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Situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, in accordance with General Assembly resolution 52/147 of 12 December 1997 and Economic and Social Council decision 1998/272. Pursuant to the requests of the Commission of Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

* A/53/150.

Annex

Report on the situation of human rights in Bosnia and Herzegovina prepared by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, in accordance with General Assembly resolution 52/147 of 12 December 1997 and Economic and Social Council decision 1998/272 of 30 July 1998

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I. Introduction

1. This is the first comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. The report considers human rights developments in the three countries of the Special Rapporteur's mandate until mid-August 1998. Because United Nations practice requires early submission of reports for editing and translation purposes, information contained in the present report may be superseded by more recent events that have taken place prior to its presentation to the General Assembly in November 1998. The Special Rapporteur will endeavour to provide updates on the human rights situation in the coming months.

2. Mr. Dienstbier was appointed on 13 March 1998 by the Chairman of the Commission on Human Rights, and fully assumed his duties in early July 1998. By August 1998, he had visited all of the countries of his mandate. In April 1998, at the request of the Chairman of the Commission on Human Rights, he travelled on a brief mission to the Federal Republic of Yugoslavia, especially for the purpose of reviewing the situation in Kosovo. He submitted a report on his mission with a letter to the Chairman dated 8 April 1998 (E/CN.4/1998/164). The Special Rapporteur visited Bosnia and Herzegovina from 4 to 9 July 1998, and Croatia from 9 to 15 July 1998. He was planning return missions to the Federal Republic of Yugoslavia in September 1998, and to post-election Bosnia and Herzegovina and to Croatia in October 1998.

3. The Special Rapporteur would like to pay tribute to his predecessors, Mr. Tadeusz Mazowiecki and Mrs. Elisabeth Rehn, for their commitment and their open-minded presentation of the situation of human rights in the region of the former Yugoslavia. Mr. Dienstbier hopes similarly to spend considerable time in the territory and to seek out a variety of viewpoints to ensure the accuracy and value of his reports. The Special Rapporteur would also like to express his gratitude to the Geneva office of the United Nations Office of the High Commissioner for Human Rights (OHCHR), especially to the field officers, who work and live under difficult circumstances. All of the Special Rapporteur's missions are organized by OHCHR field offices, which also gather information and otherwise support his mandate.

II. General observations

4. By definition, it is the role of the Special Rapporteur to be critical. Human rights are never fully respected anywhere. Their observance requires the permanent attention of national and international governmental institutions, media, non-governmental organizations and the people themselves. This is especially so in the global neighbourhood, where no problem is local anymore. Criticisms, however, should not be taken by Governments as an inconvenience but rather as a source of support on the road to democracy. Having come himself from a formerly communist State, the Special Rapporteur is aware of the difficulties in transition to democracy and an open society. Many of the problems faced by countries in these circumstances are similar, even if there are also important differences due to the legacy of past conflicts, recent wars and other factors.

5. Serious human rights violations can still be observed in all three countries of the Special Rapporteur's mandate. Many of these continuing problems are linked to a failure to respect the human rights most closely associated with democratic principles. The challenge for political leaders at all levels in the countries of the Special Rapporteur's mandate will be to instill in their States and their communities a new appreciation of the meaning of democracy, by encouraging free expression, respect for the law, especially in law enforcement and in the courts, and above all the understanding that government's main purpose is not to control society but to serve the freely expressed will of the people.

III. Bosnia and Herzegovina

A. General observations

6. Almost three years after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), the citizens of Bosnia and Herzegovina remain subjected to serious human rights violations. Sources of violations are different and methods vary from place to place, but one pattern predominates: victims usually belong to ethnic groups which are or have become a minority in a given area. Occasionally ethnic factors are replaced by political ones. The assurances of political leaders about their commitment to implement the human rights provisions of the Dayton Agreement have not yet been translated into active policy. Numerous cases indicate the direct responsibility of state institutions for human rights violations in some instances, while in others there is a serious failure by the authorities to investigate or redress abuses reported to them.

