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To the Judges of the International Court of Justice  
The Peace Palace  
The Hague  
The Netherlands

7 August 1993

Your Excellencies:

I hereby supplement, support, substantiate and amend:

- (1) Our Application of 20 March 1993 (The Application);
- (2) Our Second Request for an Indication of Provisional Measures of 27 July 1993 ( The Second Request);
- (3) Our outstanding Request for an immediate hearing of the Second Request by the Court; and
- (4) Our Request made on Wednesday 4 August 1993, for an immediate Order without hearing pursuant to our Second Request, in accordance with Article 75(1) of the Rules of the International Court of Justice;

by bringing to the attention of the Court the following arguments and documents in support and substantiation thereof:

1. In my communication to the Court of 6 August 1993--which was intended to be included in the case file--I attached and incorporated therein a letter by President Izetbegovic to the ICFY Co-chairmen of 1 August 1993, which constituted an official "objection" to (that is, rejection of) Article 1 of the so-called Owen-Stoltenberg Plan. This Plan calls for the Republic of Bosnia and Herzegovina--a Member state of the United Nations Organization--to be carved up into three independent states and for us to lose our U.N. Membership. In that letter of objection, President Izetbegovic indicated that he had lodged this objection to Article 1 on the advice of his legal advisers. In this regard, President Izetbegovic was acting on the basis of a formal Opinion Letter that I provided to him on the Owen-Stoltenberg Plan. This Opinion Letter is entitled "Analysis of Second Internal Draft of 29 July 1993." The Draft referred to was that of the Owen-Stoltenberg Plan. This Opinion Letter is seven pages long, and was signed and dated by me at 8:00 a.m. on 30 July 1993 before it was forwarded to President Izetbegovic. I hereby deposit this Opinion Letter with the Court as part of this case and in order to supplement, support, substantiate and amend points (1), (2), (3), and (4) above.

2. This Opinion Letter was followed by a letter from President Izetbegovic to the ICFY Co-chairmen later that day on 30 July 1993, in which he expressed his reservation to Article 1 in the strongest terms possible. Attached to this communication is a copy of that letter which is submitted to the Court in support and substantiation of (1), (2), (3) and (4) above.

3. In this letter, President Izetbegovic suggested that the question of the proper interpretation of Article 1 should be resolved by legal experts. Therefore, pursuant to his instructions, I met with Mr. Paul Szass, the Legal Adviser to the ICFY Co-chairmen, at the Palais des Nations the very next day on 31 July 1993 around 11.00 a.m. Attached to this communication is a "Memorandum of Conversation " on those discussions of the same date, that has been signed by me and three other witnesses who were members of our legal team at the Palais where the negotiations are

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taking place. I hereby submit this Memorandum to the Court in support and substantiation of (1), (2), (3), and (4) above. As you can see from reading the Memorandum, Mr. Szass confirmed to us that he had drafted the Owen-Stoltenberg Plan on instructions from the Co-chairmen to carve up the Republic of Bosnia and Herzegovina into three independent states and to deprive us of our U.N. Membership. Pursuant to instructions I had received from my Foreign Minister, I rejected this proposal in the strongest terms possible, and tendered to Mr. Szass our counter-offer, a copy of which is attached to the Memorandum and incorporated here by reference.

4. Later that same day, the ICFY Co-chairmen sent President Izetbegovic a letter dated 31 July 1993, stating that there would be no continuity problem for us at the United Nations under the Owen-Stoltenberg Plan. A copy of their letter is attached to this communication. Their assurance directly contradicted what their Legal Adviser had told us earlier that same day, as indicated in the Memorandum.

5. Therefore, acting upon my advice as counsel, President Izetbegovic sent his letter dated 1 August 1993 to the ICFY Co-chairmen that constituted an official "objection" to, that is rejection of, Article 1, and tendered our counter-offer under his name. Additional copies of these two documents are attached to this communication and incorporated here by reference. They are offered here to the Court in support and substantiation of (1), (2), (3) and (4) above.

6. Attached to this communication is my letter to the Court of 6 August 1993 transmitting the above two documents and expressing my formal legal opinion as to their significance under public international law. This letter is submitted to the Court in support and substantiation of (1), (2), (3), and (4) above.

7. So far, we have not yet received a formal response from the ICFY Co-Chairmen to President Izetbegovic's letter of 1 August, which is not in accordance with normal diplomatic protocol. Indeed, Mr. Owen publicly indicated yesterday that he was still insisting upon the Owen-Stoltenberg Plan as originally drafted, including the rejected Article 1.

