

**ROUND TABLE
ON « THE LEGAL ASPECTS
OF A UN - TRUSTEESHIP
FOR BOSNIA-HERZEGOWINA »**

PAR

Neri SYBESMA-KNOL

On 5 February 1993 the Centre for United Nations Studies of the Free University of Brussels (V.U.B.), in cooperation with the Catholic University of Leuven (K.U.L.) and the VERONA FORUM (1) invited specialists in public international law to participate in a discussion on the legal aspects, and on the feasibility, of an international trusteeship for Bosnia-Herzegovina.

The proposal for an international trusteeship figures as an alternative for the Vance-Owen-Plan, and is presented by Yugoslav citizens, now forced to live abroad, who do not want to accept gains of the Serbian groups in Bosnia as a point of departure for a settlement.

Chairman of the Round Table was Prof. Erik SUY (University of Leuven, K.U.L.)

Speakers were : Ms Ann PAUWELS (VUB), Koen DE FEYTER (U.I.A.), Prof. Zoran PAJIC (University of Sarajevo, University of Essex) and Dr. Drazen PETROVIC (University of Sarajevo, University of Geneva).

The subject of the Round Table was introduced by Professor Neri SYBESMA-KNOL, Director of the Centre for UN-Studies of the VUB.

She briefly recalled the legal framework of the predecessor of the United Nations Trusteeship system, the Mandate System of the League of Nations as laid down in the Covenant.

She explained that, basically, this Mandate System provided for the « administration » of a certain territory (former German colony or part of

(1) The « VERONA FORUM FOR PEACE AND RECONCILIATION IN FORMER YUGOSLAVIA » is a platform for civic initiatives of qualified individuals, groups, organizations and parties in former Yugoslavia who through dialogue promote democratic solutions, peace and reconciliation. It supports concrete projects, such as the proposal for a Trusteeship for Bosnia, and organizes discussions with experts and policymakers.

the Ottoman Empire) *by another State*, and until the peoples of such territories would be « able to stand by themselves under the strenuous conditions of the modern world », the well-being and development of such peoples forming « a sacred trust of civilization ».

The novelty of such a system was the supervision by a League of Nations body : the Mandates Commission.

The Mandate System was continued under the UN-Charter, which provides (art. 77) for various categories of « trusteeship » and for the possibility of placing territories under the system on a voluntary basis. However, article 78 of the Charter clearly states that the Trusteeship System does not apply to territories which have become Members of the United Nations, that is, to Bosnia-Herzegowina.

Professor Zoran PAJIC then described the origin of the present crisis in a part of former Yugoslavia in which traditionally different ethnic groups have lived and worked together in a peaceful and constructive manner. The multi-ethnic character of Bosnia-Herzegowina was proverbial : there were many mixed marriages and mixed families. Ethnic origins were never stressed in this society.

According to Prof. PAJIC, the Vance-Owen Plan would destroy forever this pluralistic element which has been the hallmark of Bosnia, and more specifically of Sarajewo. What is needed now is a moratorium to create a more favorable political environment, and a major involvement of the international community, with massive administrative and military support.

Doctor Drazen PETROVIC then presented the proposal to place Bosnia Herzegowina under an institutional system of international assistance and administration :

« Legal Bases of the Proposal »

1. The idea for an institutional system of international assistance and administration can be linked by analogy to provisions which deal with an international protectorate system as foreseen in Chapter XII (para. 75-85) in the U.N. Charter.

We are aware of the fact that this system was foreseen for other historical circumstances, but we believe that it can be applied by analogy to independent countries in which there is civil war with great consequences or in countries which derived as the consequence of the dissolution of communist rule and in which there are serious tensions which threaten peace.

2. The Republic of Bosnia-Herzegowina is an internationally recognized state and a member of international organizations, such as the U.N.

We believe, therefore, that the proposed system cannot be introduced on the basis of decisions of international institutions (nor can the UN-Trusteeship system be directly applied). Rather, it should be based on an international agreement attained between the legitimate authorities of the Republic of B-H and an international institution prepared to offer this sort of assistance and administration.

3. The aims of the U.N. as outlined in article 1 of the UN Charter, primarily the interest in maintaining peace and security in the world, as well as the need to ensure the application and observance of human rights on the basis of the right of a people to self-determination, but also on the principle of equal rights for all people without any kind of discrimination (on any basis), leads us to the consideration that the central role in this situation should be undertaken by the U.N.

4. All political parties in B-H have already demonstrated their willingness to incorporate international factors in the solving of internal problems, even to a considerable extent in the constitutional system of B-H.

Basic Elements of the Proposal

1. The decision of the U.N. Security Council concerning the idea of an institutional system of international assistance and administration opens the process of negotiating about the elements of an international agreement on which it would be based. The authority of the U.N. Security Council is necessary for carrying out this project. This institution should pass, according to article 81 of the U.N.-Charter, a decision on establishing administrative authority under the auspices of the U.N.

2. An international agreement between the Republic of B-H and the U.N. should be reached and should delineate the role and place of administrative authorities (including the issue of its mandate, immunities, payments, etc.), taking into consideration the existing legal system of the Republic of B-H.

