

Who Fought Just War? Walzer's Theory and the War in the Former Yugoslavia

*Miljenko Antić**

Summary

Applying Walzer's theory, this article analyzes the morality of the war in the former Yugoslavia. The main findings are the following: Serbia fought an unjust war during the entire 1991-99 period. Montenegro participated in the aggression on Croatia. Croatia also fought a just war on its own territory and on the territory of Bosnia and Herzegovina in 1992, 1994 and 1995. However, Croatia fought an unjust war in Bosnia and Herzegovina in 1993. Bosnia and Herzegovina and Kosovo both fought just wars. The international community prosecuted just war crimes (Lat. *jus in bello*) and did not prosecute the very aggression (Lat. *jus ad bellum*).

Keywords: just war, aggression, intervention, war crimes, Yugoslavia, *jus ad bellum*, *jus in bello*.

Radovan Karadžić is very religious. He reads the Bible, wears a cross around his neck and has two icons with the figures of Jesus Christ and Virgin Mary.

(A journalist remark about Radovan Karadžić, the war President of Republika Srpska, indicted for genocide)

According to Michael Walzer (1992:xi-xii), "just-war theory has always played a part in official arguments about war. No political leader can send soldiers into battle, asking them to risk their lives and to kill other people, without assuring them that their cause is just – and that of their enemies unjust". The purpose of this article is to implement the theory of just war on the war on the territory of the former Yugoslavia (1991-99). Therefore, this article first briefly presents the origins of just war theory. Then – since

* Miljenko Antić is an associate professor at the Faculty of Civil Engineering, University of Zagreb, Kačićeva 26, 10000 Zagreb, Croatia, e-mail address: antic@grad.hr

the article is based on Walzer's book (especially on his analysis of *jus ad bellum*) – the main theses from his book will be presented. After the presentation, Walzer's theory will be tested on the basis of the case study of the war in the former Yugoslavia.

It is beyond the scope of this article (which is focused on the war in Yugoslavia) to present all the important authors who developed the theory of just war.¹ Hence, only the most important ones will be presented here. The theory of just war has its origin in the work of St. Augustin. According to him, the most important criterion is whether the war occurred for a just purpose or for self-gains.² According to Francisco de Vitoria (quoted in Walzer, 1992:59), "no war can be just on both sides". Furthermore, both sides (and even more than two sides) can fight an unjust war. Therefore, this article analyzes whether any side in the war on the territory of former Yugoslavia fought a just war.

For the topic of this article it is also essential to mention that Hugo Grotius (1625), in his work *De Iure Belli ac Pacis*, differentiated *jus ad bellum* (the justice of war) from *jus in bello* (justice in war). Walzer, who wrote the most comprehensive work on just war, clearly defines the difference between the two terms. According to him (1992:21), "*jus ad bellum* requires making the judgment about aggression and self-defense; *jus in bello* is about observance of the customary and positive rule of engagement".

Since the analysis about *jus ad bellum* is, in essence, an analysis of aggression, Walzer formulates a theory of aggression with six propositions. The most important ones are the following (italics – M. A.):

1. *This international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty;*
2. *Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act;*
3. *Aggression justifies... a war of self-defense...* (Walzer, 1992:61-2).

Walzer's ambition is to formulate a universal theory, applicable to all wars. "Just-war theory, with its definitions of aggression and self-defense and mutual aid, should be applied impartially across the society of states, to the critics' own state as well to all the others" (p. xxiii).

However, the first question that should be answered is why a just-war theory is important. For, "moral discourse was excluded from the world of science, even of social science" (Walzer, 1992:xxv-vi). Almost 2,500 years ago, Thucydides (2002:38) wrote: "The strong do what they can and the weak suffer what they must." Yet, Walzer (1992:xii) argues that it is important to investigate morality of war because "sometimes

¹ A short list of authors who wrote about just war (in addition to above mentioned authors) includes Cicero, John Locke, Emerich de Vattel, Immanuel Kant, John Stuart Mill, Oliver O'Donovan, George Weigel and Brian Orend.

² See Gonzalez (1984).

it serves only to determine what lies our leaders tell, the complex structure of their hypocrisy". It is important to include an additional reason why a moral aspect of war is important. An illegitimate character of aggression may cause a low level of morale of the troops that attack foreign country on one side, and a very high level of morale of soldiers who resist this aggression. Or, to use Nye's term (2004), fighting just war is increasingly becoming a source of "soft-power" but can even become a source of "hard" military power.³ This is the main reason why all warring sides try to assert that they fight a just war. Yet, it is up to scientists to analyze their arguments and to judge which side (if any) really does fight just war.

In essence, judgment about just war is a judgment about who the aggressor is because "aggression is the name we give to the crime of war" (Walzer, 1992:51). He defines aggression as "every violation of the territorial integrity or political sovereignty of an independent state" (p. 52). It is important to identify clearly the aggressor because "all aggressive acts have one thing in common: they justify forceful resistance... [because] territorial integrity and political sovereignty can be defended in exactly the same way as individual life and liberty" (p. 52-4). Furthermore, "a people can defend its country in the same way as men and women can defend their homes, for the country is collectively owned as the homes are privately owned. The right to territory might be derived, that is, from the individual right to property" (p. 55).

