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LETTER DATED 3 AUGUST 1993 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to convey the attached report addressed to me on 2 August 1993 by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia.

(Signed) Boutros BOUTROS-GHALI

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Annex

Report of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia

INTRODUCTION

1. The Secretary-General reported to the Security Council on 8 July 1993 on the activities of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia (S/26066). The present report contains information on the latest efforts of the Co-Chairmen to stop the conflict in Bosnia and Herzegovina, as well as on other activities of the Conference.

I. BOSNIA AND HERZEGOVINA

2. The Co-Chairmen have continued their search for a negotiated settlement to the conflict in Bosnia and Herzegovina. They have maintained contacts with the different sides to the conflict, seeking to serve as a channel of communication and to clarify ideas and proposals advanced by the parties during the discussions.

3. During their contacts with President Izetbegovic, Mr. Boban and Mr. Karadzic, as well as in related contacts with Presidents Milosevic, Bulatovic and Tudjman, the Co-Chairmen impressed upon them the urgency of reconvening peace talks to strive for a negotiated and durable solution. As part of this process, the Co-Chairmen arranged for a meeting, held in Geneva on Saturday, 17 July 1993, between President Milosevic and President Tudjman.

4. Having regard to developments on the ground, especially the deteriorating humanitarian situation and the persistence of conflict, the Co-Chairmen invited the Bosnian sides, together with Presidents Milosevic, Bulatovic and Tudjman, to come to Geneva for talks on Friday, 23 July 1993. The Co-Chairmen also appealed to the Bosnian leaders to order their forces to refrain from further hostilities and to help to alleviate the humanitarian situation, especially by assisting in the restoration of utilities in Sarajevo and in allowing access for humanitarian convoys.

5. Owing to the hostilities then taking place around Sarajevo, President Izetbegovic requested, and the Co-Chairmen agreed to, a postponement of the talks from Friday, 23 July to Sunday, 25 July 1993. For similar reasons, a further deferral was made to Tuesday, 27 July, when all sides came to Geneva for peace talks. Seven other members of the Presidency of Bosnia and Herzegovina also attended, as did Presidents Milosevic, Bulatovic and Tudjman. Furthermore, President Izetbegovic brought with him five leaders of political parties, with whom the Co-Chairmen met and held discussions.

6. The peace talks began on 27 July and were continuing as at 2 August 1993. The discussions concentrated on steps to secure a cease-fire and on ways and means of dealing with humanitarian issues; future constitutional arrangements; and the allocation of territory to the constituent entities.

A. Cessation of hostilities and humanitarian issues

7. Following discussions on 27, 28 and 29 July 1993, President Izetbegovic, Mr. Karadzic and Mr. Boban agreed to issue immediate directives to their military commanders to implement a full cessation of hostilities. They further agreed that, in order to reinforce that directive, the commanders of the three military forces should meet immediately at Sarajevo Airport under the chairmanship of the United Nations. Furthermore, the commanders should meet each day while the talks continued so as to discuss the causes of any conflict and to correct the situation. The commanders were also requested to discuss whether any modifications were needed to the military agreements contained in the Vance-Owen peace plan (see S/25479, annex IV) that all three sides have reaffirmed.

8. The military commanders of the three sides met at Sarajevo Airport on 30 July 1993 under the auspices of the Force Commander of the United Nations Protection Force (UNPROFOR). At the end of their meeting that day, they signed an agreement providing that all forces of the three parties cease firing and freeze all military activities, including military movements, deployment of forces and establishment of fortifications. The agreement also provides for permitting free passage for UNPROFOR convoys and convoy escorts and free passage for humanitarian aid convoys. The text of the agreement signed is reproduced in appendix I to the present report.

B. Constitutional Agreement

9. During the discussions on constitutional issues, all sides submitted working papers, which were distributed and discussed. Taking these submissions into account and having regard to the issues raised in the discussions, a consolidated working paper was discussed and examined article by article, with all sides participating in an open and constructive manner.

10. After intensive discussion on a number of drafts submitted by the parties, with amendments submitted by all three parties, they agreed on 30 July to a Constitutional Agreement for a Union of Republics of Bosnia and Herzegovina to form part of an overall peace settlement. The text of the Constitutional Agreement is reproduced in appendix II to the present report.

C. Access Authority

11. The Co-Chairmen stressed the vital importance of ensuring freedom of movement throughout the country. They proposed establishing an Access Authority, as foreseen under the Vance-Owen peace plan, with throughways to ensure access in sensitive areas of the country after UNPROFOR withdraws. They also stressed that the "blue route" concept in the Agreement for Peace in the Vance-Owen peace plan would also be maintained and that would ensure, within a few days, access through Sarajevo city and the surrounding areas out to key cities.

12. The railway and road from Ploce to Doboj which, after it crosses the Croatian border, follows the route Mostar-Jablanica-Sarajevo-Zenica-Doboj,

criss-crosses all three of the constituent republics. For this reason, the Co-Chairmen strongly felt that it should be run by the Access Authority. There would be guaranteed road access along the designated "blue routes" (Sarajevo-Ilidza-Hadzici-Tarcin-Jablanica-Mostar, Sarajevo-Rajlovac-Ilijas-Visoko-Zenica, Sarajevo-Bentbasa-Mokro-Sokolac-Vlasenica-Zvornik) as soon as UNPROFOR started to implement the military plan. This time interval while UNPROFOR was present in the country would allow a number of bypass roads to be constructed to give guaranteed access within the territory of each constituent republic.

D. The map

13. The Co-Chairmen's detailed discussions on the map started on 21 July 1993. They are determined to ensure that the suggestion made during their earlier clarification talks that any Muslim-majority republic should have at least 30 per cent of the territory of Bosnia and Herzegovina and have guaranteed access to the Sava river and to the sea at Ploce should be fulfilled.