8. Thus, it is obvious that the Owen-Stoltenberg Plan is a diktat that is the legal equivalent to what Hitler presented to Czechoslovakia at Munich in 1938. The Plan is based upon the assumption that the Republic of Bosnia and Herzegovina--a Member State of the United Nations--will be carved up into three independent states and deprived of our U.N. Membership. We have repeatedly and most emphatically rejected this proposal to sign our own death certificate as a sovereign nation state and Member of the United Nations. Yet enormous pressure is still being brought to bear upon us both here at U.N. Headquarters in Geneva and upon our capital in Sarajevo by means of the illegal threat and use of force, coercion, duress, compulsion, etc. For example, as you can see from the Memorandum, Mr. Szass personally threatened me on behalf of the Republic of Bosnia and Herzegovina at the Palais des Nations by saying that if we did not accept the Owen-Stoltenberg Plan, "The Security Council will tell you to go to hell." Mr. Szass had already been informed by me that I was Attorney of Record and General Agent of the Republic of Bosnia and Herzegovina before the International Court of Justice and was speaking to him in that capacity and at the instructions of President Izetbegovic and the Foreign Minister. Yet, he threatened me and the Republic of Bosnia and Herzegovina anyway, and in U.N. Headquarters at that. This should provide the Court with some idea of the threats, duress and compulsion that is currently being applied to us here in Geneva to "accept" the Owen-Stoltenberg Plan.

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I respectfully request the Court to take judicial notice of the savage military attacks currently being perpetrated by the the Respondent and its agents against our capital, Sarajevo, in order to get us to "assent" to the Owen-Stoltenberg Plan.

9. Therefore, we most respectfully request the Court to grant immediately all of the relief specified in (1), (2), (3), and (4) above and, in particular but not limited to, the ten measures of provisional protection set forth in our Second Request as well as all of the measures proprio motu suggested therein. Under these horrendous circumstances in Geneva and Sarajevo, we also respectfully ask the Court to reconsider the six provisional measures of protection set forth in our first Request to that effect of 20 March 1993.

10. Due to communications problems with the Registry, I would most respectfully appreciate receiving an immediate written confirmation of the receipt of this communication, together with an itemized list of the attachments. I want to make it very clear that this communication and these documents are intended to be part of the file of our case against the rump Yugoslavia (Serbia and Montenegro) for genocide against the Republic of Bosnia and Herzegovina.

11. In the future, I would appreciate receiving an immediate written confirmation from the Registry of all letters and documents that I communicate to the Court or to the Registry, and an indication that all such documents and letters have been entered into the file of our case for genocide against the rump Yugoslavia (Serbia and Montenegro).

Please accept, Excellencies, the assurance of my highest consideration.

Francis A. Boyle

Francis A. Boyle  
Professor of International Law  
General Agent for the Republic of Bosnia and Herzegovina before the  
International Court of Justice  
The President Hotel  
Geneva, Switzerland

.ttachments.

15:45 hrs

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## Analysis of Second Internal Draft of 29 July 1993

by Professor Francis A. Boyle

Title: This title can be construed to constitute an international agreement or treaty among three independent republics under public international law, each with their own independent legal personality; instead of as a constitution for a federal state. Under the Vienna Convention on the Law of Treaties, the name or title is irrelevant. This title is consistent with the Owen-Stoltenberg "improvement" to the Tudjman- Milosevic plan, giving all three republics access to the World Court. The only way that can be done is if each republic is an independent state in its own right, which would imply the dissolution of the Republic of Bosnia and Herzegovina as known today and certainly pave the way for the termination of Bosnia's UN membership.

I. From Bosnia's perspective the title "The Union of Republics of Bosnia and Herzegovina" is worse than "The United Republics of Bosnia and Herzegovina". So what they gave Bosnia in the title of the Agreement with the word "constitutional", they took away from Bosnia by substituting "United Republics" by "Union of Republics". Certainly Bosnia should ask for a "Constitution of the United States of Bosnia and Herzegovina" like the Constitution of the United States of America.

Article 1

This clearly calls for the creation of a "Union" of three independent states under international law. Again "Union of Republics" is worse than the "United Republics" under international law. The former seems to be modelled on the Commonwealth of Independent States (CIS), which does not legally continue the old Soviet Union that was dissolved. Hence, the Republic of Bosnia and Herzegovina would be dissolved into three independent republics like the CIS states which are all independent states and UN members.