3. Confirmation should be made that this agreement has the power of a constitutional act in the Republic B-H on the one hand, and on the other hand that every hindrance to its implementation committed by third-party states will be subject to sanctions imposed by the U.N. Security Council.

4. This international agreement would be in force until the holding of new democratic elections and the consolidations of institutions affected by those elections.

5. This international agreement in no way violates the international legal subjectivity of the Republic of B-H and its territorial integrity, nor does it in any way prejudice the constitutional arrangement of internal relations which would be determined by democratic means. »

The *purposes* of the system would be in the first place a stabilization of peace and security in the territory, promoting the political, economic, social and cultural welfare of all inhabitants, assisting in the development of parliamentary democracy and democratic institutions, assistance in the organization of free and democratic elections, ensure the greatest possible degree of consensus among all political factions and the elimination of possible influences and conflicts of interest of neighbouring countries.

Detailed proposals for the composition of the Administrative Authority and for its functioning were also put forward, including the founding of special police forces, dispute settlement procedures etc., as well as proposals for interim arrangements.

The next speaker, Ms. Ann PAUWELS, Centre for United Nations Studies, VUB, discussed the basic rules and legal principles on which the Trustee-

ship System of the United Nations is based. According to the Charter of the United Nations, the Trusteeship System involves three elements :

- 1) a Territory which is placed under the Trusteeship System, called the « *Trust Territory* » ;
- 2) an « *Administering Authority* » which administers the Trust Territory ;
- 3) the United Nations as « *Supervising Authority* » over the administration.

Until now, only non-self-governing territories were brought under the UN-Trusteeship System. The system was in fact used as an instrument to attain independence or self-government.

With regard to the proposal of placing Bosnia under a VN-trusteeship, she referred to article 77 of the Charter which provides for the possibility of placing « territories » under the Trusteeship System on a voluntary basis.

Thus, although the system has so far been restricted to non-self-governing territories, it has according to Ann Pauwels, a wider application.

However, article 78 stipulates that the system shall not apply to territories which have become Members of the United Nations.

Therefore the establishment of a trusteeship over the territory of Bosnia-Herzegowina, within the framework of the Trusteeship System as provided for in the Charter, was, according to the speaker, impossible.

However, she did admit that there was great need to place Bosnia under an international regime, with the aim of normalizing the situation in Bosnia and with the aim of accelerating the return of normal conditions for the development of democracy in Bosnia.

The last speaker of the morning session, Dr. Koen DE FEYTER (Universitaire Instellingen Antwerpen), concentrated on the more general question of the protection of minorities under international law. Several aspects were dealt with, such as the definition of minorities and the various criteria relevant to such a definition, the international law concerning Human Rights and Humanitarian Law and its application to the minorities problem (namely the prohibition of discrimination, affirmative action, the prohibition of genocide, and the applicability of article 27 of the Covenant on Civil and Political Rights) and the link with the right to self-determination and autonomy.

With regard to this last problem he cited several case-studies prepared, or in preparation, by experts-members of the UN-Commission or Subcommittee on Human Rights.

As concerns possibilities for action, more specifically in the Yugoslavia-context, there are several international institutions which may be able to act. Would it be possible for the Security Council to act under Chapter VII in the face of violations of minority rights ? Only if such violations are considered a threat to the peace or a breach of the peace. The Security

Council has not yet taken this step, but has acted in this sense in its resolution 794 of 3 December 1992, in the case of Somalia.

Dr. DE FEYTER sees a model for UN-actions mainly in the techniques which have been developed by the UN-Human Rights bodies, such as reporting, individual complaints, the sending of Special Rapporteurs ...

To conclude, he mentioned the special possibilities existing within the framework of the Conference on Security and Co-operation in Europe : the interstate complaint system and the early warning system. Furthermore, the CSCE has recently nominated the former Minister of Foreign Affairs of the Netherlands, Max van der Stoel, as *High Commissioner on National Minorities*.

Discussion and conclusions

Various questions were asked about the legal foundation of the proposed trusteeship. It would certainly need the consent *and* full co-operation of all the factions involved. The problem then remains to be solved who is entitled to speak for the different factions, or ethnic groups. The international community has accepted the « warlords » as negotiating partners, but there are other groups involved with perhaps more representative and legitimate spokesmen. These and other practical questions were summed up by Professor Erik SUY in his conclusion :

- A trusteeship in the traditional sense, and within the context of the U.N. Charter, will not be possible ;
- Any agreement on an international supervisory machinery would have to be a formal agreement with the legitimate (?) government of Bosnia-Herzegowina ;
- Such an agreement would have to have the full support and co-operation of all the factions within the territory ;
- Costs would have to be borne mainly by Bosnia-Herzegowina ;
- All participants agreed on the possibility under international law of setting up such a system. It would amount to a new form of peace-keeping mission, after what was called the « Cambodia-model » ;
- The success and outcome will depend on the readiness of the parties to negotiate and reach a fundamental consensus on their common future.