Schmidt’s counterfeit new criminal statute.

Finally, Part III examines how certain countries, in contradiction to their expressions of support for BiH’s EU aspirations, have been undermining BiH’s political stability and sabotaging its EU integration through constant interference in BiH’s internal affairs. For example:

- The United States publicly broke with the EU by condemning and trying to torpedo recent constructive political agreements among the leaders of BiH’s Serb, Bosniak, and Croat political parties.
- Some supposed friends of BiH also have continued to support Mr. Schmidt’s lawless and destabilizing dictatorship over BiH.
- The OSCE Mission in BiH, which has never criticized Schmidt’s unconstitutional and anti-democratic rule over BiH, attacked the RS over its Election Law legislation, despite the fact that the legislation does not intrude at all on the BiH level’s constitutional jurisdiction.
- The US Embassy earlier this year tried to bully judicial and law enforcement authorities into investigating RS citizens for their participation in the RS Day parade, a celebration of the RS’s birthday.
- Germany and other critics of the RS sponsored a destabilizing anti-Serb resolution in the UN General Assembly, knowing that certain BiH officials’ expressions of BiH’s support for the resolution are fraudulent and flagrantly violate the BiH Constitution, which entrusts foreign policy to the collective Presidency.
- The United States, acting without the required permission of the BiH Presidency, even flew a pair of fighter jets over BiH on the eve of the parade as a menacing threat of potential military action against the RS.

All of these acts of interference in BiH’s internal affairs are destructive to BiH’s future prospects for EU membership and success as a country.

I. The RS is dedicated to the Dayton Accords, including BiH's constitutional order.

1. The 1995 Dayton Accords have ensured peace in BiH for more than 28 years, and the RS remains dedicated to Accords' faithful implementation. This includes a commitment to BiH's Constitution as well as its sovereignty and territorial integrity.
2. The RS's commitment to the Dayton Accords also, of course, includes an unalterable commitment to peace. The RS and its leaders have consistently ruled out any resort for violence for any reason. Contrast this with Bosniak politicians who regularly talk of war, like BiH Defense Minister Zukan Helez, who recently said it is necessary to introduce military training in secondary schools because children do not know how to handle firearms.¹
3. Political rivals must exclusively work out their differences through dialogue and with respect for BiH's constitutional order. The RS also supports and cooperates fully with the EU's Operation Althea in its mission of helping ensure that BiH's peace remains undisturbed.
4. The RS's commitment to Dayton, moreover, includes an insistence that the BiH Constitution—the heart of the Dayton compromise—be implemented faithfully as written. The Constitution provides for a democratic system leaving most competences in the hands of the two Entities that make up BiH. The Constitution also includes protections for the interests of each of BiH's constituent peoples (the predominantly Muslim Bosniaks, the predominantly Orthodox Christian Serbs, and the predominantly Roman Catholic Croats). This constitutional order gives each people confidence that it will not come under the domination of other peoples. That confidence has been the basis for the peace that has prevailed in BiH since 1995.
5. Regrettably, the BiH constitutional order—especially the Constitution's assignment of most competences to the two Entities and its protections for the interests of the constituent peoples—has been badly undermined, mostly through foreign interventions, especially the illegal dictatorial decrees of the HR and Mr. Schmidt. The RS, understanding how essential the BiH constitutional order is for the country's future, will continue to defend it from these attacks using legal and peaceful methods.

II. BiH's swift advancement toward EU membership

A. The RS welcomes the European Council's decision to launch membership talks with BiH.

6. BiH celebrated a historic milestone on 21 March when the European Council unanimously decided to launch EU membership negotiations with BiH. The RS heartily welcomes this decision

¹ *BiH's Defence Minister on anniversary of Ahmici massacre: "Fascism has not been eradicated"*, N1, 16 Apr. 2024.

and is gratified for the EU's recognition of painstaking efforts of officials from all BiH's constituent peoples. BiH Foreign Minister Elmedin Konaković, a representative of one of BiH's governing Bosniak parties, rightfully praised "the superhuman efforts of our coalition."²

7. The RS is a steadfast supporter of BiH's path to EU membership, and the hard work of officials from the RS has played a central role in BiH's earning the EU's decision to begin negotiations. In recent months, the RS's leaders and BiH-level officials from the RS have worked diligently to negotiate and implement high-priority reforms on the road to EU membership, culminating in the European Council's historic decision.

8. The RS, indeed, supports BiH's fulfillment of all the remaining elements of the 14 key priorities at once. The RS also supports implementing *Sejdic Fini* and related European Court of Human Rights decisions for office holders from the RS by removing all ethnic qualifications.

9. The RS has worked vigorously for many years on aspects of EU integration within its constitutional competences and has made important progress on the objectives outlined by the EU in its reports on BiH. Thousands of RS regulations have undergone the procedure of harmonization and assessment of conformity with the EU *acquis*.

10. In welcoming the European Council's decision, RS President Milorad Dodik said it is "a recognition of all citizens and political forces that persistently strive to strengthen mutual respect, agreement and compromise between Serbs, Bosniaks and Croats."³ He further said that the "decision strengthens the foundation on which the RS is ready to strengthen the Dayton-based Bosnia and Herzegovina, which equally belongs to everyone."⁴

11. The RS's strong support for BiH's EU integration demonstrates the RS's forward-looking European orientation and disproves once and for all the malicious falsehood that the RS takes orders from a foreign power.

B. BiH's domestic leadership has made rapid progress toward meeting the 14 priorities from the European Commission's Opinion on BiH's application for membership.

12. The European Council's momentous decision on 21 March is recognition of the rapid progress BiH has made as officials from both Entities and all three of its constituent peoples have worked

² *If EU opens accession talks with Bosnia everything will get easier*, FM Konakovic tells N1, N1, 7 Mar. 2024.

³ *Dodik welcomes EU's green light for Bosnia, says it's a recognition to him and RS*, N1, 21 Mar. 2024.

⁴ *EU agrees to open accession talks with Bosnia and Herzegovina*, European Western Balkans, 22 Mar. 2024.

cooperatively toward the common goal of EU membership. European Commission President Ursula von der Leyen said that “more progress was made in one year than in the previous decade” and that BiH “has achieved significant progress in dialogue and reconciliation.”⁵ Attachment 1 to this report outlines the recent progress BiH’s domestic leadership has made—all without any help from Mr. Schmidt—on its EU integration priorities.

C. BiH’s federal constitutional structure is consistent with EU requirements and European security.

13. There is no contradiction at all between EU membership and the complex constitutional structure of BiH guaranteed by the Dayton Accords. EU members like Germany, Belgium, and Spain successfully fulfill their EU membership obligations while maintaining systems in which component territorial units have a great deal of autonomy.

14. Moreover, BiH’s federal constitutional structure and the protections enshrined in the BiH Constitution for its constituent peoples enhance the security of BiH and of Europe. As explained in Attachment 2 to this report, there are powerful political forces in BiH that are sympathetic to jihadism. Fortunately, the BiH Constitution incorporates provisions designed to defuse power and ensure the representation of the interests of the country’s two autonomous Entities and its three constituent peoples. This system, in addition to maintaining peace and stability among BiH’s ethnic groups, helps ensure the security of BiH and Europe by helping prevent the concentration of power in the hands of any radical political movement, Islamist or otherwise.

D. Now that BiH is entering accession negotiations, it must finally be freed from foreign control.

15. With the EU having decided to open accession negotiations with BiH, it is long past time for the OHR to close and for the foreign judges on the BiH Constitutional Court to be replaced by BiH citizens as called for by the EU.

1. The OHR must close at once for BiH to advance toward EU membership.

16. The EU is a union of sovereign states, not protectorates, and the EU has made it clear that the existence of a foreign official claiming sweeping dictatorial authority over the people of BiH is inimical to BiH’s EU path. The OHR must close in order for BiH to be a democratic country living under the rule of law and in accordance with human rights.

⁵ Von der Leyen: *Bosnia is fully aligned with EU’s foreign and security policy*, N1, 21 Mar. 2024.

a) The so-called Bonn powers are egregiously illegal and crippling to BiH's political development.

17. As examined in Attachment 3 to this Report, the so-called Bonn powers are a shocking abuse of the rule of law. Even if Mr. Schmidt were a legitimately appointed High Representative, which he is not, his issuing of edicts purporting to enact BiH laws would be an outrageous and flagrantly illegal breach of BiH's sovereignty and democratic constitutional order. It could not be more obvious that an unelected foreigner decreeing laws with no international oversight and no authority brazenly violates the BiH Constitution, which establishes and guarantees a democratic constitutional system in which laws are enacted only by the legislature. Moreover, nothing resembling such dictatorial powers is mentioned, implied, or even contemplated in any part of the Dayton Accords or any other source of international or BiH law.

18. Moreover, the presence of a foreigner claiming dictatorial powers has long stunted the development of BiH's political culture, as has been recognized even by former HRs, and Mr. Schmidt's illegitimate reign has been especially destructive and destabilizing. Mr. Schmidt's reckless edicts, threats, and other interference have provoked crisis after crisis in BiH ever since his arrival. Indeed, the recent actions and rhetoric by RS officials that certain foreign states have condemned were all provoked, predictably, by Mr. Schmidt's egregiously illegal actions.

b) A foreigner's assertion of despotic powers over BiH is incompatible with BiH's EU path.

19. The presence in BiH of an unelected foreigner claiming unlimited autocratic powers is quite obviously inimical to BiH's road to EU membership. The leader of BiH's main Croat party, Dragan Čović, recently said that he is "convinced that the opening of the negotiation process basically means the displacement of the institution of the High Representative from BiH."⁶ BiH Foreign Minister Konaković admitted that BiH "will not enter the European Union with OHR."⁷

20. As long as BiH is subject to the illegal Bonn powers or anything resembling them, BiH will not come close to meeting the criteria for accession to the EU, known as the Copenhagen criteria. The first of the Copenhagen criteria is "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."

21. A country in which an unelected foreigner imposes laws by decree can hardly be said to have institutions guaranteeing democracy. Nor can such a country remotely be characterized as

⁶ *Bosnian leaders at panel discussion in Vienna: An opportunity to send a unique message about dedication to European path*, N1, 14 Mar. 2024.

⁷ *Konaković: BiH u EU neće ući sa stranim sudijama i OHR-om*, Banjaluka-net, 25 Mar. 2024.

guaranteeing the rule of law. As explained above, there is no legal basis for the Bonn powers in the BiH Constitution or any other source of law, and Mr. Schmidt maintains an order that even bans any judicial review that “takes issue in any way whatsoever”⁸ with any of his decisions. The foreign-dominated BiH Constitutional Court has refused to uphold the basic provisions of the Constitution such as those requiring laws be enacted democratically. Moreover, BiH is far from guaranteeing human rights as long as it continues to allow a single individual to rule by decree and to punish individuals without any form of due process.

2. BiH’s Constitutional Court must be composed of BiH’s own citizens.

22. A crucial element of the EU’s 14 key priorities for BiH’s EU integration is the replacement of the foreign judges on the BiH Constitutional Court with BiH citizens. BiH is the only country in the world in the bizarre position of having seats on its constitutional court reserved for foreigners. Despite the BiH Constitution making clear that the foreign judges were supposed to be a short-term transitional measure, the judges remain on the court 28 years later. The foreigners on BiH’s Constitutional Court are not trained in BiH’s legal system, do not speak any of the local languages, and do not even live in the territory over which they wield vast power, accountable to no one. Under the terms of BiH’s Constitution, the foreign judges were supposed to have been replaced with BiH citizens decades ago, but Bosniak political parties and their allies in the international community have resisted these changes in order to keep BiH in the state of a subservient colony.

23. In its Opinion on BiH’s EU membership application, the European Commission included the replacement of the foreign judges among the 14 key priorities for BiH’s EU integration. As BiH Foreign Minister Konaković has recently acknowledged, BiH “will not enter the European Union with foreign judges.”⁹

24. Astonishingly, the United States is aggressively undercutting EU policy and BiH’s EU integration by adamantly opposing this long-overdue reform. In a February speech in Sarajevo, US Assistant Secretary of State James O’Brien made the bizarre assertion that the foreign judges must remain because “BiH courts interpret the law of the European Court of Human Rights (ECHR), so it is important to have judges who are expert in that law on the court.” Obviously constitutional courts in most European countries interpret the law of the ECHR, yet Mr. O’Brien would never dare to suggest that those countries should reserve one-third of their constitutional court seats for foreigners. Mr. O’Brien thus insulted BiH’s entire legal culture by implying that all BiH judges must be so ignorant and incompetent that they are incapable of interpreting ECHR law.

⁸ Office of the High Representative, Order on the Implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina in the Appeal of Milorad Bilbija et al, No. AP-953/05, 23 March 2007.

⁹ Konaković: *BiH u EU neće ući sa stranim sudijama i OHR-om*, Banjaluka-net, 25 Mar. 2024.

25. Mr. O'Brien's speech made the equally bizarre implication that it is unimportant for judges to be experts on the very constitution it is their job to interpret, or even to speak one of the country's languages.

26. BiH must promptly replace the foreign judges on its Constitutional Court as the EU has made clear is necessary for BiH's EU integration.

III. Mr. Schmidt and his supporters are actively and intentionally sabotaging BiH's political progress and EU integration.

27. It is difficult to fathom how any mediocrity as poorly qualified as Mr. Schmidt could end up claiming to be the High Representative. His intemperate disposition, disregard for the policies and objectives of the EU, acknowledged lack of diplomatic experience or skills, poor understanding of BiH's history and political dynamics, lack of self-awareness, and celebration of Nazi military villains—all qualities that have been noted even in the German press—render him unfit for a junior position in Germany's embassy in Sarajevo. Even so, even Mr. Schmidt is not such a fool that the many crises that he has provoked with his destructive meddling can be considered mere mistakes, and they must therefore be intentional provocations.

A. Mr. Schmidt's latest destabilizing decree

28. BiH's rapid progress on EU integration and EU leaders' decision to open accession talks with BiH presented a clear threat to Mr. Schmidt's power. The highly productive cooperation among BiH's multi-ethnic governing partners in the absence of OHR involvement proved that BiH could govern itself successfully through its own democratic institutions. Moreover, Mr. Schmidt knew that his continuing claim of despotic powers was antithetical to BiH's EU path. As the EU has repeatedly stated, "extensive international supervision is incompatible with the European future of BiH." Mr. Schmidt knew that to save his claimed position, he had to act quickly to create a crisis in BiH that would cause a deep inter-ethnic rift and derail the country's drive toward EU membership.

29. On 26 March, just five days after EU leaders decided to launch accession talks with BiH, Mr. Schmidt posted on the OHR website a decree purporting to enact 114 amendments to the BiH Election Law. Mr. Schmidt acted with total contempt for the EU, whose spokesman Peter Stano had in January publicly warned Mr. Schmidt against imposing the decree.¹⁰ Even Foreign Minister Elmedin Konaković, representing one of the governing Bosniak parties, had said in early March that imposition of election law amendments would be a "new complication" on BiH's road to the EU.

30. As Mr. Schmidt hoped and expected, the decree has bitterly divided BiH's ethnic groups, with Serb and Croat parties represented on the BiH Council of Ministers vehemently rejecting Mr.

¹⁰ EU spokesperson: High Rep's powers should be used "only as a measure of last resort", N1, 9 Jan. 2024.

Schmidt's violation of BiH's sovereignty and constitutional order, and Bosniak parties welcoming the edict. As Mr. Schmidt must have intended, this rift has brought a sudden end to the period of fruitful cooperation preceding Mr. Schmidt's decree and knocked BiH's EU integration badly off track. Commenting on Mr. Schmidt's decree, former High Representative Miroslav Lajčák, now EU Special Representative for the Belgrade-Pristina Dialogue and other Western Balkan Regional Issues, said, "we had a very positive momentum in the country, which unfortunately was replaced with yet another political crisis."¹¹ He added, "I really don't think that it's good and normal . . . for the country when almost 30 years after Dayton, Bonn powers are still in daily use. This is not how it was projected. . . . [T]he international community should be there to help but not dictate. That's my very strong opinion."¹²

31. Mr. Schmidt's decree is inexplicable unless his goal in imposing it was to trigger a crisis to preserve his own dictatorial powers. There was certainly no urgent need for the amendments, and his shameful lies about the scope of the changes speak volumes as to his harmful intentions.¹³ BiH has been holding elections using the current Election Law framework for more than two decades, during which time observers such as the Organization for Security and Co-operation in Europe have described BiH elections as competitive and well organized. BiH-level and Entity-level elections are not due until 2026. Moreover, the amendments Mr. Schmidt imposed were part of an Election Law package that was being negotiated among BiH's governing partners.

32. Indeed, the reason the package had not already been enacted was that some Bosniak parties hoped that Mr. Schmidt would impose the elements of the package the Bosniak parties wanted without the elements they did not. This is a perfect example of how decrees by high representatives and Mr. Schmidt have poisoned political culture and made negotiations with Bosniak parties so often futile.

33. Mr. Schmidt's defiance of the EU in issuing the election law edict, continuing his pattern of contempt for the policies and prerogatives of the EU, should finally put to rest the lie that he is subject to some measure of political accountability through the PIC Steering Board. Half of the active members of the PIC Steering Board are EU member states and institutions, yet Mr. Schmidt disregarded the EU's staunch opposition to the election law edict.

¹¹ *N1 interview with Miroslav Lajcak: This is first time I see EU more ready for Balkans than Balkans is ready for EU*, N1, 19 Apr. 2024 (video available at <https://n1info.ba/english/news/video-n1-interview-with-miroslav-lajcak-this-is-first-time-i-see-eu-more-ready-for-balkans-than-balkans-is-ready-for-eu/>).

¹² *Id.*

¹³ Mr. Schmidt's claim that his recent diktat imposed merely "technical changes" to the Election Law is a bald-faced lie. Mr. Schmidt's decree imposes a sweeping overhaul of the Election Law that gives broad and unconstitutional powers to the Central Election Commission. That Mr. Schmidt lied about the election law edict being merely a set of "technical changes" demonstrates Mr. Schmidt's mendacity, bad faith, and understanding of how egregiously illegal his own dictates are.

34. Mr. Schmidt's latest reckless edict also demonstrates that his claims to be acting only for the good of BiH are lies. He had received warnings from experts and officials both inside and outside of BiH, from individuals far more experienced, capable, and sensible than Mr. Schmidt, that his decree could have serious destabilizing consequences. As blundering and reckless as Mr. Schmidt is, even he could not claim that the reaction by the Serb and Croat communities, and by the EU, was unexpected.

35. The EU issued a statement diplomatically condemning Mr. Schmidt's decree, but nonetheless Mr. Schmidt got what he wanted. He will now use the political crisis that he engineered as an excuse to claim that EU membership is a far-off dream and that he must continue to hold his lucrative position and his right to rule the citizens of BiH with unlimited powers. Indeed, lately he has tried to prove his indispensability even to the Serb community that so thoroughly despises his presence by making the absurd claim to be the protector of the RS, as if his departure could result in the total elimination of the RS as an Entity established in the BiH Constitution.

36. For the future of BiH, and its prospects for EU integration, the EU and other members of the international community must not endorse Mr. Schmidt's cynical power play but must at last demand that the OHR—the predominant source of BiH's political crises—be shut down immediately.

B. Prosecution of a duly elected official for failing to follow illegal decrees of an unelected foreigner

37. The most reckless, destabilizing, and repressive edict Mr. Schmidt has handed down is a 2023 “law” establishing prison sentences for public officials who dare to defy his illegal decrees.

38. In response to Mr. Schmidt's lawless and unconstitutional efforts to rule BiH by decree, the RS National Assembly in June 2023 approved a statute ending the publication of such illegal decrees in the RS's Official Gazette. When the President of the RS took the procedural step of formalizing the new law, as required under the RS Constitution, the BiH Prosecutor's Office—acting under pressure from Mr. Schmidt—indicted him based on Mr. Schmidt's counterfeit new criminal statute. The indictment is an attempted coup d'état against the RS's democratically elected leadership and an escalation in Mr. Schmidt's confrontational attack on BiH's constitutional order.

39. If the efforts to imprison those who object to the despotic overlordship of a foreign despot—particularly a rash, bumbling mediocrity like Mr. Schmidt, who was never even lawfully appointed—are intended to make the leadership and citizens of the RS more accepting of antidemocratic rule by blundering Germans foisted upon them by secretive decisions made in a few foreign capitals, those efforts will only have the very opposite effect.

C. Foreign interference undermines BiH's EU integration and provokes political instability (and is perhaps intended to do so).

40. Certain foreign states that claim to be friends of BiH and supporters of its aspirations for EU membership have, contrary to these claims, been pursuing policies that undermine BiH's political stability and sabotage its EU integration efforts.

1. Disruption of agreements among BiH's political leaders

41. In recent months, talks among the Bosniak, Serb, and Croat parties represented on the BiH Council of Ministers have made important progress toward resolving longstanding contentious issues, including key priorities for EU integration. EU officials naturally welcomed these negotiations and the agreements resulting from them.

42. Unfortunately, however, the US Embassy has conspicuously broken with the EU to publicly condemn these agreements. In attacking the agreements reached by BiH's democratically elected leaders, the Embassy has evidently appointed itself the defender of Bosniak interests in BiH, ignoring the fact that BiH's own elected Bosniak leaders already zealously perform that function.

43. It is a welcome event when the governing parties representing BiH's constituent peoples reach the kind of accommodations necessary for BiH to advance toward EU membership and otherwise improve citizens' lives. Efforts to block such cooperation, thwart implementation of the parties' agreements, and micromanage political developments in BiH only serve to subvert BiH's EU integration efforts, blight the country's political culture, and undermine its stability.

44. Agreements among the BiH-level partners are necessary, as a practical matter, to enact significant legislation in BiH's constitutional system, including the key legislation required for BiH to advance on the road to EU membership. Thus, reckless intervention to thwart these agreements threatens BiH's EU integration.

45. Obstruction of political agreements in BiH is also damaging to BiH's political culture. For BiH to succeed, it is essential for representatives of its constituent peoples to engage in ongoing dialogue to seek common ground. Agreements by the parties representing the constituent peoples are vital for developing the political culture of give-and-take necessary for a multiethnic country like BiH to work. When foreign parties such as the US Embassy pull the rug out from under negotiating parties, it not only sabotages the agreements at hand, but also cripples future efforts to achieve such compromises.

46. Moreover, the sabotage of political agreements among the parties representing each constituent people severely undermines BiH's stability and future development. Agreements among the Bosniak, Serb, and Croat parties are inherently stabilizing for BiH because such agreements build inter-ethnic trust and balance the interests of each constituent people. These agreements promote ethnic harmony because members of an ethnic group with confidence in the safety of their group's position in BiH are more likely to support continued inter-ethnic cooperation and less likely to support destabilizing policies.

