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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, 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

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Introduction

1. This is the second 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. His first report was submitted to the General Assembly (A/53/322) on 11 September 1998 and was updated with an addendum on 30 October 1998 (A/53/322/Add.1). Because United Nations practice requires early submission of reports for editing and translation purposes, information contained in this report will be superseded by more recent events before its presentation to the Commission on Human Rights in spring 1999. The early due date of this report means that it will generally cover only events of November and early December 1998. The Special Rapporteur will further endeavour to discuss some general trends which he has observed since his initial appointment in March 1998. The Special Rapporteur would like to stress, however, that the practice of requiring the submission of reports more than three months before they are to be discussed in the Commission or the General Assembly is unacceptable and offers suitable arguments to those who would criticize the United Nations for ineffectiveness and excessive bureaucracy.

2. The Special Rapporteur would like to express his gratitude to the Office of the High Commissioner for Human Rights (OHCHR) for the support it has provided to his mandate, and especially to the field officers, who work under often difficult circumstances. All of the Special Rapporteur's missions are organized by OHCHR field offices, which also gather information and provide analysis of human rights developments. The Special Rapporteur has been gratified by the generous financial support provided by Governments to the field presences of OHCHR, and he is hopeful that this trend will continue in 1999.

I. BOSNIA AND HERZEGOVINA

A. General observations

3. Three years after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (Dayton Agreement) (S/1995/999, annex), the country continues to be divided along ethnic lines. While the Dayton Agreement stopped the fighting and the most egregious violations of human rights and international humanitarian law, underlying issues were to a large extent left to the parties to resolve among themselves on the basis of the Dayton principles. Human rights violations taking place today are directly linked to the parties' failure rigorously to implement the structures and mechanisms agreed to at Dayton. The implementation of Annex 7 (Refugees and Displaced Persons) to the Agreement has been especially poor, with an unacceptably low number of minority returns throughout the country, despite the enormous efforts and pressure brought to bear by the international community. Through the end of 1998 only some 50,000 minority returns had taken place, of which only some 2,000 were to the Entity of the Republika Srpska (RS). There is a huge gap between the verbal commitments of political leaders to respect the right to return and the reality on the ground. Authorities at all levels and in all parts of the country consistently obstruct return programmes in ever-more imaginative ways.

4. In theory the Dayton Agreement guarantees the highest level of human rights standards to the citizens of Bosnia and Herzegovina. In practice, any objective assessment would have to conclude that rights violations continue on a large scale. State actors persistently fail to respect, protect or fulfil their obligations towards citizens. The international community, present in Bosnia and Herzegovina on an unprecedented scale, is pressing ahead with efforts at reform of police and the judiciary to improve the protection of human rights and to make the process self-sustainable. While the Special Rapporteur fully supports these programmes, he would like to see more attention given to the genuine building of civic society. Rushed programmes and the tendency toward imposing solutions from outside will not bring lasting results. It must be recognized that an international presence will have to remain in Bosnia and Herzegovina for a long time to allow for the reconciliation and democratization processes to take root.

5. The Special Rapporteur visited Bosnia and Herzegovina from 4-9 July 1998 and again on 5-8 December 1998. During the latter visit he participated in a Human Rights Conference organized by the Human Rights Centre of the University of Sarajevo and the Council of Europe in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. At that time he also met with representatives of local non-governmental organizations (NGOs), international organizations such as the United Nations High Commissioner for Refugees (UNHCR), and the High Representative in Bosnia and Herzegovina, Mr. Carlos Westendorp.

6. The Special Rapporteur welcomed new institutional arrangements undertaken in Bosnia and Herzegovina, by which the OHCHR field presence would be formally located within the Office of the Special Representative of the Secretary-General in Bosnia and Herzegovina, while maintaining close cooperation with the Office of the High Representative. This arrangement will benefit the Special Rapporteur by providing him better access to information on human rights gathered and verified by these organizations. The Special Rapporteur, while recognizing the importance of receiving all relevant information on the human rights situation from the field, would like to emphasize again the independent character of his mandate, by which any observations, conclusions and recommendations he makes are his alone.

