INVESTIGATING WAR CRIMES IN THE FORMER YUGOSLAVIA WAR
1992–1994
INVESTIGATING WAR CRIMES IN THE FORMER YUGOSLAVIA WAR 1992–1994


M. CHErif BASSiOUNI
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DEDICATION

This book is dedicated to the victims of the conflict in the former Yugoslavia (1991–1994). The suffering of the many, but not all, is described herein. Conflicts like these are not only about numbers they are about individual human beings, each one to be distinguished from the others.

M. Cherif Bassiouni
ABOUT THIS BOOK

This book contains the Final Report and Annexes (the latter is available online through Intersentia Publishing) of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992). The Commission of Experts was the first international initiative to advance international criminal justice since the post-WWII experiences. The Cold War had brought a sharp stop to the international community’s efforts to advance international criminal justice. As such, it was befitting for the Security Council to establish such a Commission of Experts, whose mandate was to investigate violations of international humanitarian law committed in the territory of the former Yugoslavia in the early 1990s.

The Commission of Experts’ investigation, which was originally intended to be something of a continuation of post-WWII prosecutions, was politically challenging because some of the European countries most directly involved at the time were focused on bringing about a political settlement. To them, pursuing peace and justice at the same time was simply impossible.

The United Kingdom’s Lord Peter Carrington and then Lord David Owen, representing the European Union, were pursuing a political solution. They probably believed that negotiating with the heads of the warring factions of the time would not be possible if the factions’ leaders knew they were being investigated by a UN commission – and were likely to be charged with war crimes and crimes against humanity. Perhaps those involved in the political settlement negotiations also contemplated offering some sort of immunity to the leaders, and maybe a few others, as a quid pro quo for agreeing to a political settlement. And that would not have been possible with a United Nations fact-finding body in place and functioning.

Whatever their reasons, those active in the political settlement field, particularly the negotiators from the United Kingdom, first fought the establishment of the Commission of Experts and then, used bureaucratic and financial means to thwart the Commission’s work.

The Commission of Experts’ work was a long and arduous battle because of the political, financial and bureaucratic obstacles it faced, as well as the horrific nature of the alleged crimes. But it ended with invaluable, credible evidence, documenting atrocious crimes. The facts uncovered and documented by the Commission of Experts – evidence of policies and practices such as ethnic cleansing, mass rape, and targeted genocide – were ones that 1990s Europe could
not accept. Once such facts were documented and made public, impunity for those responsible could never be part of any negotiated settlement.

As its Final Report shows, the Commission of Experts documented and provided evidence of war crimes, crimes against humanity, and targeted genocide, and it showed how these were linked to the leaders of the conflict. Despite all the conflicting political currents of the time, the large majority of such leaders eventually were indicted and prosecuted by the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The Commission of Experts’ battles were indispensable for bringing about the prosecution of those who committed such crimes by the ICTY. Determining exactly how much the work of the Commission of Experts and the evidence contained in its Annexes were convincing to the Security Council and contributed to the establishment of the ICTY is impossible. But, the Security Council acknowledged the work of the Commission of Experts in Resolution 808 (1993), where it stated,

Having considered the interim report of the Commission of Experts established by resolution 780 (1992) (S/25274), in which the Commission observed that a decision to establish an ad hoc international tribunal in relation to events in the territory of the former Yugoslavia would be consistent with the direction of its work … Decides that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

The Commission of Experts fought – and won – the first post-WWII battle for accountability and justice. It succeeded in uncovering exactly what crimes were being committed, where they took place, and who was responsible, and that set the stage for the ICTY prosecutions. In the end, although not all of those who committed atrocities were brought to justice by the ICTY, the principles of accountability and justice did prevail.

