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Summary record of the 1914th meeting

Held at Headquarters, New York, on Thursday, 29 March 2001, at 10 a.m.

Chairperson: Mr. Bhagwati

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Initial report of Croatia (continued)

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01-31013 (E)

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

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Initial report of Croatia (continued)

List of issues (CCPR/C/71/L/HRV) (continued)

Right to life, liberty and security (arts. 2, 6, 7, 9, 16 and 17) (continued)

1. **The Chairperson** invited the members of the delegation to reply to questions that had not been answered at the previous meeting.

2. **Ms. Karajković** said that the amnesty law covered certain criminal offences but was not applicable to war crimes. To date, nearly 21,000 people had benefited from its provisions. Cases involving war crimes were subject only to legal remedies. Croatian non-governmental organizations had noted some irregularities, mostly involving the problem of the qualification of murders as war crimes or ordinary crimes. In any event, the prosecution of such crimes was strictly prescribed by the law.

3. The backlog of cases was a problem for both the civil and criminal courts, although the problem was more severe in the civil courts. The Government was aware of the problems, and had taken a number of measures, including amendments to the Law on Civil Proceedings and the Law on Criminal Procedure to speed up proceedings, to strengthen the responsibility of the parties, especially in civil cases, and to provide training for judges. The Ministry of Justice had established a centre for the professional training of judges and other law enforcement officials. Efforts had been made to create better working conditions for judges, including computerization of the judiciary, to strengthen the responsibility of the presidents of courts in court administration, and to improve the discipline of judges. A number of cases had been brought against judges for failing to carry out their functions properly.

4. Prosecutors from the International Criminal Tribunal for the Former Yugoslavia were currently in Zagreb, interviewing General Petar Stipetić, the head of Croatian army headquarters. In addition, General Mirko Norac and others were awaiting trial before the county court of Rijeka for war crimes committed in Gospić. Although many war crimes were unresolved,

the Government was confident that the Croatian judiciary could handle those cases in the domestic courts. There was no statute of limitations for war crimes. The case being brought against General Stipetić should demonstrate Croatia's commitment to the prosecution of war crimes, irrespective of the perpetrator.

5. The Law on Attorneys set the conditions for the registration of attorneys, and required that attorneys registering with the Croatian Bar Association should be Croatian citizens. In its negotiations with the European Union, that problem had been pointed out, and the Government had drafted a new law to redress it. The Law on Criminal Procedure and the Law on Civil Proceedings both provided for free legal defence, depending on the financial situation of the defendant.

6. The Constitution contained general provisions concerning freedom of religion; a draft law was currently in preparation that would regulate the legal status of religious communities and cover such areas as registration, religious teachings, police, armies and prisons.

7. **Mr. Kukavica** said that a number of questions had been raised concerning ethnically motivated incidents that had occurred between Croatian citizens and those of Serbian origin. In 1999, peaceful protests had been held in Berak, Vukovar, by residents of Croatian origin who were opposing the return of refugees of Serbian origin because of crimes committed against Croats in Berak in 1991, at the start of the war, by residents of Serbian origin. Those protests had led to incidents, including the killing of Djuro Mutić, a resident of Serbian origin, in his own home, by a resident of Croatian origin. Court proceedings were under way against the accused, and the situation in Berak had stabilized.

8. Also in 1999, a number of police officers in Dubrovnik had used force to overcome resistance by Nikola Miletić, who had been violating laws protecting public peace and order. The supervising officer of the police station had determined the intervention to be justified and legal. Mr. Miletić had, however, filed criminal charges for abuse of police powers with the State Attorney; a decision had not yet been rendered.

9. The case of Šefik Mujkić had occurred in 1995 in the town of Slavonski Brod. Two police officers had used force to extract information from Mr. Mujkić regarding activities that contravened the national

security of Croatia; he had suffered serious bodily injury that was held to be the cause of his subsequent death. Criminal proceedings had been instituted against the officers for using force to extract information; the decision was currently being appealed.

10. **Mr. Mrčela** said that, if any judge or other court official unduly delayed a trial, that matter should be brought to the attention of the court so that action could be taken. He was aware of one case in which a judge had been relieved of his duties on the ground of negligence, when Croatia was a member of the former Yugoslavia. Such crimes as genocide, aggression, and war crimes or other crimes subject to international law were not subject to a statute of limitations.

11. Paragraph 343 of the report, which discussed the imprisonment of juveniles, was misleading because it did not mention that only juveniles aged 14 and older were subject to prison sentences. Paragraph 89 contained a mistranslation: arrest was not a police measure.

