

R E P O R T

Rapporteurs (Corell - Türk - Thune) under  
the Moscow Human Dimension Mechanism to Croatia

30 September - 5 October 1992

## Table of Contents

Summary	1
1 Introduction	4
2 Background	6
2.1 Formation of the Rapporteur Mission	6
2.2 The Mandate	7
2.3 Co-ordination with other Missions	8
2.4 Relevant documents	8
3 Visit to Croatia	10
4 General observations	11
5 Report on the human rights situation in Croatia	17
5.1 Reports of atrocities against unarmed civilians	17
5.2 Mass-killings and arbitrary executions	18
5.3 Forced deportations and detention camps	19
5.4 Areas under the threat of "ethnic cleansing"	20
5.5 Destruction and confiscation of property	21
5.6 Discriminatory dismissal from employment and harassment	22
5.7 Arbitrary arrest of Serbs in Croatia	23
6 Relevant legislation and administration of justice	24
6.1 Relevant legislation	24
6.2 Administration of justice	26

7	Attributing responsibility	28
	7.1 Principles	28
	7.2 Collection of information	29
	7.3 Administration of justice	29
8	Proposal for a system for administration of collected information	31
9	Deliberations on a competent jurisdiction	35
	9.1 National courts	35
	9.2 Establishment of an international criminal court	36
	9.3 An international ad-hoc tribunal for certain crimes committed in the former Yugoslavia	37
10	Other proposals	43
	10.1 Exhumation	43
	10.2 Alleged execution of villagers of Kip	44
	10.3 International assistance in creating a democratic system of administration of justice	44
11	Proposal for an Extraordinary meeting of the Committee of Senior Officials - Publication of the report	45
12	Acknowledgements	46
13	Concluding remarks	47
Annexes		
Annex 1	Articles 4, 6, 10 - 12 and 14 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE	49

Annex 2	The Rapporteurs under the Moscow Human Dimension Mechanism to Croatia	51
Annex 3	Programme for the visit to Croatia	52
Annex 4	Map	56
Annex 5	Relevant Provisions from the Constitution of the Socialist Federative Republic of Yugoslavia of 1974 and Relevant Provisions from the Constitution of the Republic of Croatia of 1990	57
Annex 6	Relevant Provisions from Chapter 16 of the Penal Code of the Socialist Federative Republic of Yugoslavia	60
Annex 7	Final proposal of the Law on Abolition of Criminal Prosecution and Criminal Proceedings for Criminal Acts perpetrated in the Armed Conflicts and the War against the Republic of Croatia	66
Annex 8	Letter of 29 June 1992 from the Public Prosecutor of the Republic of Croatia to the District and the Military Prosecutors	70

## SUMMARY

The Rapporteurs (Corell-Türk-Thune) visited Croatia during the period of 30 September - 5 October 1992 under the Moscow Human Dimension Mechanism to Croatia. During this period they had extensive talks in Zagreb with representatives of the Croatian Government, the Croatian Parliament, non-governmental organizations and with academics, as well as representatives of the international organizations operating there. They further visited three of the United Nations Protected Areas (UNPAs), where they had talks with representatives of the United Nations as well as the local authorities.

The Rapporteurs, in particular, made the following observations: There are numerous reports regarding atrocities perpetrated against unarmed civilians as well as the practice of "ethnic cleansing" in territory of the Republic of Croatia. Although responsibility for these grave violations of human rights and the norms of international humanitarian law is to be attributed to both parties to the conflict, it appears that the scale and gravity of the crimes committed by the Yugoslav National Army, Serbian paramilitary groups and the police forces of the Knin authorities are by far the most serious. On the Serbian side, such violations of generally accepted international norms seem to form part of an officially tolerated or even supported systematic policy.

Besides the fact-finding elements of their mission the Rapporteurs saw their main task to be investigation of the possibilities of attributing responsibility for acts of atrocities against unarmed civilians. In this connection, they examined the relevant national legislation and the administration of justice in Croatia as well as pertinent international legal instruments. On the basis of this examination, the Rapporteurs conclude that there is a sufficient legal basis for international prosecution.

After deliberating on their mandate, the Rapporteurs made the following proposals:

---

- \* A committee of experts should be convened immediately to examine the possibility of establishing a system for the administration of collected information. The mandate of the committee should be to propose within a very short time the necessary rules as well as the administrative and technical solutions for the collection of information, and to make an estimate of costs. (See Section 8)
  
- \* Since there is a viable possibility for establishing an international jurisdiction to deal with the alleged war crimes and crimes against humanity committed in the former Yugoslavia, a committee of experts from interested States should be convened as soon as possible in order to prepare a draft treaty establishing an international ad hoc tribunal for certain crimes committed in the former Yugoslavia. The committee should also make an estimate of costs for such a jurisdiction. (See Section 9.3)
  
- \* An international group, including forensic experts, should be sent immediately to UNPA Sector East to investigate the existence of massgraves. They should exhume the possible victims in order to identify them and to establish the cause of death. This operation should be undertaken before 1 November since after the winter the condition of the bodies might not allow for their identification or the establishment of the cause of death. (See Section 10.1)

Such an international group of experts could be constituted from among the members of the International Fact-Finding Commission under Article 90 of the 1977 Protocol I additional to the Geneva Conventions of 1949.

