

BOSNIA & HERZEGOVINA

CERD A/48/18 (1993)

453. At its 984th meeting, held on 19 March 1993, the Committee expressed grave concern over the ongoing ethnic conflict taking place in the territory of the former Yugoslavia and requested the Government of Bosnia and Herzegovina to confirm its adherence to the Convention and, in the event, to submit, in accordance with article 9, paragraph 1, of the Convention, further information on the implementation of the Convention not later than 31 July 1993. The Government of Bosnia and Herzegovina subsequently deposited with the Secretary-General its instrument of succession to the Convention, on 16 July 1993, and submitted a report (CERD/C/247), which was considered by the Committee at its 1001st meeting held on 12 August 1993 (see CERD/C/SR.1001).

454. Members of the Committee expressed regret at the absence of the representative of Bosnia and Herzegovina, who had informed the Committee of his inability to be present owing to prior commitments in connection with the peace talks taking place on the former Yugoslavia.

455. They noted that the disintegration of the former Yugoslavia had taken place since the Committee had considered that country's report in 1990. With regard to "ethnic cleansing", it was stated that, although all parties to the conflict had been responsible for abuses, most of the victims had been Muslim. Violations included massacres, detention of civilians, torture and killing of prisoners and rape and other sexual abuses.

456. Members of the Committee drew attention to the conclusions contained in the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1994/3, paras. 90-93), particularly with regard to the grave humanitarian crisis existing in eastern Bosnia and Herzegovina and on the need to establish "safe areas" there.

457. Members of the Committee also stressed that human rights concerns should be given priority in the peace process; all detainees should be released immediately into conditions of safety; blockades of cities and enclaves be ended immediately and humanitarian relief corridors opened; the "safe areas" concept be expanded and applied to other areas of Bosnia and Herzegovina; and that the right to flight and the right to seek asylum should be guaranteed.

458. It was recommended that the new Constitution should incorporate the relevant articles of the Convention, particularly the definition of racial discrimination contained in article 1, since grave violations had clearly occurred. The Government could be requested to give the demographic composition of the population before and after the conflict. Further, attention should be drawn to all aspects of articles 2 and 3, stressing that parties should eradicate all practices of racial segregation in territories under their jurisdiction. Replies should be given in relation to articles 5 and 7, all of the provisions of which had been violated.

459. In the context of ethnic cleansing, members of the Committee stated that article 4 had to be reflected in the Penal Code and that the Civil Code should cover article 6, particularly with regard to war crimes and compensation for victims of ethnic cleansing.

460. It was pointed out that racial discrimination was at the root of the tragic situation in Bosnia and Herzegovina and, in particular, that the provisions of articles 3 and 5 of the Convention were being flouted there. Since the Committee had the task of monitoring the implementation of the Convention, it had a duty to make a clear statement of principle deploring the violations of rights enshrined in the Convention.

461. Members noted that the current situation in the territory of the former Yugoslavia served as a lesson that racial discrimination and ethnic conflict, if not controlled at an early stage, could easily get out of control, escalate into armed conflict and result in a change in human attitudes that ran counter to the Convention and other human rights instruments. It was recommended therefore that, in view of deepening racism and racial discrimination in the world, the Committee should reserve time at each session to consider potentially dangerous situations under a separate agenda item. That would enable the Committee to function more effectively in an early warning and urgent action role.

462. It was pointed out that the International Tribunal that was being established pursuant to Security Council resolution 808 (1993) would play a vital role in prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia and that States should be urged to cooperate with it.

463. Several members of the Committee stated that the subject of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) must be kept on the agenda of the Committee as part of an in-depth study of the situation in the former Yugoslavia.

Concluding observations

464. At its 1012th meeting, held on 20 August 1993, the Committee adopted the following concluding observations. 6/

(a) Introduction

465. The Committee noted the report submitted by the State party but regretted that a representative was unable to present that report and to respond to the questions of the Committee.

(b) Positive aspects

466. The Committee welcomed the deposit with the Secretary-General of the instrument of succession of Bosnia and Herzegovina to the Convention.

6/ Mr Agha Shahi stated that he did not wish to be associated with these concluding observations.