12. **Ms. Chanet** said that the replies received with respect to the first part of the list of issues had confirmed her sense of the seriousness of the report. She was grateful to the delegation for the various ambiguities it had resolved. The fact that the Covenant was not integrated with the Constitution was regrettable: she understood that the issue was still being debated among Croatian lawmakers. She had doubts as to whether certain rights enshrined in the Covenant were adequately reflected in the Constitution or in domestic law; others were not reflected at all. In the case of a state of emergency, the conditions set out in article 4 of the Covenant were stricter than those established in the Constitution; the same was true for article 26, governing the right to non-discrimination. It was regrettable that the more rigorous instrument had less power than the less rigorous one. In addition, article 16 of the Constitution provided for a derogation that was too general.

13. She assured the delegation that the Committee was made up of experts in both civil and criminal law, and fully understood the difference between arrest and detention. She commended it for its replies concerning mandatory detention, and for its clarifications regarding the release of arrested persons.

14. **Mr. Shearer** said that he would like to know whether a person of Serbian ethnicity born in Croatia and displaced during the war was entitled to

citizenship. He would welcome a copy of the citizenship law, if it was available in English or French.

15. **The Chairperson** inquired what portion of the prison population was made up of persons held in pre-trial detention.

16. **Sir Nigel Rodley** said he was grateful for the lucid description of the system of pre-trial detention. He would like to know, in addition, who held jurisdiction over the court premises and the staff of such premises. Since there were a number of scenarios for persons held in detention, he would like to know on what principle that system was based and what safeguards were in place for persons being held in custody on suspicion of having committed crimes. He would also like to know under whose jurisdiction a person was detained for investigative purposes, and under whose authority the staff responsible for his detention acted.

17. He would also like to know why, in the statistics supplied by the delegation in answer to the question in paragraph 8 of the list of issues, there were no statistics related to article 176 of the Criminal Code, which dealt with torture or to article 99, which dealt with serious bodily harm, and why torture carried a lower maximum penalty than did serious bodily harm.

18. With reference to paragraphs 139 and 140 of the report, he inquired whether prisoners could be the subjects of medical experiments.

19. **Mr. Lallah** said that the State party had misunderstood the question raised in paragraph 3 of the list of issues. The Committee wished to know what mechanisms were in place to give effect to the Views of the Committee in response to a communication received from an individual under the terms of the Optional Protocol to the Covenant.

20. He endorsed the remarks of Ms. Chanet with regard to the incorporation of Covenant articles into the Constitution, but would go still further. Although article 2 called for constitutional processes to give effect to its provisions, that did not exempt the substance of those rights from being incorporated into law. He understood that Croatian judges were not accustomed to applying the provisions of the Covenant and of other human rights instruments. By not incorporating the precise terms of the Covenant in the Constitution, Croatia was depriving its judges of the

ability to pronounce on those matters, and obliging Croatian citizens to take their complaints to the European Court of Human Rights in Strasbourg. In order to instil a human rights culture to protect rights and remedy the abuse of rights, all Covenant rights must be incorporated in the Constitution as such. The rights of children under article 24, for instance, were not reflected in the Constitution.

21. **Mr. Kretzmer** said that while the State party had extensively discussed the legal apparatus in Croatia, it had provided little information about the situation on the ground. He would like to know what actions were being prosecuted by the domestic courts against persons involved in war crimes during the early 1990s, what was the status of members of the armed forces alleged to have committed war crimes, and what had been done to ensure that such persons no longer served in the armed forces.

22. **Mr. Klisović** said that in the former Yugoslavia, all persons had enjoyed federal citizenship; and persons born in Croatia had both Croatian citizenship and Yugoslav federal citizenship. When the former Yugoslavia ceased to exist, all persons in Croatia had been offered Croatian citizenship. Under the current law, any person born in Croatia had the right to citizenship, as did anyone who had lived in Croatia for five years and had shown respect for the laws and traditional culture of the country.

23. **Mr. Mrčela** said that the court premises for detaining arrested persons were maintained and staffed by the Ministry of Justice, not the police. They were nevertheless under the supervision of the president of the court having jurisdiction. Croatian law established that on an exceptional basis, a judge could order the provisional confinement of a prisoner in a police station if the offences for which he was held were punishable by a term of more than five years. In his experience, however, judges were reluctant to implement that rule, and preferred to confine such persons in the courthouse, where there were special rooms for holding arrested persons during the 24-hour period.