- \* Expert advice, possibly through an international expert commission, could be provided to the Croatian Government in order to assist in the interpretation of the relevant international legal norms, violations of which do not fall under abolition or amnesty under the respective Croatian law. (See Section 6)

- \* The Committee of Senior Officials should invite the Government of Croatia to give a final report as to the outcome of the ongoing investigation on the alleged execution of the villagers of Kip. (See Section 10.2)
  
- \* The Committee of Senior Officials should invite governments and international organizations to offer assistance programmes in order to promote an effective, modern and democratic system for the administration of justice in Croatia. (See Section 10.3)
  
- \* An extraordinary meeting of the Committee of Senior Officials should be held in October in order to enable action on the proposals which in the view of the Rapporteurs require immediate action. (See Section 11)

## 1 INTRODUCTION

The following is the report of the Rapporteurs (Corell-Türk-Thune) under the Moscow Human Dimension Mechanism mission to Croatia on 30 September - 5 October 1992.

The report contains a description of the background to the Rapporteur Mission (Section 2). After a description of their visit to Croatia (Section 3) the Rapporteurs make some general observations, in particular on the situation in the area (Section 4). Following that they give a short report on the facts concerning the human rights situation brought to their attention (Section 5). They then proceed to describe relevant national legislation etc. (Section 6) and to discuss questions of principle in relation to the prospect of attributing responsibility (Section 7). They also make proposals for a system for administration of collected information (Section 8) and deliberate on a competent jurisdiction (Section 9). They, furthermore, make other proposals, which they consider urgent (Section 10). Their report also contains proposals for an extraordinary meeting of the Committee of Senior Officials and publication of the Report (Section 11). Acknowledgements and a few concluding remarks appear at the end of the Report (Sections 12 and 13). There are eight annexes to the Report.

The Rapporteurs wish to emphasize that the impressions of their short but intense visit to Croatia are very strong. Even if they were able to prepare themselves for the visit by reading some of the many documents that now exist concerning the situation in the former Yugoslavia, these documents were not able to convey the impressions which an on-site examination of the conditions makes. The Rapporteurs are also aware that they have only been able to make a preliminary examination.

However, according to the rules a Rapporteur Mission is a mission of short duration; its report should be produced three weeks after the last Rapporteur has been appointed, or, they presume, after their mandate has been finalized if this occurs on a later date. The Rapporteurs, therefore, had no possibility of going deeper into the subject-matter. But they hope that

their proposals will be of service for the future decision-making and the analysis which is necessary for laying down rules for further action.

This Report represents the unanimous opinion of the Rapporteurs.

## 2 BACKGROUND

### 2.1 Formation of the Rapporteur Mission

On 5 August 1992 the United Kingdom informed the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw that the United Kingdom, with the support of Italy, Portugal, Denmark, the United States, Greece, Spain, the Netherlands, Ireland and Germany, had decided to invoke the Moscow Human Dimension Mechanism with respect to Bosnia-Herzegovina and Croatia. Subsequently, ODIHR was informed that France and Belgium had also joined the supporting States.

The rules of the Moscow Human Dimension Mechanism are laid down in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE. The relevant provisions appear as Annex 1 to this report. The United Kingdom had invoked Paragraph 12 of the Document which allows for engaging this mechanism in case a participating State considers that a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State.

On 19 August 1992 the ODIHR was informed that the United Kingdom had appointed Ambassador Hans Corell, Under-Secretary for Legal and Consular Affairs, Ministry for Foreign Affairs of Sweden, as Rapporteur.

On 29 August 1992 the ODIHR informed the United Kingdom that the Republic of Bosnia-Herzegovina and the Republic of Croatia had appointed as Rapporteur for the mission to their respective countries Ambassador Helmut Türk, Deputy Secretary-General and Legal Advisor of the Federal Ministry for Foreign Affairs of Austria.

On 4 September 1992 Ambassador Corell and Ambassador Türk informed the ODIHR that they had on that day appointed Mrs. Gro Hillestad Thune, member of the European Commission of Human Rights from Norway, as the third Rapporteur for the mission to Bosnia-Herzegovina and to Croatia.

Consequently, the Moscow Human Dimension Mechanism in the present case was established and ready to enter into function on 4 September 1992. The participants in the Rapporteur Mission appear in Annex 2.

## 2.2 The Mandate

Originally, the mandate for this Rapporteur Mission was to enable investigation of reports of attacks on unarmed civilians in Bosnia-Herzegovina, especially in Sarajevo and Gorazde, and in Croatia.

