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Stefan A. Riesenfeld Symposium Keynote Address— Securing International Peace: Legality vs. Politics

By
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I.

KEYNOTE ADDRESS

Good evening. First of all with all of the eminent educated personalities, in view of the recent history in my country and in our region, I am glad to see that there are no psychiatrists in this group. As you know, Mr. Karadic and others have left their legacy on us. But indeed, I am honored to be among such a distinguished group. And lest we don't take ourselves all too seriously, I thought it would be appropriate to start in that direction. Mrs. Riesenfeld, it is my pleasure to be here at this forum. Dean, I think you've moved in the back, and, Professor thank you for the introduction and welcoming me so much. And particularly, I'd like to thank the student organizers.

* Upon admittance of the Republic of Bosnia-Herzegovina to the United Nations on May 22, 1992, H.E. Sacirbey was appointed Ambassador and Permanent Representative. In 1995, he served as Foreign Minister of the Republic of Bosnia-Herzegovina for one and a half years where he was a key player in the Dayton Peace talks. Later, in 1996, he resumed his current post as Ambassador and was also named Special Envoy for the Implementation of the Dayton Peace Agreement. He was most recently also appointed as Vice-Chairman of the Preparatory Commission for the International Criminal Court. Born in Sarajevo, H.E. Sacirbey fled as a political refugee in 1963 with his family to Europe and North Africa before settling in the U.S. H.E. Sacirbey earned his J.D. from Tulane University Law School specializing in comparative, corporate, and international law, and his M.B.A. from Columbia University, New York. He has worked at the law firm, Booth and Baron; as Vice President and manager with Standard and Poore's Corp.; as Senior Vice President of Security Pacific Merchant Bank; as manager of Mortgage-Structured Real Estate Finance Group; and as principal in the Princeton Commercial Corporation dealing with real estate and structure finance.

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This has been often stated as a significant dialogue. I will sound a little bit too much like I am speaking from a Bosnian perspective, but I think it is only appropriate that I should present you with that expertise, that personal knowledge that is closest to me. But, by no means should you view this as a Bosnia only discussion. In fact, I'd like to extend it well beyond Bosnia, particularly when we get into the questions and answers and, it is my intention to move quickly to that point, because I suspect that most of you are pretty familiar with the issues. So, I don't want to lecture too long, I'd like to have a dialogue, and I'll get on with it.

While the work of the United Nations (UN) over its first half century is a story of a valiant vision, courageous efforts, and mixed results the end of the Cold War brought about new hopes and even higher expectations. The stage was no where more appropriately set than in Bosnia-Herzegovina, the old fault line of the east and west rivalry, for these expectations and reality to collide. The UN suffered its most visible and humbling setback with CNN and all the world's media focused in Bosnia-Herzegovina. It seemed all that remained was for the UN burial fire to be prepared and set ablaze among the many eulogies prepared by the world's global leaders. Maybe the oft-repeated statement that anything or anyone over half a century of life has become obsolete, lost the capacity to make the necessary changes for survival. Maybe this statement was proving to be true at least with respect to the UN. Certainly as someone who is now approaching my fifties, I would like to think that this is not the case.

However, just as the UN was being discarded in the rubble of history, it just as amazingly found rejuvenation actually within Bosnia-Herzegovina, in effect, a new hope and a new vision. But the story is not that simple. Between the ashes and the rising of the phoenix, there is a much more complex tale. Maybe the failure was not in the half-century old institution or even the code of laws that are the basis of international humanitarian law. Maybe the fault lies with the application of those laws and institutions and those men and women vested with the responsibility of leadership. Too often there was a weakness of commitment and a prevalence to manipulate legality and these institutions for short-term political benefits. It was often stated, and I'm glad Professor that you mentioned WWII in your own personal legacy, that international legal norms, particularly international humanitarian norms like the Geneva Conventions, were built on idealism that in fact were not realistic. But, if you really think about the history, they were built upon the very real experiences of WWII. In fact, I think many of those who kind of questioned the applicability of those legal standards that were adopted immediately after WWII, I think they missed the point. That, in fact, they were the premises, and the real teachers were those very personalities who survived those horrid examples of WWII and particularly the Holocaust.