Applying Walzer's theory, the main hypothesis of this article is that Serbia fought an unjust war from 1991-99. Montenegro was an aggressor on Croatia in 1991. Other countries defended their borders from Serbian aggression, i.e. they fought just wars. The only exception was Croatian aggression on Bosnia and Herzegovina, which lasted for a year (in 1993). If the judgment about just war is judgment about who the aggressor is, it is important to investigate first whether there was any aggression in the former Yugoslavia during the 1991-99 period. This article will start with the analysis of the war in Croatia.⁴

Serbian authors define this war – almost without exception – as a civil war. So Vučinić (2004:10) states: "Almost all reputable scientists, military theorists and specialists in our country (Serbia – M. A.) argumentatively point out that from 1991 to 1995 there was a civil war in Croatia." Serbian authors base that claim on the fact that, at the time the war began, the Socialist Federal Republic of Yugoslavia (SFRY) was an internationally recognized state, while the Republic of Croatia was only one of the federal entities of that state. After the international recognition of Croatia, the Federal Republic of

³ According to the author, military power and economic power are examples of hard power. Hard power rests on "carrots" and "sticks". In contrast, "getting others to want what you want – is a 'soft' power" (p. 124).

⁴ Official term in Croatia is the Patriotic war.

Yugoslavia (FRY) was no longer – according to Serbian authors – involved in the war. Therefore, the authors reject the claim that Serbia committed aggression against Croatia, because, according to Mirić (2002:1), “Serbia, as a federal unit of the common state, could not have its own armed force with which it led the war”.

However, further analysis will show that the conflict was primarily international. Croatia declared its independence and was attacked by the army which was under the effective control of Serbia and Montenegro since 1991. The claim that the war was a civil war⁵ – as the Republic of Croatia was an internationally recognized state at the time of the outbreak of war – is very convincingly refuted by Srđa Popović (capital letters and italics in the original):

The recognition of the other subjects of international law does not establish statehood, but accepts the *ALREADY EXISTING* legal fact (that is indicated in the word ‘recognition’) which *PRECEDES* the recognition. This recognition operates, therefore, *ex tunc, i.e. backwards* from the date of occurrence of the state. Thus, the Republic of Croatia was an independent state at the time it was attacked because it declared its independence before the war. However, it is less known that Serbia had also declared its independence with its Constitution of 28 September, 1990, thus a year before the independence of Slovenia and Croatia. Article 2 of the Constitution says: “The Republic of Serbia regulates and provides: sovereignty, *independence* (italics – M. A.), and territorial integrity of the Republic of Serbia and its international position and relations with other countries and international organizations ... (and) the defense and security of the Republic of Serbia.” According to Article 8, “The armed forces in peace and war are managed by the President of the Republic of Serbia.”

Thus says Popović, “the international character of the conflict stems from the fact of the existence of a sovereign and independent Serbia from the very beginning of the conflict”. Serbia achieved its independence not only constitutionally, but also by creating concrete steps. “Serbia enacts laws within the jurisdiction of ex-federation which governs its own credit and monetary policy, its own policy of price controls, introduces duties on goods from abroad (and ex-republics of Yugoslavia), charges its own customs, etc., and eliminates a number of laws aimed at implementing former federal legislation”.⁶ Despite the declaration of independence, Serbia sought to bring under its

⁵ It is interesting to note that Serbian authors do not mention the term ‘civil war’ when they talk about the conflicts between Serbia and Turkey in the period from 1804-78, although Serbia did not gain independence until the Berlin Congress of 1878. See, for example, Ljušić (2007:118-59).

⁶ *Feral Tribune*, May 21, 2004

control all federal institutions. It is the most successful, due to reasons stated above, in establishing control over the Yugoslav People's Army (YPA). In his brilliant analysis,⁷ Popović states that all this was made possible due to

conspiracy between Serbian political leadership and the leadership of the YPA, in which the YPA would cleanse its ranks of non-Serbs, and make itself available to Serbian leadership and in turn be paid and dependent of Serbia (with money stolen from the federal treasury) ... Because of this fear of beatings, other former republics had to tolerate this nonsense and send their representatives in the so-called 'Presidency of Yugoslavia' for the whole year, until the end of 1991, and in fact agreeing that the independent Serbia had authority over the 'Presidency' and 'territory of Yugoslavia', that is, its republics.

Even Serbian leadership, who wanted to present the war as a civil war, was aware that this war was actually an interstate war. For example – in one of his speeches – Milošević, the President of Serbia, claimed: "We must have unity in Serbia if we want Serbia, which is the strongest and most populous Republic, to dictate future events. *Borders are the main issues* (italics – M. A.). And, the strongest dictate borders, not the weakest (*Nin*, 04/12/1991)." Simply, war for borders is not a civil war but rather an interstate war.

The fact that a part of Serbian population raised an armed rebellion against the Croatian Republic certainly gives this war certain aspects of civil war. However, the fact that a large part of German and Italian national minorities supported the aggression on Yugoslavia in 1941 does not negate the international character of that aggression. Likewise, no one disputes that Germany occupied Czechoslovakia in 1938, even though the Sudeten Germans supported the occupation.⁸ Thus, the support of the Serbian population in Croatia for the Greater Serbia project does not negate the international character of the conflict. After all, without military involvement of Serbia, this project would not have been possible. The above analysis shows that the war in Croatia was dominantly an interstate conflict rather than a civil war, as almost all Serbian theorists claim.

⁷ An overall analysis, which has so far been the best published constitutional analysis of the causes of wars on the territory of Yugoslavia, can be found in Popović (2004) and Popović (2006). The essence of his analysis Popović presented in the above cited interview in *Feral Tribune*.

