

Germany, Government Reply on Rapes in Bosnia

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: German Bundestag, Document 12/4048, 12th legislative period, December 29, 1992; original in German, unofficial translation.]

REPLY by the Federal Government to the written questions submitted by Bundestag members [...] – Document 12/3838 – Systematic rape as a means of Serb warfare, *inter alia* in Bosnia

[The reply was issued on behalf of the Federal Government in a letter signed by Ursula Seiler-Albring, Minister of State at the Federal Ministry of Foreign Affairs, and dated 15 December 1992. The document also sets out – in small type – the text of the questions.]

1. What knowledge does the Federal Government have of the systematic rape of predominantly Muslim girls and women by Serb soldiers and irregulars, principally in Bosnia?

Has the Federal Government made representations to the Serbian government in Belgrade in connection with such rape?

According to the information at the disposal of the Federal Government, based on concurrent first-hand accounts, it must be assumed that mass rape is being committed against predominantly Muslim girls and women. Precise figures relating to the actual extent of this serious violation of fundamental human rights are not available. There are growing indications that this is a case of systematic rape aimed at destroying the identity of another ethnic group. The Federal Government has therefore made vigorous and repeated representations to the “Yugoslav” government, both bilaterally and within the framework of the European Community, in connection with these rapes and other grave human rights violations.

2. In what way does the Federal Government intend to play its part in ensuring the investigation, prosecution and worldwide proscription of such rape?

Rape is already a criminal offence under the international law of war, which also applies to the region of the former Yugoslavia. The Federal Government is currently looking into possible ways in which those fundamental rules for the safeguard of human dignity can be widely implemented.

The Federal Government was the first to take practical measures to assist and counsel the girls and women concerned. The discussions held with the victims during that process are also serving to advance the investigation into the facts of each individual case. In addition, the Federal Government has asked UN Special Rapporteur Mazowiecki to devote particular attention to the issue of rape. Further investigation work is being carried out by self-help groups on the ground.

3. In what way will the Federal Government push for rape to be incorporated as a war crime in the international conventions relating to the protection of the [civilian] population in war zones and civil war zones?

The rape of women and girls is already prohibited in armed conflict and to be deemed a war crime under the existing provisions of international humanitarian law. In that respect reference must be made in particular to the provisions of Article 27, para. 2, of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 and of Article 4, para. 2(e), of the Protocol additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts. Should the reports of systematic mass rape of predominantly Muslim women and girls be confirmed, this would, moreover, meet the statutory definition for systematic harm to an ethnical group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948. [...]

Discussion

1. Is rape by a belligerent and its agents prohibited in international armed conflicts? In non-international armed conflicts? (GC I-IV, Art. 3 and Arts 50/51/130/147 respectively; GC IV, Art. 27(2); P I, Art. 76(1); P II, Art. 4(2)(e); CIHL, Rule 93)
2. Are all deliberately committed violations of IHL war crimes? (GC I-IV, Arts 50/51/130/147 respectively; P I, Art. 85)
3. Is rape by a belligerent and its agents committed in an international or a non-international armed conflict a grave breach of IHL? Is it otherwise a war crime? (GC I-IV, Arts 50/51/130/147 respectively; P I, Art. 85)