7. The Constitution of Bosnia and Herzegovina places important responsibility for the protection of human rights with the authorities of both entities – the Federation of Bosnia and Herzegovina (Federation) and the *Republika Srpska* (RS) – but the proper functioning of state authorities is also of the utmost importance. So far, progress in establishing these authorities has been minimal. Meanwhile, in spite of some advances, serious problems remain unresolved in the Federation, including on such matters as the police, the judiciary and education. Some Bosnian Croat leaders, in particular, continue to oppose all efforts aimed at creating a more efficient system of federal rules and regulations. In the RS, extreme ideologies of ethnic separation and supremacy are giving way to more pragmatic policies, based largely on the desire to obtain desperately needed economic assistance through cooperation with the international community. However, human rights continue to be violated on a major scale, with the courts, police and other public institutions exercising discrimination in a variety of ways.

B. Return of refugees and displaced persons

8. 1998 had been proclaimed the year of minority returns, but the reality is that very few such returns have taken place. Many refugees returning from abroad cannot return to their homes of origin, adding to the number of internally displaced persons in Bosnia and Herzegovina, which approaches some 800,000. The main obstacles to return remain poor security, lack of adequate housing, few employment opportunities and, for families with children, problems in education.

9. Several incidents of violence against returnees caused major setbacks during the spring and summer of 1998. In Drvar (Federation, Bosnian Croat-controlled), the killing of a Bosnian Serb returnee couple and a riot directed against international representatives in April 1998 seriously slowed the rate of return of Serbs to the area. Many homes belonging to Serbs have been burnt in Drvar since 1997. In recent months, some Serbs who fled in April 1998 have returned, but security concerns remain. During his mission to Bosnia and Herzegovina in July 1998, the Special Rapporteur visited Drvar and met with the new chief of police, who committed himself to do his utmost to improve the security situation in the town. By August 1998, however, no arrests or other concrete progress had been reported.

10. Other areas where returns of minorities have been particularly contentious in the Federation include the Mostar area and Middle Bosnia Canton. In Stolac (Bosnian Croat-controlled), large-scale destruction of returnees' property, incidents of harassment and attacks on returnees have continued, with local police either unable or unwilling to protect returnees or arrest wrongdoers. Similarly, although Croats have started to return to Bugojno (Bosniak-controlled), returns on a large scale will not take place if municipal housing authorities continue to disregard returnees' property rights.

11. There have been almost no minority returns to the eastern part of the RS, including for example to Foca, Srebrenica, Zvornik and Visegrad. Yet there appears to be a willingness on the part of some to return. Thousands of Bosniak minorities have made assessment visits to their pre-war homes in the eastern RS. In other parts of the RS, there have been instances of low-profile, spontaneous minority returns. The rate of return, however, is still well below the expectations of the international community, with authorities continuing to impose significant obstacles.

12. Major conferences to discuss the question of returns were organized in February 1998 at Sarajevo and April 1998 at Banja Luka to help encourage minority returns to both cities as a positive example. At Sarajevo, although a declaration was adopted setting a target of 20,000 minority returns, very little had been achieved by August 1998. Meanwhile there has been virtually no progress in returns to Banja Luka.

13. Most minority returns so far have been spontaneous, arranged by displaced persons themselves through local non-governmental organizations. The Coalition for Return (whose

representatives the Special Rapporteur met in July 1998) has organized assessment visits, collected and disseminated information, and advocated strongly for returns, thus creating some small progress. The Special Rapporteur believes this is a good way to achieve sustainable returns, and hopes that these associations receive support for their work.

14. In Bosnia and Herzegovina, the problem of the regulation of property, including socially owned apartments, is a source of continuing concern and has direct consequences for the return process. In the Federation, after immense pressure from the international community led by the Office of the High Representative (OHR), a property law package was adopted that came into force on 4 April 1998. Under the Apartments Law, relating only to socially owned property, new claims for repossession of apartments in the Federation had to be lodged with housing authorities in the municipality where the apartment was located no later than 4 October 1998. If pre-war occupants failed to file such claims in time, they could permanently lose occupancy rights. The authorities had to submit decisions on claims within 30 days.

