

BREAKING THE LOGJAM:  
REFUGEE RETURNS TO  
CROATIA

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## BREAKING THE LOGJAM: REFUGEE RETURNS TO CROATIA

### EXECUTIVE SUMMARY

As winter approaches in Bosnia and Herzegovina (Bosnia), conditions for refugee returns to that country become increasingly difficult. In neighbouring Croatia, by contrast, the weather is generally milder so that, given political will, refugees should be able to return to their homes throughout the winter months. Moreover, the Croatian government is organising a reconstruction conference next month, at which it hopes to obtain pledges of international support to help rebuild its war-damaged country. Many refugees from Croatia are Serbs -- of whom some 300,000 now reside in the Federal Republic of Yugoslavia and Republika Srpska -- who fled previously Serb-held regions of Croatia in the wake of the Croatian Army's 1995 military offensives.

The position Croatia's Serbs has long been contentious. Croat nationalists have often seen the Croatian Serbs as a Trojan Horse that has been used to undermine Croatia, with the aim of carving out pieces of Croatian territory and joining them to a Greater Serbian state. In communist times there was widespread Croat resentment at perceived advantages afforded to Serbs in Croatian party bodies and institutions. Serbs for their part derived many advantages from Croatia's inclusion in Yugoslavia, which placed them in a wider union bringing together Serb communities throughout Yugoslavia. The nationalist euphoria with which most Croats greeted the assertion of Croatian sovereignty and independence in 1990-91 caused anxiety and insecurity among Serbs which, manipulated by the Serbian leadership in Belgrade, led to an armed rebellion in regions in which Serbs formed a significant proportion of the population, and the expulsion of most Croats from those regions. Croatia's reconquest of most of those regions in 1995 met with international disapproval, due to the mass Serb exodus which it prompted and widespread atrocities against the few who remained.

Following the 1995 offensives, the Erdut Agreement was signed on the peaceful reintegration of the last Serb-controlled region, in Eastern Slavonia (the Croatian Danube region). After a transitional UN administration, the region reverted to Zagreb's full control in January 1998. During the transitional period Serbs in the region, both pre-war residents and displaced persons (DPs) from other parts of Croatia, were able to acquire Croatian documents. However, the reintegration process has not proceeded smoothly. Few Croats have returned, and the condition of Serbs remains difficult, with widespread intimidation, violence and discrimination forcing many to leave Croatia.

With the restoration of Croatia's territorial integrity, few Croats sympathised with the idea of allowing Serbs to return. While officially the authorities were committed to the return of all refugees, in fact the attitude was negative, and Serb returns were obstructed. However, increased international pressure led to the adoption of a returns programme in June 1998. Despite lingering doubts about the will of the authorities to implement it, the international community welcomed the programme, which had been prepared with its co-operation. Other doubts about the programme included its uncertain legal status (formally it does not have the status of a law); that it does not deal sufficiently clearly with the need to provide for Serb returnees who do not own property, and have lost occupancy rights in former socially-owned property; and that, despite the repeal of laws which had encouraged the take-over of Serb property by Croats, comprehensive, non-discriminatory property legislation is lacking.

Since the programme's adoption the procedure for Serb refugees to gain Croatian documents has been simplified, and the numbers of Serbs returning have increased. They nevertheless remain low, and particular problems are being experienced by those whose property is either occupied by Croats or damaged. The housing commissions set up under the programme to enable the recovery of property by returnees have mostly not functioned satisfactorily. The local authorities were often slow to set them up; commission members have in some cases complained of a lack of resources or remuneration for their work; instructions from the central authorities have been insufficiently precise; and commissions have been reluctant to evict temporary Croat occupants of Serb homes.

Reconstruction of damaged properties is under way, and an estimated 80,000 out of 143,000 destroyed or damaged houses have already been restored. The government has drawn up a reconstruction programme, and has scheduled a reconstruction conference for December 1998. The conference has been repeatedly delayed, as the international community tied its participation to progress in implementing the returns programme and evidence that the reconstruction programme would not discriminate between Croat and Serb properties. The government estimates the cost of the reconstruction programme at some \$2.5 billion, and has expressed hopes of gaining substantial pledges of international assistance towards this at the conference, warning that the implementation of the returns programme will be slower without financial help. The international community has rejected this linkage, insisting that Croatia must fulfil its obligations without conditions. It is noticeable that when it has been considered to be in Croatia's strategic interest to carry out construction work, as in Croat-controlled areas of Bosnia, the funding has been there. It seems unlikely that significant international funding will be made available, and highly likely that the government will seek to present this as an excuse for slower returns.

Despite some progress, on-going problems underline concerns about a lack of will among the Croatian authorities to implement the returns programme, and that they will only do so under continued, intense international pressure. Croatia's desire for integration into western structures gives the international community some leverage, which should be used to ensure Croatia's compliance with international demands. With this in mind, ICG recommends the following:

- Rigorous monitoring of the returns programme's implementation should be maintained. Any suggestion of a lack of will on the part of officials should meet a firm response. The Croatian authorities must be constantly aware that their performance is being watched. Practical difficulties, such as the poor performance of housing commissions and necessary legal amendments or clarifications, should be identified and swiftly addressed. As the only international agency on the ground with sufficient human resources adequately to monitor the implementation process, a substantial OSCE presence should be maintained for some time to come.

- Stronger action needs to be taken to provide security for Serbs in return areas, including serious penalties for perpetrators of violence or intimidation. The trust establishment committees need to be activated, in an effort to build real reintegration and reconciliation of communities. The application of the amnesty law needs to be clarified, so as to reassure Serb returnees. Attention needs to be given to economic regeneration, as well as to measures to counter discrimination against Serbs in employment.
- Clear criteria needs to be established for judging implementation of the returns programme. Apart from the actual numbers of returns, the performance of the housing commissions and the success of more problematic returns -- those to occupied or damaged houses -- should be key criteria. The international community should continue to press for adequate provision for Serb returnees who have lost occupancy rights in former socially-owned housing.
- No significant international reconstruction aid should be made available until there is clear evidence of compliance with international demands regarding returns and non-discriminatory disbursement of reconstruction funds.

**Zagreb-Sarajevo, 09 November 1998**

# BREAKING THE LOGJAM: REFUGEE RETURNS TO CROATIA

## I. INTRODUCTION

As winter approaches in Bosnia and Herzegovina (Bosnia), conditions for refugee returns to that country become increasingly difficult. In neighbouring Croatia, by contrast, weather conditions are generally more favourable, so that, given the political will, refugees should be able to return to their homes throughout the winter months. Moreover, the Croatian government is organising a reconstruction conference next month, at which it hopes to obtain pledges of international support to help rebuild its war-damaged country. Many of the refugees from Croatia are Serbs -- of whom some 300,000 now reside in the Federal Republic of Yugoslavia and Republika Srpska -- who fled previously Serb-held regions of Croatia in the wake of the Croatian Army's 1995 military offensives. Since many of these refugees took up arms against the Croatian state, their position is in many ways akin to that of eastern Europe's German communities who fled in 1945, and Croat attitudes towards them are uncompromising.

Since the Dayton Peace Agreement (DPA) ended the Bosnian war in 1995,<sup>1</sup> Croatia has formally accepted the principle of refugee return. Until recently, however, the Croatian authorities failed to establish conditions that would encourage the return of Serb refugees. Following intense international pressure, the Croatian parliament (Sabor) voted to accept a Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (hereafter the returns programme) in June 1998. In this document, Croatia recognised the equal right of return for all persons who qualify as refugees according to the Geneva convention and reaffirmed its commitments on refugee return contained within the DPA. The returns programme was drawn up in co-operation with the UN High Commission for Refugees (UNHCR) and the Organisation for Security and Co-operation in Europe (OSCE). Since the adoption of the returns programme, its implementation has been closely monitored by the international community, as one of the key conditions for Croatia's integration in western structures.

This report discusses the position of Serbs in Croatia. It focuses in particular on the prospects for the implementation of the returns programme in practice, and for the return of Serb displaced persons to Croatia.<sup>2</sup> Particular consideration is given to the need for political will among the Croatian authorities to see the plan through. It contains a discussion of possible measures that the international community might take adequately to monitor progress in implementing the programme, and of the criteria upon which the plan's implementation might be assessed. The report concludes with recommendations as to appropriate responses in case the programme is not implemented satisfactorily.

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<sup>1</sup> The General Framework for Peace in Bosnia and Herzegovina was initialled in Dayton, Ohio on 21 November 1995, and signed in Paris on 14 December 1995.

<sup>2</sup> The term "refugees" refers to displaced persons who have fled to other countries; "internally displaced persons" (IDPs) refers to those who remained inside the country; and "displaced persons" (DPs) refers to both categories.

