

Ethnic Cleansing – An Attempt at Methodology

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The continuing war in Bosnia and Herzegovina has contributed a new term to the vocabulary of international relations with the expression 'ethnic cleansing'.¹ This word describes a set of human rights and humanitarian law violations in both Bosnia and Herzegovina and Croatia.² The term was initially used by journalists and politicians who applied it later to other crisis situations,³ but it has also been adopted as part of the official vocabulary of UN Security Council documents and by other UN institutions and governmental and non-governmental international organizations. In fact, the reasoning behind this terminology and its relationship to the system of international law are not very clear.

This study will compare the description of this phenomenon given in different documents, and analyse its substance in order to determine if it has any meaning in international law. As a necessary first research step, given that no agreement exists about the very definition of ethnic cleansing, some basic notions should be discussed. As this is one of the first papers on this issue, extensive references and quotations have sometimes seemed inevitable. The main reason for such an

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1 Commission of Experts in its *First Interim Report* of 10 February 1993, UN Doc. S/25274: 'The expression ethnic cleansing is relatively new.' See also Roux, 'A propos de la purification ethnique en Bosnie-Herzégovine', *Hérodote* (1992) 49. See also by Roux, 'Lo scenario bosniaco: Pulizia etnica e spartizione territoriale', *LIMES Rivista italiana di geopolitica* (1/1993) 29-46.

2 Ethnic cleansing has been compared with Nazi policies during World War II. See, Mr. Cornelio Sommaruga, President of the International Committee of the Red Cross (ICRC) at the opening of the International Meeting on Humanitarian Aid for Victims of the Conflict in the former Yugoslavia, held under the auspices of the UNHCR, Geneva, 29 July 1992, Statement of Mr. Eagleburger, US Secretary of State, *International Herald Tribune* 17 December 1992, at 1; Féron, 'Yougoslavie, Origines d'un conflit', *Le Monde* (1993) 91.

3 For example in Cyprus, Rana, 'Pulizie etniche - Cipro', *Avvenimenti* 15 December 1993, Georgia, Hockstader, 'In Georgia, Tales of Atrocities', *International Herald Tribune* 22 October 1993, at 5, Burundi, Dupraz, 'La purification ethnique plonge à nouveau le Burundi dans l'horreur', *Le Tribune de Genève* 23 March 1994, at 11 and Caucasus, 'Nettoyage ethnique dans le Caucase', *L'Hebdo*, 21 October 1994, at 10.

approach is that, although there is widespread use of this new term, its actual meaning is not precise.

I. Questions of Terminology

Ethnic cleansing is a literal translation of the expression 'etničko čišćenje' in Serbo-Croatian/Croato-Serbian. The origin of this term, even in its original language, is difficult to establish. Mass media reports discussed the establishment of 'ethnically clean territories' in Kosovo after 1981. At the time, it related to administrative and non-violent matters and referred mostly to the behaviour of Kosovo Albanians towards the Serbian minority in the autonomous province within the Socialist Federal Republic of Yugoslavia.

The term derived its current meaning during the war in Bosnia and Herzegovina,⁴ and was also used to describe certain events in Croatia. It is impossible to determine who was the first to employ it, and in what context. As military officers of the former Yugoslav People's Army had a preponderant role in all these events, the conclusion could be drawn that the expression 'ethnic cleansing' has its origin in military vocabulary. The expression 'to clean the territory'⁵ is directed against enemies, and it is used mostly in the final phase of combat in order to take total control of the conquered territory. In general terms, the idiom 'cist'-'clean' means 'without any dirt' or 'contamination'. The word 'ethnic' has been added to the military term because the 'enemies' are considered to be the other ethnic communities.⁶

In English, reference is also made to 'ethnic purification'. In French, including French versions of relevant UN Security Council resolutions, different terms are used: *la purification ethnique*, *nettoyage ethnique* and *épuration ethnique*. It would be difficult to establish any rule in the use of these different terms, and they may be considered as synonyms.

4 Patterns of ethnic cleansing are also found in the annals of history. See Bell-Fialkoff, 'A Brief History of Ethnic Cleansing', *Foreign Affairs*, Vol. 72, No. 3 (1993) 110.

5 For example, Burns, 'Ethnic Cleansing in Bosnia: A Savage Tale of Murder and Rape', *International Herald Tribune* 28-29 November 1992: 'Although this expression is basically connected with the Bosnian war, similar patterns are also found in the annals ... he [Borislav Herak] said Serbian commanders called the Serbian operation in the village *ciscenje prostora* or the cleansing of the region, and had told the Serbian fighters to leave nobody alive.'

6 According to widespread opinion, the use of such designation is not adequate in Bosnia and Herzegovina due to the same ethnic origin of major national groups: Muslims-Bosnjaks, Serbs and Croats.

II. Different Approaches

Despite the widespread use of the term, it is difficult to ascertain its precise meaning, and witnesses have described the system and methods of ethnic cleansing in different ways. To emphasize its unclear nature, the term ethnic cleansing is often prefixed by 'so-called'.⁷

Further, governments, international organizations and non-governmental organizations have employed diverse terminology. Sometimes ethnic cleansing has been described as a 'systematic process',⁸ a 'campaign'⁹ or a 'pattern',¹⁰ 'policy'¹¹ or 'practice'.¹² All this may at first glance seem insignificant, but they may indicate a substantial difference in attitude toward ethnic cleansing.

A. Ethnic Cleansing as a Practice

As a practice, ethnic cleansing could mean a set of different actions, directly or indirectly related to military operations, committed by one group against members of other ethnic groups living in the same territory. Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission for Human Rights,¹³ used this description on