47. Indeed, these deleterious effects of the disruptive interference of foreign meddlers are so blatantly obvious, and have been so widely noted and criticized among knowledgeable observers and regional leaders alike, that it becomes difficult to avoid the conclusion that these harmful effects are the intended objective—an objective that seeks to present BiH from functioning as a normal country, so that certain foreign powers can claim that the dysfunction of BiH requires that their colonial overlordship must remain in place indefinitely.

2. Support for a foreigner's dictatorship over BiH

48. Of course, the main way certain countries destabilize BiH is through their unquestioning support for Mr. Schmidt, whose claimed powers are patently illegal under the BiH Constitution and international law, even for a legitimately appointed High Representative. OHR decrees are inherently destabilizing to BiH not just because they ravage the rule of law and vitiate BiH's democratic system for enacting laws, but also because they nullify the BiH Constitution's protections for BiH's Entities and constituent peoples. Such protections are core elements of the Dayton Accords, which help ensure BiH's stability by making the citizens of each Entity and the members of each constituent people feel safe and secure about their position in BiH. It is hardly conducive to stability for citizens of an Entity or the members of a constituent people to see a reckless foreign overseer lawlessly decree statutes, disregard their interests, and make a mockery of BiH's democratic constitutional procedures.

49. In addition to issuing destabilizing decrees, the OHR also has a long history of interfering destructively in inter-ethnic political agreements. For example, in November 2012, the leading parties representing each of the constituent peoples negotiated a resolution of the most divisive issue in BiH—public property. But before the resolution could be enacted into law, then-High Representative Valentin Inzko intervened to torpedo the agreement, dealing a disastrous blow to BiH's stability and political development.

3. Hypocritical and false criticisms of RS Election Law legislation

50. As knowledgeable observers predicted, in response to Mr. Schmidt's illegal, provocative Election Law decree, the RS enacted a new RS Election Law, which only regulates election matters that are squarely within RS jurisdiction under the terms of the BiH Constitution.

51. Notwithstanding the RS legislation's perfect consistency with the BiH Constitution, the OSCE Mission in BiH criticized the legislation, saying that the "BiH Election Law, reinforced by decisions of the Constitutional Court of BiH, clearly enumerates the respective responsibilities for the governance of elections. As such, the establishment or charging of anybody other than the Central Election Commission (CEC) to organize and conduct elections would violate the constitutional order of BiH, including the Dayton Peace Agreement."

52. The OSCE statement demonstrates a fundamental ignorance of the way that laws and constitutions work, and a fundamental disregard for the BiH Constitution agreed at Dayton. It is the

BiH Constitution that defines “the respective responsibilities for the governance of elections,” and the BiH Election Law may only regulate elections within the parameters set by the Constitution.

53. The BiH Constitution provides, “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.” The Constitution authorizes the BiH Parliamentary Assembly to enact a BiH Election Law only for the specific purposes of regulating the election of members of BiH Presidency and the BiH House of Representatives. Thus, the Constitution mandates that the regulation of all other types of elections belongs to the Entities.

54. To the extent the BiH Election Law attempts to regulate elections other than those for the members of BiH Presidency and the BiH House of Representatives, it is unconstitutional. Because the proposed RS Election Law does not regulate either of these types of elections, it does not encroach onto BiH-level jurisdiction at all.

55. One might take the OSCE Mission’s opinions on election matters more seriously if the mission had ever said one word to condemn the decades of defilement of BiH’s constitutional order by Mr. Schmidt and the six successive High Representatives who preceded him in BiH, none of whom ever subjected themselves to any form of election. Despite being run by a US diplomat without legal training, the OSCE Mission in BiH must be aware that no one—least of all an unelected foreigner—has a trace of legal authority to make law in BiH by decree, and that the enactment of laws through a foreigner’s edict brazenly violates BiH’s democratic Constitution.

56. The OSCE Mission’s silence about Mr. Schmidt’s lawless, anti-democratic rule by decree makes clear that the mission’s criticisms of the RS Election Law are nothing more than an extension of the US administration’s attempts to harass the RS into submission to rule from Washington.

4. Interference in BiH’s legal system

57. Foreign officials have, for many years, interfered promiscuously in the operations and decisions of BiH’s judiciary. For example, it is an open secret that the Constitutional Court has long taken instruction from the OHR and other foreign actors. A former foreign judge on the Constitutional Court admitted that there is a “tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation.”¹⁴

58. Unfortunately, foreign interference in the legal system continues. For example, in January, the US Embassy issued a statement menacingly demanding that BiH judicial authorities and law enforcement investigate BiH citizens for their involvement in celebrations of RS Day, a voluntary

¹⁴ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, European Diversity and Autonomy Papers (July 2004) at 17 and 18.

and secular holiday marking the anniversary of the day the RS was founded. It is bizarre that the US Embassy holds such an obsession with RS Day, which is nothing more than a celebration of the RS's existence—an existence the BiH Constitution fully embraces as a fundamental pillar of the country's structure.

59. According to the US Embassy's absurd and disingenuous reasoning, "The issue is not the celebration of the holiday, but rather the decision to do so on January 9. The linking of the commemoration to an Orthodox religious holiday violates several provisions of the BiH Constitution that prohibit discrimination." The US Constitution similarly prohibits discrimination; it cannot have escaped the notice of the US Embassy's staff that the Embassy itself was closed about two weeks earlier for the official US holiday of Christmas, a religious holiday that celebrates the birth of Christ and nothing else. The US Embassy cannot possibly expect such nonsensical explanations for the alleged illegality of RS Day to be taken seriously by anyone. And yet, as explained below, to defend this absurd position, the United States went so far as to threaten the RS with menacing overflights of fighter jets.

60. When the BiH Constitutional Court considered the constitutionality of RS Day, four out of the six BiH citizens on the court voted to uphold the law establishing the holiday. However, the court's three foreign judges, allied as usual with the two Bosniak judges, ludicrously claimed that RS Day somehow violated the Constitution. There is no legally defensible basis for the Constitutional Court's decision, which is inexplicable except as an attack on the legitimacy of the RS itself.

61. It is highly inappropriate for the US Embassy to bully judicial and law enforcement authorities on any matter, let alone for it to demand that citizens be criminally investigated for peacefully celebrating a holiday. Such meddling in the criminal justice system is yet another of the Embassy's cavalier, flagrant, and constant violations of its obligation under the Vienna Convention on Diplomatic Relations "not to interfere in the internal affairs" of the host country, and yet another example of the champion of the rule of law utterly ignoring any law that might be applied to itself.

62. Those countries that claim to support BiH and its bid for EU membership, as well its political culture and stability, should begin acting that way—ending their obstruction of internal BiH political agreements, their sponsorship of the bumbler who claims unrestricted dictatorial rule over BiH, and their illegal interference in BiH's legal system.

5. Sponsorship of a destabilizing, anti-Serb resolution at UN General Assembly

63. In a destabilizing effort to delegitimize and perhaps abolish the RS, Germany is sponsoring a resolution condemning anyone who does not classify the 1995 war crime in Srebrenica, in which several thousand Bosniak fighting-age males were killed, in the same category as the Holocaust, in which six million Jews of all ages and sexes were killed. Rwanda is another principal sponsor of the resolution, which demands that everyone categorize a brief and localized atrocity in which women

and children were purposely spared, as the equivalent of the Rwandan genocide, a monthslong, countrywide massacre in which 70 percent of the country's Tutsi population was slaughtered.

64. The third principal sponsor is BiH's UN ambassador, Zlatko Lagumdžija, who, by sponsoring the resolution without getting authorization from BiH's three-member Presidency, is gravely and recklessly defying the BiH Constitution. The Constitution, as part of the crucial power-sharing mechanisms that have helped ensure peace in BiH for more than 28 years, explicitly entrusts foreign policy solely to the BiH's three-member Presidency. The Presidency has never given anyone permission to advocate for the General Assembly resolution or anything resembling it. Neither the Presidency's rotating chair, nor one or two members of the Presidency, nor BiH's foreign minister have any authority under the Constitution to decide on BiH's foreign policy; only the collective Presidency, acting as an institution, may do so.

65. Some of the RS's principal critics, including the United States, have also sponsored the resolution. And many other countries are supporting the resolution because they have been deceived by Bosniak officials into believing BiH endorses it.

66. For the UN General Assembly to pass the resolution would be to reward a rogue UN ambassador for disregarding his own country's Constitution and to assist in the further destruction of BiH's constitutional order. Moreover, approval of the resolution would undermine BiH's long post-war healing process and cause internal strife in BiH. The obsession with characterizing the Srebrenica atrocity as a genocide undermines inter-ethnic reconciliation in BiH and is purposely intended to do so. Christian Axboe Nielsen of Aarhus University found in a 2013 paper that "[i]n Bosnia, the disproportionate attention on genocide helps to perpetuate the zero-sum approach that has informed Bosniak-Serb political negotiations since the end of the war."

67. The killing of unarmed fighting-age males in Srebrenica almost 29 years ago was undoubtedly a horrendous war crime, and the RS has always supported the vigorous prosecution and punishment of those responsible for it. Unfortunately, the resolution is a one-sided and stridently anti-Serb document that fails to acknowledge that all three of BiH's constituent peoples—Serb, Croat, and Bosniak—suffered terribly from war crimes. The resolution is drafted as if the Bosniak victims in Srebrenica were the only victims of the war whose lives mattered. But the 1995 atrocity in Srebrenica itself followed upon the ethnic cleansing of the region by the Muslim Bosniak army, in which hundreds of Serbian children, women, and elderly were deliberately tortured and killed. The resolution calls for an International Day of Remembrance for Srebrenica's Bosniak victims, but offers nothing to remember the many other victims of war in the area during the 20th Century, such as the hundreds of thousands of people—mainly Serbs, Jews, and Roma—murdered by Croatia's Ustaše

regime during World War II.¹⁵ As Serbia's ambassador to the United States recently wrote, "The resolution's unilateral and, frankly, abnormal, movement as well as its singular focus on Bosniak victims in Srebrenica seems almost tailor-made to stoke ethnic tensions."¹⁶

68. The resolution would condemn any questioning of whether the July 1995 atrocity at Srebrenica should be classified as a genocide. But a large portion of BiH's population, as well as many experts, assess that the crime at Srebrenica does not meet the definition of genocide. For example, William A. Schabas, president of the International Association of Genocide Scholars has written that categorizing the Srebrenica crime as a genocide "seems to distort the definition unreasonably."¹⁷ In an article published this month, Efraim Zuroff, Chief Nazi Hunter and Director of Eastern European Affairs at the Simon Wiesenthal Center, wrote, "[A]nyone acquainted with [the Srebrenica] event, as well as with the original definition of 'genocide,' knows very well that the crime committed by the Serbian troops does not fit the definition of genocide, for the simple reason that the women and children at Srebrenica were ALL released unharmed."¹⁸ Gen. Lewis MacKenzie, a former commander of UN forces in Sarajevo, and world-renowned genocide scholar Yehuda Bauer have also written that the Srebrenica crime did not constitute a genocide.¹⁹

69. It is absurd to label a war crime that was perpetrated over two or three days in the area of one small town with the same label that is applied to systematic ethnic killings perpetrated over months or years in wide swathes of territory. Indeed, many hundreds of the combatants captured by Serb forces in the area were freed in a prisoner exchange, demonstrating that the killings were isolated rather than systematic.

70. If the war crime committed at Srebrenica by one rogue military unit is to be labeled a genocide simply due to the differing ethnicities involved, then there are literally dozens of members of the UN General Assembly that are also guilty of genocide. Labeling the Srebrenica war crime genocide renders the word almost meaningless.

¹⁵ The Donja Gradina Memorial and the prominent historian Vladimir Dedijer estimate that the death toll of the Ustaše's Jasenovac camp alone was 700,000.

¹⁶ Marko Djuric, *UN Resolution on the Balkans Would Be a Mistake*, RealClear World, 17 Apr. 2024.

¹⁷ William A. Schabas, *Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia*, 25 Fordham International Law Journal 23, 47 (2001).

¹⁸ Efraim Zuroff, *Not every war crime is a case of genocide*, Jerusalem Post, 17 Apr. 2024.

¹⁹ Lewis MacKenzie, *The real story behind Srebrenica*, The Globe and Mail, 14 July 2005; *Professor Bauer: There was no genocide in Srebrenica*, Kosovo Online, 21 Apr. 2024.

71. If adopted, the resolution would be used by Bosniak politicians and their supporters as a political weapon to brand Serbs as genocidal and to pretend only Bosniaks were the only group to suffer grievously during the war. The resolution would also be exploited by certain radical Islamist elements within BiH that are supported and inspired by the Muslim Brotherhood; these groups purposely use accusations of genocide to inflame hatred of Serbs among their recruits.

72. Such radical elements will also use the resolution to justify the rapes, beheadings, and other horrendous war crimes committed against unarmed villagers by the mujahidin fighting for the Bosniaks and will encourage the continued denial of mass and systematic crimes against the Serbian population in Srebrenica and throughout BiH, especially the ethnic cleansing of Serbs in Sarajevo.

73. The RS National Assembly, following deliberations on a joint proposal from both ruling and opposition parties, voted to endorse the General Conclusions of the Official Report of the [Independent International Commission of Inquiry on the Sufferings of All Peoples in the Srebrenica Region between 1992 and 1995](#). That commission was headed by Gideon Greif, a professor at the University of Texas who is one of the world's leading Holocaust researchers. The commission's other members were similarly distinguished scholars from the United States, Japan, Australia, Nigeria, Italy, Serbia, and Germany. The Commission, noting that "it is crucial for the prevention of future genocides that the notion of genocide as a crime above all crimes must not be diluted," found that the 1995 killings in Srebrenica, were a war crime but do not qualify as a genocide. The Commission's conclusions are Attachment 4 to this report.

74. The greatest honor to pay to the victims of all ethnicities in Srebrenica, and of other war crimes committed in the conflict, is to strive all the harder to maintain peace, and to take every measure to ensure that no such acts are committed again, and no more lives lost.

6. Other bullying behavior intended to provoke political destabilization

75. On 8 January, the United States, acting without the permission of the BiH Presidency, which is responsible for BiH's foreign policy, flew two fighter jets over BiH in a menacing show of force designed to intimidate RS citizens on the eve of their RS Day holiday. This was an aggressively bullying act, especially for the many Serbs whose loved ones were among the thousands of innocent Serb civilians killed or severely wounded by NATO bombing during the 1990s.

76. In March, the United States, as always acting without any form of due process, imposed sanctions against three more RS citizens based on nothing more than the allegation that they "facilitated" commemorations of RS Day. And in a visit to Sarajevo that same month, Acting Assistant US Treasury Secretary Anna Morris threatened that the US would sanction banks in BiH that do business with individuals under sanctions. This lawless extraterritorial threat against banks that have never violated any law—much less a law of the United States—has, as intended, caused banks to withdraw basic banking services from individuals under US sanctions, making it impossible for these individuals even to receive their salaries.

77. Actions like threatening to bomb the RS and depriving RS citizens of basic services seem almost perfectly designed to repel the citizens of the RS from supporting closer ties with the West. Those who foolishly think that such hostile bullying may turn the populace against the RS leadership fundamentally misunderstand the people that they are harassing; such bullying only serves to increase the popularity of those who rightly stand up to such illegal, threatening behavior by hostile foreign interests, and causes them to seek friendship and support from other powers. If Western countries such as the United States and the United Kingdom hope to obtain RS support for BiH membership in Euro-Atlantic structures, their behavior toward the RS could hardly be more likely to elicit the very opposite reaction from citizens of the RS.

78. After so many years of causing rather than solving problems in BiH, it is long past time for those foreign powers meddling in BiH's internal affairs to recognize that abusive sanctions, menacing fighter jets, and despotic rule by imposed German mediocrities have not squelched the determination of the RS and its citizenry to enjoy the rights to which they are entitled under the Dayton Accords, nor will they. Investing even more heavily in a doomed endeavor is the very height of foolishness. Policies that are fundamentally flawed will not magically become successful by implementing them more aggressively.

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BiH's rapid progress on EU integration priorities

As recognized by the European Council with its 21 March decision to launch accession talks with BiH, BiH's domestic leadership has made rapid progress recently toward meeting the 14 priorities from the European Commission's Opinion on BiH's application for membership.

In announcing the European Commission's recommendation to open EU accession negotiations, Commission President Ursula von der Leyen said:

Since we granted candidate status, Bosnia and Herzegovina has taken impressive steps forward. More progress has been achieved in just over a year than in over a decade. First, Bosnia and Herzegovina has now fully aligned with our foreign and security policy, which is crucial in these times of geopolitical turmoil. Second, the country is adopting important laws, such as on the prevention of conflict of interest which had stalled for seven years, now it is adopted; and the law on anti-money laundering and countering terrorist financing. Third, the management of migration flows continues to improve, with negotiations on a Frontex agreement now ready to begin after the Presidency endorsed the negotiating framework. Fourth, the Ministry of Justice has agreed to include in the domestic criminal records the judgements of the International Criminal Tribunal for the former Yugoslavia. And fifth, on dialogue and reconciliation, a new peacebuilding steering committee has just become operational.

Among BiH's other recent accomplishments on the road to EU membership, according to the Commission's March 2024 Progress Report on BiH, are:

- The Directorate for European Integration finalized the program for EU integration.
- BiH adopted integrity amendments to the Law on High Judicial and Prosecutorial Council.
- BiH adopted amendments to the law on civil service in state-level institutions that aim to improve transparency and introduce human resources management tools.
- BiH adopted a law on foreigners.
- The Council of Ministers adopted the Program of Economic Reforms 2024 – 2026.
- The Council of Ministers adopted a migration strategy and action plan.
- The Council of Ministers appointed a supervisory body for the implementation of the national war crimes processing strategy.

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- The Stabilization and Association Parliamentary Committee (SAPC) has become fully operational.
- BiH officials finalized at the working group level the draft new law on personal data protection.

The Progress Report said, "The dedication and the commitment of the political leadership to the principles for ensuring a functional Bosnia and Herzegovina that advances on the European path is highly welcomed by the Commission. . . . In light of the results achieved since 2022 the Commission considers that Bosnia and Herzegovina achieves the necessary level of compliance with the membership criteria."

After the Progress Report was published, BiH met yet another priority from the Commission's Opinion on BiH's membership application when the Council of Ministers adopted the Strategy for Public Procurement.

Annex 2 to Republika Srpska's 31st Report to the UN Security Council**BiH's constitutional structure is vital to European Security**

Despite the many benefits of the unique constitutional structure of Bosnia and Herzegovina (BiH), some Western officials have been trying to undermine BiH's Constitution in favor of a centralized and strictly majoritarian system in which Serbs and Croats would be marginalized and Bosniaks—and potentially Islamist parties—would hold all power. Such officials fail to recognize the crucial importance of BiH's constitutional structure for European security.

Even as BiH works toward EU accession, the country remains—as it has been for more than three decades—the most dangerous source of terrorism in Europe. Concern over the terrorist threats emanating from BiH has been noted by many Western governments and other sources. For example, the US State Department wrote last year, “Terrorist groups continue plotting possible attacks in BiH.”¹ French President Emmanuel Macron in 2021, referring to BiH's jihadist presence, even called the country “a ticking time bomb.”²

According to data published by the Wilson Center in Washington, among European countries, BiH had the highest per-capita number of citizens who left to wage jihad in Syria and Iraq.³ Germany's leading news magazine, *Der Spiegel*, wrote in 2016, “Radical Islamists have found a new refuge in Bosnia. They recruit fighters, promote jihad and preach a fundamentalist interpretation of Islam—just across the border from the European Union. . . . Most recently, 64 illegal Muslim communities suspected of radicalism have been counted.”⁴

Recent developments in the Middle East and demonstrations in BiH by groups sympathetic to Hamas have only heightened these concerns. BiH is the only country entirely in Europe for which Israel has raised the threat level for travel to the second-highest level. Israel recommends that Israelis “[a]void unnecessary travel” to BiH and warns, “Terrorist cells are motivated to harm Israelis/Jews anywhere. Therefore, we recommend reconsidering any non-essential travel to this country.”⁵

In December, according to the Wall Street Journal, police in Austria and BiH “arrested two separate groups of Afghan and Syrian refugees who carried arm arms and ammunition, including Kalashnikov assault rifles and pistols. Investigators found pictures of Jewish and Israeli targets in Europe on some of the suspects' mobile phones, which they said suggested they were motivated

¹ US Department of State, Bosnia and Herzegovina Travel Advisory, 26 Jul. 2023.

² David M. Herszenhorn, *Diplomatic blow-up after Macron calls Bosnia a 'ticking time-bomb'*, Politico, 9 Nov. 2019.

³ *Report: More than 20,000 Foreign Fighters in Syria/Iraq*, Wilson Center, 26 Jan. 2015.

⁴ Walter Mayr, *Bosnia's Islamic State Problem*, 5 Apr. 2016.

⁵ Israeli National Security Council, Travel Warning – Bosnia and Herzegovina.

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by Israel's war against Hamas in Gaza.”⁶ In August, police arrested a BiH citizen on suspicion of having Islamic state links and planning to attack Muslims from a more moderate tradition at a mosque.⁷ In 2022, the United States deported a BiH citizen convicted of providing material support to a terrorist.⁸

BiH has seen deadly jihadist terrorist attacks within the country,⁹ but the main impact of terrorism rooted in BiH has occurred outside the country. The perpetrators of many of the most horrific terrorist attacks of recent decades had significant connections to BiH, including the 9/11 attacks in the United States, the 2004 Madrid Train bombing, and the 2015 Paris attacks.

The most radical Islamist elements in BiH society emerged out of the war in Bosnia and Herzegovina, a period when large numbers of jihadists, including Osama bin Laden and two of the 9/11 hijackers, came to BiH to aid the Bosniak army in its fight against the Serbs and Croats. The Bosniak army incorporated foreign jihadists into what it called the El Mujahid Detachment, which became notorious for terrorizing combatants and civilians alike, including with many beheadings.

After the war, the El Mujahid Detachment was disarmed, but unfortunately some of the key foreign jihadists stayed in BiH with the help of sympathetic Bosniak officials. Moreover, the foreign mujahidin's local followers have continued to spread jihadist ideology throughout certain Bosniak areas of the country, and, as reported by Radio Free Europe/Radio Liberty, “some Bosniaks were radicalized by foreign fighters.”¹⁰

Although many Bosniaks in BiH adhere to a moderate form of Islam, the largest political party in BiH representing the Bosniaks has its roots in the extremist ideology of Islamist groups like the Muslim Brotherhood. In fact, the party's manifesto openly emphasized that “the Islamic movement should and can start to take over power as soon as it is morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one.”¹¹ Although the party presents a moderate, democratic face to the West, it has

⁶ Bojan Pancevski, *A New Terror Threat Is Emerging in Europe Linked to Iran, Gaza War*, Wall Street Journal, 12 Mar. 2024.

⁷ *Bosnia arrest man suspected of Islamic State attack plan – prosecutors*, Reuters, 7 Aug. 2023.

⁸ *ICE removes Bosnian-Herzegovinian convicted of providing material support to a terrorist*, US Immigration and Customs Enforcement, 19 Apr. 2022.