## II. SERBS IN CROATIA

The position of a substantial Serb population in Croatia has long been problematic. At the nationalist end of the Croatian political spectrum, the country's Serbs have been regarded as a Trojan Horse, which has repeatedly been used to undermine Croatia, and which could be used again to carve off pieces of Croatian territory and join them to a Greater Serbian state.<sup>3</sup> The widespread perception among Croats of the experience of Yugoslav union before the Second World War in the Kingdom of Yugoslavia, was of hegemonic Serb rule. The extreme reaction against that experience of the Ustashas, who in the German puppet Independent State of Croatia (*Nezavisna Drzava Hrvatska* or NDH) in the Second World War sought to wipe out all trace of Serbs (as well as Jews and Roma) in Croatia and Bosnia, heightened a Serb sense of vulnerability and sensitivity to any expression of Croat nationalism. It was among the Serbs, fighting for their lives in the NDH, that resistance to Axis occupation first flared. The communist-led partisans, in their effort to harness and take control of what was, in the early stages of the war, a largely Serb rebellion, applauded Croatia's Serbs for their sacrifices in the struggle against the occupiers and the Ustashas and for the new Yugoslavia. However, among Croats in communist Yugoslavia, it was widely felt that Serbs in Croatia were afforded numerous privileges, in party bodies and official institutions, at the expense of Croats.

There thus evolved two diametrically opposed views of Croatia's place in Yugoslavia among the republic's Croat majority and its Serb minority. Among Croats, dissatisfaction with and opposition to communist rule was coloured by resentment at perceived privileges enjoyed by Serbs in Croatia. Thus the aspiration to Croatian sovereignty was tinged by a determination to redress the perceived imbalance, to assert specifically Croat interests, at the expense of Croatia's Serbs. For Croatia's Serbs, Yugoslavia presented many advantages, placing them within a wider union bringing together Serb communities around Yugoslavia, and protecting them from the type of excesses they had experienced at the hands of the Ustashas.

Thus the nationalist euphoria with which most Croats greeted the assertion of Croatian sovereignty and independence in 1990-91 was matched by fear and insecurity among Serbs, which was unscrupulously manipulated and whipped up by the Serbian leadership in Belgrade. In regions in which Serbs formed a significant proportion of the population (an absolute majority in some areas), Serbs, with the help of the former Yugoslav People's Army (*Jugoslovenska narodna armija* or JNA), seized control of territory, driving out Croats in the process. Croatian determination to regain control of the whole country was acknowledged by the international community, as international recognition of Croatia's independence was granted in January 1992; however, the deployment of UN forces in the Serb-controlled regions, which brought a temporary halt to hostilities in Croatia, did nothing to bring about the restoration of Croatia's territorial integrity. When mounting impatience led the Croatian authorities to take matters into their own hands and re-conquer most of the territories in two lightning strikes in 1995, the move met with international disapproval as a result of the mass exodus of the Serb population and evidence of atrocities against the few who remained.

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<sup>3</sup> This view of Croatia's Serbs has been given pseudo-intellectual respectability in Croatia even in recent times, for example, by the head of the Institute of Contemporary History in Zagreb, Mirko Valentic, in an interview in the pro-government daily, *Vjesnik*, 6 February 1995.

For many Croats, the notion that those who had recently rebelled against Croatia, driven Croats from their homes, carried out atrocities against Croats and bombarded Croatian cities (including Vukovar, which was reduced to rubble by the JNA before surrendering in November 1991) should be welcomed back after they had fled, seemed obnoxious. There was little appreciation of the notion that individuals should be held individually responsible for individual deeds, and not a whole national group; for many Croats, the Serbs' flight simply reflected their guilt. Thus international insistence that Serbs who had not committed war crimes be amnestied for their part in the rebellion, and that they be allowed freely to return to their homes and enjoy full rights as Croatian citizens elicited little sympathy among most Croats, and resistance from the Croatian authorities.

Although the Croatian authorities have paid lip service to the principle of the return of all refugees, the negative attitude to Serb returns has been obvious in commentaries in pro-government media. Thus, for example, articles by Maja Freundlich, a columnist with the daily *Vjesnik*, frequently amounted to little more than hate-filled, anti-Serb rants. In an article in October 1995 Freundlich referred to "the madness which they [the Serbs] have shown, the Nazism which they have worn, the cowardice which flowed from them, the hypocrisy which adorned them in every key moment of the war or of politics, the lies for which they pride themselves, the blood-thirstiness in which they glory even in their literature".<sup>4</sup> Referring to Serb refugees as "fugitives" (*bjegunci*) she went on to state that their return would be a "real Trojan Horse" because "among them would certainly want to come to Croatia, without check, the worst kind of Serb terrorists, or soldiers, or secret agents..." Freundlich continued her efforts to whip up fear of and ill-will towards Serbs in an article in December 1995, in which she asked: "Why is that return of bandits (*razbojnici*) so important?"<sup>5</sup> In tones bordering on hysteria she suggested that the alleged favouritism in placing Serbs in important positions in Croatia under communism, and even in supposedly accommodating them in flats in strategic places, was part of a perfidious plan, and that the Serbs in Croatia had been prepared for their "position as a Trojan Horse, for the task of a military fifth column -- for the decisive, foreseen moment of the conquest of Croatia". She went on to say that to allow the return of Serbs would mean enabling the terrorists to recover the ground that they had lost in military defeat.

The suggestion that Croats too were in some instances guilty of crimes, and that Serbs were sometimes victims, has not, on the whole, been taken well. According to research carried out by Amnesty International, more than 200 murders were carried out by Croats in the aftermath of the 1995 lightning strikes. Amnesty International has also noted the slowness of the judicial authorities to initiate cases against Croats for murders of Serbs, even though many are well-documented. The human rights' group's chief investigator for Croatia, Bosnia and Slovenia, Johana Bjorken, considers the statement of the President of Croatia's Supreme Court, Milan Vukovic, that a Croat could not have committed a war crime, because he was defending the motherland, as indicative of the official attitude.<sup>6</sup>

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<sup>4</sup> Article by Maja Freundlich in *Vjesnik*, 25 October 1995.

<sup>5</sup> Article by Maja Freundlich in *Vjesnik*, 27 December 1995.

<sup>6</sup> Interview with Johana Bjorken of Amnesty International, *Jutarnji list*, 6 August 1998, regarding an Amnesty International report on Croatia published on 4 August 1998.



### III. EASTERN SLAVONIA<sup>7</sup>

Following the Croatian military offensives which returned the larger part of the Serb-controlled regions of the country to Croatian authority, international negotiations got under way over the peaceful reintegration of the remaining Serb-controlled area, in eastern Slavonia. This led to the Erdut Agreement,<sup>8</sup> which established a transitional period of UN administration in the region, the so-called UN Transitional Administration for Eastern Slavonia or UNTAES, before it reverted to Zagreb's full control. Under the terms of the accord, all who had left the region had the right to return, and all who had come to the region from other parts of Croatia had the right to live there in security. In addition, all had the right to recover property, or to receive compensation for property that could not be recovered. Reconstruction assistance was to be equally available to all, without regard to ethnicity. The Transitional Administration was to form and train a multi-ethnic police force, to ensure respect for human rights and to help build confidence among the different communities.

In order to demonstrate an interest in promoting reconciliation, the government initiated a programme on the re-establishment of trust, which was intended to apply to all of the war-affected areas of the country, although initially committees to oversee the programme were set up only in eastern Slavonia.<sup>9</sup> This programme emphasised the need to build a climate of "forgiveness, tolerance, coexistence and equal rights" and to restore trust among all citizens. It acknowledged that while many Croatian Serbs participated in an armed rebellion and aggression against Croatia, during which numerous criminal acts were committed, on the other side "emotional and inappropriate language was used in the private and public area so as to generalise guilt and strengthen feelings of hate and division". In order to carry out the programme's goal of restoring trust, a National Committee was formed to monitor progress, which included prominent members of the Serb community in Croatia. A Joint Council of Municipalities was also established, as a focus for links between representatives of the Serb community in the region and the government.

According to the Erdut Agreement, UNTAES was to last for 12 months, and for another 12 months if so requested by one of the parties. In the event, the transfer of full control finally took place only in January 1998, as the international community had earlier objected that Croatia had not done enough to fulfil its obligations towards the region's Serbs.<sup>10</sup> During this interim period, the region was gradually reintegrated into Croatia, and Serbs living there were able to apply for Croatian documents, confirming that they were citizens of Croatia. Many of them did so, both Serbs whose homes were in the region and Serb IDPs from other parts of Croatia.

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<sup>7</sup> Eastern Slavonia is generally referred to in Croatia as Hrvatsko Podunavlje, that is the Croatian Danube region.

<sup>8</sup> The *Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium* was signed on 12 November 1995. It followed agreement on *Guiding Basic Principles for Negotiations on a Settlement of Eastern Slavonia, Baranja and Western Sirmium*, which was signed on 3 October 1995.