Due to circumstances which prevailed after the initiation of the Mission, the mandate was further discussed among the initiators. On 28 September 1992 the mandate of the Mission was finalized. The Rapporteurs were informed through the Foreign and Commonwealth Office of the following mandate:

"To investigate reports of atrocities against unarmed civilians in Croatia and Bosnia, and to make recommendations as to the feasibility of attributing responsibility for such acts.

The additional mandate, depending on how much can be accomplished in the time available and in the light of any organisational difficulties which may arrive, is to visit areas which may be under threat of ethnic cleansing, and to investigate allegations of the arbitrary arrests of Serbs in Croatia."

Due to the time which had lapsed since the original contact with the Rapporteurs, in particular since Ambassador Corell was first approached, they had difficulties in performing their task as a whole immediately. Furthermore, the United Kingdom informed the Rapporteurs that the Foreign and Commonwealth Office would need some time to prepare a visit to Bosnia-Herzegovina in view of the security situation. In consultation between the United Kingdom, the ODIHR, and the

Rapporteurs it was decided that the Rapporteur Mission should perform its task in two steps. It was thus decided that they should first visit Croatia, commencing on 30 September 1992, i.e. two days after the mandate was finalized. The visit to Bosnia-Herzegovina is being prepared for mid-November 1992.

### 2.3 Coordination with other Missions

At its meeting in Prague on 16 to 18 September 1992 the Committee of Senior Officials invited the Rapporteur Mission to visit Bosnia-Herzegovina and Croatia as soon as possible and to consult the members of the Thomson Mission. The Rapporteurs note, however, that at that time they had not been given their final mandate.

In view of this and other requests for coordination between this Rapporteur Mission and the Rapporteur appointed by the United Nations Commission for Human Rights, former Prime Minister Tadeusz Mazowiecki of Poland, and Sir John Thomson's Mission, appointed by the Committee of Senior Officials, Ambassador Corell had contacts with Mr. Mazowiecki's office in Geneva and had a telephone conversation with Sir John Thomson in Moscow.

During these contacts the Rapporteurs were informed that Mr. Mazowiecki planned to visit Bosnia-Herzegovina in early October 1992. It was made clear, furthermore, that the mandate of the present Rapporteur Mission was different from the mandate of the two other Missions, and that there would be little risk of duplication.

### 2.4 Relevant documents

There are by now a great number of reports and documents concerning the situation in the former Yugoslavia. The Rapporteurs have tried to study as many of them as possible. They should like to mention in particular the following:

- Report of the CSCE Mission to Bosnia-Herzegovina 29 August to 4 September, headed by Sir John Thomson
- Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights pursuant to paragraph 14 of Commission resolution 1992/S-1/1 of 14 August 1992 (E/CN. 4/1997/S-1/9:28/8-1992)
- Further report of the Secretary-General pursuant to Security Council Resolution 743 (1992) and 762 (1992) of 28 September 1992 (S/24600)
- War Crimes in Bosnia-Herzegovina: A Helsinki Watch Report - August 1992
- Submissions of Information to the United Nations Security Council by the US-Government in accordance with paragraph 5 of Resolution 771 (1992) of 22 September 1992.

### 3 VISIT TO CROATIA

During their Mission to the Republic of Croatia, the Rapporteurs visited Zagreb, Daruvar under Croatian authority in UNPA Sector West, as well as Serb-controlled Pakrac in the same Sector. They also visited Serb-controlled Knin in UNPA Sector South and Vukovar and surrounding areas under the control of the Knin authorities in UNPA Sector East.

The Rapporteurs held discussions with numerous representatives of the Government of Croatia, the Knin authorities, UNPROFOR, UNHCR, ECMM, ICRC and representatives of Serbian and Croatian non-governmental organizations as well as academics. On the last day of their visit they were also received by the President of the Republic of Croatia. For the detailed programme see Annex 3.

The comprehensive programme was made possible thanks to careful coordination by the United States Embassy in Zagreb in cooperation with local authorities and international organizations. The extensive travels and visits outside Zagreb, furthermore, would have been impossible in the short time available without the very generous and efficient logistic support of UNPROFOR.

The Rapporteurs noted the forthcoming attitude of the Croatian Government and its willingness to take part in endeavours resulting from future decisions within the framework of the Moscow Human Dimension Mechanism.

#### 4 GENERAL OBSERVATIONS

The bloodshed resulting from the disintegration of the Socialist Federative Republic of Yugoslavia prompted the United Nations to engage in a peace-keeping operation under which "United Nations Protected Areas" (UNPAs) were created in certain areas of the Republic of Croatia, that is Eastern Slavonia (Sector East), Western Slavonia (Sector West) and Krajina (Sectors North and South). The location of these areas appears on the attached map in Annex 4. These are areas in which Serbs constitute the majority or a substantive minority of the population and where inter-communal tensions have led to armed conflict.

It is the task of the "United Nations Protection Force" (UNPROFOR) to ensure that these areas are and remain demilitarized and that all persons residing in them are protected from fear of armed attack. The United Nations police monitors (UNCIVPOL) are to ensure that the local police forces carry out their duties without abusing human rights or discriminating against persons on the basis of nationality.