⁹ For example: In 2015, a Bosniak gunman attacked a police station in the RS city of Zvornik, killing one police officer and wounding two others while shouting “Allahu akbar.”; In 2011, a Bosniak gunman fired 105 shots at the US Embassy in Sarajevo, wounding an embassy guard; In 2010, a Bosniak Islamist terrorist bombed a police building in Bugojno, killing one police officer and wounding several others.

¹⁰ *Bosnia Raises Terrorism Threat Level Due To Gaza Conflict*, RFE/RL, 19 Oct. 2023.

¹¹ Alija Izetbegovic, *Islamic Declaration* (1990) at 56.

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never disavowed its explicitly Islamist ideology, and its leadership maintains close ties to radical leaders in the Muslim Brotherhood and in places like Iran.

Sympathy in political Sarajevo for radical ideology helps explain why there has not been sufficient political will to rid BiH of dangerous jihadist elements. If there is any doubt about the continuing influence of these radical ideologies in BiH, one need only consider the very lenient treatment given to ISIS fighters returning to BiH, who have received little more than a slap on the wrist from BiH courts. Most of these individuals were raised in Muslim Sharia enclaves that practice radical forms of Islam separately from the official Islamic Community of BiH.

In fact, according to a study published in 2019 by the US Military Academy at West Point, even individuals convicted in BiH for actual terrorism-related activities received final prison sentences averaging less than 2 years.¹² For example, a defendant who had repeatedly provided financial support to ISIS was allowed to pay a minimal fine of only \$15,000 in lieu of a one-year prison sentence.¹³

Radical Islamist elements in BiH must not be allowed to flourish, and their path to political power must be resisted, rather than encouraged.

Fortunately, the BiH Constitution includes mechanisms that help prevent the dominance of the Islamist strain of politics. The Constitution incorporates provisions designed to defuse power and ensure the representation of the interests of the country's two autonomous Entities and its three constituent peoples. This system, in addition to maintaining peace and stability among BiH's ethnic groups, benefits the security of BiH and Europe by helping prevent the concentration of all power in the hands of radical parties, whether Islamist or otherwise.

To reduce the terrorist threat from BiH, it is necessary, first, to be wary of certain Bosniak politicians who present a moderate democratic façade even though their past, their relationships, and their writings all display adherence to a radical Islamist ideology. Such radicals should be called out for what they are, not welcomed into diplomatic drawing rooms as respected emissaries.

Second, it is vital to support BiH's constitutional system, including its structure and provisions that ensure the participation of Serbs and Croats in the BiH political process. These steps are important not just for BiH's security, but also that of Europe and the world.

¹² Adrian Shtuni, *Western Balkans Foreign Fighters and Homegrown Jihadis: Trends and Implications*, CTC Sentinel (Combating Terrorism Center at West Point), Aug. 2019, p. 21.

¹³ *Id.*

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The rank lawlessness of the dictatorial powers exercised by Christian Schmidt

In examining the political situation in BiH, it is useful to ask how one would react if a foreigner like Christian Schmidt deemed his will to be law in one's own country, with no oversight whatsoever from any elected official, any judiciary, or any international institution. Would one encourage one's own elected officials to obediently follow the foreigner's decrees as if they were legitimately enacted laws, or would one reject such preposterous impositions as being wildly illegal violations of one's country's own Constitution and sovereignty?

The reality is that Mr. Schmidt has just as much legal authority to decree laws in the United States or France as he has in BiH—that is to say, none whatsoever. Yet he exercises supreme, unrestricted authority to rule all of BiH, having issued eleven reckless decrees in BiH, including a decree imposing prison terms on those who decline to accept his claim to unlimited despotic power.

The Germans who have imposed Mr. Schmidt upon the citizens of BiH, along with the governments of the United States, the United Kingdom, and a few other Western powers, would not allow an unelected foreign mediocrity like Mr. Schmidt unrestricted authority to rule over a rural township, yet they have not only installed him as the overlord of all of BiH, subject to no oversight whatsoever, judicial or otherwise, and they will sanction and criminalize anyone in BiH who dares to defy his reckless edicts.

Mr. Schmidt's strongest supporter, the United States, emerged as a country due to a protest against the legitimate parliament and crown of Britain simply for their levying of taxes on the colonies without the colonial citizens' democratic input. No one who has ever read the Declaration of Independence could possibly imagine that the country born out of that document would so cavalierly trample upon the democratic rights of the citizens in another country.

Mr. Schmidt has usurped the role of High Representative illegally.

In a January 2024 interview with *Večernji list*, Mr. Schmidt made absurd statements to support his false claim to have been legitimately appointed to the position of HR, even though the UN Security Council never approved his appointment. In a remark showing either brazen dishonesty or abject ignorance about the content of the Dayton Accords, or both, Mr. Schmidt suggested that the Dayton Accords give the so-called peace implementation council (PIC) authority to appoint the HR, and he emphasized that there are “no veto rights in the PIC according to Dayton.”

The Dayton Accords say nothing about veto rights in the PIC because the Accords do not mention the PIC or even contemplate its existence. The Dayton Accords, which are the sole legal authorization for the position of HR, entrust appointment the HR to the UN Security Council and give no role at all to the PIC, which—it bears repeating—the Accords do not mention. The PIC is nothing more than an ad-hoc, self-appointed group of countries, which has no legal existence and

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no legal authority at all. As the European Court of Human Rights has confirmed, the PIC is merely an “informal group of states.”¹ The attempt by a handful of self-appointed countries to appoint Mr. Schmidt as an overseer to shunt aside Bosnia and Herzegovina's democracy and rule it by decree is a lawless exercise of raw, neocolonial power.

In that same January interview, Mr. Schmidt also referred to the UN Security Council as the “Security Council to which I submit my reports as the High Representative and which accepts me as such.” Mr. Schmidt's claim that the UN Security Council accepts him as HR is simply a bald-faced lie. The Security Council has never—in any way—accepted Mr. Schmidt as HR. Mr. Schmidt's practice of sending periodic reports to the Security Council claiming to be HR does nothing to change that. Some individual members of the Security Council have pretended that Mr. Schmidt is HR, but the Council itself has never, in any way, accepted Mr. Schmidt's sham appointment.

Mr. Schmidt has no legal authority at all. He is simply an ordinary German citizen who is lying, quite openly, in his attempt to justify his exercises of illegitimate despotic power over a sovereign foreign country. He knows this, and anyone who has ever read the Dayton Accords knows this.

Even a legitimate High Representative has no legal authority to decree laws.

Certain countries assert that Mr. Schmidt has legal authority to impose laws by decree—a claim that is often parroted uncritically by media outlets despite being a demonstrable lie. Mr. Schmidt's claim to be BiH's modern-day viceroy would be laughable if the absurd claim were not promoted by powerful countries, and certain Bosniak officials and institutions in BiH that they control.

The reality is that even if Mr. Schmidt were a legitimately appointed HR, his issuing of edicts purporting to enact laws in BiH would be flagrantly illegal, under both the BiH Constitution and international law.

The HR who first claimed the authority to exercise the Bonn powers, Carlos Westendorp, has openly admitted the illegality of the power grab. “At the Bonn conference, we managed to introduce a method by which the High Representative can take these decisions, which is not exactly in legal terms with Dayton. . . . It was not very legal, I have to admit.”²

¹ *Berić v. Bosnia and Herzegovina*, Eur. Ct. H.R., decision of 16 Oct. 2007, at para. 26.

² Adis Merdzanovic, *Democracy by Decree, Prospects and Limits of Imposed Consociational Democracy in Bosnia and Herzegovina* (2015), 256.

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Former UK Ambassador to BiH Charles Crawford, who also helped invent the Bonn powers, has written, “[A]s far as I could see the Bonn powers had *no real legal basis at all*. They amounted to an international political power-play bluff which successive HRs wrapped up in legal language to make the whole thing look imposing and inevitable.”³ In an article published by the European Council on Foreign Relations, former Swedish Prime Minister Carl Bildt, who served as the first HR, stated, “The legal basis for [the Bonn powers] was questionable in the extreme.”⁴

In the most thorough legal analysis of the Bonn powers to date, published in the *Goettingen Journal of International Law*, Tim Banning concluded, “[The Bonn powers] do not qualify as a legal power. Their existence is a powerful, but delusive legal fiction.”⁵ None of the foreign powers that support the unlimited powers claimed by Mr. Schmidt have ever even attempted to articulate a cogent legal argument as to how the despotic powers claimed by successive HRs and Mr. Schmidt are legal, and that is because it cannot be done.

It could not be more obvious to anyone familiar with the BiH Constitution that an unelected foreigner imposing laws flagrantly breaches the Constitution, which establishes and guarantees a democratic constitutional system in which laws are enacted only by the legislature.

Some supporters of the so-called Bonn powers claimed by Mr. Schmidt and the HRs who came before him have claimed dishonestly that sweeping powers of rule by decree are provided for in the Dayton Accords. But nothing resembling such powers is mentioned, implied, or even contemplated in any part of the Accords. The Dayton Accords never would have been accepted if they included such absurd and abusive provisions. Indeed, if the Accords provided HRs with such powers, those powers would be called the “Dayton powers” instead of being named after a conference of powerful countries that took place years after Dayton was concluded.

Annex 10 of the Dayton Accords, the sole source of the HR's legal authority, authorized the appointment of a HR with a strictly circumscribed mandate to be a coordinator of international activities involved in the civilian aspects of the Dayton Accords and a facilitator of the parties' efforts. In Annex 10, the HR is requested by the parties to participate in activities such as to “monitor,” “maintain close contact with the Parties,” “facilitate,” “participate in meetings of donor organizations,” “report,” and “provide guidance” to the commissioner of the International Police Task Force. Absent from Annex 10 is even the slightest hint that the HR is empowered to make decisions that are binding on BiH or its citizens.

³ Charles Crawford, *Bosnia: the Bonn Powers Crawl Away to Die*, available at charlescrawford.biz/2011/07/05/bosnia-the-bonn-powers-crawl-away-to-die/ (emphasis added).

⁴ Carl Bildt, *Bosnia to war, to Dayton, and to its slow peace*, *European Council on Foreign Relations*, 28 Jan. 2021.

⁵ Tim Banning, *The ‘Bonn Powers’ of the High Representative in Bosnia Herzegovina: Tracing a Legal Figment*, *Goettingen Journal of International Law* 6 (2014) 2, 259-302, at 302.

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Supporters of the co-called Bonn powers, implicitly conceding that there is no actual provision of Dayton providing for them, often point to a single clause of Annex 10 designating the HR as the “final authority in theater regarding interpretation of” Annex 10, which is entitled the Agreement on the civilian implementation of the peace settlement. But any lawyer knows that a clause of an agreement addressing interpretation of the agreement does not provide any substantive authority at all, let alone sweeping authorities not mentioned or even alluded to in the agreement.

Moreover, any international lawyer knows that interpretations of treaty provisions, according to the Vienna Convention on the Law of Treaties, are always bound by the requirement of good faith. To interpret Annex 10 as giving the HR powers to decree laws and depose leaders, even though Annex 10 does not provide anything remotely resembling such powers, is the very epitome of bad faith. The bad faith of interpreting Annex 10 to endow the HR with Bonn powers is even more manifest when one considers that such despotic powers unquestionably violate the democratic procedures and human rights conventions that are incorporated into the BiH Constitution, which is Annex 4 of the very same treaty.

Treaties and other agreements do not silently bestow sweeping authorities, especially authorities that violate other parts of the treaty, and violate other fundamental principles of democracy and international law.

Supporters of the so-called Bonn powers, knowing that the Dayton Accords manifestly do not provide for those powers, sometimes resort to claiming that the Bonn powers were bestowed on the HR by the PIC. This claim is absurd because the PIC lacks any legal authority at all, let alone authority to grant dictatorial powers.

As explained above, the Dayton Accords did not mention the PIC or contemplate its formation, much less grant any legal authority to such a group. Neither the UN Security Council nor any other international body established the PIC, nor did any such body determine its composition and members or grant it any legal authority. The PIC has no founding articles, nor even an ordinance or rules of procedure, no reporting mechanism, and no legal basis whatsoever.

The term “Bonn powers” originates from a statement the PIC issued two years after the conclusion of the Dayton Accords at a conference held in Bonn, Germany. The December 1997 statement “welcome[d] the High Representative’s intention to use his final authority in theatre regarding interpretation [of Annex 10] to make binding decisions” on certain issues.

Matthew Parish, a former OHR attorney, wrote that PIC’s Bonn statement “ran quite contrary to the spirit and text of Annex 10 to the [Dayton Accords], and was legally quite indefensible.” In any event, with no legal basis for its own existence, and certainly no legal authority of its own, it is preposterous to suggest that the PIC’s “welcome[ing]” statement could add to the list of authorities of the HR spelled out in Annex 10, let alone bestow on the HR dictatorial powers. Quite simply, the PIC possessed no magic wand by which the facilitator

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envisioned in Annex 10 could be transformed into a princely ruler with boundless powers to reign over the citizens of BiH.

In his March 2024 announcement of his aggressively anti-democratic decree purporting to enact 114 amendments to BiH's Election Law, Mr. Schmidt, demonstrating a remarkable blindness to irony, said "Anyone who does not want to accept the foundations of a democratic society robs people of this country's future." The most fundamental element of a democratic society is that laws must be passed by the elected legislature rather than decreed by one unelected man. Mr. Schmidt and his supporters inside and outside BiH, by refusing to accept the foundations of a democratic society, are robbing BiH of its future.

Chapter XI

General Conclusions

This Report reflects the findings of the *Independent International Commission of Inquiry on the Sufferings of All Peoples in the Srebrenica Region between 1992 and 1995*, whose work was authorized by, but independent of, Republika Srpska with the mandate of addressing critical issues in connection with the popular perceptions surrounding Srebrenica during the 1992-1995 war in Bosnia and Herzegovina. The Commission is independent in that it does not reflect the joint efforts of any particular institution, be it governmental, academic, legal, or any other form of NGO. Members were selected by virtue of their particular expertise in relevant disciplines and are solely responsible for their contributions to the overall Report. Toward this end, the international members worked independently, individually or with their team, to examine the available facts surrounding the events that occurred in the Srebrenica region during the war years. All avenues of data and information were pursued in order to gather relevant material, despite the fact that some avenues of inquiry were not forthcoming. Nonetheless, best efforts were made by each member in his or her pursuit of providing a comprehensive examination of the facts relevant to the Commission mandate.

The multidisciplinary composition of the Commission resulted in different approaches and research methodologies. In addition to published sources and reference works, documents presented before the International Criminal Tribunal for the former Yugoslavia during various court proceedings were also largely used. During the reconstruction of the events related to July 11, 1995, primary sources were used to the greatest extent, while secondary sources were used only in those cases when there were no primary sources available. Only those documents that were created during or immediately after the events that are being written about are considered primary sources. In this case, the most relevant sources are those made by the parties to the conflict, documents of military or civil security bodies or foreign organizations, such as the United Nations and so forth, which observed the conflict and whose representatives had information from the field. During the writing of the Report, other relevant sources were used, such as databases and the like.

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The Commission's media content analysis was performed in accordance with international scientific standards, and was organized as a quantitative analysis dealing with the time frame from 1991 to 1995, that is the period before the start of hostilities in Bosnia and Herzegovina and the period of the war. The media content analysis team analyzed 10.000 pages of two mainstream newspapers, The New York Times and The Guardian. Their finding testifies to a more or less one-sided interpretation of the war events portrayed in these influential Western media.

Furthermore, the President of the Commission, on behalf of all its members, in order to investigate the suffering of all peoples during the specified period as objectively as possible, gave instructions to send certain institutions, at the level of Bosnia and Herzegovina (BiH) and both its entities, official requests for access to information relevant to the Commission's research, and those institutions were the Federation of Bosnia and Herzegovina Ministry of Internal Affairs (FBiH MUP), the Federal Pension and Disability Insurance Institute, the Missing Persons Institute of Bosnia and Herzegovina, the Intelligence and Security Agency of Bosnia and Herzegovina, the Federal Ministry for the Issues of Veterans and Disabled Veterans of the Defensive-Liberation War, the Ministry of Defense of Bosnia and Herzegovina, the Potočari Memorial Centre, the Tuzla Canton Ministry of Internal Affairs (Tuzla Canton MUP), the Institute for the Research of Crimes Against Humanity and International Law at the University of Sarajevo. In its response, the FBiH MUP stated that, acting upon our request, it had requested the information from the responsible organizational unit of their Administration, the War Crimes Investigation Center, which sent us a response, informing us that they had determined that they did not have the requested data. In its response, the Tuzla Canton Ministry of Internal Affairs referred us to the Missing Persons Institute of Bosnia and Herzegovina, to which an official request has already been sent and whose response is still pending. The Federal Pension and Disability Insurance Institute, the Ministry of Defense of Bosnia and Herzegovina, and the Potočari Memorial Center refused to allow us access, stating that it is not within their jurisdiction to make a decision regarding access to the requested information, that is, to publish information at the request of individuals and legal entities. We are still awaiting official answers, as was already mentioned, from the Missing Persons Institute, as well as the Intelligence and Security Agency, and the Federal Ministry for the Issues of Veterans and Disabled Veterans of the Defensive-Liberation War.

Unfortunately, this has greatly hampered the work of the Commission, especially when it comes to investigating the suffering of the Muslim/Bosniak population. Despite the above, the Commission organized a field research and photographing of the memorial to Muslims / Bosniaks killed during the period between 1992 and 1995. In accordance with that, additional efforts were made and field work was done on photographing memorials, *türbes*, memorial fountains (*hajr česme*) and similar memorials at known locations. All photographs are attached to the Report. The Commission received significant assistance in its research from the Government of the Republika Srpska Center for Research of War and War Crimes and

the Tracing of Missing Persons which provided us with all documentation and materials they had at their disposal, which greatly helped us to collect information about the suffering of Muslims/Bosniaks and Serbs in this region. Combining all the above research methods and means of investigation, the Commission was able to examine and analyze the basic aspects and context of the tragic events and, to the greatest extent possible, to process and shed light on key events and developments in the region that occurred during the specified time period. Of course, the Commission is aware that researching each individual event and victim would require many years of systematic research by a much larger number of experts, and in this regard encourages all scientific institutions and organizations as well as individuals from the scientific community to, on the basis of the results of the Commission's research, conduct their own objective and professional researches, all with the aim of discovering accurate facts about these tragic events that should contribute to better mutual understanding and trust and ultimately to future reconciliation.

Historical Context

The Middle Podrinje is an area located in the east of Republika Srpska and Bosnia and Herzegovina. It encompasses an area of approximately 1,700 km² and extends over the territory of five municipalities: Srebrenica, Bratunac, Milići, Vlasenica, and Zvornik. According to the census of 1971, this region had 147,703 inhabitants, 79,782 (or 54%) of whom were Muslims, while 65,938 (or 44.64%) were Serbs. Just before the conflicts in Bosnia and Herzegovina started, in 1991, the Middle Podrinje had 185,714 inhabitants, 115,558 (62.22%) of whom were Muslims, 66,055 (35.56%) Serbs, while the rest were Croats, Yugoslavs, and other minorities. Srebrenica and the Middle Podrinje do not represent a separate political, social, economic and cultural entity, thus, it was impossible to observe it separately, whether temporally or spatially, but instead it had to be observed within the context which includes broader historical factors.

Bosnia was first mentioned in the works of the Byzantine emperor Constantine VII Porphyrogenitus in the 10th century, as a territory within, as he stated, the Baptized Serbia (the population of Serbs baptized into the Orthodox faith). During the following two centuries, this area saw a succession of governments of various historical players, from Samuil's empire, to Byzantium, to the Serb state formed in the territory of what is now Montenegro, and then, eventually, in the late 12th Century, the unified Serb ethnic area was split into two states, Raška and Bosnia, which remained an historical constant until the Ottoman occupation in the mid-15th century.

In this era, the Middle Podrinje region developed under the influence of Srebrenica, which was first mentioned in writing by that name in the 14th century. During the era of advancement in medieval Bosnia, Srebrenica was the leading industrial center in the country, which brought the sovereign profits three times greater than any other industrial center in the country.

The Ottoman occupation of the medieval Bosnian state brought forth two important and interdependent social changes. Those were the changes to the feudal system and to the religious composition of the population. Under the Ottoman understanding of property, all land was owned by the sovereign and loaned to the so-called *timariots* to use in exchange for military service. At the same time, the Ottoman Empire recognized religions based on the Bible, but unlike Muslims, according to the Sharia law, Jews and believers of various Christian denominations were regarded as second-class citizens and exposed to a number of discriminatory policies; to use a contemporary expression, their political rights depended on the specific decision of the holder of Muslim power. As the Ottoman government only had confidence in Muslim *timariots* who influenced the old landowners, who were accepted into Ottoman service after the occupation, to convert to Islam, which was the beginning of the process of Islamization. This process reached its peak in the first half of the 16th century, leading to a key change in the religious composition of the population, which also had social consequences. Given the scale of the process that took place during a relatively brief period of time, we can conclude that it was conducted under existential pressure on the population.

In this era, the center of Middle Podrinje was no longer Srebrenica but Zvornik, while Srebrenica turned into an Oriental borough with no political or economic significance, as a consequence of its mining industry being slowly destroyed. Its fate was sealed during the Great Turkish War (1683-1699), when Ottoman troops withdrew from the town and burned it to the ground on their way out. Generally speaking, the Middle Podrinje region was only significant to the Ottomans during the periods when it was on the very border of the Empire, which was during the conquests in the second half of the 15th century and during the 19th century.

Apart from these elements, many nationalist movements, striving for national and social liberation and the formation of a nation-state, emerged in the Balkans in the early 19th century. This process began with the Serbian Revolution in 1804 that resulted in the creation of the Principality of Serbia, which was nominally dependent on the Ottoman Empire until 1878, and formally and legally it became an independent state in 1878. As early as the 1830s, it had abolished the feudal system within its boundaries, which, in addition to evoking undeniable nationalist zeal, represented another important element in forming national policies in other regions of the Ottoman Empire in which Serbs were a majority. Bosnia and Herzegovina was one such region. The increasing pressure on the Serb peasants, as well as the increasingly clear national vision, resulted in multiple uprisings against the Ottoman rule in this region during the 19th century. The most significant among them was the uprising of 1875-1878 that was an integral part of the Great Eastern Crisis, which was ended at the Congress of Berlin, a meeting of the great powers. At this Congress, Serbia and Montenegro gained international recognition, while Bosnia and Herzegovina were placed under the supervision of the Austro-Hungarian Empire.