24. The statistics available under the articles of the Penal Code involving torture and aggravated bodily harm were admittedly insufficient. He was unaware of any cases of torture pending under the provisions of article 176. Article 99, which dealt with aggravated bodily harm, had four stages of severity, with penalties

ranging from several months to eight years. He did not know why the Croatian legislature had established those distinctions; a person could, however, be charged for more than one offence simultaneously.

25. Medical experiments were not practised on detainees in Croatia.

26. **Mr. Smerdel** said that the State party might well have misunderstood Mr. Lallah's question on national mechanisms to implement the Committee's Views, but would have been unable to report on its experience in any case since no Committee Views had been referred to it yet. (There were three cases pending before the European Court of Human Rights as well.) Nor had the State party taken a decision as to whether such Views would constitute grounds for a retrial, although article 29 of its Constitution could be so construed.

27. As for Mr. Lallah's question concerning the incorporation of provisions of human rights instruments in the Constitution, he said that amalgamating sources of human rights law — e.g., the Covenant, the European Convention on Human Rights, or the European Social Charter — diminished their richness and effect. The real problem was to train judges to consider the various instruments and to apply them in domestic decisions.

28. **Ms. Karajković** said that the delegation would make every effort to forward a copy in English of the Croatian legislation on citizenship to Sir Nigel Rodley. In reply to Mr. Kretzmer, she acknowledged that statistics on war crimes were lacking but drew attention to a case against a Croatian general — the first major case to be tried in Croatia and not The Hague — and said it was a first step in demonstrating the country's commitment to prosecuting all war crimes.

Freedom of expression, rights to peaceful assembly and free association (arts. 19, 21 and 22)

29. **The Chairperson** read out the questions relating to the above articles: what restrictions are imposed upon the freedom of the press; their compatibility with article 19 of the Covenant; the composition of and the criteria employed by the Commission for Appeals with the Ministry of the Interior when hearing appeals against decisions of the police administration to prohibit a public assembly; the time frame for the Commission to hand down its decision in such cases; and restrictions imposed by the Law on Associations (1997) on the establishment and free operation of

associations and how they were compatible with article 22.

30. **Ms. Karajković**, referring to paragraph 16 of the list of issues, said that the Public Information Act guaranteed freedom of the press, including freedom of reporting and unrestricted access to information, and also outlined journalists' responsibilities, including liability for compensation damage caused by misinformation. The Act also guaranteed freedom of public information, which was defined as freedom of expression; freedom of collection, examination, publication and dissemination of information; freedom to print and distribute newspapers and other publications; and freedom to produce and broadcast radio and television programmes. The Act prohibited unlawful restrictions of freedom of public information, including by force or abuse of office. Violations of freedom of public information were prosecuted by the courts. The Act guaranteed the right to individual privacy, dignity, reputation and honour and required public officials to supply information to journalists, except for lawfully designated State or military secrets. It stipulated prohibitions on publishing information obtained unlawfully, through, for example, eavesdropping devices, secret cameras, theft or the unlawful use of automatic data-processing facilities. Lastly, it prohibited the marketing and display of pornographic newspapers. The delegation believed that the content of the Act was wholly in conformity with article 19 of the Covenant.

31. **Mr. Smerdel**, replying to the question in paragraph 17 of the list of issues, said that the 1992 Law on Public Assembly had been superseded in December 1999, and that the Commission on Appeals within the Ministry of the Interior had been abolished. A mistranslation in paragraph 468 of the report gave the impression that, under the previous law, an "application" had to be submitted to police in order to obtain permission to hold public assemblies. In fact, that word should have been "notification". In exceptional cases where organizers had given notification but were denied the right of public assembly, they had recourse to the Minister of the Interior himself; there were no longer a sufficient number of complaints to justify the existence of a commission. If the Minister denied that right as well, organizers could file a complaint in the administrative court activating emergency procedures. Indeed, commercial events, such as soccer matches or concerts,

had been the only real cause of problems; most political meetings — other than demonstrations of 25 persons or more — were held freely and even notification was not required.

32. However, he acknowledged the need to build awareness of the right to public assembly, noting that a number of the officials who had taken office after the January 2000 elections had themselves participated in demonstrations against the former Government and should be more tolerant of the opposition now.