B. Return of refugees and displaced persons

7. The Dayton Agreement guaranteed the right of all refugees and displaced persons freely to return to their homes of origin and to have restored to them, or to receive compensation for, property of which they were deprived in the course of hostilities since 1991. The parties promised to ensure that returns can occur with full security, without fear of harassment, intimidation, persecution or discrimination. The right to choose one's destination freely and the right to information were also guaranteed. These rights are without doubt among the most frequently violated rights in Bosnia and Herzegovina.

8. Three years after, Dayton conditions are still deeply unsatisfactory for returns, especially for the return of minorities. While freedom of movement

improved in 1998 following the introduction of common automobile licence plates, other conditions necessary for returns have not materialized. The

main obstacles to returns remain inadequate security and lack of protection of social and economic rights, particularly those related to property and housing.

9. As reported previously by the Special Rapporteur, violence targeting returnees and potential returnees was widespread in 1998. Incidents were reported from all areas of the country, but the Special Rapporteur must stress his concern over Bosnian Croat-controlled areas, including Stolac, where serious threats to the security of the returnees as well as to international organizations working for returns persisted throughout the year, up to the writing of this report. Large-scale destruction of returnees' property and violent incidents targeting returnees were almost daily occurrences. The situation has remained tense and the safety of returnees has required the presence of tanks of the international Stabilization Force (SFOR) at the site.

10. It is typical of Bosnia and Herzegovina that the local context in which returns happen varies a great deal. If one looks only at the statistics of human rights violations it is possible to be easily misled. For example, in eastern parts of Republika Srpska, the number of security-related incidents against returnees appears to be low. However, this is due to the fact that return movements to these areas, "ethnically cleansed" of Bosnian Muslims during the early stages of the war, have not really even started.

11. Also, methods of obstructing returns vary. While violence against returnees and lack of police action to protect returnees' rights are easily detected, more sophisticated methods of obstructing returns, such as different administrative and legal obstacles and corrupt practices of local authorities, are more difficult to discern. Yet this kind of obstruction is practised rampantly in all areas of Bosnia and Herzegovina.

12. The Special Rapporteur attended the Humanitarian Issues Working Group meeting in Geneva on 20 November, in which UNHCR's paper on Progress in and Prospects for Sustainable Return and Solutions in the Former Yugoslavia (HIWG/98/9 of 16 November 1998) was discussed. The Special Rapporteur would like to express his support for the extremely difficult task that UNHCR is trying to accomplish in the region of the former Yugoslavia to facilitate return movements. He agrees with UNHCR that the central lesson learnt from 1998 is that reaching the goals of the international community, and thereby meeting the aspirations of the great majority of the peoples of the region, will be a time-consuming process - much longer and more demanding than many had expected at the conclusion of the Dayton Agreement.

13. The Special Rapporteur unequivocally supports the right to return to one's home of origin as a fundamental human right. At the same time, it must be recognized that large and ever-increasing numbers of refugees and displaced persons are deciding not to return home. The Special Rapporteur agrees with UNHCR that those persons who have decided not to return need help to rebuild their lives and should not be left in limbo. It is of paramount importance that the choice of residence can be exercised freely and voluntarily without any manipulation or pressures. Such free choice cannot be exercised unless obstacles to return are removed or at least significantly reduced.

14. In Bosnia and Herzegovina, the security environment in the long run requires the development of professional and depoliticized police forces and judiciaries. In the short term, the presence of international military forces and their active support for the implementation of civilian aspects of the Dayton Agreement will remain imperative. Access to adequate housing is another key element. Thus, rigorous implementation of the property and housing legislation now in place in both Entities is fundamentally important.

So far, monitoring of the implementation of the property and housing laws of the Federation of Bosnia and Herzegovina has revealed serious problems and only very few returnees have actually managed to repossess their pre-war housing. In the Republika Srpska, property and housing laws were only passed in early December 1998, but it is very likely that it will prove difficult to enforce them.