<sup>9</sup> *Programme of the Government of the Republic of Croatia on the Establishment of Trust, Accelerated Return and Normalisation of Living Conditions in the War-Affected Regions of the Republic of Croatia*, adopted on 2 October 1997.

<sup>10</sup> As late as October 1997 the UN secretary general, Kofi Annan, reported that conditions had not yet been met for the region's full reintegration into Croatia.

The reintegration process, nevertheless, left much to be desired. An agreement on two-way returns of Croats to the region and Serbs from the region to other parts of Croatia was reached in April 1997.<sup>11</sup> However, returns to and from the region have been disappointing. Concerning figures for the return of Croats, the head of the Croatian government's Office for Displaced Persons and Refugees (ODPR), Lovre Pejkoć, estimated in October 1998 that 21,340 Croat DPs had returned to eastern Slavonia,<sup>12</sup> out of around 84,000 who were displaced from the region during the war. The OSCE, by contrast, estimated that only some 10,000 Croat returnees had taken up full-time residence in the region in a September 1998 report.

As for Serbs returning from eastern Slavonia to other parts of Croatia, a UN survey in the region in August 1996 estimated that there were some 46,000 Serb DPs there. In October 1998, Pejkoć said that 23,343 Serb DPs had returned from eastern Slavonia to other parts of Croatia. The OSCE mission is sceptical of the ODPR figures, and in its September 1998 report estimated the number of returns from eastern Slavonia at between 10,000 and 15,000. The situation appears even bleaker when the exodus of Serbs from eastern Slavonia into Yugoslavia (Serbia and Montenegro, that is the Federal Republic of Yugoslavia or FRY) is taken into consideration.<sup>13</sup> According to UNHCR and OSCE estimates in September 1998, this exodus of Serb DPs from the region has amounted to around 28,000. While most left before the end of UNTAES in January 1998, the OSCE has observed a continued haemorrhage of an average six Serb families per week since then, while the ODPR has recently estimated that around 5,800 Serb DPs remain in the region. In addition to the exodus of Serb DPs, the UNHCR estimates that around 16,000 of the 67,000 Serbs who resided in the region before the war left the country between August 1996 and July 1998, mostly to the FRY.

Thus, despite all the efforts to ensure a peaceful reintegration of eastern Slavonia into Croatia, the reintegration of the Serb and Croat communities there has failed to take place, and many Serbs continue to see little future for themselves in Croatia. Reasons for this disappointing record include the following:

#### **A. Security Problems**

A secure environment, free from violence or intimidation is critical. The Erdut Agreement attempted to address this matter with the formation of a transitional police force which was created in July 1996. While the force was initially made up mainly of Serbs, its composition changed over time. Of a current total of some 1,500-1,600 officers, around 850 are Croats and 650 Serbs, a ratio which more closely reflects the region's pre-war ethnic composition. Under UNTAES, the UN Civilian Police Support Group (UNPSG) monitored the performance of the local police, a role it continued to perform after the region passed to complete Croatian control in January 1998 at the request of the Croatian government.

In the initial period following the reintegration of the region, there were numerous incidents of threats and violent acts against Serbs, which the UNPSG divided into

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<sup>11</sup> *Agreement of the Joint Working Group on Operational Procedures of Return*, signed on 23 April 1997, by the Croatian government, the UNHCR and UNTAES.

<sup>12</sup> BETA, 22 October 1998.

<sup>13</sup> The UN Security Council on 2 July 1998 expressed its concern at the large number of Serbs who have left eastern Slavonia since the end of 1996, and at the continued occurrence of ethnically-motivated incidents in the region.

two categories: property-related and ethnic-related. Such incidents have since declined from around 60-70 to around 20-30 per week.<sup>14</sup> However, the decline has mainly been in property-related cases involving Croats returning to find Serb DPs in their former homes, and reflects the departure of most of the latter. The occurrence of ethnic-related assaults and abuse has remained fairly stable according to the UNPSG, although violent incidents have increased. The UNPSG has also reported that the local police have responded adequately in most instances, although there have also been cases of police participating in or even initiating incidents. Incidents have usually only resulted in public order charges being brought, and a huge backlog of cases has built up in the courts. The UNPSG's mandate ended on 15 October 1998, when its functions were taken over by the OSCE.

The Croatian media have tended to focus on incidents in which Serbs have been the initiators. For example, great attention was given in the Croatian media to the recent case of a Serb pupil who insulted Croat pupils in school, spat on the Croatian coat of arms and destroyed a photograph of the Pope.<sup>15</sup> However, international representatives in the region assert that in the overwhelming majority of cases it is Croats who are the initiators and Serbs the victims. Thus while insecurity remains high among the Serb community, Croats are fed the false impression of a beleaguered Croat community suffering intimidation and humiliation at the hands of the region's Serbs.

The authorities' response to incidents such as the above, resorting to placing police in schools, is indicative of the failure thus far to promote reconciliation and real reintegration. The international community has complained that the National Committee to Establish Trust has to date failed to accomplish anything.<sup>16</sup> Moreover, a Serb member of the Trust Establishment Committee in Vukovar in October 1998 complained that the situation of Serbs was becoming unbearable, especially in areas to which Croats were returning. He asserted that Serbs faced constant threats and disturbances, which would lead to further mass departures unless things improved.<sup>17</sup>

## **B. Amnesty Ambiguity**

On-going uncertainty over application of Croatia's 1996 amnesty law affects both Serbs who are still in eastern Slavonia and potential Serb returnees.<sup>18</sup> The law amnestied Serbs who had participated in the armed uprising against Croatia, but did not extend its protection to people guilty of war crimes. After much negotiation, a limited list of 150 people not protected by the amnesty was issued in March 1997, 25 of whom had been convicted in absentia. The Croatian authorities also agreed that in case of any further prosecutions, the international community would be consulted first.

In March 1998 some 13,575 people were specifically amnestied for their part in the armed rebellion. This has, however, caused great confusion, as many people on the amnesty list were insufficiently clearly identified, with the result that one of them was

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<sup>14</sup> Kirsten Haupt, UN Liaison Office spokeswoman, quoted in HINA, 13 October 1998.

<sup>15</sup> HINA, 30 September 1998.

<sup>16</sup> The OSCE's September 1998 report on Croatia. In addition, in a non-paper submitted to the government in October 1998 the OSCE repeated that concrete action should be taken to implement the programme to establish trust.

<sup>17</sup> HINA, 26 October 1998.

<sup>18</sup> Information on the amnesty issue from the OSCE in Croatia.

arrested, and only released after international protests. Moreover, the issuance of a list of people included in the amnesty goes against the principle of a general amnesty, from which only specified individuals are excluded. Thus, instead of diminishing insecurity and uncertainty, the amnesty has in fact increased it, as any man who fought in the former rebel Serb forces, and who is not specifically amnestied, may fear arrest. There have also been instances of Serbs being arrested and questioned by police, later to be released without charge, further heightening fears among Croatia's remaining Serbs and potential Serb returnees that, irrespective of their record, they may be arrested and charged with wartime atrocities.

### **C. Prospects for Returnees**

Representatives of the OSCE in Vukovar stress that a key reason why many Serbs have been leaving, or are considering leaving the region, is the perception that they have few long-term prospects in Croatia. Economic conditions in eastern Slavonia as well as other regions that were previously under Serb control, are difficult. Economic recovery has been hampered in part by uncertainty over the prospects for certain key enterprises which were formerly major employers. The privatisation process has moved slowly, so that some enterprises are effectively in limbo, meaning uncertainty and high unemployment for the population. This lack of prospects and employment opportunities has discouraged many Croat DPs from returning to the region. Prospects for Serbs, who face widespread discrimination in addition, are bleaker still.

The OSCE reports that the government appears to have fulfilled commitments regarding the ethnic balance in public employment in eastern Slavonia. However, permanent employment contracts have in most instances been awarded only to Croat returnees. If the returns programme is to result in returns by anybody apart from elderly, retired Serbs, the questions of economic regeneration in areas to which Serbs would be returning and non-discrimination against Serbs in employment opportunities need urgently to be addressed.

#### IV. INTERNATIONAL PRESSURE

Agreement on the programme for returns of refugees and IDPs came only after considerable delay, disagreement and international pressure. The larger proportion of Serb refugees from Croatia is in the FRY, estimated by the UNHCR at some 270,000. A smaller number, estimated at 30,000-35,000, is in Bosnia.<sup>19</sup> Progress in securing the return of members of the Serb minority to Croatia had, up until the adoption of the returns programme, been modest. According to the UNHCR in Zagreb, citing ODPF data, as of 23 June 1998, 21,134 Serb refugees had returned to Croatia from the FRY and Bosnia (mostly from the former). The ODPF acknowledges that many of those who had up until then returned from the FRY to Croatia were in fact people who had already obtained Croatian papers during UNTAES, who had left Croatia, and whose return had been relatively simple given that they already possessed the necessary documents. For those who have not already obtained Croatian documents, the procedure for doing so has proved a major obstacle, reducing the numbers of returnees. In any case, the OSCE, in its September 1998 report, expressed scepticism as to the ODPF's returns figures, which it considers inflated.