33. **Ms. Karajković**, referring to paragraph 18 of the list, said that the Constitution guaranteed freedom of association for the promotion and protection of social, economic, political, national, cultural and other beliefs and objectives. Citizens could freely form or join trade unions and other associations which did not constitute violent threats to the democratic and constitutional order and independence, unity and territorial integrity of the republic. The Association Act, based on the regulations of Western European countries, facilitated the exercise of the constitutional right to free association and even permitted foreign citizens to join Croatian associations. The Act prescribed only the skeletal structure (mandatory bodies and officials) of associations; other matters of internal organization were regulated by the associations themselves.

34. A County Court could impose a temporary prohibition on association activities suspected of contravening constitutional law, and that Court decision could be appealed to the Supreme Court. The prescribed time frames for court proceedings were designed to ensure minimum delays. Thus far, no prohibition had ever been applied in practice. In February 2000, the Constitutional Court had repealed a number of what it believed to be restrictive prohibitions on associations, including the registration requirement (unregistered associations could now operate although they were not recognized as legal persons); the denial of legal status to organizational units of associations; and the imposition of penalties on associations which did not notify the authorities of organizational units. In view of various problems in implementing the Association Act and the opinion of the Constitutional Court, a new draft act had been submitted to the Croatian Parliament after consultation with non-governmental organizations and experts from the Council of Europe.

35. There were about 20,000 associations in Croatia and the number was constantly growing. Under the Police Act, police officers were prohibited from organizing political parties or engaging in political activities in the Ministry of the Interior, or from participating in any party or political event when they were off duty. General regulations were applicable to trade unions of the staff of the Ministry of the Interior. Moreover, under the Police Act, police officers were denied the right to strike in the event of war or an immediate threat to the independence and unity of the State, armed rebellion or other violent threats to the constitutional order of the republic or fundamental freedoms and human rights; and natural disasters or other incidents obstructing normal life and endangering the safety of the Croatian people.

*Right to privacy, family, home and correspondence
(art. 17)*

36. **The Chairperson** read out the questions relating to the above article as follows: restrictions on freedom and privacy of correspondence and all other forms of communication provided in law for the protection of State security and the conduct of criminal proceedings.

37. **Mr. Mrčela**, referring to the relevant paragraph, said that freedom and privacy of correspondence and all other forms of communication were guaranteed by the Constitution, and were restricted only when necessary for the protection of state security and the conduct of criminal proceedings. The Internal Affairs Act authorized secret information-gathering and interference with the privacy of individuals suspected of carrying out activities undermining the sovereignty of the republic, organization of the State authorities or foundations of the national economic system; planning and committing criminal offences under domestic or international law; or associating with organized crime rings.

38. Methods of secret information-gathering included surveillance of communication equipment, surveillance of mail, technical recordings of premises and objects, surveillance of persons, wiretapping and inspection of the personal data of citizens. The duration of such measures could not exceed four months (it was 30 days in the case of surveillance and observation of persons). The procedure was monitored by the State Commission for Monitoring of Application of Measures of Secret Information-gathering, which was appointed by the House of Representatives and composed of experts,

including at least one judge. Methods similar to the information-gathering measures already described and the use of undercover investigators, offers of bribes and surveillance of transportation and delivery could be ordered by an investigating judge in criminal proceedings on a motion by the Public Prosecutor. Such measures could be applied only where persons were suspected of criminal offences against the constitutional order of the republic or against the principles of international law, or of serious crimes, including murder, money laundering, illicit possession of weapons, kidnapping, the physical and sexual abuse of children, abuse of narcotic drugs, and involvement with organized crime. Orders to implement such measures were issued in writing, accompanied by a statement of reasons, and their duration was limited to four months with a possible three-month extension in some cases.

Equality and the principle of non-discrimination

39. **The Chairperson** read out the questions relating to the above articles as follows: measures that had been taken, or were intended to be taken, to enhance the status of women in public life, particularly in the political area and public service (Parliament and government); further information on the participation of women in the economic sector, especially at senior levels; measures to ensure equal pay for men and women; additional information on the measures existing and proposed to combat and eliminate violence against women, including in the home; measures taken to increase public awareness of these issues and the avenues of assistance available to victims.

40. **Ms. Šimonović**, referring to the relevant paragraph of the list on gender equality, said that gender equality had been accorded the highest priority under the Constitution, laying the groundwork for further legislation on equal opportunities. The huge increase in the number of female representatives in the Croatian National Parliament since the January 2001 elections (from 5.7 to 21.5 per cent) had been a catalyst for the recent establishment of the new Parliamentary Committee for Gender Equality.