15. A number of other issues have to be addressed in addition to those mentioned above. The authorities have to start providing full and unhindered access to all public documents necessary for returnees to realize their rights. Discriminatory treatment in the areas of employment, education, health and social welfare must be eliminated and access to all public services, such as water, gas and electricity ensured. The Special Rapporteur fully supports the increased attention paid by the international community to ensuring these rights to all without discrimination. It is of utmost importance that refugees and displaced persons be provided with information on their rights and effective mechanisms to realize them. It is also vital that local NGOs providing information and legal services to the refugee and displaced population are strengthened and provided with the necessary resources to fulfil their important role.

C. Refugees from Kosovo

16. The Special Rapporteur would like to draw attention to the plight of Kosovo refugees in Bosnia and Herzegovina, most of them women and children, many of whom continue to live in extremely bad living conditions. The Special Rapporteur visited in early December the refugee camp in a former Coca Cola factory in Hadzici, near Sarajevo, where some 1,200 refugees have been accommodated for months without proper heating and in totally inadequate hygienic conditions, despite the efforts of UNHCR to provide adequate facilities. According to the instructions on the temporary admission of refugees from Kosovo, the refugees are to be granted the right to a temporary stay and necessary assistance. At the time of the visit of the Special Rapporteur, the conditions observed were far from satisfactory and urgent action was needed on behalf of State and Federation authorities to improve the conditions and to transfer the refugees to suitable accommodation. The order for provisional measures issued by the Human Rights Chamber on 4 December based on the application of some refugees, directed the authorities (both the state of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina) to take all necessary steps to protect applicants' health by improving the heating and sanitary conditions in the refugee camp and by considering the applicants' transfer to more suitable premises. The Special Rapporteur, through the field presence of OHCHR, is following closely the steps taken by the authorities to comply with the order of the Human Rights Chamber.

D. Property rights and legislation

17. Due to massive displacement during the war, the destruction of huge numbers of properties and complex wartime property legislation, property violations are among the most pervasive rights violations in Bosnia and Herzegovina. Re-establishing the rule of law in this area is one of the most difficult tasks facing Bosnian society. As described by the Special Rapporteur on previous occasions, property and housing laws were amended in the Federation and entered into force on 4 April 1998. The implementation of these laws faced serious obstacles and there were widespread unlawful practices on the part of municipal housing authorities, which led the High Representative to extend by six months the 4 October deadline for submitting claims to socially-owned apartments. Since the decision to extend the deadline, the registration of claims in most municipalities reportedly has improved. However, deadlines prescribed by the laws for taking decisions are still usually not complied with, and progress on deciding claims is unacceptably low. The overwhelming majority of claimants still have not regained possession of their properties.

18. In the Republika Srpska, property laws were finally passed by the RS National Assembly in late 1998. The laws, which at the time of writing this report were not yet available, will presumably have similar provisions to those of the Federation.

19. It should be emphasized that the passing of the property laws in both Entities was a major achievement, achieved by the exertion of enormous pressure by the international community. Monitoring and enforcing compliance with the laws will require continuing efforts as local authorities are extremely reluctant to implement the laws and thus enable pre-war occupants of property to return.

20. The evictions of illegal occupants, necessary for the reinstatement of returnees to their pre-war homes in Republika Srpska, have continued to encounter delays. Despite repeated interventions by the international community, action by local police to enforce evictions remains weak. The situation of "floaters" (persons illegally evicted from their property during the war, who remain in Banja Luka) remains practically unresolved. There were five reinstatements of "floaters" reported in Banja Luka during August 1998, none during the elections period in September, and a further four in October.

In the first half of November five court-ordered evictions were scheduled, but none were carried out. The Helsinki Committee for Human Rights in Republika Srpska reported to the Special Rapporteur the similar situation of minorities in the Bijeljina area, who had been illegally evicted from their properties and had stayed in Bijeljina in desperate living conditions.

E. Economic and social rights

21. The International Covenant on Economic, Social and Cultural Rights, which is binding on Bosnia and Herzegovina, contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the

highest attainable standards of health, to education and to enjoyment of benefits of cultural freedom. The Covenant obliges States to take steps by all appropriate means, including by adoption of legislative measures, to achieve progressively these rights without discrimination. The Covenant specifically guarantees that men and women possess precisely the same legal entitlements and provides a framework for measures to be taken so that women may enjoy on an equal footing rights which have often been denied to them.

