The end of the Cold War, which paralyzed the United Nations from its inception, was a cause for celebration and hope. In the early 1990s, while Western leaders were still congratulating themselves over the end of communism and the fall of the Soviet empire, the security structure that helped bring about those events began to come apart. Less than two years after the fall of the Berlin Wall, the structure of international law seemed to be crumbling.

Following the historic Security Council Summit Meeting of January 1992, the then Secretary-General of the United Nations, Boutros Boutros-Ghali, spoke of a growing conviction ‘among nations large and small, that an opportunity has been regained to achieve the great objectives of the UN Charter – a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, “social progress and better standards of life in larger freedom”.’ Even as this optimistic mission statement was being made, the Balkans had erupted into a theatre of war and Rwanda’s genocidal conflagration was in the making. It took a war in Europe-Croatia in 1991 to stir public interest. The war in Bosnia-Herzegovina (1992) and the Rwandan genocide (1994) amplified the alarm bell, though it had been sounded a good deal earlier.

Unlike the indifference by the international community which had met the humanitarian crises of the politically volatile Cold War era, in the post-Cold War era, the ideological barrier between the ‘East’ and ‘West’ had crumbled. The UN Security Council was in a position to achieve ‘Great Power Unanimity’ on operations authorised under Chapter VII of the Charter (to maintain or restore international peace and security). This new spirit of cooperation was crucial in enabling the UN to carve out a much broader role by acting as a watchdog over international

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2 In January 1991, with the overthrow of Somalia’s President Siad Barre, fighting between various Somali factions and clans resulted in widespread death and destruction, causing a dire need for emergency humanitarian assistance. See generally The Situation in Somalia: Report of the Secretary-General, UN SCOR, 47th sess, [7], [9], [11] and [13], UN Doc S/23829/Add 1 (1992); The Situation in Somalia: Report of the Secretary-General, UN SCOR, 47th sess, [4], UN Doc S/23693 (1992); The Situation in Somalia: Report of the Secretary-General, UN SCOR, 47th sess, [13], UN Doc S/23829 (1992).
disputes, a peacemaker and peacekeeper. Though slow to react, the Security Council issued a series of resolutions with regard to the conflicts in the 1990s, and deployed peacekeepers.³

In response to the deteriorating human rights situation in the former Yugoslavia, the UN Commission on Human Rights was called into its first ever special session, during which it adopted resolution 1992/S–1/1 on 14 August 1992, requesting the Chairman of the Commission to appoint a special rapporteur 'to investigate first hand the human rights situation in the territory of the former Yugoslavia, in particular within Bosnia and Herzegovina'.⁴ The first report of Special Rapporteur Mazowiecki to the Commission on Human Rights concerned, inter alia, the policy of ethnic cleansing and other serious human rights violations committed in the territory of the former Yugoslavia. The report stated that '[t]he need to prosecute those responsible for mass and flagrant human rights violations and for breaches of international humanitarian law and to deter future violators requires the systematic collection of documentation on such crimes and of personal data concerning those responsible.'⁵

The Special Rapporteur then recommended that '[a] commission should be created to assess and further investigate specific cases in which prosecution may be warranted. This information should include data already collected by various entities within the United Nations system, by other inter-governmental organizations and by non-governmental organizations.'⁶

Subsequently, a number of reports called for criminal investigation of war crimes and serious violations of humanitarian law as well as the timely collection of information and evidence to support such investigations.⁷ The Security Council keen on


⁷ See, eg, E/CN 4/1992/S–1/10 of 27 October 1992 at [18] as well as Annex 11 (Statement by Dr Clyde Snow). See also Report of the Special Rapporteur (transmitted by the Secretary-General to the Security Council and General Assembly) A/47/666; S/24809 of 17 November 1992, [140], where Mr Mazowiecki stated: 'There is growing evidence that war crimes have been committed. Further investigation is needed to determine the extent of such acts and the identity of those responsible, with a view to their prosecution by an international tribunal, if appropriate'. See further the later reports of the Special Rapporteur for more details on the human rights situation in the former Yugoslavia: E/CN 4/1993/50 of 10 February 1993; E/CN 4/1994/3 of 5 May 1993; E/CN 4/1994/4 of