The use of the word "peoples" is quite dangerous because it means they all have a right to self-determination under the UN Charter; therefore to independent statehood; and therefore each to independent UN membership like the CIS states. In theory then Bosnia might lose its UN membership automatically and have to re-apply for admission, which will never happen. So the second sentence means nothing and is misleading. Bosnia can not determine UN membership itself. Rather, the UN could very well decide that like the CIS states, the three "republics" must all apply for membership. I doubt the UN will take the position that the "Muslim state" is the successor in law to the Republic of Bosnia and Herzegovina at the UN. The UN did permit Russia to succeed to the Soviet seat at the UN, but not as a matter of law but power that the US consented to. Legally, Russia should have had to re-apply. This is the only example of such invalid and flawed succession that I know of in UN history. I doubt the Great Powers will do for Bosnia what they did for Russia. And the British will have a veto to prevent Bosnia's re-admission to the UN.

Also, if all three "peoples" have the right of self-determination under international law as explained above, then they become entitled to exercise this "right" by deciding to join Croatia and Serbia at any time and thus leave the so-called Union. So the world would have a Greater Serbia and a Greater Croatia. Then the "Muslim state" would quickly be eliminated. By comparison, even the Badinter Arbitration Commission has

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ruled that Serbs living in the Republic of Bosnia and Herzegovina have no right to join Serbia; nor do the Croats have a right to join Croatia. So here the proposal is giving Serbs and Croats in Bosnia and Herzegovina a potential right to self-determination that was denied to them by Badinter.

#### Article 2

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In other words there is not now a flag and emblem for the Union because such a "state" does not exist. The Parliament will never come into existence. And there will never be the 80% vote. So there will never be a flag and emblem and thus never be one state. Rather, there will be produced three independent states under international law.

#### Article 3

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(a) In other words there are no citizens of this "Union". Hence, there is no state because a state must have citizens. This law will never be adopted, so the union will never have citizens and thus never constitute a state.

(b) This does not solve the above problem. People might be "entitled" to become a citizen, but that means they are not citizens now. Also, they can not be forced to become citizens under the Universal Declaration of Human Rights. So without fixed citizens now there is no state. Also, this simply opens the way to more "ethnic cleansing".

(c) Does not mean much one way or the other at this point.

(d) This gives the whole game away. Under international law only independent states have a right to determine who their citizens are. Hence the three republics will be independent states.

#### Article 4

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So the three Republics are demilitarised. But if the Croats in Bosnia and Herzegovina join Croatia and the Serbs in Bosnia and Herzegovina join Serbia, then only the Muslim state will remain demilitarised. That will make it easy for them to destroy the Bosnians. Indeed, the Bosnians will then be exterminated like the Jews without much of a fight. At least today the Bosnians are fighting. Also if Bosnians sign this Agreement Bosnia will never be able to get rid of the illegal arms embargo. Rather, Bosnia will have legitimised and consented to the arms embargo, which Bosnia has never done. In the United States this will mean the end of the Dole-Lugar bill to arm Bosnia.

## II. The Constituent Republics and Their Responsibilities

#### Article 1

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(a) Boundaries. Yes, but if there are three "peoples" who have a right of self-determination, then the Serbs in Bosnia and Herzegovina can join Greater Serbia; the Croats in Bosnia and Herzegovina can join Greater

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Croatia; and they as "peoples" can claim that this exercise of the right of self-determination under international law and the UN Charter takes priority over this "Agreement". Indeed, this Agreement only seems to deal with the boundaries among the three republics themselves. There is no enforceable prohibition on any one or two of these republics joining another state so long as it keeps its specified boundaries. Hence there is produced a Greater Serbia, a Greater Croatia (neither of which will be demilitarised) and a demilitarised Muslim state that will quickly be destroyed and extinguished. And Bosnia will have basically consented to the process of its own destruction.

(b) Normally, a boundary commission is set up to function among sovereign states as a creature of international law. Having the UN Secretary General appoint all five persons completely internationalises the entire process. This is even worse than how three independent states would do it normally: they would each appoint one member; then the Secretary General would appoint the other two. Here the UN Secretary General literally appoints all five as if Bosnia is some ward of the UN instead of a sovereign member state of the UN.

(c) This language is ridiculous. It is not a legally binding right or regime of access to anything. The language "shall be vested" means nothing. This is a term from the Anglo-American law of real property whereby title to land is "vested" in someone. It appears that the protection here will be meaningless because the republics will have "jurisdiction" over this land which will be in their "territory". That is what sovereignty is all about. If the Union of Republics never gets organized, then nothing will "vest" and thus there will be no access by citizens to these locations. This language is completely inadequate here.

