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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN
ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER
DEPENDENT COUNTRIES AND TERRITORIES

Czech Republic*, El Salvador, Germany, Latvia* and
United States of America: draft resolution

1996/... Situation of Human rights in the Republic of Bosnia and
Herzegovina, the state of Bosnia and Herzegovina, the
Republic of Croatia and the Federal Republic of
Yugoslavia (Serbia and Montenegro)

The Commission on Human Rights,

Guided by the Charter of the United Nations, the Universal Declaration of
Human Rights, the International Covenants on Human Rights and all other
relevant instruments relating to human rights and international humanitarian
law,

Reaffirming all relevant resolutions of the Commission, the
General Assembly and the Security Council on this subject, in particular its
own resolutions 1992/S-1/1 of 14 August 1992, 1995/35 of 3 March 1995 and

* In accordance with rule 69, paragraph 3, of the rules of procedure of
the functional commissions of the Economic and Social Council.

1995/89 of 8 March 1995, especially its paragraph 3, General Assembly resolutions 50/190 and 50/193 of 22 December 1995 and Security Council resolutions 1031 (1995) of 15 December and 1035 (1995) of 21 December 1995,

Gravely concerned at the human tragedy that has occurred in the Republic of Bosnia and Herzegovina and also in the Republic of Croatia and in the Federal Republic of Yugoslavia (Serbia and Montenegro), by the associated massive and systematic violations of human rights and international humanitarian law, including genocidal acts, and in particular at those violations committed in the context of the systematic practice of ethnic cleansing, which has been the direct cause of the vast majority of human rights violations there,

Convinced that a full and objective account of violations of human rights will contribute to building confidence among the parties, thus promoting reconciliation and democratization,

Stressing the importance of the promotion and protection of all human rights and fundamental freedoms,

Recognizing the important work of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia, established pursuant to Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993,

Recognizing that, while individuals of all parties to the conflict have committed atrocities, a considerable number of Bosnian Serbs, including in the military and civilian leadership, and among combatants at all levels, are responsible for the preponderance of violations of human rights and international humanitarian law since the beginning of the conflict,

Expressing its full support for the General Framework for Peace in Bosnia and Herzegovina (the "Framework Agreement") and the annexes thereto, initialled in Dayton, Ohio on 21 November 1995 and signed in Paris on 14 December 1995 (together, the "peace agreement") (A/50/790-S/1995/999) and for the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, signed on 12 November 1995 (S/1995/951, annex) and for Security Council resolution 1037 (1995), which establishes the United Nations Transitional Authority in Eastern Slavonia,

Convinced that the successful functioning of the mechanisms established in accordance with annex 6 to the peace agreement, in particular the

Commission on Human Rights for Bosnia and Herzegovina and its two components, the Human Rights Chamber and the Office of the Ombudsman, which constitute central elements for the protection of human rights, will help to build the foundations for a democratic, multi-ethnic society in the state of Bosnia and Herzegovina,

Expressing its support for the efforts of the Organization for Security and Cooperation in Europe mission to monitor and strengthen respect for human rights and fundamental freedoms in the state of Bosnia and Herzegovina, to establish a climate of dialogue and confidence between its peoples and to contribute to an environment conducive to the conduct of free and fair elections,

Dismayed by the huge number of missing persons, many of whom may be buried in mass graves, as a consequence of the continuing practice of ethnic cleansing and of the armed conflict in the territory of the former Yugoslavia, particularly in the state of Bosnia and Herzegovina and the Republic of Croatia,

Welcoming the report of the expert member of the Working Group on Enforced or Involuntary Disappearances on the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36), as well as the establishment of the Expert Group on Exhumation and Missing Persons chaired by the Office of the High Representative,

Commending the positive efforts undertaken by the International Committee of the Red Cross to re-establish links among relatives separated by the conflict and to trace persons unaccounted for and to inform their families accordingly,

Commending also the United Nations High Commissioner for Refugees for her action in support of the humanitarian operation during the period of conflict and her activities in the implementation of annex 7 to the peace agreement,

Reaffirming the vital importance of freedom of movement and the right of return for all persons and noting the commitments made in the peace agreement (annex 7) that persons have the right to return to their homes in safety and dignity, and have their property restored or receive compensation for property that cannot be restored to them,

Encouraging the international community, acting through the United Nations, the Organization for Security and Cooperation in Europe, the International Committee of the Red Cross and other international organizations

as well as bilaterally, to continue humanitarian support for the people of these countries to ensure that lasting solutions are found for displaced persons and refugees through a process of early, peaceful, orderly and phased return and to give close attention to the protection of human rights in the repatriation of refugees and the return of displaced persons, paying special attention to the situation of returning women and children,