Under the UN Charter, the Security Council is vested with responsibility for maintaining international peace and security. However, is this a particularly good choice? Well, first of all, I think we should point out that this is a coincidence of history—a historical accident. The fact that we have fifteen members

and five permanent members is nothing more than a consequence of how the spoils were being divided after WWII. Of course, the Security Council is very much a political body; it is not meant to be a representative body of the world's citizens, it is not meant to be a judicial body—a legal body. If you look at the way it operates, it acts out of self-interest rather than its responsibility to the international community as its primary motive. When you look at the permanent members in particular, the human rights record and the record of democracy in these countries is at best spotty. In effect, what most of these countries tend to do is try to preserve their primacy within this UN system and, in effect, they are doing everything that they can to maintain their privileged position. Too often they are usurping the power of other UN and international institutions that have just as valid a reason for being there to try and preserve international peace and security. Worst of all, there is no accountability to the world, to the UN; the veto can be exercised with or without explanation. Frequently, the Security Council will apply measures, but only half-measures; take a problem to only, in effect, say that it is “vested” with a problem, and to leave it hanging, without a real solution. And, unfortunately it is often too frequently about personalities—leaders who of course see it fit to exercise their visions of political and diplomatic stardom in front of the UN press corps.

Well, Bosnia-Herzegovina gave a test both to the Security Council and, of course, the UN system as a whole. Faced with the Yugoslav conflict in its beginnings and particularly Mr. Milosevic's plan for a greater Serbia, the UN's Security Council first decided that it was clearly to point a finger at Mr. Milosevic, particularly as it relates to what was going on in Bosnia-Herzegovina. For instance, there is a report, actually two reports, dated in April and May of 1992, which squarely say that in fact it is the Milosevic regime and its cronies in Bosnia who were practicing what was then called ethnic purification. Sanctions were imposed upon the Belgrade regime. But as soon as, in effect, these initial steps failed, the Security Council backed off and it actually backed off to the point of equivocation, in effect trying to find as much fault with the victims in order to justify why it wasn't completing the necessary steps to bring about a real peace in Bosnia-Herzegovina. What it also did was to provide humanitarian assistance, food, in order to alleviate the public pressure, the outcry, that something must be done to save civilian lives. But, in effect, it always failed to confront those who were killing, besieging, and creating the humanitarian catastrophe that was in this instance the methodology of genocide, of ethnic cleansing. There obviously seemed to be a clear contradiction in saying that one would attempt to feed a civilian population and use all necessary means to do that but one would not use any military force to defend this civilian population when it came under direct attack. And the end result of this, of course the most shameful event, was Srebrenica.

But, beyond that, we had something that was called the arms embargo that was imposed on the former Yugoslavia. But, once it was imposed, it was not judicially applied, in effect, it was applied both to the Victim and the Victimizer. It happened that the Victim had no weapons to defend itself while the Victimizer

had the weapons of the third or fourth largest army in Europe at that time. Now, frankly, I was one of the architects of this strategy calling for the lifting of the arms embargo; half of it was real, and half of it was bluff. What was real is if no one would defend this, we wanted, obviously, at least the capacity to defend ourselves even if it was to the grave. I mean, no one wants to go down without at least the capacity, the ability, to try to defend themselves. But more importantly, we were in effect saying, if you have denied us the opportunity, the weapons to defend ourselves, then, I think, you have already intervened to a point where you now have an obligation to complete the intervention and to bring the war to an end. And once again here, of course, that intervention was not forthcoming for three and a half years.

But, I think something else was happening here, which was the UN itself was being made into a scapegoat. It was given a job it really couldn't do. It didn't have the necessary resources. Effectively, it was told to take care of what was perceived of as a dying patient, that is my country Bosnia-Herzegovina, but to make sure that the dying was as graceful as possible with minimum civilian life which was almost a contradiction in terms again. And, of course, when the patient wouldn't die, then this kind of befuddled all the strategists of this graceful death, and, once again, they found more fault with those who managed to keep this country alive by whatever means. In effect, we became not only the victims, but the villainized. Peacekeeping was provided for Bosnia, but in effect, there was no peace to keep. Peacemaking was what was necessary but no one was to even interpret generously worded resolutions in such a way that peace keeping would be an option, a real option.