(d) This does not help Bosnia. The same is true for the EEC. They are all independent states and UN members.

#### Article 2

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(a) If each republic has its own constitution, then they are independent states. As explained above, this Agreement is not a Constitution but arguably an Agreement among three peoples with respective rights of self-determination under international law. Again the title used the words "Constitutional Agreement" which can mean a treaty; not a "constitution".

(b) Only independent states have their elections supervised by the UN and the Chapter 8 regional arrangement such as the EEC. So here each republic is treated like a separate independent state.

#### Article 3

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This means that the governments of the three republics are real governments with real powers and functions. Hence, the next requirement for an independent state being an effective government will be fulfilled here. So this Agreement would be creating the independent states with self-determination, citizens, governments and territories. The "Union" would mean nothing more than a CIS like system that exists only on paper and with occasional meetings.

#### Article 4

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Here the Agreement would be effectively giving de facto diplomatic recognition to the governments of the three states among themselves.

III. The common institutions etc.

Article 1

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(b) like the CIS

(c) In other words, nothing can be done. All powers and decisions will reside in and be made by the three republics.

It is not even clear that the Union will have any separate international legal personality apart from those of its three constituent members. So the head of state of nothing will be nothing. Just a title.

Article 2

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(a) The head of government of a CIS like structure means nothing. All legal and political power is in the hands of the republics.

(b) ditto the Foreign Minister

(d) ditto the Cabinet

Notice the cabinet only deals with "policies" not "powers" concerning foreign affairs, international trade, common institutions. So the cabinet can draft position papers. But that is about it. The last phrase here means little or nothing at all because it was made quite clear that the Union does not have general jurisdiction and power, which reside in the republics. Hence, the Union Parliament can only adopt laws in those very few areas in which it has been given competence, which so far are only these three areas. So this "specify by law" means nothing.

Article 3

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(a) Parliament of the Union. So what?

(b) It has negligible "competence" in any event; only the three areas mentioned above. So why bother to have such a Parliament. You only need a President to do these three tasks. So this is a Parliament which will have nothing to do. It will never meet. There is no reason for anyone to become a member. Indeed, if the Serb and Croat republics refuse to elect the 56 members respectively there will never be the Union Parliament coming into existence. And with only 56 members from the Muslim state, it can not adopt any laws.

Article 4 Courts

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(ii) Once again, this is an international dispute settlement mechanism that is applicable only to sovereign nation states. The World Court judges would have nothing to do with this.

(iii) Once again, the Court of Human Rights sounds like an international

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court among 3 states.

#### Article 5

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And what if the Union Parliament never comes into existence because the Serb and Croat republics refuse to elect their 56 members each?

#### IV. International relations

##### Article 1

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The Union can always apply for membership. But I doubt any of these organisations would accept the Union. And the Republic of Bosnia and Herzegovina would lose the memberships it already has. Also, even the decision to apply is subject to the veto of the other two. So this means nothing.

Notice that the 3 republics are expressly given the right to join any international organisations - just like states. Just like the CIS. This "not be consistent" language means nothing because there is no mechanism to determine "interests".

##### Article 2

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(a) This is the nub of the problem here. This is an extremely dangerous provision. The moment this Agreement comes into force, the Union becomes the successor in law to the Republic of Bosnia and Herzegovina, which would go out of business as an independent state. Hence, the Republic of Bosnia and Herzegovina could automatically lose its membership in the UN and all other international organisations and all its rights under current treaties such as the Genocide Convention and the Geneva Conventions. But neither the UN nor these other international organisations nor the contracting parties to any of these treaties would be obliged to accept the Union as the successor in law to Bosnia and Herzegovina. Rather, a separate decision would have to be made at the UN and by these international organisations and the contracting states to do this. I doubt it will ever happen. So basically, by signing this Agreement Bosnia WILL put itself out of business as a sovereign nation state for good. Bosnia will lose what it already has for nothing in return.

(b) This means nothing because the Parliament will never come into existence. And it will never get the 70%. This is meaningless. These conditions will never be fulfilled. The Union will never have any role to play in international agreements.

(c) This protection is meaningless because it is so vague. It does not prohibit the Serb state and the Croat state from joining Greater Serbia and Greater Croatia pursuant to the right of self-determination.

#### V. Human Rights

##### Article 1

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These guarantees are only on paper. There are no meaningful mechanisms to carry them out. They will protect no one. The Serbs and Croats will simply

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ignore them.

Article 2

Pious nonsense.