The history of what happened in the former Yugoslavia has never been recorded, and not enough to satisfy those who were involved in that conflict, let alone future generations. To some extent, the events of the early 1990s in the former Yugoslavia resemble the First Balkan War in 1913, when the same ethnic communities were engaged in an interracial/political conflict during which horrendous atrocities were committed. And yet their crimes went entirely without accountability. In 1914, the Carnegie Endowment for International Peace published a report entitled “Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars,” which is about the only historic record we have today of that

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1 S.C. Res. 808, 1–2 (Feb. 22, 1993).
conflict and its atrocities. But the communities’ memories never faded away – and were renewed between 1991 and 1994.

History will judge whether the combined results of the Commission of Experts and the ICTY will amount to a glass that is half full or half empty. But in looking back at the history of international criminal justice, we can see that each effort may not have accomplished everything people hoped for – but still contributed to the pursuit of accountability and international criminal justice. The battle with realpolitik, where individual nations’ interests are paramount, over international criminal accountability and international criminal justice continues. But in the work of the Commission of Experts and the ICTY, we can certainly see history as a glass in the process of being filled.
ABOUT THE AUTHOR


Professor Bassiouni is an Emeritus Professor at DePaul University College of Law in Chicago, where he taught for 45 years and was a founding member and President of the International Human Rights Law Institute. He was also a founder of the Siracusa Institute, formerly the International Institute of Higher Studies in Criminal Sciences, in Siracusa, Italy and served as its Dean and then President from 1974–2015. At the Association Internationale de Droit Pénal, Professor Bassiouni held the positions of Secretary-General (1974–1989), President (1989–2004) and Honorary President, since then.

He has authored 28 books, co-authored 5 books and edited 44 books. He has also authored 268 articles on International Criminal Law, Human Rights Law, Comparative Criminal Law and U.S. Criminal Law. His works have been written in and translated into Arabic, Chinese, Farsi, French, German, Hungarian, Italian, Portuguese, Russian and Spanish.

He has received ten honorary degrees from seven countries (Albania, Austria, Belgium, France, Ireland, Italy and United States), and was awarded 15 medals from seven countries (Austria, Croatia, Egypt, France, Germany, Italy and United States). He was nominated for the Nobel Peace Prize in 1999 for his pioneering work of over half a century to establish a permanent International Criminal Court.

Professor Bassiouni earned an LLB from the University of Cairo, Egypt. He studied law at Dijon University (France), the University of Geneva (Switzerland) and in the United States. He earned a J.D. from Indiana University, a LL.M. from John Marshall Law School and a S.J.D. from George Washington University.
ACKNOWLEDGEMENT

This is to acknowledge the assistance of Deirdre McGrory, without whose help I would not have been able to accomplish this book. The work was done beginning in November 2016 and was completed in March 2017. During that period of time I was mostly ill and had to reckon with chemotherapy, which left me without much physical energy. I dictated this book to Deirdre, who would then reread her transcriptions to me and I would bring corrections to her and ask her to undertake research to ensure the accuracy of what was being said and to add whatever additional legal or factual information was necessary.

I therefore am grateful to her for her assistance.

M. Cherif Bassiouni
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACABQ</td>
<td>United Nations Advisory Committee on Administrative and Budgetary Questions</td>
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Annex VI.B