41. Out of 19 ministers, only two were women: the Deputy Prime Minister and Government Secretary of Croatia. More than 35 per cent of Ministry Secretaries were women, although the overall number of state officials was 20.51 per cent. Women were under-

represented at the regional and local levels, but were expected to gain some ground in the June 2001 local elections.

42. Women accounted for more than 51 per cent of the population and 45 per cent of the workforce. Equal pay for equal work was an accepted principle enshrined in the Constitution. There were women executives in the social welfare sector but the lack of gender disaggregated data made it impossible to estimate the number of women managers in economic and financial institutions and the service sector. Although women constituted the majority of the workforce in the government and judiciary, there were few women acting as court presidents. Women were under-represented in high-level academic posts as well.

43. Croatian women still tended to work mainly in low-paying health care jobs, education, catering and the trade services and owned less than 33 per cent of the total number of registered craft businesses. As the records of business owners were not kept on a gender basis, the number of women entrepreneurs was impossible to determine. Nor were there reliable data on women in managerial posts, but that number was believed to be small. The percentage of unemployed women was 52.5.

44. Follow-up to the fourth World Conference on Women had generated the establishment of the Government Commission for Issues of Equality in 1996 and the National Policy for the Promotion of Equality, based on the Beijing Platform for Action, for the period 1997 to 2000. A National Policy for the period 2001-2005 for Action was now being prepared in close collaboration with non-governmental organizations. The new National Policy called for amendment of the election laws and the Political Parties Act in order to enhance the role of women in public life and decision-making positions. Awareness-building activities included the "Women can do it" regional programme designed to educate government officials and the Commission for Gender Equality which, in cooperation with non-governmental women's associations, was planning to meet with public officials on a biannual basis.

45. Her Government was taking steps to increase the number of women on committees, boards, delegations and in all executive offices. Similarly, the Ministry of Health planned to increase women managers by at least 30 per cent by 2005; the goal of the Ministry of Sports

and Education was to increase the number of female school principals to at least 40 per cent by 2002; and the Ministry of Science would submit regular reports to the Commission on strengthening the female presence on university faculties.

46. There was a growing awareness in Croatia of the phenomenon of violence against women, especially domestic violence, and the Government was preparing a national strategy for combating it in collaboration with non-governmental organizations and other interested parties. The first step was to sensitize all State agencies, especially the police and health care staff, who had contact with women victims of violence. The Government would be monitoring the implementation of laws governing the treatment of violence against women, such as the Misdemeanours Act, the Penal Code and the Criminal Procedure Act.

47. The Commission for Gender Equality would be cooperating with women's non-governmental organizations in proposing new legislation and other measures. A successful event called "Together against Violence against Women" had been organized on that basis in June 1999. The Government office for non-governmental organizations provided regular funding for projects and programmes of organizations combating violence against women. A network of women's refuges was being set up, along with a special telephone help line. The Ministry of the Interior would be training police to deal with incidents of violence, and there would be special training for the staff of the office of the State Prosecutor and the courts who dealt with women victims of violence.

48. **Ms. Karajković**, replying to question 22 in the list, said that a new Act on the election of representatives to Parliament had been passed at the end of 1999, creating a special constituency for national minorities for the whole country. Those minorities would be represented by five members of Parliament, including one representative of the Serb national minority rather than three as before. Members of the Hungarian, Italian, Czech and Slovak national minorities had one representative each. Members of the Austrian, German, Ruthenian, Ukrainian and Jewish national minorities would together elect one representative. There was also provision for deputy or alternate representatives. Electors belonging to the national minorities could vote either for candidates on the minority lists or for those on the ordinary constituency lists. Since the elections of 2000, the

provision in the Constitutional Act prescribing proportional representation of any minority with over 8 per cent of the population — namely, the Serb minority — had been reintroduced. In the meantime, a new Constitutional Act on the Rights of National Minorities had been drafted in collaboration with the Council of Europe, especially experts from the Venice Commission. The new provisions would reduce the percentage figure for proportional representation for national minorities, thus increasing the number of their representatives.

49. In reply to question 23, she explained that the new Constitutional Act would also guarantee national minorities a right of proportional representation in local and regional government, and would ensure they were given priority for employment in institutions which were important for their survival, such as minority educational establishments. The Council of National Minorities would become a permanent advisory body to the Government.

