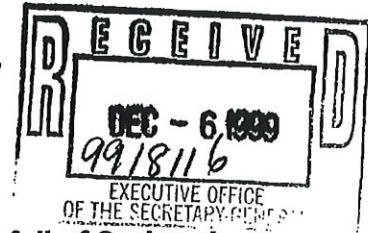


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Note to Mr Riza  
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Criminal Proceedings against UN officials in respect of the fall of Srebrenica

I refer to a Reuters' press report of 1 December 1999, entitled "Srebrenica massacre survivors to sue U.N. officials", a copy of which you sent to me, together with a request for my advice.

9/12

I note that, according to this report, an association of relatives of the victims of the killings which took place following the fall of Srebrenica intends to cause criminal charges to be brought against certain current and former officials of the Organization regarding their supposed criminal responsibility in respect of those killings. The officials concerned are said to include the Secretary-General, his predecessor and two force commanders.

The part of the report appearing below the subtitle "U.S. lawyer to speak for survivors" indicates that the intention of the association is to cause such proceedings to be instituted before the International Criminal Tribunal for the Former Yugoslavia, specifically, to have a U.S. lawyer bring charges against the persons concerned.

The only person who may institute a prosecution before the International Criminal Tribunal for the Former Yugoslavia is the Prosecutor, Ms Del Ponte. No system exists, similar to that which prevails in some national legal systems, whereby a private individual may institute criminal proceedings before the Tribunal. The course of action contemplated in the report is therefore simply not a possibility.

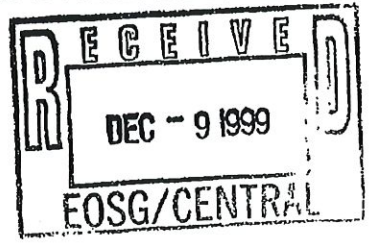
It is of course possible that the U.S. lawyer named in the report may seek to persuade the Prosecutor to prepare an indictment against certain or all of the officials concerned.

However, there would not seem to be any crime within the jurisdiction of the Tribunal for which the officials concerned might conceivably be charged.

While the report does not allude to such a course of action, it is possible that the association intends to cause criminal proceedings to be instituted before a national court, rather than before an international tribunal, the most likely possibility being the courts of Bosnia and Herzegovina.

In this regard, it may be noted that certain legal systems make it a criminal offence for a person to fail to come to the assistance of another person whose life is in danger. (It may be recalled that the commander of the Belgian contingent of UNAMIR was charged with, tried for, but acquitted of, such an offence under Belgian law in respect of the deaths of the members of that contingent that were guarding the Prime Minister of Rwanda.) It is not known whether the laws of Bosnia and Herzegovina contain such an offence and, if they do, what its precise nature is. It is difficult, though, to conceive that it would be framed in such a way as to render the officials concerned criminally

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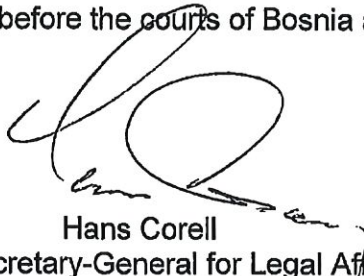


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responsible for the deaths of the persons who were killed following the fall of Srebrenica.

In so far as legal proceedings might nevertheless be instituted before some jurisdiction in respect of the killings, it should be noted that the current and former officials referred to in the press report all enjoy immunity from legal process. This could be asserted to preclude their prosecution.

It might be added that the commander of the Dutch battalion, whose prosecution is also contemplated in the press report, was not an official of the Organization and would not enjoy immunity from prosecution on that basis. However, under UNPROFOR's Status of Forces Agreement, he would, as a former member of its military component, enjoy immunity from legal proceedings before the courts of Bosnia and Herzegovina.



Hans Corell  
Under-Secretary-General for Legal Affairs  
The Legal Counsel

3 December 1999