And finally, we have the many stories of what was then the birth of UN preventative diplomacy and its initial failures in Bosnia-Herzegovina and the former Yugoslavia. I remember in 1992, before the war broke out in Bosnia, but in effect was already blazing in Croatia, we went to see, that is, President Izetbegovic and several Bosnian leaders, we went to see the Secretary General Cyrus Vance. We said that we are very much afraid that the next step of this war in Croatia will be in Bosnia-Herzegovina. Will you please do something that will in effect deter the war from occurring? Now, some of you may have questions about what happened in terms of Bosnia's declaration of independence at that time. We were working with Cyrus Vance as the mediator in Bosnia's transition to independence and, actually, Mr. Vance and all those working with him were very supportive of the idea of Bosnia holding a referendum for independence, which was held in February and March 1992. And of course, on this basis, Bosnia declared its independence. So, on the one hand there was support in the international community for independence. But, when we said why don't you deploy some peacekeepers within Bosnia, they said, well, uh Mr. President, you don't quite understand the way the UN works. You first have to have a terrible war, you have to have a lot of people dying. Then the world takes notice, and then we have a peace agreement, and then we send in UN troops to separate out the sides. Obviously a highly inefficient way, both from a UN

perspective, but particularly from the civilians involved, in terms of addressing the conflict.

I think though that when we talk about the international community at that time, particularly the Security Council, there was, I wouldn't say a conspiracy of action, but there was a conspiracy of omission. I don't wish to tell you that somehow back in 1990, a group of people got together and decided that they were going to see Bosnia extinguished—its mostly Muslim population murdered or expelled. I think what happened is basically that some people started going down the wrong road. They had neither the foresight nor the courage to address the problem. And, the more that their policies were shown to be ineffective, inadequate, and wrong, the more they were determined to in effect, against all evidence, make sure that their position was somehow absolved. Several good examples. Even though on several occasions, Belgrade was clearly, clearly pointed out as the culprit, the word "aggression" was never used in any Security Council resolution. Why? Because the word aggression demands action, affirmative action by the Security Council in stopping it. The word "genocide" was never used in any UN Security Council resolution, basically for the same reason, even though the International Court of Justice, at our request, as early as 1993, had declared that there was sufficient basis to believe that genocide was occurring in Bosnia-Herzegovina.

When I had taken up my post relatively recently at the UN, frankly, there was already information coming in to us in April and May, that terrible things were happening; that people were being murdered in mass, that concentration camps were being set up . . . I remember speaking to Haris Silajdzic and saying, Haris, can we actually say these things? I mean we're going to sound like we are nuts, this can't be happening in modern-day Europe! Nonetheless, we had this information, we had a list of camps, and we took it to the Secretary General and said we don't want to be alarmist, but we have this information. Will you please deal with it? Low and behold, in August of 1992, some very capable people like Roy Gutman and ITN film crew happened to kind of cross paths with a concentration camp. At that same time, through personal channels, I received two UN communications dated April and May 1992. In these first two internal communications that I got my hands on, there is in one mention of "mass murder" and in the second, of "camps being set up for large segments of the population." I made this available to the media who asked the Assistant Secretary General for Peacekeeping why this information was not made public? And the answer was well, it was made public to those who need to know—i.e. the Great Powers. And then, shortly thereafter, I received a phone call demanding how did I receive these two pieces of paper? Demanding that I reveal my sources. Obviously, I said, I demand to know why you haven't made this information public. I mean, these are crimes against humanity and not making these crimes available as information to those who in fact have an affirmative responsibility to stop these crimes could in and of itself be viewed as certainly serious "intrusion," and I used the word intrusion here, into international humanitarian law.

Even when the war crimes tribunal that now exists for the former Yugoslavia was created, I frankly do not believe that initially when this idea was floated, that this was a serious attempt at justice, that there was ever the intention to make it a reality. I think there was the idea that somehow if you were not willing to intervene, to stop these types of crimes, then you would tell the world that we will punish these bad guys sooner or later and that somehow this would serve as an excuse as an alternative to intervention. That is, if you don't confront them today, you will punish them tomorrow, and the public will somehow feel secure that justice and international peace and security have been maintained. I'm glad that Professor Meron is here tonight; frankly, he is one of the very small handful of personalities that worked, against all odds, to make sure that in fact the tribunal did happen. I'll mention two other names that I think are very instrumental here and that is Professor Cherif Bassiouni, and at that time, Ambassador Madeline Albright. I know that there are many others, but there are certainly those who I think surprised the rather cynical, mostly cynical factors, who intended to promise a tribunal but never in effect have it realized.