22. Information received from various sources, including the Federation Ombudsmen and local NGOs, indicates that violations of economic and social rights are common and discrimination is widespread. Discrimination in employment on all grounds (including ethnic origin, political affiliation or opinion, and gender) has been singled out as one of the most serious problems and needs to be addressed. There is an urgent need to review current and proposed labour legislation to incorporate non-discrimination principles from the beginning. Mechanisms to protect workers' rights must be developed and implemented.

F. Human rights institutions

1. Commission on Human Rights

23. The Dayton Agreement created institutions specifically to deal with the protection of human rights in Bosnia and Herzegovina. The Commission on Human Rights, created by Annex 6 of the Agreement, consists of the Human Rights Chamber, a judicial body with powers to issue binding decisions, and the Human Rights Ombudsperson, a mediation-oriented body that has powers to conduct investigations and issue recommendations. The Dayton Agreement obligates the Parties to cooperate fully with the Annex 6 institutions and to comply with their decisions and recommendations. In 1998 the cooperation of State and entity authorities with the Commission was impeded by the slow process of appointment of governmental agents to the Commission. Implementation of final and binding decisions of the Human Rights Chamber has been far from satisfactory. With regard to the recommendations of the Ombudsperson, compliance by the RS authorities has improved significantly, whereas compliance by the Federation and the State remains problematic.

2. Entity institutions

24. The institution of the Federation Ombudsmen, established by the Washington Agreement in 1994, is composed of three Ombudsmen, and is competent to conduct investigations into human rights violations in the territory of the Federation. The institution has nine branch offices throughout the Federation. Although the cooperation of the authorities with the Federation Ombudsmen has generally improved during 1998, it remains erratic in more politically sensitive human rights cases. The Special Rapporteur, closely follows the work of the Federation Ombudsmen and intends to maintain a good cooperation with them. He strongly encourages the RS authorities to create an Ombudsmen-type institution.

G. Rule of Law

25. The establishment of genuine rule of law in Bosnia and Herzegovina is the highest priority. This requires a thorough and comprehensive reform of the judicial system. The Constitution of Bosnia and Herzegovina stipulates that Bosnia and Herzegovina shall be a democratic State which shall operate under the rule of law. It obliges the State and both Entities to ensure the highest level of internationally recognized human rights and fundamental freedoms. Reality, however, is very different. The task is a difficult one, as Bosnia and Herzegovina has to go through a transition from a socialist system to a democracy at the same time as it is recovering from the conflict that divided the country. However, Bosnia and Herzegovina is in a relatively privileged position, as there are many agencies present, both intergovernmental and non-governmental, which are willing to assist in this process.

26. The main problem is the lack of an independent and impartial judiciary in both Entities. There is lack of transparency and unacceptable political involvement at all stages of judicial process, including the prosecution. For example, in numerous cases of violence against returnees the prosecution of perpetrators is inadequate or totally lacking, even if the perpetrators have been identified. The courts often do not respect the rights of members of ethnic groups, whose cases are left pending for long periods or never taken up. When the courts issue decisions, they are not enforced. The problems are further complicated by the complexity of the legal framework, the destruction of the infrastructure and losses of professional personnel.

27. The establishment of the rule of law requires the restructuring and reform of police, tasks undertaken by the United Nations International Police Task Force. The establishment of multi-ethnic, professional and depoliticized police forces in both Entities, which is still far from having been completed, is vital for sustainable returns of minorities. As reported in the October update report of the Special Rapporteur, Bosnian Serb police officers constitute only 1.17 per cent of the Federation police force. In the Republika Srpska, Bosniaks and Bosnian Croats constitute 2.77 per cent of the total RS police force. The number of women serving in the police forces in both Entities is also far too low - below 1 per cent. Gender specific crimes, such as domestic violence and rape, cannot be properly addressed under the current circumstances. Training of all police should include human rights training and gender sensitization.