- 7 For example: 'inadmissible policy of so-called ethnic cleansing, Address by Jean de Courten, ICRC Director of Operations, at the Follow-up Meeting convened by the UNHCR, 4 December 1992.
- 8 *War Crimes in Bosnia and Herzegovina, Helsinki Watch, A Division of Human Rights Watch*, April 1993 (hereafter referred to as *Helsinki Watch 2nd Report*), at 2.
- 9 Ethnic cleansing was so described in UN Security Council Resolution 819 (1993) of 16 April 1993, paragraph 6, where it was stated that the Security Council 'Condemns and rejects the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of the Republic of Bosnia and Herzegovina as part of its overall abhorrent campaign of ethnic cleansing'.
- 10 *Preliminary Findings and Recommendations of the International League for Human Rights Mission to the former Yugoslavia* (14-22 November 1992, hereafter referred to as *Human Rights Mission*), at 2. *A Wound to the Soul*, Amnesty International, January 1993, AI Index: EUR 63/03/93, 2.
- 11 *War Crimes in Bosnia and Herzegovina, A Helsinki Watch Report, Human Rights Watch*, August 1992 (hereafter referred to as *Helsinki Watch 1st Report*), at 1; J. de Courten, *supra* note 7.
- 12 It is a commonly employed expression of UN Security Council, and appeared in Resolutions 780, 787, 808, 819, 820, 827 and 836.
- 13 Mr. Mazowiecki has submitted two series of reports. One series of four reports pursuant to the Commission Resolution 1992/S-1/1 of 16 August 1992. They were the reports of 28 August 1992, UN Doc. E/CN.4/1992/S-1/9 - hereafter referred to as *First Mazowiecki Report I*; 27 October 1992, UN Doc. E/CN.4/1992/S-1/10 - hereafter referred to as *Second Mazowiecki Report I*; 17 November 1992, UN Doc. A/47/666 and S/24809 - hereafter referred to as *Third Mazowiecki Report I*; and 10 February 1993, UN Doc. E/CN.4/1993/50 - hereafter referred to as *Fourth Mazowiecki Report I*, and another series of six reports pursuant to paragraph 32 of Commission Resolution 1993/7 of 23 February 1993. They were the reports of 5 May 1993, UN Doc. E/CN.4/1994/3 - hereafter referred to as *First Mazowiecki Report II*; 19 May 1993, UN Doc. E/CN.4/1994/4 - hereafter referred to as *Second Mazowiecki Report II*; 26 August 1993, UN Doc. E/CN.4/1994/6 - hereafter referred to as *Third Mazowiecki Report II*; 6 September 1993, UN Doc. E/CN.4/1994/8 - hereafter referred to as *Fourth Mazowiecki Report II*; 17 November 1993, UN

several occasions.¹⁴ What follows will be an attempt to categorize the types of conduct which have made up component parts of ethnic cleansing.

*1. Administrative Measures*¹⁵

These have included forced removal of lawfully elected authorities,¹⁶ dismissal from work¹⁷ (especially from important public service positions), restrictions on the distribution of humanitarian aid,¹⁸ constant identity checking of members of minority ethnic groups,¹⁹ official notices to the effect that security of the members of other nations cannot be guaranteed;²⁰ settlement of 'appropriate' population (affiliated to the same nation, very often refugees) in the region;²¹ discriminatory and repressive legislation;²² refusal of treatment in hospital,²³ making the departure

Doc. E/CN.4/1994/47 – hereafter referred to as *Fifth Mazowiecki Report II*; 21 February 1994, UN Doc. E/CN.4/1994/110 – hereafter referred to as *Sixth Mazowiecki Report II*.

14 See *Third Mazowiecki Report I*, at 6, point 9-10; *Fourth Mazowiecki Report I*, at 7, point 17;

15 Some authors call it 'a bureaucratic dimension of ethnic cleansing, Pajic, 'Violation of Fundamental Rights in former Yugoslavia, I. The Conflict in Bosnia and Herzegovina', The David Davies Memorial Institute of International Studies, Occasional Paper No. 2 (1993) 5. See also, Roux, *supra* note 1, at 50: 'l'affaire de l'administration'; Special Rapporteur of Commission on Human Rights also considers some measures as administrative in *Fifth Mazowiecki Report II*, at 8, point 12.

16 *Third Mazowiecki Report I*, at 8, point 17a; *Fourth Mazowiecki Report I*, at 7, point 17. See also example given in *Time*, September 1992, at 41.

17 See *First Mazowiecki Report I*, at 3, point 12; *Fourth Mazowiecki Report II*, at 2, point 10; *Fifth Mazowiecki Report II*, at 9, point 55; *Sixth Mazowiecki Report II*, at 5, point 9.

18 *Fourth Mazowiecki Report II*, at 2, point 10; *Fifth Mazowiecki Report II*, at 8 and 13, points 52 and 91.

19 *Third Mazowiecki Report I*, at 8, point 17.

20 *Fourth Mazowiecki Report II*, at 8, point 25.

21 'Encouraging Bosnian Serbs to resettle in areas under Serbian control is consistent with the nationalist aims and policy of the Serbian leadership in Bosnia and Herzegovina', *Third Mazowiecki Report I*, at 10, point 21. See also, *Fifth Mazowiecki Report II*, at 22, point 155.

22 'Let me quote briefly from this edict or decision issued by the municipal authorities of so-called Serbian Republic of Bosnia-Herzegovina proclaiming what was well-known in the South African apartheid regime as the 'banning of persons'. It starts by listing 34 people by name in this decree, 33 of them Muslim and one Croat, to judge by their names, and banning them or explicitly saying that those citizens listed in Article 1 are not allowed to move around the town between 4pm and 6am, not allowed to stay in the street, in restaurants or other public places, not allowed to swim in two local rivers, or to fish and hunt, not allowed to travel to other towns without appropriate authorization, not allowed to possess any firearms, not allowed to use or drive motor vehicles, not allowed to be in groups of more than three people, not allowed to communicate without authorization with relatives who are not citizens of the particular municipality, and so it goes on. There is a very peculiar provision or paragraph at the end of this decree, saying that citizens listed in previous articles are not allowed to establish any contact with their neighbours or to walk outside between 00.00 and 24.00 hours, unless called up for work. So the previously mentioned provisions were gradually extended in the same document to a 24-hour ban, or 24-hour arrest for those people.' Pajic, *supra* note 15, at 5-6. See also, *Fifth Mazowiecki Report*, at 11, point 73. Probably the same case was quoted by *Time* 14 September 1992, at 41, as being produced in the village of Celinac.

23 'Children from Muslim or Croat families were refused treatment at the local hospital', *First Mazowiecki Report I*, at 2, point 9. See also, *Fifth Mazowiecki Report II*, at 23, point 159.

of one member conditional upon the departure of the entire family;²⁴ disconnection of telephones,²⁵ forced labour very often including work on the front-lines of armed conflict,²⁶ prohibiting women of particular ethnic groups from giving birth in hospital,²⁷ and 'voluntary' transfer of property by forcing people to sign documents stating that the property was permanently abandoned by the owner.²⁸

2. Other Non-violent Measures

These could include: local media inflaming fear and hatred; harassing phone-calls,²⁹ including death threats,³⁰ and publishing lists of citizens indicating their ethnic origin.³¹

3. Terrorizing Measures

Actions of this type have been committed by soldiers or even armed civilians, but need not necessarily be directly connected with military operations. They are usually illegal and could involve the following: robbery, terrorization and intimidation in the street,³² massive deportation, detention and ill-treatment of the civil population and their transfer to prisons and camps, shooting on selected civilian targets or blowing-up and setting fire to homes, shops and places of business,³³ destruction of cultural and religious monuments and sites,³⁴ mass displacement of communities,³⁵ and discrimination of refugees on the basis of ethnic differences.