And then, of course, a series of events began to unfold which I think demanded a response from the very powers that for so long tried to avoid the proper response. There were UN soldiers that were chained in order to deter NATO from using air strikes to protect civilian populations. The mass murder at Srebrenica occurred which actually, I believe, some people—international factors—had forewarning on but, in effect, did not take that forewarning seriously and felt muddled, probably soiled as much as anything, by the fact that they did not address Srebrenica in advance. On the day that Srebrenica fell, I was in Strasbourg. And, I remember meeting with Carl Bildt who happened to be there at the same time and was rather upset. Carl Bildt says in his book that I was rather calm and accepted certain statements that he made which is contrary to the truth. And I'll tell you what he said to me. There were several "safe areas" at that time, Srebrenica was one of them, Zepa was a smaller one, next to Srebrenica. Gorazde, Bihac, Sarajevo, and Tuzla. Before Srebrenica was even completely overrun, Carl Bildt said to me, well we are not going to liberate or take back Srebrenica and by the way, we are not going to defend Zepa either. On a political level, this has far-reaching consequences because it says basically that the map that was drawn by the Contact Group for the division of Bosnia along internal lines needed to be somehow changed and some people were only willing to accommodate Mladic and others who wanted to change it and Srebrenica and Zepa were not convenient to a new map. Of course, it also shows how seriously or not so seriously the UN commitment was taken to defend something designated as a safe area for refugees.

But I think somehow things began to unfold somehow beyond Mr. Bildt and other people's hands who thought they could continue to manage the drama of a dying country. And that was that NATO's own reputation, its own survival, was on the verge. If you had NATO, but no longer the Soviet Union as a threat—what was its *raison d'être* except to address a situation like Bosnia-Herzegovina, to confront a warmonger like Milosevic? And, in fact, intervention

that is peace-making did happen, I think primarily because so many reputations were put on the line, including that of Jacques Chirac, whom, I believe, felt ultimately betrayed by how far events went in Srebrenica.

After the intervention and after the Dayton peace agreement, the major peacekeeping job was given to NATO and the UN was given a very minimal role initially, in effect confirming the marginalized role of the UN as the major institution for international peace and security. So, how does the UN, that is the international legal order, how is it now on the verge of its greatest triumph in Bosnia? How all of a sudden do we see once again, a large number of UN peacekeeping missions being demanded? Why again are people looking to the UN as a source of hope?

Well, within Bosnia, they have done the right things on a small level. They are helping reform the police. In effect, Bosnians now will be participating in UN peacekeeping efforts, starting with the police, in places like East Timor, maybe Sierra Leone, and others. We are prepared. That is good for us, its good for the UN, and it's good for the international community. They are also helping us reform the judiciary which is tainted not only by the years of war but also in fact by the old communist system. And, of course, it is helping us to implement what I think is one of the most important Dayton provisions, which is that regardless of what the Dayton document looks like—the Dayton peace agreement, the Dayton Constitution of Bosnia-Herzegovina—it needs to be made compatible with the European Union Charter, that is, Bosnia's place is in Europe and therefore Bosnia's Constitution must be compatible with the Council of Europe Charter.

But, I think there is more that UN institutions are involved in right now. The International Court of Justice is still in fact vested with the case of Bosnia-Herzegovina vs. Serbia and Montenegro for genocide; the case that was started in 1993. This case is not about the collective guilt of a people, it is about the guilt of a regime that many in fact had tried to exonerate, to make a false partner in peace. It is about confronting historical revisionism; as much as there is an attempt to revise events of the Holocaust, you can bet there is a heck of a lot of revisionism going on about what happened in our region. And then of course there is the tribunal. We must remember that this is a UN body—financed and supported by UN States. And, this institution is not about just finding individuals accountable, it is in fact at the very heart of justice, of reconciliation, and of peace. Without identifying and prosecuting the guilty, then one cannot also exonerate, reconcile the innocent. And of course, the tribunal has now also given birth to something called the International Criminal Court, which, in a few decades I suspect, will serve as the primary focus of justice for those involved in significant violations of international humanitarian law. But, I think, when we go to the tribunal, we need to understand it as also providing the impetus for peace. Is it just that simple though? Is it just that simple that in fact the tribunal is about reconciliation; that it is about satisfying the yearning for vengeance and is it about getting rid of the bad apples? Locking them away so that in fact once again Bosnia can prosper? Is it about deterrence? Is it just about our sense of

decency, about our sense of personal security in a world we'd like to think is a lot more civilized than I think we really know is not?

