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AT THE TABLE IN SARAJEVO: REFLECTIONS ON ETHNIC SEGREGATION IN BOSNIA

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The only thing necessary for the triumph of evil is for good men to do nothing. ⁿ¹

I was exposed to this Burkean critical maxim during my own ethical formation as a Vincentian major seminarian preparing for priesthood in the Roman Catholic Church. Although I completed my divinity degree without being ordained, my vocation ⁿ² [*212] was to teach in high school both before and after law school and ultimately as a graduate faculty member in higher education. In fact, my academic specialization in Education Law led to my involvement in, and ever deepening concern for, Sarajevo, Bosnia and Herzegovina. ⁿ³ More specifically, my pursuit of a career as an academic, rather than a practicing attorney, albeit ultimately in a College of Education, is an extension of a lifelong desire to engage in a vocation of public service, whether in the classroom or in the halls of justice. ⁿ⁴

[*213] My experiences and observations in Sarajevo during April and December of 1997 have powerfully affirmed the truth of the Burkean maxim, and further, the moral imperative of affirmative ethical conduct in the Christian tradition. ⁿ⁵ While on my first visit to Sarajevo about a year and one-half after the December 1995 signing of the Dayton Peace Accords, ⁿ⁶ I was horrified by the sight of the large-scale destruction inflicted upon that beautiful old European city. In an era when CNN flashes electronic images instantaneously around the globe, the West stood by in an impotent stupor ⁿ⁷ as Serbian nationals and other combatants inflicted the heinous policy of ethnic cleansing ⁿ⁸ and other horrors on innocent victims throughout Bosnia.

The destruction of Bosnia has been well-documented with graphic realism in both legal ⁿ⁹ and other publications ⁿ¹⁰ as well as [*214] in film. ⁿ¹¹ A reasonably well-functioning, genuinely multi-cultural nation prior to the outbreak of fighting, ⁿ¹² Bosnia's population dwindled during the hostilities as large numbers of citizens fled their war-torn homeland. ⁿ¹³ Among the hardest hit regions in Bosnia were the countryside and large cities, most notably Sarajevo, which became home to large numbers of displaced men, women, and children. ⁿ¹⁴

A less well-documented, but no less real, tragedy is the harm inflicted upon the children of Bosnia who not only lost their innocence to war, ⁿ¹⁵ but also witnessed the destruction of their schools and futures. Moreover, under the policy of forced ethnic segregation in the schools, introduced on January 22, 1997, ⁿ¹⁶ and repealed on November 10, 1997, ⁿ¹⁷ it appeared for a time that the pernicious Plessy-like ⁿ¹⁸ doctrine of "separate but equal," the long- [*215] time blight on the American legal and cultural landscape, was about to become the law of the land throughout Bosnia. As the only foreign national, let alone American, to serve on a roundtable, or public hearing, on education in Bosnia and Herzegovina after the policy was repudiated, I decided to write this essay to describe my reflections on this experience. The first section details my experiences in Sarajevo. The second section briefly reflects on the ethical implications of events in Bosnia for lawyers committed to Burkean resistance to the evils of indifference.

I. Sarajevo: A City on the Brink

Sarajevo calls to mind vastly contrasting images. Some may have vague memories of Sarajevo as home to the successful 1984 Winter Olympics.ⁿ¹⁹ More recently, however, most will recall Sarajevo as the city caught in the middle of another terrible example of man's great capacity for inhumanity. The December, 1995, signing of the Dayton Peace Accords,ⁿ²⁰ ending the war in Bosnia and Herzegovina, created a special bond between the people of Bosnia - especially of Sarajevo - and the people of Dayton, Ohio. Consequently, when the President of the local chapter of the Friendship Forceⁿ²¹ invited the University of Dayton to participate, my Dean in the School of Education, along with the Director of International Programs, asked me to accompany the group on a week-long visit to Sarajevo at the end of April 1997. I joined the faculty at the University of Dayton as Professor and Chair of the Department of Educational Administration in the School of Education in July 1996. My academic specialization in Education Law helped to meet one of the expressed needs of the leaders in Sarajevo and, therefore, I was invited to make the trip. I was happy, although a little apprehensive, to travel to Bosnia, as it would afford me the opportunity to provide service [*216] in a new and different arena, one unlike anything I had ever experienced. During my first visit to Sarajevo, I met with the former Deputy Minister of Education, Mr. Asim DonliD,ⁿ²² visited schools to assess ways in which the University (and I) might be of service, and made contacts that would help pave the way for my return.

Prior to the most recent outbreak of war in the Balkans, Sarajevo's 400,000ⁿ²³ residents lived in a thriving, cosmopolitan, truly multi-cultural city. Situated in a valley near the boundary of East and West,ⁿ²⁴ Sarajevo's (mostly secular) Moslem, Croat (Catholics), and (Bosnian) Serb (Orthodox Christians) residents lived and worked alongside each other in harmony for generations.ⁿ²⁵ Yet, Sarajevo was forever altered on April 6, 1992, when Serbian gunmen perched on the roof of the Holiday Inn, not far from the center of the city, and fired indiscriminately on anti-war demonstrators.ⁿ²⁶ That evening, Serb artillery forces in the nearby mountains started a 1000-day siege, the longest suffered by any city during this century.ⁿ²⁷ Today, almost six years after [*217] the shelling began, the ethnic make-up among Sarajevo's 349,000 residents has taken on a very different look, as many who fled their beleaguered city have returned along with large numbers of displaced Bosnians.ⁿ²⁸

Having read about Sarajevo and the war in Bosnia prior to my initial departure, I had hoped to be prepared for the aftermath of the carnage that I would witness. Sadly, I was not. In fact, even as our plane approached Sarajevo, the prominent sight of widespread, wanton damage to civilian targets in city and countryside was mind-boggling.