14. The discussions on the map are continuing.

II. CROATIA

15. Following the military actions of the Croatian armed forces in January 1993, the Security Council, by its resolution 802 (1993), ordered, among other things, that Croatian government forces be withdrawn from the areas within or adjacent to the United Nations protected areas. Since then, successive rounds of discussions have been organized within the framework of the International Conference, as well as under the auspices of UNPROFOR, to bring about compliance with Security Council resolution 802 (1993).

16. On 15-16 July 1993, an agreement relevant to the implementation of that resolution was signed by Serb local authorities and by representatives of the Croatian Government. The Agreement followed contacts that the Co-Chairmen had had earlier with President Milosevic and President Tudjman, followed by discussions held in Zagreb and Erdut. The Agreement of 15-16 July provided that there would be no Croatian armed forces or police in the areas specified in the Agreement after 31 July 1993. UNPROFOR would move into those areas. In the villages of Islam Grcki, Smokovic and Kasic, Serb police together with United Nations Civilian Police (UNCIVPOL) would be present. With the withdrawal of the Croatian armed forces and police, according to the first paragraph of the Agreement, Maslenica Bridge, Zemunik Airport and Peruca Dam would be under the exclusive control of UNPROFOR. The building of a pontoon bridge could proceed after the signature of the agreement by both sides. Both sides agreed to intensify their efforts to reach a negotiated solution to all problems existing between them, starting with a cease-fire agreement to be negotiated by UNPROFOR. The text of the Agreement is set out in appendix III to the present report.

17. Following the signature of the Agreement, efforts continued to get the two sides to sign a cease-fire agreement. On 20 July 1993, Croatian and Serb delegations met in Vienna in a plenary session and reviewed a draft cease-fire agreement that had been produced by UNPROFOR. Initially the talks went well, with few significant differences between the parties. A military working group

was established to examine in detail the areas involved and the exact lines of withdrawal. However, after both sides consulted their authorities, it emerged that the Croatian Government considered that the cease-fire agreement was not linked to the agreement of 15-16 July, while the Serbs insisted that the Croatian forces should withdraw in accordance with that agreement before they would sign any global cease-fire. Despite the best efforts of the negotiators, it proved impossible to find a formula to reconcile these positions, and on 22 July the talks were adjourned until further notice.

18. Subsequently, on 23 July 1993 the Croatian authorities signed a unilateral undertaking to the agreement of 15-16 July in order for UNPROFOR units to start deploying in the Zemunik/Maslenica area not later than 0900 hours on 26 July. UNPROFOR forces would assume control of the whole area by no later than 31 July. The other areas would be taken over by UNPROFOR after the signing of a formal cease-fire agreement. The undertaking further provided that, in the villages mentioned in the Agreement of 15-16 July, UNCIVPOL would be present together with five Serb policemen in each village, armed with side-arms only. Those policemen would be allowed to cross the present confrontation line and enter the villages on 1 August. The text of the undertaking is set out in appendix IV to the present report. The Serb local authorities rejected the undertaking, as not falling within the scope of the agreement of 15-16 July.

19. The crux of the problem has been that the Croatian Government has not yet withdrawn from the areas from which they promised to withdraw in the Agreement of 15-16 July, while the Serbs repeatedly warned that, unless the Agreement is complied with by 31 July, they would feel free to shell the Maslenica Bridge and surrounding areas.

20. Numerous contacts have been made with the Croatian authorities in Zagreb and the Co-Chairmen of the International Conference have had discussions on the matter with President Tudjman.

21. On 25 July the Deputy Force Commander of UNPROFOR obtained an undertaking from the Serb leadership to refrain from all armed hostilities until 31 July 1993, in order to allow the Croatian armed forces and police to withdraw from the areas specified in the Agreement of 15-16 July. The text of the undertaking is set out in appendix V to the present report.

22. Repeated efforts to get the Croatian authorities to comply with the 15-16 July Agreement were unsuccessful and the Serbs continued to indicate that they would feel free to resume armed hostilities after 31 July.

23. On 30 July 1993, Croatian Defence Minister Susak informed the Deputy Force Commander of UNPROFOR as follows:

(a) United Nations military observers can go into all areas specified in the Agreement of 15-16 July;

(b) Armed troops can deploy into the area of the "blue zones", i.e. Maslenica Bridge, Zemunik Airport and Serbian villages;

(c) Discussions can continue after 31 July.

24. The Serb leadership considers that none of these proposals complied with the Agreement of 15-16 July.

25. The Security Council considered this situation on 30 July 1993. Having heard with deep concern a report from the Special Representative of the Secretary-General for the Former Yugoslavia, the Security Council demanded that the Croatian forces withdraw forthwith in conformity with the agreement of 15-16 July and that they permit the immediate deployment of UNPROFOR. The Council also demanded that the Krajina Serb forces refrain from entering the area. The Council called for maximum restraint from all the parties, including the observance of a cease-fire. The Council warned of the serious consequences of any failure to implement the Agreement of 15-16 July.

26. Following the issuance of the statement, the Co-Chairmen have been in contact with the parties and with others in a position to influence the situation so as to promote compliance with the decisions of the Security Council.

III. HUMANITARIAN ISSUES

27. Since the last report of the Secretary-General, Mrs. Sadako Ogata, United Nations High Commissioner for Refugees and Chairperson of the Humanitarian Issues Working Group, has maintained close contact with Governments of the region and with the Bosnian parties, through her Special Envoy and Chiefs of Missions. On 14 July 1993 she visited Sarajevo to express support to its besieged population and to re-emphasize to President Izetbegovic her commitment to continue humanitarian operations in Bosnia and Herzegovina, where possible.