24 *First Mazowiecki Report I*, at 3, point 11.

25 *Fifth Mazowiecki Report II*, at 9 and 13, points 55 and 91.

26 *Fifth Mazowiecki Report II*, at 12, point 84.

27 Pajic, *supra* note 15, at 6: 'He [the-director of a hospital department in Banja Luka] recently banned all Muslim and Croat women from being allowed to give birth in his hospital'.

28 *First Mazowiecki Report I*, at 3 and 5, points 11 and 23. This was so widespread that the Security Council was moved to announce that it 'endorses the principle (...) that all statements or commitments made under duress, particularly those relating to land and property, are wholly null and void...' See Resolution 779 (1992) of 6 October 1992, para. 5. *Fifth Mazowiecki Report II*, at 9, point 59.

29 *Fourth Mazowiecki Report II*, at 8, point 26. See also, Battata, 'Serbs Step Up "Cleansing" of Muslims', *International Herald Tribune* 30 September 1992, at 1 and 6.

30 *Fourth Mazowiecki Report II*, at 2, point 11.

31 *Case of Croatia, Third Mazowiecki Report*, at 6, point 27.

32 *Fourth Mazowiecki Report II*, at 8, point 26.

33 *First Mazowiecki Report I*, at 4, point 15; *Third Mazowiecki Report I*, at 6, point 9; *Fourth Mazowiecki Report II*, at 2, point 11.

34 *First Mazowiecki Report I*, at 4, point 16: 'Attacks on churches and mosques are also part of campaign of intimidation used to force Muslims and ethnic Croats to flee Bosnian territory ...'; *Fourth Mazowiecki Report II*, at 8-9, points 26 and 29; *Sixth Mazowiecki Report II*, at 5, point 13.

35 *Fifth Mazowiecki Report II*, at 4, point 15.

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A very specific element of ethnic cleansing is rape³⁶ and other forms of sexual abuse such as castration. Rape has been used most frequently against women of different ethnic origin, and in the case of ex-Yugoslavia it has been committed systematically.³⁷ It has been connected with military operations, but has very often continued after the cessation of military operations. Women of all ages have been victims, often including very young girls and virgins.³⁸ It has frequently been committed in front of the victim's parents, children or other members of the family.³⁹ There are a number of testimonies indicating that special women's camps were established for these purposes.⁴⁰ Rape has often been committed with the intent of making the woman pregnant,⁴¹ and victims have also been detained until the late days of pregnancy.

These patterns have been observed in territories where ethnic cleansing is committed by the majority or minority population.⁴²

4. Military Measures

Some of the acts that could be considered as falling within this category are summary executions,⁴³ deliberate killing and torturing of leading citizens such as religious and political leaders,⁴⁴ intellectuals, policemen and members of the

- 36 *Preliminary Findings and Recommendations of the International League for Human Rights Mission to the former Yugoslavia* (14-22 November 1992), at 2 where it is noted that 'Rape is often part of this pattern...'; *Third Mazowiecki Report I*, at 12, point 27: 'Rape is another repugnant feature of ethnic cleansing.'; Report of the team of experts on their mission to investigate allegations of rape in the territory of the former Yugoslavia from 12 to 23 January 1993, Annex II to *Fourth Mazowiecki Report I*, at 73, point 62: 'In Bosnia and Herzegovina and in Croatia, rape has been used as an instrument of ethnic cleansing'; Bell-Fialkoff, *supra* note 4, at 120: '... rape indeed became a new and gruesome weapon in the ancient quiver of ethnic cleansing'.
- 37 For the analysis, see *Second Interim Report of the Commission of Experts*, UN Doc. S/26545 of 6 October 1993, points 68 and 69.
- 38 See 'A Pattern of Rape', *Newsweek* 11 January 1993, at 26.
- 39 See for example, *Le Nouvel Observateur*, at 33, *Newsweek*, *ibid.* *Rape and Sexual Abuse by Armed Forces*, Amnesty International, January 1993, AI Index: EUR 63/01/93, at 5.
- 40 This pattern was so important that the UN Security Council in its Resolution 798 (1992) on 18 December 1992, UN Doc. S/RES/798(1992) declared that it was 'appalled by reports of the massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina' and demanded that 'all detention camps, in particular, camps for women, should be immediately closed'.
- 41 See for example, testimonies published in *Rape and Sexual Abuse by Armed Forces*, Amnesty International, *supra* note 39, at 12: 'You will bear a Serbian child'; *L'Espresso* 24 gennaio 1993, No. 3, Anno XXXIX, Bugno, 'E tu concepirai con violenza: un Serbo', at 23. Also, testimonies quoted by Drakulic, 'Vicious Rape, Planned and Systematic', *International Herald Tribune* 14 December 1992.
- 42 *Third Mazowiecki Report I*, point 12.
- 43 *Fourth Mazowiecki Report I*, at 7, point 17.
- 44 One example has been given by the International League for Human Rights, at 2: '... after Serbs rounded up and shot some men outside the Mosque in Carakovo, they cut off the genitals of the Hodja (a religious leader).' *Third Mazowiecki Report I*, at 8-10.

business community,⁴⁵ and holding towns and villages under siege,⁴⁶ deliberate attacks and blocking of humanitarian aid,⁴⁷ deliberate shelling of civilian targets (especially bakeries, water and transport facilities, means of communication, post offices, cultural monuments and religious objects, and medical institutions;⁴⁸ reprisals against civilian targets⁴⁹ and population;⁵⁰ taking hostages and detention of civilians for exchange;⁵¹ use of civilians as human shields;⁵² and attacks on refugees camps.⁵³

The problem with describing ethnic cleansing as a practice is that all these acts could be analysed as isolated violations of human rights and international humanitarian law, thereby fuelling the risk of overlooking the system which underlies each specific case. As the practice of ethnic cleansing does not always include all the elements which have been described above, it is necessary to isolate those which fall within its boundaries.⁵⁴ The lists which have been presented in this paper are not definitive, but are merely exemplary.