Bosnia and Herzegovina were, in a sense, a *corpus separatum* within a dual state administration system under the authority of the Joint Ministry of Finance of the Austro-Hungarian Monarchy. The basic idea of the Finance Minister, Benjamin von Kállay, who, essentially was in charge of Bosnia and Herzegovina for around two decades (1882-1903) as a colonial governor, was to keep these regions as isolated as possible from the new Serb states of Serbia and Montenegro, and to nurture a separate and common Bosnian / Bosniak identity in those same regions. The most suitable ally in the realization of this idea were the remains of the Muslim social strata of *beys*, who, as the Muslim population was no longer a majority in the region, maintaining their social and political supremacy through land ownership. For this reason, the agrarian reform was not implemented in Bosnia and Herzegovina, causing these provinces to maintain a feudal social system until the end of Austro-Hungarian rule. All this was met with resistance from the Serb political elite.

Apart from this, the new sovereign in Bosnia and Herzegovina colonized the areas bordering Serbia by settling Roman Catholics from other parts of the Empire there, thus breaking up the area with a relative Serb majority. Simultaneously with the colonization of the Roman Catholic population, there was an organized departure of Muslims from the territory of BiH, for they did not want to live under the rule of a Roman Catholic monarchy, thus they moved to those parts of the Balkan Peninsula that were still under the control of the Ottoman Empire.

This Austro-Hungarian policy, which included a change in the national composition of the population in the areas bordering Serbia, was in full swing during World War I. As early as 1906, the Austro-Hungarian military circles had decided that a future attack on Serbia would have to happen across the Drina River, even though this direction was far less favorable than the direction across the Sava and the Danube. Thus this decision was supposed to prevent a potential Serb uprising in Bosnia and Herzegovina and make use of the situation in which the people would find themselves when Podrinje became the zone of direct military operations for the persecution of the Serbs. This was exactly how it occurred.

One month after the assassination of Austro-Hungarian Crown Prince Franz Ferdinand in Sarajevo, Austria-Hungary declared war on the Kingdom of Serbia on July 28, 1914. Although Austro-Hungarian officials claimed the Kingdom of Serbia was responsible for the assassination, this premise was never proven. Austria-Hungary presented the Sarajevo assassination as the cause of the war, while, in fact, it was only using that as an excuse to attack the Kingdom of Serbia. Soon after the declaration of war, the Austro-Hungarian authorities began to take prominent Serbs throughout Bosnia and Herzegovina hostage. Among the first to be arrested was the Srebrenica priest Drago Urošević, who was interned in the Arad camp.

During World War I, a large number of Podrinje Serbs ended up in camps (such as Dobož, Arad and Nežider) located in various parts of the Austro-Hungarian Empire. The Sopronnyék camp, today's Neckenmarkt, in the Austrian province of Burgenland, was par-

ticularly painful to remember for the Serbs from Podrinje. Women and children from eastern Bosnia, as well as from Herzegovina, were mostly sent to this camp. According to the data we have, out of 1,056 murdered Serbs in this camp, as many as 435 victims were children under the age of 6 years.

On December 1, 1918, after the victory of the Allied forces in World War I, the Kingdom of Serbs, Croats and Slovenes was founded.

The period between the two world wars, when it comes to the area of Bosnia and Herzegovina, was marked by agrarian reform which finally disempowered the remnants of the Ottoman *bey* strata, but the political traditions of Muslims were at that time upgraded by pan-Islamic ideas. On the other hand, the most important question, the one that the fate of the Kingdom of Serbs, Croats and Slovenes (SHS) / Kingdom of Yugoslavia largely hinged on was the Croat question. The bearer of Croat nationalism during this period was the Croatian Peasant Party. The representatives of the Ottoman *beys* that had been dispossessed by the agrarian reform, who mainly gathered around the Yugoslav Muslim Organization, after the death of their founder and longtime president Mehmed Spaho, began joining the Croatian Peasant Party hoping to regain economic and political status in the new country, and almost as a rule represented its right wing. In this way, there was a type of fusion of two ideologies that saw the realization of their goals in the disappearance of the Kingdom of Serbs, Croats and Slovenes (SHS) / Yugoslavia.

The Kingdom of Yugoslavia was attacked on April 6, 1941 by Germany and its allies, who soon after the military collapse and the capitulation of the Kingdom formed occupation zones on its territory. The Independent State of Croatia was established by the Ustasha on April 10, 1941, as a Nazi puppet state, and extended across the territory of present-day Croatia (excluding one part of Dalmatia, which the Ustasha had handed over to Italy on May 18 in accordance with the Roman Agreements), Bosnia and Herzegovina, and Srem. The emergence of this new Croatian state, under the historical conditions of the new order spearheaded by Nazi Germany, was seen as an opportunity to resolve the Serb issue in Croatia once and for all. Very early on, the Serbs were forbidden from using their national alphabet, their religion was renamed, their movement was restricted, and, additionally, racial laws were passed in accordance with which Serbs could be convicted for capital crimes solely on the basis of an assumption, and after a few months – which is how long it took for the central and local part of the government to be formed – the campaign of physical destruction of the Serbs began. It is important to note that the Jewish and the Roma people suffered the same fate in this area, in accordance with Nazi ideology and politics.

As the territories of Bosnia and Herzegovina was made part of the Independent State of Croatia, Muslim leaders started developing ideas about its autonomous status, within which the results of the social processes from the Kingdom of SHS / Yugoslavia era would be annulled, and the social order from the pre-Yugoslav era reaffirmed, leading to them once again

becoming the leading social strata in the state. Based on the interests formulated in this way, but also on the preexisting hatred they felt for the Serbs as the bearers of “Yugoslav-ness”, the majority of the Muslim political elite put themselves at the service of the new state, in which they became part of the Croatian political people of Catholic, Protestant, and Muslim faiths. Some time later, after it had become clear that the Muslims in the Independent State of Croatia would not be granted autonomy, a part of Muslim politicians sought autonomy for Bosnia and Herzegovina under the protection of the Third Reich, which led to the creation of the 13th Mountain Division of the SS *Handschar* (*handschar* – knife, dagger).

During this period, the Serbs in Srebrenica, as well as in the Middle Podrinje met with the same fate as Serbs in the entire Independent State of Croatia throughout the course of a genocide that was committed against them. Immediately before the beginning of World War II, an equal number of Serbs and Muslims were living in the Srebrenica district. Local Muslims came to power in the Podrinje districts and organized mass killings and persecutions of Serbs. During the first month of the rule of the Independent State of Croatia, six priests of the Serbian Orthodox Church were killed in the archdiocese of Vlasenica-Srebrenica. In July and August 1941 alone, approximately 110 Srebrenica Serbs were killed.

In August 1941, there was an uprising of the Serbs in the area of the Middle Podrinje aimed at preventing the genocide which was being carried out by the Independent State of Croatia authorities. During the autumn and winter of 1941, the insurgents were divided on ideological grounds. The monarchists acted as the Yugoslav Army in the Homeland and were called Chetniks, while those who fought under the leadership of the Communist Party of Yugoslavia were called partisans.

In January 1942, a large-scale German, Ustasha, and Croatian Home Guard offensive on the insurgent area began. The disunited insurgent forces, divided and quarreling among themselves, were unable to resist a far stronger adversary. A new mass killing of Serbs in Podrinje and the Srebrenica district followed. During this period, the first Chetnik retaliations took place in the Middle Podrinje, in which Muslim civilians were also killed. The Chetnik retaliations against the Muslims occurred mainly after mass killings of Serbs. The great crimes of the Chetniks against the Muslims were committed in the region of the Upper Podrinje, especially in Foča.

April 1942 is a black month in the history of the Podrinje Serbs. After the withdrawal of the German 342nd Division, which was sent to the eastern front, Jure Francetić’s infamous Ustasha Black Legion, consisting of a large number of local Muslims, came to the territory of eastern Bosnia and began the systematic destruction of Serbs in the Middle Podrinje. The Serbs tried to find salvation in Serbia and were fleeing towards the Drina River, but many of them were captured and often brutally executed on the banks of this river. According to the estimates of the National Commission for Determining Crimes in Bosnia and Herzegovina, between 4,000 and 6,000 Podrinje Serbs were killed in April and May alone.

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At the initiative of Heinrich Himmler, Commander of the Gestapo and SS units, as well as the creator of the Holocaust, and the Jerusalem Mufti Mohammad Amin al-Husseini, in 1943, the 13th Mountain Division of the SS *Handschar* was formed, which was a unit consisting of young Muslim men from Bosnia and Herzegovina. Members of the *Ulama* Association of Bosnia and Herzegovina, El Hidaje, and their youth section Young Muslims, who inherited the ideas of the pan-Islamic Muslim Brotherhood organization, played a key role in recruiting young Muslim fighters. The officer staff consisted predominantly of Germans, while the fighters were predominantly Muslims from Bosnia and Herzegovina with not many Croats and *Volksdeutsche*. After the completion of its training in occupied France and Germany, which lasted until February 1944, this unit was returned to the territory of Yugoslavia. Among the numerous data on various types of engagement of European Muslims on the side of Germany in World War II, it is stated that out of the total number of Muslim soldiers in the Wehrmacht, 35,000 to 40,000 were “Slavic Muslims” from Bosnia and Herzegovina and Sandžak and that, given that there were between 23,000 and 26,000 of them, they were the most numerous Muslim group in the *Waffen* SS units, even more numerous than the Soviet Muslim group.

In the period from March to October 1944, the *Handschar* Division committed serious crimes against Serbs, Jews, and Roma in the area of northern and eastern Bosnia. They particularly distinguished themselves by the killing of civilians, women, and children, as well as the elderly and infirm. The War Crimes Commission listed 1,803 names of persons who were killed in Bosnia and Herzegovina by this Division, districts of Bijeljina and Brčko excluded. It is estimated that in those two districts, where the *Handschar* Division headquarters were located for some time, around 5,000 Serbs were killed.

In World War II, out of all Yugoslav countries, Bosnia and Herzegovina had the highest number of casualties. The deaths were not limited to the battlefield alone, but rather, a large number of people died in the Holocaust and during the course of the genocide of the Serb and the Roma people which was carried out by the Independent State of Croatia. In terms of percentage, the Serbs made 74.40% of the total number of casualties in Bosnia and Herzegovina, Muslims followed with 15.18%, Jews with 5.27%, Croats with 3.55%, Roma with 1.66%, and people of other ethnicities with 1.12%. In accordance with the above, the Srebrenica area saw similar percentages of casualties, where Serb victims also represented a majority of 70.97%.

As the end of World War II was nearing, the Communist Party of Yugoslavia was finalizing the process of forming government. As the headquarters and the leadership of the aforementioned Party happened to be in the territory of Bosnia and Herzegovina, the foundations of the new Yugoslav state were established precisely in that area. During this period, Bosnia and Herzegovina, just like other federal units of communist Yugoslavia, developed as an integrated part of a single state under the command of the Communist Party of Yugoslavia.

It obtained the status of a federal unit in 1945, after a debate in the Party itself, because one part of the leadership believed that due to its Serb majority it should be a province within the Republic of Serbia. This process, which followed the Soviet model, was finalized in 1946 when the Constitution was adopted, which promised the citizens of Yugoslavia equality, regardless of race, ethnicity, language, religion, education, or social status. When it came to the promotion of national equality, it was most pronounced in Bosnia and Herzegovina since it was the only republic without a nation that constituted majority. For this reason precisely, the communists tried to present it as neither Serb, nor Croatian, nor Muslim, while at the same time it was to be the republic of all those peoples, borne on the wings of Yugoslav ideology.

A significant event from this period was the Yugoslav-Soviet split, that is, the Tito-Stalin split of 1948, which led to a turnaround in the policy of the Yugoslav leader, Josip Broz Tito, which soon turned into the Yugoslav policy of non-alignment with the goal of maintaining a neutral position in world events. Non-alignment was, in essence, a logical path for the new policy of the Yugoslav leader, which was oriented towards countries of the Third World, since that was precisely where Yugoslav influence and dominance were most reflected. The new policy perhaps affected Bosnia and Herzegovina the most. With this move, Tito wanted to put himself at the head of the Third World countries and thus gain influence in world politics. Tito used the Muslims of Bosnia and Herzegovina to strengthen his position within the Non-Aligned Movement, in which Islamic countries were dominant. That is, he constructed an image through their role in Yugoslavia, and it would later become clear that they had made very good use of the position that they found themselves in. In this period, the Grand Mufti, the supreme Muslim leader in the country, would often make an appearance when welcoming foreign officials from non-aligned countries. In other words, he was building up an image of their role in Yugoslavia, and later it would become clear that they also used the situation in which they found themselves to their advantage. During this period, the Grand Mufti, the country's highest Islamic representative, began to appear more and more frequently when welcoming statesmen from non-aligned countries. In addition to this, the number of Muslims in almost all state and Party leaderships increased, and the role they were given in the domestic and foreign policy gave the Bosnian-Herzegovinian Muslims a collective self-confidence. From that period, Muslim religious affiliation was recommended to anyone hoping to climb the ladder in diplomacy, thus it was noted that in the mid-1970s, prominent Muslims from Bosnia and Herzegovina spent some time in several Arab countries as diplomats. It is clear that all of them were members of the League of Communists who should have, in accordance with the ideology of the party, renounced their religion, but they did not do that because the only thing about them that mattered to the Yugoslav policy was that they were Muslims. For those same reasons, Džemal Bijedić was elected Federal Prime Minister during that period, which in a way marked the beginning of an era of the rise of Muslims in Bosnia and Herzegovina and the strengthening of their positions both in Yugoslavia and in Bosnia and Herzegovina.

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Put together, all of this led to the raising of national questions within the Communist leadership in Bosnia and Herzegovina. It has already been mentioned that the position of Muslims improved suddenly, and the position of their own national identity changed and improved in accordance with that. It is easiest to track this process through the population censuses, in which Muslims had initially declared themselves as Serbs or Croats, then as “undeclared Muslims”, then “undeclared Yugoslavs”, and from 1971 forward, the religious epithet “Muslim” started being used as a term denoting ethnicity. More precisely, the Muslim religion had become a national characteristic, validated by the 1974 Constitution, according to which the determinant “Muslim” was to be written with a capital “M” and was to denote ethnicity, which made them one of the formally recognized ethnicities in Yugoslavia. The crisis of the Yugoslavian identity was becoming increasingly more apparent during this period, since, despite the best effort of the League of Communists, this identity was not clearly defined and was a type of conglomerate of conflicting elements and systems. This can be seen from Alija Izetbegović’s positions which he expressed in his Islamic Declaration, published shortly after Muslims were recognized as a nation, where he concluded that the society of Bosnia and Herzegovina can only survive if it embraces Islam, and the country itself can survive only if Muslims become the majority.

It is important to note that according to the 1971 census, for the first time since the modern censuses were organized, Serbs were not the majority in Bosnia and Herzegovina but instead the majority were Muslims with 39.6%. What permanently changed the national structure in Bosnia and Herzegovina, in addition to the key events from the time of the genocide in the Independent State of Croatia, were the occurrences from the period between 1945 and 1948 when the process of the colonization of Vojvodina was carried out under the leadership of the central communist authorities, that is, the resettlement of a mainly rural population from the area of Bosnian Krajina and Herzegovina to fertile arable lands in Banat, which had been abandoned by *Volksdeutsche* and Hungarian families, whether they wanted to leave or not. About 100,000 Serbs were relocated from Bosnia and Herzegovina during that period.

The change in the demographics of the country continued throughout the following period. In the 1950s and 1960s, an average of 16,000 people were leaving Bosnia and Herzegovina each year. During the constitutional reforms in Yugoslavia until the mid-1970s, the republics were given, as some considered, characteristics of states, and this had a particularly negative effect on Serbs, who at the time lived in Serbia, but also in Bosnia and Herzegovina, Croatia, and Montenegro. They saw the division of Yugoslavia by its internal republic borders, resembling parastate borders, as a discontinuation of their territorial and ethnic continuity, as well as having the potential possibility that they would eventually experience new sufferings, with a clear suspicion that this process would, sooner or later, result in them being separated by internationally recognized state borders and that they would find themselves in the position of being an endangered national minority. This also caused an exodus,

which gained new momentum, especially among the national elite, who, on the one hand, were people with the highest degree of education who could thus recognize political trends more easily, and on the other, were people who were most qualified professionally and who were the most mobile part of the population. Most of these internal Yugoslav migrants from Bosnia and Herzegovina were Serbs who went to live in Serbia. In the midst of such events and in the process of trying to form a “Bosnian-Herzegovinian” identity, Sarajevo became an environment aggressive towards any expressions of different identity opinions, primarily regarding the existence of Serb and Croatian identities in these areas.

From all of the above, it is clear that “Yugoslavia” was for the Muslims, as well as for the Slovenian and Croatian elites, a kind of a transitory historical smoke-screen which they used to build their own nation-states. While all of them, on the wings of the Yugoslav ideology, worked hard on building their own national interests and, ultimately, their own states, the Serbs tried to do the impossible – to build and preserve the common state of Yugoslavia.

Pre-War Years and Beginning of the Armed Conflict

In order to better understand the research topic, it must be understood that the Srebrenica region consists of five municipalities (Srebrenica, Bratunac, Zvornik, Milići, and Vlasenica), some of which were part of the Srebrenica enclave, and some of which were attacked from inside the enclave. Thus, the Srebrenica region is not a geographical term, but a geostrategic term used to better understand the events from the war because if we look at this region in that context, we notice that it clearly represented a whole in which the mentioned municipalities were largely turned towards one another.

National tensions in the Middle Podrinje region, especially in the areas of Srebrenica and Bratunac, were extremely high during the 1980s. On several occasions in 1989, certain Belgrade newspapers wrote about how the Serbs in the area of Srebrenica and Bratunac were endangered and about the forced displacement of Serbs from this region. A letter from 14 Serb fighters, veterans from World War II, which was sent to the Presidency of the Central Committee of the League of Communists of Bosnia and Herzegovina, said that nothing had been built in their villages since World War II, and that Serbs were being forced to send their children to schools in Ljubovija or Bajina Bašta, the neighboring municipalities across the Drina River in Serbia.

Due to extremely high tensions between Muslims and Serbs, in June 1990, a decision was made by the Yugoslav authorities to relocate territorial defense weapons from the area of the municipalities of Srebrenica and Bratunac. About 1,300 rifles and other materiel and technical equipment from the municipality of Srebrenica and a certain amount of it from the municipality of Bratunac were relocated to the barracks of the Yugoslav People’s Army and Territorial Defense in other regions of Bosnia and Herzegovina.

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After national parties in Bosnia and Herzegovina were established at the level of the republic, in the second half of 1990, the establishment of parties at the level of municipalities began. The founding assemblies of the Party of Democratic Action (SDA) and the Serbian Democratic Party (SDS) were held in Srebrenica on August 19, 1990. On that day, in Glogova (municipality of Bratunac) and Potočari (municipality of Srebrenica), stones were thrown at buses carrying Serbs who were on their way to the founding assembly of the SDS. All this resulted in barricades being put up and armed village guards appearing in some villages in the municipalities of Bratunac and Srebrenica, regardless of whether the villages were predominantly Serb or Muslim.

In the middle of 1990, the first paramilitary Muslim organization was established in Podrinje, in Ustikolina, near Foča. Members of that extremist group swore on the “Qur’an that they would fight in the name of Allah to defend their religion.” In early 1991, the Patriotic League was established, which was the most organized Muslim paramilitary formation with the greatest number of members, and which was practically a military formation of the SDA that based its ideology on the postulates of the Muslim Brotherhood. One of the military branches of the Patriotic League was the Green Berets, established in Sarajevo on March 31, 1991. SDA members from Srebrenica, the President of the Municipal Assembly, Besim Ibišević, the Member of the Bosnia and Herzegovina Assembly, Ibran Mustafić, as well as the Chief of the Srebrenica Public Security Station, Hamed Salihović, were all involved in the work and activities of the Patriotic League.

The last attempt to resolve the crisis in Bosnia and Herzegovina peacefully came from the Portuguese ambassador to the European Community, José Cutileiro, who negotiated with all three national communities in Bosnia and Herzegovina in February and March 1992. After five rounds of negotiations, on March 18, 1992, the leaders of the three national parties, SDA, HDZ (Croatian Democratic Union), and SDS, signed a statement on the principles of new constitutional solutions for Bosnia and Herzegovina (Cutileiro Plan), according to which BiH was to remain within its borders as a single state with three constitutive units, each of which would belong to one of the three nations. According to the prepared maps, Muslims were to get 42 municipalities and 44% of the territory, Croats 20 municipalities and 12% of the territory, and Serbs 37 municipalities and 44% of the territory. Eighteen percent of Muslims, 59% of Croats and 50% of Serbs would have remained outside their national community, that is, outside the municipalities where they would be part of the majority. Just seven days after the signing of the agreement, representatives of the HDZ and the SDA decided to reject Cutileiro’s plan and to start mechanisms for the creation of a unitary Bosnia and Herzegovina. By the decision of the President of the Presidency, Alija Izetbegović, dated April 3, 1992, and despite the opposition of the Serb member of the Presidency, the mobilization of TO (Territorial Defense) units from all municipalities and the city of Sarajevo was ordered, Patriotic League and Green Berets included.

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In accordance with this decision, the mobilization of the Muslim population on the territory of the municipality of Zvornik started the very next day (on April 4). On the same day, Muslim TO forces took control of the town as the Crisis Staff of the Serb municipality of Zvornik withdrew to Karakaj, 3 km northeast of Zvornik. Fighting in the municipality of Zvornik between Muslim territorials, essentially members of the Patriotic League, on one side and the Yugoslav People's Army and Serbian territorials on the other, began on April 9, 1992. A significant number of Muslim territorials were located in Kula Grad, a suburb of Zvornik and a medieval fortress, which overlooks the town. From this dominant position, Muslim snipers kept the city under constant siege, and the battle for Kula Grad became the battle for Zvornik. In the face of fighting, during which both sides suffered casualties, civilians, both Muslims and Serbs, fled the area en masse.

During the same period, as the fighting in the vicinity of Zvornik continued, members of the Muslim Territorial Defense established a number of war police stations made up exclusively of Muslims in the territory of Srebrenica. A Tanjug correspondent reported on April 18, 1992, that heavy fighting had begun in the Srebrenica municipality between the Yugoslav People's Army and Serb territorials on one side and the Muslim TO forces on the other. In the village of Potočari, a group of Muslim soldiers under the command of Naser Orić, ambushed and killed five members of the JNA on April 20. During those days, there were civilian casualties among both Serbs and Muslims in Srebrenica.

In late April, the Yugoslav People's Army, assisted by Serbian territorials, managed to overcome the Muslim resistance at Kula Grad and to gain full control over the municipality of Zvornik. According to certain Muslim sources, 36 inhabitants of this Muslim village were killed during this operation in the village of Snagovo.

In early May, attacks by Muslim armed forces in the municipality of Srebrenica intensified. On the Orthodox holiday of Đurđevdan (St. George's Day), May 6, 1992, the Serb village of Blječeva in the municipality of Bratunac was attacked, as was the village of Gniona in the municipality of Srebrenica, which was torched by Muslim territorials who, while committing those acts, also killed five Serb civilians. The next day, 10 Serb civilians were killed in the immediate vicinity of the town center of Srebrenica, and on May 8, a deputy in the BiH Assembly, lawyer Goran Zekić, was killed in an ambush. The murder of Goran Zekić, the leading figure among Serbs from Podrinje, triggered reactions throughout Srebrenica and Bratunac. On the same day when Zekić was murdered, a mass exodus of Serbs from the urban part of Srebrenica began, and the next day Muslim units under the command of Naser Orić entered the town, taking control of it and mostly expelling and killing the few remaining Serbs.