⁸ Formally speaking, neither Serbia nor Croatia had been internationally recognized states in 1991 (as were Germany, Italy and Yugoslavia in 1938). However, both countries declared their independence before the war in Croatia started. Therefore, it is legitimate to compare the behavior of Croatian Serbs in 1991 with the behavior of German and Italian national minorities in 1941 (and with behavior of the Sudeten Germans in 1938).

The previous analysis suggests that the claim of the Serbian authors – that there was no aggression against Croatia – is absurd. Since the YPA units, which were under the control of Serbia, attacked the territory of the Republic of Croatia and Croatia did not fire a single bullet in Serbia, it is clear that Serbia, as an independent and sovereign state defined by its Constitution of 1990, committed aggression against Croatia. The proof for that is Kadjičević's (1993:135) description of the plan to attack the Republic of Croatia:

The idea of maneuver contained the following main elements: to block Croatia completely from the air and from the sea... For this purpose, to cut Croatia in the directions Gradiška-Virovitica; Bihać-Karlovac-Zagreb, Knin-Zadar, Mostar-Split. The strongest group of armored forces are to liberate Eastern Slavonia, and then quickly its continue activity in the west, to join forces in Western Slavonia, and continue towards Zagreb and Varaždin, and to the border of Slovenia. At the same time, strong forces from the region of Herceg Novi-Trebinje are to blockade Dubrovnik from the land and break into the Neretva valley, joining forces coming from the direction of Mostar-Split.

Kadjičević's confession shows that Serbia indeed committed an act of aggression against Croatia and that, accordingly, Serbia fought an unjust war in Croatia.

When the war in Yugoslavia started, Serbia claimed that borders between newly established countries were unjust. This was untrue because they were based on ethnical structure, natural boundaries and historical rights.⁹ However, even if this were true, according to Walzer, "good borders make good neighbors. But once invasion has been threatened or has actually begun, it may be necessary to defend a bad border simply because there is no other" (p. 58).¹⁰ In other words, Serbian attempt to change borders was an act of aggression and can be justified neither on the basis of international law nor on the basis of just war theory.

⁹ For example, there was no municipality in Croatia with Serbian majority close to the border between Serbia and Croatia, the Danube River was a natural border and there were historical reasons for making the border just the way it is. See Brandt (1991).

¹⁰ The Arbitration Commission of the Conference on Yugoslavia (commonly known as Badinter Arbitration Committee) concurred with Walzer's opinion. On 20 November, 1991, Lord Carrington asked: "Can the internal boundaries between Croatia and Serbia and between Bosnia and Herzegovina and Serbia be regarded as frontiers in terms of public international law?" Applying the principle of *uti possidetis*, the commission concluded on 11 January, 1992 (opinion no. 3): "The boundaries between Croatia and Serbia, between Bosnia and Herzegovina and Serbia, and possibly other adjacent independent states may not be altered except by agreement freely arrived at." Furthermore, "except where otherwise agreed, the former boundaries become frontiers protected by international law" (see Pellet, 1992).

Another argument that Serbia and the Serbs use, in order to defend Serbian policy, is an argument that their action was aimed to prevent a new genocide against the Serbs.¹¹ Indeed, during WWII, the so called Independent State of Croatia (NDH) killed approximately 217,000 Serbs (out of 2,100,000).¹² Only in one concentration camp, Jasenovac, 47,627 Serbs were killed (12,683 of them children).¹³ Bearing that in mind, was it not justified to start a military action in order to prevent a new genocide against the Serbs? Walzer's book, once again, is a powerful tool for answering this question:

Both individuals and states can rightfully defend themselves against violence that is imminent but not actual; they can fire the first shots if they know themselves about to be attacked. This is a right recognized in domestic law and also in the legalist paradigm for international society. In most legal accounts, however, it is severely restricted (Walzer, 1992:74).

In his theory, Walzer follows Daniel Webster (quoted in Bowett, 1958:59) who claims that, in order to justify pre-emptive violence, there must be shown "a necessity of self-defense... instant, overwhelming, leaving no choice of means, and no moment for deliberation". Preemption on this view is "like a reflex action, a throwing up of one's arms at the very last minute" (Walzer, 1992:74-5).

So, did Serbia have justification for a preemptive strike against Croatia? Obviously, it did not. The reasons are the following. First, it is impossible to compare a fascist "Independent State of Croatia (NDH)", established by Hitler and Mussolini, with modern Croatia that was established after democratic elections and as a result of a referendum on its independence. Second, "NDH" was a tyranny. In contrast, the Republic of Croatia has had a democratic constitution, similar to other modern democracies in the West. Third, according to Walzer (p. 67), "aggression most often takes the form of an attack by a powerful state upon a weak one". Since the balance of power was heavily in Serbian favor,¹⁴ there were Croats (and later Bosnians) who were in jeopardy rather than Serbs. Furthermore, before the Serbian threat of using force had begun, there was no action of Croatian government that could be considered an aggressive act against Serbian population in Croatia. It is true that at the end of the war (in 1995) many Serbs

¹¹ See, for example, Krestić (1998) and Ilić (1996)

¹² Goldstein (2011, vol. 1:58)

¹³ <http://www.jusp-jasenovac.hr/Default.aspx?sid=6284> (accessed on 6 January, 2013)

¹⁴ Controlling YPA, Serbia had under its control a military that had 3,5 million modern infantry firearms, 3,500 tanks, 3,760 armored combat vehicles, 11,000 large-caliber artillery weapons (100 mm or more), 455 combat aircraft and a complete navy (Žunec and Špegelj [discussion] in Magaš and Žanić (eds.), 2001:111 and 320). In contrast, Croatian, Bosnian, Slovenian and Macedonian military did not have a single tank or a combat aircraft.

left parts of Croatia which were, at the beginning of the war, under Serbian occupation. However, justifying aggression on Croatia with the events that happened as *a result of this aggression* would be similar to justifying Hitler's occupation of Czechoslovakia by the expulsion of the Sudeten Germans after the war. In short, if either side had the right to a preemptive strike (but they did not), those were the victims of Serbian aggression who had the right to do it rather than Serbia itself.

