



**International covenant
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HUMAN RIGHTS COMMITTEE

Eighty-eighth session

SUMMARY RECORD OF THE 2402nd MEETING*

Held at the Palais Wilson, Geneva,
on Wednesday, 18 October 2006, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. GLÈLÈ-AHANHANZO
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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* No summary record was issued for the 2401st meeting.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT

(agenda item 6) (continued)

Initial report of Bosnia and Herzegovina (CCPR/C/BIH/1; CCPR/C/BIH/Q/1; HRI/CORE/1/Add.89/Rev.1; written replies by Bosnia and Herzegovina, document without a symbol distributed in English only)

1. At the invitation of the Chairperson, the members of the delegation of Bosnia and Herzegovina took places at the Committee table.
2. Mr. STANIŠIĆ (Bosnia and Herzegovina) said that his Government had submitted reports to several United Nations treaty bodies since 2005 and had met many international commitments in a relatively short period. The authorities were committed to building a free, democratic society in which the civil and political rights of all citizens were fully respected. In cooperation with the international community, and under the terms of the Dayton Peace Agreement, his Government was striving to remove all traces of armed conflict, ensure the return of refugees, rebuild government institutions, introduce legislation in line with international standards and promote the rule of law.
3. Mr. ČEGAR (Bosnia and Herzegovina), introducing his country's initial report (CCPR/C/BIH/1), said that the report covered the period 1994 to 2004. While it described the legislative progress that had been made, it focused on the practical implementation of laws, recommendations and programmes in order to give a clear picture of the situation during that time.
4. A working group established to prepare the report had included some 30 experts at State and entity level and experts from the Brčko District. Additional groups had performed specific tasks, on completion of which the working group had drafted the report, which had then been presented to the public for consultation. The report included statistics and information from numerous sources, including State and local authorities, administrative bodies, public institutions, the press and NGOs. Although the lack of a unified database at the State level had hindered the reporting process, the situation was improving. The Government had increased its cooperation with NGOs, which had been invited, along with other interested organizations, to participate in the preparation of the report through advertisements in the three most widely-read daily newspapers. The Sarajevo office of the United Nations High Commissioner for Human Rights had organized public discussions of the draft report, and State and entity offices of the Ombudsman and several other State agencies had also made contributions. In the drafting of the report, efforts had been made to comply with the Committee's reporting guidelines on form and content, particularly in regard to the non-duplication of information already provided to other treaty bodies.
5. Ms. ĐUDERIJA (Bosnia and Herzegovina), responding to question 1 of the list of issues (CCPR/C/BIH/Q/1), said that the provisions of the Covenant could be invoked directly in the courts in situations that were not covered by domestic legislation. New legislation was harmonized with the international instruments ratified by the Government, and the Ministry for Human Rights and Refugees was responsible for verifying the compatibility of existing

legislation with the provisions of the Covenant. Committees of the Parliamentary Assembly could also draft amendments to bring domestic law into line with international instruments. Private individuals had the right to take allegations of violations of Covenant rights to several institutions, including the Constitutional Court.

6. Mr. ČEGAR (Bosnia and Herzegovina), referring to question 2, said that the amended legislation on the Human Rights Ombudsman had entered into force in April 2006. All the offices of the Ombudsman would be functioning in accordance with the new procedures by the end of 2006. The main aim of the reform had been to increase the efficiency of that institution. To that end, 50 per cent of posts had been cut and several field offices had been established in addition to the headquarters in Banja Luka.

7. Mr. Glèlè-Ahanhanzo (Vice-Chairperson) took the Chair.

8. Ms. ĐUDERIJA (Bosnia and Herzegovina), responding to questions 3-5, said that significant progress had been made in promoting women's rights and preventing discrimination against women. It had, however, proved difficult to increase women's participation in politics, despite the implementation of a quota system. The number of women in management positions remained an issue of concern.

9. Domestic violence had been criminalized and measures had been introduced to ensure the swift removal of perpetrators of such acts from the family home. However, the authorities lacked experience in monitoring implementation of the relevant legislation and in undertaking effective investigations. The situation was further hampered by the paucity of resources currently allocated to social services.