In response to the murder of Goran Zekić and what was happening in and around Srebrenica, on May 9, 1992, Miroslav Deronjić ordered an attack on the village of Glogova, the strongest and largest SDA stronghold in the municipality of Bratunac. In the attack on the

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village, 64 people of Muslim ethnicity were killed, some of whom were civilians. Miroslav Deronjić was sentenced to 10 years in prison for this attack before the Hague Tribunal.

During May, June, and July 1992, there were still no clearly defined fronts between the warring parties, and for that reason there were a large number of civilian casualties on both sides.

One might say that certain villages were fortified points that were being defended mostly using personal means, that is, by village guards, armed mainly with infantry weapons, while the roads belonged to the military force that was moving along them at a given point in time. During this period, Serb civilians and village guards were killed in the villages of Međa (seven were killed and 10 were taken prisoner), Žutica (eighth), Rupovo Brdo (eight), Loznica (10), Ratkovići (18), Brežani. (19), Krnjići (18), Zagoni (14), Zalazje (45). Muslim villages also lost some of their people in these battles; namely, a number of people in Zaklopača (68 civilians and members of village guards), Nova Kasaba (29), Drinjača (35), and Donji Grbavci (69).

It is important to note that until July 29, 1992, Serbian paramilitary units “Yellow Wasps” (Žute ose) and “Pivarski” operated in the municipality of Zvornik, which are said to have killed at least 352 Muslims, almost all of whom were able-bodied men. These paramilitary units did not refrain from killing Serbs as well, if they opposed their intentions. The character and nature of these units can be deduced from the fact that they captured and abused the the Government of the Serbian Republic of Bosnia and Herzegovina Minister of Information, Velibor Ostojić, at their checkpoint at the entrance to the town. After this event, specially trained MUP (Ministry of the Interior) units from Pale, on July 29-30, 1992, arrested and drove out all members of these units from the territory of the Serbian Republic of Bosnia and Herzegovina. A large number of members of these units have been sentenced to years in prison before courts in Serbia and Republika Srpska for crimes they had committed against Muslim civilians.

Starting with the summer of 1992, Muslim Territorial Defense units from Srebrenica launched a systematic campaign of ethnic cleansing of Serb villages around Srebrenica, with the aim of capturing Bratunac and splitting Republika Srpska into two parts. During the summer and autumn of 1992, most of the Republika Srpska Army’s forces were engaged in breaking through the corridor in Posavina, which ended the physical and economic blockade of more than a million people in Bosanska Krajina and the Serb Republic of Krajina, as well as fighting in Herzegovina, through which they prevented the Croatian army from capturing it. In conditions when the VRS (the Army of Republika Srpska) was still engaged in organizing and forming the Drina Corps, which was subsequently made up of units of other corps and some newly formed units from this region (the order to establish the Drina Corps was issued in July 1992, but the Corps did not function or begin to fulfill its combat role until November 1992), Muslim forces from Srebrenica carried out a series of systematic attacks and crimes in the Srebrenica region.

One of the larger Serb villages in Srebrenica, Podravanje, was attacked on September 24. During this attack, 31 civilians and members of the village guards were killed, several were captured, and the village was torched. The Serb village of Fakovići in the municipality of Bratunac was torched on October 5, and 28 civilians and members of the village guards were killed, 12 of whom were women. Only a few days later (on October 8), in the municipality of Zvornik, in the villages of Šetići and Malešići, 14 Serb civilians and members of the village guards were killed. A major attack by Muslim forces from Srebrenica on the Serb villages of Bjelovac, Sikirići and Loznica in the municipality of Bratunac was carried out on December 14, 1992. In this attack, 62 Serbs were killed, while many Serbs, mainly women and children, were taken prisoner. One group of women and children, 17 of them, was exchanged on February 6, 1993.

On a major Christian holiday, Christmas, on January 7, 1993, Muslim units from Srebrenica launched a large-scale attack on Serb villages in the municipality of Bratunac, particularly targeting the village of Kravica, and villages that gravitated towards the local community of Kravica (Ježestica, Kajić, Šiljković, Opravdići, Popovići, Mandići, Banjevići, Oćenovići, Rusići, Dolovi, and Jasikovača). It is estimated that between three and four thousand Muslim soldiers carried out this attack, while only a few hundred residents of Kravica and neighboring villages were engaged in the defense. During this attack, all Serbs were expelled, while the villages were destroyed, torched, and looted. Fifty-one civilians and members of the village guards were killed during the attack. A number of Serbs were captured and taken to Srebrenica.

In that same onslaught, and as part of a larger offensive against the municipality of Bratunac, on January 16, 1993, Muslim forces attacked Skelani. Serb civilians in the area were surrounded on three sides, and under pressure were expelled to Serbia, more specifically in the direction of Bajina Bašta, via the only existing route, across the bridge over the Drina River which was under constant sniper fire by Muslim forces. Those who could not cross the bridge, tried to swim across the river. Fifty-seven civilians and members of the village guards were killed in the attack, with the youngest victims being five-year-old Aleksandar Dimitrijević and his twelve-year-old brother Radisav Dimitrijević, who were killed by sniper fire.

The attack on Skelani that was carried out by Muslim forces based in Srebrenica, whose actions were coordinated by the military and political leadership in Sarajevo, consolidated the territory of the Muslim enclave of Srebrenica, the most ethnically pure area in wartime Bosnia and Herzegovina. During this period, the enclave was at its largest, extending to about 900 km², and it included parts of five municipalities (Srebrenica, Bratunac, Vlasenica, Zvornik, Milići). By this time, Muslim units had carried out complete ethnic cleansing of the entire regions of the Middle Podrinje and Srebrenica, in which somewhat less than 2,000 Serb civilians, soldiers and members of the village guards were killed or went missing and more than 150 different settlements were destroyed. Muslim armed forces (ARBiH) apparently

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committed brutal and systematic crimes in this region, with the knowledge of their Supreme Command in Sarajevo.

After the attack on Kravica, and especially after the one on Skelani, and the systematic massacre and destruction of the Serb civilian population in the Middle Podrinje, the Army of Republika Srpska launched a large counter-offensive against Muslim units based in Srebrenica. In just a few weeks, the Muslim forces were completely defeated and limited only to the town center in Srebrenica, while a part of the Muslim forces remained separated in the military stronghold of Žepa, south of Srebrenica. During the counter-offensive of the Serb forces, a significant number of Muslim civilians and fighters from other Podrinje municipalities that were under the control of the VRS withdrew to Srebrenica. The town center of Srebrenica, where Muslim forces were located, was shelled by the VRS, which resulted in Muslim civilian casualties.

In mid-March 1993, negotiations began through the international community to form a demilitarized zone and enclave of Srebrenica, which would be under the protection of United Nations forces. While the negotiations were in progress, a UNHCR convoy entered Srebrenica and brought a large amount of humanitarian aid. At the same time, the evacuation of the Muslim civilian population to Tuzla began, which lasted until April 2, 1993, when forces under the command of Naser Orić forcibly prevented the evacuation, although the civilians exhibited a strong desire to go to Tuzla, which was at the time an area under the control of the Army of Bosnia and Herzegovina. As a gesture of goodwill, the Republika Srpska authorities allowed the evacuation of wounded Muslim forces members from Srebrenica by helicopter. The Republika Srpska delegation, which was participating in negotiations in New York, informed the United Nations Security Council that all military activities on the battlefield around Srebrenica were suspended and that the Serb side guaranteed an air and land corridor for the rendering of humanitarian aid.

On April 16, 1993, the United Nations Security Council passed Resolution 819, which stated that all armed attacks on Srebrenica had to be stopped immediately, and that the VRS forces were to withdraw from the area around Srebrenica. On the same day, the VRS Main Staff acted on the Resolution, and two days later an agreement was reached on the demilitarization of Srebrenica and Žepa, which was signed by representatives of the VRS, ARBiH, and the UN that guaranteed the agreement, and thus that the demilitarization of the Srebrenica and Žepa enclaves, would be implemented.

At no point did the Muslim forces in Srebrenica allow themselves to be disarmed, but instead they saw the demilitarized zone as a shelter where they could reorganize their military potential and from which they could carry out operations deep inside the territory under the control of the Republika Srpska Army, as evidenced by a document in which Naser Orić, Commander of the 8th Operations Group, on May 25, 1994, requested from his superiors to have his fighters take part in the “liberation of the country” by carrying out combat operations

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“behind aggressor lines”. Starting with the summer of 1994, combat operations carried out from the protected area by the 8th Operations Group aimed at the inside of the territory under the control of the VRS intensified, thus on July 12, an artillery attack was carried out on the cemetery in Bratunac, while a memorial service was being held for the Serbs who had been killed in the area. The attacks continued throughout October, November, and December, and became especially intense during the spring and summer of 1995.

According to the new reorganization scheme of the Army of Bosnia and Herzegovina, the 8th OG (Operations Group) Srebrenica was renamed on January 12, 1995, and established as the 28th Division, based in Srebrenica. According to the combat reports of the 28th Division, sent to the Command of the 2nd Corps of the Army of Bosnia and Herzegovina, they carried out over 30 reconnaissance and sabotage operations on the territory of Republika Srpska from inside the protected areas of Srebrenica and Žepa; within just a few days, between June 22 and June 27, 1995, members of this unit carried out three major attacks from inside the protected and demilitarized area of Srebrenica, killing at least 47 Serb soldiers and civilians. From mid-March 1993 to mid-summer 1995, members of the 8th OG, or the 28th Division, killed about 450 Serb civilians and soldiers in the area around Srebrenica. All these attacks were carried out in accordance with the war objectives and directives of the General Staff of the Army of Bosnia and Herzegovina, and in mid-1995 they were part of a grand plan involving an offensive and breaking through the blockade around Sarajevo. According to Muslim as well as other sources, by this time, the Muslim side had suffered approximately 2,100 casualties in this region, more than 1,800 of whom were soldiers according to an official monograph of the ARBiH 28th Division.

Due to the increasingly aggressive actions of the members of the 28th Division and the actual danger of the realization of their military and political plans to cut off the territory of Republika Srpska in the Middle Podrinje, on July 2, the VRS Command issued a preparatory order to all DK (Drina Corps) units except the headquarters support units, with the “aim of preparing for upcoming actions”. By this point, many individuals have claimed that this order was a preparatory order for the execution of “Krivaja 95”, which is only partially true, because that was not its purpose at the time when it was issued, but instead that became its purpose only after the Order for active combat actions within the OP (Operation) No.1 was issued under the code name “Krivaja 95” by the DK Command that same day.

At 0430 hours on 6 July 1995, VRS forces launched an operation codenamed “Krivaja 95”, which envisaged the separation of the officially demilitarized areas of Srebrenica and Žepa. The main objective was to limit the actions of Muslim forces to the area of the town and thus stop the IDGs (Reconnaissance and Sabotage Groups) of the Muslim 28th Division and their actions deep inside the territory of Republika Srpska. The command of the Drina Corps did not intend to take the town of Srebrenica, and it could not expect that the members of 28th Division would forsake the defense of the town and their families and attempt a breakthrough from the encirclement.

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As the first day of operation “Krivaja 95” did not yield the expected results, the Drina Corps Command started reorganizing its forces on the front and started the operation again on July 8. On July 9, General Krstić, who was at the time still the Chief of Staff of the Corps, informed the VRS Main Staff by telegram that the “immediate task” had been completed, and that the next task would be completed very soon, and with it, the operational objective of the “Krivaja 95” would be accomplished as well. In this telegram, clearly exceptional in terms of form and urgency, General Krstić reported that he had noticed unexpected changes on the ground, that opportunities were opening up for him to enter the town itself, and it is obvious that he was expecting to receive guidance on that and, possibly, consent to do so. General Zdravko Tolimir, Assistant Commander for Intelligence and Security Affairs of the VRS Main Staff, in response, conveyed the consent of the Supreme Commander Radovan Karadžić to the new decision of the DK Command to enter the town.

After the breaking of the counter-offensive of the 28th Division forces, all the forces of the Drina Corps which were engaged in the execution of the “Krivaja 95” essentially carried out the set task in the spirit of the order of the Commander of the Drina Corps. With this, the primary objective of operation “Krivaja 95” was achieved. In the morning of July 11, the Chief of Staff of the Drina Corps, Major General Radislav Krstić, orally issued tasks to subordinate units to continue the attack towards the town, with the mission of entering the town of Srebrenica.

By 1100 hours on 11 July, nine members of the 28th ARBiH Division units in Srebrenica were killed while 30 were wounded, which is less than 1% of the Division’s total staff. Given the extremely low number of casualties and sufficient materiel and technical equipment, as well as the support of the Dutch UNPROFOR Battalion, the 28th Division was not defeated, and was able to defend Srebrenica. Given the huge advantage that the defense forces had over the attacking forces, the fall of Srebrenica would not have occurred so quickly had the units of the Bosnia and Herzegovina Army decided to defend the town. Faced with an immediate VRS attack, members of the Bosnia and Herzegovina Army did not even attempt to establish any effective defense system. They did not attempt to use their heavy artillery, which was available to them in the event of an attack, despite the fact that it was under UNPROFOR control. In such conditions, the VRS Main Staff decided that VRS members should enter Srebrenica, which they did by 1400 hours on July 11.

Based on the order of the Command of the 28th Division, on the evening of July 11, all active and reserve military personnel of the 28th Division, Srebrenica Police, and all able-bodied men from the Civil Defense and units performing war work duties gathered at the agreed location in Šušnjari. There were a few women among them, but their military status was that of a soldier of the Army or the Civil Defense, while some women were civilians who set out with their family members, that is, members of the Army in active service or reserves of the 28th Division. According to a report of the 28th Division, dated June 1, 1995, the 28th Division

had 5,846 active personnel. The Srebrenica Police had 137 police officers. There were 1,309 members in units performing war work duties and 939 members of Civil Defense. In total, the number of armed men and women from the Srebrenica enclave, including conscripts (recruits), was 9,591. Furthermore, there were 2,552 soldiers from other municipalities. Among them there were probably a number of conscripts who had not yet reached the age of 16, which was the age limit for conscription.

In Šušnjari, all stationed conscripts, in active service or reserves of the 28th Division, received the order to carry out the combat operation of breakthrough towards Tuzla and they lined up in a battle formation that eventually headed towards Tuzla, passing through the territory under the control of the VRS. The route along which they were to move had been recommended by the Reconnaissance Patrol of the 284th Brigade, which consolidated the route 15 days earlier. There were around 12,500 people in the column. A small number of soldiers were in uniform. The majority were wearing civilian clothes. After the formation of the brigades was inspected, the 28th Division started moving.

Criminal Investigation Perspective

The significance, weight and consequences of the events in Srebrenica in July 1995 merit special consideration. The core of this Report focuses on the analysis of those events. It is a reconstruction of the events based on available sources. The Report particularly focused on the aspects of the criminal investigation.

An investigative team appointed by the Prosecutor's Office of the International Criminal Tribunal for the former Yugoslavia (ICTY) was in charge of conducting the criminal investigation in the Srebrenica case. That team had an extraordinarily complex task. The investigation started in late July 1995. There are substantial arguments for taking a critical look at the work of that team. The investigative team had an extremely limited number of people at its disposal, especially in the early years following the end of the war in Bosnia and Herzegovina. According to the chief of the investigative team, Jean-René Ruez, it took until 1998 to actually form a team that could be nominally described as an "investigative team". The passing of time always has negative implications for gathering material evidence in a criminal investigation, and certainly firsthand evidence as well, especially when these pieces of evidence are personal testimonies of participants in the events.

Prior to elaborating on the key aspects of the investigation, it is first necessary to take a look at the work of the ICTY Prosecution's investigative team, that is, at the scope of their mandate. The investigation was not concerned with determining the causes of the events, nor with any events preceding July 11, 1995. Besides, according to the provisions of international humanitarian law, the investigation was not concerned with the military operations or the fate of combatants, but rather with the fates of noncombatants regardless of their prior membership in the military or lack thereof, that is, those who had no longer been in a position to

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fight. However, a significant number of participants in the column were killed in combat, by stepping on anti-personnel mines, in mutual clashes, or by committing suicide. The position of those persons may not be equated with the fate of those captured. They were in a position to fight, or did *de facto* fight back against the Serb forces, which had an overwhelming tactical advantage on the ground, in a military sense, despite having significantly less manpower compared to the Bosniak side. The ICTY Prosecution's investigative team did not reflect upon those crucial facts, nor was this the subject of their investigation. That approach led to insufficient and incorrectly determined facts regarding the events connected to Srebrenica in July 1995.

The ICTY Prosecution investigative team's first task was to determine what happened in Srebrenica after Serb forces entered the enclave. The eyewitnesses to the events were the most reliable source of information. The investigative team did not conduct detailed interviews with those persons, but rather relied primarily on the support of the Bosniak Police and AID, the Bosniak intelligence service, that is, the security services of one of the warring sides, to help them select key eyewitnesses.

The second task was to exhume graves and gather material evidence. A large part of the investigation dealt with locating and identifying missing persons. Court medical experts examine exhumed remains to determine the possible cause of death. Determining the perimortem circumstances, that is, whether the injuries were inflicted by shooting, sustained in combat, or under different circumstances, is neither the jurisdiction nor the expertise of the court medical experts, but rather of those conducting the criminal investigation.

The third investigative task was to find the persons responsible for perpetrating the crimes. To a large extent, the ICTY Prosecution's investigative team gathered the information on the perpetrators from the transcripts of radio communications intercepted by the Army of the Republic of Bosnia and Herzegovina during a military operation of the Army of Republika Srpska (VRS), codenamed "Krivaja 95". Following the official request from the ICTY Prosecution, the Bosniak side took an unreasonably long time after the request was filed to produce the first transcripts of the conversations, and to a lesser extent, audio recordings, and even longer for the rest. As it happens, the request was first filed on 13 November 1996, and the Bosniak side did not respond until March 1998.

The Commission was unable to determine the reason for the delay in producing the transcripts, but we may postulate that the party in question, a participant in the conflict, was motivated to present its own version of events, and we may assume that it was possible that the contents of the transcripts were altered to suit the interests of one of the warring parties, in this case, the Bosniaks. The ICTY Prosecution's investigative team did not verify the authenticity of the transcripts, but did use the transcripts as a highly reliable source in their investigation. The role of the participants on the ground and their responsibility as perpetrators of the crimes they were charged with and later convicted of by the ICTY was determined

based on those transcripts (and the aforementioned eyewitnesses). A widely accepted discourse regarding the events surrounding the fall of Srebrenica was created largely based on the proceedings before the ICTY.

The Srebrenica enclave was granted “safe area” status as per the United Nations Security Council Resolution 819 of April 16, 1993. The Resolution called for the safe area to be demilitarized, but this was never implemented practice.

Following the partial demilitarization, the ARBiH 2nd Corps 28th Division continued actively operating within the enclave. After abandoning the enclave on 11 July, that formation went for a breakthrough towards Tuzla, an ARBiH-controlled territory, around 80 kilometers from Srebrenica. The composition of the column and the events in the column during the breakthrough are an exceptionally significant aspect of the reconstruction of events. They are also very important in regard to the ICTY Prosecution investigative team’s mandate and the direction of its investigation in the Srebrenica case. No investigation of the events in the column was ever carried out, which is what we focused on in our reconstruction of the events in and around Srebrenica in July 1995.

Before elaborating on the nature of the column, we shall go over the general demographic indicators in the Srebrenica enclave. According to the official records of the Bosnia and Herzegovina Statistical Office, the Srebrenica municipality had a total of 37,255 inhabitants in January 1994. Out of that number, 9,791 were local residents of Srebrenica, 10,756 local residents displaced from their homes within the Srebrenica municipality, and 16,708 residents of other Podrinje municipalities who had been driven from them. The number of residents of the enclave decreased as people moved out of it due to the adverse circumstances and the generally bad social conditions. There are no official records, but we can assume that by July 1995 the population of the enclave was around 35,500 people.

Following the fall of Srebrenica on 11 July 1995, around 23,000 civilians gathered in the area in front of the United Nations peacekeeping compound in Potočari and a certain number of them gathered in the compound itself. That group of civilians, mostly women, children and the elderly, was evacuated on request of the United Nations peacekeepers and the representatives of the civilian population of Srebrenica. The evacuation took place on July 12 and 13, 1995, and the people were evacuated to Kladanj, an ARBiH-controlled territory.

In addition to the civilian population (women, children and the elderly), there was a certain number of able-bodied men in front of and inside the United Nations compound in Potočari who had sought protection from the United Nations peacekeepers. A United Nations report listed 239 such persons, while 60 persons refused to identify themselves. An overwhelming majority of those persons are classified as missing – presumed killed by the Serb forces. We were able to determine that one of those persons was transported to the camp in Batković, and exchanged at a later date.

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Based on those indicators, we may presume with confidence, considering the eyewitness testimonies, that the column breaking through towards Tuzla consisted of approximately 12,500 persons.

On the basis of an analysis of ARBiH documents, we can also conclude that the ARBiH 2nd Corps 28th Division had between 10,900 and 11,500 members before the demilitarization in April 1993. The number of active service members of the Division following the demilitarization has been estimated to be between 5,700 and 6,200 combatants.

After the demilitarization, the manpower reduced by nearly 5,000 was assigned to the reserve forces to be activated as needed, which is confirmed by ARBiH documents cited in this Report.

After the VRS entered the enclave on July 11, 1995, the population of Srebrenica started evacuating in two large columns. One of the columns consisted of the ARBiH 2nd Corps 28th Division, including both active members and the reserve forces who had received orders from the 28th Division Command to report to the staging area in the villages of Šušnjari and Jaglići near Srebrenica. The second column consisted of the civilian population, including women, children, the elderly, and a certain number of able-bodied men who had sought protection from the United Nations peacekeepers. Relevant sources, primarily documents of the Republic of Bosnia and Herzegovina military and civil security bodies and ICTY documents, confirm the military status of the column, and that it was conducting a military combat operation called a breakthrough from encirclement.

The statements of the participants in the breakthrough taken by the BiH civil and military security bodies, cited in this Report, detail the military nature of the column, military status of the participants, chain of command, combat formation, weapons, and so on.

Eyewitnesses stated that the members of the Military Police along with the ARBiH 28th Division 281st Brigade Commander Zulfo Tursunović were stopping the able-bodied men and soldiers from arbitrarily leaving town on July 11, 1995. Also, eyewitnesses to the events said in their statements that a military courier had appeared on the streets of Srebrenica with a message from the ARBiH 28th Division Command, that is, from the military leadership of the enclave, saying that all able-bodied and armed men were to head through the woods in the direction of the village of Šušnjari, towards the staging area, and all civilians were to go to the United Nations compound in the village of Potočari.

