



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD OF THE 667th MEETING*

Held at the Palais des Nations, Geneva,
on Tuesday, 8 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* No summary record was prepared for the 666th meeting.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5)

Initial report of Bosnia and Herzegovina (CAT/C/21/Add.6; HRI/CORE/1/Add.89/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Bosnia and Herzegovina took places at the Committee table.
2. Mr. NAGRADIĆ (Bosnia and Herzegovina), introducing the initial report (CAT/C/21/Add.6), apologized for its very late submission, which could be attributed to a number of factors. Problems relating to the internal organization of the State had been compounded by the very complex situation described in the core document (HRI/CORE/1/Add.89/Rev.1). Moreover, the more than 10-year reporting period included 3 years of war and the difficult post-war period. The matter of which State body should draft the initial report had not been decided until 2000, and the newly established Ministry of Human Rights and Refugees assigned the task had initially been ill-equipped to carry it out. State procedures for approving and adopting the initial report had been protracted. There had also been considerable difficulties in the collection and processing of relevant data, owing to poorly organized statistics services, staff shortages in State and judicial bodies and the ongoing reform of the judiciary.
3. The initial report covered the period from 1992 until June 2003; however, since then, there had been many positive developments relating to the promotion and protection of human rights in a number of different areas.
4. In the area of legislation, significant progress had been made in bringing criminal legislation into line with European standards. New institutions, including the Court of Bosnia and Herzegovina and a war crimes department, had been established.
5. Efforts had been made to strengthen national institutional capacities, inter alia, through the establishment of a new Ministry of Justice and Ministry of National Security. It was hoped that with the forthcoming reform of the police force such efforts would ensure better implementation of the Convention.
6. NGOs had come to play an increasingly important role in the protection and promotion of human rights. Several NGOs had been set up in recent years and had cooperated in the drafting of the initial report.
7. With a view to raising awareness of the need to prevent torture and to deal with its consequences, public debates, workshops and round tables had been organized, and publications and educational campaigns had been launched. Such activities were part of the process of national reconciliation under way.

8. Additional activities had been undertaken in connection with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In cooperation with NGOs and the authorities of Bosnia and Herzegovina, it had conducted inspections of detention centres with a view to identifying shortcomings and improving conditions.
9. In conclusion, he expressed confidence that the report, introductory statements and information from NGO sources as well as a constructive dialogue with the Committee would provide a clearer picture of the overall situation regarding the implementation of the Convention in Bosnia and Herzegovina.
10. Ms. SMAJEVIĆ (Bosnia and Herzegovina) said that the drafting of the initial report had been coordinated by the Ministry of Human Rights and Refugees. Details of the other national and entity institutions that had participated were given in paragraphs 4 to 8 of the report. NGOs had also made a valuable contribution in response to the public invitation issued to that effect by the Ministry of Human Rights and Refugees and through working groups organized under the auspices of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The main NGOs concerned were listed in paragraph 19 of the report.
11. The initial report covered the period from 1992, when Bosnia and Herzegovina had acceded to the Convention, to 30 June 2003. It had been approved by the Council of Ministers on 11 May 2004.
12. Turning to the situation in Bosnia and Herzegovina during the period 1992-1995, she drew attention to the consequences of the conflict that had begun in April 1992, as detailed in paragraphs 10, 13 and 14 of the report. Virtually the entire civilian population had been affected in some way by the various forms of torture practised at that time. Many people were still suffering the consequences, and despite efforts by the national authorities, problems in the areas of health, education, social welfare and resettlement remained unresolved. Thus far no national legislation had been passed that dealt comprehensively with the problems facing the victims of torture, although the various ministries concerned were following up individual cases. The only relevant legislation, which had entered into force in 2004 and complied with European standards, related to missing persons.
13. Criminal legislation was the best means of ensuring the protection of human rights. She drew attention to some of the criminal provisions of Bosnia and Herzegovina relating to torture, as described in paragraphs 93 to 95 and 98 to 99 of the report. Throughout most of the reporting period similar criminal provisions had also been in force in the entities; they were either remnants from the legislation of the Former Republic of Yugoslavia or arose from obligations under international treaties ratified by it.
14. The first phase of the reform of criminal legislation in the entities and the District of Brčko had been completed in 2000. The second phase of reform at the national level, which was still under way, had been launched in January 2003. It was accompanied by a process of judicial reform and would be followed by the overhaul of the prison system. NGOs had played an

important role in the latter by conducting research into prisons. The authorities had taken the NGO findings seriously, as they were aware of the need to improve conditions in prisons and particularly in psychiatric institutions. It should be emphasized that the current shortcomings were caused not by a lack of understanding or political will, but by a shortage of financial and other resources.