As the Secretary-General of the United Nations stated in his further report of 28 September 1992, pursuant to Security Council Resolutions 743 (1992) and 762 (1992), UNPROFOR is encountering increasing obstacles in its efforts to implement the United Nations Plan in the UNPAs. This was due to the failure of the parties, and principally of the Knin authorities and extremist forces in the UNPAs, to give UNPROFOR the full and continuing cooperation which it must have if it is to be able to carry out the tasks entrusted to it by the Security Council.

Through discussions with responsible officers of UNPROFOR the Rapporteurs gained the impression that the implementation of the United Nations Peace-keeping Plan ("Vance-plan") is, indeed, blocked at present. They came to the conclusion that there is little prospect for a major change in this respect in the foreseeable future, as the demilitarization of most of the

UNPAs does not make real progress due to lack of cooperation by local Serb authorities.

At present, approximately one quarter of the territory of the Republic of Croatia remains under the control of ethnic Serbs, who seem to enjoy support by the Government in Belgrade. On these territories Serb leaders have established the so-called "Republic of Serbian Krajina" with its "capital" in Knin ("Knin authorities"). These areas largely coincide with the UNPAs, with the exception of the Northern part of Sector West which is under Croatian authority.

The Knin authorities claim their "Republic" to be an independent State with its own parliament, government, legal system, currency, etc. Elections are planned in the regions controlled by them in mid-November to which the Rapporteurs, in principle, were invited as observers. Furthermore, there are reports that the Knin authorities are considering to join, at least economically, the territories they control in western Croatia with Serb-controlled areas in north-western Bosnia-Herzegovina.

In their conversations with the Rapporteurs, the representatives of the Knin authorities insisted that the talks were not taking place on Croatian territory. They are claiming the right to self-determination for the Serbs in Croatia through the establishment of their own State, claiming that they had been denied the status of a nation equal to the Croats under the new Croatian Constitution. They adamantly reject the status of a national minority, considering the legal provision on minority rights enacted by the Republic of Croatia as insufficient for safeguarding their national interests. The Rapporteurs at present see little prospect that this attitude will change.

At the same time it has to be pointed out that the economic situation in these Serb-controlled areas is disastrous. The supply of electricity and water is frequently interrupted or non-existent. Thus, besides most serious violations of civil

and political rights occurring in these areas, which will be described in Section 5 of this Report, the enjoyment of economic and social rights must be considered virtually non-existent by the generally accepted standards of the participating States of the CSCE.

In their conversations with the Rapporteurs, some representatives of the Knin authorities admitted that the level of respect for human rights in these areas under Serbian control was generally low because of current circumstances. The Knin authorities, however, claimed that the legal system established by them was functioning. They further denied that there existed a deliberate policy directed against non-Serbs. They also stated that serious human rights violations affecting Serbs were taking place in Croatia and even more so in Bosnia-Herzegovina, where atrocities against Serbs were committed particularly by Muslim forces.

The power of the Knin authorities was previously upheld by military units of the Yugoslav National Army (JNA) and Serbian "Territorial defence forces" (TDF). The JNA-forces have now been withdrawn and the TDF-units demobilized, according to the Vance-plan. However, the Knin authorities have instead renamed their military forces "Special Police", "Border Police" or "Multi Purpose Brigades" made up of members of the JNA, TDF and Serbian irregulars, in order to evade the demilitarization of the UNPAs in conformity with the United Nations plan. The Knin authorities have so far not revealed the total strength of these forces, but according to UN estimates they might total 16,000 armed men.

At present these paramilitary forces constitute the power basis of the Knin authorities. Members of these "police forces" are reported to bear responsibility for assaults, "ethnic cleansing", robbery, murders and other criminal acts against the non-Serb population in the Serb-controlled areas of Croatia. As described by informed sources, the rule of law in these areas has widely been replaced by the "rule of the gun". The Serb "police forces" are seen as a great menace by the

remaining non-Serb population in the self-proclaimed "Republic of Serbian Krajina".

Military and other supplies from Serbia and Montenegro are crucial for the continuing existence of the "Republic of Serbian Krajina", as also shown by the fighting over the control of a land-corridor from Serbia along the northern border of Bosnia-Herzegovina to the Serb-controlled Banja Luka-region of Bosnia and further on to the Krajina-region of Croatia.

The military situation along the confrontation line in the UNPAs is reported to have been generally stable during the last two months, except for some armed incidents. In Sectors North and West, inter-communal tension has reportedly decreased. However, tension appears to have increased in Sectors East and South, where reportedly numerous terrorist acts, predominantly against non-Serbs, have been committed under a state of near anarchy.