International pressure on the Croatian authorities to allow Serb refugees to return to Croatia has increased in 1998. The late Croatian Defence Minister, Gojko Susak, in talks with the US Defence Secretary in January 1998, committed Croatia to coming up with procedures for the return of refugees to Croatia by mid-March 1998. These procedures were to cover such matters as the verification of citizenship and obtaining of entry documents. Further, by the end of March 1998, the authorities were to present proposals on measures needed to facilitate returns, covering such issues as property rights and the reconstruction of damaged properties. Croatia failed to honour either promise. In late April 1998 a document on the procedures for returns was issued.<sup>20</sup> However, this failed to satisfy international concerns, particularly because it required potential returnees to re-apply for citizenship, rather than just affirming citizenship.

International pressure for more satisfactory proposals forced Croatia to postpone a reconstruction conference (from which the government is hoping for substantial pledges of aid), from April 1998, to July, then to October. The conference is now set for December 1998. In addition, the European Union has continued to put off extending the PHARE aid programme to Croatia, from which the country has been excluded since the Croatian military offensives in 1995, which led to the mass exodus of most of the Serb population of the formerly Serb-held territories.<sup>21</sup> The possibility of the European Union suspending Croatia's preferential trade status has also been mooted.<sup>22</sup>

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<sup>19</sup> These figures are provided by the UNHCR in Croatia.

<sup>20</sup> *Procedure For Individual Return of Persons Who Have Abandoned Croatia*, April 27 1998.

<sup>21</sup> Following reports that the European Commission had again in October 1998 judged that Croatia had failed to satisfy international conditions, in particular concerning the return of refugees, the foreign minister, Mate Granic and the Croatian ambassador to the European Union, Janko Vranyczany-Dobrinovic, both concluded that Croatia's inclusion in the PHARE programme was still a long way off, HINA 19 October 1998 and *Jutarnji list*, 29 October 1998.

<sup>22</sup> Reuters reported that the EU external affairs commissioner, Hans Van den Broek had linked refugee returns with the continuation of Croatia's EU trade privileges, 30 July 1998.

Also, at the end of April 1998, the Office of the High Representative (OHR) in Bosnia and the UNHCR held a Regional Refugee Return Conference in Banja Luka, at which Croatia's poor record on minority returns was examined. The conference pointed to the restrictive application of Croatia's citizenship law as it affected Serb refugees; to the need for non-discriminatory property legislation, which would facilitate returns; and to the need for the non-discriminatory disbursement of reconstruction assistance.<sup>23</sup>

Following international criticism of the proposed return procedures, the Croatian authorities issued a set of "Mandatory Instructions" dealing with the acquisition of Croatian documents.<sup>24</sup> These addressed some of the concerns, simplifying the procedure to some extent. The international response to this was a little ambiguous. The OSCE and the European Union reacted positively; the UNHCR was more circumspect. In mid-June 1998 the government issued what it said was the entire returns plan.<sup>25</sup> This elicited further international criticism, for the following main reasons:

- The first part of the document discussed the historical background of the returns programme, in which the "Serb aggression" against Croatia was described. The international community was unhappy about the inclusion of this section in the programme, arguing that it appeared to give the impression that acceptance of the return of Serb refugees, not long ago aggressors against Croatia, was only grudging and that they were not really welcome. Thus many potential returnees might be discouraged from returning.
- There was also dissatisfaction over the terminology used to describe different categories of potential returnees. In addition to the recognised categories of DP (*prognanik*) and refugee (*izbjeglica*), the document referred to a third category of resettled person (*raseljena osoba*). This three-way categorisation is normal in both Croatia and Bosnia. However, in the Croatian returns programme the category of resettled person was used specifically to refer to Serbs, who were regarded as people who had voluntarily left the country and could therefore be treated differently from Croat victims of aggression. This categorisation ran contrary to the international requirement that all refugees and IDPs, as defined according to internationally accepted criteria, be treated equally whatever their ethnic origin.
- Another source of contention lay in the inclusion in the proposed plan of a survey of the associated reconstruction needs, which stressed the difficulty that Croatia would have in implementing the returns plan with its own budgetary resources. The international community was unhappy with the inference that the successful implementation of the programme for minority returns was in some way conditional on the receipt of international aid.

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<sup>23</sup> Regional Return Conference, Banja Luka, 28 April 1998: Conference Background Note, *General Legal and Administrative Framework in the Republic of Croatia Regarding the Return of Refugees to Croatia*.

<sup>24</sup> *Mandatory Instruction For Acquiring Documents Required For Implementation of the "Individual Return Procedure For Persons Who Left The Republic Of Croatia"*, adopted by the government on 14 May 1998.

<sup>25</sup> *Programme On Return And Providing Care for Displaced Persons And Refugees*, 14 June 1998.

Also in mid-June 1998, the government invited international representatives (principally the OSCE, the UNHCR and US representatives) to advise on how to improve the programme. The international agencies insisted that the part of the programme dealing specifically with the procedures and the organisation of returns be separated from the other sections dealing with the historical background and the reconstruction needs. They would only give advice on the part of the text dealing with the mechanisms of handling the returns. Intensive consultations followed, leading to the adoption of the programme, which was approved by the government on 22 June 1998 and accepted by the Sabor four days later. The head of the OSCE mission in Croatia, Tim Guldemann, declared that he was satisfied with the document, while stressing that the key point was that the programme should be implemented. The Foreign Minister, Mate Granic, visited Bonn and London (Britain held the EU presidency until the end of June 1998) to present the plan, which also received a cautious welcome in Brussels.<sup>26</sup>

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<sup>26</sup> *Jutarnji list*, 26 June 1998.

## V. THE RETURNS PROGRAMME

According to the returns programme, a commission has been set up, made up of representatives of several government ministries, as well as of the ODPR, to monitor the implementation of the plan in co-operation with the UNHCR. In addition, a Co-ordination Committee drawn from ministries, government bodies, international organisations and NGOs will monitor progress. The process of return is in accordance with the earlier "Procedures" and "Mandatory Instructions". In accordance with the programme, two laws, the *Law on the Temporary Take-over and Administration of Specified Property* and the *Law on the Lease of Apartments in the Liberated Areas*, which enabled the take-over of properties vacated by their Serb owners, have been repealed. Housing commissions have been set up at the local level to implement the returns process, which is supposed to be co-ordinated and monitored by the central commission. The ODPR, in co-operation with the UNHCR, has been carrying out the registration of potential returnees outside of Croatia, although registration is not to be a pre-requisite for return.

Essentially, the programme has been welcomed internationally as good in principle. However, from the beginning there have been many reasons to doubt the existence of the necessary political will to see it implemented. These include the following:

### A. Presentation of the Programme to the Sabor

As already noted, the OSCE and the UNHCR had said that they would only consult on the specific details of the returns programme, and not on the other sections of the wider report that appeared in mid-June 1998. They insisted that the plan which they agreed with the authorities was a separate, stand-alone document, and should be presented as such to the Sabor. They received assurances from the government that it would be so.

However, the document initially presented to the Sabor was a much longer paper, which contained within it, as Section IV, Chapter 6, the internationally-agreed programme. The longer document was essentially similar to the earlier document of mid-June 1998. The OSCE and the UNHCR objected to the inclusion of the agreed programme in the wider document, insisting that their approval of the programme referred only to that portion of it which they had agreed, and stating that the government had failed to live up to its commitment to present the agreed text as a separate document. They stressed that statements in the wider document that were at variance with the principles of the agreed programme would in no way qualify the approved plan.<sup>27</sup> Following these objections, Granic made it clear to the Sabor that the approved programme was a separate document, and it was voted on as such. Nevertheless, the episode gave the unfortunate impression that the authorities had tried to qualify the agreed text, the inclusion of which in the longer document represented a clear breach of the agreement reached with the OSCE and the UNHCR. Moreover, the authorities offered explanations which were not in the least credible. This example of bad faith served to reinforce the impression, based on the past record of obstruction and delay, that it is only through close monitoring, forthright speaking and pressure that Croatia can be induced to fulfil its commitments on minority returns.

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<sup>27</sup> Joint press statement by the OSCE and the UNHCR, Zagreb, 25 June 1998.



## B. Statements by Ministers

The ministry with primary responsibility for the implementation of the programme is the Ministry of Reconstruction and Development, headed by Jure Radic. The Foreign Ministry was also closely involved in the negotiations with the international community, and the Deputy Prime Minister, Ljerka Mintas-Hodak, has also played a part.<sup>28</sup> Statements issued by the ministers and officials connected with the programme have at times been positive and suggested real commitment to its implementation. However, other statements have added to fears of a lack of will.