Welcoming the agreement by the parties to the peace agreement to ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment, the protection of the right to vote in secret without fear or intimidation, freedom of expression and of the media and freedom of association,

Underlining the relationship between the fulfilment by the parties of their human rights commitments and the readiness of the international community to commit resources for reconstruction and development,

Gravely concerned at reports by the Special Rapporteur and the Secretary-General, of grave and massive violations of international humanitarian law and of human rights, in particular, in and around Srebrenica and Zepa and in the areas of Banja Luka and Sanski Most, including reports of mass murder, unlawful detention and forced labour, rape and expulsion of civilians,

Deeply concerned by the information contained in the reports of the Secretary-General on rape and abuse of women in the areas of armed conflict in the former Yugoslavia, particularly in the Republic of Bosnia and Herzegovina (A/48/858 and A/50/329),

Expressing its particular concern for the situation of children and the elderly as well as other vulnerable groups in these countries,

Stressing that effective cooperation of the Governments of the state of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), with the assistance of parties and organizations in a position to help, in resolving the problem of missing persons represents a critical test of their commitment to the peace process and restoration of confidence in the region,

Deeply concerned as well at the situation of human rights throughout the Federal Republic of Yugoslavia (Serbia and Montenegro), particularly in Kosovo, but also in Sandjak and in Vojvodina,

Expressing its concern also at the situation of human rights in the Republic of Croatia, in particular in the former United Nations Sectors South and North, Eastern Slavonia, Baranja and Western Sirmium, and in this context welcoming the statement on the Republic of Croatia by the President of the Security Council on 23 February 1995 (S/PRST/1996/8),

Emphasizing the important role that religious leaders and organizations should have in bringing about reconciliation, and encouraging the parties to find ways to rebuild places of worship and cultural sites destroyed during the conflict, especially in the state of Bosnia and Herzegovina as well as in the Republic of Croatia,

Underlining the necessity for all the actors in the field of human rights to coordinate their efforts,

I. Violations of human rights

1. Condemns in the strongest terms all violations of human rights and international humanitarian law by the parties to the conflict, in particular in areas which were under the control of the self-proclaimed Bosnian and Croatian Serb authorities, in particular massive and systematic violations, including, inter alia, systematic ethnic cleansing, killings, disappearances, torture, rape, detentions, beatings, arbitrary searches, burning and looting of houses, shelling of residential areas, illegal and forcible evictions and other acts of violence aimed at forcing individuals from their homes, and reaffirms that all persons who plan, commit or authorize such acts will be held personally responsible and accountable;

2. Expresses its outrage that the abominable, deliberate and systematic practice of rape has been used as a weapon of war in the Republic of Bosnia and Herzegovina, recognizes that rape in this context constitutes a war crime; and calls for protection and care of rape victims, respect for the special needs of victims of sexual violence in the investigation and prosecution of alleged violations, and punishment of those responsible;

3. Expresses its concern over continuing human rights violations within the state of Bosnia and Herzegovina and delays in fully implementing the human rights provisions of the peace agreement, including:

(a) Continuing restrictions on freedom of movement both within the Republika Srpska, within the Federation and between the Republika Srpska and the Federation;

(b) Actions that undermine the principle of right to return, including enforcement of legislation which restricts rights to claim "socially owned" property throughout the state of Bosnia and Herzegovina, unjustified evictions of persons from their homes and resettlement of displaced persons in homes which, under the agreement reached in Geneva on 18 March 1996, should remain vacant for six months;

(c) Continuing unauthorized arrests by all parties of persons suspected of serious violations of international humanitarian law, despite the parties' agreement in Rome on 18 February 1996 that such arrests would be made only after the International Tribunal had reviewed and approved orders of arrest as consistent with international legal standards;

II. International Tribunal

4. Supports fully the efforts of the International Tribunal aimed at the prosecution and trial of persons accused of having committed serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991, and requests States, as a matter of urgency, to continue to make available to the Tribunal adequate resources to aid in the fulfilment of its mandate;

5. Demands that all States and parties to the peace agreement meet their obligations to cooperate fully with the Tribunal, as required by Security Council resolution 827 (1993) of 25 May 1993, including with respect to surrendering persons sought by the Tribunal;

6. Expresses its outrage over the failure of parties to arrest and surrender persons indicted by the Tribunal in violation of the peace agreement, demands that all States arrest, detain and facilitate the transfer of such persons to the custody of the Tribunal and ensure adequate protection of witnesses who have appeared before the Tribunal, and urges the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and authorities in the Republika Srpska to allow the establishment of offices of the Tribunal in their territories;