It was already explained why the Serbian intervention in Croatia should be considered an act of aggression (see page 6). However, the situation in Bosnia and Herzegovina was a little bit different than the one in Croatia. The main differences were the following. First, Bosnia and Herzegovina was, in contrast to Slovenia and Croatia, recognized as an independent state prior to the war. Second, the bulk of the Serbian soldiers who fought in Bosnia and Herzegovina were the Serbs from this state. Therefore, this war had many characteristics of a civil war. Even the International Court of Justice did not consider Serbia and Montenegro to be responsible for genocide in Bosnia Herzegovina.¹⁵ However, there is no doubt that Serbia organized the aggression on Bosnia and Herzegovina. The very fact that Slobodan Milošević, the President of Serbia, was the chief negotiator for the Bosnian Serbs in Dayton shows that he was the real leader of Bosnian Serbs.

The third difference is the fact that in Bosnia and Herzegovina there were more than two warring sides. Serbia was the aggressor from the beginning until the end of the war. Croatian position was different. At the beginning of the war, Croatia was a Bosnian ally. Croatia recognized Bosnia and Herzegovina in April 1992. Governments of Croatia and Bosnia and Herzegovina established a Council for mutual defense in July that year. According to Goldstein (2011(3):51),

anticipating Serbian action in Bosnia and Herzegovina already in 1991 and at the beginning of 1992, Croatia armed the Croats in Bosnia and Herzegovina, mainly the Croats in Herzegovina... Croatian Military (HV) and Military of Bosnian Croats (HVO) were partially successful in resistance against Serbian Military but only in Herzegovina and in parts of Central Bosnia.

Military alliance between the Croats and the Bosnians lasted approximately until the end of 1992.

At the begging of 1993 former allies became enemies. The war between the Croats and the Bosnians lasted until the beginning of 1994. Who was responsible for this war? There were several causes. One of them was the fact that, in 1992, the Serbs occupied

¹⁵ For verdict in this case see: <http://www.icj-cij.org/docket/files/91/13685.pdf> (accessed on 1 November, 2012)

70 percent of Bosnia and Herzegovina. The Bosnians and ethnic Croats were expelled from the occupied territories and a huge number of refugees concentrated on only 30 percent of Bosnian territory. This fact contributed, certainly, to the eruption of hostilities between the two nations. However, there is no doubt that the President of Croatia, Franjo Tuđman, was the most responsible for the war between the Croats and the Bosnians. Even before he became President, as a historian, Tuđman had claimed that Croatia had the right to Bosnia and Herzegovina or at least to a part of it.¹⁶ In contrast to Milošević, who tried to hide his responsibility for the Serbian aggression on Bosnia and Herzegovina, Tuđman openly stated his ambition to take a part of Bosnia and Herzegovina.¹⁷ He was probably the most explicit in his interview to *Slobodna Dalmacija* (31/12/91), where he stated that Croatian-Serbian relations can be permanently solved “if Serbia fulfills its national goals [taking parts of Bosnia and Herzegovina – M. A.]. Then, Serbia will not have reasons for further territorial expansion. In this case, Croatia would take Croatian parts of Bosnia and Herzegovina because the existing borders of Croatia are unnatural”. Such statement was followed by Croatian military actions a year later. There is plenty of evidence that Croatia was involved in the war between the Croats and the Bosnians in Bosnia and Herzegovina.¹⁸ As a result of the evidence, the International Tribunal in the Hague, in Tihomir Blaškić’s verdict, concluded that “Croatia, and more specifically the former President Tuđman, was hoping to partition Bosnia and exercised such a degree of control over the Bosnian Croats and especially the HVO that it is justified to speak of overall control”.¹⁹ In short, there is no doubt that Croatia was, in 1993, an aggressor on Bosnia and Herzegovina. To return to Walzer’s analysis – if we apply *jus ad bellum* – Croatia waged an unjust war in Bosnia and Herzegovina in 1993, and the Bosnian side waged a just war against Serbian and Croatian aggressors.