Many large office buildings, hospitals, schools, factories, mosques, and churches in Sarajevo remain in varying stages of ruin. Moreover, almost every structure in the city was damaged by the Serbian siege.ⁿ²⁹ The most heart-rending sight in Sarajevo is the more than 10,000 graves of war victims interred in a massive cemetery adjacent to the Olympic stadium and ice arena.ⁿ³⁰ Smaller burial sites are located in parks and public property throughout the city.

As Sarajevans seek to rebuild their city, they are faced with formidable tasks. The city still awaits the billions of dollars that will be necessary to repair damage to its infrastructure.ⁿ³¹ In ad [*218] dition to massive rebuilding and restoration projects, the city lacks many necessities that are mainstays of urban life. A serious deprivation is that water supplies are not always readily available throughout the city; many homes have water for only about two hours in the morning and for another two hours at dinnertime.ⁿ³²

Another grim reminder of the war is the state of the Sarajevan school system. Sarajevo's battered school system currently serves about 58,000 students in fifty-two primary/middle and thirty-four secondary public schools.ⁿ³³ The city also has one Catholic school and a Bosniac high school. During the war virtually every school was damaged and at least two primary/middle schools were destroyed.ⁿ³⁴ Yet, amazingly, the schools managed to continue functioning throughout the war as educators conducted classes in their homes and moved children to safe locations throughout the city. Consequently, the schools in Sarajevo are confronted by a multitude of problems ranging from lack of adequate facilities to finding ways to meet the needs of and integrating large numbers of displaced students. A particularly significant concern is providing adequate counseling [*219] and psychological services for children (and staff) who were traumatized during the war.ⁿ³⁵

The presence of United Nations peacekeepers, clearly visible throughout Sarajevo, has to some extent restored a sense of normalcy to the city.ⁿ³⁶ Still, as an American who had not previously experienced the sorrow of war firsthand, the sight of personnel carriers and heavily-armed soldiers patrolling the streets was disconcerting. Even with the indefinite extension of the mission for the large American component of the multi-national peacekeeping force, peace is far from assured.ⁿ³⁷ If anything, it can easily be argued that the "peace" is merely a temporary, artificial cessation of hostilities rather than a true peace wherein enemies have learned to live with one another in harmony. As the residents of Sarajevo make a valiant effort to rebuild their shattered lives, one can only hope that the rest of the world will help to assure a just and lasting peace in Bosnia.

My second trip to Sarajevo left me very dismayed; not nearly enough has been done to repair the city. It is painfully evident that despite two billion dollars in foreign aid, and the promise of another 1.5 billion in the near future, ⁿ³⁸ much more is needed to pay for the still-unmade repairs to buildings and infrastructures. Fortunately, however, progress is being made to ensure that [*220] schools in Bosnia remain open to all children. Although serious disagreements still remain over the content of the curricula and textbooks used in Bosnian schools, on November 10, 1997, the Minister of Education, Fahrudin Rizanbegović, signed an order rescinding the ill-conceived Plessy-like policy of ethnic segregation. ⁿ³⁹

In the midst of the heated controversy over segregated schooling, a staff attorney in the Office of the Ombudsman, which was created by the Dayton Peace Accords to oversee the status of civil rights in Bosnia, ⁿ⁴⁰ invited me to participate in a roundtable, to develop a strategy to eliminate this deleterious policy. I was asked to participate because I was a part of a small contingent from the University who had already traveled to Sarajevo, and we had already begun providing assistance to the Office of the Ombudsman. Based on the successful efforts of the Office of the Ombudsman and international civil rights groups to abolish the policy, the focus of the roundtable shifted to devising methods of ensuring equal educational opportunities for all children in Bosnia.

During my December visit to Sarajevo ⁿ⁴¹ I made two presentations to faculty and students in the Faculty of Philosophy, Science of Education, at the University of Sarajevo. My first talk was on the history of equal educational opportunities in the United States. After conferring with my colleague at the University, Dr. Adila Kreso, I put aside my prepared remarks on school governance and devoted the second session to an open-ended question and answer period on a variety of thoughtful questions, most notably the place of religion in the schools, special education, and the role of women in American education and society. ⁿ⁴² My goal, with the support of officials at the University of Dayton, is to nurture the growing links between our institutions so that we can assist educators in Bosnia in helping to restore a sense of normalcy to their schools.

[*221] The roundtable, consisting of three panel discussions and a wrap-up session, met for a full day in Sarajevo on December 16, 1997. Of the more than eighty people present, I was the only one of the ten or so foreign nationals to serve on the panels. The roundtable was attended by representatives from Bosnia and Herzegovina, notably Sarajevo, Tuzla, Gorazde, Livno, and Mostar as well as Banja Luka in the Republika Srpska. Despite the cold weather that accompanied the previous night's snowfall, the atmosphere in the courtroom where the representatives met was highly charged.

Following an introduction by Ombudsman Vera Jovanović and comments by the Minister of Education about the great importance of restoring the school system, the day was underway. During the three main sessions, the panelists offered their views, with the floor being open to lively participation and debate from the audience, as a number of persons read prepared statements into the record.

The first panel was meant to examine legislative activity and structures in Bosnia, but primarily focused on curricular issues. I presented an overview of equal educational opportunities in the United States, starting with the Supreme Court's landmark 1954 decision in *Brown v. Board of Education* ⁿ⁴³ that prohibited the nefarious practice of "separate but equal." ⁿ⁴⁴ Emphasizing that I was present neither to proselytize the American approach nor to assert that our system is perfect, I suggested that Americans and Bosnians could learn from each other while attempting to eradicate prejudice.