45 'Elites locales', Rapport de Médecins sans frontières, 7 décembre 1992, in *Livre noir de l'ex-Yougoslavie; Purification ethnique et crimes de guerre*, Documents rassemblés par le *Nouvel Observateur et Reporters sans frontières* (1993) at 383.

46 'The siege, including the shelling of population centres and the cutting off of supplies of food and other essential goods, is another tactic used to force Muslims and ethnic Croatsians to flee.' *First Mazowiecki Report I*, at 4, point 17. For a detailed description of the situation in Sarajevo see *Third Mazowiecki Report I*, at 3-5, points 14-23.

47 *Third Mazowiecki Report I*, at 2-3, points 6-13; *Fourth Mazowiecki Report I*, at 5, point 29. Peter Kessler from UNHCR accused the Serbs of 'ethnic cleansing by starvation', 'UN Denounces Serbs for Blocking Convoy', *International Herald Tribune* 16 March 1994, at 2.

48 *Third Mazowiecki Report II*, at 5, point 25; *Fourth Mazowiecki Report II*, at 4, point 26.

49 'In the village of Celinac, 17 houses occupied by Muslim families were blown up in a single night, after reports received that some soldiers from the village had been killed in combat', *First Mazowiecki Report I*, at 3, point 13.

50 Rapport sur le processus de purification ethnique dans la région de Prijedor (Bosnie-Herzégovine), 26 octobre 1992, par M. Louis Joinet, président de groupe de travail de la Commission des droits de l'homme des Nations Unies sur la détention arbitraire, à la suite d'une visite en Krajina-Sud, in *Livre noir de l'ex-Yougoslavie*, supra note 45 (hereafter *Joinet Report I*), at 301.

51 '(...) the need to obtain ethnic Serbs for exchange against detained Muslims is one of the main reasons for arbitrary detention of the Serbs in Bosnia and Herzegovina', *First Mazowiecki Report I*, at 5, point 23. The same, *Third Mazowiecki Report I*, at 11, point 23 and *Fifth Mazowiecki Report*, at 7, point 84. 'Il est impossible de ne pas conclure que la plupart des prisonniers sont des innocents pris comme otages pour favoriser "l'épuration ethnique"', Report of the CSCE Mission in Bosnia-Herzegovina, Septembre 1992, in *Livre noir de l'ex-Yougoslavie*, supra note 45, at 206.

52 *Fifth Mazowiecki Report*, at 7, points 36, 37 and at 12, point 84.

53 *Fifth Mazowiecki Report*, at 23, point 163.

54 See Rapport intérimaire de la Commission d'experts constituée conformément à la résolution 780 (1992) du Conseil de sécurité, point 27, UN Doc. S/25274 of 10 February 1993. The UN Security Council is also not precise in its formulations: "ethnic cleansing" (...) and forcible expulsion of civilians and deprivation of their rights of residence and property', Resolution 779 (1992); '(...) mass killings and the continuance of the practice of "ethnic cleansing"', Resolution 780 (1992) and 808 (1993); '(...) "ethnic cleansing" and the deliberate impeding of the delivery of food and medical supplies to the civilian population...', Resolution 787 (1992); '(...) "ethnic cleansing" and the massive, organized and systematic detention and rape of women', Resolution 820 (1993); '(...) "ethnic cleansing" and all practices conducive thereto, as well as the denial or the obstruction of access to civilians to humanitarian aid and services such as medical assistance and basic utilities', Resolution 824 (1993); '(...) mass killings, (...) rape, (...) and (...) "ethnic cleansing"' Resolution 827 (1993).

B. Ethnic Cleansing as a Policy

Another possible approach to identifying ethnic cleansing would be to examine conduct by reference to its goal. This method is more systematic and should encapsulate all elements mentioned above, while viewing them as part of an overall system.⁵⁵ This methodology is preferable to other alternatives as it emphasizes the existence of an elaborate policy underlying individual events. Therefore, the conduct of various parties should be viewed in the light of motivating policies.⁵⁶

The Special Rapporteur considers all patterns he mentioned to be elements of a broader plan.⁵⁷ He has expressed the following views:

The military conflict in Bosnia and Herzegovina, which is aimed at achieving 'ethnic cleansing' (...)⁵⁸

The Special Rapporteur shares the view of other observers that the principal objective of the military conflict in Bosnia and Herzegovina is the establishment of ethnically homogeneous regions. Ethnic cleansing does not appear to be consequence of the war but rather its goal.⁵⁹

The continuation of ethnic cleansing is a deliberate effort to create a *fait accompli* in flagrant disregard of international commitments entered into by those who carry out and benefit from ethnic cleansing.⁶⁰

Some international bodies⁶¹ and doctrine⁶² seem to share this opinion

The aim of the policy of ethnic cleansing could be defined both on the local and global level. On the local level the aim of ethnic cleansing policies could be the creation of fear, humiliation and terror for the 'other' community, gaining effective control over a given area, which may be achieved by provoking the community to flee and reprisals. On the global level, the aim could be defined as an irreversible change of the demographic structure, creation of ethnically-homogeneous regions,⁶³

55 'The pattern reflects a policy intended to terrorize the surviving non-Serbian population to such an extent that they had no option but to flee or accept places offered in convoys out of Serbian controlled territory', *A Wound to the Soul*, Amnesty International, *supra* note 10, at 2.

56 Commission on Human Rights Resolution 1992/S-2/1, para. 2: 'Categorically condemns the ethnic cleansing being carried out ... recognizing that the Serbian leadership in territories under their control in Bosnia and Herzegovina, the Yugoslav army and the political leadership of the Republic of Serbia bear primary responsibility for this reprehensible practice.' 'During the whole period of the Special Rapporteur's mandate, the policy of ethnic cleansing, initiated by the *de facto* Bosnian Serb authorities, has continued unabated. It is obvious that inadequate reaction to that policy prompted other sides, in particular the *de facto* Bosnia-Croat authorities to use the same methods.' *Sixth Mazowiecki Report*, at 44, point 289.

57 The speech of Mr. Tadeusz Mazowiecki delivered at the 50th session of the Commission on Human Rights, Geneva, 28 February 1994: 'Nous avons toujours affaire aux pratiques cruelles qui constituent la "purification ethnique".'

58 *Second Mazowiecki Report I*, at 2, point 1.

59 *Second Mazowiecki Report I*, at 3, point 6.