(c) Principal subjects of concern

467. The Committee was gravely concerned about the massive, gross and systematic human rights violations occurring in the territory of Bosnia and Herzegovina, as well as practices of "ethnic cleansing", including forced population transfers, torture, rape, summary executions, the blockading of international humanitarian aid and the commission of atrocities for the purpose of instilling terror among the civilian population. The Committee deplored the lack of effective action to bring to an end those and other human rights violations in Bosnia and Herzegovina.

468. The Committee was profoundly concerned that the human rights violations occurring in Bosnia and Herzegovina were being committed on the basis of "ethnic identity" for the purpose of attempting to create ethnically pure States. The Committee emphasized that such attempts were completely contrary to the spirit and the principles of the Convention. Furthermore, the Committee was concerned that partition along ethnic lines in Bosnia and Herzegovina could encourage groups elsewhere who were unwilling to respect the territorial integrity of States.

(d) Suggestions and recommendations

469. The Committee strongly supported the principle of multi-ethnic societies and States and, to that end, recommended that active and effective measures should be urgently taken in support of efforts to promote inter-ethnic tolerance and understanding in Bosnia and Herzegovina and to end ethnic divisions there. To that end, multi-ethnic organizations and movements should be encouraged and an ongoing dialogue should be fostered on an urgent basis among leaders and representatives of the various communities with a view to reducing tension, building confidence and ending the conflict.

470. The Committee urged the Government of Bosnia and Herzegovina and all parties concerned to take all measures at their disposal to bring to an end the massive, gross and systematic human rights violations occurring in the territory of Bosnia and Herzegovina. In that connection, the Committee strongly recommended that effective action should be taken to ensure that refugees and other displaced persons were allowed to return to their homes, all detainees were released immediately into conditions of safety and adequate reparation was given to the victims.

471. The Committee reaffirmed that those responsible for massive, gross and systematic human rights violations and crimes against international humanitarian law should be held responsible and prosecuted. In that connection, the Committee urged the Government of Bosnia and Herzegovina to assist efforts to arrest, bring to trial and punish all those responsible for crimes which would be covered by the terms of reference of the International Tribunal established pursuant to Security Council resolution 808 (1993).

(e) Further action

472. The Committee offered its technical assistance to the State party in the form of a mission of one or more of its members for the purpose of promoting the elimination of all forms of racial discrimination and of preparing the next report.

473. In accordance with article 9, paragraph 1, of the Convention, the Committee requested further information from the State party on measures taken to implement the provisions of the Convention, particularly in the light of the above suggestions and recommendations. The State party was requested to provide that information by 1 January 1994 so that it might be considered by the Committee at its forty-fourth session.

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205. The Committee considered the report of the Republic of Bosnia and Herzegovina (CERD/C/247/Add.1) at its 1082nd and 1092nd meetings, held on 7 and 14 March 1995 (CERD/C/SR.1082 and 1092).

206. At its 1082nd meeting the Committee proceeded in the absence of a representative of the State party. Members drew attention to aspects of the situation in Bosnia and Herzegovina, emphasizing the effects of the ongoing conflict and the activities of international bodies.

207. Some members called for the lifting of the international arms embargo on the export of arms to the State party, withdrawal of the United Nations Protection Force and more forceful action by the Security Council. Such suggestions elicited debate.

208. A delegation of the State party attended the 1092nd meeting of the Committee. The State representative expressed regret for the late submission of the report and the inability, by reason of war conditions, of representatives to attend earlier meetings in which his country was discussed.

209. The representative drew attention to the establishment of the Federation of Bosnia and Herzegovina and to the very strong human rights provisions contained therein in its Constitution, including the provision incorporating the Convention and other international instruments into the law of the Federation. The representative also explained the envisioned roles for the ombudsmen and the Human Rights Court. Support was expressed for the rule of law and for international procedures such as the International Tribunal for the prosecution of war crimes in the former Yugoslavia.

210. The representative described the terrible situation afflicting the country owing to the aggression of secessionist and external forces, whereby the Government was not in control of all its territory and was unable to halt massive violations of human rights in these areas.