The second session, which was scheduled to discuss both curricular issues and private schooling, focused on the latter. In light of the crucial role of religion in Bosnia, I traced the legal development of American non-public schools, especially those that are religiously affiliated. ⁿ⁴⁵ The third, and briefest, panel concentrated on schooling for a civic society, military education, and special education. ⁿ⁴⁶

[*222] Participants in the wrap-up session offered their recommendations for improving education in Bosnia. Panelists suggested adopting such measures as permitting religious and ethnic minorities to retain their identities in the schools, while searching for links in the world community which would aid these minorities in the struggle to restore a sense of normalcy in their educational system. Among other items, I urged the Federal Office of the Minister of Education to adopt a pro-active role in promoting education as a powerful integrating factor. I suggested that revised curricula and reading materials, developed by qualified representatives of the various ethnic groups in Bosnia's multi-cultural society, should emphasize democratic principles to ensure equal educational opportunities for all students. Finally, I agreed with speakers who urged the Ombudsman to sponsor similar roundtables throughout Bosnia. ⁿ⁴⁷

[*223] The day ended short of achieving universal agreement on ways of ensuring equal educational opportunities for all children in Bosnia and Herzegovina. Even so, there was strong support for keeping the schools open for all students while searching for ways to permit Bosnian, Croatian, and Serbian children to preserve their ethnic identities.

The roundtable was a successful first step toward helping schools in Bosnia, to the extent that it brought individuals with a variety of sharply differing viewpoints together in an environment that fostered frank, open and civil conversation. It is clear that even in the absence of a consensus, let alone unanimity, on how to achieve equal educational opportunities for children in a land that has suffered greatly from the ravages of war, significant strides are being made. ⁿ⁴⁸

II. Reflections

As an alumnus of the Law School at St. John's University, the largest Catholic university in the United States, ⁿ⁴⁹ and as a witness to the tragic aftermath of the conflagration in Sarajevo, I have struggled with my decidedly mixed feelings about American involvement in Bosnia. On the one hand, I share the concern of many, and am reluctant to see American forces sent into any dangerous combat region, ⁿ⁵⁰ especially one as potentially explosive as Bosnia. These considerations are particularly important as there is an absence of national and international support for a clearly defined mission and a plan for an orderly withdrawal when the mission is completed. President Clinton's recent decision ^[*224] to extend the American mission in Bosnia indefinitely has heightened my concerns. ⁿ⁵¹ On the other hand, Edmund Burke's words ⁿ⁵² remind me that if the United States had not assumed a key leadership role in striving to bring about a just and lasting peace in Bosnia, then the senseless killing of innocent children, women and men would have continued. Therefore, even at the risk of turning American combat forces into a kind of world police force, the need to protect innocents, especially children, from further harm outweighs political considerations over foreign policy in Bosnia. Keeping in mind that events in Bosnia may not be of paramount importance to American legal practitioners, the purpose of the remainder of this essay, consistent with Madison's assertion that "justice is the end of government," ⁿ⁵³ is to reflect briefly on the responsibility of legal communities in pursuit of justice.

Lawyers and the systems within which they work, whether local, national or international, must be committed to following the often quoted dictate that "if you want peace, work for justice." ⁿ⁵⁴ Law schools can begin the process of achieving this end by developing curricula that do more than simply provide their graduates with a technical knowledge of the law. ⁿ⁵⁵ Rather, law schools should pro-actively equip future attorneys to move beyond the basics of contracts, civil procedure and the like in order to help bring about justice, in at least two ways. First, law schools can add classes or modify existing course structures to place an appropriate emphasis on human rights. ⁿ⁵⁶ Second, institutions can require law students, and perhaps even their faculties, to provide a variety of pro bono legal services. ⁿ⁵⁷ An approach ^[*225] of this nature will help lawyers take to heart the concerns expressed in legal documents such as the Declaration of Independence, the Constitution, and various United Nations documents, ⁿ⁵⁸ to create a system that genuinely fosters respect for basic human rights.

Perhaps the best example of how attorneys, as part of the international community, acted in pursuit of justice was the Nuremberg Trials conducted after World War II. ⁿ⁵⁹ The Nuremberg Trials, largely under the direction of Robert H. Jackson, Associate Justice of the United States Supreme Court ⁿ⁶⁰ who served as Chief Prosecutor, brought many Nazi leaders to justice. ⁿ⁶¹ Admittedly, there are significant differences between recent events in Bosnia and Herzegovina and Nazi Germany, not the least of which is the incredible scale of Nazi atrocities ⁿ⁶² and the consensus among Western Nations seeking justice in 1945. ⁿ⁶³ This consensus is not present today as there is apparent disagreement over the extent to which the United Nations and its War Crimes Tribunals should pursue indicted war criminals such as Slobodan Milošević ⁿ⁶⁴ and Radovan Karadžić ⁿ⁶⁵ who remain free and ^[*226] continue to exercise their considerable authority with impunity. ⁿ⁶⁶ Even so, there are important similarities between the atrocities in Germany and Bosnia. For example, the genocide inflicted by both the Nazis and various combatants in Bosnia, most notably the Serbs, arose out of the perverse desire for ethnic cleansing that reduced innocent women, children, and prisoners of war to sub-human status as targets for destruction. ⁿ⁶⁷ In addition, religious hatred was a rallying cry for hate mongers ⁿ⁶⁸ in both cases. In light of the parallels between the zenith at Nuremberg and the nadir in Bosnia of the rule of law in the twentieth century, American attorneys can learn important ethical lessons by reflecting on what has transpired in Bosnia as a departure point in considering their obligations in pursuit of justice. ⁿ⁶⁹

The first lesson for attorneys is that, as important as it is to be concerned with the needs of their clients, they must also learn to "think globally and act locally." ⁿ⁷⁰ Attorneys can model this behavior by demonstrating their concern for basic human rights, including respect for life in all of its forms, freedom of religion and providing schools for all children, whether in America, in Bosnia, or elsewhere in the world. As such, a Christian lawyer should be motivated by concern for "the least of these" ⁿ⁷¹ who have been deprived of their fundamental rights. Moreover, in caring for those

who cannot fend for themselves, attorneys [*227] should develop an appreciation for what they have so that their service is a form of returning something to the community. American attorneys must, while valuing what they have, become less attached to their possessions, and be willing to part with some of their property so that others who have nothing might at least have something. This need to be less possession-oriented was accentuated by the experiences of my friends in Sarajevo, all of whom lived in comfortable, middle class surroundings before the fighting. I care, and feel, deeply for my friends who expressed that they never could have imagined the horrors that they would experience, or the sufferings that they endured, from food deprivation to having to forage for firewood to heat their homes in the dead of a frigid, war-time winter.