60 *Third Mazowiecki Report I*, at 38, point 135.

61 International League for Human Rights, *supra* note 10, at 2.

62 'The "ethnic cleansing" or massive displacement of people in Bosnia-Herzegovina has not been a consequence of this war. It is the main strategic aim of the war in Bosnia-Herzegovina', Pajic, *supra* note 15, at 8.

63 *Second Mazowiecki Report I*, at 3, point 6.

and achieving a more favourable position for a particular ethnic group in ensuing political negotiations based on the logic of division along ethnic lines.⁶⁴ The final aim could also be the extermination of certain groups of people from a particular territory, including the elimination of all physical traces of their presence.⁶⁵

The goals of this policy could be of both a short-term and long-term nature. The short-term goal could be effective control over territory for military or strategic reasons. The long-term goal could be the creation of living conditions that would make the return of the displaced community impossible,⁶⁶ and ultimately lead to the change of ethnic structure of population in the region according to the concept of territorial unity and ethnic exclusivity.⁶⁷

C. Ethnic Cleansing – Regional Analysis

Some descriptions of ethnic cleansing tend to deal with the problem on a region-to-region basis. Examples of this method can be found in the reports about situations in different regions of Bosnia and Herzegovina, like Prijedor⁶⁸ or Kulen Vakuf,⁶⁹ Kozarac,⁷⁰ eastern enclaves (Cerska, Konjevic Polje, Srebrenica, Gorazde and Zepa),⁷¹ etc.

But the fact is that the global aims of the ethnic cleansing policy are difficult to recognize just by describing a very specific region.

64 'In an effort to create a *fait accompli* in disregard of international commitments'. Resolution 1992/S-2/1 of the Commission on Human Rights, UN Doc. E/CN.4/1992/S-2/6, para. 8 of the Preamble. See also para. 2 of the UN Security Council Resolution 787 (1992) where the Secretary-General reaffirmed 'that any taking of territory by force or any practice of ethnic cleansing is unlawful and unacceptable and will not be permitted to affect the outcome of negotiations on constitutional arrangements for the Republic of Bosnia and Herzegovina'. 'Tous les observateurs internationaux s'accordent à penser qu'on assiste actuellement à un effort concerté mené par les Serbes de Bosnie-Herzégovine, avec l'assentiment de la JNA et à tout le moins un certain appui de la part de celle-ci – pour créer des régions "ethniquement pures" dans le contexte des négociations sur la "cantonisation" de la République de la Conférence de la CEE sur la Bosnie-Herzégovine, présidée par l'Ambassadeur Cutileiro. Les techniques utilisées consistent à saisir des territoires par la force militaire et à intimider la population non serbe.' UN Secretary-General's Report to the Security Council, UN Doc. S/23900 of 12 May 1992., para. 5, at 3.

65 'The authorities of Banja Luka have removed physical traces of the presence of a Muslim community with the demolition of all of the municipality's 202 mosques', *Sixth Mazowiecki Report II*, at 5, point 13.

66 *Third Mazowiecki Report I*, at 6, point 10.

67 In the specific situation of former Yugoslavia, 'this lends credence to the fear that the ultimate goal may be to incorporate the Serbian-occupied areas of Croatia and Bosnia and Herzegovina into a "Greater Serbia"', *Third Mazowiecki Report I*, at 7, point 13.

68 See *Joinet Report I*, at 285.

69 Rapport sur le processus de purification ethnique dans la Vallée de Ripac, à Kulen Vakuf, in *Livre noir de l'ex-Yougoslavie*, *supra* note 45, at 296.

70 Rapport de Médecins sans frontières sur le processus de purification ethnique dans la région de Kozarac (Bosnie-Herzégovine), 7 December 1992, in *Livre noir de l'ex-Yougoslavie*, *supra* note 45, at 381.

71 *First Mazowiecki Report II*.

III. Definitions of Ethnic Cleansing

Special Rapporteur Mazowiecki defined ethnic cleansing in his report of 17 November 1992 in the following terms:

The term ethnic cleansing refers to the elimination by the ethnic group exerting control over a given territory of members of other ethnic groups.⁷²

Later, in his *Sixth Report* the Special Rapporteur argued that:

ethnic cleansing may be equated with the systematic purge of the civilian population based on ethnic criteria, with the view to forcing it to abandon the territories where it lives.⁷³

A further definition was provided by the Commission of Experts, in their first Interim Report of 10 February 1993.⁷⁴ They were of the view that:

considered in the context of the conflicts in the former Yugoslavia, ethnic cleansing means rendering an area ethnically homogenous by using force and intimidation to remove persons of given groups from the area.

Andrew Bell-Fialkoff gives his definition:

(...) ethnic cleansing can be understood as the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these.⁷⁵

For Michael Roux,

(...) c'est de politique d'homogénéisation nationale forcée d'un territoire par expulsion (et accessoirement massacre) des éléments jugés indésirables.⁷⁶

There are even broader definitions of ethnic cleansing.⁷⁷ It is the present writer's view that ethnic cleansing is a well-defined policy of a particular group of persons to systematically eliminate another group from a given territory on the basis of religious, ethnic or national origin. Such a policy involves violence and is very often connected with military operations. It is to be achieved by all possible means, from discrimination to extermination, and entails violations of human rights and international humanitarian law.

72 UN Doc. A/47/666 and S/24809 of 17 November 1992.

73 *Sixth Mazowiecki Report II*, at 44, point 283.

74 *Supra* note 1.

75 Bell-Fialkoff, *supra* note 4, at 110.

76 Roux, *supra* note 1, at 51.

77 'In estrema sintesi, la pulizia etnica è il rifiuto radicale della convivenza fra gruppi diversi per origine e religione, è l'ultima e più tragica conseguenza del nazionalismo e del razzismo in crescita un po' dovunque in Europa', E. Doni, C. Valentini, *L'arma dello stupro, Voci dei donne della Bosnia* (1993) 15.

This definition outlines the main characteristics of ethnic cleansing.

