

## **BOSNIA & HERZEGOVINA**

### **CCPR A/48/40 (1993)**

311. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the Covenant, having noted that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant, finding that the new States within the boundaries of the former Yugoslavia succeeded to the obligations of the former Yugoslavia under the Covenant, in so far as their respective territories were concerned, and acting under article 40, paragraph 1 (b), of the Covenant, on 7 October 1992 the committee requested the Government of the Republic of Bosnia and Herzegovina to submit a short report on certain issues in respect of persons and events now coming under its jurisdiction (for the Committee's decision, see para. 36 and annex VII).

312. The report submitted by the Government of the Republic of Bosnia and Herzegovina pursuant to this decision was considered by the Committee at its 1200<sup>th</sup> meeting, on 3 November 1992 (see CCPR/C/SR/1200). (For the membership of the delegation, see annex XI.)

313. The report was introduced by the representative of the State party, who said that terrible crimes were being committed in the territory of Bosnia and Herzegovina that was controlled by the aggressor (Serbia, the Serbian Democratic Party and its armed formations), for which ethnic cleansing was an integral part of the war objectives. The Serbian Democratic Party's policy was based on the principle that persons of different religions and ethnic origins could not live side by side, and the concept of ethnic cleansing was a corollary of that concept. For example, in the territory controlled by the aggressor, mass executions and arrests were taking place, hundreds of thousands of people were being deported or interned in concentration camps and detention centres, and the right of individuals to work, freedom of movement and property were being denied. So far, 165,000 persons had lost their lives, in some cases almost the entire population of an area. Moreover, 1,200 members of the Jewish community in Sarajevo had been compelled to flee without hope of ever coming back.

314. The Government of the Republic of Bosnia and Herzegovina opposed an ethnic war and had taken a number of steps to determine the circumstances in which a large part of the population of two regions, one with a Serbian majority and the other consisting mainly of Muslims, had fled. In actual fact, 600,000 Muslim citizens had been forced to abandon their homes in various regions of Bosnia and Herzegovina. In some places, virtually the entire population had been forced to leave. Yet the Bosnia State was a State for all those who lived in its territory and it comprised peoples who had fused to the point of forming an indivisible entity. It had done everything in its power to prevent ethnic cleansing in the territory under its control. Ethnic war was therefore something that had been imported into Bosnia and Herzegovina and was caused by the ambitions of neighbouring States seeking to annex part of the territory and population of the country.

315. Bosnia and Herzegovina had neither its own army nor its own weapons; the population had therefore organized spontaneously to defend their country and stand up to aggression. The situation had given rise to some cases of torture and arbitrary executions by way of reprisals for the mass and arbitrary executions and the torture for which the Serbs were responsible. Steps had been taken to

put an end to such actions, such as dismissing certain officers and disbanding local self-defence units whose reprehensible behaviour was notorious. The Bosnian authorities undertook to establish high-level commissions of inquiry and were continuing to defend the principle of the communities living alongside each other.

316. The members of the Committee noted that, in submitting the report requested and sending a delegation, the Republic of Bosnia and Herzegovina had shown, so far as its territory was concerned, that it had succeeded to the former Socialist Federal Republic of Yugoslavia's obligations under the Covenant. On the basis of the two reports by the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/S-1/9 and E/CN.4/1992/S-1/10), the report of the Mission of the Conference on Security and Cooperation in Europe to Bosnia and Herzegovina in August 1992 and other reports on the situation in certain camps, they deplored the unprecedented tragedy that the country was suffering. They expressed their consternation at the extent of the violations of the rules of humanitarian law in general, the Geneva Conventions of 12 August 1949 for the protection of war victims and the Covenant. They noted that the situation in the camps under the control of the authorities of Bosnia and Herzegovina were better than in the other camps and that no policy comparable to a policy of ethnic cleansing was being applied in the territory under the control of the Bosnian authorities.

317. The members of the Committee asked what steps had been taken to protect the rights enunciated in the Covenant, in particular the rights to life, to protection against torture and other ill-treatment, to liberty and to freedom of movement. In the case of persons deprived of their freedom as a result of the conflict, they asked for clarification about the conditions in certain detention centres, particularly those at Konjic and Zenica and any other private detention centres around Sarajevo; the situation in two villages in Bosnia and Herzegovina where the population was said to be unable to leave; the results of inquiries conducted into the question of extrajudicial executions and cases of torture; the steps taken so that the abuses noted in the latter centres would not recur; the measures to identify detainees and to exchange information about them; the registers of detainees and any transfers; and the number of people held by the Bosnian authorities. They also asked whether the International Committee of the Red Cross had been kept fully informed of the number of detainees; whether the places of detention had all been declared as such and could be visited; and whether instructions had been issued so that persons not bearing arms would not be arrested simply in order to exchange them against Muslims held by the opposing forces.