10. Mr. MIŠKOVIĆ (Bosnia and Herzegovina), replying to questions 6 and 7, said that legislation had been adopted to regulate the effective implementation of the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY). A number of new laws had been enacted to regulate Bosnia and Herzegovina's national cooperation with ICTY. The State Investigation and Protection Agency (SIPA) had been established, with a mandate which gave it competence to block the assets of individuals or entities that had assisted war crime suspects or indictees. It was engaged in efforts to arrest Radovan Karadžić and Ratko Mladić, and bring the two men to justice.

11. Over the past two years, the legal system had undergone complete reform, and new procedures had been established for the appointment of judges in order to ensure complete independence from political parties. Legislation had been passed to establish the State Court of Bosnia and Herzegovina and the national Prosecutor's Office; it had come into force in March 2003. Those two institutions were currently hearing cases relating to war crimes and organized crime. The State Court had a chamber of second instance. The Criminal Code and Code of Criminal Procedure had been revised in order to remedy shortcomings. Prosecutors and police officers had been placed in charge of investigations and the concept of an investigating judge had been removed from the legal system. Punishment had been increased for indictees who pleaded guilty in the context of plea-bargaining. The results of the reform had been assessed and relevant amendments would be made to further improve the effectiveness of procedures.

12. Mr. VUČINIĆ (Bosnia and Herzegovina) said that his Government had maintained constructive cooperation with ICTY, and it was generally accepted that persons indicted for war crimes by ICTY should be arrested. There were currently six war crimes indictees still at large: five had been indicted for crimes in Bosnia and one for crimes in Croatia. The proceedings in the national courts had resulted in sentences being imposed for war crimes. ICTY had referred 5 cases involving nine indictees to the State Court of Bosnia and Herzegovina, and a further 12 cases were expected to be so referred. That Court was becoming increasingly capable of dealing with such cases in terms of staffing and technology. In the War Crimes Chamber of the Court, each panel of judges consisted of two foreign judges, and one judge native to Bosnia and Herzegovina, in order to ensure impartiality. Although a series of measures had been taken with the aim of arresting Radovan Karadžić and Ratko Mladić, the whereabouts of Karadžić were unknown and Mladić was believed to be on Serbian territory.

13. Ms. Chanet (Chairperson) resumed the Chair.

14. Mr. VRANJ (Bosnia and Herzegovina) said that the SIPA included a war crimes investigation unit and a witness protection unit, which were particularly important for documenting war crimes. Law enforcement officials were being trained to document war crimes, in order to improve capacity to address the existing situation. ICTY had commended the cooperation of the Bosnian authorities.

15. Mr. STANIŠIĆ (Bosnia and Herzegovina) said that, according to estimates, the State Court would be dealing with war crimes cases for at least a further 10 years.

16. Mr. VUČINIĆ (Bosnia and Herzegovina) said that the law establishing the War Crimes Chamber of the State Court of Bosnia and Herzegovina had come into effect in 2005. Substantial support had been received from the international community in the establishment of the Court, which had been modelled on ICTY in The Hague. A strategy had been developed to transfer all cases from international judges to domestic judges by 2009. District and mid-level courts did not have sufficient resources and had difficulties funding witness protection programmes.

17. Mr. STANIŠIĆ (Bosnia and Herzegovina), referring to question 8, said that experts from across Bosnia and Herzegovina had been involved in compiling the report of the Srebrenica Commission. The report had been submitted to all relevant institutions in the country, including the Prosecutor's Office. A total of 11 individuals had been indicted on charges of genocide, and four further cases were pending. Measures were being taken to investigate the 800 individuals named in the report as suspects in war crimes in Srebrenica.

18. Ms. ĐUDERIJA (Bosnia and Herzegovina) said in reply to question 9 that a committee had been established by the Council of Ministers to investigate the cases of persons who had gone missing from Sarajevo during the war. It was hoped that a law establishing a reconciliation committee would be enacted in the future.

19. Turning to question 10, she said that the Institute for Missing Persons had become operational in 2006. The Government had allocated funds from the national budget to finance the Institute's activities, which included searches for and identification of mass graves, searches for new burial sites, conducting burials and marking new graves. The Institute would also

establish a database on missing persons, which would contain information previously held by international organizations such as the International Committee of the Red Cross and the International Commission on Missing Persons. Efforts were being made to transfer powers from the entity level to the national level, and a fund had been established, inter alia, to provide financial support to relatives of missing persons who had no other source of income. The fund would be fully established by the end of 2006.