Article 3

This will never happen for reasons previously explained.

Article 4

Bosnia already has UNPROFOR there. This will be used as an excuse to withdraw UNPROFOR, which is supposed to be a peacekeeping force.

Article 5

(a) Pious nonsense. The Palestinians were promised the same by the UN General Assembly itself 45 years ago. Here the UN is making no promises. This would be even WORSE than what happened to Palestinians in 1947.

(b) For reasons already explained, there will be no Union Parliament and thus no such laws.

Article 6

Who appoints these ombudsmen? The law will never be adopted by a non-existent Parliament.

VI. Finances

The budget will be minimal because the common institutions will never come into existence. Nor will the Parliament. There will be no valid international obligations here. There will never be a 70% majority.

(b) This means nothing because there will never be a first budget. So what?

Article 2

(a) There will never be a first budget so this means nothing.

(b) But the Union Parliament will never meet, let alone pass these laws. It will have no source of income. Hence, it will be on paper only.

VII. The Constitutional Agreement

Article 1

(a) This means nothing. It will never happen.

(b) So what?

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Article 2

(a) But if the three people have a right of self-determination, who is going to stop them from exercising it? Certainly not the Security Council. They have not enforced any of their own resolutions. The Security Council is under no obligation to enforce this agreement.

(b) Ditto here

Article 3

Arguably this is "Approved" the moment it is signed and dated by the three leaders - Boban, Karadzic and Izetbegovic. Hence, Bosnia arguably could put itself out of business as the sovereign state of Bosnia and Herzegovina and as a member of the UN, almost effective immediately. This is what they all want! The Bosnians will then be treated even worse than the Palestinians - - like the Kurds.

Conclusion: The Agreement is not worth paper it is written on - - a mere "scrap of paper". In my professional opinion, the Republic of Bosnia and Herzegovina must never sign an Agreement such as this.

Francis A. Boyle

Francis A. Boyle

Professor of International Law

President Hotel, Geneva

30 July 1993



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REPUBLIC OF BOSNIA AND HERZEGOVINA  
P R E S I D E N C Y

Lord David Owen and Mt Thorwald Stoltenberg  
ICFY Co-Chairmen

Sirs,

Yesterday I gave my preliminary approval of the draft on Constitutional Agreement on the Union of Republics of Bosnia and Herzegovina. My approval was given upon your statement that the Agreement does not question the status of state for future Union and thereof its membership in the OUN.

However, I have been warned this morning by experts in international law that Article 1. of the Agreement, as it is, leaves doubts relating to the legal status of the Union of the Republics of Bosnia and Herzegovina. The answer to the question whether the Union will have the status of a state may bring about substantial consequences, particularly in regard of the status of the state and legal continuity of the republics of B-H and the international and legal personality of the Union and its membership in the OUN and other international organizations.

Therefore I have to insist upon and unambiguous answer to this question. For these reasons I suggest that either the opinion of board of your and my experts teams be obtained or that expertise by internationally recognized authorities or institutions in this field be provided.

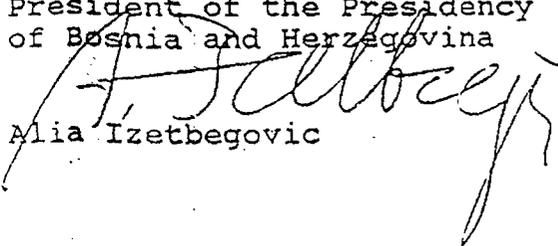
I have to inform you that until I receive the answer I remain reserved regarding the wording of the Article 1. of the Constitutional Agreement and that I shall propose the rephrasing of the mentioned article.

I would like to express my commitment to continuing negotiations. But I consider it necessary that, while the negotiations on other details of the Agreement are proceeding, the ambiguity on the above matter must be resolved.

Yours sincerely,

Geneva, July s 1993.

President of the Presidency  
of Bosnia and Herzegovina



Alija Izetbegovic

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MEMORANDUM OF CONVERSATION  
PALAIS DES NATIONS  
GENEVA  
JULY 31ST 1993

Present : Dr. Paul Szass, Prof. Francis Boyle, Dr. Kasim Trnika,  
Prof. Lamija Tanovic, Djenana Campara, Katharine Kanter  
(rapporteur)

This a brief summary of personal notes taken by one of the participants who is not a stenographer. All quotes are paraphrases.

Discussion begins :

Bosnia's legal advisors : Concerning the message of this morning of the President of BiH to Owen : he wants to know whether or not the union is in fact intended to be state, and if not, then what ?