It was also reported that in certain areas under Croatian authority, cases amounting at least to indirect "ethnic cleansing" and terrorist acts against Serbs, such as the destruction of numerous homes belonging to members of that ethnic group, have taken place, although to a significantly lesser extent than in Serb-controlled regions. Arbitrary arrests of Serbs have also been reported in areas under the control of the Croatian Government. The competent Croatian authorities have assured the Rapporteurs that any form of criminal act, whoever it may be directed against, would be investigated and prosecuted according to the applicable legal provisions. They also strongly denied that any persons were arrested only because they are Serbs.

Regarding possible future military developments, there is great concern that with road communications hampered during the coming winter, Serb forces will try to gain control over rail communications from Banja Luka via Bihac in north-western Bosnia-Herzegovina and further on to Knin. The Muslim-dominated

region of Bihac with a population in 1991 of some 250.000 people is today besieged by Serbian forces. According to different sources there is a serious risk of "ethnic cleansing" in this area, should it fall under Serbian control.

It was also indicated to the Rapporteurs that a major Serbian attack on Bihac might take place before the onset of winter. Besides great civilian casualties such a turn of events would lead to a major new influx of refugees to Croatia. There is a risk all together of about 500,000 new refugees coming from Bosnia-Herzegovina. In this connection, it has to be pointed out that there are already more than 2.1 million displaced persons or refugees on the territory of the former Yugoslavia, according to recent UNHCR estimates. It was indicated to the Rapporteurs that the humanitarian situation in Bosnia-Herzegovina, in particular in view of the lack of food supplies, was desperate and that it might lead to a catastrophe during the coming winter. International assistance might come too late for thousands of people.

There is, furthermore, great concern that Serbian forces in the Krajina region might resort to terrorist acts on a large scale. The Peruca High Dam, south east of Knin, was until recently held by Serbian "special police forces". These forces were withdrawn after negotiations with UNPROFOR. The dam is said to be in a bad condition and Serbian forces have reportedly mined the area. Even after UNPROFOR took over the control of the dam on 14 September 1992, a considerable number of Serbian forces are reportedly still deployed at close distance. There is great concern that the Knin authorities might threaten to destroy the dam, which would result in an ecological disaster and endanger the lives of 40,000-50,000 people living south of the dam. Another area of major concern is the many tons of explosives said to be stored near the Serb-controlled Zemunik airport, which, if detonated, could cause a seismic tremor endangering the historic town of Zadar and the surrounding area with a population in 1991 of some 135,000 people.

In the view of the Rapporteurs, it is obvious that the deployment of UNPROFOR in the areas concerned is a major factor

in preventing a renewed armed conflict. The difficulties encountered with the implementation of the United Nations plan has understandably caused the Croatian Government profound disappointment. There is thus growing pressure regarding the return of refugees and displaced persons to their homes in the UNPAs. In the view of the Rapporteurs, however, such a return appears hardly feasible under present conditions as the security of the persons concerned could not be guaranteed. Futhermore, any violent incidents in this connection would carry a serious risk of renewed armed confrontation.

Unless a political solution with respect to the Serb-controlled areas of the Republic of Croatia can be found in the coming months, a withdrawal of UNPROFOR when its mandate expires would in the opinion of the Rapporteurs probably lead to new and massive bloodshed, including atrocities against the unarmed civilian population. Such a development might have dire consequences for the situation in the whole region.

## 5 THE HUMAN RIGHTS SITUATION IN CROATIA

### 5.1 Reports of atrocities against unarmed civilians

There are numerous reports regarding atrocities perpetrated against unarmed civilians as well as the practice of "ethnic cleansing" in the territory of the Republic of Croatia. Although responsibility for these grave violations of human rights and norms of international humanitarian law is to be attributed to both parties to the conflict, it appears that the scale and gravity of the crimes committed by the JNA, Serbian paramilitary groups such as the TDF, and the police forces of the Knin authorities, are by far the most serious. On the Serbian side, such violations of generally accepted international norms seem to form part of an officially tolerated or even supported systematic policy.

The means employed for the creation of "ethnically pure" areas are both direct and indirect. The most direct form consists of mass killings or forced deportations of the "undesirable" elements of the population. Furthermore, random killings, torture, death threats, and the subjection of civilians to cruel and inhumane conditions in detention camps are intended to create a general climate of terror, making it impossible for a specific ethnic group to remain in a given area. The indirect forms of "ethnic cleansing" primarily consist of the destruction and confiscation of property and various forms of economic strangulation such as dismissal from employment of individuals belonging to a certain ethnic group. In such situations, deprivation of shelter and the means of livelihood, compounded by a climate of fear, eventually force people to leave their towns and villages.