Today's law school graduates, many of whom fill key leadership posts in the government, must do all that they can to ensure that neither American, nor any other nation's policies, are predicated on religious or ethnic hatred. At the same time, these attorneys must do everything possible to ensure compliance with accepted standards of human rights within the international community. Unfortunately, during my first visit to Sarajevo I spoke with Moslems who, because of contemporary Western attitudes, especially those evidenced in the motion pictures and television, and American involvement in the Persian Gulf, were disenchanted with America. These Moslems wondered whether the West would have acted more promptly during the destruction of Bosnia if the victims had been of a different religious or ethnic background or if American economic interests were more at risk. With this in mind, at the very least, all lawyers share in the duty of raising social consciousness of the moral imperative to treat others as they themselves would wish to be treated.

Individual attorneys should provide assistance in ways that most appropriately fit their talents. For example, academicians could heighten others' awareness of the world around them through writings which expose the horrors of war and injustice. They can also participate in exchange programs, whether in Bosnia or other parts of the world. Practitioners, and academicians, can help by expanding their pro bono services to help war-torn countries, such as Bosnia, develop laws and regulations that will assist them in restoring their business infrastructures and economic well-being to pre-war standards. All practitioners can offer free or reduced legal services to refugees living in the [*228] United States.

Regardless of whether individual attorneys are inspired to help the residents of Sarajevo and greater Bosnia as they struggle to restore normalcy to their lives, it is important to keep Burke's dictate in mind and act to help others whether at home or abroad. The goal should be to follow not only Burke but, more importantly, for those of us who are Christians, as well as for those of us who are not, the example and words of Jesus, who reminded us of our ethical obligation to love our neighbors as we love ourselves. ⁿ⁷²

Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & Procedure Counsel Right to Counsel General Overview Education Law Instruction Curricula Standards Legal Ethics Public Service

FOOTNOTES:

n1. Attributed to Edmund Burke, in John Bartlett, *Familiar Quotations* 332 (Justin Kaplan ed., 16th ed. 1992). This quote has not been found in any of Burke's writings, see *id.* at 332 n.3, and one authority suggests that the quote is a paraphrase of Burke's statement that "when bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle." Emily M. Beck, *Preface to John Bartlett, Familiar Quotations* at ix (Emily M. Beck ed., 15th ed. 1980). For more on Edmund Burke, the 18th-century Irish conservative theorist, see generally Russell Kirk, *The Conservative Mind: From Burke to Eliot* (7th rev. ed. 1986); Michael W. McConnell, *Establishment and Toleration in Edmund Burke's "Constitution of Freedom,"* 1995 *Sup. Ct. Rev.* 393 (1996); Ernest Young, *Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation,* 72 *N.C. L. Rev.* 619 (1994); James G. Wilson, *Justice Diffused: A Comparison of Edmund Burke's Conservatism with the Views of Five Conservative, Academic Judges,* 40 *U. Miami L. Rev.* 913 (1986); J. F. Davidson, *Natural Law and International Law in Edmund Burke,* 21 *Rev. Pol.* 483-94 (1959).

n2. For an interesting, and welcome, contribution to the growing literature on vocations in the law, see David L. Gregory, *The Discernment of (the "Law Student") Vocation in Law,* 66 *Fordham L. Rev.* 1425 (1998); Robert W. Gordon, *Law as a Vocation: Holmes and the Lawyer's Path,* in Oliver Wendell Holmes, Jr., and *The Path of the Law* (Steven Burton, ed. forthcoming 1998) (cited in David Luban, *The Bad Man and the Good Lawyer: A Centennial Essay on Holmes's The Path of the Law,* 72 *N.Y.U. L. Rev.* 1547, 1548 n.9 (1997)); see also Thomas L. Shaffer, *The Christian Lawyer -- An Oxymoron?*, *America*, Nov. 23, 1996, at 12, 12-17.

n3. "Bosnia and Herzegovina," the title used in the Dayton Peace Accords, replaces "Republic of Bosnia and Herzegovina," the name under which the nation was admitted to the United Nations in 1992 following the collapse of the former Yugoslavia. See Paul C. Szasz, *Introductory Note, Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes,* 35 *I.L.M.* 75, 79 (1996) (discussing Annex 4 of the agreement which recognized the continuation of the Bosnia-Herzegovina republic as

just "Bosnia and Herzegovina"). The country is actually composed of two entities: the "Federation of Bosnia and Herzegovina" and "Republica Srpska," home to the Serbs. See *id.* at 76. This Article uses "Bosnia and Herzegovina" or "Bosnia" to refer to the entire country without addressing a particular political entity.

n4. I have endeavored to demonstrate the conceptual and practical applications of my religious faith tradition of Roman Catholicism to improving the interrelated arenas of education and labor. For example, Catholic social teaching on the fundamental and universal rights of all workers is an especially eloquent and powerful voice for human dignity. In some important aspects of my writing I continue, alone and with colleagues, to explore how the applications of the Church's social teaching on the fundamental and universal rights of all workers is an especially eloquent and powerful voice for human dignity. I am particularly interested in how the social teachings of the Church can positively enhance the workplace and employment relations dynamics of Catholic institutional employers and their employees with particular, but not exclusive, reference to the educational setting. See, e.g., Charles J. Russo & David L. Gregory, *Some Reflections on the Catholic University's Tenure Prerogatives*, 43 *Loyola L. Rev.* 181 (1997); David L. Gregory & Charles J. Russo, *The Supreme Court's Jurisprudence of Religious Symbol and Substance*, 28 *Loyola U. Chi. L.J.* 419 (1997); Charles J. Russo & David L. Gregory, *The Return of School Prayer: Reflections on the Libertarian-Conservative Dilemma*, 20 *J. L. & Educ.* 167 (1991); David L. Gregory & Charles J. Russo, *Let Us Pray (But Not "Them!"): The Troubled Jurisprudence of Religious Liberty*, 65 *St. John's L. Rev.* 273 (1991); Charles J. Russo, *NLRB v. Catholic Bishop of Chicago: Collective Bargaining in Roman Catholic Secondary Schools Ten Years Later*, 57 *Educ. L. Rep.* 1113 (1990); David L. Gregory & Charles J. Russo, *Overcoming NLRB v. Yeshiva University by the Implementation of Catholic Labor Theory*, 41 *Lab. L.J.* 51 (1990); Charles J. Russo, *Academic Freedom and Theology at the Catholic University of America: An Oxymoron?*, 55 *Educ. L. Rep.* 1 (1989).