15. A number of obstacles have arisen, however, with respect to the new property laws. After interventions by OHR, instructions for their implementation were issued by the Federation Minister of Urban Planning and Environment, and some points were clarified (e.g., that fees were not to be charged to file claims, and that military and police apartments were included within the competence of municipal authorities). However, many obstacles remained, and the picture so far of the repossession process under the laws in the Federation is discouraging. As of August 1998, few claims had been decided despite the fact that thousands of decisions were due. The situation has affected returns, particularly to more urban areas, where most socially-owned property is located, such as Sarajevo, Mostar and municipalities in Middle Bosnia Canton, including Bugojno and Novi Travnik.

16. In the Republika Srpska, housing and property draft laws prepared for consideration by the RS National Assembly at a session on 26 June 1998 were not passed but were instead returned to the Government for redrafting. The deadline for passing the laws as set by the Peace Implementation Conference at Luxembourg was 31 August 1998, but there appeared little probability that the new laws would be adopted before elections in September 1998.

17. The RS Law on Abandoned Property, adopted during the war, continues to be used to deny property rights to Bosniaks and Croats forcibly evicted from their homes in

C. Property rights and legislation

1995. Particularly critical is the situation of those who never left the town, known as "floaters". In their cases, the courts have been slow to process their claims, and in most instances when a court order is issued for reinstatement of the floater in his or her property, evictions of the illegal occupants are not carried out due to lack of cooperation from local police and other law enforcement officials. Some floaters were reinstated in early 1998, but in May 1998 eviction procedures in Banja Luka were stopped following a resolution of the RS National Assembly. Evictions were soon formally resumed after interventions by OHR and the Office of the United Nations High Commissioner for Refugees (UNHCR), but no successful reinstatement of minorities had been achieved through the courts as of August 1998.

18. In the RS, local housing commissions which manage the housing stock appear to discriminate in the allocation of property. There are no firm responses, for example, to cases of double occupancy by refugees, or illegal occupancy by members of the military or police of homes belonging to minorities. In Bosanska Gradiska, housing authorities openly declared that they would not consider cases of Bosniaks until all Serb refugees and displaced persons had their housing situations resolved. Although the United Nations Mission in Bosnia and Herzegovina (UNMIBH) has the authority to issue non-compliance reports against police officers, which can lead to their decertification and removal, it has proven more difficult to issue non-compliance reports against civilian authorities, such as housing commissioners.

19. One positive development was the opening at Banja Luka on 16 March 1998 of an office of the Commission for Real Property Claims (CRPC), mandated by the Dayton Agreement to certify ownership of property. The decisions of CRPC are final and binding, and authorities are obligated under the Dayton Agreement to implement the decisions. However, no enforcement mechanism exists, and draft implementing legislation has not yet been finalized for presentation to the authorities.

D. Other forms of discrimination

20. Patterns of discrimination have been widely reported in the area of acquisition of identification documents. For applications from minorities in the RS, for example, authorities often demand additional documentation (such as certification that the applicant never left the territory of the

21. In the RS, minority populations have encountered serious difficulties in exercising freedom of religion. The Bosniak community has repeatedly sought permission to rebuild the Ferhadija Mosque in Banja Luka (all mosques in the RS were destroyed during the war), but the authorities have so far not cooperated. After the death of the Mufti of Banja Luka on 23 July 1998, Banja Luka authorities turned down a request from the Bosniak community to bury him at the site of the destroyed mosque. A violent crowd of about 300 persons, led by members of the "Serb Party of Krajina and Posavina", threw stones at the building of the Islamic community and threatened its members. Equally, Croats of Catholic faith have been victimized in some instances. On 23 April 1998 at Drventa, Bosnian Serbs prevented Cardinal Vinko Puljic from conducting a mass to mark St. George's Day in a destroyed Catholic church.