50. National minorities were guaranteed access to all government bodies. An Act on the Use of Minority Languages, adopted in 2000, provided a guarantee that members of national minorities could use their mother tongue at central, local and regional government levels. They could obtain personal documents in their own languages, and legal documents in a minority language were recognized as valid. Another Act had been adopted in 2000 to ensure that members of minorities could be educated at primary and secondary levels in their own language and script. A majority of members of the governing bodies of minority schools must belong to the minority concerned, and the headship would be given in preference to a member of that minority. There were no special laws or regulations for minorities in employment, housing or social welfare, because in those areas the same rules applied to all qualifying Croatian citizens permanently resident in the country. The return of property of national minorities without distinction as to status was normal.

51. **Mr. Sočanac**, replying to question 24, said that the Croatian Government's work in the field of human rights had become much more visible since the elections in January 2000. There was a special government agency for cooperation with non-governmental organizations, which made funding proposals for their programmes. The Department for Human Rights of the Ministry of Foreign Affairs coordinated reports on compliance with the Covenant

to the Human Rights Committee, and cooperated with NGOs by seeking their opinions and observations. For the past six months there had also been a Commission for Human Rights, consisting of representatives of various ministries, which intended to co-opt representatives of the NGO community. The Government's Office for Human Rights would soon be opened. Future plans included an initiative for disseminating the fundamental principles of international human rights instruments.

52. **Ms. Karajković**, replying to question 25, said that the Ministry of Justice had established a Centre for Professional Training of Judges and other Law Enforcement Officials at the end of 1999. The training programmes aimed to familiarize judges and law enforcement officials with new domestic legislation, European and international law, and contemporary problems of information technology. Four hundred and thirty-eight judges and other judicial officials had already taken part in the courses. Seminars to be held in 2001 would focus on court administration and communication techniques, psychological and legal aspects of civil and criminal proceedings, the fight against corruption and organized crime, the independence of the judiciary and democratic processes. In May 1999 Croatia had concluded an agreement on technical assistance with the Office of the United Nations High Commissioner for Human Rights. The technical assistance would include seminars on reporting to the human rights committees of the United Nations.

53. **Mr. Sočanac** added that a workshop on reporting obligations under the Covenant, held under the auspices of the technical assistance programme, had included representatives of the judiciary and of ministries. Representatives of the NGO community and students from four law schools, also took part in the programme.

54. Knowledge of the Covenant and its Additional Protocol would be promoted through the National Programme on Human Rights, soon to be included in all levels of school education. A separate programme was in preparation for tertiary level students and adults. It was also intended to include members of ethnic and linguistic minorities in the operations of the new Office and Commission for Human Rights.

55. **Mr. Scheinin** was grateful for the wealth of information provided. Concerning non-discrimination

and the position of national minorities, although the term “citizen” in article 14 of the Constitution had been replaced by “everyone”, it was not clear whether the non-discrimination principle in that article extended, by interpretation, to all constitutional rights, especially social and political rights, which were otherwise defined, as in articles 57, 58 and 66, as being granted to “citizens”. The third paragraph of article 14 guaranteed national minorities the freedom to express their nationality and use their language. That was problematic, in the context of a non-discrimination clause; it could readily create a situation in which some were more equal than others. He wondered whether the rights of some groups might be affected because they were not defined as national minorities. According to the core document submitted by Croatia in 1998, there were 20 minority groups, and the most numerous of them, the Muslims, the Slovenes and the Roma, were not listed as national minorities. Paragraph 597 of the report (CCPR/C/HRV/99/1) stated that members of Parliament representing “all ethnic and national communities and minorities” in a nationwide constituency had a duty to protect their interests. That was a strange principle, because it would seem more important that the majority representatives should protect the minorities.

56. The answer to question 23, on the prevention of discrimination against Serbs, was not wholly satisfactory. There must be some statistics available on the restitution of property of Serbs and the provision of housing for them, if the intention was to build a viable multi-cultural society. Three religious communities — Catholic, Greek Orthodox and Muslim — were mentioned in paragraph 404 of the report in the context of religious education. Were families able to choose which of the three religious curricula they wished their children to follow, regardless of the group to which they belonged? Were non-believers exempt from religious education, and what was meant by the term “atheistic” in paragraph 406: did it mean “secular”? In connection with freedom of religion and conscience, some minorities would find compulsory military service, including unarmed service, incompatible with their beliefs. Was there an alternative form of civilian service available for conscientious objectors?

57. On the situation of women, he noted that discrimination on various grounds was punishable under article 106 of the Criminal Code. Did that provision have horizontal effect — could it be used to

punish private actors guilty of discrimination, as well as public authorities? What other legal remedies were there against discrimination in the private sector, especially in the employment market? Was sexual harassment defined as a form of discrimination? What remedies were there against discriminatory hiring practices, such as vacancy announcements specifying a particular gender, age or appearance, and against discriminatory clauses in employment contracts, such as a compulsory undertaking not to become pregnant?