15. The Criminal Code of Bosnia and Herzegovina defined torture and other forms of cruel, inhuman or degrading treatment or punishment as a criminal offence committed by any official or other person. The crime of torture was incorporated in a separate part of the Criminal Code dealing with crimes against humanity and the values protected by international law.

16. By June 2003, in addition to the Criminal Code and pursuant to its obligations under article 2 of the Convention, Bosnia and Herzegovina had adopted the Code of Criminal Procedure and the Law on Protection of Witnesses under Threat or Vulnerable Witnesses. The Code of Criminal Procedure defined judicial measures for the prevention of acts of torture with the proviso that torture could not be justified under any circumstances, including during a state of emergency. Thus the criminal legislation of Bosnia and Herzegovina, its entities and the District of Brčko was a means of ensuring the protection of human rights and freedoms and preventing arbitrary action by State bodies and the judiciary.

17. In closing, she thanked the former Committee member, Ms. Rueda Castañón, for her visit to the State two years previously which had allowed for a better understanding of the issues at stake and encouraged efforts to draft the initial report.

18. Ms. GAER (Country Rapporteur) asked how the complexity of the State party's legal structures affected its implementation of the Convention. It would be useful to know to what extent the high proportion of international staff in the judiciary and the police force had facilitated that endeavour, and how the Government saw the longer-term presence of those staff.

19. It was unclear whether the definition of torture as a crime against humanity was more limited under article 172 (1) of the Criminal Code of Bosnia and Herzegovina than the general definition of torture in article 190 of that Code. She failed to understand how the definition in the Constitution of Republika Srpska included all the elements required under article 1 of the Convention. Given that the Criminal Codes of Republika Srpska and the District of Brčko did not include specific definitions of torture, the reporting State should clarify how it ensured that the definition of torture in the Convention was part of the Criminal Code at the federal level, and how it guaranteed effective prevention and punishment of torture in all parts of the country.

20. The State party should indicate what action it was taking, or planning to take, to gather data that would help identify effective measures to prevent torture. While the information provided in table 16 of the initial report was useful, the Committee would appreciate disaggregated statistics on the individuals who had filed the complaints. It would be interesting to learn what difficulties the State party had encountered in gathering data.

21. The reporting State should comment on the problems highlighted in the report of the Organization for Security and Cooperation in Europe entitled "War Crimes Trials before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles". It would also be useful to hear the Government's reaction to the criticism that ethnic bias had been a major problem in

prosecutions of war crimes, and that police officers had not cooperated in investigations into war crimes committed by their colleagues. In the case of the death of Tomislav Matanović and his parents, it would be interesting to hear the delegation's reaction to the assertion by the Humanitarian Law Centre, Belgrade that the outcome of the trial reflected inadequate investigation. Since the defendants in that trial had pleaded not guilty on the grounds that they had been performing their duty, did that not constitute a violation of article 2 (3) of the Convention, which stipulated that an order from a superior officer or a public authority could not be invoked as a justification of torture? Was there any prospect of that case being reopened?

22. It would be interesting to have the State party's comments on the efforts of the European Union Force in Bosnia and Herzegovina to consolidate the policing structures, particularly regarding the prospects for more effective implementation of the Convention by a single police force.

23. Turning to the independence of the judiciary, she requested additional information on the veracity of reports that there had been no prosecutions of people who had threatened judges. It would be interesting to know what steps the Government had taken to ensure that judges were protected from intimidation, and whether further measures were necessary at the federal or entity level.

24. More details should be provided on witness protection, particularly whether any measures had been implemented at the State or entity level to introduce a system similar to that established by the International Criminal Tribunal for the former Yugoslavia. OHCHR had expressed concern that, under article 81 of the Criminal Code, witnesses could be compelled to give evidence. The reporting State should indicate to what degree an individual could refuse to give evidence and whether that concern was justified. It would be interesting to learn whether the State party would value the presence of international personnel in its special war crimes chamber in future.

25. It would be useful to learn how the State party planned to deal with suspected war criminals who had fled to Serbia and Croatia after the war and obtained citizenship there. Given that under the Constitutions of those States, their nationals could not be extradited to another country, it would be enlightening to know whether the reporting State considered the provisions of the Convention sufficient to extradite those people or whether additional agreements and understandings would be necessary.

26. The reporting State should indicate what steps had been taken to improve cooperation with the International Criminal Tribunal for the former Yugoslavia to ensure that all those indicted for war crimes by that court were brought before it. Additional details of efforts to apprehend Radovan Karadžić and Ratko Mladić would be welcome. The reporting State should be more specific about measures to improve efforts in Republika Srpska to bring war crimes suspects to justice. The State party should indicate what steps had been taken to bring to justice the perpetrators of war crimes identified in the Srebrenica Commission's report.