H. Missing persons

28. The extent of the problem of missing persons in Bosnia and Herzegovina is huge. Some 20,000 people were reported missing during the conflict, according to data available from the International Committee of the Red Cross (ICRC). It is generally acknowledged that the majority of the missing have died. Allegations of hidden detentions have reportedly decreased and continued to be checked by the ICRC and the United Nations International Police Task Force. Unannounced visits to alleged places of detention and prison facilities have been conducted by both agencies. In 1998 no hidden detainees were found. The process of exhumations and identification will be the most effective and reliable way of resolving the cases of missing persons. In 1998 the joint exhumation process, coordinated by the Office of the High Representative and carried out by teams of local commissions (Bosniac, Serb and Croat), monitored by international experts, has been carried out without major problems, including across inter-Entity lines. As of 10 December 1998 the number of graves exhumed was 310, with a total of 1,753 bodies exhumed and an identification percentage of approximately 70 per cent.

I. Conclusions and recommendations

29. The Special Rapporteur is once again obliged to conclude that while some improvements in the situation of human rights can be observed, the authorities and political leaders currently in power in Bosnia and Herzegovina continue to undermine efforts aimed at integrating the country, which is divided along ethnic lines.

30. The return process continues to be obstructed in many ways and so far the results have been insignificant, in particular if measured against the efforts and resources spent by the international community. The efforts to improve security have to be stepped up and property rights, as guaranteed in the new property and housing laws in both Entities, have to be respected. The manipulation of returnees and displaced persons has to be stopped. Refugees and displaced persons must be able freely to choose whether to return or stay and they have to be given objective information on conditions for return, including the security situation.

31. A high priority has to be given to the resolution of the situation of "floaters" in Banja Luka and other municipalities in the Republika Srpska. This would send the right signal to others contemplating returning.

32. The transition of Bosnia and Herzegovina into a democratic society built on rule of law and respecting the human rights of all is a long-term process. The Special Rapporteur believes that the presence and the commitment of international community in Bosnia and Herzegovina will be needed for a long time. The programmes and activities of different agencies have been moving in the right direction and coordination of different actors appears to be sufficient and improving. However, the Special Rapporteur believes that local actors, including non-governmental organizations, should be more involved in human rights work, also on the policy level.

33. The prosecution and punishment of war criminals in the International Criminal Tribunal for the Former Yugoslavia in The Hague, which has gained momentum in 1998, has to be speeded up and the indictees still at large, mainly in the Republika Srpska, should either surrender or be arrested. As

there is misinformation on the mandate and activities of the ICTY, efforts should be made to improve the knowledge of the population in general of the work of the ICTY, in particular its mandate, procedures and decisions issued so far.

34. The Special Rapporteur believes that the reconciliation process would benefit from the establishment of some kind of truth commission. The local actors whom the Special Rapporteur has spoken with all seem to support this kind of process.

35. The Special Rapporteur believes that accession to the Council of Europe should not be granted before Bosnia and Herzegovina meets the minimum conditions which had been set for the opening of the procedure. The assessment has to be made on the real situation and not on formal grounds or for political reasons.

II. REPUBLIC OF CROATIA

A. Introduction

36. The present report is based on information compiled from a variety of sources by the Zagreb office of the (United Nations) High Commissioner for Human Rights (OHCHR). It takes into account information from the Government of Croatia, including the Government's reactions to the reports of OHCHR Croatia. It is further based on first hand field work, the reports of other international organizations, Croatian lawyers, and local and international non-governmental organizations (NGOs).

37. The Special Rapporteur wishes to thank the Government of Croatia, as well as local and international organizations in the field, for their assistance to OHCHR in Zagreb and for their generous cooperation in the exercise of his mandate.

B. Returnees and refugees

38. On a positive note, in the context of the Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons endorsed by Parliament on 26 June 1998, the Government of Croatia has adopted recommendations for legal reforms related to the return process, which had been suggested by a group of international and government legal experts in October - such as a new Law on Areas of Special State Concern - which are designed to overcome existing discriminatory legal provisions that have impeded return and repossession of property. It is to be hoped that these changes will help ensure the equality of all eligible persons, regardless of nationality, with respect to entitlements, benefits and obligations.

39. The Government, in November 1998, began issuing temporary green cards affirming returnee status to both organized and spontaneous returnees who returned to their places of origin in Croatia, with the intention of making it easier for them to have access to rights and entitlements while awaiting identification and other documents. Preliminary reports, however, note that the temporary cards do not provide substantial benefits, particularly access