318. In response to the questions raised, the representative of the State party said that, as the Special Rapporteur of the Commission on Human Rights had pointed out, there was no comparison between the human rights violations in the territory legally controlled by the Government and the crimes committed in the part of the territory that was temporarily occupied. In the war conditions forced upon the country, human rights violations were inevitable and cases of disappearances, ill-treatment inflicted on detainees in certain prisons or camps, arbitrary arrest and detention without trial had been noted. In the circumstances, steps had been taken by the Government and, from now on, any arrest other than by order of the police was forbidden and the powers of the military police were reduced. Furthermore, military prisons were now solely for members of the army found guilty of offences and no civilian could be imprisoned in them. Maintenance of public order was exclusively the responsibility of the civilian police and judicial bodies. The Government was endeavouring to seek out and punish persons responsible for illegal acts and, to that end, a Committee of Inquiry had

been established to find those responsible for crimes committed, regardless of whether they were Muslims, Croats, Serbs or partisans of any political faction. Another Special Committee had been instructed to examine complaints of acts committed by the military authorities, namely arbitrary arrests and detentions and violations of the right to property, to freedom of movement and to work. The Bosnian authorities in no way acted as Muslim authorities and the victims, in the territory under their control, although generally Muslim, also belonged to other ethnic groups or religions.

319. Nevertheless, steps to restore respect for the law were hindered in the Sarajevo region because it was subjected to constant bombardments and because of the lack of water, electricity, fuel, food, medicines and means of communication. It was therefore difficult to set up an appropriate mechanism for the protection of human rights. It was to be noted that in the regions which had least suffered from enemy infiltration, public order was being maintained and no violence had been found in the detention camps. Citizens of Serbian origin who had felt that they were threatened had benefited from special protection measures. Furthermore, the Government regarded itself as legally responsible for the population living in the occupied part of the territory and was conducting investigations so that victims would once again enjoy their rights and be compensated in so far as possible, although the task was extremely difficult without the support of the international community.

320. The Government of Bosnia and Herzegovina had been patient and shown good will by negotiating a political agreement in Geneva that could lead to a cease-fire. It had undertaken to respect all international humanitarian law instruments, particularly the Geneva Conventions which provided for the release of persons detained in the "camps". In that regard, the participants in the London Conference had recognized that besieged towns and villages could no doubt be regarded as concentration camps. Over 400,000 persons were being detained in what could be regarded as the largest concentration camp ever exist in the world and the situation was growing worse from month to month, without the international community displaying any intention of coming to the assistance of the inhabitants of Sarajevo. The representatives of the international community, and in particular delegates of the International Committee of the Red Cross, had been invited to visit detention camps and prisons under Bosnian jurisdiction. Shortly after the agreement of 1 October 1992 to open up the camps, the Government had respected its commitments. However, the aggressor had continued its policy of ethnic cleansing by preventing released persons from returning to their homes or villages of origin, by threatening their security, by pressuring them to emigrate to Croatia and by using force to move them there.

#### Concluding observations by individual members

321. The members of the committee noted that, while the report did not methodically and systematically answer the questions included in the Committee's decision, the delegation of the Republic of Bosnia and Herzegovina had answered them orally. They noted that the Republic of Bosnia and Herzegovina considered itself as legally responsible for everything which had happened, not only in the part of the territory effectively under its control but also in the other parts. They also noted the steps taken to combat and prevent human rights violations committed by the forces placed under the control of Government in a conflict which had been imposed on it.

322. The members of the committee said they were revolted by the crimes committed by the forces

not under the control of the Government. In that connection, it was out that ethnic cleansing was a form of genocide and was accompanied by massive violations of articles 6, 7, 12 and 26 of the Covenant. They also said that all places of detention should be officially declared as such, that a list of all detainees should be drawn up and published and that ICRC should be able to visit those camps. Camps not complying with those requirements should be dismantled.

323. The representative of the Republic of Bosnia and Herzegovina assured members of the Committee that his country was making every effort to bring the conflict to an end and to honour its obligations and guarantee respect for everyone's human rights. A draft Constitution guaranteeing protection of all the human rights set out in the international human rights instruments had been elaborated.