In presenting the programme to the Sabor, Radic insisted that the government had not submitted to any international pressure, nor would it.<sup>29</sup> He pointed out that implementation of the programme was in the government's hands, and said that they would know how to defend Croatian interests. This emphasis raises particular fears given the past record which has suggested that senior Croatian officials do not see Croatian interests as including the return of Serb refugees. In particular measures taken after the 1995 offensives designed to encourage Croat settlement in previously Serb-inhabited areas were clearly designed to prevent large-scale Serb returns.<sup>30</sup> The reassurances of Granic that there was no need to fear a mass Serb return, as few Serbs had applied for documents at the Croatian embassy in Belgrade, did not give the impression that Serb returnees would be particularly welcome.<sup>31</sup>

It may be that such statements were intended to reassure the many Croats who are disturbed by the prospect of significant Serb returns, and thus to disarm potential opposition to the programme. Indeed, other statements by Croatian officials have given greater cause for encouragement. At a meeting in Topusko on 7 July 1998, government officials, including Radic and the head of the ODPR, Lovre PejkoVIC, explained the programme to the local officials who will have to implement it in practice. OSCE and UNHCR officials who were present were impressed by the positive tone of the statements made by the government officials, who, for example, met objections to the notion of extending the hand to former "aggressors" with insistences that the plan must be implemented.<sup>32</sup> Following a meeting with local leaders in eastern Slavonia, Mintas-Hodak stressed that the programme will certainly be implemented.<sup>33</sup> A second conference on the returns programme, following the one in Topusko, was held in Baske Ostarije in August 1998.<sup>34</sup> Nevertheless, given

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<sup>28</sup> There have been reports that Granic was isolated in the government over his advocacy of acceding to international demands over refugee returns; that the Prime Minister, Zlatko Matesa, as well as Radic and Mintas-Hodak all preferred a hard-line stance, and only yielded due to the intensity of international pressure. See, for example, commentary by Davor Butkovic in *Jutarnji list*, 31 October 1998.

<sup>29</sup> Report on the Sabor's acceptance of the programme carried in *Jutarnji list*, 27 June 1998.

<sup>30</sup> The August 1995 laws on *The Temporary Take-over and Administration of Certain Properties* and on *The Renting of Apartments in the Liberated Areas*, both of which have been repealed since the adoption of the returns programme.

<sup>31</sup> In the Sabor Granic stated that only 505 Serbs had applied for Croatian documents in Croatian diplomatic missions abroad. In a later press conference he said that in the previous month and a half 787 applications had been received at the embassy in Belgrade, and another ten in other diplomatic missions in the FRY (*Jutarnji list*, 4 July 1998).

<sup>32</sup> Impressions of the Topusko meeting obtained from OSCE and UNHCR officials who were present, as well as a positive assessment of the meeting at an OSCE press conference, reported in *Vecernji list*, 9 July 1998.

<sup>33</sup> Reported in *Vjesnik*, 14 July 1998.

<sup>34</sup> HINA, 18 August 1998.

the poor record to date, concerns as to whether there is any greater will to facilitate the return of the Serb minority than has hitherto been the case remained.

### **C. Implementation Concerns**

There are a number of aspects of the programme itself which from the beginning raised doubts as to whether it would be fully implemented. They include the following:

#### **1. Legal Status**

The legal status of the programme is unclear. Although the programme has been passed by the Sabor, some Croatian officials have warned that it does not have the status of a law as such. A Croatian legal expert consulted by ICG warned that in addition to the programme's uncertain, "sub-legal" status, it is, in its detail, too imprecise, too open to interpretation and too open to challenge. The programme, the Croatian lawyer warned, depends on the good will of those charged with implementing it, which, given the record, must be considered doubtful.

The Prime Minister, Zlatko Matesa, has assured the OSCE that the programme will have legal effect, and on 9 July 1998 the programme was published in the official gazette. However, in certain respects the programme is at odds with existing Croatian law. For example, according to Croatian law, someone facing eviction proceedings should have the right to appeal to a higher court against the decision. Yet the programme states that an appeal procedure initiated by a temporary occupant should not delay the repossession of the property by the legitimate owner. Essentially, the commitment of the government to act on this stipulation represents a political decision, rather than one based in law.

However, the legal expert consulted by ICG pointed out that the law repealing the *Law on the Temporary Take-over and Administration of Specified Property* refers to the programme, specifying that the repealed law is superseded by the provisions of the programme. This reference in the law thus gives legal status to the programme. It is clear, nevertheless, that ultimately the implementation of the programme depends on the political will of the Croatian authorities to fulfil their commitments to the international community, whatever quibbles there might be about the programme's legal status.

#### **2. Property Legislation**

The Banja Luka Regional Return Conference welcomed the decision to repeal the *Law on Temporary Take-over and Administration of Certain Properties* and the *Law on Renting of Apartments in the Liberated Areas*. However, it went on to insist that Croatia should introduce new, comprehensive, non-discriminatory property legislation, which would create simplified procedures for the restitution of properties to their rightful owners and holders of occupancy rights in socially-owned property; provide alternative accommodation to temporary occupants; provide adequate alternative accommodation or financial compensation to former occupancy right holders; and provide adequate and prompt assistance to those whose property was in need of reconstruction.

While the programme does address these issues (although not entirely adequately in every case, as described below), it does not constitute satisfactory, comprehensive property legislation, as looked for in Banja Luka. The effects of the two repealed laws remain, and given the uncertain legal status of the programme, it may in certain key aspects prove to be difficult to enforce it, so as to reverse the effects of the two laws in practice. In its September 1998 report, the OSCE continued to highlight the need for further progress on property issues.

### 3. Returns under the Programme

Before the Sabor passed the returns programme, most returns which had taken place involved people who had already obtained Croatian documents, and whose return was thus relatively simple. The programme contains procedures to enable those who do not yet have Croatian documents to return. As regards the verification of Croatian citizenship, the programme refers to procedures contained in the earlier "Mandatory Instructions". This lays down a variety of documents, including expired identity cards or passports, driving licences, professional licences, birth certificates and property titles, which can be used to confirm the right to Croatian citizenship of those who do not possess valid Croatian papers. Applications for citizenship can then be approved by the Ministry of the Interior, which can also refer to records or the testimony of witnesses in Croatia. The "Mandatory Instructions" specify that a competent diplomatic mission will forward applications for processing.

The UNHCR has cited obstructions in the Croatian embassy in Belgrade as an obstacle to the faster processing of return applications.<sup>35</sup> Some among the Croatian authorities have pointed to a lack of human resources in the embassy as a possible cause of delay.<sup>36</sup> As regards the consulate in Banja Luka, consular hours began to operate in mid-July 1998.<sup>37</sup> The low numbers of applicants for Croatian papers cited by Granic notwithstanding, the Croatian ambassador in Belgrade, Zvonimir Markovic, has denied that the embassy is hindering the issuing of documents, saying that it has dealt with half of the 30,000 applications of Serbs for return.<sup>38</sup>

Difficulties in processing applications in the diplomatic missions should in any case no longer hold up the returns process. The returns programme states that persons defined by the Geneva convention as refugees who do not have Croatian documents "may return under specific ODPB authorisation and upon clearance by the Ministry of the Interior". They may then "regulate their residence according to the law" and "resolve their citizenship status, if they so wish, through naturalisation". The reference to the possibility of naturalisation is a concern, given the repeated international insistence that it should simply be required to confirm the Croatian citizenship of refugees. Nevertheless, under the programme, refugees can now register their desire to return with the

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<sup>35</sup> Eduardo Arboleda of the UNHCR in Belgrade, reported by Reuters, 8 July 1998.

<sup>36</sup> On this point, ICG held discussions with officials in the Croatian Foreign Ministry and in the office of the Deputy Prime Minister, Ljerka Mintas-Hodak.

<sup>37</sup> *Novi list*, 14 July 1998.

<sup>38</sup> *Novi list*, 9 July 1998.

UNHCR, and the information is then passed on to the ODP, which processes return applications.

According to information supplied by the UNHCR and the OSCE, as of 25 October 1998, 13,479 applications had been submitted to the ODP since the adoption of the programme.<sup>39</sup> Of these, 5,625 had been cleared by the ODP, and 1,331 had returned with UNHCR and ODP assistance, and a further 907 had returned unassisted. In addition to these 2,238 returns under the programme, the ODP has also recorded a further 1,884 who have returned with travel letters issued by Croatian diplomatic missions. These numbers are still relatively small, and in the week to 25 October 1998 only 135 people actually returned under the programme. However, with the ODP aiming to process 500 applications per week, the numbers returning have increased since the programme got under way.