E. Police reform

22. The establishment of multi-ethnic police, which is among the main tasks of UNMIBH, continues to be resisted in both entities. The formation of truly multi-ethnic police forces could be a vital guarantee for returning minorities, producing an overall positive effect on security. Despite efforts by UNMIBH to restructure the RS and Federation police, little progress has been achieved. The number of female officers remains far below any acceptable standards (of 9,491 police officers employed in the Federation, only 154 are female). The authorities frequently claimed that the proximity of elections in September 1998 made it politically difficult to press ahead with implementation of United Nations recommendations.

F. Commission on Human Rights

RS during the war, or that military obligations were fulfilled). In other cases, illegal fees are charged. Although specific cases of discrimination are often resolved after the intervention of international agencies, problems continue to be reported from throughout the region. Discrimination is also rife in employment and in the granting of medical or other social services.

23. The Dayton Agreement created a sophisticated and complex system of human rights protection in Bosnia and Herzegovina. The Commission on Human Rights for Bosnia and Herzegovina, created by annex 6 of the Agreement, consists of the Human Rights Chamber and the Human Rights Ombudsperson. Both of their caseloads have expanded considerably in the last year. As of 31 July 1998, the Chamber, which is a judicial body, had registered 828 cases, issued 25 provisional measures, published one report on amicable settlement, and issued 17 final and binding decisions on the merits involving 33 cases. The decisions required respondent Parties to take specific actions in cases with such human rights issues as the death penalty, right to property, standards of arrest and detention, and enforcement of judicial decisions.

24. The Office of the Human Rights Ombudsperson is a mediation-oriented institution that has the power to conduct investigations and issue recommendations. As of 31 July 1998, the Ombudsperson had registered 2,480 cases, published 35 final reports dealing with 154 individual cases and issued 13 special reports on more general human rights issues. Seventy-three cases were referred to the Chamber.

25. The Dayton Agreement obligates the Parties to cooperate fully with the annex 6 institutions and to comply with their decisions and recommendations. In the event of non-compliance, the Office of the High Representative can use its influence to pressure the authorities to comply. However, no explicit enforcement mechanisms exist. Although there have been a few successful outcomes, a serious lack of cooperation by authorities continues to frustrate the implementation of most decisions and recommendations. Authorities in the RS have made the most effort to cooperate, implementing three of the 17 final decisions of the Chamber and responding to almost half the requests from the Ombudsperson for information in cases in which the RS was a respondent Party. Although the RS still needs to improve its record, cooperation from state and Federation authorities is worse, with many authorities simply ignoring requests for information, or even attempting to obstruct decisions' implementation.

G. Federation Ombudsmen

26. The institution of the Federation Ombudsmen, established by the Washington Agreements in 1994, is composed of three Ombudsmen (one Bosniak, one Bosnian Croat and one Bosnian Serb), and is competent to conduct investigations into human rights violations in the territory of the Federation. The institution has nine branch offices located throughout Federation territory. As of April 1998, the Ombudsmen had 7,300 pending cases, of which 2,250 were lodged in the first four months of 1998 alone. As some 45,000 individuals have contacted the Ombudsmen since their establishment, it is clear that the institution has become well

27. On 20 May 1998, the Ministers of Justice of the Federation of Bosnia and Herzegovina and the *Republika Srpska* signed a memorandum of understanding on the regulation of legal assistance between institutions of the Federation of Bosnia and Herzegovina and the *Republika Srpska*. The long-awaited agreement addresses some of the most urgent problems concerning the functioning of the judiciaries in both entities, such as the service of subpoenas across inter-entity boundary lines, immunity for witnesses testifying in courts of the other entity, and the admissibility of members of each bar to practise before courts throughout Bosnia and Herzegovina without restriction. The Commission on Inter-Entity Legal Cooperation, which held its inaugural session on 4 June 1998, has as its main objective to identify further areas requiring legal cooperation across inter-entity lines and make appropriate recommendations.