I think there is a point here to be made by relating to you a slightly longer story, so I hope you will excuse me. When I was in Dayton as Foreign Minister, I remember that Mr. Milosevic was one night sitting in his apartment; he was of course being honored as one of the keystones, fundamental for peace. He invited me to come have coffee with him. I was a Foreign Minister, a young man. He had a heck of a reputation, and certainly was very charismatic. One should never mistake that on a one-to-one level, Mr. Milosevic can make you like him, quite easily. He said, well, would you like to have a drink? And, I said, well, no, thank you, I just wanted to relay to you some information about our negotiating position. And he said, well, maybe you don't prefer alcohol, maybe you'd like some coffee. Just sit down, let's talk a little awhile. I said, no thank you, I think I need to go. I understood that this was an attempt at seduction. Unfortunately, too many others have succumbed. A few weeks before this event, I was having dinner with Madame Manelli, the Foreign Minister for Italy at the time. This was in preparation for Dayton and I was making the rounds around Europe to understand better various negotiating positions. And, she said at the end of the dinner, by the way, downstairs, in my brother's apartment, Henry Kissinger is also having dinner with him, and would you mind if he comes up and has a little bit of a discussion with you about what is going on with the peace talks and so on? I said, oh no problem, I met Mr. Kissinger before, but we've never had an extensive discussion. So, we proceeded to have a discussion but at the end of this discussion, Mr. Kissinger looked at me and he said, you know, by the way, don't you think that Mr. Holbrooke is becoming a bit of a media monster? And I of course, remembered all of these scenes of Richard Holbrooke in that loveseat with Mr. Milosevic, and rather than fall into the temptation and just agree, I said, but Mr. Kissinger, don't you know that they are calling him the Kissinger of the Balkans?

I was wondering if Mr. Milosevic was the one who was indispensable for peace or was in effect indispensable for people's egos. We've had Mr. Milosevic indicted since Dayton, and we've had actually another gentleman indicted and arrested by the name of Krajisnik who was also at Dayton and who also used to be a part of my Presidency in the post-Dayton years. He was elected under the terms of the Dayton peace agreement. But these people, particularly Mr. Krajisnik, were known for their crimes when they came to Dayton. And, one of the reasons peace in Bosnia suffers so much is because in effect it was given to bloody hands to mold, and did this have to be so?

I think there is a more uncomfortable side which I have to emphasize to you in addressing the issue of justice, the tribunal and the forthcoming international criminal court. Too frequently in the Security Council, sometimes in public, but mostly in private, I hear about how room must be given to the peacemakers, to the Security Council, to deal with criminals for the sake of peace. To in effect make the necessary deals. Let's make deals with the world's greatest mass murderers because after all, this will in fact, stop the killing. Un-

fortunately, when this idea is brought about, it is generally about those mass murderers, those dictators, which happen to be further from the West, that the West doesn't have any direct stake with. So a country like Sierra Leone has in fact been forced to make a deal, one that most people do not believe will survive, with that leader of a so-called guerrilla force that had no other agenda than to say we want a piece of the diamond action and lets cut off the limbs, the arms and feet of little children so that the government in power gives us our piece of the action.

Peacemakers are good, they are necessary, but who are they accountable to? In effect it is us, the peacemakers, the public, who give impunity to war criminals particularly those at the very top, because we seem to be sometimes too intent on short-terms solutions and to not have to pay the price. And, to somehow be able to say, isn't wonderful, they are all hugging each other? In effect, there is of course, expediency at stake and there is the ego of those who would be Nobel Peace prize winners because they brought bad guys together to the peace table. In effect, I would argue to you, that institutions like the Tribunal and the International Criminal Court are to protect us from ourselves. But, in effect, this is the greatest triumph of the 21st century, of the UN system in the international legal order. If I may just end with these words, justice is not a threat to peace, peace is a product of justice, of legality.