III. Framework Agreement

7. Emphasizes that the Framework Agreement and the annexes thereto commit the parties to secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the right to life, liberty and security of person;

8. Expects the parties to ensure that the constitutional court, the Commission on Human Rights for Bosnia and Herzegovina and its two parts, the Office of the Ombudsman and the Human Rights Chamber, are fully supported and their decisions respected;
9. Also expects the parties to cooperate fully with the international mechanisms that have mandates involving human rights, including the High Representative, the High Commissioner for Human Rights, the Organization for Security and Cooperation in Europe, the Council of Europe and other international, regional as well as non-governmental organizations;
10. Commends the High Commissioner for Human Rights for his activities in the implementation of the peace agreement, in particular by developing and conducting training for international monitors, including for the missions of the Organization for Security and Cooperation in Europe and the International Police Task Force, making available to the High Representative human rights experts; continuing to support the work of the Special Rapporteur and the Expert in charge of the special process dealing with missing persons, and calls upon all States to provide the High Commissioner with the necessary resources;
11. Urges all organizations involved in human rights monitoring, including the Organization for Security and Cooperation in Europe and the International Police Task Force, to ensure that persons with expertise in investigating and working with victims of sexual assault be included among the human rights monitors, and encourages the High Representative to support these efforts in his coordinating role;
12. Acknowledges the release of prisoners, insists that all parties continue to fulfil their commitments in conformity with the peace agreement to release without delay all civilians and combatants detained in relation to the conflict, and demands that the parties cooperate fully with the International Committee of the Red Cross in this regard;
13. Recalls the relationship, as described in the London Conference, between the fulfilment by the parties of their commitments in the peace agreement and the readiness of the international community to commit resources for reconstruction and development;
14. Insists that the parties, in conformity with the peace agreement (annex 7, art. 5), provide information through the tracing mechanisms of the International Committee of the Red Cross on all persons unaccounted for;

IV. Building for the future

15. Stresses that primary responsibility for the promotion of free, fair and democratic elections, to be held under the auspices of the Organization for Security and Cooperation in Europe and other international organizations, for laying the foundation for representative government and for ensuring the progressive achievement of democratic goals and the building of a tolerant, multi-ethnic society lies with the people of the state of Bosnia and Herzegovina, in particular through the central Government and the governments of the entities as well as through, inter alia, religious communities, humanitarian organizations and non-governmental organizations;

16. Insists that the parties abide by their commitments to promote and protect democratic institutions of government at all levels in their respective countries, to ensure freedom of expression and of the press, to allow and encourage freedom of association, including with respect to political parties, and to ensure freedom of movement;

17. Appeals to the international community to support such efforts and, in particular, the promotion of democratic institutions in the Federal Republic of Yugoslavia (Serbia and Montenegro), the state of Bosnia and Herzegovina and the Republic of Croatia, inter alia, by improving the administration of justice and the functioning of free media and by fostering a culture of respect for human rights;

18. Encourages all Governments to respond favourably to the United Nations revised consolidated inter-agency appeal for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia and Slovenia to assist refugees, internally displaced persons and other war-affected people to rebuild their lives, in particular the activities proposed by the High Commissioner for Human Rights;

19. Also encourages all Governments to respond favourably to the Joint Appeal from the High Representative, the Organization for Security and Cooperation in Europe and the Council of Europe for voluntary contributions to the Organization for Security and Cooperation in Europe fund established to finance the Commission on Human Rights for Bosnia and Herzegovina, other institutions of justice and elections in this state;

V. Immediate steps

20. Welcomes positive developments which contribute to reducing human rights violations in the area, including increased access being provided to the International Committee of the Red Cross and other humanitarian

organizations; increased cooperation by all parties with the Office of the United Nations High Commissioner for Refugees and the opening of field offices of the Centre for Human Rights in the Federal Republic of Yugoslavia (Serbia and Montenegro) and in Eastern Slavonia;

21. Urges the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the state of Bosnia and Herzegovina and the authorities of the Federation of Bosnia and Herzegovina and the Republika Srpska to facilitate, with the assistance of the international community, the safe and dignified return of refugees and displaced persons to their homes, honouring fully the commitments undertaken under the peace agreement in regard to human rights and refugee issues (annexes 6 and 7);