27. She requested additional information on the steps being taken to increase the participation of women in law enforcement.

28. In the light of the findings of a recent report by the European Committee for the Prevention of Torture, it would be useful to learn whether the Government planned to take action to implement the provisions of the Convention concerning the right of all detainees to have access to a lawyer and a doctor. The State party should confirm or deny the allegations that women and minors were often held in detention and prison facilities together with men.

29. She asked what steps were being taken to prevent inter-prisoner violence, to deal with complaints related to such violence and to protect the victims. She also inquired whether efforts were being made to monitor and record incidents of sexual violence in prisons. She would welcome clarification as to what extent individuals who had suffered from sexual violence during the Bosnian war had been recognized as victims of torture, inter alia, in various rehabilitation programmes.

30. Article 3 of the Convention prohibited States parties from expelling, returning or extraditing a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture. She wished to know how such cases were dealt with and whether the officials in charge of such matters received adequate information and training.

31. The United Nations Special Rapporteur on trafficking in persons, especially women and children, who had visited Bosnia and Herzegovina in 2005, had expressed concern that only a small number of perpetrators of trafficking had been successfully prosecuted, that the sentences imposed had failed to reflect the serious nature of the violations, that victim protection programmes were inadequate, and that there was a lack of consistency between federal and local laws. She asked why relatively few perpetrators of trafficking had been prosecuted and what steps were being taken to prevent the involvement of state officials and local authorities in trafficking activities. It would also be useful to know whether measures would be taken to harmonize the relevant federal and local laws.

32. She would be interested to know whether the Government believed that it had jurisdiction over alleged perpetrators of torture on the whole territory of Bosnia and Herzegovina and whether it had ever applied the concept of “universal jurisdiction”. Did the Government believe that its recent ratification of the European Convention on Extradition and the European Convention on the Transfer of Proceedings in Criminal Matters would help settle various issues related to extradition in the region and facilitate the prosecution of alleged perpetrators of torture.

33. Comments from the delegation on the allegations that ethnic bias in the court system had prevented accused members of minorities from being treated fairly would be welcome. Would the transition from an inquisitorial to an adversarial system, which was currently under way, help ensure a fair trial and resolve issues related to accountability? Had the Government encountered any difficulties in implementing that transition?

34. The Federation of Bosnia and Herzegovina had concluded an agreement with Croatia on legal assistance in civil and criminal matters, which had been amended in 2002 to include Republika Srpska. However, the amendment had not been published in the official law gazette and was not widely known among prosecutors. Would it be useful to redraft the agreement, or elaborate a new one, in order to facilitate future judicial cooperation?

35. Referring to article 15 of the Convention, she asked whether, in the context of mutual judicial assistance, measures were in place to ensure that transferred evidence invoked in court had not been obtained by impermissible means, such as torture.

36. Referring to paragraph 273 of the report, she asked whether any sanctions had been imposed on the four police officers concerned. Referring to paragraph 276, she enquired to what posts and for what period of time the three police officers in question had been transferred. She stressed the need to ensure that officials transferred to other posts for having abused their position of authority were punished and prevented from committing new violations.

37. The European Committee for the Prevention of Torture had expressed concern about the situation in the country's prisons. She asked the delegation to substantiate the claim made in paragraph 381 of the report that a "favourable psycho-social atmosphere" had been created in all prisons. Lastly, referring to paragraph 392 of the report, she asked what steps were being taken to educate and train prison staff and to prevent the use of torture and other inhumane or degrading treatment in prisons.

38. Mr. WANG Xuexian noted that, according to paragraph 539 of the report, no cases of torture committed by officials against a prisoner had been recorded. However, according to the report of the delegation of the European Union following its visit to the country, a significant number of individuals interviewed had alleged that they had been ill-treated by police officers. The delegation had also found baseball bats, steel rods and wooden stakes at police stations. He asked whether police officers used such objects. Information on the current situation in prisons should be provided.

39. Redress for victims of torture was reportedly not always forthcoming. The State party should adopt legislation recognizing the rights of persons who had been subjected to torture or ill-treatment in the period from 1992 to 1995 and increase budget allocations for the compensation of torture victims. He asked how victims had received compensation to date.

40. Mr. RASMUSSEN commended the State party on its achievements in the field of human rights, in spite of the difficult circumstances. While he recognized that financial constraints might hamper progress in some respects, most measures relating to the implementation of the Convention had no financial implications.