58. **Mr. Yalden** observed that much of the information provided dealt with legal and institutional activities, and there had not been much detail of practical programmes. He noted that according to paragraph 61 of the report, women’s representation in leading positions was not yet adequate, although he was glad to learn that their representation in Parliament and in the justice system had improved.

59. However, apart from paragraph 74 of the report there was hardly any information about women’s position in the labour market. Much more information was needed, and it should be broken down according to employment hierarchies and sectors. The Committee had been told that according to the law in Croatia, women were paid equally for equal work. In practice, it was well known that in many countries which had such a law, women were not paid equally, and he assumed that was also true of Croatia. What was the actual ratio of women’s pay to that of men? What was being done to implement the principle of equal pay, and how did the Government intend to monitor trends so as to provide a real picture of the factual situation of women? He would also welcome more information about the activities of the Commission for Gender Equality, and about the content of government programmes for women. Such programmes must have clear goals so that their outcomes could be measured. He found it difficult to accept that statistical information of that kind was not available.

60. Concerning the rights of minorities and the restitution of Serb-owned property, he agreed with the comments of other members of the Committee. What agency would be responsible for monitoring implementation of the three new statutes; would it be the responsibility of the Ombudsman? More information on monitoring procedures was needed before the Committee met again with the State party. The figure given for the Roma population varied between 6,700 and 30,000. The Roma were evidently a

sizeable minority within Croatia, but were not listed as a national minority; why not? He hoped for some clarification of their position, since it was a matter of urgency to redress the victimization of Roma, including Roma children who were regularly marginalized in school and in society at large.

61. **Mr. Klein** congratulated the representatives of Croatia on the considerable progress their country had made in some areas over the past two years. He noted that according to the report, the system of applying for permission to hold an assembly or demonstration had been replaced by a notification system, which was more in conformity with the Covenant. According to article 42 of the Constitution, the right of peaceful assembly and public protest was guaranteed to citizens; did the law on public assembly also extend to all persons living in Croatia? What remedies were open to the organizers of a demonstration or assembly if it was banned shortly before the intended date for holding it? Could they appeal to the administrative courts to suspend the ban? Paragraph 438 of the report mentioned a new article 200 of the Criminal Code, dealing with defamation. However, there were other provisions of the Code on the same subject: the former article 191, on defamation, had apparently been replaced, since 1998, by article 322. Was the new article 200 intended to replace the latter provision? He believed that in May 2000, the Constitutional Court had ruled as unconstitutional a legal provision which protected the honour and reputation of the President of the Republic and of certain senior government officials. What was the relationship between that provision and the new article 200 of the Criminal Code? In the past, was the State Prosecutor able to choose between two different clauses of the Code? Apparently, there had been many criminal convictions on the basis of the provision now struck down by the Constitutional Court. What was the position of those convicted: if imprisoned, had they been released, and were they able to claim compensation based on wrongful conviction?

62. **Ms. Medina Quiroga** said that she shared the concerns expressed by Mr. Scheinin and Mr. Yalden with respect to women's rights. In addition, she would welcome information on any existing laws against discrimination in the private sector.

63. She noted that Croatia's report had referred to violence against women and their right to life and personal integrity, but had overlooked domestic

violence. According to information she had obtained, although the Criminal Code contained remedies for domestic violence, they were limited by the fact that police officers and judges often failed to act, few women filed complaints and the incidences of such abuse were subject to a statute of limitations. It would be helpful to know whether Croatia had set up a national emergency plan to deal specifically with cases of domestic violence.

64. **Mr. Solari Yrigoyen** said that although Croatia had made progress in its efforts to counter violence against women, notably through new legislation and institutions, he had serious concerns about the representation of minorities in the Croatian Parliament. Specifically, he failed to understand why the number of Serbian deputies had decreased from three to one and would welcome information as to the percentage of Croatian citizens of Serbian descent in the population as a whole.

65. **Sir Nigel Rodley** observed that religious and moral reasons could be invoked under Croatian law to justify a stance of conscientious objection. He would appreciate an explanation as to the scope of the term "moral reason" and whether it was broad enough to include ideology or opposition to a specific war. Furthermore, he wondered whether an individual who had enlisted or been conscripted into the armed forces could subsequently adopt a position of conscientious objection.