Annex VII

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Annex X.B

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BiH</td>
<td>Bosna i Hercegovina (Bosnia and Herzegovina)</td>
</tr>
<tr>
<td>BSA</td>
<td>Bosnian Serb Army (Vojска Republike Srpske)</td>
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<tr>
<td>CCL No. 10</td>
<td>Allied Control Council Law No. 10</td>
</tr>
<tr>
<td>CIVPOL</td>
<td>United Nations Civil Police Unit</td>
</tr>
<tr>
<td>CoI</td>
<td>Commissions of Inquiry</td>
</tr>
<tr>
<td>Cominform</td>
<td>Communist Information Bureau</td>
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<tr>
<td>Commission of Experts</td>
<td>Commission of Experts Established pursuant to Security Council Resolution 780 (1992) to Investigate Violations of International Humanitarian Law in the Former Yugoslavia</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference on Security and Cooperation in Europe</td>
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<tr>
<td>EC</td>
<td>European Community</td>
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<tr>
<td>ECMM</td>
<td>European Community Monitoring Mission for Yugoslavia</td>
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<tr>
<td>FRY</td>
<td>Federal Republic of Yugoslavia (Savezna Republika Jugoslavija)</td>
</tr>
<tr>
<td>GA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>HDZ-BiH</td>
<td>Croatian Democratic Union of Bosnia and Herzegovina (Hrvatska Demokratska Zajednica- Bosna i Hercegovina)</td>
</tr>
<tr>
<td>HOS</td>
<td>Paramilitary Wing of Croatian Party of Rights (Hrvatska Oružane Snage)</td>
</tr>
<tr>
<td>HV</td>
<td>Croatian Army (Hrvatska Vojska)</td>
</tr>
<tr>
<td>HVO</td>
<td>Croatian Defense Council (Hrvatsko Vijeće Obrane)</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<tr>
<td>IHRLI</td>
<td>International Human Rights Law Institute</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>IMT</td>
<td>International Military Tribunal at Nuremberg</td>
</tr>
<tr>
<td>IMTFE</td>
<td>International Military Tribunal for the Far East</td>
</tr>
<tr>
<td>JNA (or YPA)</td>
<td>Yugoslav National Army or Yugoslav People’ Army (Jugoslovenska Narodna Armija)</td>
</tr>
<tr>
<td>LCY</td>
<td>League of Communists of Yugoslavia (Komunistička Partija Jugoslavije)</td>
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<tr>
<td>NDH</td>
<td>Independent State of Croatia during World War II (Nezavisna Država Hrvatska)</td>
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<tr>
<td>NGO</td>
<td>Nongovernmental Organization</td>
</tr>
<tr>
<td>OLA</td>
<td>United Nations Office of Legal Affairs</td>
</tr>
<tr>
<td>OTP</td>
<td>Office of the Prosecutor</td>
</tr>
<tr>
<td>RSK</td>
<td>The Republic of Serbian Krajina (Republika Srpska Krajina)</td>
</tr>
<tr>
<td>SANU</td>
<td>Serbian Academy of Arts and Sciences (Srpska Akademija Nauka i Umetnosti)</td>
</tr>
<tr>
<td>SASK</td>
<td>Serbian Army of the Republic of Serbian Krajina (Vojska Republike Srpske Krajine)</td>
</tr>
<tr>
<td>SC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>SDA</td>
<td>Bosnian Muslim Party of Democratic Action (Stranka Demokratske Akcije)</td>
</tr>
<tr>
<td>SDS</td>
<td>Serbian Democratic Party (Srpska Demokratska Stranka)</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia (Socijalistička Federativna Republika Jugoslavije)</td>
</tr>
<tr>
<td>SPS</td>
<td>Serbian Socialist Party (Srpska Partija Socijalistička)</td>
</tr>
<tr>
<td>SRBiH</td>
<td>Serbian Republic of Bosnia and Herzegovina (Republika Srpska)</td>
</tr>
<tr>
<td>SRS</td>
<td>Serbian Radical Party (Srpska Radikalna Stranka)</td>
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<td>SSJ</td>
<td>Serbian Unity Party (Stranka Srpskog Jedinstva)</td>
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<td>TDF</td>
<td>Territorial Defence Force (Snage Teritorijalne Obrane)</td>
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<td>Total National Defence</td>
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<td>UNHCR</td>
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<td>UNPA</td>
<td>United Nations Protected Area in the former Yugoslavia</td>
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<td>UNPROFOR</td>
<td>United Nations Protection Forces in the former Yugoslavia</td>
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<td>ZNG</td>
<td>Croatian National Guard (Zbor Narodne Garde)</td>
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