41. He asked whether law enforcement officials received training to prevent ill-treatment of detainees both at the time of apprehension and during police questioning. Many police officers and prison officials had been involved in combat operations and might suffer from post-traumatic stress disorder. The delegation should indicate whether officials suffering from that disorder had access to psychological treatment and were duly removed from office. He asked whether forensic examinations were carried out in cases of alleged ill-treatment.

42. It appeared that there were no separate detention facilities for juvenile offenders, which increased their vulnerability to abuse. He asked whether the Government planned to build such facilities or reserve part of existing prison establishments for juveniles. The delegation should

specify whether prison guards were specially trained to deal with juvenile offenders; whether the practice of long-term detention of juveniles without meaningful activities continued to exist; and whether juvenile offenders had access to education and outdoor exercise.

43. It was unwise to use prison guards to control prison riots, as had been done in the case of the riot at Zenica prison in February 2003. Anti-riot operations should be carried out by specially trained police from outside the prison system; the involvement of prison guards had a devastating effect on their relationship with inmates in the long term. He requested information on existing prison monitoring mechanisms and on internal complaints procedures within the prison system.

44. He wished to know whether persons in need of psychiatric treatment were placed in detention, owing to the shortage of psychiatric institutions.

45. Mr. GROSSMAN asked whether any public officials accused of misconduct had been prosecuted or convicted under the 2003 Criminal Code. Did domestic legislation contain specific provisions on gender-based breaches of the Convention? The delegation should explain what steps had been taken to request the release of the six Algerian nationals who had been illegally transferred to United States custody and detained at Guantánamo Bay. Had any compensation been awarded in connection with those cases?

46. The delegation should describe the safeguards in place to prevent the expulsion of victims of trafficking who ran the risk of being tortured or re-trafficked upon return to their country of origin. He requested examples of cases where expulsion orders had not been enforced for those reasons. He wished to know whether the doctrine of command responsibility was recognized in domestic legislation, in particular with regard to cases involving torture, and whether the Special Department for War Crimes of the Prosecutor's Office had already been established.

47. The delegation should indicate the number of prison guards who had benefited from human rights training programmes; explain how the effectiveness of such programmes was monitored; and confirm whether special training was provided for handling victims of trafficking. What measures had been taken to implement the recommendations of the Ombudsman of Republika Srpska in respect of ill-treatment by law enforcement officials?

48. He wished to know whether any prison riots had taken place in 2004 and 2005 and requested detailed information on sanitation and hygiene in prison establishments, in particular psychiatric units. He would welcome information on measures taken in follow-up to the visit by the European Committee for the Prevention of Torture.

49. He asked whether any police officers had been investigated, indicted, convicted and placed in detention since the signing of the Dayton Peace Agreement. It would be useful to know whether there was an external mechanism to investigate police misconduct and, if so, to learn of its powers and proceedings. He asked whether there was an external appeals mechanism for victims of abuse by law enforcement officials and, if so, requested information on the effectiveness of such a procedure.

50. He would welcome information on the number of persons who had been investigated, prosecuted and convicted in relation to war crimes and requested statistics on domestic violence. Did the State party intend to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

51. Mr. MAVROMMATIS said that, while the report gave a clear account of the difficulties arising from the complex situation in the State party, the amount of detail provided caused confusion. The next report should contain clear information that was directly relevant to the articles of the Convention. Also, it was unclear what time period was covered in the report.

52. It would be useful to learn of the reasons for introducing constitutional provisions relating to the European Convention on Human Rights, given that no such measures had been taken with regard to other international human rights instruments, including the Convention against Torture.

53. According to the State party report, only pain and suffering inflicted in connection with the execution of legal sanctions were acceptable. Given that the death sentence was not applied in the State party, he wished to know what other types of sanctions were likely to inflict pain and suffering.

54. He asked whether members of the armed forces were informed that they were under no obligation to obey orders that were manifestly illegal. Did the State party proceed to the expulsion of persons on security grounds, even if that might expose them to the risk of being tortured? He asked whether the State party applied universally accepted norms to ensure the independence of the judiciary. The Government of Bosnia and Herzegovina must take urgent measures in respect of the six Algerian nationals who had been transferred to United States custody; collusion in prolonged pretrial detention was unacceptable.

55. The CHAIRPERSON asked whether provisions of international instruments that had been incorporated into federal legislation and legislation governing the presence of foreigners were applicable throughout the State party's territory. He would welcome information on the ethnic composition of the State Border Service; on the competence of military courts in respect of acts of torture; and on cooperation between the State party and other countries in the region in the repatriation of Bosnian refugees.

The meeting rose at 1.05 p.m.