20. Turning to the issue of torture and sexual violence (question 11), she said that efforts were being made to ensure that civilian victims of war received the same protection as military victims. Changes were being made in the protection of women who had been victims of rape during the war; they were now entitled to assistance from the State. Information was being gathered on civilian female victims who were eligible for benefits at the local level. The high level of unemployment in Bosnia and Herzegovina caused problems in providing social benefits for all vulnerable persons.

21. Ms. BAŠIĆ (Bosnia and Herzegovina) said that in 2005 legislation had been enacted on the application of sanctions; it included regulations on the treatment of prisoners and the protection of their human rights and fundamental freedoms, including the prohibition of all forms of inhuman treatment of tried and untried prisoners (question 12). Training was provided for prison staff responsible for security and safety in prisons, in order to ensure the consistent implementation of legislation on detention and imprisonment. A State detention unit had been constructed in full conformity with modern standards. Detention centres at the entity level, however, were of an unsatisfactory standard, and budget allocations had been made to improve facilities. All prison guards began their work as interns, following which they were required to pass an examination on penal, pedagogical and psychological standards, and demonstrate their knowledge of the Code of Criminal Procedure and regulations pertaining to the application of sanctions. Guards were subsequently subjected to annual assessments.

22. Mr. VRANJ (Bosnia and Herzegovina) said that, pursuant to new criminal legislation enacted in 2003, the period of police custody must not exceed 24 hours. Measures had been taken in recent years to improve pretrial detention facilities and bring conditions into line with international standards. Legislation had been adopted on procedures of arrest and detention, and regular courses on relevant domestic and international norms were held for law enforcement officials. As a result, fewer complaints were received of ill-treatment of detainees in police custody. In addition, so-called “professional standard units” had been set up in all police stations to monitor compliance with legislation and investigate reports of police misconduct. All police stations had been equipped with special mailboxes where citizens could post anonymous complaints; a toll-free hotline had been set up for the same purpose.

23. The new Criminal Code established trafficking in human persons as a punishable offence (question 13). Provision had also been made for the prosecution and punishment of related offences such as people smuggling, slavery and enforced prostitution. The Office of the State coordinator for the prevention of trafficking and illegal immigration had taken a series of measures aimed at combating trafficking, details of which were contained in the written replies. Special training was provided for police officers and judicial personnel, and several awareness campaigns had been conducted to educate the public about the issue of trafficking. Nearly all the approximately 200 nightclubs that had employed trafficked women had been closed down. While measures to curb trafficking in Eastern European nationals had been successful, the

number of trafficked Bosnians and Serbs had increased in recent years. In response, following the adoption of the new Criminal Code, the law enforcement authorities had intensified efforts to identify, prosecute and punish traffickers and people-smugglers. Specific case-related information was provided in the written replies. A programme had been introduced for the protection of vulnerable witnesses, especially children, and victims of trafficking were given practical assistance.

24. Ms. ĐUDERIJA (Bosnia and Herzegovina) said that the Government's anti-trafficking efforts were based on close cooperation with NGOs, especially women's NGOs, whose activities mainly focused on providing assistance and shelter to victims. The Office of the State coordinator for the prevention of trafficking and illegal immigration was currently implementing a multi-year action plan to combat human trafficking, which had enhanced institutional capacity-building and coordination. Additional information on measures taken in the framework of the plan was contained in the written replies. Special efforts had been made to establish a mechanism to prevent child labour and sexual exploitation of children, especially within the Roma community.

25. Mr. MIŠKOVIĆ (Bosnia and Herzegovina) said that pretrial detention could only be ordered by a judge, at the request of the public prosecutor, and normally for a period not exceeding two months (question 14). For offences punishable by more than 10 years' imprisonment, the maximum period of pretrial detention was six months. The grounds justifying pretrial detention were set forth in the Code of Criminal Procedure.

26. Efforts had been made in recent years, with the support of the international community, to bring conditions of pretrial detention into line with international norms (question 15). The treatment of pretrial detainees was regulated by the Code of Criminal Procedure, the Law on Execution of Criminal Sanctions, Detention and other Measures, and house rules in detention facilities, all of which reflected the pertinent international instruments.