211. Members of the Committee expressed appreciation for the presence of a high-level delegation from the State party and for the information provided both orally and in the report. Understanding was expressed for the great difficulties which the war and Sarajevo siege placed on the State party in meeting its reporting obligations under the Convention.

212. A number of members requested further information on the legal structures in the Constitutions of the Republic and the Federation which serve to protect and vindicate human rights, such as the judicial system, including the proposed Human Rights Court, and procedures for prosecution of crimes against humanity whether domestically or before the International Tribunal. The representative was also asked to indicate the extent to which ethnically motivated and other such crimes were in the course of being investigated and prosecuted.

213. Concerning the ongoing war, members asked for information as to the Government's understanding of the long-term political ambitions of the separatists and for its view on the effectiveness and utility of the United Nations Protection Force. A member also asked for the views of the representative as to whether the conflict was essentially ethnically or politically based.

214. Members asked whether Bosnia and Herzegovina remained a pluralist State which rejected ethnic discrimination or preferment. One member asked whether non-Muslims were treated equally to Muslims. Further information was requested on the influence of the mass media and whether they had contributed to the promotion of ethnic hatred.

215. In replying to a range of questions posed, the representative of the State party reiterated his country's commitment to the rule of law and to the importance of the principles of human rights. He stressed the culpability of aggressors who were attempting to dismember his country. He and other members of the delegation presented their analysis of attempts to create a "Greater Serbia".

216. The important role played by the United Nations Protection Force was acknowledged, though representatives said that it was inadequate to meet the needs which should be addressed.

Concluding observations

217. At its 1097th meeting, held on 16 March 1995, the Committee adopted the following concluding observations.

(a) Introduction

218. The Committee on the Elimination of Racial Discrimination acknowledges the report received from the Government of the Republic of Bosnia and Herzegovina and is profoundly distressed about the violations of human rights and international humanitarian law reported therein. The Committee appreciates the presence of the representatives of the Government of the Republic of Bosnia and Herzegovina and takes note with appreciation of the information provided orally.

(b) Principal subjects of concern

219. The Committee expresses its grave concern and condemns the massive, gross and systematic human rights violations occurring in the territory of Bosnia and Herzegovina, most of which are committed in connection with the systematic policy of "ethnic cleansing" and genocidal acts in the areas under the control of the self-proclaimed Bosnian Serb authorities. All these practices, which are still occurring, constitute a grave violation of all the basic principles underlying the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee urges the immediate reversal of ethnic cleansing which must begin with the voluntary return of displaced people.

220. The Committee deeply regrets that no effective protection was afforded to the population even in the Security Council-declared "safe areas".

221. It is deeply deplored that due to the control of parts of its territory by secessionist forces with support from outside, the State party is not in a position to exercise control over the whole of its territory and consequently cannot ensure the application of the provisions of the Convention throughout the State. It is noted that the secessionist forces are mainly responsible for systematic violations of human rights in areas under their de facto control, including rights ensured by the Convention, the principal victims of which are those belonging to the Muslim community. The

Committee, being aware of the inherent right to self-defence of all States, as recognized in Article 51 of the Charter of the United Nations, notes that the Government has been prevented from protecting human rights throughout its territory.

222. The Committee is deeply concerned over the threat to the territorial integrity of the Republic of Bosnia and Herzegovina posed by the design for a "Greater Serbia".

(c) Suggestions and recommendations

223. The Committee reaffirms that persons responsible for massive, gross and systematic human rights violations and also crimes against international humanitarian law should be held responsible and prosecuted on the national or the international level.

224. While mindful of the complexities of the resort to enforcement action, as explained by the United Nations Secretary-General in the supplement to an Agenda for Peace (A/50/60-S/1995/1), the Committee expresses the view that the continuing and persistent violations of basic principles of international law and international obligations deriving therefrom, including basic principles underlying the International Convention on the Elimination of All Forms of Racial Discrimination, calls for the application of enforcement measures by the Security Council in connection with the situation in Bosnia and Herzegovina.

225. The Committee repeats its offer of technical assistance to the State party in the form of a mission of one or more of its members for the purpose of promoting the elimination of all forms of racial discrimination.