#### **4. Returns to Occupied Properties**

Although it is somewhat easier for Serb returnees physically to come back to Croatia since the adoption of the programme, it is still proving difficult for them to recover property. Some returnees are going back to houses which are both inhabitable and vacant, and in such cases it would be expected that delays could be kept to a minimum. Of the 5,625 applications cleared by the ODP as of 25 October 1998, 3,608 were relatively easy cases of people who are returning to unoccupied housing, or who are going to host families or relatives. Fewer more difficult cases are being dealt with: 898 applications for return to destroyed or damaged housing have been processed, and 1,119 for people whose homes in Croatia are currently occupied.

In cases where the property of the returnee is occupied by a Croat DP, the process is proving problematic. The programme lays down the procedure for dealing with such cases. Returnees should claim the property through the housing commission in the locality concerned. Within five days the housing commission should inform the returnee of the status of their property. Once ownership has been proved, the housing commission must within seven days request the temporary occupant to vacate the property. This decision also indicates a deadline by which the property has to be vacated, while the temporary occupant has to be provided with alternative accommodation by the state. If alternative accommodation is not available locally, the local housing commission should inform the central commission charged with implementing the programme and the ODP within five days, so that alternative accommodation can be found elsewhere. If the temporary occupant fails to vacate the property by the stipulated deadline, the housing commission should file a suit for their eviction with the municipal court within seven days.

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<sup>39</sup> *Weekly Update by UNHCR and OSCE on The Government of Croatia Programme for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons, 19-25 October 1998.*

Various problems have arisen in this procedure. At the meeting in Topusko discussed above, a number of questions were raised by local officials about practical difficulties, to which the representatives of the central government did not, in every case, have ready answers.<sup>40</sup> Having on 20 July 1998 ordered the establishment of housing commissions in areas of return by the end of the month, the government in August 1998 issued "Instructions" regarding the activities of the commissions.<sup>41</sup> However, in reports in September 1998 and October 1998 the OSCE pointed out that the commissions have frequently not carried out their functions satisfactorily. Not all were established within the deadline, and some local authorities refused to establish them.

There have been repeated complaints that there has been insufficient direction of the implementation of the programme by the central authorities, and that the instructions to the commissions have been insufficiently precise. The OSCE spokesman, Mark Thompson, observed in August 1998 that while the returns conference in Baske Ostarije appeared to show a determination on the part of the authorities to carry out the programme, it also highlighted the lack of concrete operating instructions as to how to implement it.<sup>42</sup> The President of the Serb National Council, Milorad Pupovac, has said that unless the housing commissions began to function effectively, there was little prospect of the returns programme being implemented.<sup>43</sup>

While the OSCE has noted that only a few commissions are operating effectively, there are exceptions to the general picture, and Pupovac has pointed with approval at the performance of the commission in Petrinja, while criticising those in Okucani, Knin and Kostajnica. The head of the OSCE regional office in Knin, Andreas Kohlschuetter, has pointed to positive examples in Udbina and Otocac, but said that the OSCE has witnessed cases of violence against returnees in villages near Knin.<sup>44</sup> In Daruvar, on 24 September 1998, a Serb family was prevented from returning to its home by a group of about 20 Croat DPs; the local police failed to take action.<sup>45</sup>

A lack of clear direction from the centre is only part of the problem. As with every stage of the implementation of the programme, the success of the housing commissions in enabling Serb returnees to recover their property depends on good will among those responsible. The programme leaves it to the local housing commissions to set deadlines for properties to be vacated by temporary occupants, many of them Croat DPs from Bosnia. Experience to date indicates that commissions are extremely reluctant to evict temporary Croat occupants from Serb-owned houses. Members of some commissions have complained of a lack of resources and have insisted on adequate remuneration for their services before they begin to carry out their tasks. There has been pressure from Bosnian Croat DPs who have resisted eviction, arguing that they had earlier been given the impression that they could settle in the former Serb homes permanently.

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<sup>40</sup> Information from OSCE official who was present.

<sup>41</sup> *Instructions for the Work of Housing Commissions and the Application of Forms for the Implementation of the "Programme of Return and Providing Care for Exiled Persons, Refugees and Displaced Persons*, 10 August 1998.

<sup>42</sup> OSCE and UNHCR press conference, HINA, 19 August 1998.

<sup>43</sup> HINA, 24 September 1998.

<sup>44</sup> HINA, 29 September 1998.

<sup>45</sup> Case cited by Mark Thompson of the OSCE, HINA, 7 October 1998.

Finding alternative housing for temporary occupants is a genuine problem. Nevertheless, it is notable that commissions have shown considerably more will when it has been a matter of evicting Serb DPs from Croat homes in eastern Slavonia. Kohlschuetter has complained that the commissions have failed to make sufficient effort to find alternative accommodation. He has also pointed out that, as in Bosnia, multiple occupancy is a problem, with some Croat refugee families occupying several houses and flats; despite this, commissions have failed to resolve the matter. The OSCE in its October 1998 report stressed the need for better horizontal communication and co-operation among commissions, as well as better vertical communication from the central authorities to the commissions, so that information on availability of alternative accommodation could be shared more effectively.

Concerns have also been expressed about the conditions to which many returnees are going back. Often houses deemed habitable nevertheless lack many necessities, including windows, doors and heating. With winter approaching, international officials have expressed concern that some returnees (most of them elderly) may be at severe risk. The authorities are obliged to meet the immediate needs of returnees, who, for six months, are supposed to have special returnee status, entitling them to material and financial assistance. The experience of many has been of significant delays in confirming their returnee status, which should not be necessary given that their status has already been agreed before their return to the country.

## **5. Returns to Damaged Properties**

The programme promises equal treatment of returning refugees whose properties have been damaged with all other Croatian citizens, according to the *Law on Reconstruction*. The reconstruction process is well under way, and in October 1998 Radic estimated that 80,000 out of 143,000 destroyed or damaged houses had been restored.<sup>46</sup> In an interview in July 1998 Radic said that he expected that 110,000-120,000 would finally be restored, reflecting the fact that not everyone would return.<sup>47</sup>

In the same interview Radic said that the reconstruction plan which was being prepared would serve in part as an invitation to the international community to participate in the postponed reconstruction conference, with a view to their providing some financial support. Radic also acknowledged that the international community would want to see in the reconstruction plan that all returnees (i.e. regardless of ethnicity) would be equally treated in the disbursement of funds for reconstruction. The planned reconstruction conference was put off several times during 1998. The international community insisted on seeing a complete reconstruction plan for the year, including provision for reconstruction in Serb villages, before it would agree to participate in the conference.

Although the conference is being organised by the government, it would have little meaning without international participation. This therefore gives the international community some leverage in pressing for the equitable distribution of reconstruction funding and for the implementation of the returns programme

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<sup>46</sup> HINA, 13 October 1998.

<sup>47</sup> Interview with Jure Radic in *Vecernji list*, 9 July 1998.

in general. The linkage between these conditions and participation in the conference has been made repeatedly.<sup>48</sup> This insistence has been coupled with assertions that the authorities have not been fully meeting their undertakings. The UNHCR spokesman, Andrej Mahecic, reported in October 1998 that Serbs are in an unequal position as regards the return of property and reconstruction aid, and that the government had not fulfilled its obligation within three months to amend legislation so as to equalise the status of all returnees, Serb as well as Croat.<sup>49</sup>

As feared at the time of the returns programme's adoption, when the programme was presented as part of a wider document, including an assessment of reconstruction costs, the authorities have repeatedly expressed expectations that substantial aid pledges will come out of the reconstruction conference (frequently, and misleadingly, referred to in Croatia as a donors' conference). For example, Radic has pointed out that if the \$2.5 billion he estimates will be required to implement the remainder of the reconstruction programme has to come entirely out of the government's budget, then it will take another five years.<sup>50</sup> The pro-government media has explicitly drawn a link between receipt of international aid and implementation of the returns programme, suggesting that the latter is dependent on the former.<sup>51</sup>

Despite international reservations about implementation of the returns programme, the international community has accepted the reconstruction programme as satisfactory.<sup>52</sup> The programme sets as its target the reintegration of another 200,000-240,000 returnees. It includes a detailed budget, envisaging expenditure of \$500 million per year over five years, and expresses the hope that international help will be forthcoming. The reconstruction conference has now been scheduled for December 1998.

It seems unlikely, however, that significant international funding will be made available, and highly likely, given the authorities' oft-repeated attempts to link international aid with implementation of the returns programme, that the government will seek to present this as an excuse for slow progress on returns. Such a linkage must not be permitted. The record has shown that when the Croatian authorities have seen it as being a strategic Croat goal to carry out construction work, then the funding is there. This has, for example, been the case in the construction of housing for Bosnian Croat DPs in areas of Bosnia such as Mostar, Capljina and Stolac. International insistence that reconstruction assistance for Serb returnees to Croatia must be available, without discrimination, should be maintained, and not be made conditional on levels of international aid.

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<sup>48</sup> For example, by Mark Thompson at an OSCE press conference, *Jutarnji list*, 22 October 1998.