Dr. Szass : There were so many disagreements, that we wanted to avoid using certain words and expressions, like that of State. But I do want to make it clear that the Union is a state as a member of the UN. We will make sure about that, we just tried to find a way around the difficulty without using the word.

Objections from Bosnia's legal advisors on the wording, which throws up into the air the continuity of the Bosnian state.

Prof. Boyle : We want to do business. But we cannot throw away our UN membership. If we sign this Article 1 as it is, we have thrown it away. This article cannot be accepted as it is.

Dr. Szass : Well I admit there is a problem with the wording as to the question of the continuity of statehood. That will have to be figured out. Owen admits there is a disagreement over that. Whereas your President says there is continuity.

Prof. Boyle : May I make it clear that I am not here representing a PARTY to a conflict. I am not here to take sides. I am the lawyer for the entire State of Bosnia-Herzegovina, which is a member of the United Nations Organisation where we are meeting today, and I have to do everything to ensure that the statehood of my client be not jeopardised in any way. Continuity is not a side issue.

Dr. Szass :

I don't think it essential that the point of continuity be solved right here and now. This is not an academic exercise but a political exercise. This language IS MEANT TO ESTABLISH A NEW STATE WITHOUT EXPLICITLY USING THE WORD STATE or resolving the

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problem of continuity. The intention is that the Security Council will get around to endorsing this.

Dr. Trnika : This contradicts flatly the UN Charter.

Dr. Szass : Well, you will get what you want from the Security Council. Anyway, look at Russia - she was the successor state to the USSR, but Serbia was not allowed to be the successor state to the 'Federal Republic of Jugoslavia'.

Dr. Trnika : Eventually, I could understand that we would drop the term state in this paper, but we cannot drop the concept of the Republic of BiH as a Union and a unitary state. That is not negotiable. As to what you say on this being an 'agreement' : the language is very important because an 'agreement' is between STATES. We are not talking about states here, but a state. You can talk about constitutional principles if you wish.

Dr. Szass : But the word constitutional 'agreement' was already being used in late January, when we virtually had one, but then the Serbians refused to sign because of other points they didn't like.

The paper you have before you is INTENDED TO BE A FULL CONSTITUTION. That is why we changed the title to constitutional agreement. I don't think we should get into semantics. This is a practical question. The idea to discuss just principles was suspended by the proposal to call it a constitution. This is MEANT TO BE A COMPLETE TEXT WHICH STANDS BY ITSELF.

Dr. Trnika : If we are talking about a constitution, then that means that the constitution has been suspended, which means in law that the State of BiH is suspended. That is suicide. We will never agree to it.

Dr. Szass : No, I assure you, there is no suspension. It is not intended to function as suspension. You will keep a state until the new state comes into being. It says here at the bottom of the document anyway, that it only comes into operation at the point the parties all agree.

Prof. Boyle : Your verbal assurances are not enough. This is a legal matter. This has to be in black and white.

Dr. Trnika : The 3 Republics do not exist. Therefore they cannot lawfully make an agreement. We already have a state. Its transformation can only occur through constitutional transformation. The state of BiH can not give up being a state. The consequences would be too terrifying.

THE LETTER FROM THE PRESIDENT TO OWEN AND STOLTENBERG IS PRODUCED. CONSTERNATION ON DR. SZASS' COUNTENANCE.

Dr. Trnika : This emerged after my discussion last night with the President. He had not fully understood the implications of Article 1.

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Prof. Boyle : We are not trying to be difficult. Once we have solved this we can go on to discuss the details of the agreement. But there is no way around the unsatisfactory nature of Article 1 in your paper. Did you write this Dr. Szass ?

Dr. Szass : I had tried to be more precise about the question of statehood in my original wording. But it was changed. Anyway, the question is whether your Government can agree to how the NEW STATE CAN OPERATE. I can tell you that there will be LITTLE UNDERSTANDING IN THE INTERNATIONAL COMMUNITY ABOUT THESE THEOLOGICAL QUESTIONS. I mean, as to whether it is the same state, or whether it is changed. The question is whether these agreements can be operational.

Clearly, this instrument is not fully satisfactory from the standpoint of every party. There are compromises. That is the nature of most agreements.

Prof. Boyle : Formally submits our revision of Article 1 and the Title : Constitutional Instrument, which was Dr. Szass' word. See Attachment.

But where does this language in Article 1 come from ?

Dr. Szass : It DEVELOPED AFTER THE PRESIDENCY MEETING.