Does it mean that Serbia and Croatia were equally responsible for the war in Bosnia? The answer is simple: not at all. It was already mentioned that, at the beginning of this war, Croatia and Bosnia were allies. Croatia helped Bosnian militarily and this 30 percent of Bosnia which the Serbs did not occupy was mainly defended by the Croats, especially in the south of Bosnia and Herzegovina. Furthermore, Bosnian refugees, from the areas occupied by the Serbs, were hosted in Croatia, in spite of the fact that almost 30 percent of Croatia was occupied as well, and Croatia also had its internal refugees. Moreover, after the Washington agreement had been signed, in March 1994, Croatia and Bosnia and Herzegovina became allies once again. Finally,

¹⁶ See Tuđman (1995), especially page 341

¹⁷ See, for example, Rudolf (1999), Nobile (2000), Tuđen (2007)

¹⁸ See especially Lucić (ed.), 2005, and book by Chief of General Staff of Croatian Military, Janko Bobetko (2003)

¹⁹ <http://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf> (accessed on 3 November, 2012)

successful Croatian military offensives against the Serbs, both in Croatia and Bosnia and Herzegovina (“Zima”, “Bljesak”, “Oluja”, “Maestral” and “Južni potez”), forced Milošević to accept the Dayton peace agreement, which was the end of the war in Bosnia and Herzegovina. In other words – in contrast to Serbia, an aggressor throughout the war, Croatia was an aggressor for one year but for the remaining three years Croatia was the most important ally of Bosnia and Herzegovina and contributed most to the ending of the war in Bosnia and Herzegovina.

In discussions about the war in Yugoslavia, it is also important to investigate whether the NATO intervention of 1999 should also be considered an act of aggression. In Serbia, there is almost a consensus in classifying this intervention as aggression. Even politicians who are considered pro-European claim that the NATO fought an unjust war against Serbia.²⁰ So, was the attack of the NATO on Serbia an act of aggression or did the NATO wage a just war? The Walzer (1992) analysis, once again, is a powerful tool for answering this question.

It is important to mention, firstly, that the NATO intervention was not authorized by the United Nations. Hence, how can a military attack of the NATO alliance on a sovereign state be justified? Walzer (1992:90) lists three cases when the ban of boundary crossing is acceptable. For the case of the war in Kosovo of 1999, two of them are important:

- When a particular set of boundaries clearly contains two or more political communities, one of which is already engaged in a large-scale military struggle for independence; that is, when what is at issue is secession or “national liberation”;
- ...
- When the violation of human rights within a set of boundaries is so terrible..., that is, in cases of enslavement or massacre.

It is obvious that both preconditions for the NATO intervention were fulfilled. The Albanians in Kosovo were a political community that was in a military struggle for its independence, trying to achieve “national liberation”. In addition, since he came to power, Milošević established a system of apartheid in Kosovo, violating the basic human rights of Albanians. According to Cohen (1996:37),

In 1989, Serbian authorities dissolved the legitimate parliament of Kosovo, an unprecedented act in recent European history. Under Serbian pressure, Yugoslav

²⁰ For example, the former President of Serbia, Boris Tadić, said: “Attack of the NATO on the former SR Yugoslavia was a crime against our country and our people.” (*Jutarnji list*, 25 March, 2012, available at: <http://www.jutarnji.hr/boris-tadic--napad-nato-saveza-na-tadasnju-sr-jugoslaviju-je-bio-zlocin-protiv-nase-zemlje-i-naseg-naroda/1016753/>, accessed 4 November, 2012).

authorities imposed military occupation and a system of apartheid characterized by expropriations of Albanian property, forced expulsions, mass firings of ethnic Albanians, political imprisonment, and political murders. Serbian authorities have also encouraged the routine harassment (including looting, rape, and murder) of civilians by irregular Serbian forces in Kosovo. Serbia has clearly stated the intention to 'ethnically cleanse' the Albanians from Kosovo.

Furthermore, Serbia had already attacked Slovenia, Croatia and Bosnia and Herzegovina and the Serbian army committed terrible war crimes in Croatia and genocide in Bosnia and Herzegovina. Therefore, the NATO intervention was fully justified because it enabled the liberation of Kosovo from Serbian rule (and this liberation was a will of great majority of Kosovo's citizens)²¹ and, additionally, it prevented a new genocide. When the NATO troops arrived to Kosovo they were accepted by the local population as liberators and people celebrated their arrival. Therefore, the right question is not why the NATO intervened in Kosovo, but rather why it did not intervene much earlier, when Serbia attacked Croatia and Bosnia and Herzegovina. Had NATO intervened in 1991 or in 1992, more than 100,000 lives would have been saved. To quote Walzer (1992:52, 67) once again: "All aggressive acts have one thing in common: they justify forceful resistance... Resistance to aggression is necessary to deter the future aggressor." Since Milošević was not stopped at first, his aggressions were followed one after the other. In short, the NATO intervention of 1999 was not an act of aggression but rather a late response to eight years of Serbian aggression on the territory of the former Yugoslavia.

However, one may ask whether the same criteria should also be applied to "Republika Srpska Krajina (RSK)". Was Serbian military engagement also – since Serbian community was in a struggle for its independence from Croatia – a just intervention rather than an aggression on Croatia? The answer is negative because there were huge differences between "Republika Srpska Krajina" and Kosovo:

1. According to the Yugoslav Constitution of 1974, Kosovo was an autonomous province. In contrast, RSK did not exist at all. This entity was established exactly as a result of Serbian aggression on Croatia, similar to, for example, Vichy France;
2. Second, Kosovo had defined borders but "RSK" did not. The latter entity was nothing else but occupied parts of Croatia;
3. Kosovo had, according to the 1981 census, 1,600,000 inhabitants. In contrast, inside Croatia, the Serbs had only two small enclaves with approximately 100,000 inhabitants and these enclaves did not have any connections with Serbia;

²¹ According to the 1981 census, the Albanians (who overwhelmingly supported the independence of Kosovo) comprised 77.4% of the population of Kosovo. The Serbs (who overwhelmingly rejected Kosovo's independence) comprised just 13.2% of the population (Bertić (ed.), 1987:239).