For the purpose of attributing responsibility, the reported violations in this section are categorized on the basis of acts committed either on the territory under the control of the Croatian Government or in areas presently under the control of the Knin authorities. This section of the Report does not intend to duplicate the work on the documentation of human

rights violations already done by the Special Rapporteur of the United Nations Human Rights Commission, Mr. Mazowiecki, on the situation of human rights in the former Yugoslavia, or the reports of the Secretary-General on progress made by the United Nations Protection Force in the implementation of its mandate in Croatia under the United Nations peacekeeping plan. In this connection, reference may also be made to the comprehensive reports of non-governmental organizations such as Helsinki Watch in the documentation of atrocities in Croatia. Rather than providing an exhaustive enumeration of atrocities perpetrated against unarmed civilians, therefore, the following is intended only as a broad cross-section of such violations focusing on particularly notorious examples which were brought to the attention of the Rapporteurs.

## 5.2 Mass-killings and arbitrary executions

### Territory under the control of the Croatian Government

The Rapporteurs received reports alleging the arbitrary execution of Serbs by Croatian forces. It was reported that in mid-November 1991, eighteen Serbian men from the village of Kip (near Daruvar in Sector West) were arrested by members of the Croatian Army and brought to the village of Marino Selo, where they were allegedly executed in December 1991. Despite reports by the press and numerous requests by the family of the missing, an official investigation has not yet been concluded by the Croatian authorities. It should be noted, however, that when this matter was raised during the meeting of the Rapporteurs with the Croatian Minister of the Interior, immediate instructions were given by him to the authorities to conduct a thorough investigation.

According to reports, the Croatian Army massacred approximately 150 civilians in the vicinity of the village of Pakracke Polje (Sector West) in November 1991. This incident was also reported in the Croatian press. It is not yet clear where the mass-grave is located. Despite appeals by the families of the victims, however, no information has been released by the Croatian

authorities thus far although the matter is under investigation by the Ministry of the Interior. It has been alleged that the authorities are delaying the investigation because the Army is involved.

#### Areas presently under the control of the Knin authorities

There have been numerous reports of mass-killings of unarmed civilians the most serious of which appears to have occurred in the town of Vukovar (Sector East). According to several sources, between 2,000 and 3,000 unarmed civilians who disappeared after the fall of the city of Vukovar may have been executed by the combined forces of the JNA and Serbian irregular forces. There are allegations that there are between ten and fifteen mass-graves in Vukovar and vicinity. There appear to be clear indications concerning the specific location of three of these mass-graves. The Knin authorities, however, have refused access to these sites. The Rapporteurs were informed by competent experts that if the exhumation of these mass-graves does not take place before the coming winter (i.e. by November), it may be impossible to identify the victims and the cause of death.

#### 5.3 Forced deportations and detention camps

Forced deportations on the basis of ethnic identity have taken place on numerous occasions, in particular by the Serbian side. In many cases, the deportees have been incarcerated in detention camps where they have been subjected to serious mistreatment. Such incidents have been amply documented. It has been reported that non-Serb prisoners in the Baranja region (Sector East) are subjected to forced labour on farms. Apart from detention camps as such, both sides have reportedly engaged in a policy of "hostage settlement". This practice involves the encirclement of an entire village and the use of the inhabitants as hostages in exchange for detainees held by the other party to the conflict. It was reported that the Serbian side has perpetrated such acts on numerous occasions. It was also reported that the Croatian army has held the

inhabitants of several Serbian villages in Western Slavonia (northern part of Sector West) as hostages.

#### 5.4 Areas under the threat of "ethnic cleansing"

Although "ethnic cleansing" is a fait accompli in many cases, ethnically mixed areas continue to exist. In most of these areas, however, specific ethnic groups are either presently undergoing the early stages of the ethnic cleansing process or are under imminent threat of expulsion or killings using the methods described above. Such situations are characterized by the destruction and confiscation of property, discriminatory dismissal from employment and a general policy of intimidation and harassment against a target ethnic group. The objective of these practices is to create a climate of terror and fear which, together with economic strangulation, leave the affected individuals with no alternative but to flee.

In the territory under the control of the Croatian Government, the Serbian population is the sole target ethnic group. In areas under the control of the Knin authorities, however, other than the Croatian population, ethnic groups such as Muslims, Hungarians, Czechs, Slovaks and Ruthenians, are also affected. It was also pointed out that while the destruction of Croatian homes occurred primarily during the armed conflict, most of the destruction of Serbian homes has taken place after the introduction of the Vance-plan, in order to prevent the return of Serbs. Other than eliminating the "undesirable" elements of the population through destruction of their homes, confiscated homes are also used to resettle refugees and displaced persons, primarily from Bosnia-Herzegovina, belonging to the "desired" ethnic group, in order to create ethnically "pure" areas.

Among the areas under threat of "ethnic cleansing" in the territory controlled by the Croatian authorities, the following were brought to the attention of the Rapporteurs: the area of Rijeka and Western Slavonia, particularly the region around Pakrac. As to areas under the control of the Knin authorities,

the region of Baranja and areas in the region of the Dalmatian coast have been reported to be under threat of ethnic cleansing.