n5. See, e.g., James 2:26 (New American). "Be assured, then, that faith without works is as dead as a body without breath." *Id.*; Dan Edwards, *Reflections on Three Stories: "Practicing" Law and Christianity at the Same Time*, 27 *Tex. Tech. L. Rev.* 1105, 1110-12 (1996).

n6. Dayton Peace Accords, (Dec. 14, 1995), U.N. Document A/50/810-S/1995/1021, Annex, Dec. 8, 1995, reprinted in 35 *I.L.M.* 75 (1996). The Peace Accord is an agreement between the republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, see *id.* at 89, and involved NATO, see *id.* at 102, and the United Nations, see *id.* at 188. It provides for Bosnia to be a single country divided into a Muslim-Croat Federation and a Serb Republic, see *id.* at 77.

n7. For an interesting discussion of the West's failed policy, see James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (1997); David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (1995).

n8. For an outstanding essay review of a dozen books on genocide and ethnic cleansing, see Mark Danner, *America and the Bosnia Genocide*, *N.Y. Rev. Books*, 55, 55-65 (Dec. 4, 1997); David M. Kresock, Note, "Ethnic Cleansing" in the Balkans: The Legal Foundations of Foreign Intervention, 27 *Cornell Int'l L.J.* 203 (1994).

n9. See, e.g., Svetozar Stojanovic, *The Destruction of Yugoslavia*, 19 *Fordham Int'l L.J.* 337 (1995); Peter J. Cannon, *The Third Balkan War and Political Disunity: Creating a Confederated Cantonal Constitutional System*, 5 *J. Transnat'l L. & Pol'y* 373 (1996); Nicole M. Procida, Note, *Ethnic Cleansing in Bosnia-Herzegovina, A Case Study: Employing United Nation Mechanisms to Enforce the Convention on the Prevention and Punishment of the Crime of Genocide*, 18 *Suffolk Transnat'l L. Rev.* 655 (1995).

n10. In addition to other works cited herein, see, e.g., Jan Willem Honig & Norbert Both, *Srebrenica: Record of a War Crime* (1997); Rezak Hukanovic, *The Tenth Circle of Hell: A Memoir of Life in the Death Camps of Bosnia* (1996) (Colleen London & Midhat Ridjanovic trans., Ammler Alculay ed.); Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia* (1996); Norman L. Cigar, *Genocide in Bosnia: The Policy of "Ethnic Cleansing"* (1995); Bogdan D. Denitch, *Ethnic Nationalism: The Tragic Death of Yugoslavia* (rev. ed. 1996).

n11. Michael Nicholson, *Welcome to Sarajevo* (1997) (describing the story of a British journalist's adoption of a nine year-old Bosnian girl, which has been turned into a motion picture released by Miramax Films). See Lisa Schwarzbaum, *News of the Whirl Reporters Reel from a City Under Siege in the Torn-from-the-Headlines Welcome to Sarajevo*, *Ent. Wkly.*, Nov. 28, 1997, at 57, available in 1997 WL 16155404.

n12. In 1991, Bosnia and Herzegovina had a population of 4,354,911, of whom 1,905,829 were Muslims, 1,363,258 were Serbs, 755,895 were Croats; the remainder of the population was composed of Jews (total unavailable), Yugoslavs (239,945), and others (93,747). See Robert J. Donia & John V.A. Fine, Jr., *Bosnia and Herzegovina: A Tradition Betrayed*, 86-87 (1994). Bosnia was the only former Yugoslav Republic where Muslims made up the largest portion of the population, 44%. See Lee Hockstader, *In Bosnia, Peace on Paper but Not in Practice; West Can Enforce Order but Not Impose Unity*, *Wash. Post*, Dec. 7, 1997, at A1.

n13. See Donia & Fine, *supra* note 12, at 244 (discussing the alarming rate at which refugees fled the Serbian onslaught).

n14. See *infra* note 28.

n15. See Scott Anderson, *Bosnia's Last Best Hope*, *N.Y. Times (Magazine)*, Sept. 8, 1996, at 48 (detailing the stories of teenagers who spent the war years hiding in basements, crouching in bunkers, or guiltily, living abroad).

n16. See Directive from Minister of Education, Fahrudin Rizanbegovi, on the Use of Two Curricula and Two Education Plans on [sic] the Whole Territory of the Federation of Bosnia and Herzegovina (on file with author) [hereinafter Directive from Minister]; see also Chris Hedges, *Bosnia -- Ethnic Diversity Distorting History, Art and Language*, *Dayton Daily News*, Dec. 11, 1997, at 23A, available in 1997 WL 16067069; Chris Hedges, *Sarajevo Journal: In Bosnia's Schools, 3 Ways Never to Learn from History*, *N.Y. Times*, Nov. 25, 1997, at A1; Viewpoints, *The ABC's of Ethnic Hate*, *Newsday*, Oct. 21, 1997, at A42; Tracy Wilkinson, *Bosnia's Ethnic Division Relocates to the Classroom Balkans*, *L.A. Times*, Oct. 19, 1997, at A1.

n17. See Directive from Minister, *supra* note 16.

n18. *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding separate but equal accommodations for whites and blacks on public railway cars). Separate but equal was formally extended to public education in *Gong Lum v. Rice*, 275 U.S. 78 (1927). The Court finally overruled the doctrine of separate but equal in *Brown v. Board of Education*, 349 U.S. 294 (1955).