28. On 16 July 1993, Mrs. Ogata chaired a meeting of the Humanitarian Issues Working Group in Geneva, attended by senior representatives of all Governments of the region, of a large number of interested States, and of several intergovernmental and non-governmental organizations. The meeting was addressed by Mrs. Ogata, Mr. Stoltenberg, Lord Owen, Mr. Nakajima of the World Health Organization (WHO), President Sommaruga of the International Committee of the Red Cross (ICRC) and by senior representatives of the World Food Programme (WFP) and the United Nations Children's Fund (UNICEF). Mrs. Ogata informed the meeting of the serious obstacles affecting the international relief effort, including the ongoing denial and obstruction of humanitarian access in many areas of Bosnia and Herzegovina, and attacks on and harassment of relief staff. She highlighted the intensification of war and persecution and the dire conditions of the population of Sarajevo, and of those populations trapped in many other areas, such as Srebrenica and Mostar and in central Bosnia. Warning that, under these conditions a humanitarian catastrophe would be unavoidable during the coming winter months, she called on all Bosnian parties to respect the humanitarian and impartial nature of the international relief effort and to ensure unimpeded and safe access.

29. A further serious obstacle Mrs. Ogata mentioned was the shortfall in funding for all United Nations agencies participating in the relief effort. The shortfall had already resulted in cutbacks in various support programmes, including in Croatia and Yugoslavia (Serbia and Montenegro), which were facing substantial and rising social and economic difficulties. Mrs. Ogata emphasized

the need for continuous and increased burden-sharing with all regional countries of asylum, while calling on these and other States to continue to provide admission and proper treatment, under safe conditions, to persons in need of protection irrespective of their ethnic or religious origin.

30. Expressing concern about the difficulties faced by UNPROFOR and by the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations, the meeting reaffirmed its commitment to the international relief effort in the entire region. Many delegations expressed their willingness to participate in, or otherwise support, a UNHCR-proposed consortium to provide shelter to the increasing number of displaced persons, particularly in central Bosnia, and to undertake essential infrastructural repairs, where feasible. The continuing need to provide temporary protection was recognized, as well as the need to ease the burden of refugee-receiving States in the region. Financial pledges were made, totalling US$ 126 million, of which $63 million were for UNHCR's programme for the former Yugoslavia. While these pledges are encouraging, they will unfortunately not permit UNHCR and other humanitarian organizations to sustain the international relief effort for former Yugoslavia beyond October 1993. Moreover, while the number of people dependent on external assistance is rising daily, parties to the conflict in Bosnia and Herzegovina are rendering it increasingly difficult to reach the victims and to ease their plight.

IV. ARBITRATION COMMISSION

31. As the Secretary-General reported earlier to the Security Council (see S/25708, para. 19), the Working Group on Succession Issues had submitted to the Arbitration Commission six legal questions for its opinion. On 16 July 1993, the Arbitration Commission issued three advisory opinions, giving its views on four of the questions. These opinions are reproduced in appendix VI to the present report. The Commission also indicated that it would give responses relating to the other two questions shortly.

V. CONCLUDING OBSERVATIONS

32. During the latest round of peace talks on Bosnia and Herzegovina, unprecedented positive steps have been registered.

(a) The leadership of the three sides negotiated for the first time intensively, cordially and in a constructive manner for seven days continuously, and continues to do so;

(b) All three sides agreed to a constitutional framework for Bosnia and Herzegovina on 30 July;

(c) The political leadership of the three sides directed their military commanders to observe a cease-fire and an agreement to that effect was signed by the military commanders on 30 July;

(d) Fighting in Bosnia and Herzegovina has been decreasing greatly while the talks are on;

(e) Electricity and water are again available in Sarajevo, although there are still technical problems. The gas pipeline has now been turned on by the Hungarian authorities;

(f) Humanitarian convoys are getting through. The current success rate is 80 per cent;

(g) The delimitation of constituent parts of the State of Bosnia and Herzegovina has been taking shape and every effort is being made to see to it that the areas allocated to the Muslim-majority Republic, which contain most of the wealth and the industrial base of the country, should not be less than 30 per cent of the overall territory.

Appendix I

Agreement for a complete cessation of all combat activities among the parties in conflict of 30 July 1993

THE UNDERSIGNED MILITARY COMMANDERS, as representatives of their respective Parties in conflict,

Respecting the recent decisions of their commanders-in-chief in Geneva, made under the auspices of the International Conference on the Former Yugoslavia,

Mindful of their obligations under relevant Security Council resolutions, including to ensure UNPROFOR's safety and freedom of movement,

Recognizing the absolute urgency of the present situation and pledging their full efforts to see that this Agreement is honoured,

HAVE AGREED as follows:

Article I

CESSATION OF ALL COMBAT ACTIVITIES

1. Beginning upon signature of this Agreement, all forces of the three Parties shall cease firing and shall freeze all military activities, including military movements, deployments of forces and establishment of fortifications.

2. Written orders mandating such cessation of combat activities shall be issued, as soon as possible following signature of this Agreement, by each of the undersigned military commanders.

Article II

HUMANITARIAN AID AND FREEDOM OF MOVEMENT

Written orders shall be issued by the undersigned military commanders, as soon as possible following signature of this Agreement, permitting:

(a) Free passage for UNPROFOR;

(b) Free passage for UNPROFOR convoys and convoy escorts, subject to routine control of numbers of personnel and weapons entering and leaving the territory under the control of a Party; and

(c) Free passage for humanitarian aid convoys, subject to reasonable control of the contents and personnel that are part of the convoy at one checkpoint.

UNPROFOR acknowledges that each Party has legitimate concerns over movements within territories under its control. UNPROFOR shall provide notification of convoy movements.

Article III

VERIFICATION OF COMPLIANCE WITH THIS AGREEMENT

1. The undersigned military commanders shall confirm to UNPROFOR the issuance of orders required by this Agreement, and their acknowledgment by subordinate commanders. Full assistance shall be extended to UNPROFOR to permit it to monitor the implementation of this Agreement. UNPROFOR officers in the field may be consulted to provide assistance in implementation of this Agreement.

2. The undersigned military commanders, or their authorized representatives, shall continue to meet daily at a specified time while their commanders-in-chief are meeting in Geneva or, when necessary, on the request of any of the Parties. In accordance with the recommendation made in Geneva by the commanders-in-chief of the Parties, the draft "Military Agreement on the Cessation of Hostilities" shall be discussed, among other issues.