4. Historically, the Albanians have been an indigenous population of Kosovo. In contrast, Serbian population came to Croatia running away from the Turks when they entered the Balkan Peninsula.²² In other words, the Albanians have much more historical rights to Kosovo than the Serbs do to “RSK”,²³
5. The most important difference is the fact that, in Kosovo, the Serbs had just one municipality with Serbian majority. In contrast, RSK occupied, in full or partially, 14 municipalities in which the Serbs were not a majority.²⁴ Furthermore, Serbia wanted to occupy the entire Croatia (see page 6). When this plan failed, RSK was established on the territories of Croatia which the Serbian troops occupied militarily. Situation with “RSK” was akin to the situation in which Kosovo, for example, would have wanted to occupy the southern part of Serbia or even the entire Serbia.

In short, RSK was a similar entity to the Sudetes part of former Czechoslovakia – just a pretext for aggression of Serbia on Croatia. In addition, before the war started, Croatian government had not made any actions against the Serbian population that could have been a justification for Serbian military intervention. Human abuses against Serbian population in Croatia were sporadic and a consequence of Serbian aggression rather than a cause of intervention.²⁵ To conclude, Serbia did not, in contrast to the NATO in Kosovo, intervene in Croatia but it organized an aggression on Croatia.

Interestingly enough, in spite of the fact that there were more reasons to give independence or a very high level of autonomy to Kosovo than to RSK (due to the reasons

²² For a history of Kosovo see Horvat (1989), especially page 26. For a history of Croatia see Goldstein (2008), especially pages 185-89.

²³ Of course, historical arguments are the least important ones. However, they were the basis for the establishment of, for example, the Israeli state. Therefore, they should also be mentioned.

²⁴ “Republika Srpska Krajina” – in addition to 11 municipalities with an absolute majority of Serbs – also consisted of the following municipalities (in parentheses there is the percentage of Serbian population): Beli Manastir (24%), Vukovar (31%), parts of municipalities in Osijek (18%) and Vinkovci (13%); parts of municipalities Pakrac (38%) and Novska (21%); parts of municipalities in Duga Resa (8%), Karlovac (23%) and Ogulin (33%); Petrinja (38%), part of municipality Sisak (18%), Slunj (30%), Drniš (20%), and part of municipality Zadar (9%). Furthermore, the official acts of the so-called Republic of Serbian Krajina also state municipalities of Daruvar (30%), Grubišno Polje (29%) and Podravska Slatina (38%) as an integral part of the Republic of Serbian Krajina (RSK), but under temporary occupation of the Republic of Croatia (Dakić, 1994:21). Moreover, the YNA also tried to invade Dubrovnik (6%), but it did not manage to do so (source of data: Bertić (ed.), 1987).

²⁵ Two authors, one Serbian and one Croatian (Bjelajac and Žunec, 2007) analyzed war events, and worked hard to examine whether the departure of the Serbs from the Croatian territory was the cause or the consequence of the war and they concluded the following: “Also, it is important to remember that the murders or any forms of violent persecution of the Serbs in Croatia ... started only after the complete armed conflict during the summer of 1991. Hence, these crimes cannot serve as justification for the insurgency because they occurred after the uprising, and while the war was in full swing.” (p. 22)

explained above), international negotiators offered a very similar solution for both cases. In Croatia, it was the so called Z-4 plan, written by ambassadors of the USA, the UK, Russia and Germany (Goldstein, 2011(3):78). For Kosovo, it was a “Contact Group” composed of the representatives of France, Germany, the UK, Italy, Russia and the USA (see Kovačević, 2007:209-74). Proposals offered a very high level of autonomy for both “RSK” and Kosovo, but inside Croatia and Serbia respectively. Croatia and Kosovo accepted the peace proposals. However, the Serbian side rejected both proposals. Z-4 was rejected because it did not grant independence of “RSK” and because it demanded the return of territories – in which the Serbs were not a majority prior to the war – to Croatian authorities. The proposal of the “Contact Group” was rejected because, according to Serbian negotiators, it offered too much autonomy to Kosovo. These rejections showed that Serbian negotiators did not want to accept equal treatment of all the minorities in the former Yugoslavia. They also showed that it was not possible to persuade the Serbian side of a fair solution to the conflict without the use of force.

Throughout the war there were just two solutions: first, to accept Serbian policy of Greater Serbia or, second, to resist this policy by force. In other words, policy of appeasement worked neither against Hitler nor against Milošević. This policy could be defeated just by military intervention of Croatian military (“RSK”) and the NATO (Kosovo). Therefore, it is completely unjustified to call these interventions aggressions (as it is labeled by the Serbian media and official authorities).^{26,27}

²⁶ See, for example, <http://www.novosti.rs/vesti/naslovna/aktuelno.293.html:372205-Tadic-NATO-bombardovanje-je-zlocin>, and <http://www.hrvatski-vojniki.hr/hrvatski-vojniki/3842012/domovinski.asp> (accessed on 26 November, 2012).