Eyewitness statements confirm that two columns were formed, one that headed for the United Nations compound in Potočari, and the military column whose designated staging areas for the breakthrough were the villages of Šušnjari and Jaglići. Combatants from neighboring villages surrounding Srebrenica joined them at the staging area.

During the night, around midnight between July 11 and 12, 1995, a lineup of ARBiH 28th Division brigades was done in the village of Šušnjari. According to statements of the

participants, the breakthrough was planned in a house in that village immediately before the lineup; the route of travel towards Tuzla was agreed upon, as well as the marching order of the ARBiH 28th Division brigades.

The column consisted of able-bodied men, active and reserve duty members of the ARBiH, who had been ordered to report to the staging area to go for a breakthrough towards Tuzla. Eyewitnesses stated that the men were 15 to 65 years old. They also stated that the column included a small number of women. Some of them were members of the ARBiH 28th Division, while others chose to follow their husbands, brothers and cousins through the woods because they did not wish to be separated from them.

The military column was poorly equipped in terms of weaponry, and especially uniforms, since only a small number of soldiers had uniforms. Most of the participants were carrying infantry weapons, hunting weapons, and explosives. A certain number of column participants were unarmed.

The front of the column began the breakthrough around 0100 hours on July 12, 1995. The remaining brigades followed at short time intervals, in a single-file column. The column was several kilometers long. According to eyewitness statements, the rear of the column started the breakthrough from the area of Ravni Buljim on July 12, 1995, at around 1200 hours.

The fighting along the line of the ARBiH 28th Division's breakthrough is an important aspect in the reconstruction of the events. It is especially significant to determine the circumstances surrounding the deaths of breakthrough participants. From the perspective of the criminal investigation, the circumstances of deaths that occurred during the breakthrough are crucially important. It is extremely important to determine the causes of death of a large number of column participants. The ICTY Prosecution investigative team did not focus on that aspect. The members of the military formation who died in military operations were regarded by the ICTY as persons who were not in a position to fight, which does not accurately reflect the facts.

The military formation of the ARBiH 28th Division included 6 light infantry brigades: the 280th, 281st, 282nd, 283rd, 284th and 285th Brigades, and the 28th Independent Mountain Battalion.

The VRS forces engaged in the "Krivaja 95" military operation (referenced in the documents as the "Krivaja 95" combat activity, which indicates that it was of a narrower scope) included units of the VRS Drina Corps, that is, parts of the units which were already stationed around the Srebrenica enclave (the Bratunac and Milići Brigades and the Skelani Independent Battalion), as well as forces from other VRS Drina Corps units (a reinforced battalion of the 1st Zvornik Infantry Brigade, a mixed battalion consisting of the combined forces of the 1st Birač Infantry Brigade and the 2nd Romanija Motorized Brigade, together with one company from the Skelani Independent Battalion, reserve forces equivalent to one battalion

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with the strength of 2-3 Ministry of Interior [MUP] companies, and one company from the 1st Vlasenica Light Infantry Brigade, as well as contact forces equivalent to one light battalion consisting of forces from the 1st Milići and the 1st Bratunac Brigades). The estimated strength of the engaged Serb forces was around 4,000 combatants. Around 1,500 combatants from the VRS Drina Corps were engaged in active operations along the lines of the “Krivaja 95” attack, while the defensive forces on those same lines were more numerous than two brigades with a battalion in reserve, which is around 3,000 combatants, that is, a 1:2 advantage in favor of the 28th Division. After the VRS forces entered Srebrenica, the bulk of its forces headed to Žepa, which also significantly impacted the number of VRS numbers in this area. Some of the men were reassigned back to Zvornik only when that municipality became threatened by the activities of the advancing 28th Division. There were clashes between the Serb forces and the ARBiH 28th Division along the entire 28th Division breakthrough route. The battles were fought on VRS-controlled territory, with the VRS operating towards an enemy military formation moving across territory under its control.

In a cross-examination by prosecutor McCloskey, while testifying as a at the trial of the VRS General Ratko Mladić, the chief of the ICTY investigative team Jean René Ruez stated that the ARBiH 28th Division had barely suffered any casualties in the breakthrough, seeing as most of the victims were civilians. He claimed that the 28th Division had consisted of of 6,000 armed soldiers, and that 6,000 soldiers had made it to Tuzla. This is obviously an erroneous claim based on unverified facts. The statements of ARBiH 28th Division members who participated in the breakthrough show that this claim is incorrect.

As previously stated, between the afternoon and midnight on July 11, 1995, ARBiH 28th Division members gathered in the area of the villages of Šušnjari and Jaglići. Following the lineup of brigades and upon receiving orders from the ARBiH 28th Division Command, units at the front of the column started the breakthrough towards Tuzla across Serb-controlled territory around 0100 hours on July 12, 1995.

Keeping in mind that the rear of the column remained in the locality of Šušnjari/Jaglići until noon on July 12, 1995, the VRS sighted a section of the column in the area of Ravni Buljim early in the morning on July 12, 1995 and opened fire. According to eyewitness statements, 500 to 1,000 people were killed in that artillery attack.

Late in the afternoon on July 12, 1995, a section of the ARBiH 28th Division column was attacked in the area of the village of Šiljkovići. The ARBiH 28th Division suffered significant losses in manpower in that attack. Based on a previous agreement, the village of Kamenica was designated to be the staging area for the ARBiH 28th Division, that is, a location where the front of the column would wait for the rear to catch up.

In the evening of July 12, 1995, brigades of the ARBiH 28th Division once again lined up in the vicinity of the village of Kamenica. That same evening, the VRS began an intense artillery and infantry attack. According to eyewitness statements of ARBiH 28th Division

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members interviewed by military and civilian security services, 2,000 to 3,000 persons were killed in that attack. In the evening on July 12, 1995, the ARBiH 28th Division Command made the decision that the 28th Division active duty service members shall attempt to break through across the Nova Kasaba – Konjević Polje road. In accordance with that, the decision was that the ARBiH 28th Division reserve forces would remain in the Kamenica area and wait for the active duty forces to come back for them. The 28th Division 282nd Brigade under the command of Ibro Dudić was left behind in that section of the column. That decision led to confrontations and mutual clashes among the ARBiH 28th Division ranks, which, according to eyewitness statements, led to a significant number of casualties.

The VRS began an intense military operation in the afternoon and evening on July 12, 1995 in the area between the villages of Mratinci and Konjević Polje. During the night between July 12 and 13, 1995, the ARBiH 28th Division members who had been left behind in the Kamenica area against their wishes started fighting among themselves. Eyewitnesses stated that around 1,000 persons from the column lost their lives that night in that section of the route.

Early in the morning on July 13, 1995, between 0400 and 0800 hours, ARBiH 28th Division units crossed the Nova Kasaba – Konjević Polje road. Eyewitness statements suggest that the ARBiH 28th Division suffered 500 to 1,000 casualties while crossing the asphalt road.

The ARBiH 28th Division units were attempting to cross the asphalt road in the area of the village of Sandići when the VRS forces engaged them in combat. Despite the previous agreement that the front of the column would return for the rear, which had been left behind in the Kamenica area, that never happened. The rear of the column was left encircled by Serb forces. The VRS blocked the Nova Kasaba – Konjević polje road between 0900 and 1500 hours on July 13, 1995. Several groups of persons from the column surrendered in the village of Sandići, and several more did so in the area between Konjević Polje and Nova Kasaba.

The Command and several units of the ARBiH 28th Division successfully crossed the Nova Kasaba – Konjević polje road between 0400 and 0800 hours on July 13, 1995. At the lineup of the brigades in Kamenica (Bratunačka Kamenica) the day before, on July 12, 1995, it was decided that the next lineup would be in the locality of Udrč, 13 to 15 kilometers past the Nova Kasaba – Konjević Polje road. The lineup of the units at Udrč began in the morning of July 13, 1995. A large section of the column was unable to cross the road and remained encircled by Serb forces. The ARBiH 28th Division Command made the decision to send back a part of their elite forces to help the encircled units cross. The Serb forces launched an artillery attack against the ARBiH 28th Division in the Udrč area between 1500 and 1600 hours on July 13, 1995. For that reason, or some other reason unknown to us, the ARBiH 28th Division Command changed its decision to have a part of the forces go back for the encircled units, and issued the orders for those units to continue the breakthrough towards Tuyla together with the Command.

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Intense fighting was taking place in the area of the village of Liplje around 0700 hours on July 14, 1995. The same day, July 14, 1995, the ARBiH 28th Division continued the breakthrough towards the villages of Snagovo and Marčići. Between 1400 and 2100 hours on 14 July, fighting was ongoing in the village of Snagovo and in the area of the village Liplje, as well as along the route towards the village of Marčići. The same evening, on July 14, the ARBiH 28th Division and the VRS were engaged in intense fighting in the area of the village of Marčići. In addition to infantry, the VRS used armored fighting vehicles in those clashes. The ARBiH 28th Division suffered significant losses in manpower at that locality.

The fighting continued in the area of Križevačke Njive, the villages of Parlog, Pandurice and Baljkovica, which are a very short distance from one another. Large-scale clashes between the ARBiH 28th Division and the VRS took place in that area on July 15, 1995. ARBiH 28th Division members inflicted significant losses on the VRS. There they captured several tanks, Praga cannons and trucks carrying weapons and military equipment. The fighting continued throughout that day and during the night of July 16, 1995. In the meanwhile, the rest of the ARBiH 28th Division column that had managed to cross the Nova Kasaba – Konjević Polje road linked up with the units at the front. Early in the morning, around 0400 to 0500 hours, following intense fighting and significant losses on both sides, the ARBiH 28th Division attempted to break through the last line of defense of the VRS and reach ARBiH-controlled territory. Keeping in mind how close the ARBiH-controlled territory was, ARBiH forces were operating against the VRS lines from the direction of Tuzla, providing backup for the ARBiH 28th Division breaking through VRS-controlled territory. In the meanwhile, the ARBiH 24th and 28th Divisions were negotiating with the VRS Drina Corps Zvornik Brigade Command. The line was breached shortly before 1300 hours on July 16, 1995, and an agreement had been reached in the meanwhile to let the column pass through. The ARBiH 28th Division crossed over to Bosniak-controlled territory at Nežuk starting at 1300 hours and lasting through the evening. The ARBiH 28th Division column continued crossing over the demarcation line until 1800 hours the following day, July 17, 1995.

Most of the ARBiH 28th Division members crossed over to ARBiH-controlled territory on July 16 and 17, 1995. However, smaller groups from the column were unable to reach ARBiH-controlled territory in that timeframe. Smaller groups of soldiers continued trying to break through in the following days. Some were successful, some were killed in combat, and others were captured by the VRS and exchanged at a later date. There is also a possibility that there may have been some situational murders.

Groups of ARBiH 28th Division members who were lagging behind the front of the column in the days following the large-scale armed clashes between the Snagovo area and the ARBiH-controlled territory encountered the bodies of those who died in the breakthrough. On the basis of eyewitness statements, our estimate is that around 1,000 ARBiH 28th Division members were killed between the Nova Kasaba – Konjević Polje road and the breakthrough line near Nežuk, an ARBiH-controlled territory.

An important aspect for the reconstruction of the events, that is, for understanding what was happening in the column during the breakthrough, involves suicides, murders of other participants in the column, and the ARBiH 28th Division members who were killed in clashes with other column participants. Our research yielded findings, based on eyewitness statements from column participants, about two general locations on the breakthrough route where the aforementioned incidents occurred. The first location is before the Nova Kasaba – Konjević Polje road. Eyewitnesses testified about the mass panic that ensued in the areas of Kamenica, Sandići, Pobude and Đugum as a consequence of an intense VRS artillery attack in the evening of July 12, 1995. The artillery attack on an area tightly packed with column participants caused mass panic, fear and uncontrolled behavior. The eyewitnesses testified about suicides and murders of other participants in the column with hand grenades and firearms. In addition to this, in the chaos that ensued, a certain number of column participants decided to surrender to the Serb forces stationed along the road. Those circumstances led to the group dividing into those who wished to surrender and those who strongly opposed it. The disagreement resulted in mutual clashes, the greatest of which occurred in the area of Bokčin Potok near the village of Sandići and in the area of Đugum, immediately before crossing the Nova Kasaba – Konjević Polje road. A certain number of column participants surrendered to the Serb forces in those locations and were then transported to the football field in Nova Kasaba as prisoners of war. This happened on July 13, 1995. As groups of soldiers were surrendering, detonations and gunfire from automatic weapons could be heard from the woods behind the road. The fighting that was taking place was among members of the ARBiH 28th Division.

The next location where mass suicides and murders of other participants in the column occurred was the area after the Nova Kasaba – Konjević Polje road. More specifically, the locations in question are the areas of Križevačke Njive, Baljkovica and Pandurica, located near the demarcation lines, that is, the breakthrough line. Intense fighting took place in the evening and during the night between July 15 and 16, 1995. Those circumstances led to uncontrolled behavior of the ARBiH 28th Division members, which resulted in numerous suicides and murders of other participants in the column. On the basis of eyewitness statements, we estimate that several hundred persons died by suicide, were murdered by other column participants, and in mutual fighting along the entire breakthrough line.

The key questions to answer regarding the reconstruction of the events are how many ARBiH members were captured, and at which locations did that take place. The following crucial question has to do with the number of prisoners of war killed in mass shootings. Those two questions are closely connected, since the answer to the second depends on the answer to the first. The captured column participants were later shot dead, and around two hundred of them were exchanged.

In order to obtain the answers to those questions, we must begin with the previously determined facts regarding the approximate number of persons who started the breakthrough.

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By relying on demographic analysis and eyewitness statements, we have determined that number to be around 12,500 persons. The primary question concerns the number of casualties in July 1995. We considered the critical period between July 11 and 19, 1995, as the referential time frame. Determining the time of death is crucially important. We relied on the ICMP list of persons missing in the events of July 1995 as a valid source for the analysis, which is also used by the ICTY as the official list of the missing or dead Bosniaks who lived in the area of the Srebrenica enclave. According to that list, the total number of missing/deceased persons is 7,692. That list includes the names of missing/deceased persons from before, during and after the critical period between July 11 and 19, 1995. We have defined the critical period as the time between July 11 and 19, 1995, by which point most of the surviving column participants had successfully broken through to ARBiH-controlled territory. The front line between Baljkovica and Nežuk was opened on 16 July 1995 and most of the ARBiH members who fought their way through crossed over to ARBiH-controlled territory on July 16 and 17, 1995. Smaller groups continued breaking through to Nežuk in the following days, and a certain number of ARBiH members were captured during and after the breakthrough, that is, after the bulk of the 28th Division had crossed over to the Muslim territory.

The ICMP list contains data on persons reported as missing, the date when, and approximate location where, they went missing. In practice, this list was compiled based on statements of relatives or close acquaintances reporting the last location where they had seen the missing persons. The reported time and location of disappearance may not, therefore, be interpreted as the determined time and circumstances of death, but rather as the time that the person was last seen alive. Based on that methodology, we may posit that the persons known to have died prior to July 11 and persons last seen alive after July 19, 1995, most likely died outside the critical period. Using this approach, we analyzed the data contained in the ICMP list and found a total of 6,674 names of persons who went missing or who died inside the aforementioned critical period. Keeping minimal discrepancies in mind, we may conclude that there is a great likelihood that a total of 7,025 persons were reported as missing in Srebrenica during the critical period. Having at our disposal the starting figure of approximately 7,000 missing/deceased persons in the critical period, we must now look at the estimated figures of deaths in combat, mutual clashes and from suicides during the breakthrough.

Estimating the number of column participants killed in combat operations, clashes between column participants and who died from suicide is necessary to yield an approximate figure of persons who died in those circumstances.

The route of deaths during the breakthrough was divided into two dominant sections. The first section refers to the area between the location where the breakthrough started in the villages of Šušnjari and Jaglići up to the Nova Kasaba – Konjević Polje road. The second section is from the Nova Kasaba – Konjević Polje road up to Nežuk, that is, ARBiH-controlled territory. This split was exceptionally significant during the course of this research, as it was

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necessary to determine the approximate number of casualties in both sections of the route. That is very relevant for estimating the number of ARBiH members who were captured and shot. Splitting the route into two sections is significant in determining the number of captured persons, since mass captures took place in the first section of the route, between Šušnjari and Jaglići and the Nova Kasaba – Konjević Polje road. Next, it was necessary to investigate the precise locations where column participants surrendered. Two predominant locations were found. The first location is the village of Sandići, around 25 kilometers from Srebrenica. The next location is the Nova Kasaba area, around 36 kilometers from Srebrenica. In order to determine the number of column participants who were captured and later shot, it was also necessary to determine the approximate number of those killed in both sections of the route.

Taking estimated losses based on eyewitness statements from surviving participants in the breakthrough and ARBiH reports into consideration, we can state that there is a great likelihood that 3,000-4,000 persons lost their lives in combat, mutual clashes, died from suicides and from stepping on landmines in the first section of the route between the starting point of the breakthrough, that is, between the villages of Šušnjari and Jaglići and the Nova Kasaba – Konjević Polje road. Most casualties happened in the areas of Bokčin Potok, Kameničko Brdo and around Nova Kasaba.

Upon analyzing witness statements, we can estimate that around 1,000 people were either killed in combat, killed each other, died from suicide or were killed in minefields, all in the second section of the route. We estimate that along the entire breakthrough route 4,000-5,000 people were killed in combat, killed each other, died from suicide or were killed in minefields.

Furthermore, when estimating the number of those captured and shot dead, we must consider the able-bodied men who did not join the column, but sought protection from United Nations peacekeepers in Potočari. The total figure is 299 able-bodied persons. Those persons were transported to the Vuk Karadžić Elementary School in Bratunac in the morning of July 13, 1995, and a majority of them were executed in mass shootings in the days that followed. As previously stated, we have determined that at least one of those persons was taken to the Batković camp and was later exchanged.

Now that we have an approximate figure of persons who went missing or were killed within the critical period (around 7,000), and on the other hand, estimates of casualties in combat and other circumstances (4,000-5,000 persons total), we may proceed to estimate the number of breakthrough participants who were captured. Based on these data our estimate is that the minimum number is 1,500-2,000, while the maximum is 2,500-3,000 captured members of the 28th Division active and reserve forces. In order to determine the number of persons killed in mass executions by shootings, we started with the assumption that the total number of captured breakthrough participants is equal to the maximum number of persons who were shot. Apart from that, we must consider the fact that a certain number of prisoners were not shot, but rather were exchanged at a later date.

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Breakthrough participants were captured in two locations. The first location is the village of Sandići, and the second is Nova Kasaba. Limited sources are available which would help estimate the number of ARBiH members captured in Sandići. They primarily include aerial footage taken by a US Air Force U2 reconnaissance aircraft at 1400 hours on 13 July 1995. The aerial footage was analyzed by intelligence expert Cees Wiebes in his study entitled *Intelligence and the war in Bosnia 1992-1995: The role of the intelligence and security services*, which forms an integral part of the Dutch government's report on Srebrenica published by the Netherlands Institute for War Documentation (NIOD). In addition, we used eyewitness statements of column participants.

In order to estimate the number of ARBiH 28th Division members captured in Nova Kasaba, we have also used aerial footage taken by a US Air Force U2 reconnaissance aircraft showing the prisoners being held at the football field in Nova Kasaba. We also used eyewitness statements of column participants, as well as statements of eyewitnesses that refer to the number and location of the buses they had seen on July 13, 1995 that were used to transport the prisoners of war from Nova Kasaba to Bratunac.

According to an analysis of the aerial footage taken at 1400 hours on 13 July 1995, there were two groups of prisoners being held at a meadow in Sandići, 80 prisoners in one, 320 in the other. According to this source, the total number of prisoners was around 400. Individual participants from the column that was breaking through later offered their own estimates/opinions that around 1,000 members of the breakthrough column surrendered in Sandići.

According to the Wiebes study, the estimated number of captured persons based on the aerial footage from Konjević Polje includes one group of approximately 100 persons and another of approximately 500, which yields a total of 600 persons. Individual breakthrough participants from the column later offered their own estimates/opinions that the number of prisoners of war in Nova Kasaba was between 400 and 2,000.

In order to estimate the number of captured persons, we also used source material concerning the number of buses used to transport the prisoners of war to Bratunac. The prisoners were transported in the evening on 13 July 1995. According to eyewitness statements, the vehicles were parked in a single-file line on the left side of the street, on two streets directly near the Vuk Karadžić Elementary School in Bratunac. We have physically measured this space, and determined its total length to be 280 meters. Based on the length of that route, we may proceed to estimate the maximum number of vehicles, more precisely, buses and trucks used to transport the prisoners. The buses and trucks were not all of the same size. It is our estimate that the maximum number of vehicles that could physically fit inside that space is 30, bearing in mind that the average length of a standard bus is 11-14 meters. The length of an articulated bus is around 18 meters, and the length of smaller trucks does not exceed the length of a standard bus.

Based on the estimated number and type of vehicles (maximum 30, minimum 15-20 vehicles), we may presume the average number of persons per vehicle to be 50-70, up to a maximum of 100. The minimum number of persons per bus would be 35-40. Based on that estimate, the number of prisoners of war transported in those vehicles falls somewhere between the low estimates of 1,500-2,000 and the high estimates, but does not in any case exceed the highest estimated figure of persons killed in mass shootings – which is 2,500-3,000 persons. According to the ICTY judgment in case no. IT-05-88-T, there were some situational killings while the prisoners of war were surrendering.

According to eyewitness statements, per orders from the VRS Command, in the afternoon and evening of 13 July 1995, the captured ARBiH 28th Division members were put inside buildings where they could be guarded and secured through the night, and then taken to other locations to be exchanged. However, as previously said, the majority of the prisoners of war died in mass shootings over the following days.

Mass murders of prisoners of war took place in several locations. The mass murders in the Bratunac municipality took place in the early evening on 13 July 1995; those in the village of Kravica were provoked by an incident where a group of prisoners housed in the Agricultural Cooperative building stole a rifle from a guard and shot him dead with it, and wounded another. After that, the remaining guards opened fire on several hundred prisoners of war, with only a small number surviving by fleeing the premises. It is evident that situational murders of captured individuals and/or groups occurred in that area on 13 or 14 July 1995, seeing as, for example, some of the remains found at the Cerska primary burial site had ligature marks. At the same time, there are statements from the interviewed military column participants stating that they had seen a large number of bodies of their fallen fellow soldiers at the location where this burial site was exhumed.

According to an eyewitness, prisoners from Bratunac were transported north towards Batković on 14 July 1995 – as expected. However, the convoy stopped and offloaded prisoners of war at five localities along the way (Orahovac/the school in Grbavac, the Petkovci dam, the Kozluk gravel pit, Pilica, and the Branjevo Military Farm), all located along the Zvornik-Bijeljina regional road, from where they were taken to sites where they were later executed in mass shootings. The mass shootings at all of the locations and the mass graves are found directly near the local roads. From the aspect of the criminal investigation, it was not possible to estimate the number of shooting victims per location (for that type of analysis, see the research conducted by the forensic-anthropological team).