II.

RESPONSE TO THE KEYNOTE: QUESTIONS AND ANSWERS

A. *What can be done to strengthen the State institutions of Bosnia-Herzegovina?*

Dayton is a compromise not only between two parties, but between justice and injustice, between democracy and a rather awkward non-democratic system. We have right now, an ethnically stratified political system. Basically, if you are a Bosnian Muslim, you only vote for Bosnian Muslims; if you are a Serb, you only vote for Serbs; if you are a Croat you only vote for Croats; and if you are a Jew, well then, you've got to choose one of these. That is a major problem because I heard Senator Mitchell speak once on Northern Ireland where he said, I don't know how in the heck we are ever going to have peace in Northern Ireland, if the only people that a political leader has to appeal to are those of the same ethnic or religious group. That is, a leader has nothing to lose, by being ever more demanding on behalf of that so-called, ethnic or religious constituency that he represents. Therefore, that is the most basic flaw of the Dayton peace agreement. The idea of fixing these institutions to make them stronger only becomes a technical problem which I don't really want to get into now because it will take too much time and drag us into too much detail.

B. *What can the UN do to avoid the mistakes of neutrality that occurred in Bosnia-Herzegovina or of the reluctance or omission as you described it?*

It has already done the most important thing . . . if you would like to take a look at the Srebrenica report, you can, and it is on the Internet. It says in this report that one of the major mistakes that the UN made was neutrality. Impartiality is necessary, but too often, those two concepts (neutrality and impartiality) are confused. And, I have to tell you right now, that if I saw two people fighting right outside this door, my initial reaction would be to walk in there and to be a peacemaker and to say, guys cut it out. Not knowing that maybe one is pummeling the other for no reason. It is our human reaction to view two combatants as somehow being both victimized and somehow both culpable, and I think it is the last point that worries me. Impartiality means that you understand the situation from a fair perspective and that then you begin to address it. Neutrality means that in effect it becomes an end to itself, that I don't want to get involved too much so therefore, I'll try to help them, but if both of them don't want to work with me, so be it, and I'm going to let one continue to pummel the other.

Pacifism has been abducted by some of the world's great villains. They expect that the world will do everything it can to avoid confrontation and by that time, they will have done their dirty deed. Pacifism, I think, needs to be revisited as a philosophy as an ideology simply because I'm afraid we cannot assume that conflicts are just a matter of parties that do not understand each other in good faith. There are too many political leaders who use confrontation, who use war, who use genocide as tools to promote their own ends. That is their power, their economic needs, and simply their ability to control the political system of a political country or region.

C. At the opening of your remarks, you refer to the political dynamics of the UN Security Council. To create a more effective UN system, would you recommend revamping the structure of the Council, what specifically would you recommend as a representative of a State, and how would that affect the UN ability to enforce its own resolutions?

There are easy ways and hard ways to reform the Security Council so let's try to be pragmatic rather than idealistic. Because, if we all accept the idea of the UN as something which has value, which I do, then, let's not have the UN cease to exist just because some countries pull out. Which means, first of all, it will be very difficult to deprive any country which now has the veto from having the veto in the future. But, I think that we can demand that countries explain their veto and that this in effect almost establishes a precedent where down the road, precedent would have to be invoked when countries use the veto, or for that matter, vote in a certain way within the Security Council.

Second, I think it is important to broaden the membership of the Security Council to reflect the fact that there are many more countries now than when the original Security Council was originally envisioned. And, frankly, to increase transparency because greater numbers mean greater transparency and also to give other countries the opportunity to bring new ideas, fresh ideas into the Council. The permanent members are frankly not interested in revising the system and maybe for good reason in terms of their own self-interest. That's why

you need to have more countries as elected members, not permanent members, coming through and, in effect, I think that would make it more difficult to exercise the veto if there is an overwhelming majority instead of say 14-1, of 24-1 or 20-1, in any particular vote. Yes, there may be some problems in efficiency with a larger Council, but frankly, I don't think that is the problem that is keeping the Security Council from being reformed. Ironically, we have some would-be members of the Security Council competing among themselves. The "wannabes" as one would call them, who seem to have some of the characteristics of the "haves" and who somehow would like to use those characteristics to promote themselves into a position of permanent member and even veto-wielding member, I would very much resist the idea of new veto countries. And, I'm not sure I'd like the idea of too many more permanent members.