#### 5.5 Destruction and confiscation of property

##### Territory under the control of the Croatian Government

It was reported that in numerous cases Serbian properties have been destroyed or confiscated in Croatia. It was reported that over 6,000 Serbian homes have been destroyed in the last 10 months. It was reported that in the region of Zadar (Dalmatian coast), on 2 May 1991 approximately 1,000 Croats from Bibine (near Zadar) joined a group from Zadar and proceeded to systematically destroy and loot shops belonging to Serbs. It was also reported that a number of municipalities had lists of Serbian homes and properties to be destroyed. It was alleged, furthermore, that these lists were prepared by officials belonging to the HDZ party. In the region of Daruvar (Sector West) it was reported that between April and September 1992, 85 Serbian homes were either destroyed or damaged.

##### Areas presently under the control of the Knin authorities

It was reported that most of the homes and property belonging to non-Serbs have already been destroyed or confiscated by the Knin authorities. Such acts, nevertheless, are allegedly still carried out. In September 1992, six elderly people from the village of Svinjarevci (Sector East) who were terrorized into abandoning their homes and who were desperately seeking to cross the line into Croatian-held territory, were informed by the "Internal Affairs Office" in Vukovar that in order to receive permission to leave the area they had to sign an official form stating that they were voluntarily leaving their homes. The Rapporteurs were particularly concerned about information received that the Knin authorities have enacted a law in November 1991 allowing for the confiscation of properties belonging to any individual who is considered an "enemy of the Serbian Republic of Krajina". In view of the fact that no effective judicial system exists in these areas, it is apparent

that the sole purpose of such a law is to legitimize the arbitrary expulsion of non-Serbs from their homes.

#### 5.6 Discriminatory dismissal from employment and harassment

##### Territory under the control of the Croatian Government

It was reported that significant numbers of Serbs have been arbitrarily dismissed from employment solely on the basis of their ethnic origin. In particular, this has been the case in government offices and police departments. There are also numerous reported incidents of harassment against Serbs. It was reported, for example, that in March 1990, sixty members of the Serbian intelligentsia were pressured to leave Zadar through threatening letters signed by the HDZ party which stated that "we have had enough of Serbian Communist dictators, our time has arrived. You leave or you will have to behave as we want." The local police took no action to protect these individuals who subsequently received threatening telephone calls warning them that if they did not leave, their children would be killed and their wives would be raped. It was reported that most of these people were eventually dismissed from work. It was also reported that the children of Serbs have been threatened, both physically and psychologically, in their schools in certain areas.

It was pointed out by the Croatian authorities that in the former Yugoslavia, Serbs occupied a disproportionate number of jobs, particularly in the public sectors including the police, because of their affiliation with the Communist Party. They contend, therefore, that their dismissal from employment is not based on their ethnic origin, but rather a consequence of the establishment of democratic rule and the withdrawal of communist privileges.

##### Areas presently under the control of the Knin authorities

In these areas, it was reported that practically all Croats, as well as other non-Serbs, have been arbitrarily dismissed from

employment, solely on the basis of their ethnic origin. Non-Serbs, furthermore, are subjected to death threats and other serious forms of intimidation on a regular basis. It was pointed out that there are few such cases reported at present because of the fact that few non-Serbs remain in areas under the control of the Knin authorities.

#### 5.7 Arbitrary arrests of Serbs in Croatia

There have been numerous reports involving the arbitrary arrests of Serbs in the territory under the control of the Croatian Government. It was reported that in most cases, Serbs are accused of being "Chetniks" and charged with "rebellion against the State" pursuant to section 236(f) of the Criminal Code of Croatia, without any evidence whatsoever. While in police custody, furthermore, there have been reports of torture and mistreatment.

It was reported that the names of Serbian intellectuals have been published in Newspapers in the form of a "wanted" persons list. If they are located, therefore, they may be arrested. It was reported, furthermore, that legal action pursuant to section 236(f) of the Criminal Code of Croatia has been taken against some 20,000 Serbs, many of whom have been tried in absentia. It was alleged that as long as the name of an individual of Serbian origin appears on the list, no other evidence is necessary for his conviction.

According to figures of the Croatian authorities, 73% of the 20,071 persons prosecuted from August 1990 until June 1992 were charged under section 236(f) of the Criminal Code. It should be noted, however, that apparently, these proceedings shall be discontinued pursuant to Article 1 of the Law on Abolition. (See Annex 7)

## 6 RELEVANT LEGISLATION AND ADMINISTRATION OF JUSTICE

### 6.1 Relevant legislation

#### Constitutional Law

Article 134 of the Constitution of Croatia adopted 22 December 1990 stipulates that international treaties concluded, confirmed, and published in conformity with the Constitution constitute an integral part of domestic law. (See Annex 5) Such international obligations, furthermore, prevail over domestic legislation in the event of inconsistency. The provisions of international treaties may only be abrogated on the basis of means contained in the treaty itself or in accordance with the general rules of international law. Similarly, with respect to the period prior to Croatian independence, the 1974 Constitution of Yugoslavia provided in article 210 that international treaties which have been promulgated shall be directly applied by domestic courts. (See Annex 5). Yugoslavia had ratified all the major international human rights instruments concluded under United Nations auspices, including the International Covenant on Civil and Political Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and the Convention on the Elimination of All Forms of Racial Discrimination.