22. Calls upon the Government of the Republic of Croatia to respect fully the rights of the local Serb population including their right to remain, leave or return in dignity and safety, allow continued access to this population by humanitarian organizations and create conditions conducive to the return of those persons who have left or were forced to leave their homes, as demanded by the Security Council in its resolution 1009 (1995) of 10 August 1995, and pursue vigorously prosecutions against those suspected of past violations of international humanitarian law and human rights, while ensuring that the rights to a fair trial and to legal representation are afforded to all persons suspected of such crimes;

23. Expresses its full support for the plans of the United Nations Transitional Authority in Eastern Slavonia to organize the return in dignity and safety of Croatian and other non-Serb refugees who were forcibly expelled from their homes;

24. Strongly urges the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and the state of Bosnia and Herzegovina and the authorities of the Federation of Bosnia and Herzegovina and the Republika Srpska to take immediate and effective steps to build confidence among people in order to prevent new mass exoduses of populations, calls upon the Republika Srpska and the Federation to adopt amnesty laws, and deplures reports of arrests inconsistent with the amnesty law adopted by the state of Bosnia and Herzegovina;

25. Strongly urges the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) to revoke all discriminatory legislation and to apply all other legislation without discrimination, release all

political detainees, allow the free return of ethnic Albanian refugees to Kosovo and take appropriate measures to respect fully all human rights and fundamental freedoms, including freedom of the press and freedom of movement and freedom from discrimination in the field of education and information, and to stop discrimination against and guarantee fully the rights of all persons belonging to any ethnic, national, religious or linguistic minority;

26. Urgently demands that the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) take immediate action to put an end to the repression of and prevent violence against non-Serb populations in Kosovo, including acts of harassment, beatings, torture, warrantless searches, arbitrary detention, unfair trials, arbitrary, unjustified evictions and dismissals and also to respect the rights of persons belonging to minority groups in Sandjak and Vojvodina and of persons belonging to the Bulgarian minority;

27. Also urgently demands that the Federal Republic of Yugoslavia (Serbia and Montenegro) allow ethnic Albanians in Kosovo to participate fully in the life of Kosovo without discrimination and to enjoy political and educational rights, including by allowing the establishment of democratic institutions, and the right to seek, receive and impart information and ideas through any media and, in particular to improve the situation of ethnic Albanian women and children, and to allow an international presence for monitoring of the human rights situation in Kosovo;

28. Reiterates its call to all parties in the Federal Republic of Yugoslavia (Serbia and Montenegro) to engage in a substantive dialogue, to act with the utmost restraint and to settle disputes peacefully and with full respect for human rights, and calls especially upon the Federal Republic of Yugoslavia (Serbia and Montenegro) to pursue dialogue with representatives of ethnic Albanians in Kosovo;

29. Emphasizes that improvements in the promotion and protection of human rights and political freedoms in Kosovo and the rest of its territory as well as cooperation with the Tribunal will assist the Federal Republic of Yugoslavia (Serbia and Montenegro) to establish the full range of relations with the international community;

VI. Cooperation and coordination

30. Calls upon the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and the state of Bosnia and Herzegovina

to ensure full and free access to their territories to all institutions concerned with the implementation of the present resolution, including non-governmental organizations;

31. Requests the Governments of the territories within the mandate of the Special Rapporteur to cooperate with her and provide her on a regular basis with information about the actions they are undertaking to implement her recommendations;

32. Urges all bodies concerned with the situation in the state of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and with the implementation of the peace agreement, inter alia the relevant United Nations bodies, the High Representative, the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe, to coordinate their activities closely and to exchange on a continuing basis all relevant information in their possession on the situation in these territories, particularly through the Human Rights Coordination Centre that has been established to address this issue;

VII. Missing Persons

33. Commends the expert member of the Working Group on Enforced or Involuntary Disappearances for his report on the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36);

34. Draws attention to the need for immediate and urgent efforts to determine the fate of missing persons, including in cases where other means of determining the fate of the missing have proven unsuccessful and upon the recommendation by qualified experts that exhumation will provide an efficient means for resolving cases that are unlikely to be resolved by other means, an eventual examination by such experts of mass grave sites or sites where arbitrary executions or killings of many thousands of persons are reported to have taken place, in particular, near Srebrenica, Zepa, Prijedor, Sanski Most and Vukovar, and the communication of any determination to the families of the missing, and

(a) Requests that the expert member of the Working Group on Enforced or Involuntary Disappearances, in conjunction with his mandate for the special process dealing with the problem of missing persons in the state of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), the International Tribunal, the High Representative,

the Special Rapporteur and the International Committee of the Red Cross coordinate their efforts to this end, within their respective mandates, particularly through the Expert Group on Exhumations and Missing Persons established under the authority of the High Representative and that they prepare a comprehensive plan for dealing with this question in the state of Bosnia and Herzegovina as well as in the Republic of Croatia;