324. On completion of the consideration of the report submitted by the Republic of Bosnia and Herzegovina pursuant to the Committee's decision of 6 October 1992, the Chairman thanked the delegation for the useful information it had supplied in response to the questions raised. He expressed the hope that the current negotiations would lead to a radical change in the situation and that all those who lived in the Republic of Bosnia and Herzegovina would soon be able to enjoy the rights protected by the Covenant.

#### Comments of the Committee

325. At its 1205<sup>th</sup> meeting (forth-sixth session), held on 6 November 1992, the Committee adopted the following comments.

#### Introduction

326. Deeply concerned by recent and current events in the territory of the former Yugoslavia affecting human rights protected under the international Covenant on Civil and Political Rights; noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant; and acting under article 40, paragraph 1 (b) of the Covenant; the Committee on 7 October 1992, requested the Government of the Republic of Bosnia and Herzegovina to submit a short report on the following issues in respect of persons and events now coming under its jurisdiction:

- (a) Measures taken to prevent and combat the policy of ethnic cleansing pursued, according to several reports, the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the Covenant;
- (b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant,
- (c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant;
- (d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the Covenant.

327. Pursuant to that request, the Government of Bosnia and Herzegovina submitted a background paper dated August 1992 on the violations of human rights that had occurred in the territory of the Republic, which was considered by the committee at its 1200<sup>th</sup> meeting, held on 3 November 1992. The Republic of Bosnia and Herzegovina was represented by Mr. Muhamed Filipovic, Vice-President of the Academy of Science and Art of the Republic of Bosnia and Herzegovina, Member of the Assembly of the Republic of Bosnia and Herzegovina, Member of the State Delegation of the Republic of Bosnia and Herzegovina at the International Conference on the Former Yugoslavia; Mr. Kasim Trnka, Member of the Constitutional Court of the Republic of Bosnia and Herzegovina, Member of the State Delegation of the Republic of Bosnia and Herzegovina at the International Conference on the Former Yugoslavia and Mr. Mustafa Bijedic, Minister Counsellor, Chargé d'affaires, Mission of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva. The document submitted was supplemented orally in detail and in depth in the perspective of the particular areas of concern on which the Committee had requested a report.

328. The Committee notes that by complying with its request to submit a report and by sending a delegation before it, the Republic of Bosnia and Herzegovina had confirmed its succession to the obligations undertaken under the International Covenant on Civil and Political Rights by the former Socialist Federal Republic of Yugoslavia in respect of the territory forming part of the Republic of Bosnia and Herzegovina.

#### Positive aspects

329. The Committee welcomed the delegation's affirmation that the Republic of Bosnia and Herzegovina considers itself legally responsible for whatever has taken place not only in that part of its territory on which it has factual and effective control but also in other parts of its territory. The Committee has also taken note of the measures taken to combat and prevent violations of human rights, in particular, measures to ensure that arrest and detention of persons are carried out only by the legal authorities and not by uncontrolled individuals; the demarcation of legal responsibility between the military and civilian police authorities; the replacement of commanders who have been responsible for violations; and the disbanding of groups and units which have been responsible for violations. The Committee has also taken note of the measures taken to protect the person and property of Serbs.

#### Factors and difficulties impeding the application of the Covenant

330. Since Bosnia and Herzegovina became a separate State, a significant part of its territory has remained out of its control and has been subjected to military action entailing massive human rights violations resulting in loss of life, torture, disappearances, summary executions, rapes and general ill-treatment of persons. The delegation stated that much of this was the result of the action of outside forces and uncontrolled groups and individuals.

#### Principal subjects of concern

331. The Committee expressed its concern at the large number of killings, arbitrary arrest, detentions, the operation of prisons by private persons and the general mistreatment of persons.

## Recommendations

332. The Committee recommends that the Republic of Bosnia and Herzegovina formalize its succession to the Covenant by submitting the appropriate notification to the Secretary-General of the United Nations. The Committee recommends that the measures already taken by the Republic should be further intensified and systematically monitored so as to ensure that ethnic cleansing does not take place, whether as a matter of revenge or otherwise; that prisoners are not taken for the purpose of eventual exchange of prisoners; that all places of detention are officially proclaimed; that records of all people detained are kept and made public; and that such places of detention are open to visits by the International Committee of the Red Cross and the families of the people detained. All places of detention that do not comply with these conditions should be immediately dismantled. Administrative arrangements should be made to enable persons to retrace members of their family who have disappeared and prompt investigations should take place to bring all those responsible for violations to trial.