3. For urgent matters, the military commanders shall make available, through reliable communications on a 24-hour-a-day basis, a representative who is authorized to take decisions or reach those with such authority.

THIS AGREEMENT, done pursuant to the decisions of the commanders-in-chief of the Parties in Geneva, shall enter into force upon its signature.

DONE at Sarajevo Airport, on the 30th day of July 1993, in two versions, one in English and the other in the language of the Parties. Where there are differences of interpretation between the versions, the English version shall control.

(Signed) General Rasim DELIC

(Signed) Lieutenant-General Ratko MLADIC

(Signed) General Milivoj PETKOVIC

UNPROFOR WITNESSES:

(Signed) General Jean COT
Force Commander

(Signed) Lieutenant-General Francis BRIQUEMONT
Commander
Bosnia and Herzegovina

Appendix II

Constitutional agreement of the Union of Republics of Bosnia and Herzegovina

I. THE UNION OF REPUBLICS OF BOSNIA AND HERZEGOVINA

Article 1

The Union of Republics of Bosnia and Herzegovina is composed of three Constituent Republics and encompasses three constituent peoples: the Muslims, Serbs and Croats, as well as a group of other peoples. The Union of Republics of Bosnia and Herzegovina will be a State Member of the United Nations, and as a Member State it shall apply for membership in other organizations of the United Nations system.

Article 2

The flag and emblem of the Union of Republics of Bosnia and Herzegovina shall be specified by a law adopted by the Union Parliament.

Article 3

(a) Citizenship of Bosnia and Herzegovina shall be determined by a law adopted by the Union Parliament.

(b) Every person who on the entry into force of this Constitutional Agreement was entitled to be a citizen of the Republic of Bosnia and Herzegovina shall be entitled to be a citizen of a Constituent Republic as well as of the Union of Republics of Bosnia and Herzegovina.

(c) Dual citizenship shall be allowed.

(d) Decisions about citizenship shall be made by the designated organs of the Constituent Republics, subject to appeal to the competent courts.

Article 4

Neither the Union of Republics of Bosnia and Herzegovina nor any of the Constituent Republics shall maintain any military force, and any forces existing on the date of the entry into force of this Constitutional Agreement shall be progressively disarmed and disbanded under the supervision of the United Nations and the European Community.

II. CONSTITUENT REPUBLICS AND THEIR RESPONSIBILITIES

Article 1

(a) The boundaries of the Constituent Republics shall be as set out in annex A, part I. Except as provided in paragraph (b) below, the boundaries of the Republics may be changed only by the procedure provided for amending this Constitutional Agreement.

(b) Marginal changes in the boundaries set out in annex A may be made by the Presidency on the recommendation of a Boundary Commission, which shall receive evidence from those specifically affected by them. The Commission shall consist of five persons appointed by the Secretary-General of the United Nations, of whom three shall be persons recommended by representatives of the three constituent peoples.

(c) The areas specified in annex A, part II, even though within the territory and under the jurisdiction of a Constituent Republic, shall be vested in the Union of Republics of Bosnia and Herzegovina, for the purpose of ensuring access by all citizens to buildings of the Union in Sarajevo, to the sea at Neum and to the Sava River.

(d) There shall be no border controls on boundaries between the Constituent Republics, and there shall be free movement of persons, goods and services throughout the territory of the Union of Republics of Bosnia and Herzegovina.

Article 2

(a) Each of the Constituent Republics shall adopt its own Constitution, which shall provide for democratic forms of government, including democratically elected legislatures and chief executives and independent judiciaries, as well as for the highest standards of human rights and fundamental freedoms. No provision of these Constitutions may be inconsistent with this Constitutional Agreement.

(b) The initial elections in each Constituent Republic shall be supervised by the United Nations and by the European Community.

Article 3

All governmental functions and powers, except those assigned by this Constitutional Agreement to the Union of Republics of Bosnia and Herzegovina or to any of its institutions, shall be those of the Constituent Republics.

Article 4

All acts taken by a competent governmental authority of any of the Constituent Republics shall be accepted as valid by the other Constituent Republics.

III. COMMON INSTITUTIONS OF THE UNION OF REPUBLICS OF BOSNIA AND HERZEGOVINA

Article 1

(a) The Presidency of the Union of Republics of Bosnia and Herzegovina shall consist of the President, or of an appointee of the legislature, of each of the Constituent Republics.

(b) The Chairmanship of the Presidency shall rotate every four months among the members of the Presidency. The Chairman of the Presidency shall represent the Union of Republics of Bosnia and Herzegovina.

(c) The Presidency shall take all its decisions by consensus.

Article 2

(a) The head of the Council of Ministers of the Union of Republics of Bosnia and Herzegovina shall be the Prime Minister, who shall be appointed and may be removed by the Presidency. The post shall rotate every year so as to be occupied in turn by the nominee of the President of a different Constituent Republic.

(b) The Presidency shall also appoint and may remove a Foreign Minister. The post shall rotate every year so as to be occupied in turn by the nominee of the president of a different Constituent Republic.

(c) The Prime Minister and the Foreign Minister shall be from different Constituent Republics.

(d) Other Ministers may be appointed by the Presidency. They and the Prime Minister and the Foreign Minister shall constitute the Council of Ministers, with responsibility for the policies of the Union of Republics of Bosnia and Herzegovina in relation to foreign affairs, international trade and the functioning of the common institutions, as well as any other functions and institutions that the Union Parliament may from time to time specify by law.

Article 3

(a) The Parliament of the Union of Republics of Bosnia and Herzegovina shall be composed of 120 representatives, one third each to be elected by the respective legislatures of the Constituent Republics.

(b) The Union Parliament may by a simple majority of the members from each Constituent Republic adopt laws within the competence of the Union of Republics of Bosnia and Herzegovina.