n19. See 24 *Encyclopedia Americana* 257, 258 (international ed., 1994); see also Larry Gerber, *Sarajevo: A Toast to the Town*, *San Diego Union-Trib.*, Feb. 20, 1984, at A1, available in 1984 WL 2269138; Tom Callahan, *The Sweet Scene in Sarajevo*, *Time*, Feb. 13, 1984, at 62; Jane Leavy, *Pomp, Happy Circumstances Open Games*, *Wash. Post*, Feb. 9, 1984, at E1.

n20. See *Dayton Peace Accords*, supra note 6.

n21. The Friendship Force is a non-profit international citizen's exchange group founded by former President Jimmy Carter, Rosalynn Carter, and Wayne Smith in 1977. See Jimmy Carter, *Jimmy Carter and the Friendship Force: On a Homestay Program, Adventure is a Way of Life*, *Chic. Trib.*, Aug. 17, 1997, at 1.

n22. Former Deputy Minister of Education Asim DonliD sought help in developing regulations to identify children with disabilities, providing an impetus for the visit.

n23. See *The World Almanac & Book of Facts* (1992) at 818, 819; see also International Crisis Group, *Rebuilding a Multi-Ethnic Sarajevo: The Need for Minority Returns*, Section III (Demographics) Summary (February 3, 1998) [hereinafter ICG Report] (on file with author).

n24. Bosnia and Herzegovina is located on the Balkan Peninsula in central Europe, across the Adriatic Sea from Italy, and is bordered by Croatia to the north and west, and Yugoslavia (Serbia) to the south and east. Sarajevo, Bosnia and Herzegovina's capital, is 125 miles southwest of Belgrade. See *Encyclopedia Americana*, supra note 19, at 257.

n25. See Noel Malcolm, *Bosnia: A Short History* 234 (1994) (noting that ethnic violence within the country did not stem from innate hatred, but rather due to pressures from outside Bosnia).

n26. See Donia & Fine, supra note 12, at 238; Tom Gjelten, *Sarajevo Daily: A City and its Newspaper Under Siege 2* (1995); see also Christopher Bennett, *Yugoslavia's Bloody Collapse: Causes, Course and Consequences* 187 (1994); Julijana Mojsilovic, *Holiday Inn Becomes Scene of Battle*, *Associated Press*, Apr. 6, 1992, available in 1992 WL 5291846; Slobodan Lekic, *Violence Erupts in Yugoslav Region*, *Orange County Reg.*, Apr. 6, 1992, at A12, available in 1992 WL 6345091; Victoria Stegic, *Five Gunned Down as Thousands Clamor for Peace in Bosnia*, *Agence France-Presse*, Apr. 5, 1992, available in 1992 WL 8470443. For a history of events leading up to the outbreak of the war, see Christian J. Garris, *Comment, Bosnia and the Limitations of International Law*, 34 *Santa Clara L. Rev.* 1039, 1040-55 (1994).

n27. See, e.g., Roger Cohen, *Conflict in the Balkans: The Overview; Bosnian Serbs Agree to Pull Back Heavy Artillery from Sarajevo*, *N.Y. Times*, Sept. 15, 1995, at A1; Francis Curta, *No Peace, No War as Conflict Enters Fourth Year*, *Agence France-Presse*, Apr. 5, 1995, available in 1995 WL 7787321. The shelling averaged from 200 to 1000 shell impacts each day. See Mark R. von Sternberg, *Per Humanitatem ad Pacem: International Humanitarian Norms as a Jurisprudence of Peace in the Former Yugoslavia*, 3 *Cardozo J. Int'l & Comp. L.* 357, 371 (1995).

n28. ICG Report, supra note 23, Section III (Demographics). According to the United Nations High Commission for Refugees (UNHCR), the ethnic break-down in Sarajevo has changed dramatically since 1991. In 1991, 252,000, or 50%, of the city's residents were Bosnians (Muslims) while today it stands at 303,000, or 87%, of the population. The Serb (Orthodox) population has dropped from 139,000, or 28%, to 18,000, or 7% of the total. The Croatian [Catholic] populations declined from 35,000, or 7%, to 21,000, or 6%. A word of caution is in order since after the breakup of the former Yugoslavia, many people who had identified themselves as "Others" declared themselves Bosnian, Serb or Croat.

In addition, about a quarter of Sarajevo's population is made up of people who are internally displaced. The UNHCR estimates that there are 89,000 Bosnians, 2000 Croatian, and 1000 Serbian displaced persons living in Sarajevo. See also Donia & Fine, supra note 12, at 244.

n29. See Donia & Fine, supra note 12, at 259 (stating that periodic shelling had annihilated Sarajevo and other cities).

n30. See, e.g., Michelle Bearden, *City of Death, Destruction Hears Pope Speak of Peace*, *Tampa Trib.*, Apr. 14, 1997, at 1, available in 1997 WL 7045131; Mark McDonald, *A Test of Endurance: Sarajevo Marathoner Follows Route from War Zone to Olympic Games*, *Dallas Morning News*, June 16, 1996, at 1A, available in 1996 WL 2129954.

n31. Efforts to rebuild Bosnia have been making progress. In 1996, 1.8 billion U.S. dollars went to rebuilding bridges and power plants in Bosnia. See *Xinhua English Newswire*, Jan. 3, 1997, available in 1997 WL 3734511; see also Paul A. Marin, *Bosnia Is Beginning to Recover After Four Years of War, and Is Offering the First Signs of Legitimate Business Opportunities*, *Business America*, Sept. 1, 1997, at 5, available in 1997 WL 10005717. The International Olympic Committee has established a \$ 10 million fund to rebuild Zetra Olympic Stadium in Sarajevo. See A. Craig Copetas, *Familiar Rings: Commercial Success of Olympics Leaves Challenging Legacy*, *Wall St. J. Eur.*, Feb. 6, 1998, at 1, available in 1998 WL-WSJE 3509810. Some funds, however, are being withheld from Bosnian Serbs until suspected war-criminals are brought to justice. See *Aid Donors Agreed to Withhold Redevelopment Funds from Bosnian Serbs*, *Wall St. J. Eur.*, Jul. 24, 1997, at 1, available in 1997 WL-WSJE 12208874; *Agence France-Presse*, *Bosnian Serb Government Will Go to Bosnia's Donor Conference*, July 18, 1997, available in 1997 WL 2160784.