- A) International reports make reference to one crucial element of ethnic cleansing – its systematic character. This has already been pointed out in this article.⁷⁸
- B) Related to its systematic character is the fact that the authorities support this process, by participation or instigation, or at least by refraining from taking action to restrain those responsible.⁷⁹
- C) Ethnic cleansing is perpetrated against particular groups of individuals, according to their ethnic, national, religious, or other characteristics.⁸⁰ This means that it is directed against the members of the given population as such, especially civilians⁸¹ (including women, children and other non-combatants). The target of ethnic cleansing is defined by its origin, and not by its activity.⁸²
- D) Individuals advocating the policy of ethnic cleansing, by definition, cannot respect international humanitarian law,⁸³ in spite of their formal commitments.⁸⁴ Respecting it would simply deprive this policy of its means, methods and object. Special Rapporteur Mazowiecki states that ‘massive violations of human rights and international humanitarian law are not simply features of the war in Bosnia and Herzegovina. They are being used deliberately to achieve ethnically homogenous areas’.⁸⁵
- E) Ethnic cleansing has different forms, ranging from simple administrative and economic discrimination to the extermination of a target group. Differences of forms, methods and targets of ethnic cleansing seem to depend primarily on the means at the disposal of different parties⁸⁶ and the global character of their projects.⁸⁷

78 *Supra* text notes 55 to 67.

79 It is a question of whether those units and groups have been under effective control of military and political forces. See, e.g., Declaration of Mr. Cornelio Sommaruga, President of the ICRC at the London Conference on Former Yugoslavia, 26 August 1992, *Livre noir de l'ex-Yougoslavie*, *supra* note 45, at 179-180; *First Mazowiecki Report I*, at 6, point 31. P. Morillon, *Croire et oser* (1993) 115; *Fourth Mazowiecki Report*, at 55, point 258; *A Wound to the Soul*, Amnesty International, *supra* note 10, at 3.

80 There are examples of the pressure on Ukrainians in Bosnia-Herzegovina. See *Fourth Mazowiecki Report I*, at 7, point 23. ‘... the victims (of rape) are of different nationality from the perpetrator, that is, women have been singled out for humiliation on account of their nationality...’ *Rape and Sexual Abuse by Armed Forces*, Amnesty International, *supra* note 39, at 5.

81 ‘... the vast majority of the victims are civilians who take no part in the hostilities and are thus especially vulnerable’. Statement by Mr. Cornelio Sommaruga, 29 July 1992, *supra* note 79.

82 Detainees defined as the ‘potential combatants’, *Third Mazowiecki Report I*, at 14, point 34.

83 ‘The violations of international human rights and humanitarian law have been primarily employed as a means for “ethnic cleansing”’, *Fifth Mazowiecki Report II*, at 14, point 99.

84 Obradovic, ‘The “Yugoslav War” Experience and the Problem of Revising International Humanitarian Law of Armed Conflicts’, Paper presented to the Round Table, Fribourg/Switzerland, July 1993.

85 *Fourth Mazowiecki Report II*, at 7, point 16.

86 ‘They are used by all the parties involved, to an extent determined by the means at their disposal...’ Statement by Mr. Cornelio Sommaruga, Geneva 29 July 1992, *supra* note 79.

87 ‘Sans doute Croates et Musulmans ont-ils eux aussi recours, avec moins d’ampleur puisque sont eux qui perdent du terrain, à telles pratiques. Mais, il n’est pas possible de le revoyer dos à dos avec les Serbes.’ Roux, *supra* note 1, at 50.

IV. Ethnic Cleansing and International Law

The relationship between ethnic cleansing as a policy and international humanitarian law,⁸⁸ understood in a broader sense, could be analysed on three levels,⁸⁹ which however do not exclude each other.

A. The Geneva Conventions

Most ethnic cleansing methods are grave breaches of the 1949 Geneva Conventions and 1977 Additional Protocols. Even a superficial survey of the actions listed above supports this conclusion.

In fact, when the UN Security Council used the term ethnic cleansing for the first time in Resolution 771 (1992) of 13 August 1992, it expressly stated that it violated international humanitarian law.⁹⁰

Even in this case, analysing only the violations of the 1949 Geneva Conventions and 1977 Additional Protocols, it is necessary to make a distinction between 'individual criminality' and 'system criminality'.⁹¹

B. Crimes Against Humanity

These are described in the Charter of the International Military Tribunal which was held at Nuremberg.⁹² The UN Secretary-General, in his proposal on the Statute of the Tribunal for former Yugoslavia, explained that 'crimes against humanity are aimed at any civilian population', and listed the examples of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhuman acts.⁹³ The Commission of Experts established by the Security Council understands those crimes to mean

88 Bell-Fialkoff, *supra* note 4, at 110: 'At one end it is virtually indistinguishable from forced emigration and population change while at the other it merges with deportation and genocide.'

89 After giving the list of elements of the ethnic cleansing, the Commission of Experts concludes that 'ces pratiques constituent des crimes contre l'humanité et peuvent être assimilées à des crimes de guerre bien définis. Qui plus est, elles pourraient également relever de la Convention sur le génocide', UN Doc. S/25274, at 16, point 56.

90 UN Security Council's Resolution 771 (1992) at para. 2. See also 780 (1992), 787 (1992), 808 (1993), 819 (1993), 820 (1993), 824 (1993), 827 (1993). The same appears in the UN General Assembly Resolution 46/242 of 25 August 1992, UN Doc. A/RES/46/242.

91 See further Röling, 'Aspects of the Criminal Responsibility for Violations of the Laws of War', in A. Cassese (ed.), *The New Humanitarian Law of Armed Conflict* (1979) 203.

92 In Article 6(c): 'namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial and religious ground in execution of or in connection with any crime within the jurisdiction of the Tribunal...'

93 UN Doc. S/25704, at 13, points 48-49.

toute violation flagrante des règles fondamentales du droit humanitaire et du droit relatif aux droits de l'homme, commise par une personne dont il peut être établi qu'elle appartient à une partie au conflit, dans le cadre d'une politique officielle de discrimination à l'encontre d'un groupe déterminé de personnes, qu'il y ait ou non de guerre et quelle que soit la nationalité de la victime.⁹⁴

It is apparent that a policy of ethnic cleansing, aimed at the elimination of a population from a given territory, without precise designation of the target group and without any clear intention of their destruction as a group, could fit into the definition of crimes against humanity. The majority of ethnic cleansing policies in former Yugoslavia appear to correspond to crimes against humanity, given that they are a systematic and massive attack on the civilian population. All 'parties in the conflict' have committed some of the acts listed above as components of ethnic cleansing, and there are a large number of victims belonging to the different nations. In fact, the Secretary-General has pronounced that:

in the territory of former Yugoslavia, such inhuman acts have taken the form of so-called ethnic cleansing and widespread and systematic rape and other forms of sexual assault; including enforced prostitution.⁹⁵

C. Genocide

The inevitable question is whether the violations of international humanitarian law which have occurred in Bosnia could be considered as isolated incidents without implying a specific intent. In other words, could we consider extreme examples of ethnic cleansing as crimes of genocide? International affairs after World War II had not encompassed specific events that warranted labelling as genocide until the outbreak of war in Bosnia and Herzegovina.⁹⁶

Helsinki Watch⁹⁷ was the first NGO to define the situation unfolding in the territory as genocide. Further, it is significant that genocide was recognized in

94 Report of 10 February 1992, UN Doc. 25274, at 25, point 49.

95 *Supra* note 93, point 48.