<sup>49</sup> OSCE and UNHCR press conference, HINA, 7 October 1998. In its response to the OSCE's October 1998 paper on the returns process, the government undertook to consult with the international community over which legislation needed to be amended.

<sup>50</sup> Cited by HINA, 13 October 1998.

<sup>51</sup> For example, a commentary by Marko Barisic in *Vjesnik*, 9 October 1998.

<sup>52</sup> The programme, entitled *Continuing Programme for the Reconstruction of War-Affected Settlements*, prepared by the Ministry of Development and Reconstruction, dated October 1998, received support from the international community through the Article 11 Commission, which was formed following the Erdut agreement, on 27 October, 1998. The announcement by the Article 11 Commission nevertheless expressed its continuing concern at the uneven implementation of the returns programme.

## 6. Returns of Non-Home-Owners

A particular point of contention between the Croatian authorities and the international community has been the treatment of Serb returnees who do not own their own property, who previously lived in socially-owned property and have now lost their occupancy rights. The programme states that such people can, upon return to Croatia, and once their status has been regulated, apply for welfare benefits like all citizens. This is not likely to encourage the return of Serbs in this category; not only would their chances of receiving adequate housing appear slim, but the experience of Serbs who have remained in eastern Slavonia suggests that numerous obstacles would be put in the way of Serbs claiming social welfare.<sup>53</sup>

Further, the commission set up by the programme would, "where possible", try to find such returnees permanent accommodation where this affected the returns process. During the period of consultation when the programme was being drawn up, the international agencies pressed the need for provision for this category of returnee, but accepted the argument of their Croatian counterparts that in the circumstances it would be politically difficult to spell out too specifically that special treatment would be extended to Serb returnees while many Croat DPs were still living in collective centres. Nevertheless, the OSCE and the UNHCR stressed that they would continue to press for special attention for this category of returnee, so that they would not be disadvantaged.

In his speech to the Sabor, Radic rejected any possibility of Serb returnees regaining their occupancy rights, and rejected the interpretation of "some international representatives" (the UNHCR spokesman in Zagreb, Andrej Mahecic) that there was any ambiguity in the programme, asserting that Croatia had rejected discussion of the matter. However, Guldemann signalled that the international community will not let the matter rest, when he told the press that the question remained open.<sup>54</sup> The international community has continued to press the matter since then. The OSCE has described the series of laws which took away occupancy rights from departed Serbs as arbitrary and discriminatory as a result, for example, of the unreasonably short deadlines for applications to preserve the rights. The occasion for a clarification of the programme on this point could, according to the UNHCR, be provided for by the stipulation in the programme that the government should propose changes to the law so as to ensure the equal status of all returnees. Radic, however, has continued to maintain that the matter is closed, stating that Guldemann must not seek to alter the agreement.<sup>55</sup>

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<sup>53</sup> Information from the OSCE in Vukovar.

<sup>54</sup> *Jutarnji list*, 27 June 1998.

<sup>55</sup> Interview with Jure Radic in *Vecernji list*, 9 July 1998.



The disagreement on this point would appear to underline the necessity for the international community to be open and explicit on all points, so that no opportunity can be afforded for individual commitments by Croatian officials to be disowned by others. The Ministry of Reconstruction and Development assured ICG that efforts would be made, where possible, to find accommodation for returnees who did not have their own property. However, no guarantees have been offered. According to the UNHCR, there are four possible ways of providing for returnees who have lost occupancy rights: if their previous accommodation is vacant, they should be able to return there; other available social housing could be made available; alternative accommodation could be found by the Real Estate Agency (APN); temporary accommodation could be provided in collective centres. The UNHCR stresses that it should be clear that if the fourth option was offered, it would only be a short-term solution.

## VI. CONCLUSIONS

Despite some belated movement on Serb returns to Croatia, the returns record has to date been disappointing. The experience of the past three years raises concerns about the political will of the Croatian authorities to implement the programme. The inescapable conclusion is that the Croatian authorities do not really want to see large-scale Serb returns and that they will only implement the returns programme under continued, intense international pressure. That said, some politicians in positions of responsibility have suggested that the political situation in Croatia is changing as memories of the war recede. In these circumstances, peacetime concerns, such as economic and social issues, are becoming more important. Whereas only a year ago the returns programme would have been met with outrage and resistance among much of the population, there is now a possibility that it could be implemented. Moreover, the return of as many Serb refugees to Croatia as wish to go back, based on a genuinely free choice, could benefit all parties, the Serbs themselves, the international community and Croatia in the following ways:

- On a practical level, enabling the return of Serb refugees who are currently in Bosnia would facilitate the return of Bosniac and Croat DPs to homes currently occupied by those Serb refugees. This would in turn contribute to the rebuilding of a multi-ethnic society in Bosnia, without which the chances for long-term stability in that country appear bleak.
- The return of Serb refugees to Croatia would provide a valuable contribution to the post-war normalisation of relations between Croatia and Serbia. The presence of a large number of Serb refugees from Croatia in Serbia would continue to poison relations between Zagreb and Belgrade for a long time to come (witness recent tensions between the Czech Republic and Germany, for example, as well as the constant state of tension in relations between Greece and Turkey, nearly 80 years after their mutual population exchanges, which would appear to give the lie to notions that population exchanges can solve disputes over minorities). The return of refugees would thus contribute to regional stability over the longer term.
- The return of Serb refugees would be of benefit to Croatia itself, removing a blemish on the country's record in building an independent state and a healthy democracy (a process which in the latter case is still far from complete). Respect of the rights of minorities is a key criterion upon which a country's democratic credentials can be judged. This includes both the individual rights of members of minority groups and the right of a minority as a community to express its national and cultural individuality within the state of which its members are citizens. Croatia's reconciliation with its Serb community would represent the best possible demonstration of confidence by a country at ease with itself after the tragedies of war are put behind. To be sure, this is a two-way process, which also includes the need for Croatia's Serbs to come to terms with their wartime record, but the principle of individual guilt for individual actions must be upheld, as opposed to the collective guilt of the Serb people in Croatia, and reconciliation has to proceed on that basis.

## VII. RECOMMENDATIONS

This section considers criteria upon which progress in implementing the programme can be judged. Consideration also needs to be given to appropriate measures to ensure the programme's implementation, including constant monitoring and pressure. The experience so far has been that progress in reaching an agreed programme has only been made under sustained international pressure on Croatia, Radic's denials in the Sabor notwithstanding. The passing of the programme was itself encouraging, and a beginning has been made in implementing it. However, the problems highlighted in this report will need to be addressed as part of a continuous monitoring process. The Croatian authorities, both at the central and at the local level, need to be constantly aware that their performance in implementing the programme is under scrutiny. There must be no ebb and flow in international interest in this issue -- international attention needs to be vigilant and constant.

The broad consensus in Croatia behind the desire to integrate into European structures gives the international community leverage in seeking to ensure behaviour which accords with that which is expected of a European state. Pressure and the credible threat of sanctions against Croatia can be effective in bringing results.

While the pressure needs to be maintained, Croatian officials have stressed that constant pressure, without the appearance of reward for compliance with international demands, sends an unfortunate message, which risks resulting in despair of ever satisfying the international community, and still greater defiance. In one sense, it could be argued that it would be inappropriate to reward implementation of measures to which Croatia was already committed. Nevertheless, it would be politically wise to demonstrate that fulfilment of Croatia's obligations will bring greater international acceptance. There should thus, where appropriate, be a clear linkage between performance in complying with particular demands and specific international measures to secure that compliance. Thus it can be clearly demonstrated to Croatia's leaders and to the wider Croatian public that international pressure is not about unfair victimisation of Croatia (as it has often been presented in much of the Croatian media), and that it can be lifted when Croatia meets specific demands.

Given that Croatia's suspension from the European Union's PHARE programme followed the Croatian military actions against the formerly Serb-controlled territories, it would be appropriate to link the reinstatement of the PHARE programme directly with progress in implementing the refugee return programme. In his meeting with Granic in late June 1998, the British Foreign Secretary (representing the European Union, of which Britain held the presidency at the time) stressed progress in implementing the programme as a precondition for the reinstatement of PHARE.<sup>56</sup> As discussed above, Croatian officials are not expecting an early inclusion in the PHARE programme. With the above in mind, ICG recommends the following:

### **A. Rigorous Monitoring**

- Any comments by officials responsible for the programme's implementation which might in any way suggest a lack of will to see it through should be met with

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<sup>56</sup> *Jutarnji list*, 25 June 1998.

an immediate international response, such as that which Guldemann gave in July 1998 to Radic's comments regarding the lack of occupancy rights for returnees who do not own property. The Croatian authorities must be made constantly aware that their performance is being watched.