66. **Mr. Henkin** said that it had become increasingly important for governments to forge close ties with national and international non-governmental organizations. They represented a valuable source of information and differing views. He would appreciate information on whether the Government of Croatia cooperated actively with international non-governmental organizations, read their reports, provided them with information, and incorporated their recommendations in Croatia's human rights policy. States Parties needed to understand that by signing the Covenant, they were taking on responsibility for ensuring compliance not only in their own country but in other countries as well. He encouraged members of the Croatian delegation to read the reports filed by other States parties to the Covenant.

67. **The Chairperson** invited the delegation to reply to the oral questions put by Committee members.

68. **Mr. Smerdel** remarked that problems encountered when drafting the provisions of the Croatian Constitution relating to national minorities stemmed from the fact that under the Constitution of the former Republic of Yugoslavia, those minorities had been referred to as nations and nationalities. In the new Constitution, drafters had decided to include Croatian demands for a national State in the preamble, where they would have declarative rather than normative weight — somewhat analogous to the American Declaration of Independence. In 1997, the wording of the preamble had been changed to declare Croatia the national State of Croats, while ethnic groups from the former Yugoslavia were described as minorities rather than nations. Moreover, the list of national minorities in the 1990 preamble had been updated in 1997 to include autochtones — the original inhabitants of the region since mediaeval times.

69. Unfortunately, Croatian nationalists tended to draw a distinction between minorities listed in the Constitution and those who were not, despite the fact they were all guaranteed the same rights. This had been compounded by the fact that the Elections Act of 1998 had distinguished between “national minorities” from traditional States and all others.

70. An initial attempt to break with the use of ethnic labels had been made at the 1991 European Peace Conference on Yugoslavia at The Hague, chaired by Lord Carrington. Faced with a Croatian majority that insisted that the new Constitution should refer explicitly to the Republic as a Croatian State, and a Serbian minority that refused to recognize such a Constitution, Lord Carrington had won agreement of the parties to a document that outlined the constitutional rights of ethnic minorities. The groundwork had thus been laid for legislation to grant special rights to Serbs, as reflected in the preamble and some articles of the new Constitution. The supreme values contained in article 3 of the Croatian Constitution provided a context for interpreting the Constitution as a whole.

71. **Ms. Šimonović** said that reports submitted by Croatia to CEDAW and to the Secretary-General of the United Nations in June 2000, had contained specific references to women’s rights, including those outlined in the Covenant; they had also listed concrete actions taken by the Commission for Gender Equality from 1997 to 2000 in the 12 critical areas of women’s rights

described in the Beijing Declaration and Platform for Action.

72. She stated that women comprised 45 per cent of the active work force. The principle of equal pay for equal work was being enforced in the public sector but no statistics were available for the private sector. The new gender equality policy adopted by the Commission for the period 2001-2005 included initiatives designed to deal with the issue in the private sector.

73. Domestic violence had only recently become the object of public discussion in Croatia. Many non-governmental organizations had been involved in those discussions from the outset, and the Government had responded by beginning to frame new policies. In addition, a non-governmental organization had set up the first shelter for women victims of domestic violence and the shelter’s initial 10-bed capacity had been expanded with the help of government funds.

74. The Government had established an Office for Cooperation with non-governmental organizations, which were particularly active in the area of women’s issues. It had provided them with legal and financial assistance and enlisted their aid in drafting government policy. For example, non-governmental organizations had been part of the working group in charge of drafting the 2001-2005 gender equality policy.

75. The issue of sexual harassment had been raised frequently by women’s non-governmental organizations and efforts were being made to increase public awareness, particularly with respect to the workplace.

76. The Government of Croatia acknowledged that States parties should take responsibility for the violation of human rights. Croatia had signed all six main United Nations human rights treaties, whose provisions took precedence over domestic law.

77. **Mr. Mrčela** added that sexual harassment was covered by two articles of the Croatian Constitution: article 193 concerning lewd acts and abuse of position and article 174 allowing private individuals to be named as perpetrators of such an offence.

78. He said that he would be happy to provide Committee members with examples of cases in which the right to freedom of expression had been upheld. In the past, journalists had been indicted by the State Prosecutor under the provisions of article 204 of the Criminal Code related to insult and defamation.

Attacks on the honour and reputation of private individuals had previously been dealt with in civil court, except for cases involving the most senior government, legislative and judicial officials, which had required criminal procedures. Although that provision of the law had since been changed, the State Prosecutor had brought actions in a number of cases based on the previous legislation.

The meeting rose at 1.12 p.m.