After the ARBiH 28th Division broke through the VRS line on 16 July 1995, most of the surviving combatants successfully crossed to ARBiH-controlled territory during the following two days. However, several smaller groups were left behind on VRS-controlled territory, as they were unable to break through with the rest of the soldiers. In addition to this, after the fall of Srebrenica, a number of 28th Division members crossed the border to the Republic of

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Serbia, across the Drina River. Some of those were turned back to Serb-controlled territory. Those persons, along with others, were taken as prisoners of war to the Batković camp in the Bijeljina municipality, while in certain cases some of those prisoners were executed, mostly by unknown individuals or groups. Also, some of the able-bodied men who had sought protection from the United Nations peacekeepers at the Potočari compound were taken to the Batković camp, while others were taken to Bratunac. According to the ICTY judgment in the case no. IT-05-88-T, there were situational murders of prisoners of war after the breakthrough.

On 26 July 1995, the prisoners in Batković were registered with the International Committee of the Red Cross, which was granted unlimited access to the camp. Approximately 185 prisoners were registered as prisoners of war at the Batković camp in the latter half of July 1995. The exchanges of prisoners of war at the Batković camp began in July 1995 and ended on 24 December 1995, at which time the camp was shut down. No prisoner was murdered nor abused at the Batković camp while it housed prisoners of war. According to eyewitness statements, the VRS members treated the prisoners humanely.

Estimating the losses incurred during the breakthrough is an important part of the reconstruction of the events. The estimated population of Srebrenica in July 1995 was 35,500, out of which 23,000 civilians sought protection from the United Nations Dutch Battalion and were later evacuated. The estimated number of participants in the breakthrough column is 12,500. According to ICMP and ICTY databases, the total number of persons missing/killed in the events in Srebrenica is 7,692. The estimated surviving population of the enclave is around 27,800. Around 21.6% of the enclave population, including the population from several other municipalities in Podrinje, were killed in a variety of circumstances, in combat, mass shootings, mutual clashes between members of the same army, by committing suicides and in other ways. The majority of the casualties were male (7,548, or 98.12%). As for the age structure of the missing column participants, 89% was able-bodied population aged 16 to 60 years. That age limit corresponds to the order by the Srebrenica military authorities for men aged 16 to 60 years, that is, military conscripts aged 16 to 60 years, to report to the staging area to go for a breakthrough. Only a small fraction of the total number of missing column participants were under the age of 16 years (80 persons, or 1.04%). The breakthrough column included only 701 (9.11%) persons over the age of 60 years.

According to the time of disappearance, we split the missing into three groups: those who went missing within the critical period between July 11 and 19, 1995, those who went missing outside that period in July 1995, and those without a specified date of disappearance. An analysis of the data showed that most of the column participants were reported as missing within the critical period between 11 and 19 July 1995, a total of 6,674 (86.76%). According to ICTY data, out of the total number of persons missing/killed in the breakthrough, 70.1% were ARBiH members. The ICTY Prosecution did not include members of the reserve forces in their estimate. The lowest estimate of those captured and shot is 1,500-2,000 persons,

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while the high estimate is 2,500-3,000 persons. As far as the estimate of persons killed in other circumstances (in combat, mutual clashes between members of the same army, by committing suicides, from landmines), the low estimate is around 4,000 persons, while the high is 5,000. 7,692 active and reserve force members of the ARBiH 28th Division were killed in the “Krivaja 95” military operation, when the VRS entered Srebrenica, and in combat and events related to the breakthrough column. This figure includes able-bodied men who were in Potočari on 11 July 1995, as well as those who joined this military formation on an ad-hoc basis. The VRS suffered the loss of 53 men in the “Krivaja 95” military operation, not including a large number of the wounded and the missing, as well as losses of military technology and armored weaponry.

One of the key aspects of the investigation in the Srebrenica case involves determining the identities of the victims. The International Committee for Missing persons (ICMP) identifies victims through DNA analysis. That list of missing persons was adopted by the ICTY as the official list of victims of war crimes. The ICMP list, that is, the ICTY Prosecution list, was amended in 2009 to exclude persons who potentially may have survived the events in Srebrenica, and one individual who was irrefutably confirmed to be alive. We would like to point out that the updated list was published in 2009, that is, 14 years after the Srebrenica tragedy, which was an exceptionally long time period to verify the list in detail and exclude the survivors from it.

The aforementioned facts indicate severe oversights in the ICTY Prosecution’s work. Had the investigation been conducted according to the rules of the profession and had the circumstances of death been determined, the aforementioned oversights would not have occurred. However, this task was assigned to the ICMP, which deals with preliminary identification of victims through DNA, and not with determining the cause of death. The ICMP is, essentially, a DNA laboratory, and its mandate did not include conducting an investigation, which led to imprecise and incorrect fact-finding concerning the events of July 1995.

In the course of this research, we conducted a partial check of the updated ICTY Prosecution list from 2009 and during that check we have determined that it contained an individual who cannot by any means be connected with the time period of the events following the fall of Srebrenica, as that individual was killed in 1993. Also, we identified two persons whose identifying information (name, surname, father’s name, date of birth) is identical to that of persons found in the logs of the BiH Agency for Identification Documents, Registers and Data Exchange. Those persons may be considered as potential survivors, which requires further inquiry.

Also, we conducted a partial check of the Srebrenica Memorial Center list of victims. Research showed a total of 36 names of individuals listed at the Memorial Center, who also appear in the logs of the BiH Agency for Identification Documents, Registers and Data Exchange as having been issued personal documents after the war in Bosnia and Herzegovina

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ended. We compared names, surnames, father's names, and dates of birth. Those 36 names came back with a 100% match. In addition, we found significant overlap in the compared data for another 15 persons. The differences are mostly limited to a single character in a name or a surname. The aforementioned data indicates that those persons are likely alive, and therefore cannot possibly have been victims of the war events in July 1995. We also uncovered other potential irregularities in the list which warrant further inspection.

A partial check of the lists found that 26 of the persons buried at the Srebrenica Memorial were killed prior to 1995, of whom only one had died in May 1995, and the others in 1992 and 1993.

After the breakthrough, thousands of remains of fallen ARBiH 28th Division members were strewn around the battleground along approximately 80 kilometers of the route of the column. In order to prevent the spread of disease from rotting corpses, the VRS cleaned the battleground according to standard procedures. General Ratko Mladić, chief of the VRS Main Staff, gave the order to clean the battlefield on 21 July 1995. The order was issued immediately after the majority of ARBiH 28th Division members had successfully crossed over to ARBiH-controlled territory.

The VRS Drina Corps also issued an order to all subordinate units at the corps level to clean the battlefield. The breakthrough route was located precisely in the Drina Corps area of responsibility. On 21 July 1995, the Zvornik District Civil Protection Staff issued an order to municipal Civil Protection units to clean the field along the breakthrough route in the areas outside of the scope of combat operations.

Over the course of our research, we were unable to find any reports on the cleaning being carried out, only orders to do it. However, eyewitness statements from breakthrough participants confirm that the field was in fact cleaned not only after the combat operations ceased, but also while they were ongoing, particularly on the Nova Kasaba – Konjević Polje road, where a large number of ARBiH 28th Division members were killed. Other eyewitnesses gave testimony on the deaths of their fellow fighters during the breakthrough, listing them by name. A partial analysis showed that a number of those persons were later exhumed from primary or secondary burial sites.

The ICTY investigative team did not look into those statements or circumstances, even though it was within their mandate to do so. As a consequence of failing to conduct an investigation on the circumstances of death, the persons whose remains were cleared away are listed by the ICTY as victims of mass shootings, which is inconsistent with the facts.

In our reconstruction of the events that followed after the VRS had entered Srebrenica on 11 July 1995, we sought to objectively present facts heretofore less known or unknown to the general public. This research aims to contribute to better understanding and uncovering the truth about the tragic events surrounding Srebrenica.

Forensic Anthropological Analysis

From the viewpoint of forensic archeology, anthropology and pathology, an important aspect of reconstructing events related to Srebrenica in 1995 has to do with the number of decedents. It is clear from documents related to the fall of Srebrenica that it is not easy to get accurate data. One of the main institutions dealing with this issue for many years has been the International Criminal Tribunal for former Yugoslavia (ICTY), established in 1993. Over the ensuing years the Court has prosecuted predominately Serbs accused of committing war crimes in Bosnia and Herzegovina, with accusations of genocide initially based on an accepted number of nearly 8,000 persons executed in mass shootings. Demographers from the ICTY have explained in detail the main sources used for creating the list of missing persons (7,692) related to the events in Srebrenica, as well as the methodology utilized to calculate the number of Srebrenica-related victims, including the ratio between deceased individuals and the size of the population living in Srebrenica before the war. However, some scholars have strongly criticized the applied methodology, final results, and the ICTY experts' interpretations.

Regarding the demographic structure of those who died in connection with the fall of Srebrenica, it was confirmed that almost the entire population were Muslim and male, predominantly young. It is less clear what percentage of the victims were members of the military, and how much military losses contributed to the total number of casualties. The total number of matches between ARBiH records and the ICTY Office of the Prosecutor (OTP) list is 5,371; the ICMP has identified via DNA analysis 3,438 individuals from the ARBiH records who also appear on the OTP list. Another issue requiring attention is whether active troops, together with the ARBiH 28th Division reserve forces, who attempted to reach Tuzla from Srebrenica in July 1995, were engaged in military action, or whether they were simply "men (who) tried to escape the area by walking through the forest", as cited in many ICTY reports. Although certain documents do indicate that some individuals were "on assignment", regardless of the nature of the engagement of the ARBiH military staff in Srebrenica (official or non-official) and the quality of their military training and the possession of standard equipment (weapons, footwear and uniforms), the basic question remains: how did they die, and particularly were they all executed in mass shootings, as is generally accepted?

In the ICTY summary reports starting in 2009, the deaths of all persons identified by DNA in "Srebrenica-related mass and other graves" were attributed to mass executions at Kravica and other locations, Orahovac, the Petkovci Dam, Kozluk, and Branjevo/Pilica; all accounting for 6,849 of the victims identified by 2013, including the so-called unique Srebrenica-related DNA profiles which have not been matched to any missing persons. We have analyzed these connections and found that the total number of cases with a DNA connection represents 871 individuals found in two or more locations. Out of these 871, one DNA connection between an execution site (blood stains on an inner wall of a warehouse in Kravica)

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and a secondary mass grave (the case of remains found at Zeleni Jadar 2) indicates that this person was executed. Apart from that one, only 386 cases indicated direct relations between primary and secondary graves, while the majority of DNA connections only showed links between different secondary sites. Unfortunately, these results, based on genetic identification, are insufficient to provide accurate forensic evidence on the number of executed individuals.

Since all executed individuals were initially buried in primary graves, analysis of “robbed” primary mass graves (where most of the remains were removed from a primary burial site and reinterred – at Glogova, Branjevo, Petkovci, Lažete, and Kozluk) and undisturbed graves was performed from the viewpoint of forensic archeology, in order to estimate the maximum number of individuals who could have possibly been buried in those graves. The forensic analysis showed that, theoretically speaking, the largest number of remains that could have possibly been buried in the primary graves does not exceed 3,715 individuals. Keeping in mind that the estimated maximum number of individuals (3,715) buried in all primary graves could only be taken as accurate in the case that the grave pits have been used in their totality – with no empty space between the bodies (that is, that the bodies were neatly stacked on top of one another), it is more than likely that the real number of remains interred in these burial sites was significantly lower than that, which was addressed in the criminal analysis.

The total number of remaining individuals in primary graves after robbing and individuals in non-robbed primary graves was 1,772, so, according to our analysis, it could be expected that a maximum of 1,943 individuals have been relocated from primary into secondary graves, provided that the spaces in the primary graves were filled to capacity with bodies. However, the total number of individuals buried and identified in secondary mass graves, according to the ICMP List of DNA Matching reports from 2013, was 4,114 (or, according to Janc, 2013 – 4,213). This figure indicates that approximately 2,171 (or, according to Janc, 2013 – 2,270) bodies from those graves came from alternative contexts, other than systematic execution.

A large number of bodies were found outside the context of major primary and secondary mass graves. After thorough analysis, excluding individuals who died before July 1995 in totally different parts of Bosnia and Herzegovina, Serbia or Croatia, we concluded that a conservative estimate of individuals found as surface remains could exceed the 756 identified by DNA, as presented by the ICTY in 2013. An additional 162 individuals in the “Pobude area“, 55 individuals in the “Baljkovica area“, and 25 individuals in the “Snagovo area“ account for at least 999 persons. Another category of victims is represented by remains found in individual graves, and some small group grave sites. So far, more than 30 such gravesites are known, with an approximate number of individuals between 170 and 200. Our complex forensic analysis demonstrated that at least eight individual graves should be included, compared to 15 listed in the OTP 2013 Update, as well as a minimum of 25 individuals more than

was found in small group graves. Together with surface finds, these small graves contain a minimum number of 1,047 individuals.

According to the forensic analysis, the lowest estimate of those who were killed in combat between the ARBiH and the VRS, rather than in mass executions, is 3,128 individuals, although the figure could be higher, which was addressed in the criminal analysis.

One of the important categories of victims of the events in Srebrenica in July 1995 relates to a series of ambushes and armed combat during the military breakthrough by the Muslims (more than ten thousand people were in the column composed partly of members of active and reserve forces of the ARBiH 28th Division), who had left Srebrenica and intended to reach Tuzla. There are numerous documents detailing the actions of the Army of Republika Srpska forces trying to prevent Muslim armed forces from reaching Tuzla. Some documents cite VRS losses, with many eyewitness accounts detailing the effects of shelling the column and the resultant deaths of 28th Division members during the breakthrough. However, the essential answer to the question of how many people were killed in combat is still unknown. There are several forensic indicators of connections between the deaths of those people and surface finds/cases that were later discovered in the same area.

The number of individuals who disappeared “in the woods” at places that the Muslim armed forces troops passed through (such as Buljim, Bokčin Potok, Kravica, Mratinci, Kamenica, Udrč, Snagovo, Baljkovica etc., including “wooded” areas) is considerable. The place of disappearance, of course, does not necessarily mean that a person died at that location, however, evidence that 3,000 people had disappeared in the vicinity of combat lines led us to perform spatial analyses, starting from simply mapping of the discovered surface cases as a foundation, and then adding on another layer of the geographically reconstructed route, i.e. the course of the 28th Division’s breakthrough. This provides a spatial pattern showing that the majority of surface finds were discovered in the direct line of the breakthrough and/or in its vicinity.

Information about the cause of death in pathology reports is somewhat limited because of soft tissue decomposition prior to the time of autopsy, so it was not always useful in attempting to discern the combatant/non-combatant status of the decedents, or the manner or particular circumstances of the deaths, even if evidence of gunshot injuries is present. However, it is not unreasonable to suggest that the presence of shrapnel or blast injuries implies that a certain number of individuals were killed in combat. Analysis of the causes of death cited in the database produced by the Podrinje Identification Project (PIP) in 2015, containing the records of 5,450 identified individuals, demonstrated that in 301 cases wounds from explosive weapons were mentioned as a possible cause of death. The highest concentration of individuals with explosive wounds was found in secondary grave sites along the road to Čančari (between Zvornička Kamenica and Čančari) – 122, followed by Liplje – 29 individuals. These graves, along with the locations of surface remains (57 individuals) follow

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the spatial pattern of the breakthrough line and combat areas, which all suggests that those individuals were killed in a combat situation.

Analysis of the state of preservation and completeness of skeletal remains in the secondary graves demonstrated that some secondary graves have an unusually high level of body disarticulation and scattering of body parts. Since all grave sites shared similar characteristics and histories (location and time of creation, use of heavy machinery for digging, robbing and relocating the bodies, similar archeological methods of excavation, etc.), a uniform level of body fragmentation is to be expected. However, the level of fragmentation of skeletal remains (expressed as a quantitative relationship between complete or mostly complete remains and disarticulated body parts) demonstrated significant differences among the graves. Notably, commingled/mixed up bones in sites with the highest fragmentation and scattering of the remains were mostly from Liplje, Zeleni Jadar and Čančari Road localities. Those are also the sites which could contain individuals who were killed in combat by heavy weapons. The level of disarticulation in these graves does not correspond to the typical disarticulation ratio resulting from subsequent use of heavy machinery to transfer the remains to the secondary graves.

In addition to the clear evidence indicating that surface finds, small graves and some of the secondary graves contain the remains of individuals who died in combat circumstances, there is further evidence that some of the secondary graves contained the comingled remains of individuals who died in a variety of different contexts. Several examples indicate that individuals who died before or after the events in Srebrenica in July 1995 and in other contexts were buried together in the same mass grave. Examples of those are Blječeva 1 with bodies from war events from 1992, or Zalazje 1 which contains Serb victims from 1992 in addition to Muslim victims from 1995. Several secondary graves, such as the ones on the Čančari road or Zeleni Jadar, contain body parts directly connected to the surface remains cleared away from Pobude near Bratunac or the Baljkovica area, indicating that they had not been relocated from primary graves but most likely belonged to persons who were killed during the breakthrough and whose remains were cleared from the field and buried in those mass graves. Finally, some remains have unique DNA profiles which are not connected to any persons missing from Srebrenica at all. On the other hand, the remains of nearly 1,000 victims cited in the Srebrenica-related list of missing persons have never been found.

All of this raises many questions regarding the number of people who were executed in mass shootings, the number of those killed in combat, and the number of deaths that occurred in other contexts in the summer of 1995 and before that time. At the same time, it confirms that, according to the forensic research and findings explained above, a significant number of remains exhumed from the mass graves belonged to people who were killed outside the context of mass shootings.

International and Local Tribunals and Courts

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the United Nations Security Council Resolution 827 on May 25, 1993, as a body of the United Nations (UN), with the aim to try the perpetrators of war crimes in the former Yugoslavia. Needless to say, the Security Council is the most important political body in the United Nations, which is why it is more than clear that the ICTY has gained political legitimacy since its inception, which may indicate some reservations about its independence and impartiality as a judicial body. With this in mind, even though the findings of this body have political legitimacy, they do not necessarily represent factual history, nor should they influence current and future academic research.

If one wants to learn lessons from the conflict and crimes committed and tragedy that occurred in the Srebrenica region during the war and to make the best use of the lessons learned for the purpose of prevention, one has to know why and how it happened, namely, what was the motivation and mechanism of the crime. The ICTY should not automatically be viewed as without flaws/faults as providing a sound history of the conflict and crime study, especially when it failed to, or decided not to scrutinize, the nexus between the mass killings and the existence of the armed conflict, which is crucial in the investigation of the motives and mechanisms of the crime. The Srebrenica incident did not occur at a single point in time in a ‘vacuum’. Rather, it took place over the course of a series of conflicts in Bosnia and Herzegovina and the region.

The foundations of the ICTY rest primarily in the longstanding efforts of Western states to establish and codify a system of International Law. The system of Western International Law that emerged over many centuries emerged in an effort to establish a doctrine of just war. More precisely, Western states have devised a system of International Law to try to bring order to the competing global interests of powerful states. Even though the mechanisms of this Law covered several topics, the most important were war and the conduct of war, and to a lesser extent, trade and economic issues. Although the development process of this system can be traced back to the middle of the 19th century, it particularly intensified after the end of World Wars I and II when additional efforts were made to control weapons and establish international peace keeping organizations.

International Law was initially developed as a result of efforts to establish rules that would ensure that countries participated in wars that could be and are justified. From that starting point, International Law has blossomed into an enormous, complex field of rules, regulations, statutes, and institutions. But it also suffers from two major impediments that will play heavily into the establishment and work of the ICTY. The first obstacle is the fact that the international system is chaotic, that is, in most cases, there does not exist an overarching international organization that can enforce the decisions of the international courts. The second obstacle is that, in some cases, the major powers can enforce decisions using their

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military power, but this also means that there is usually no superior force that would force the world's strongest countries to adhere to decisions in International Law. Consequently, administration of the norms of international law often is inherently biased. Naturally, this does not mean that war crimes indictments are always - or at least often - false and unfounded; however, they can be filed unfairly, without concrete evidence, in a spirit of spite and revenge, and for the wrong reasons. On the other hand, some war crimes indictments have not been filed in cases where there was a justifiable reason for doing so because the suspect countries are too large and too powerful.

When it comes to whether or not International Law applies to the military action and killings in the eastern enclaves of Srebrenica and Žepa, state sovereignty should first be mentioned, which is an inviolable foundation of International Law. In practice, there are several legal and illegal ways to undermine state sovereignty, and violating it is a norm that has been practiced for centuries. So, in theory, Yugoslavia, and later Bosnia and Herzegovina, were sovereign states, but the circumstances surrounding the breakup of Yugoslavia and the emergence of Bosnia and Herzegovina and other republics created conditions that opened the door for foreign forces to intervene.

Also, command responsibility, as a component of the International Law, was a major factor during the war in Bosnia and Herzegovina, especially in regards to the Srebrenica killings. How deeply were Mladić and Karadžić involved in either ordering the killings or knowing either beforehand or afterward about them? Of course, the number of innocent people killed is important, but regardless of whether that number is 8,000 or 2,000, it cannot be disputed that a war crime was committed and that someone issued orders and others committed the crime. The main problem was that the bias (on the part of those testifying and the judges who will determine the outcome of each case), faulty memories, hearsay, spite, promises of reduced sentences, and so forth, can make it very difficult at times to know the answers to the central questions. It was these problems that plagued the trials at the ICTY throughout its venue, often making it difficult to draw a direct line to those responsible for the killings and putting command responsibility in question, especially because of the changes requiring more specificity brought about by the 1977 Geneva Convention Protocol. Of course, in many cases, it was possible to draw that direct line, but in other instances, it was not, especially since command responsibility applies not only to military officers but to civilian authorities, who had less direct contact with soldiers than military officers. In addition, the requirement that superior officers and officials make known the rules to lower-ranked military personnel actually made the case of Srebrenica more difficult to prove, since there was scant evidence to prove that this was or was not done. Command responsibility was not the formal charge leveled against the overwhelming number of the accused. But, because of the lack of direct evidence of culpability in many, if not most cases, command responsibility was the underlying, default rationale for conviction.

The combination of Human Rights law, Crimes Against Humanity and Genocide and Universal Jurisdiction had enormous significance for prosecuting the killings in Srebrenica not because they are not legitimate tools for prosecuting crimes when used properly and judiciously, but because they are so broad and allow for so much leeway that they can be abused and be used as “catch-all” legal categories. Human Rights law and Crimes Against Humanity encompass very long lists of crimes and abuses that prosecutions almost always can be made in times of war and even peace. Also, the definitions of genocide are so broad and encompassing that they, too, can be applied in many wartime situations. Concerning Universal Jurisdiction, it may be the broadest category of all since it allows for almost any state or group of states to pursue a case. All these tools were abused in the case of Srebrenica, whether on purpose or not. That is, there were individuals from all three ethnic groups throughout the war who escaped prosecution based on these criteria, despite the fact that there was good cause to convict them, while, on the other hand, there were individuals who were convicted who probably should not have been. The fundamental problem is not that Serbs - or any of the other combatants - should not have been held accountable for war crimes in Srebrenica or elsewhere during the Bosnian war. Namely, the main issue is the unevenness and unfairness of the international judicial system, which is in need of reform.