- Practical difficulties which arise in implementing the programme should be met with insistence by the international agencies on the speedy adoption of measures to deal with them. Such difficulties, as identified in this report, include the communication of clear guidelines from the central authorities to housing commissions, the need to find alternative accommodation for temporary occupants of Serb-owned property and the enforcing of evictions against them. The international agencies should pay particular attention to the legal status of the programme, should press for any necessary clarifications and amendments to it, and should seek expert Croatian legal advice to ensure that there can be no misunderstandings. As the OSCE has repeatedly stressed, most recently in its October 1998 report to the government, a number of legal changes need to be made to equalise the status of all returnees and to provide comprehensive property legislation conducive to the returns process.
- The OSCE, alone among the international agencies, possesses sufficient human resources on the ground adequately to monitor implementation at the local level. It has, in close co-operation with the UNHCR, which is more directly responsible for registering potential returnees and assisting the returns process, maintained contact with the local housing associations, evaluating progress in implementing the programme and warning of problems, so that rapid action can be taken. This close involvement will need to be maintained well into the future, and a continued substantial OSCE presence in Croatia will therefore be needed for some time to come.

## **B. Prospects for Returnees**

Establishing proper procedures for returns and the reclaiming of property will have limited effect if returnees and potential returnees do not see real prospects for themselves in Croatia. Actions that would help in this regard would include the following:

- While there has been an improvement in the security situation for Serbs in Croatia, considerably more needs to be done. Acts of violence and intimidation need to be seen to be taken seriously, with effective police action and charges appropriate to the gravity of the crimes. Only thus can the badly damaged confidence of Serbs in regions of return be restored. The OSCE, which has taken over the role of the UNPSG in monitoring the local police in the Danube region, should give greater publicity to cases of attacks on and intimidation of Serbs, to counter the false perception encouraged in most of the Croatian media that it is Croats who are primarily at a disadvantage in regions of return. In its response to the OSCE's October 1998 report, the government has acknowledged the need to activate the trust establishment committees. This should be given a high priority, for the contribution it can make in diffusing tensions and to a genuine integration of the Croat and Serb communities.
- Of great concern is the application of the amnesty law. Most important here is that there is complete transparency. The international community needs to ensure that only persons on the list of those excluded from the amnesty can be arrested or questioned, and that if the authorities wish to proceed against any

other individuals, those cases should first be brought up with the international community, as was earlier agreed. Former Serb soldiers in the armed formations of the former Serb-controlled regions will only be able to feel secure in Croatia if any fear of arbitrary moves by the authorities against war crimes suspects is removed. The best place for alleged war criminals to be tried is at the international court in The Hague. The Croatian authorities should bring allegations against individuals to the international community, with a view to their being tried in The Hague if there is a case to answer.

- Urgent attention needs to be given to the economic regeneration of areas to which Serbs refugees will be returning, and to ensure that Serbs will share in the benefits of recovery. The Croatian authorities should be urged to speed up the process of privatisation of enterprises in these regions, so that their prospects can be clarified and their suitability for new investment, including foreign investment, assessed. The multilateral agencies should consider appropriate measures to contribute to economic recovery in these regions, such as rebuilding infrastructure and providing credits for the development of small and medium-sized businesses. As with all forms of assistance, however, such aid should be tied to international insistence on non-discriminatory practices by the Croatian authorities and by Croatian employers. Similarly, international investment in the returns regions should be encouraged, but it should be tied to non-discriminatory employment practices, so as to ensure that Serbs too will benefit.

### **C. Evaluating Progress**

Of key importance is to establish appropriate criteria upon which progress in implementing the programme can be judged. This is not straightforward, given that it is, at least initially, difficult to draw conclusions based on the numbers of returnees alone. Delays in getting satisfactory procedures up and running, and the limited increase in numbers of returnees is perhaps unsurprising. Nevertheless, criteria should be established for judging at least that the procedures are working adequately. Thus it should be possible to draw conclusions very quickly as to whether the programme is being implemented. It is vital that no complacency should be allowed to creep in.

Some possible criteria upon which progress might be judged are discussed below. The agencies on the ground will themselves have to agree on what methods would be appropriate, based on their experience. Critically, matters must not be allowed to slide any more, and adequate methods of evaluating progress should be understood, by the authorities as well as by the international community.

- It has already become clear that the housing commissions provided for in the programme, are, in most cases, not functioning satisfactorily. A number of reasons have been identified for this failure, and there is no reason for any delay in resolving the problems. Questions regarding the resources and remuneration of the members of the commission need to be resolved; clear operational instructions need to be handed down from the central authorities; the central commission needs to function more effectively, including the holding of public sessions; there needs to be improved communication between commissions about the availability of alternative accommodation. In addition, consideration should be given to whether it is necessary to increase the legal force of the programme, so as to facilitate the re-possession of properties and the evictions that entails.

- Above all, what is lacking is the will to carry out the procedures regarding the recovery of property by Serb returnees, and the eviction of Croats currently occupying it. If the will among the local authorities is not present, as appears the case in most instances, the clear message must be coming from the government that the programme really must be implemented. Such will on the part of most members of the government is only grudging, and international pressure should be maintained to ensure that it remains firm.
- Positive action to encourage returns should include the organisation, as provided for in the programme, of visits by refugees to their former home towns and villages. In addition, contact between refugees and Serbs who have either remained in their homes in Croatia, or who have already returned, should be facilitated, as a means of encouraging potential returnees to see return as a possibility. Joint visits by delegations of representatives of local authorities and Serbs from towns to which returns are envisaged, as have taken place in some parts of Bosnia, would be useful, and could be carried out with the assistance of the international agencies.
- As an alternative to obtaining necessary documents to enable return, returnees are registering and presenting applications to return through the UNHCR. This procedure appears to be working relatively effectively, and has resulted in an increase in the numbers being cleared for return and actually returning. The pace needs to be maintained, and the ODPR's aim of processing 500 applications per week needs to be kept up if a more significant organised return is to be possible. There needs to be greater progress in getting more difficult cases of returnees (those whose property is either damaged or occupied) processed. Until now relatively few of the cases approved by the ODPR fall into these categories. The international community should ensure that the more difficult cases too are being dealt with in an effective and timely manner.
- The progress of return applications should be followed through the system to the final return and repossession of property. In general terms, international representatives (i.e. mainly the OSCE) on the ground should monitor closely how things are proceeding in their locality, whether the local housing commission is working in such a way as to facilitate the process rather than to hinder it, and whether the process is leading to final returns. It may also be helpful to select samples of return applicants at the beginning of the process, and to follow their progress through the system closely. It should thus be possible to follow the progress of applicants in differing circumstances: those whose property is vacant; those whose property is occupied; those whose property is damaged; those who do not own property. It should be possible very quickly, even if large numbers are not yet actually returning, to evaluate how the procedures are working, to identify problems and to take measures to correct them -- including where necessary the application of pressure on the appropriate Croatian authority.
- The international community should continue to insist that consideration be given to returnees without their own property, that this category of returnee should not be discouraged from returning. Such returnees need to be offered adequate accommodation, in accordance with the stipulations of the Banja Luka

conference and the assurances of Croatian officials to international representatives while the programme was being negotiated. The programme is too weak on this point, and the provision for it to be amended where necessary so as to ensure that all categories of refugees have equal opportunity to return should be used to strengthen its provision for this category of returnee. It also needs to be ensured that all returnees, as well as those who remain, will not face discrimination in the provision of social welfare, as has often been the case until now.

**D. "Carrot and Stick"**

As noted, given the past record and lingering scepticism as to whether the real political will exists fully to implement the programme, continuous international monitoring must be maintained, and there must be continued readiness to apply credible pressure. Any tendency towards a "stop-go" strategy in applying pressure must be avoided -- the replacement of one EU presidency with another should not bring a slackening of commitment to seeing minority returns advanced. It must be clear to the Croatian authorities that there is a cost to Croatia in not implementing the plan, and that benefits will accrue when the programme is implemented satisfactorily. ICG therefore recommends the following:

- The re-instatement of the European Union's PHARE programme should be clearly linked to the implementation of the refugee returns programme, and it should not be re-instated until there is clear evidence of substantial progress -- probably not for several more months.
- While the principle of international participation in a reconstruction conference (scheduled for December 1998) has been accepted, it should continue to be made clear that any aid is contingent upon the satisfactory implementation of the returns programme, and especially on the non-discriminatory disbursement of reconstruction assistance to all returnees, Serbs as well as to Croats. The December 1998 date for the reconstruction conference is too early for a clear judgement to be made as to whether the authorities are meeting their responsibilities in this regard, and no significant aid should be promised at that stage. International reconstruction aid should be delayed pending Croatian compliance with international demands. Any attempt by the Croatian authorities to present disappointment with low levels of aid made available as an excuse for slower implementation of the returns programme should be firmly rejected.
- The possibility of more severe measures, including the suspension of Croatia's EU trade privileges, should be kept open and should be re-visited over the coming months.

**Zagreb-Sarajevo, 09 November 1998**