96 See Cassese, 'La communauté internationale et le génocide', in *Le droit internationale au service de la paix, de la justice et du développement, Mélanges Michael Virally* (1991) 183, especially 187-192. 'Il est très significatif à cet égard que la pratique officielle évite à l'ordinaire d'employer le mot 'génocide', trop chargé d'histoire; elle lui préfère généralement des formules plus contournées.' Verhoeven, 'Le crime de génocide. Originalité et ambiguïté', *RBDJ* (1991/1) 5. In public statements in former Yugoslavia this term has been widely used and misinterpreted, often for very precise political purposes.

97 See *Helsinki Watch 1st Report*, *supra* note 11, at 1-2: 'The findings in this report ... provide at the very least *prima facie* evidence that genocide is taking place.' See further *Helsinki Watch 2nd Report*, *supra* note 8, at 2: 'What is taking place in Bosnia-Herzegovina is attempted genocide - the extermination of a people in whole or in part because of their race, religion or ethnicity.'

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Article 4 of the Statute of the International Tribunal for the Former Yugoslavia of 1991,⁹⁸ as a part of its *ratione materiae* competence.⁹⁹

The term also appeared in *Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)* in which the former sought the enforcement of the Convention on the Prevention and Punishment of the Crime of Genocide before the International Court of Justice.¹⁰⁰ Both Parties mentioned this crime in their respective requests for provisional measures. The Court noted that the crime of genocide:

shocks the conscience of mankind, results in great losses to humanity ... and is contrary to moral law and to the spirit and aims of the United Nations, as reads General Assembly Resolution 96(1) of 11 December 1946.

The Court went on to conclude that:

(...) great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations.¹⁰¹

UN General Assembly Resolution 47/121 of 18 December 1992 is very explicit in its paragraph 9 of the Preamble, declaring that:

(...) the abhorrent policy of 'ethnic cleansing' (which) is a form of genocide...

It could be considered that the conclusion of the Commission on Human Rights in its Resolution 1992/S-1/1, without mentioning the word, could mean genocide.¹⁰² Later on, in its Resolution 1992/S-2/1,¹⁰³ of 1 December 1992, the Commission on Human Rights

calls upon all States to consider the extent to which the acts committed in Bosnia and Herzegovina and in Croatia constitute a genocide, according to the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁰⁴

98 Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704 of 3 May 1993. This report was approved by the Security Council's Resolution 827 (1993) *supra* note 12.

99 The Statute states in Article 1 that 'the International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law ...', the crime of genocide must be considered as a part of international humanitarian law.

100 See further the article by Raphaële Maison, this issue at 381.

101 Order of International Court of Justice, 13 September 1993. General List No. 91, at 25 point 52.

102 UN Doc. E/CN.4/1992/S-1/8; Paragraph 5 of Preamble: 'Expressing its particular abhorrence at the concept and practice of "ethnic cleansing" in the former Yugoslavia, and especially in Bosnia and Herzegovina, which at a minimum entails deportation and forcible mass removal or expulsion of persons from their homes in flagrant violation of their human rights, and which is aimed at the dislocation or destruction of national, ethnic, racial or religious groups', with mention in paragraph 10 of Preamble that 'the former Yugoslavia was a party to (...) the Convention on the Prevention and Punishment of the Crime of Genocide (...)'.
103 UN Doc. E/CN.4/1992/S-2/6.

104 Paragraph 12.

The Genocide Convention defines genocide as the intentional destruction of a group, in whole or in part. From this definition we can distinguish three elements to be applied to the specific situation: destruction, specific characteristics of a target group, and intention.¹⁰⁵

Genocide need not involve the destruction of a *whole* group.¹⁰⁶ As is stated in the Whitaker Report:

'in part' would seem to imply a reasonably significant number relative to the total of a group as a whole, or else a significant section of a group such as its leadership.¹⁰⁷

In the case of Bosnia and Herzegovina there is evidence (e.g. UN studies and reports by the media) that the majority of the victims of ethnic cleansing belong to one national group – the Muslims – and that they are further threatened by extermination.¹⁰⁸ This is a specific national group, recognized as a nation in various legal acts, including constitutional provisions. They are also identifiable by reference to their religious and cultural background.

The number of victims is very difficult to ascertain under the present circumstances, but it is obvious that they represent a significant part of the total population. It has been reported that the Muslim victims were mostly people that were supposed to be protected by international humanitarian law, and this in itself implies the intention to destroy Muslims as a people. Furthermore, there are numerous examples of villages and parts of towns being shelled in the complete absence of strategic or other military benefit, but in which Muslims formed a majority of the population.

Certain categories of the Muslim population were especially subjected to torture, deportation and killing; namely intellectuals, political and religious leaders and the wealthy. These categories could represent 'leadership' within the interpretation of the Genocide Convention.

Genocidal acts are enumerated in Article II of the Genocide Convention, and I will briefly attempt to determine if some of the methods of ethnic cleansing fall within their parameters. The acts listed in the Convention are: killing members of a group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group. 'Causing serious bodily or mental harm to members of a group' could be achieved by torture

105 Verhoeven, *supra* note 96, at 14.

106 Revised and updated report on the question of the prevention and punishment of crime of genocide prepared by Mr. B. Whitaker, UN Doc. E/CN.4/Sub.2/1985/6 of 2 July 1985, at 16.

107 *Ibid.*

108 Commission on Human Rights Resolution 1992/S-2/1, *supra* note 56, at para. 7 of the Preamble. See also *First Mazowiecki Report I*, at 11, point 52; *Second Mazowiecki Report I*, at 2, point 5; *Fifth Mazowiecki Report II*, at 34, point 228.