Article 4

The Union of Republics of Bosnia and Herzegovina shall have the following courts:

(i) A Supreme Court, composed of four judges appointed by the Presidency, no two of whom shall be from the same peoples, which, except as specified in subparagraph (iii) below, shall be the final court of appeals from the courts of the Constituent Republics;

(ii) A Constitutional Court, composed of three judges appointed by the Presidency, no two of whom shall be from the same Constituent Republic, which shall be competent to resolve by consensus disputes among the Constituent Republics, between any of these and the Union of Republics of Bosnia and Herzegovina or any of its common institutions, and among any of these institutions. Should the Court not be constituted or be unable to resolve a dispute, it shall be referred for a binding decision by a standing arbitral tribunal composed of judges of the International Court of Justice or members of the Permanent Court of Arbitration, one each of whom shall be selected by the President of each of the Constituent Republics and two of whom shall be selected by the Presidency or, if it is unable to do so, by the Secretary-General of the United Nations and by the President of the Council of Ministers of the European Community;

(iii) A Court of Human Rights to be established in accordance with resolution 93 (6) of the Committee of Ministers of the Council of Europe, whose precise composition and competence shall be as set out in the agreed annex B.

Article 5

Joint authorities between two or more of the Constituent Republics may be established by agreement of the Republics concerned if approved by a law adopted by the Union Parliament.

IV. INTERNATIONAL RELATIONS

Article 1

(a) The Union of Republics of Bosnia and Herzegovina shall apply for membership of European and international institutions and organizations, as decided by the Presidency.

(b) Any Constituent Republic may apply for membership of an international organizations if such membership would not be inconsistent with the interests of the Union of Republics of Bosnia and Herzegovina or of either of the other Constituent Republics.

Article 2

(a) The Union of Republics of Bosnia and Herzegovina shall remain a party to all international treaties in force for the Republic of Bosnia and Herzegovina on the date of the entry into force of this Constitutional Agreement, unless the Union Parliament decides that steps to denounce any such treaty shall be taken. However, treaties entered into after 18 November 1990 shall be considered by the Union Parliament within a period of three months from

the entry into force of this Constitutional Agreement and shall remain in force only if the Union Parliament so decides.

(b) The Union of Republics of Bosnia and Herzegovina shall continue all diplomatic relations until the Presidency decides to continue or discontinue them.

(c) The Union of Republics of Bosnia and Herzegovina may become a party to international treaties if such participation is approved by the Union Parliament. The Parliament may by law provide for participation in certain types of international agreements by decision of the Presidency. To the extent such participation would involve responsibilities that are to be carried out by the Constituent Republics, their advance approval must be secured, except in respect of the treaties referred to in chapter V, article 3, below.

(d) Any Constituent Republic may, if eligible, become a party to an international treaty if such participation would not be inconsistent with the interests of the Union of Republics of Bosnia and Herzegovina or of either of the other Constituent Republics.

V. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 1

(a) Subject to article 2 below, all persons within the territory of the Union of Republics of Bosnia and Herzegovina shall be entitled to enjoy the rights and freedoms provided for in the instruments listed in annex C.

(b) Should there be any discrepancy between the rights and freedoms specified in any of these instruments, or between any of these and the rights and freedoms specified in any other legal provisions in force, the provision providing the greater protection for human rights and fundamental freedoms shall be applied.

Article 2

All courts, administrative agencies and other governmental organs of the Union of Republics of Bosnia and Herzegovina and of the Constituent Republics shall apply and conform to the rights and freedoms specified in the instruments listed in parts I and IV of annex C. The rights specified in the instruments listed in parts II and III of annex C shall be considered as aspirations to be attained as rapidly as possible; all legislative, judicial, administrative and other governmental organs of the Union and Republic Governments shall take these rights appropriately into account in promulgating, executing and interpreting any legislative provisions designed to or otherwise suitable for implementing such rights and in otherwise carrying out the functions of these organs.

Article 3

The Union of Republics of Bosnia and Herzegovina shall as soon as possible become a party to each of the international treaties listed in annex C.

Article 4

All organs of the Union and Republic Governments shall cooperate with the supervisory bodies established by any of the instruments listed in annex C, as well as with the International Human Rights Monitoring Mission for Bosnia and Herzegovina established by the United Nations.

Article 5

(a) All citizens shall have the right to settle in any part of the territory of the Union of Republics of Bosnia and Herzegovina. They shall have the right to have restored to the many property of which they were deprived in the course of ethnic cleansing and to be compensated for any property which cannot be restored to them.

(b) The Union Parliament, as well as the legislatures of the Constituent Republics, shall enact laws to assist in implementing these rights.

Article 6

To assist in implementing the rights and freedoms specified in this chapter and in particular in article 5 (a) above, ombudsmen shall be appointed and carry out functions initially as specified in annex D and thereafter as specified in a law adopted by the Union Parliament.

VI. FINANCES

Article 1

(a) The Union Parliament shall each year, on the proposal of the Prime Minister and with the subsequent approval of the Presidency, adopt a budget covering the expenditures required to carry out only those functions of the Union of Republics of Bosnia and Herzegovina relating to the maintenance of its common institutions and compliance with its international obligations, as well as such other functions as may from time to time be agreed by the Union Parliament.

(b) If no such budget is adopted in due course, the budget for the previous year shall be used on a provisional basis.

Article 2

(a) The expenditures provided for in the budget shall, except to the extent that other revenues are available or as otherwise specified in a law adopted by the Union Parliament, be covered in equal part by each of the Constituent Republics.

(b) Other sources of revenues, such as custom duties, fees for services or taxes on specified activities, may be determined by law.

VII. THE CONSTITUTIONAL AGREEMENT

Article 1

(a) This Constitutional Agreement may be amended by decision of the Union Parliament, when such amendment has been approved by each of the Constituent Republics according to its constitutional processes.

(b) No amendment may be adopted that abolishes or diminishes any of the rights or freedoms specified in chapter V.

Article 2

(a) This Constitutional Agreement may not be abolished and none of the Constituent Republics may withdraw from the Union of Republics of Bosnia and Herzegovina without the prior agreement of all of the Republics. Such a decision may be appealed to the Security Council by any of the constituent Republics, and the Council's decision shall be final.