Prof. Tanovic : We will never give up our state. We have our legal rights. We can negotiate the internal structures, but the only future is one state.

Dr. Szass : You may not like this but is this a set-up that you can live with ?

Prof. Boyle : I have to repeat, do not address me as though you were talking to a party to the conflict. I am the lawyer for the State of Bosnia. We as a state cannot negotiate away our existence as a state. You have now seen the letter from our President to David Owen. Article 1, we cannot get around it. When the President realised what that was, he could not go forward with the paper as it was. In any case, it has to go back to the collective presidency. It has to be approved as a whole.

I was in the Security Council last week, and they fully supported me.

Dr. Szass : Somehow, YOU WILL GET ASSURANCES THAT THE PROBLEM OF YOUR MEMBERSHIP IN THE UN will be solved. If all parties to an instrument start nit-picking and blocking on one article, then we will never get beyond square one. I can tell you, if you go on in this way, THE SECURITY COUNCIL WILL TELL YOU TO GO TO HELL.

Losing his temper, Szass makes plain that the purpose of the Owen-Stoltenberg plan is indeed to divide the Republic of Bosnia-Herzegovina into three independent states.

Prof. Boyle : The Security Council supports us.

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Dr. Szass : Fine. I think we've got about as far as we can this morning.

Prof. Boyle : You can reach me at my hotel anytime.

Signed

*Francis Boyle*  
Prof. Francis Boyle, Professor of International Law, General Agent of the Republic of Bosnia and Herzegovina before the International Court of Justice.

*Kasim Trnka*

Prof. Kasim Trnka, Judge in the Constitutional Court and Legal Expert, for the Bosnian Delegation to the International Conference on former Yugoslavia in Geneva.

*Lamija Tanovic*

Prof. Lamija Tanovic, Representative of the Government of Bosnia-Herzegovina in Denmark.

*Djenana Campara*

Djenana Campara, B.Sc.E.E. Vice-President, Bosnia-Herzegovina Information Centre, Ottawa, Canada.

Katharine Kanter, rapporteur.

*Kanter*

Attachment

16/20 Constitutional Instrument etc.

Article I

1 The Union of Republics of Bosnia and Herzegovina is a State composed of three constituent republics: \_\_\_\_\_ and \_\_\_\_\_ and encompasses three constituent peoples: the Muslims, Serbs and Croats, as well as a group of others.

2. The Union of Republics of Bosnia and Herzegovina is the legal continuation of the Republic of Bosnia and Herzegovina.

3. For this reason, the Union of Republics of Bosnia and Herzegovina will continue the Membership of the Republic of Bosnia and Herzegovina in the United Nations Organisation and throughout the United Nations System as approved by Resolutions to that effect adopted by both the Security Council and the General Assembly. This Agreement shall not become effective until both of these Resolutions have been adopted.

4. For the same reason, the Union of the Republics of Bosnia and Herzegovina will also continue the membership of or participation by the Republic of Bosnia and Herzegovina in all other international organisations, arrangements, or agreements of whatever type or description or however named.

5. For the same reason, the Union of Republics of Bosnia and Herzegovina will continue the legal status of the Republic of Bosnia and Herzegovina as a Contracting Party to all international treaties, agreements or arrangements of whatever type or description or however named, and including but not limited to the Four Geneva Conventions of 1949, their Two Additional Protocols of 1977, and the Genocide Convention of 1948.

6. The Union of the Republics of Bosnia and Herzegovina will remain free to join any other international organisations, agreements, arrangements or treaties that the Republic of Bosnia and Herzegovina is not currently a member of, or a contracting party to, or a participant in, etc.

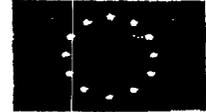
*submitted by*

*Frances A. Boyle  
Professor of International Law  
31 July 1993*

Attachment



17/20  
INTERNATIONAL CONFERENCE  
ON THE FORMER YUGOSLAVIA



Palais des Nations, 1211 Geneva 10

Office of the Co-Chairmen

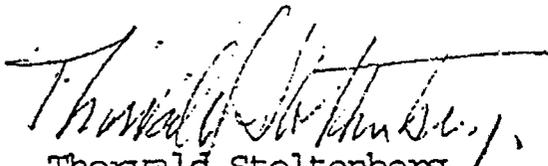
31 July 1993

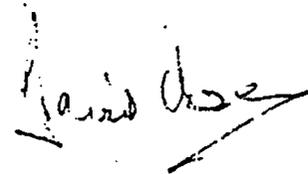
Dear President Izetbegovic

In reply to your letter of 31 July in which you pose a question concerning the interpretation of Article 1 of the Constitutional Agreement, we would like to inform you as follows:

- a. Bosnia and Herzegovina is already a recognised member state of the United Nations.
- b. The principles adopted at the London Conference, as well as the principles laid down by the Security Council, guarantee the sovereignty, independence and territorial integrity of Bosnia and Herzegovina as a member state of the United Nations.
- c. Article 1 of the Constitutional Agreement, which all three parties have agreed to, states that "the Union of Republics of Bosnia and Herzegovina will be a member state of the United Nations". We interpret this article in the spirit of the Charter of the United Nations, the Principles of the London Conference and the principles laid down by the Security Council and therefore confirm to you our understanding that the meaning of Article 1 is that the Union of Republics of Bosnia and Herzegovina will continue as a member state of the United Nations.

Yours sincerely

  
Thorvald Stoltenberg



David Owen

His Excellency  
President Alija Izetbegovic

18/20



REPUBLIC OF BOSNIA AND HERZEGOVINA  
P R E S I D E N C Y

Lord David Owen  
Mr. Thörwald Stoltenberg  
ICFY CO-chairmen

Sirs,

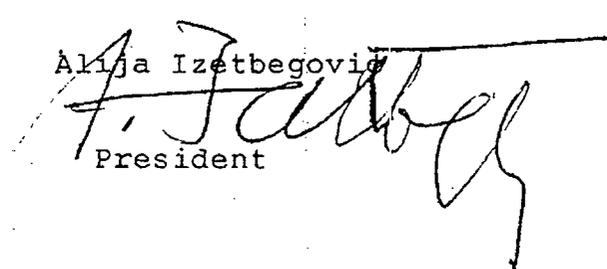
in reply to your letter of 31 July 1993 concerning the interpretation of Article 1 of the Draft of the Constitutional Agreement, I wish to make it clear that we will do nothing that might question to any extent our membership in the United Nations Organization, under whose auspices these negotiations are being conducted. Therefore, I have asked my legal advisers to prepare a new version of Article 1 of the Draft in order to deal with this point, a copy of which is attached. In our efforts to promote these negotiations in accordance with the principles of the United Nations Charter, we would encourage you to give the most serious consideration to this objection.

I hope that we shall be able to overcome present obstacles in order to continue negotiations in good faith.

Please accept the expressions of my highest consideration.

1 August 1993

Alija Izetbegović

  
President

Attachment

19/20

**THE CONSTITUTIONAL PRINCIPLES OF BOSNIA AND HERZEGOVINA**

**I. The Republic of Bosnia and Herzegovina**

**ARTICLE 1**

The Republic of Bosnia and Herzegovina is a union composed of three constituent republics: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_; and encompasses three constituent peoples: Croats, Muslims, and Serbs, as well as a group of other peoples. The Republic of Bosnia and Herzegovina is a member state of the United Nations Organization and of other Organizations within the United Nations System.

20/20

↓  
For page 20 see  
page "3/20".

To the Judges of the International Court of Justice  
The Peace Palace  
The Hague  
The Netherlands

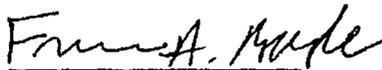
6 August 1993

Your Excellencies,

As you may know from various news media sources, the so-called "Owen-Stoltenberg Plan" calls for the Republic of Bosnia and Herzegovina to be carved up into three independent states and to lose our membership in the United Nations Organization. In a letter to the ICFY Co-chairmen dated 1 August 1993, President Izetbegovic filed a formal "objection" to this Plan together with our counter-offer that is designed to preserve both our State and our U.N. membership. A copy of this letter and our formal counter-offer is attached to this communication. So far there has been no response from the Co-chairmen.

This is to inform you in advance that any "assent" to the so-called "Owen-Stoltenberg Plan" that might be produced here in Geneva will have been coerced by means of the illegal use of force, threats, duress, compulsion and coercion against the Republic of Bosnia and Herzegovina both at United Nations headquarters in Geneva and upon the Capital of the Republic in Sarajevo. Therefore, as a matter of public international law, any such "assent" to the "Owen-Stoltenberg Plan" will be illegal, null, void ab initio, and deprived of any international legal significance whatsoever in accordance with the Vienna Convention on the Law of Treaties and general international law.

Please accept, Excellencies, the assurance of my highest consideration.



Francis A. Boyle  
General Agent for the Republic  
of Bosnia and Herzegovina before  
the International Court of Justice