n32. See Michael S. Serrill et al., *Water Wells Running Dry*, *Time Int'l*, Nov. 1, 1997, at 16. During the siege, Serbs shut off electricity, effectively destroying Sarajevo's water pumps. See *id.* As a result, residents were forced to line up at wells, becoming easy targets for Serb snipers and mortar fire. See *id.*

n33. A report on the status of schools in Sarajevo during the 1996-97 school year indicates that there were 42,998 students in elementary and middle schools (1-8) and another 16,046 in grades nine through twelve (9-12). In addition, there were 2477 teachers for grades 1-8 and another 1599 for grades 9-12. (Report on file with author).

n34. See Colin Woodard, *Bosnia's Future May Hinge on Chalk, Books, Tolerance*, *Christian Sci. Monitor*, Nov. 6, 1997, at 8. Bosniac is the term commonly used to identify Bosnia's secular, as opposed to religious, Moslems. The school offers the study of Islam as an elective course; otherwise, its curriculum is similar to that of Sarajevo's public schools.

n35. See M2 Presswire, *NATO: Report of the Secretary-General on the United Nations Mission in Bosnia & Herzegovina (UNMIBH)*, June 20, 1997, available in 1997 WL 11935590 (discussing UNICEF's assistance in dealing with child mental health services); Edith M. Lederer, *World Financial Support to Help Bosnia Cope with the Ravages of War Fades*, *L.A. Times*, Mar. 9, 1997 at A3. For a discussion of psychological aid programs, see Sally Kalson, *Childhood Reclaimed: A Relief Group Sees a Resilient Spirit in Young War Victims it Helps Through Special Program*, *Pittsburgh Post-Gazette*, Nov. 5, 1997, at B1, available in 1997 WL 11856995; Frank Wright, *Healing the Invisible Wounds of Wartime*, *Star Trib. (Minneapolis-St.Paul)*, June 29, 1997 at 19A, available in 1997 WL 7572302. But see Daloni Carlisle, *Overseas Aid: A War of Words*, *Guardian (London)*, Nov. 26, 1997, available in 1997 WL 14743224 (criticizing the call for psychological support programs as imposing western ideology upon war-torn countries).

n36. For an interesting article on the difficulties facing the forces of the United Nations, see Tibor Varady, *The Predicament of Peacekeeping in Bosnia*, 28 *Cornell Int'l L.J.* 701 (1995). The author described people's understanding that the real reason behind U.N. presence was that "the press is also there. [The] presence of the press imposes some restraint on the perpetrators of atrocities." *Id.* at 705.

n37. See Jay Branegan, *Extended Stay: "Fessing Up to Naivete, Clinton Explains Why U.S. Troops Will Not Be Coming Home from Bosnia Soon*, *Time Int'l*, Dec. 29, 1997, at 77; R. Jeffrey Smith, *How Far Off Is "Self Sustaining' Bosnian Peace?*, *Wash. Post*, Dec. 28, 1997 at A24; James Bennet, *Clinton Calls for Keeping Troops in Bosnia with No New Exit Date*, *N.Y. Times*, Dec. 19, 1997, at A1.

n38. See *supra* note 31.

n39. See *supra* notes 6-18 and accompanying text.

n40. See *General Framework Agreement for Peace in Bosnia and Herzegovina*, Dec. 14, 1995, Annex 6, *Agreement on Human Rights, Part B: Human Rights Ombudsman*, reprinted in 35 *I.L.M.* 75, 132 (1996).

n41. For a further discussion of the December roundtable, see Charles J. Russo, *Other Voices -- In Bosnia, Progress Being Made to Provide Education for All*, *Dayton Daily News*, Jan. 5, 1998, at 7A, available in 1998 WL 5876910.

n42. I will be returning to the University of Sarajevo in mid-March 1998 to speak about school governance, religion in American education, and special education.

n43. 347 U.S. 483 (1954) (striking down separate but equal educational facilities as inherently unequal).

n44. See *id.* at 493 (holding that segregation in public schools constituted a denial of equal protection of the laws).

n45. See generally Joseph F. Costanzo, *This Nation Under God* (1964); Ralph D. Mawdsley, *Legal Problems of Religions and Private Schools* (1989).

n46. I anticipate returning to Sarajevo during the Spring of 1998 for the planned second roundtable discussion, devoted exclusively to special education.

n47. My preliminary recommendations for Federation Schools were:

1. The Federation must rely upon education to act as the integrative factor. If tolerance and acceptance of diversity are not encouraged in the schools and not imbued throughout the curriculum, then we cannot expect to find them present throughout the rest of society.

2. The reconceptualized educational school system, that is open to all children (and staff), must emphasize democratic, multi-cultural principles based on citizenship in the Federation rather than membership in society based solely on ethnicity. In other words, the system must be inclusive, not exclusive.

3. The federal government in the Federation needs to adopt a pro-active role in helping to create shared values among all groups in creating educational curricula/standards. It is essential that the federal government maintain a leadership role to ensure that policies and practices will be adopted uniformly throughout the Federation.

4. Policies should be developed to meet the needs of special populations of students including, but not limited to, those children who have disabilities, are gifted, and/or are refugees.

5. The school system needs to develop a national curriculum (or set of standards) that all members of the Federation can accept. At the same time, some consideration should be provided for ways of permitting groups to preserve their ethnic heritage in the schools. For example, schools might offer classes focusing on one particular ethnic heritage; even so, these classes should be open to all students.

6. The national curricula, and accompanying texts, should be drafted primarily by appropriate professionals in the Federation who can call upon outside experts for assistance. Leadership on this important project should be provided by individuals from the Federation.

7. Members of the committee(s) assigned the tasks of developing curricular materials should be chosen from among a broad representation of citizens in the Federation.