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and terror in concentration camps, the siege of towns, rape,¹⁰⁹ and destruction of national symbols such as cultural and religious monuments. Vulnerable groups such as women and children are particularly affected.¹¹⁰

To recognize an example of 'deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or in part', it is enough to analyse the 'living' conditions prevailing in concentration camps and prisons and in occupied or besieged towns. Certain administrative measures adopted in the framework of ethnic cleansing would also fall within the definition. Furthermore, preventing the passage of humanitarian aid and essential supplies and the destruction of vital means for survival could bring the population to physical destruction.

Rape could also have the objective of preventing births within the group by inflicting psychological damage on women that would drive them to refuse future sexual contact or to give birth. Rape of wives and mothers could be designed to harm family relations. Finally, the consequences of mutilation and castration of males require no explanation.

In order to differentiate genocide from other crimes against humanity, it is essential to establish an intent to destroy a certain group.¹¹¹

An essential condition is provided by the words 'as such' in Article II, which stipulate that, in order to be characterized as genocide, crimes against a number of individuals must be directed at their collectivity or at them in their collective character or capacity.¹¹²

Due to the very existence of the Genocide Convention, it is now unrealistic to expect to find evidence, in the written materials and public statements of officials, about someone's intention to commit genocide. For this reason it is necessary to take into consideration other significant elements to determine intent. In the first place, intent could be deduced from 'sufficient evidence' which includes 'actions or omissions of such a degree of criminal negligence or recklessness that the defendant must reasonably be assumed to have been aware of the consequences of his conduct'.¹¹³ The abundant evidence of systematic genocidal acts could be viewed as an indication of an underlying intent, especially given the widespread participation of government authorities in the atrocities committed or their omission to prevent or punish the perpetrators of crimes.

109 Which effects not just the victims but their families as well.

110 See *Sixth Mazowiecki Report*, at 33, points 209-230.

111 Cassese, *supra* note 96, at 184, Verhoeven, *supra* note 96, at 16; Shaw, 'Genocide and International Law', in Y. Dinstein (ed.), *International Law in a Time of Perplexity. Essays in Honour of Shabtai Rosenne* (1989) 805.

112 Whitaker Report, *supra* note 106, at 19.

113 Whitaker Report, *ibid*.

Intent is also revealed by the form of language used in public statements to designate certain groups as 'the enemy',¹¹⁴ which could imply intent of war against those groups as such rather than against their military forces. Some public statements reported by the media also indicate the existence of intent.¹¹⁵

In specific circumstances, other relevant elements should be taken into consideration in analysing the intent. These elements could be: a profile of the population killed (sex, age, social position, specific categories, level of education, etc.), characteristics of individual crimes committed (brutality, cruelty, humiliation, etc.), the systematic nature of certain crimes (rape, destruction of property and objects necessary for survival of population, destruction of places of worship, prevention of delivery of humanitarian aid, etc.).

V. Conclusion

Analysis of ethnic cleansing should not be limited to the specific case of former Yugoslavia. This policy can occur and have terrible consequences in all territories with mixed populations, especially in attempts to redefine frontiers and rights over given territories. There is a new logic of conflict that relies on violent actions against the 'enemy's' civilian population on a large scale, rather than on war in the traditional sense i.e. between armed forces. Examples of this logic and policy abound today (the extreme case being Rwanda).

On the basis of the tragic events of Bosnia and Herzegovina and taking into consideration the many reports and analyses of all aspects of so-called ethnic cleansing, very precise violations of international law can be recognized: from intolerance and discrimination, ethnic and religious exclusivity, dominance and the sense of superiority of one group to crimes against humanity and genocide. Further, the motivating factors behind ethnic cleansing policies in the former Yugoslavia are not historical, but stem from strategic political interests.

114 For example: 'the Muslims', 'the Croats', 'the Serbs', and not their respective military forces or authorities. The present author deeply disagrees with this habit accepted by the majority of media and even official documents. Such a designation implies collective responsibility and does not correspond to the reality of the situation. In fact, this could represent acceptance of the concept which provoked the ethnic cleansing.

115 For example, statement of Mr. Karadzic in Bosnia and Herzegovina's Parliament before the war that in the event of war the Muslims will disappear; a statement released by the Commissioner for refugees of the self-proclaimed 'Serbian Republic in Bosnia and Herzegovina' reads that 'all Serbs, Croats, Yugoslavs, Jews and other citizens wishing to do so, should prepare to leave Sarajevo, threatened by cold and winter' in a situation where the majority of Sarajevo citizens are Muslims (*International Herald Tribune* 9 December 1992, at 2; 'Let's be honest, it is all about killing of Muslims' a civilian official in Pale, Bosnian Serb headquarters told a *Newsweek* reporter in December. The official had recently served as commander of a Serbian artillery battery overlooking Sarajevo. 'We had the coordinates of every playground in the city, every school, every market, every food-distribution centre. After that, it's just a question of mathematics, that's all it is.' *Newsweek* 14 February 1994, at 13; 'Let's kill all the Muslims', the (HVO) soldier began yelling as the people huddled in a sandlot', *Newsweek* 7 June 1993, at 11.

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It is important to underline once again that the policy of ethnic cleansing fundamentally represents a violation of human rights and international humanitarian law. It may be most appropriate to define forms of ethnic cleansing which are not aimed at extermination as specific crimes perpetrated within the framework of crimes against humanity. Only when the means and methods of ethnic cleansing policies can be identified with genocidal acts, and a combination of different elements implies the existence of intent to destroy a group as such, can such actions represent genocide.

Specific policies of different parties should be analysed separately.¹¹⁶ Behind most policies of ethnic cleansing in former Yugoslavia are not historical factors, but very precise strategic interests of the current political leadership.

It is essential that the new term is not used to replace pre-existing definitions in international law. So far the international community has been employing precisely this term, but only as an excuse not to comply with duties laid down by international law. The objective of this article has been to provide elements for future analysis of this phenomenon, as individual responsibility will be determined by the International Tribunal established for that purpose.¹¹⁷

In doing so it is hoped that the Tribunal will apply well defined tenants of international law rather than emotive phrases and terms, so far, 'ethnic cleansing' has been used merely as a political rather than as a legal term.

116 There are attempts to recognize the roots of the policy of Serbian extremists by analysing practically the whole of Serbian history. We cannot agree with this method, because in the history of every European State, it is possible to find different ideas, often based on exclusivity of the given nation and ideas about territorial expansion. Manipulation with history is very often used by politicians to justify their particular actions, but a similar approach by the analysts could also lead to the demonization of the whole nation by analysis of its history in the context of the actual events.

117 See the article by Shraga and Zacklin in this issue at 360.