Another issue was that the judges were strongly influenced by the Western media during the operations of the ICTY. In this context, the Muslim/Bosniak side was portrayed as a defender - each of their military actions was portrayed in the context of defense against Serb forces. Descriptions of a difficult humanitarian situation further support this characterization. On the other hand, as an attacker, the Serb side was portrayed extremely negatively – VRS forces did not respect resolutions, armistices, and agreements, and their main goal was ethnic cleansing (and genocide) and the like. Defining the Serb side as an attacker, with a negative characterization, implied that the Muslim/Bosniak side was positive. In other words, the picture was black and white - there was a bad attacker (Serbian side) and a good victim (Muslim/Bosniak side). In addition, foreign factors have been described as passive observers. This characterization additionally strengthened the mentioned descriptions of the attacker and the attacked. The readers were, therefore, offered only one, exclusive interpretation – the fundamental reason for the fall of Srebrenica and subsequent crimes was the unwillingness of the Western and international factors to use force against the VRS.

Also, a very important fact refers to the discrepancy in the term “army”. Namely, Muslim forces were consistently characterized in this way, and far more often than Serbian forces were. Researchers believe that the reason lies in the fact that the Bosniak side, with its political and military institutions, was defined as the only legitimate one (hence the frequent use of the term legitimate or government as the epithet by which they are described). In contrast, the Serb side was not defined as legitimate – its political institutions were usually self-styled and/or written in quotation marks (e.g., Nikola Koljević, deputy of Bosnian Serbs’ “parliament”, etc.), and military institutions were defined using general terms.

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This undoubtedly simplified picture was reaffirmed and repeated through practically every newspaper article. Given that “The Guardian” alone dedicated almost 2,000 headlines to the war in Bosnia and Herzegovina, it becomes clear to the reader how strong this simplified interpretation is, incessant, and long-lasting.

The bias was so strong, even to the extent that evidence to the contrary was considered irrelevant. In many cases, nothing happened even when other witnesses denied the testimonies of some witnesses, which should have been enough to raise reasonable doubt. There were also specific cases where witnesses, who were themselves indicted for war crimes and who defended themselves in their own trials, were offered reduced sentences or even immunity from prosecution if they told the judges what they wanted to hear. Also, the explanations and verdicts of the ICTY, as well as many prosecution arguments, were rich in descriptions of scenes of horror, destruction, and chaos but provided very little evidence that directly connected the accused individuals with the committed crimes. For example, although “command responsibility” was formally mentioned in very few cases, in reality, it meant that “command responsibility” was implied in almost all cases, because in such circumstances, clear, concrete evidence was not needed, but only the accusation that the accused “knew or he should have known.” This certainly does not mean that every decision or judgment rendered by the ICTY was wrong, but it does mean that there is sufficient reason to describe the work of this body more often as a political endeavor than as the administration of justice.

Perhaps the most glaring example of a “political” trial was also one with the highest profile, that of Radovan Karadžić. The Court and prosecutors spent a great deal of time describing awful scenes, especially in connection with Srebrenica, but producing very little evidence purporting to connect Karadžić to the events being described. The prosecution and the defense both produced witnesses, but only the prosecution witnesses were believed. There was no way Karadžić was going to be found not guilty. He was found guilty because he was the President of the Republika Srpska (RS), so he “must have known” and “must have approved.” This would be the default model in most democracies (especially in the West), where the head of state certainly would know about such criminal action. But that is not the applicable model in the RS, a point that neither the Judges nor the prosecutors appear to have understood. And yet, he was found guilty of genocide, crimes against humanity, and violations of the laws or customs of war. Of course, each of these crimes is heinous, but they also are very broad and can be “catch-all” crimes that can be used when there is little or no evidence. If the meaning of these crimes gets diluted, they also become crimes that can be made against virtually any military that has ever fought in any war. Again, the point is not that every accused individual is innocent of legitimate war crimes guilt, but that the same weaknesses inherent to universal jurisdiction, victor’s justice, and political motivations played out in many cases. In too many cases, the finding of guilt simply was not sustained “beyond reasonable doubt.”

In order to make these allegations clearer, it is necessary to take a look at the cases before the ICTY related to the Srebrenica region. When it comes to crimes against the Serb population in the region, only Naser Orić has been tried before the ICTY. In 2006, Orić was sentenced by the Trial Chamber by a judgment that was not final to two years in prison for failing to perform his duty as a superior to take the necessary and reasonable measures to prevent the murders that had happened from December 27, 1992, to March 20, 1993, in accordance with Articles 3 and 7 (3) of the Statute. However, in 2008, by a judgment of the Appeals Chamber, the defense's appeal was upheld, and Naser Orić was acquitted on all counts of the indictment.

The only proceedings brought before the ICTY for crimes against the Serbs in the Srebrenica region are the aforementioned proceedings against Naser Orić. Given the number of crimes that his unit committed against Serb civilians, and the fact that he was personally involved in some of them, it does not seem to make sense that, after the appeal, this case ended in acquittal. This acquittal is not the only example of its kind; the role of Croatian General Ante Gotovina in the 1995 Operation Storm should also be mentioned, who was also acquitted by the Appeals Chamber.

So far, 27 persons have been tried before the ICTY for crimes against the Bosniaks in the Srebrenica region, of whom 20 have been sentenced by final judgment to four life sentences and 272 years in prison (it should be borne in mind that some of these persons have been indicted and convicted of crimes committed in several municipalities in Bosnia and Herzegovina, not just crimes committed in the Srebrenica region).

The situation with the Court of Bosnia and Herzegovina (hereinafter: Court of BiH) is largely the same, which has processed a large number of cases, namely 137 persons, for crimes that are territorially related to the Srebrenica region. Ten people have been prosecuted for crimes against the Serb population in the region. All defendants were charged with war crimes against civilians and/or war crimes against prisoners of war. Specifically, four persons were charged with war crimes against civilians under the SFRY CC (Article 142), two with war crimes against civilians under the BiH CC (Article 173), two with war crimes against prisoners of war under the SFRY CC (Article 144), and another two with war crimes against civilians and war crimes against prisoners of war under the BiH Criminal Code (Articles 173 and 175). The proceedings against nine defendants were concluded, and three of them were sentenced by final judgment to 22 years in prison (one person for war crimes against civilians and war crimes against prisoners of war under the CC BiH, and two persons for war crimes against civilians under the SFRY CC), five defendants were acquitted, and one defendant died during the proceedings. The proceedings against one person are ongoing.

One hundred twenty-seven persons have been indicted before the Court of Bosnia and Herzegovina for crimes against the Bosniaks in the Srebrenica region. Forty-seven persons have been indicted for the crime of genocide under the CC BiH (Article 171), 64 persons

for crimes against humanity (this offense was not set out in the CC SFRY) under the CC BiH (Article 172), 12 persons for war crimes against civilians under the CC BiH (Article 173), and four persons for war crimes against civilians under the SFRY CC (Article 142). The proceedings against 65 persons were concluded, of whom 35 were sentenced by final judgment to a combined total of 526 years in prison (13 persons for genocide under the SFRY CC, 16 persons for crimes against humanity under the BiH CC, and six persons for war crimes against civilians under the SFRY CC), 25 persons were acquitted, and the proceedings against five persons were terminated due to the death of the defendants. Proceedings against 57 people are ongoing, while proceedings against five other persons have been transferred to other courts.

The indictments for the crime of genocide and crimes against humanity were confirmed exclusively for crimes against the Bosniaks. So far, no indictment has been filed for crimes against Serbs relating to the crime of genocide and crimes against humanity.

Legal Perspective

According to the United Nations definition, genocide marks acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such. The very concept of genocide, coined by Raphael Lemkin, was recognized by the United Nations General Assembly in 1948 and was defined by the 1951 Convention on the Prevention and Punishment of the Crime of Genocide. The term genocide originated during the Holocaust of World War II and was later sanctioned by the United Nations, the Geneva Convention, and the International Court of Justice as the most serious form of crime against humanity. Once coined, it was quickly retroactively assigned to certain historical events, such as the Turkish expulsion of the Armenians during World War I or the displacement of the American Indians from the United States. In addition, a large number of scholars, today, without a doubt, speak of the genocide against Serbs in the Independent State of Croatia, on the territory on which the Holocaust and genocide against Roma were also committed. More simply, it is a term associated with an intentional extermination process. In that sense, it is not in itself subject to individual offenders unless they are part of an agreement that nurtures such plans. Even then, any manifesto that promotes the extermination of a human group or its culture would undoubtedly involve more individuals.

All actions that do not fit this definition must be adjudicated as other types of war crimes. Consequently, individual episodes of violence, such as crimes or massacres, do not in and of themselves constitute genocide, regardless of the number of victims. This is especially the case during armed conflicts when mass violence is considered a military necessity. It is clear that the abuse of the label genocide for political purposes or for the purpose of inciting interethnic or any other form of hatred is untenable.

When it comes to genocide in the context of the events in the Srebrenica region and the ICTY verdicts, it is indisputable that the Tribunal took too narrow a view of the events of July 1995, even though no indications exist that the judges failed to act extremely professionally and impartially. However, the ICTY did not discuss various motives, such as the Serb side offering to exchange Srebrenica and Žepa for the Serb-controlled territory in and around Sarajevo, nor did it address the ongoing military threat by the 28th Division of the Army of the Republic of Bosnia and Herzegovina stationed in Srebrenica at the time of demilitarization since 1993. Simultaneously, the motivation for the massacre was not discussed enough. It was only displayed that the Army of Republika Srpska followed a clear military directive to “cleanse” the area of any military threat embodied in the Croatian and Muslim offensive.

Namely, the fact stands that the Army of Republika Srpska indeed had a plan to take control of the territory of the enclave of Srebrenica; however, the logical conclusion is that such an action was of military importance for several reasons. It has already been said that the area was under the control of the armed brigades of the 28th Division of the Army of Republic of Bosnia and Herzegovina, the headquarters of which were in Srebrenica. Hence, it is clear that the forces of the Army of Republika Srpska considered that they should have control over it. There existed a constant threat from the armed 28th Division under the command of Naser Orić, and it was clear that these troops not only achieved military successes but also committed war crimes against the Serb population in their villages. Directives 7 and 7/1 of the VRS were passed precisely because of the threatening attacks by Croat and Muslim forces. Finally, analyzing the Directives, it becomes clear that the attack on the enclave was based on military necessity, i.e., that the main goal was the complete physical separation of Srebrenica from Žepa, which should have prevented communication between these enclaves. The displayed method of shelling to prompt the civilians to leave the area before a major attack occurred shows that there was no intent to capture and kill Muslims. Had there truly been a demilitarized enclave of Srebrenica under the protection of the United Nations, as it should have been, such a situation would, in fact, suit the leadership of the Army of Republika Srpska, as it would let them put their military troops on another front and they certainly would not have planned an action to capture Srebrenica.

In addition, the ICTY considered that Srebrenica, despite its small size, housed a significant part of the total Muslim population in Bosnia and Herzegovina and that there was a specific intent to destroy a protected group of Muslims as such. The term “significant part” was interpreted in such a way as to dilute its original meaning unduly. According to Rafael Lemkin and the definition of genocide, partial destruction must be essential in nature, in the sense that it affects the whole, given that the Convention on the Prevention and Punishment of the Crime of Genocide applies only to acts of mass proportions. The lawyer who was among the first to deal with the definition of genocide, Nehemiah Robinson, also held this view, explaining that the perpetrator of genocide must have the specific intent to destroy a significant number of individuals who are part of the target group. Thus, it can freely be stat-

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ed that there is no reason to interpret the Convention in any other way. With all this in mind, the condition from Article 2 of the Convention is not fulfilled because the number of civilians and soldiers killed in Srebrenica could not affect the total Muslim population in Bosnia and Herzegovina in terms of their survival.

Namely, the Army of Republika Srpska announced on several occasions its decision to attack and destroy the enclaves, starting on March 8, 1995, three months before the attack. The world quietly accepted and expected the military destruction of the Srebrenica and Žepa enclaves, as described in detail in the Report itself. Therefore, in those months, Srebrenica was no longer a symbol of the presence of Muslims in the region; it became a symbol of the world's disinterest in their continued existence. It is clear that in the eyes of the leadership of the Army of Republika Srpska, as well as the rest of the world, the population of Srebrenica could not have been considered a representative or even a significant part of the Muslim people in Bosnia. Therefore there could be no intention to destroy a significant part of the protected group of Muslims. The world rediscovered its conscience only after they discovered the massacres. However, the Tribunal could not link the attack on Srebrenica and the eviction of the Muslim population to the massacres that followed after the fall of Srebrenica of the captured members of the military column and able-bodied men who remained in Potočari, as such plans for the massacre did not exist before the enclave fell and before the column formed.

From a legal perspective, it is important to distinguish the military attack on Srebrenica from the mass killings that followed the attack. The ultimatum issued by Mladić was found to be in line with a year-long practice, introduced back in Directive 4 passed in November 1992, which stated that able-bodied and armed men needed to be disarmed, and should they fail to do so, the order stood to destroy them. Mass executions after July 12 can easily be seen as a horrific consequence of refusing to surrender. By not considering the perpetrators' motives for killing these able-bodied men, such as the attempt to eliminate the military threat, as the defense argued, the Tribunal's standard for determining the specific intent to exterminate Muslims in Bosnia and Herzegovina in whole or in part was incomplete.

Also, expanding the meaning of certain terms by definition, such as "in part," "significant part," and "destroy" also leads to misapplication of the term "genocide." In fact, by adopting an interpretation of genocide that could not and would not be universally applied, the Chamber has unsustainably expanded the meaning of the term. To the extent that this groundbreaking discovery affects modern interpretations of genocide, crimes against humanity, and war crimes, this means that limiting the findings to crimes against humanity - thus maintaining clearer distinctions between these groups of crimes - would better have served the Tribunal's authority.

Finally, after a thorough investigation by the Independent International Commission of Inquiry on Sufferings of Serbs in the Srebrenica Region between 1992 and 1995, it is

concluded that neither an individual crime of genocide nor genocide in general took place in Srebrenica. Although the Commission does not consider the killings around Srebrenica as genocide, it recognizes the fact that thousands of people (mostly prisoners of war) were killed in the most horrific way and that those responsible for these heinous crimes should be punished.

The findings of the Tribunal on genocide will not stand the test of time because the Commission is convinced that the crimes in Srebrenica cannot be considered genocide under Article VIa of the Rome Statute combined with the reasoning that such conduct must take place in the context of similar behaviors aimed against the group or that such behavior in itself could have caused such destruction. In a broader sense, it is crucial for the prevention of future genocides that the notion of genocide as a crime above all crimes must not be diluted. If the term is used so lightly, as in the case of the events in Srebrenica in July 1995, it would eventually become meaningless. If such a legal understanding is realized in the future, allegations of genocide will regularly follow any army and become common to all conflicts. Most importantly, such allegations would carry very little consequences.

At the same time, armed conflicts are not organized spectator sports with clear winners and losers. They are complicated events with lasting psychological implications for all survivors. It is more than clear that the population of this region, as well as the whole of Bosnia and Herzegovina, regardless of their ethnic background, has experienced a great tragedy and a new trauma that often builds on the traumas of previous wars. The consequences of war horrors are present in members of all combating parties. It is necessary to find ways to adequately treat these traumas and restore mutual trust and future reconciliation in society, among other things, through the application of restorative justice.

Restorative justice has reconciliation as its primary goal – a major departure from the vindictive, punitive, retributive, and stigmatizing focus of the adversarial judicial process. The aboriginal model presented an historical perspective, while the South African and Canadian reconciliation processes are contemporary examples. In essence, a restorative/reconciliation assessment of the Bosnian-Herzegovina war (1991-1995) in particular, and all the other wars in the Balkans (1991-2002) should involve an independent academic/legal assessment based on the ABC clinical model where “A” signifies looking at antecedents or contravening variables leading “B,” the behavior in question (3rd Balkan Wars), and “C,” the subsequent consequences of “B” – the Dayton Accord; ICTY; and the ICJ/ICC. Toward this end, the focus needs to be on the “charges” per se instead of individual indictments along with the inherent bias associated with selective prosecutorial adjudications.

The focus of the “restorative social justice” model is to look at the events deemed criminal, to assess the judicial proceedings relevant to the administration of justice (procedural versus distributive), and to lay out the sequence of events that occurred (ABC model) so that a factual portrayal can be ascertained – one that can then be disseminated without

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political, racial, or sectarian biases. Geo-political, race/ethnic, and/or sectarian biases are greatly reduced by focusing on the indictable events per se and not solely on individual defendants. This offers a better assessment of legal ethics, something sorely absent during many adversarial contests. Moreover, the outcome of a restorative social justice proceedings is not recrimination or exoneration but a presentation of all relevant facts, including the shared horrors of war, especially civil wars. It also extends the investigation to external (proxy) forces that deliberately benefitted from the conflict often by directly or indirectly exacerbating factors that tended to prolong its duration. Foremost, any viable restorative social justice endeavors need to include all parties constituting the former Yugoslavia.

The Report submitted here is a result of the very hard and intensive work over approximately 1.5 years by an international Commission, whose members were objective experts, representing seven countries, who were anxious to reach the historical facts and only the historical truth. None of the Commission's members had any prejudices against any of the parties involved in the conflict, none came with any solid ideas on the nature and background of the conflict.

The findings of the Report have strengthened the Commission's view that it was its right and duty to investigate the issues again from various aspects, and that the Commission's scientific approach has contributed to a better understanding of the events, the historical and political context, and the power of evidence presented to the courts.

Until now, it had been a widely accepted interpretation that the killing of 8,000 Muslim males resembles the genocidal crimes committed by the Nazis who systematically separated Jews and other minorities from the rest of the population only to subsequently murder them. The findings of the Commission demonstrate that a crime of such a nature has not taken place. Moreover, the Commission has found that Muslim forces of the ARBiH 28th Division inside Srebrenica formed a military column of more than 12,000 army members which broke through formations of the Serbian army and headed towards Muslim territory. Attacks on this column, which caused the death of approximately 4-5 thousand members of the ARBiH 28th Division, can be considered legitimate military actions. However, the execution of 2,500-3,000 military prisoners, including several hundred male civilians from the Potočari compound, besides several hundred exchanged soldiers, does constitute a war crime. The commission does not have any doubts about the criminal nature of these killings.

It cannot be found, however, that these murders were committed with any other intention than to eliminate a military threat in the wake of the military assault of Croatian and Muslim forces on Serb territory ("Operation Oluja"). Concerning the existence of a special intent to destroy a protected group, the findings of the ICTY are not conclusive. The Commission was not able to identify a single case in which the judges at the ICTY had discussed any other motive for the killings other than genocide. The chambers of the ICTY have not once discussed the fact that the Serbs had been subject to genocide committed by the Croats

CHAPTER XI - General Conclusions

with the assistance of the Muslims during World War II and that the Serbs in more than 150 settlements in and around the Srebrenica region had been subject to brutal assaults and ethnic cleansing by Muslim forces in the years 1992 and 1993 and even 1995. It has interpreted the massacres in the Srebrenica region as an open message towards all Muslims in Bosnia that they would await the same fate. The commission has demonstrated that there is no evidence of such intent.

Bearing in mind the variety of different contexts, it became clear that precise numbers of diverse manners of deaths could not be given; therefore, we have tried to give as accurate estimates as possible. The Commission considers that, in the light of all of the facts of its investigation, the term “genocide” cannot be attached to those tragic events.

The Commission is aware that previous commissions have come to different conclusions, however, only the reviewed facts have dictated the results of the Report submitted here, and therefore it can be stated that all members find the final result a solid, objective, historically scientific and accurate analysis.

The Commission did not spare any effort or energy to reach the historical facts. The members of the Commission worked intensively to investigate the tragic events and to analyze them authentically.

The Commission consisted of various experts, from various countries, representing many cultures and mentalities. It is natural, therefore, that during its work, the members had some discussions and dilemmas. Nevertheless, the Report has been signed by all members, who completely and fully agree with its final conclusions. The Report represents the goal of the Commission’s members to expose the facts behind the Srebrenica conflict to the best of their abilities, and to remove the curtain which has obscured some of its historical details. It is an authentic and non-prejudiced document.

The final Report of the Commission should help in facing the past, lead to a strengthening of trust and tolerance among the peoples of Bosnia and Herzegovina, and assist with the final reconciliation and coexistence of all present and future generations. The Commission did not aim to marginalize or diminish the suffering of any peoples; quite the contrary, its members expressed their deepest respect and sympathy for all of the victims from all cultural and ethnic backgrounds who tragically lost their lives in the devastation during the civil war in Bosnia and Herzegovina. The Commission sought to attain the truth through an objective examination of the facts in connection with the occurrences from the armed conflict in this area and the application of a non-selective restorative justice process, believing that only in this way could human suffering be placed in context and eventually lead to reconciliation and dialogue.

The Commission hopes that after this Report, concrete steps will be taken towards facing the past of all, both the parties that were in conflict and the representatives of the international community, international organizations and associations of war victims. One such step could be to pay tribute to the victims of all parties at the sites of their suffering by

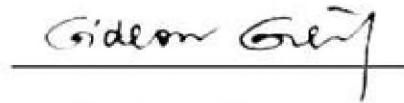
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representatives of all the above parties. True and non-discriminatory respect for all innocent victims by the joint delegations of the above parties is a step that can contribute to a common confrontation with the past and a better understanding of the universal truth about the dignity and value of every human life.

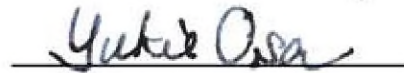
The Commission further recommends initiating an open dialogue between victims from all warring sides and even perpetrators where possible in the region of Srebrenica and the whole of Bosnia and Herzegovina.

Signatures:

Gideon Greif (Chair)



Yukie Osa, (Vice-Chair)



Steven Meyer



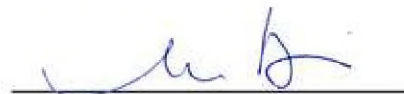
Laurence Armand French



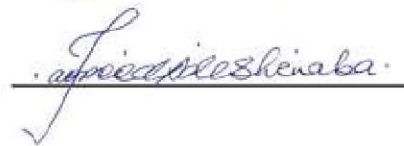
Roger W. Byard



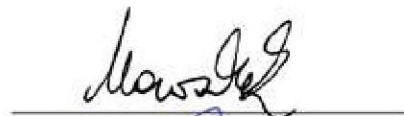
Marija Đurić



Adenrele Shinaba



Giuseppe Zaccaria



Walter Manoschek



Markus Goldbach