D. Could you please comment on the idea that Izetbegovic, Tudjman and Milosevic are all leaders cut of the same cloth, i.e. they were all out of the former communist regime who latched onto nationalism as a way of staying in power as communism and socialism collapsed. Also, as there is globalization of information about conflict, and as we become inundated with information about a conflict and hear representations from many sides about the evidence, how are we at a distance to think about the important differences, the subtle differences of what is going on, how do we assess all that?

I think that there is an assumption being made on the surface of the question which is incorrect at least in one point—that is that Izetbegovic actually was never a Communist and was in jail on numerous occasions due to the Communist rule. Tudjman himself at one time was a Communist but walked away from it in favor of becoming what we have now learned to be a Croat nationalist. Milosevic in effect has never relinquished the title of socialist but of course he has adopted the new title of nationalist—nationalist socialist—sounds somewhat familiar. But maybe rather than argue about the theory of it, let's get into the substance of what stands behind this question. And, I'm not assuming anything about the person asking this question.

I think there is a tendency to try, once again, to equivocate. There are many Bosnians who may not be supportive of President Izetbegovic in terms of his overall political positions or his vision of where the country goes. But, by no means, could he ever been accused of initiating a nationalist war. I think that there is a tendency particularly in the West to somehow say that if we throw out everything that is old and start out with something that is completely fresh, that this is for the good. Maybe there is something to that. I think though that with throwing out the old they are trying to get rid of their guilt, their own responsibility. Because if somehow you take the three leaders of what are perceived to be the three major warring elements in the former Yugoslavia, and you identify all of them as somehow being culpable, then that means you really didn't have the responsibility to step in and help anyone, that really no one was a victim. It just happened that some were a little bit stronger. But if Izetbegovic had the means, he would have been doing this to Tudjman's guys and Milosevic's guys

and this is frankly not true. This was not an ethnic war where somehow it just happened that Serbs had more weapons and they first took it out on the Croats and the Croats got strong and they took it out on the Bosnians as well. It was much more about I think, at one level, the question of maintaining power. But remember, Izetbegovic and Tudjman, to their credit, were elected in the post-Communist period, while Milosevic was elected in the period before Communism collapsed, and in fact, he very much adopted nationalism as a way to transition the period from Communism to this new brave world. And he understood something, I think, which is very clear. That, the idea that somehow the far left and the far right are somehow at opposite ends of the spectrum is not accurate. This is a three-dimensional picture and the far left of socialism and the far right of nationalism in effect meet in the back in the methodology of a totalitarian system. So, he understood that he could easily go back and forth between socialism and nationalism as he needed with one objective, to maintain the methodology of a totalitarian State. I cannot lay that on President Izetbetovic's shoulders, and although I find much fault with Mr. Tudjman's rule, I'm afraid he cannot be somehow cited as the initiator of this conflict because he was somehow trying to hold onto power as an old communist leader.

E. Could there have been any possible compromises between Yugoslavia and Bosnia-Herzegovina rather than the results which followed?

First of all, Bosnia-Herzegovina was committed to the notion that the old Yugoslavia should survive. We thought for all sorts of reasons that it was best. We thought that the reigns of central authority would have to be weakened and that what was a federalist system might have to become a confederalist system. But, there were forces on one side or the other that were not willing to let it happen or weren't really willing to make the necessary compromises. In the end, let me just speak from a Bosnian perspective, what was left to Bosnia-Herzegovina was either to choose independence as did the other ex-republics, like Macedonia, like Croatia, like Slovenia, or to in effect become like Kosovo. And, as we all know, Kosovo went along for awhile, and then inevitably, the ethnic cleansing came to visit Kosovo. So, I don't think it was a very realistic possibility, and I don't think that most Bosnians, certainly the non-Serbs, wanted to accept the notion of living in a new Yugoslavia dominated by Mr. Milosevic who not only was obviously a leader from the Communist times, but who was now using Serbian nationalism as his major tool to maintain power. The notion that somehow Bosnians couldn't live with Serbs, though, I don't accept. Because, of course, Bosnia is made up of many Serbs. So I can't tell you that somehow we can live with Serbs within Bosnia but we can't live with Serbs in the context of a rump Yugoslavia. I think the problem was that we couldn't live with this political leadership in Belgrade and everything is about timing.