²⁷ Many authors who support interventions in Kosovo and Bosnia and Herzegovina also support the USA aggression on Iraq. Vice versa, those authors who were against aggression on Iraq are usually also against interventions in Bosnia and Kosovo (for the list of the most important authors see Antić, 2009). So, were all the three cases of interventions (aggressions) just? The answer is no. To compare the aggression in Iraq with the intervention in Bosnia and Herzegovina and Kosovo would be as if to compare apples and oranges. A legitimate government of Bosnia and Herzegovina demanded (almost begged) other countries to intervene and help the residents of Sarajevo and other parts of Bosnia and Herzegovina in order to avoid Serbian slaughter of the Bosnians. In Kosovo, a great majority of inhabitants also wanted foreign intervention and really accepted foreign troops as liberators. In contrast, the legal government of Iraq and – what is even more important – the majority of inhabitants of Iraq did not want foreign intervention. In this respect, only the Iraqi Kurds behaved similarly to the Kosovars. Here we come to the main difference between the aggression on Iraq and the intervention in Kosovo. In the first case, the entire country was occupied, not only a part that really wanted foreign troops (Kurdish part of Iraq). In the latter case, foreign troops came only to the part of Serbia where an oppressed nation (the Kosovars) really wanted them. Had the NATO troops occupied the entire Serbia, the interventions in Iraq and Serbia would have been very similar and, from the moral point of view, unjust. There is no doubt that the Serbs, in this scenario, would have behaved very similarly to the Iraqi Sunnis. Vice versa, had the intervention in Iraq been limited only to the Kurdish part of the country, the intervention would have been very similar to the intervention in Kosovo and, from a moral point of view, justified.

So far, this article has dealt almost exclusively with *jus ad bellum* (see page 2). A few remarks about *jus in bello* during the Yugoslav war will be provided at the end of this article. There are two basic concepts concerning war crimes. One, with its origin in the writing of Clausewitz (1962), can be summarized with the following sentence: the aggressor is responsible for all the consequences of the fighting one begins. According to General Sherman (1875, quoted in Walzer, 1992:32), “those who brought war into our country deserve all the curses and maledictions a people can pour out”. In essence, according to this concept, defenders cannot commit war crimes.²⁸ It is obvious that Harry Truman followed this logic when he said that he had never lost a night's sleep over his decision to drop the atomic bomb on Hiroshima (Walzer, 1992:19). It was not just Hiroshima and Nagasaki. A massive raid on Tokyo, in March 1945, killed 100,000 people (Walzer, 1992:266). A similar number of people were also killed in Dresden ((Walzer, 1992:261). According to the same author, “as a direct result of the adoption of the policy of terror bombing by the leaders of Britain, some 300,000 Germans, most of them civilians, were killed and another 780,000 seriously injured” (p. 255). How many people from the USA, the UK and Russia were prosecuted in Nuremberg and Tokyo trials for this terror bombing?²⁹ None were. Why? Because, it was considered that only those who initiated the war, those who were true aggressors should be prosecuted and not those who defended themselves from Nazi aggression. In other words, those who started the war were prosecuted for violating both *jus ad bellum* and *jus in bello*. In contrast, those who were the victims of aggression were neither prosecuted for violating *jus ad bellum* (which is logical) nor for violating *jus in bello* (rules of engagement). Why were courts in Nuremberg and Tokyo only focused on crimes committed by the aggressors? Because the aggression, in the wording of the Nuremberg Tribunal, is “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole” (quoted in Chomsky, 2007:65).

When the International Criminal Tribunal for the former Yugoslavia (ICTY) was established, it did not follow the logic of Tokyo and Nuremberg tribunals. It decided to prosecute not just the aggressors (Serbia, Montenegro, and Croatia in Bosnia in 1993) but also the victims of aggression (the Croats, Bosnians, and Kosovars). The logic was that not only could the aggressors commit war crimes, but the defenders were equally

²⁸ This concept is still present in Croatia. According to Milan Vuković, a judge of the Croatian Constitutional Court, Croatian soldiers could not commit war crimes simply because they defended their country from Serbian aggression (see *Večernji list*, 4/2/2011, available at <http://www.vecernji.hr/hrvatska/v-skare-ozbolt-za-mog-mandata-srbija-nije-progonila-hrvate-248726>, accessed on 5 January, 2013).

²⁹ The Nuremberg Trials were a series of military tribunals, held by the Allied Forces of World War II, most notably for the prosecution of prominent members of the political, military, and economic leadership of Nazi Germany. The International Military Tribunal for the Far East (IMTFE), also known as the Tokyo Trials, the Tokyo War Crimes Tribunal, or simply the Tribunal, was convened on April 29, 1946, to try the leaders of the Empire of Japan for war crimes.

capable of doing such things. To use Walzer's terminology, the ICTY prosecuted violations of *jus in bello* on all warring sides.³⁰ Indeed, it was logical that the Tribunal decided to prosecute people who killed innocent civilians, no matter whether those civilians were on the side of the defenders or the aggressors. However, it was illogical that the ICTY did not prosecute the very aggression (violation of *jus ad bellum*). Because, if indeed the aggression "contains within itself the accumulated evil of the whole", then by failing to prosecute the aggression the ICTY failed to prosecute the roots of all the evils that happened during the wars on the territory of the former Yugoslavia (1991-99). And the root of all evil was the Serbian attempt to establish "Greater Serbia" by using military force. Failing to prosecute Serbia for this crime, the ICTY failed to bring real justice for the 100,000 victims of Serbian policy.³¹ Furthermore, the ICTY sometimes even produced injustice when, for example, it prosecuted generals who defended their country (Croatian generals Gotovina and Markač³²), failing to prosecute those who organized the aggression on Croatia (generals Kadijević and Adžić).³³