27. Mr. VUČINIĆ (Bosnia and Herzegovina) said that once the statutory time limit for pretrial investigation had expired, the detainee must be released. Legislation governing the treatment of detainees was consistent with article 5 (3) of the European Convention on Human Rights and persons in pretrial detention could file a petition for review.

28. Ms. ĐUDERIJA (Bosnia and Herzegovina) said that steps had been taken to facilitate the placement of prisoners with mental disorders in a specially equipped institution (question 16). Implementation of the project would commence as soon as the issue of funding was resolved. All mentally-ill inmates were eligible for six-monthly review of their physical and mental health status. Legislation further provided for the establishment of special committees within prisons to monitor respect for their rights. There was a growing trend towards placing mentally-ill perpetrators of minor offences in institutions other than prisons. Extensive information on the rights of mentally-ill detainees was provided in the written replies.

29. Mr. WIERUSZEWSKI, Country Rapporteur, thanked the delegation for the comprehensive information provided in the report and in the written and oral replies. Efforts should nevertheless be made to identify the reasons for the lack of information from NGOs. If necessary, the Office of the High Commissioner for Human Rights should consider providing relevant assistance.

30. The existing constitutional framework in the State party focused exclusively on the rights of ethnic minorities, to the detriment of individual rights and freedoms, including those relating to gender equality. He asked whether the State party planned to undertake constitutional reforms to address the situation, which hampered the implementation of the Covenant and other international human rights instruments. Legislative provisions relating to electoral processes, for example, were incompatible with articles 2, 25 and 26 of the Covenant.

31. He would welcome clarification on the meaning of paragraph 15 of the report, which seemed to suggest that the presence of the High Representative for Bosnia and Herzegovina was an obstacle to, rather than guarantor of, the implementation of human rights in the State party.

32. With regard to question 1 of the list of issues, he observed that the lack of examples of cases where the Covenant or the Optional Protocol had been directly invoked in domestic court proceedings was regrettable, yet unsurprising, given that neither instrument had been published in the official State party languages and the population was thus unaware of the rights contained therein. The delegation should indicate what steps were being taken to address the problem, which constituted both a violation of the State party's obligations under the Covenant and an impediment to implementation of the Covenant. He enquired whether legislation in the reporting State provided for the implementation of Views adopted by the Committee under the Optional Protocol.

33. With regard to questions 3, 4 and 5, he asked what mechanisms were in place to monitor the compatibility of new legislation with the Law on Gender Equality and enquired about the effectiveness of the large number of gender equality commissions. The delegation should explain the discrepancies between gender-related legislation in the different entities, especially as they related to domestic violence. While commending the State party for the legislative progress made in that regard, he expressed concern about the lack of effective assistance for victims of domestic violence and the difficulties in obtaining medical evidence. It would be useful to know whether measures had been taken to create a standard procedure for gathering medical evidence and provide relevant training for hospital staff.

34. Mr. BHAGWATI requested information concerning the three Ombudsman institutions that had been set up in 2004, particularly with regard to their powers, jurisdiction and the legal basis for their establishment. He asked how the Ombudsman of the Federation of Bosnia and Herzegovina was appointed, what were his powers and term of office, how many cases he had handled, and how many of his recommendations had been implemented by the Government. He wished to know what would be the content of the reform of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina.

35. He would appreciate a full account of efforts to search for persons reported as missing during the war, including how many had been located and whether the Government had received any assistance in its search from other sources. He requested information on the composition of the Institute for Missing Persons and its rate of success in locating missing persons. He enquired what results had been achieved by the War Crimes Chamber of the State Court of Bosnia and Herzegovina, particularly with respect to the identification of missing persons.

36. Mr. O'FLAHERTY said that he appreciated the difficulties with which the Government of Bosnia and Herzegovina had been confronted in recent years as a result of the highly complex human rights systems instituted by the Dayton Peace Agreement. The fact that the delegation had not included a representative of the Republika Srpska was an important opportunity lost, since so much of the implementation of the Covenant depended on commitment at the entity level. He asked for confirmation that the names of the 800 suspects mentioned in the report of the Srebrenica Commission had been revealed to the Office of the High Representative and State Prosecutor's Office. The delegation should explain why the bill to establish a truth and reconciliation committee had failed in the House of Representatives and what the Government was doing to correct the deficiencies responsible for its failure. In that context, he asked what programme of public consultations was being undertaken in an effort to determine the best way to resolve the matter. He would appreciate more information on the extent to which other reconciliation efforts that did not require the adoption of legislation were being considered or pursued. Based on the experiences of other countries, such efforts could include the systematic mapping of human rights abuses during the war or the promotion of reconciliation initiatives at the local level.