2. Restructuring of the judiciary

28. On 31 July 1998, the High Representative imposed a Law on Courts on Herzegovina-Neretva Canton. This exercise of power was a reaction to the failure by Cantonal authorities to agree on a law to replace the previously controlling legal regimes of the so-called "Croat Republic of Herceg-Bosna" and the Republic of Bosnia and Herzegovina. Herzegovina-Neretva Canton was the only Canton not to have restructured its judiciary in line with the new system of the Federation. According to the new law, there will be one common court for the canton at Mostar, and the ethnic

known. However, the rate of compliance is still low, with authorities implementing recommendations in only about 30 per cent of the cases. The Special Rapporteur, who met with the Ombudsmen during his first visit, wishes to continue the cooperation that his predecessors had started, and strongly supports the Ombudsmen's work.

H. The judiciary

1. Inter-entity judicial cooperation

composition of judges in the Canton shall reflect the results of the 1991 census.

29. Following controversy over the process of appointment of judges in the Central Bosnia Canton in early April 1998, international representatives pressed for the Canton's judicial selection process to be repeated. The process of selecting and nominating judges has been flawed by a lack of transparency into the criteria used for appointments. Following an agreement among relevant cantonal authorities, Central Bosnia became the first Canton in which a Judicial Appointments Commission was established to review all applications and ensure an impartial and just selection process.

I. Education

30. The Special Rapporteur stresses the importance of the interrelation of civil and political rights with economic, social and cultural rights in Bosnia and Herzegovina. Non-discriminatory education, for example, will be crucial to support the sustainable return of refugees and displaced persons, as well as for tolerance and reconciliation generally. Education in Bosnia and Herzegovina now operates almost exclusively along ethnic lines, serving not as an instrument of reconciliation but a signal to younger generations for continuing intolerance and hatred.

31. In the Federation, a commission was established in late 1997 for the elaboration of a uniform curriculum, but a curriculum that satisfies all national groups has not yet been created. In the RS, a law on education is in force with a single curriculum, but the question of treatment of minority issues has still not been resolved. However, authorities have expressed the wish to improve and modernize the system.

J. Missing persons

32. The extent of the problem of missing persons in Bosnia and Herzegovina is huge: the International Committee of the Red Cross (ICRC) has received requests from families concerning a total of 19,786 missing persons. The ongoing lack of information on the fate of the thousands who disappeared in the course of the conflict continues to cause great suffering to their relatives, and their need to know the fate of their loved ones requires an adequate response from the authorities and the international community.

33. It is generally acknowledged that an overwhelming majority of the missing have died. Allegations of hidden detentions, which have been systematically checked by

35. The return process continues to be obstructed in many ways. Authorities usually allege that minority returns to areas under their jurisdiction are impossible because there is no reciprocity in other regions. Authorities also allege that returns cannot happen until "conditions" are right, although they rarely spell out what these conditions might be. However, neither reciprocity nor vague conditions can be accepted as basis to deny well recognized human rights, and the authorities are responsible for creating and improving conditions for return, as they committed themselves to do by the Dayton Agreement. Improvements in security will be conducive for returns, and thus the action of the international Stabilization Force (SFOR) in the short term and IPTF in the long term (for the creation of multi-ethnic police forces) will be critical.

36. Law enforcement institutions have not yet reached an acceptable level of professionalism. Further efforts to change this situation are necessary, and in that context the qualifications of IPTF monitors should be examined more closely to ensure the best possible use of the IPTF mandate. Gender issues in all IPTF activities, in particular in the

ICRC and the United Nations International Police Task Force (IPTF), have in nearly all cases proven to be unfounded. Hence, the process of exhumation and identification will be the only way of resolving the cases of the missing. Exhumations, coordinated by OHR and carried out by local commissions (Bosniak, Serb and Croat) are after two years of political difficulties finally being conducted without major problems, including across inter-entity lines. As of 12 August 1998, the total number of bodies exhumed was 663, the majority of which had been identified.