³⁰ In order to punish those who committed war crimes, The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (more commonly referred to as the International Criminal Tribunal for the former Yugoslavia, or ICTY) was established on 25 May, 1993. The Court was established by Resolution 827 of the United Nations Security Council. It has jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. The maximum sentence it can impose is life imprisonment. Altogether, 89 people were convicted by the ICTY; 67 of them Serbs, 14 Croats from Bosnia and Herzegovina, five Bosnians, two Albanians and one Macedonian. Altogether, the Serbs were sentenced to 1125 years, Croats to 183 years, Bosnians to 42 years, Albanians to 19 years and Macedonians to 12 years in prison. Eleven people died in prison during the trial. Three people were killed during arrest and five of them committed suicide, all of them Serbs. Radovan Karadžić, Ratko Mladić and Goran Hadžić are still on trial. From the data above it is obvious that the Court fulfilled its main function: those who committed the worst war crimes were convicted. In addition, national courts also convicted people who committed war crimes. These data show not only that Serbia did not just initiate the wars in the former Yugoslavia, but also that the Serbian soldiers committed a great majority of war crimes. (Source: <http://www.vecernji.hr/vijesti/analiza-rada-haaskog-suda-srbi-haagu-dobili-1124-5-godina-zatvora-clanak-481839>, accessed on 17 December, 2012)

³¹ It was already stated that Montenegro also participated in the aggression on Croatia and that Croatia also participated for one year in the aggression on Bosnia and Herzegovina. However, the level of responsibility of these two countries, especially Croatia, is not comparable to the responsibility of Serbia. Being the main ally of Bosnia and Herzegovina in 1992, 1994, and 1995, Croatia contributed more to the punishment of the main aggressor (Serbia) and the ending of war than any other country that was involved in the war in Bosnia and Herzegovina.

³² The ICTY eventually acquitted both Gotovina and Markač. However, as innocent people, Gotovina spent 7 years and Markač 4 years in jail (during the trial). In the end, they did not even have the right to compensation (like others who were found innocent) for the years in jail (one additional illogical decision of the ICTY).

³³ When the aggression on Croatia started, General Veljko Kadijević was the minister of defense and Blagoje Adžić the Chief of Staff of the YPA.

But, why is it so important to differentiate the aggressors from the defenders? Walzer (1992:31), once again, provides a very persuasive answer to this question:

Wars are not self-starting. They may “break out”, like incidental fire, under conditions difficult to analyze and where the attribution of responsibility seems impossible. But usually they are more like arson than accident: war has human agents as well as human victims. Those agents, when we can identify them, are properly called criminals... They are responsible for the pain and death that follow from their decisions... In contemporary international law, their crime is called aggression.

There is no doubt that the main criminal, who initiated arson, was the President of Serbia, Milošević. The second most important person was General Kadijević, the leader of the YPA. Milošević – with his idea of “Greater Serbia” – provided “software” but Kadijević, giving almost the entire military capabilities of the YPA on disposal to Milošević, provided the “hardware” for the Serbian aggression on Slovenia, Croatia, Bosnia and Herzegovina and Kosovo. Those that followed his policy also bear responsibility. Those who killed innocent civilians are also responsible, no matter which side they belonged to. However, the main violator of *jus ad bellum* was Serbia and its political leadership led by Milošević.

Conclusion

Applying Walzer' theory, this article analyzed the ethical aspects of the war in the former Yugoslavia. The main findings are the following: Serbia fought an unjust war during the entire 1991-99 period, starting with the conflict in Slovenia, continuing with aggression on Croatia and Bosnia and Herzegovina and finishing with the war in Kosovo. Montenegro participated in the aggression on Croatia. Slovenia fought a just war (although it was just a military conflict, not a war³⁴). Croatia fought a just war on its own territory and on the territory of Bosnia and Herzegovina in 1992, 1994 and 1995. However, Croatia fought an unjust war in Bosnia and Herzegovina in 1993. Bosnia and Herzegovina and Kosovo both fought just wars defending themselves from Serbian aggression. The international community – prosecuting just war crimes (*jus in bello*) failed to prosecute the very aggression (*jus ad bellum*) and this is the main mistake made after the war.

³⁴ According to Small and Singer (1982), “to be counted as participant, each state involved in an interstate war must have suffered at least 100 fatalities or sent at least 1,000 troops into active combat. States involved in wars against non-state actors must have sustained (in combination with any allies) at least 1,000 deaths in battle during each year of the conflict.”

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Sažetak

Ovaj članak – na osnovi Walzerove teorije o pravednom ratu – analizira etičke aspekte rata na prostoru bivše Jugoslavije. Glavni su zaključci sljedeći: Srbija je tijekom čitavog razdoblja od 1991. do 1999. vodila nepravedan rat. Crna Gora sudjelovala je u agresiji na Hrvatsku. Hrvatska je vodila pravedan rat na teritoriju Hrvatske i u Bosni i Hercegovini 1992., 1994. i 1995. godine. Međutim 1993. godine vodila je nepravedan rat u Bosni i Hercegovini. Bosna i Hercegovina i Kosovo vodili su pravedne ratove braneći se od srpske agresije. Međunarodna zajednica propustila je kazniti zločin agresije (*jus ad bellum*), procesuirajući samo ratne zločine (*jus in bellum*).

Ključne riječi: pravedan rat, agresija, intervencija, ratni zločini, Jugoslavija, *jus ad bellum*, *JUS in bello*.