I'll tell you just a little interesting point. Just a few days ago, I hosted the Crown Prince of Yugoslavia, Prince Alexander, at the United Nations for lunch. And I hosted Mr. Panic, the former Prime Minister. Simply because I want to get the notion across that we actually can very well find common ground. We

don't have to agree on everything, but we can find common ground. The problem is we can't find common ground with the Milosevic regime. And as much trouble as I have with the Milosevic regime, people like Crown Prince Alexander and Milan Panic and the opposition has as much problem with it. So, I think, to be very fair to that question, ethnically, the problem did not exist or was not there to the point that disintegration was necessary. But, political realities dictated that Bosnia had no choice but to go as an independent country.

F. During your presentation, you commented in part that you were critical of the idea that one should deal with those with unclean hands, those who created the conflict. There are a number of conflicts around the world where there are substantial displaced populations; the situation is now static and those people face a substantial amount of time in the future outside of their homelands. What about them?

We all politicians and diplomats have unclean hands; lets be clear about that. I think I used the term bloody hands. And, there is a big distinction. When someone initiates genocide, when someone is chopping off the limbs of innocents, then I think you've crossed the road. I'm not suggesting that morality and somehow self-righteousness should be the basis for diplomacy. But I think we cannot lose the moral compass. And when that moral compass is clearly pointing in the opposite direction, do not believe that making peace with a mass murderer is either consistent with justice or is consistent with peace, that is long-term security. I believe that this has been the case with Mr. Milosevic. I believe that there are other instances around the globe which are worthy examples. But let me again use Mr. Milosevic's example. In Dayton, he was hailed as the peacemaker. He walked out of Dayton as someone who basically stood on the same platform as Bill Clinton. And what did he do? He ended up doing what he did in Kosovo, but just as importantly, which most people forget, he basically undermined the whole concept of transition towards democracy in Serbia itself. One of the first acts he did when he went back to Serbia was close down many of the independent press, make the whole university system very much accountable to the regime, so that now the opposition in Serbia itself is much, much weaker and much more divided because of the credibility and opportunities that Mr. Milosevic was given during Dayton immediately prior and after.

G. In your remarks you mentioned that the lawsuit before the International Court of Justice and its use in its judgment of the word genocide though the Security Council had not. What role do you think the ICJ could and should play in facilitating transparency within the Security Council?

Most of you have, I'm sure learned the experience of the U.S. judicial system, the U.S. Supreme Court, in *Marbury vs. Madison* and other similar examples. I think a court sometimes has to assert its position. So far, if you look at the international legal order, the weakest part in fact is the legal system. It is not because the laws are weak; it is because the application of the laws is weak. From giving these laws a chance to be adjudicated or debated in the context of

the legal system to the implementation of the decision of the Court. For instance, it is always interesting in the Security Council, you hear diplomats debating legal standards and just totally using them for political arguments. And, if someone ever suggested that this matter should be taken to the ICJ, they would say well, that is not their authority. I would say, quite to the contrary. And, the United Nations organs, all of them, do have the right, and I would also say the responsibility, to ask for advisory opinions on matters of importance to the international community. For instance, when we talk about the issue of aggression or genocide, lets say in Rwanda, the Security Council, the General Assembly and other international, that is UN bodies, could have asked for an advisory opinion and I think this should have been done more extensively. But, a lot of it has to do with money and who will eventually enforce the judgment. Money, because the Court will tell you that they can hear only very few cases a year. And finally, what happens is if they do have a ruling where one of the big powers doesn't like it, effective enforcement of the ruling is blocked and makes the Court look rather silly as has happened on some occasions. But, it is not because the judges are silly or the Court is silly, it just obviously doesn't have the necessary respect. And, I'm not sure what is the complete answer to this question except that it is a step-by-step process and I think advisory opinions in these types of situations are in fact a good way to go.