8. Provisions should be made to schedule Round Tables, on a variety of topics, and in a variety of locations throughout the country. The discussions should utilize the same format as the present session in order to obtain input from all parties (such as parents, students, teachers, civil leaders) interested in helping to ensure equal educational opportunities for all children in Bosnia and Herzegovina.

n48. However, it remains to be seen whether the talk will lead to action. When I return in March, and on subsequent visits, I will look to see if progress is being made. I must admit that during my visit in March, when I delivered eight lectures on various aspects of American education at the University of Sarajevo and a talk on religious freedom at the Franciscan Seminary, I was heartened by the upswing in the mood of most of the people I met. See Charles J. Russo, Sarajevo needs our help to flower again, *DAYTON DAILY NEWS*, March 30, 1998, at 11A.

n49. See St. John's University Undergraduate Bulletin (Jamaica, N.Y.) 1997-99, on inside back cover.

n50. Fortunately, to date, no American forces in Bosnia have lost their lives in combat. See Randy Browne, Editorial, Bosnia: Another View, *Orlando Sentinel*, Dec. 30, 1997, at A10.

n51. See supra note 37 and accompanying text (noting that American troops have no certain exit date from Bosnia).

n52. See supra note 1.

n53. *The Federalist* No. 51, at 324 (James Madison) (Clinton Rossiter ed., 1961).

n54. See Edmund Rittananer, Israeli Settlement Illegal and Unfair, *Chi. Trib.*, Apr. 13, 1997, at A20 (crediting Pope Paul VI with coining this phrase).

n55. For an excellent discussion of the role of Catholic law schools, see John T. Noonan, Jr., *The Heart of a Catholic Law School*, 23 *U. Dayton L. Rev.* 7 (1997).

n56. See Columbia to Launch Human Rights Project, *N.Y. L.J.*, Jan. 12, 1998, at 8. For a discussion of the involvement of Yale Law School's Human Rights Clinic with the appeal of a dismissed case against Radovan Karadzic, see Cynthia Kotts, Rights Group Served Alien Tort Papers on Serb Chief Radovan Karadzic, *Nat'l L.J.*, Dec. 29, 1997, at A6.

n57. See Arline Jolles Lotman, Like Doctors, Lawyers Should Serve Residencies, *Nat'l L.J.*, Dec. 9, 1996, at A18 (proposing that law schools adopt the medical school model, which "combines pro bono service with education by letting the fledgling doctor practice medicine under the supervision of an experienced practitioner").

n58. Among the more significant documents, especially in light of the events in the Bosnia, are *The Universal Declaration of Human Rights* (1948), *The Convention on the Elimination of All Forms of Discrimination against Women* (1979), *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *The Convention on the Rights of the Child* (1989), and *The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* (1992).

n59. The Nuremberg Trials, which prosecuted 22 major Nazi war criminals, took place in 1945-46. See Kevin R. Chaney, *Pitfalls and Imperatives: Applying the Lessons of Nuremberg to the Yugoslav War Crimes Trials*, 14 *Dick. J. Int'l L.* 57, 65. From 1946 to 1949, prosecutions of "lesser" war criminals were conducted by military tribunals. See *id.*

n60. Justice Jackson was the last Supreme Court Justice to qualify for the bar without completing law school. See *The Oxford Companion to the Supreme Court of the United States* 443 (Kermit L. Hall, et al., eds., 1992). Justice Jackson was appointed to the Supreme Court in 1941 by Franklin D. Roosevelt. As Associate Justice he exercised and was committed to notions of judicial self-restraint and strong nationalism. See *id.* at 444. In 1946, President Harry Truman requested that Jackson serve as chief counsel for the United States at the Nuremberg Trials. See *id.* After success at Nuremberg, Jackson returned to the Court. See *id.*

n61. See Alan S. Rosenbaum, *Prosecuting Nazi War Criminals* 20-21 (1993).

n62. See generally Helen Fein, *Accounting for Genocide* (1979).

n63. See Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record* 5-12 (1982) (describing the support for, and the events leading up to, the prosecution of Nazi war criminals).

n64. The President of the Republic of Serbia.

n65. The Bosnian Serb leader.

n66. See Kotts, supra note 56; see also Guy Dinmore, *Some Sanctions on Yugoslavia Eased - Concessions Granted as Reward for Backing Bosnia Peace Process*, *Chi. Trib.*, Feb. 27, 1998, at 16. "The U.S. is taking a subtle turn in its policy toward Yugoslavia, rewarding President Slobodan Milosevic for his support of the Bosnian peace process." *Id.*

n67. See Fein, supra note 62, at 3. The author credited Raphael Lemkin with coining the term "genocide" in 1944 to denote the attempt to destroy a nation or an ethnic group by depriving them of the ability to live and procreate or by killing them directly. The definition includes

... the slower extinction of distinct populations by preventing new conceptions and increasing mortality and the extinction of a culture distinguishing a people by the decimation of their intellectual leaders, prohibition of free cultural institutions and media, and suppression of liberty. See *id.* (citations omitted); see also Stjepan G. Mestrovic, *Genocide After Emotion: The Postemotional Balkan War* (1996).

n68. See generally *Religion and Justice in the War over Bosnia* (G. Scott Davis, ed., 1996).

n69. For an excellent discussion of what remains to be done in Bosnia, see *Report of the International Commission on the Balkans, Unfinished Peace* (1996).

n70. The origin of this phrase has been attributed to Paulo Friere by Pete Seeger, who affixed the phrase to his guitar case. See Frances Olsen, *Feminist Theory in Grand Style*, 89 *Colum. L. Rev.* 1147, 1173 n.100 (1989) (book review).

n71. Matthew 25:40.

n72. See Mark 6:30-31 where, in response to a question about the greatest commandment, Jesus replied "'you shall love the Lord your God with all your heart, with all your soul, with all of your mind, and with all your strength.' The second is this, 'You shall love your neighbor as you love yourself.' There is no other commandment greater than these."