(b) Should any of the Constituent Republics withdraw from the Union of Republics of Bosnia and Herzegovina, the areas specified in annex A, part II, that are within the territory of such Republic shall remain a part of the Union of Republics of Bosnia and Herzegovina.

Article 3

This Constitutional Agreement shall enter into force when approved as part of the overall peace settlement by representatives of the three constituent peoples, and on a date specified by them.

LIST OF ANNEXES

A. (See art. II.1 (a) and (c)) Part I: Boundaries of the constituent Republics; Part II: Areas vested in the Union of Republics of Bosnia and Herzegovina

B. (See art. III.4 (iii)) Composition and competence of the Human Rights Court

C. (See art. V.1 (a)) List of human rights instruments

D. (See art. V.6) Initial appointment and functions of the Ombudsmen

Appendix III

Agreement

1. There will be no Croatian armed forces or police in the areas specified on the attached map after 31 July 1993.

2. UNPROFOR shall move into the areas specified on the attached map.

3. In the villages of Islam Grcki, Smokovic and Kasic, Serb police together with UNCIVPOL will be present; the number of Serb police shall be agreed with UNPROFOR.

4. With the withdrawal of the Croatian armed forces and police according to paragraph 1 above, Maslenica Bridge, Zemunik Airport and Peruca Dam shall be under the exclusive control of UNPROFOR. The building of the pontoon bridge may proceed after the signature of this agreement by both sides.

5. Both sides agree to intensify their efforts to reach a negotiated solution to all problems existing between them, starting with a cease-fire agreement to be negotiated by UNPROFOR.

For the Krajina authorities:

(Signed) S. JARCEVIC
15 July 1993

For the Government of Croatia:

(Signed) Ivica MUDRINIC
16 July 1993

Witnessed, on behalf of the International Conference on the Former Yugoslavia, by:

(Signed) K. VOLLEBAEK

(Signed) G. AHRENS

(Signed) K. VOLLEBAEK

(Signed) General EIDE

Appendix IV

Complementary agreement, dated 23 July 1993, to the agreement of 15-16 July 1993

The areas mentioned in the agreement of 15-16 July 1993 will be under the control of UNPROFOR. UNPROFOR units will start to deploy in the Zemunik-Maslenica area not later than 0900 hours on 26 July 1993. UNPROFOR forces will assume control of the whole area by no later than 31 July 1993. The other areas will be taken over by UNPROFOR after the signing of a formal cease-fire agreement.

In the villages mentioned in the agreement of 15-16 July 1993, UNCIVPOL will be present together with five Serb policemen in each village, armed with side-arms only. Those policemen will be allowed to cross the present confrontation line and enter the villages on 1 August 1993.

For the Government of Croatia:

(Signed) Slavko DEGORICIJA (Signed) General STIPETIC

Witnessed, on behalf of UNPROFOR, by:

(Signed) General EIDE (Signed) General COT

Appendix V*

Serbian Republic of Krajina

1. In order to implement paragraph 1 of the Erdut agreement, i.e. to enable the unobstructed withdrawal of Croatian forces from the area indicated in the map annexed to the Erdut agreement, the Serbian Army of Krajina has ceased all armed hostilities since 18 July 1993. We strongly commit ourselves to refrain from all armed hostilities until 31 July 1993.

2. For the purpose of controlling the cessation of armed hostilities in this period, we are inviting the UNPROFOR Command to deploy urgently its forces and observers along the whole of the confrontation line, as has been agreed between the Serbian Army of Krajina and UNPROFOR.

3. We comply with UNPROFOR's request that, in compliance with the spirit of the Erdut agreement, their forces be deployed in the areas from which the Croatian forces will withdraw, on condition that we are previously given assurance by the UNPROFOR Command that they will withdraw from these areas until 2400 hours on 31 July 1993 if until then the Croatian side does not fully implement the agreement of 15 and 16 July 1993; in other words, if the Croatian side does not withdraw from all the areas indicated on the map annexed to the Erdut agreement.

4. We accept UNPROFOR's obligation to inform us on time on the plan of deployment of UNPROFOR forces in the specified areas.

5. We express our readiness to agree with the other side on the lasting cease-fire and restoration of peace after the Erdut agreement has been implemented.

Dorde BJEGOVIĆ
Prime Minister
[Signed on original Serbian version]

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* Reproduction of this appendix does not imply any official endorsement by the United Nations.

Appendix VI

[Original: French]

LETTER DATED 26 JULY 1993 FROM THE CHAIRMAN OF THE ARBITRATION COMMISSION OF THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA ADDRESSED TO THE CO-CHAIRMEN OF THE STEERING COMMITTEE OF THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

In response to the letter dated 20 April 1993, the Arbitration Commission of the International Conference on the Former Yugoslavia on 16 July 1993 issued three opinions relating to questions Nos. 2, 3, 4 and 6.

Attached hereto are the texts of opinions Nos. 11, 12 and 13 in their original language, French, as well as in an unofficial English translation.

In accordance with the possibility provided to it under article 7.5 of the rules of procedure of 26 April 1993, the Arbitration Commission has deferred consideration of questions Nos. 1 and 5 for one month.

(Signed) Robert BADINTER

Enclosure

A. OPINION NO. 11

On 20 April 1993, the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia referred six questions to the Chairman of the Arbitration Commission, seeking the Commission's opinion.

Question No. 2 was:

> "On what date(s) did State succession occur for the various States that have emerged from the Socialist Federal Republic of Yugoslavia?"

On 12 May 1993, the co-Chairmen of the Steering Committee of the International Conference transmitted to the Chairman of the Commission a declaration by the Government of the Federal Republic of Yugoslavia raising a number of objections to the reference to the Commission. The members of the Commission unanimously adopted a document reacting to the assertions made by the Federal Republic of Yugoslavia; this was addressed to the Co-Chairmen of the Steering Committee of the International Conference on 26 May 1993. None of the States parties to the proceedings has contested the Commission's right to answer questions referred to it.