K. Conclusions and recommendations

34. The Special Rapporteur is obliged to conclude that the representatives of the dominant political parties among the three ethnic groups in Bosnia and Herzegovina are more interested in strengthening a sense of collective identity among those who share their ethnic background than in establishing a genuine system of civic society. These policies undermine all efforts aimed at building a framework for the protection of individual rights and freedoms.

restructuring and training of the national police, must receive more careful attention. The human rights training for IPTF monitors being conducted by OHCHR, together with UNMIBH, has been useful and should be expanded to reach all UNMIBH/IPTF personnel.

37. The apprehension, prosecution and punishment of war criminals remains a precondition for improvement of the human rights situation, the return of refugees and displaced persons to their pre-war homes, and reconciliation.

38. Greater respect for the mandate of the human rights institutions and their role in establishing the rule of law in Bosnia and Herzegovina is required from the authorities. The decisions and recommendations of these institutions should be implemented in full by the authorities. At the same time, a comprehensive process of reform of the judicial and legal systems is badly needed.

39. The excellent work of the Federation Ombudsmen deserves the full support of local authorities and the international community. There still remains an urgent need

for the RS authorities to adopt a law on the establishment of an ombudsman institution in the RS.

40. On the question of education, rather than a single curriculum espousing only one set of views, it is necessary instead to have curricula that present different opinions so as to plant in children's minds democratic ways of thinking and tolerant habits.

41. Although there has been some improvement in creating conditions for free and democratic elections, serious problems remain to be solved. Full freedom of movement has still not been secured despite positive developments, such as the introduction of uniform license plates for the entire country. The main media still are controlled by nationalist parties, which has a negative effect on the political process. The promotion of democratic values and a true human rights culture should be pursued at all levels of society. For this reason, the continued support of the international community for local non-governmental organizations will be vital.

42. There is a necessity to build on existing frameworks within the United Nations system in order to develop a concerted effort to address gender issues. Several trends demand attention and appropriate responses, including organized prostitution, trafficking and domestic violence.

43. The families of missing persons should be given stronger support. Their social, economic and psychological needs must all be addressed.

46. Membership in the Council of Europe and the goal of joining the European Union has had a positive influence on the Croatian Government and on the attitudes of many opinion leaders in the country. However, real understanding of the nature of democratic society still appears to be quite low. Due to the lack of democratic traditions, the legacy of communism, the recent conflict and animosity towards Serbs (both long-standing and as a result of the conflict), the development of respect for human rights will be a long process. What has been achieved to date is largely the result of support for democratic forces within Croatia by the international community and its institutions. Many in Croatia have the ambition that it will become a truly democratic country and part of the European mainstream. Given the circumstances, it can make progress in this direction only if the presence of international institutions – for monitoring and for technical, economic and educational assistance – is maintained for the foreseeable future.

44. The return of refugees from abroad should only occur when conditions exist for them to return in safety to their homes of origin.

IV. Republic of Croatia

A. General observations

45. The Special Rapporteur conducted his first mission to Croatia from 9 to 15 July 1998. He began in the Danube region, where he met with international and local representatives, and continued on to Western Slavonia, where he spoke with people who had recently returned from the Danube region to the villages of Dragovic and Kusonje. At Zagreb, the Special Rapporteur had meetings with Government ministers and officials; leaders of opposition parties; United Nations officials; the Head of Mission of the Organization for Security and Cooperation in Europe (OSCE); members of the diplomatic corps; the Archbishop of Zagreb; the Croatian Ombudsman; non-governmental organization representatives; and other leading figures. Information received during this visit has been supplemented by the Zagreb and Vukovar offices of the United Nations High Commissioner for Human Rights.

B. The right to return

47. The question of return, including the conditions to which people are returning, was the main subject of the Special Rapporteur's discussions with Croatian Government ministers and officials. The Government's programme for the return and accommodation of displaced persons, refugees and resettled persons, which was adopted as a resolution by the *Sabor* (Parliament) on 26 June 1998, recognized the inalienable right to return of all Croatian citizens and all categories of persons who can be regarded as refugees in accordance with the definitions of the 1951 Convention Relating to the Status of Refugees, to which the Republic of Croatia is a signatory, and other relevant United Nations documents.