37. He requested additional information on the results that had been achieved by the State Action Plan to Fight Trafficking in Human Beings, particularly in terms of the effectiveness of mechanisms included in the plan to ensure the coordination of governmental action and the budgetary resources allocated to them. He asked what measures had been taken to address the problem of weak sentences imposed on traffickers and the problem of collusion between certain police officers and traffickers. He wished to know whether all foreign victims of trafficking were repatriated voluntarily and what assurances were sought as a matter of practice from the State to which the victims were returned. More information should be provided on the issue of forced begging and the steps being taken to deal with that problem.

38. Mentally-disabled persons were among the most vulnerable members of society; the State therefore had a solemn responsibility to provide sufficient budgetary resources to care for their basic needs. The delegation should explain why the Government had been unsuccessful in securing such resources, which had resulted in unacceptable living conditions for the mentally-disabled in residential facilities. He requested clarification as to why the two facilities in which individuals with serious mental disorders were placed without their consent had remained open, despite the Government's agreement to close them. Problems surrounding the transfer of mental patients between the entities could not be resolved simply through administrative measures but required legislation as a means of systematizing such transfers.

39. Mr. KÄLIN said that, although many provisions of the Covenant coincided with those of the European Convention on Human Rights, many Covenant provisions, such as article 26, went beyond those of the Convention. He therefore wondered whether those Covenant provisions, in particular, were directly applicable in Bosnia and Herzegovina, and whether they took precedence over domestic law in the event of conflict between the two.

40. He urged the Government to give priority to the search for missing persons, since inaction on its part only exacerbated the already intense suffering of the relatives of such persons. The delegation should explain why it had taken the Government 9 years after the end of the war to enact the Law on Missing Persons and 11 years to set up the Institute for Missing Persons, which was still not fully operational. He asked what steps were being taken to address

that problem so as to comply with Constitutional Court rulings that required the competent authorities to ensure the immediate functioning of the institutions established in accordance with the Law on Missing Persons.

41. Given the fact that the domestic law of Bosnia and Herzegovina defined acts of torture as those resulting in “at least 60 per cent bodily harm”, he asked what type of compensation was available to victims of rape and mental torture who could not demonstrate a sufficient level of bodily harm, but whose psychological suffering was nevertheless considerable. He requested additional information on reports that former residents returning to the Republika Srpska after July 2001 were not eligible for benefits because they had missed the deadline. It was difficult to see how that requirement could be reconciled with the State’s obligation to provide effective remedy for human rights violations under article 2 of the Covenant and to protect individuals against discrimination under article 26. Similarly, steps should be taken to ensure equal access to benefits for military and civilian victims of war, based on the means currently available.

42. Mr. SHEARER asked whether the Government considered the political structure of Bosnia and Herzegovina to be a help or a hindrance to the performance of its obligations under the Covenant. There was some confusion in the written replies to the list of issues as to the distinction between State institutions and entity institutions, and therefore, as to how evenly the Covenant was being applied throughout the territory of the State party. He wondered, for example, whether the Bosnia and Herzegovina Law on Execution of Criminal Sanctions, Detention and Other Measures applied at the State level or at the entity level. Moreover, it was unclear which crimes fell under the competence of the State and which fell under the competence of the entities. He particularly had in mind crimes such as murder, theft and rape.

43. With regard to the written replies to question 12, he asked why it was considered necessary to harmonize the legislation containing prison regulations in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District with labour legislation. Given that there were no State-level prisons, he wondered whether there were separate procedures for training prison officials in the entities. He asked whether secrecy in the reporting of mistreatment of detainees to competent bodies was entirely a matter for the lawyers of the detainees. The delegation should clarify what was meant by the reference to the first-degree and second-degree committees for damage caused by officers in the discharge of their duties.

44. Regarding the written reply to question 14, he asked what body was meant by the “Council”. He enquired whether expenses relating to accommodation for detainees and prisoners were covered by the national budget or by the entity budgets.

The meeting rose at 6.05 p.m.