The Commission has taken cognizance of the memorandum, observations and other materials communicated by the Republic of Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia and the Republic of Slovenia, which have been passed on to all the successor States of the Socialist Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia has submitted no memorandum or observations on the questions referred.

1. In accordance with the generally accepted definition contained in article 2 of the 1978 and 1983 Vienna Conventions on the Succession of States, "'date of the succession of States' means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates".

2. In the case in point there is a particular problem arising from the circumstances in which State succession occurred:

> First, the predecessor State, the Socialist Federal Republic of Yugoslavia, has ceased to exist and, as the Commission found in its opinion No. 9, none of the successor States can claim to be the sole continuing State.
>
> Second, the demise of the Socialist Federal Republic of Yugoslavia, unlike that of other recently dissolved States (USSR, Czechoslovakia), resulted not from an agreement between the parties but from a process of disintegration that lasted some time, starting, in the Commission's view, on 29 November 1991, when the Commission issued opinion No. 1, and ending on 4 July 1992, when it issued opinion No. 8.

3. However, while these circumstances need to be taken into account in determining the legal arrangements applying to State succession (see arts. 18, 31 and 41 of the Vienna Convention of 8 April 1983 on Succession of States in respect of State Property, Archives and Debts), they are immaterial in determining the date of State succession, which, as the Commission indicated in paragraph 1 above, is the date upon which each successor State replaced the predecessor State. Since, in the case in point, the successor States of the Socialist Federal Republic of Yugoslavia are new States, and since they became independent on different dates, the relevant date is, for each of them, that on which they became States.

As the Commission indicated in opinion No. 1, this is a question of fact that is to be assessed in each case in the light of the circumstances in which each of the States concerned was created.

4. The issue is the same as regards the Republics of Croatia and Slovenia, both of which declared their independence on 25 June 1991 and suspended their declarations of independence for three months on 7 July 1991, as provided by the Brioni declaration. In accordance with the declaration, the suspension ceased to have effect on 8 October 1991. Only then did these two Republics definitively break all links with the organs of the Socialist Federal Republic of Yugoslavia and become sovereign States in international law. For them, then, 8 October 1991 is the date of State succession.

5. Macedonia asserted its right to independence on 25 January 1991, but it did not declare its independence until after the referendum held on 8 September 1991, the consequences of which were drawn in the Constitution adopted on 17 November 1991, effective on the same day. That is the date on which the Republic of Macedonia became a sovereign State, having no institutional link with the Socialist Federal Republic of Yugoslavia. So 17 November 1991 is the date of State succession as regards Macedonia.

6. In opinion No. 4, issued on 11 January 1991, the Arbitration Commission came to the view that "the will of the peoples of Bosnia-Herzegovina to constitute the Socialist Republic of Bosnia-Herzegovina as a sovereign and independent State [could] not be held to have been fully established". Since then, in a referendum held on 29 February and 1 March 1992, the majority of the people of the Republic have expressed themselves in favour of a sovereign and independent Bosnia. The result of the referendum was officially promulgated on 6 March, and since that date, notwithstanding the dramatic events that have occurred in Bosnia and Herzegovina, the constitutional authorities of the Republic have acted like those of a sovereign State in order to maintain its territorial integrity and their full and exclusive powers. So 6 March 1992 must be considered the date on which Bosnia and Herzegovina succeeded the Socialist Federal Republic of Yugoslavia.

7. There are particular problems in determining the date of State succession in respect of the Federal Republic of Yugoslavia because that State considers itself to be the continuation of the Socialist Federal Republic of Yugoslavia rather than a successor State.

As has been affirmed by all international agencies which have had to state their views on this issue, and as the Commission itself has indicated more than once, this is not a position that can be upheld.

The Commission opines that 27 April 1992 must be considered the date of State succession in respect of the Federal Republic of Yugoslavia because that was the date on which Montenegro and Serbia adopted the Constitution of the new entry and because the relevant international agencies then began to refer to "the former Socialist Federal Republic of Yugoslavia", affirming that the process of dissolution of the Socialist Federal Republic of Yugoslavia had been completed.

8. The Arbitration Commission is aware of the practical problems that might ensue from determining more than one date of State succession because of the long-drawn-out process whereby the Socialist Federal Republic of Yugoslavia was dissolved. One implication is that different dates would apply for the transfer of State property, archives and debts, and of other rights and interests, to the several successor States of the Socialist Federal Republic of Yugoslavia.

9. The Commission would point out, however, that the principles and rules of international law in general relating to State succession are supplemental, and that States are at liberty to resolve the difficulties that might ensue from applying them by entering into agreements that would permit an equitable outcome.

10. The Arbitration Commission consequently takes the view:

- That the dates upon which the States stemming from the Socialist Federal Republic of Yugoslavia succeeded the Socialist Federal Republic of Yugoslavia are:

  . 8 October 1991 in the case of the Republic of Croatia and the Republic of Slovenia,

  . 17 November 1991 in the case of the former Yugoslav Republic of Macedonia,

  . 6 March 1992 in the case of the Republic of Bosnia and Herzegovina, and

  . 27 April 1992 in the case of the Federal Republic of Yugoslavia (Serbia-Montenegro).

- That, unless the States concerned agree otherwise, these are the dates upon which State property, assets and miscellaneous rights, archives, debts and various obligations of the former Socialist Federal Republic of Yugoslavia pass to the successor States.

Paris, 16 July 1993

B. OPINION NO. 12

On 20 April 1993, the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia referred six questions to the Chairman of the Arbitration Commission, seeking the Commission's opinion.

Question No. 3 was:

"(a) What legal principles apply to the division of State property, archives and debts of the Socialist Federal Republic of Yugoslavia in connection with the succession of States when one or more of the parties concerned refuse(s) to cooperate?

"(b) In particular, what should happen to property

- not located on the territory of any of the States concerned; or

- situated on the territory of the States taking part in the negotiations?"

Question No. 6 was:

"(a) On what conditions can States, within whose jurisdiction property formerly belonging to the Socialist Federal Republic of Yugoslavia is situated, block the free disposal of that property or take other protective measures?