(b) Underlines in this respect the need for the establishment of an ante mortem database to assist with identification of the dead before large-scale exhumations can be considered;

(c) Recalls the commitment of the Implementation Force to work to provide a secure environment for these tasks;

(d) Strongly reminds the parties of their commitment, made in Rome on 17 February 1996, to provide unrestricted access to the sites described above;

(e) Demands that all parties refrain from any action intended to destroy, alter, conceal or damage any evidence of violations of human rights and international humanitarian law and that they preserve such evidence;

(f) Also demands that all parties cooperate fully with the expert for the special process, the Expert Group and the International Committee of the Red Cross Working Group on Missing Persons by providing all relevant information to aid in determining the fate of missing persons in conformity with their obligations under the peace agreement;

35. Reminds the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) of its responsibility to investigate enforced disappearances, enhance its cooperation with the Republic of Croatia and with the state of Bosnia and Herzegovina in tracing missing persons and to provide complete and precise information on this subject, calls upon the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to live up to its bilateral agreement with the Republic of Croatia to this effect, to accept similar bilateral arrangements with the state of Bosnia and Herzegovina and to respond positively to the efforts of the expert for the special process, including by attending high-level intergovernmental meetings to this end;

36. Requests the expert for the special process to assume responsibility for securing appropriate support, including financial assistance, for the activities of the Expert Group, and requests the international community to make available the necessary means for this undertaking;

37. Recommends to this end that the High Commissioner for Human Rights provide, through existing voluntary funding mechanisms, means to assist the expert for the special process to secure the necessary financial assistance;

38. Decides to extend for one year the mandate of the expert for the special process dealing with missing persons, and requests him to continue to report to the Commission on this matter;

39. Requests the Secretary-General to continue providing the special process on missing persons with the necessary resources, so that it can perform its functions continuously and expeditiously;

VIII. Special Rapporteur

40. Commends both the former and the current Special Rapporteur of the Commission on Human Rights on the situation of human rights in the state of Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro) for their efforts, welcomes the report of the Special Rapporteur, and calls on the Governments of these States to continue to support the work of the Special Rapporteur;

41. Notes with concern that the past recommendations of the Special Rapporteur have been implemented only in part, and urges the parties, all States and relevant organizations to give immediate consideration to them;

42. Urges Member States to take into account the Special Rapporteur's recommendation that major reconstruction aid for the state of Bosnia and Herzegovina must be made conditional on demonstrated respect for human rights, and emphasizes in that respect the necessity of cooperation with the International Tribunal;

43. Recommends that the High Commissioner for Human Rights maintain his offices in the former Yugoslav Republic of Macedonia for the purpose of maintaining cooperation and dialogue with the Government of the former Yugoslav Republic of Macedonia;

44. Requests the Special Rapporteur, in addition to the activities mandated in its resolution 1994/72 of 9 March 1994 and in order to increase coordination with other actors in the field of human rights and to promote reconciliation among the parties:

(a) To establish a plan for her reporting on the human rights situation in the state of Bosnia and Herzegovina, particularly relating to ongoing abuses of human rights;

(b) To support the High Representative's efforts to report on the implementation of the peace agreement by providing information and recommendations concerning compliance with the human rights elements of the agreement;

(c) To continue to compile an overview of the human rights situation since 1991 in coordination with relevant human rights organizations and the International Tribunal;

45. Decides to extend for one year the mandate of the Special Rapporteur as revised in the present resolution, and requests that she continue her vital efforts, especially by carrying out missions to:

(a) The state of Bosnia and Herzegovina;

(b) The Republic of Croatia;

(c) The Federal Republic of Yugoslavia (Serbia and Montenegro), in particular to Kosovo, as well as to Sandjak and Vojvodina;

and that she continue to submit periodic reports to the Commission on Human Rights and the General Assembly and to request the Secretary-General to continue to make the Special Rapporteur's reports available to the Security Council and to the Organization for Security and Cooperation in Europe, and to exchange information and advice on the human rights situation in the territories covered by her mandate with the High Representative, the Organization for Security and Cooperation in Europe and other competent organizations;

46. Urges the Secretary-General, from within existing resources, to make all necessary resources available for the Special Rapporteur to carry out her mandate successfully and in particular to provide her with adequate staff based in those territories to ensure effective continuous monitoring of the human rights situation there and coordination with other United Nations bodies involved;

47. Decides to continue its examination of this question at its fifty-third session under the same agenda items.