"(b) On what conditions and under what circumstances would such States be required to take such steps?"

The Commission considers that these two questions form an entity and should be answered in one and the same opinion.

On 12 May 1993, the Co-Chairmen of the Steering Committee of the International Conference transmitted to the Chairman of the Commission a declaration by the Government of the Federal Republic of Yugoslavia raising a number of objections to the reference to the Commission. The members of the Commission unanimously adopted a document reacting to the assertions made by the Federal Republic of Yugoslavia; this was addressed to the Co-Chairmen of the Steering Committee of the International Conference on 26 May 1993. None of the States parties to the proceedings has contested the Commission's right to answer questions referred to it.

The Commission has taken cognizance of the memorandum, observations and other materials communicated by the Republic of Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia and the Republic of Slovenia, which have been passed on to all the successor States of the Socialist Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia has submitted no memorandum or observations on the questions referred.

1. In its opinion No. 9, the Arbitration Commission recalled the few well-established principles of international law applicable to State succession.

The fundamental rule is that States must achieve an equitable result by negotiation and agreement. The principle is applicable to the distribution of the State property, archives and debts of the Socialist Federal Republic of Yugoslavia.

2. If one or more of the parties concerned refused to cooperate, it would be in breach of that fundamental obligation and would be liable internationally, with all the legal consequences this entails, notably the possibility for States sustaining loss to take non-forcible countermeasures, in accordance with international law.

3. It follows from the principle formulated above that the other States concerned must consult with each other and achieve, by agreement between them, a comprehensive equitable result reserving the rights of the State or States refusing to cooperate.

Such an agreement is res inter alios acta in relation to third States, be they States refusing to cooperate or other States. In accordance with the established principle of international law enshrined in article 34 of the Vienna Convention on the Law of Treaties, whereby "a treaty does not create either obligations or rights for a third State without its consent", third States in whose territory property covered by State succession is situated are not required to take action in pursuance of such agreements.

However, such third States may, in the exercise of their sovereignty, give effect to them if they satisfy the conditions set out in paragraph 1 above.

4. Even in the absence of such agreements, third States may take such interim measures of protection as are needed to safeguard the interests of the successor States by virtue of the principles applicable to State succession.

5. Third States would be required so to do if an international agency with powers in the matter took decisions that were binding on States within whose jurisdiction property having belonged to the former Socialist Federal Republic of Yugoslavia was situated.

6. The Arbitration Commission consequently takes the view that:

- Refusal by one or more successor States to cooperate in no way alters the principles applicable to State succession as set out in opinion No. 9;

- Other States concerned may conclude one or more agreements conforming to those principles in order to secure the equitable distribution of the State property, archives and debts of the Socialist Federal Republic of Yugoslavia;

- Such agreements would not be binding on States which were not party to them, nor on other States in whose territory property having belonged to the Socialist Federal Republic of Yugoslavia was situated;

- However, this answer is without prejudice to the right of successor States sustaining loss by virtue of the refusal of one or more of the

parties concerned to cooperate, to take countermeasures in accordance with international law, to the right of third States to take the necessary safeguard measures to protect the successor States and to such obligations as might be incumbent on third States to give effect to decisions taken by an international agency having powers in the matter.

Paris, 16 July 1993

C. OPINION NO. 13

On 20 April 1993, the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia referred six questions to the Chairman of the Arbitration Commission, seeking the Commission's opinion.

Question No. 4 was:

"Under the legal principles that apply, might any amounts owed by one or more parties in the form of war damages affect the distribution of State property, archives and debts in connection with the succession process?"

On 12 May 1993, the Co-Chairmen of the Steering Committee of the International Conference transmitted to the Chairman of the Commission a declaration by the Government of the Federal Republic of Yugoslavia raising a number of objections to the reference to the Commission. The members of the Commission unanimously adopted a document reacting to the assertions made by the Federal Republic of Yugoslavia; this was addressed to the Co-Chairmen of the International Conference on 26 May 1993. None of the States parties to the proceedings has contested the Commission's right to answer questions referred to it.

The Commission has taken cognizance of the memorandum, observations and other materials communicated by the Republic of Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia and the Republic of Slovenia, which have been passed on to all the successor States of the Socialist Federal Republic of Yugoslavia. The Federal Republic of Yugoslavia has submitted no memorandum or observations on the questions referred.

1. In opinion No. 9 the Arbitration Commission appreciates that there are few well-established principles of international law that apply to State succession. Application of these principles is largely to be determined case by case, depending on the circumstances proper to each form of succession, although the 1978 and 1983 Vienna Conventions do offer some guidance.

2. The Commission would point out in particular that articles 18, 31 and 41 of the Convention of 8 April 1983 are relevant where State succession occurs as a result of the dissolution of a pre-existing State. While equity has some part to play in the division of State property, archives and debts between successor States, these articles do not require that each category of assets or liabilities be divided in equitable proportions but only that the overall outcome be an equitable division.

3. However, this equitable outcome is to be obtained by reference to the law of State succession. The rules applicable to State succession, on the one hand, and the rules of State responsibility, on which the question of war damages depends, on the other, fall within two distinct areas of international law.

4. The equitable division of the assets and liabilities of the former Socialist Federal Republic of Yugoslavia between the successor States must therefore be effected without the question of war damages being allowed to interfere in the matter of State succession, in the absence of an agreement to the contrary between some or all of the States concerned or of a decision imposed upon them by an international body.

5. The Arbitration Commission would, however, underline the fact that its reply to the question referred to it is in no way prejudicial to the respective responsibilities of the parties concerned in international law. The possibility cannot be excluded in particular of setting off assets and liabilities to be transferred under the rules of State succession on the one hand against war damages on the other.

6. Subject to the observations made above, the Arbitration Commission consequently takes the view that amounts that might be owing by one or more parties in respect of war damages can have no direct impact on the division of State property, archives or debts for purposes of State succession.

Paris, 16 July 1993