The Croatian Constitution does not contain any provision prohibiting the transfer of jurisdiction to an international judicial body. The Minister of Justice, furthermore, informed the Rapporteurs that he did not foresee any legal obstacles to a decision of this kind, provided that it would be approved by a competent national authority. It should be noted that the Constitution prohibits capital punishment. (See Annex 5).

### Criminal Law

The Criminal Code of Croatia entered into force on 8 October 1991. In addition to its provisions, serious crimes, such as war crimes and crimes against humanity, are punishable based on the continuing applicability of Chapter 16 of the Criminal Code of the former Yugoslavia. (See Annex 6) Certain other crimes committed before 8 October 1991, furthermore, are also punishable pursuant to the Criminal Code of the former Yugoslavia.

### The Law on Abolition

A Law on Abolition has recently been enacted by the Croatian Parliament. (See Annex 7) According to Article 1 of this Law, criminal prosecution or criminal proceedings are to be discontinued against perpetrators of criminal acts in the armed conflicts, in the war against the Republic of Croatia, or in connection with such conflicts or war, perpetrated in the period from 17 August 1990 until the day of entering into force of the Law. The Rapporteurs were informed that this occurred on 25 September 1992. Article 2 of this Law, however, contains an important qualification by providing that the perpetrators of criminal acts whom the Republic of Croatia is liable to prosecute in accordance with the provisions of international law are exempt from the abolition for criminal acts under Article 1. In other words, individuals accused of crimes under international law continue to be liable to prosecution.

In order to clarify the scope of the exemption contemplated in Article 2, reference may be made to the letter of 29 September 1992 sent by the Public Prosecutor of Croatia to district and military prosecutors. (See Annex 8) In this letter it is stated that individuals suspected of criminal acts contrary to Chapter 16 of the Penal Code of the former Yugoslavia on crimes against humanity and international law, are not protected by the Abolition Law, and thus, are liable to prosecution.

In practice, however, it may often be difficult for prosecutors or courts to assess the precise scope of the provisions of international law, violations of which are not covered by the Law on Abolition. In order to assist the competent Croatian authorities in the interpretation of the relevant international legal norms, the granting of expert advice, possibly through an international expert commission, would be useful. The Croatian Government has indicated to the Rapporteurs that it would, in principle, be ready to accept such advice by a commission or in any other form.

### Conclusions

Since an element of the present mandate is an assessment of the feasibility of attributing responsibility for atrocities committed against unarmed civilians, the Rapporteurs have considered the applicable law in the Republic of Croatia, including the prevailing situation after the entry into force of the Law on Abolition. The Rapporteurs conclude that the category of human rights violations which fall within the present mandate are punishable both under the law of the former Yugoslavia as well as under the law of the Republic of Croatia.

#### 6.2 Administration of Justice

Criminal cases are investigated by the police under the supervision of an investigating judge. The decision to prosecute is taken by the Public Prosecutor. In addition to the Croatian Public Prosecutor, there are local prosecutors and military prosecutors. The Court system consists of three levels: Municipal Courts (a total of 99), District Courts (a total of 14) and the Supreme Court. In cases involving serious crimes, the court of first instance is the District Court. According to information received, such cases may be appealed to the Supreme Court. There are also six military courts operating at present. The decisions of these courts may be appealed to the District Court, or, in serious cases, directly to the Supreme Court.

In the areas under control of the Knin authorities there also seem to be three levels of criminal courts. The Rapporteurs have not been in a position to obtain more specific information as to the functioning of the judiciary in this area. Furthermore, they have observed a substantial discrepancy between the system as explained by representatives of the authorities and the situation as it exists in practice.

The Rapporteurs have also made an effort to assess the effectiveness of the legal system in practical terms. They cannot but conclude that there are serious and important deficiencies so far as it may concern the effective protection of human rights in Croatia. In areas under the control of the Knin authorities and in the United Nations Protected Areas generally, the Rapporteurs have concluded that in practice, there is no functioning judicial system at this time. It appears that significant improvements must be made in order to protect the fundamental human rights of individuals. It is the opinion of the Rapporteurs, furthermore, that such improvements require substantial international support and assistance.

## 7 ATTRIBUTING RESPONSIBILITY

### 7.1 Principles

From the mandate it appears that an important task of the Rapporteur Mission is to make recommendations as to the feasibility of attributing responsibility for atrocities against unarmed civilians in Croatia and Bosnia-Herzegovina. In the view of the Rapporteurs, such attribution is feasible. It will, however, be a major undertaking. One must foresee the compilation of large amounts of information as well as the need to allocate substantial resources in order to conduct investigations, trial and the administration of long-term prison sentences in a number of cases.

As a point of departure, the Rapporteurs should like to take the rules on criminal proceedings laid down in international law. It is evident that whatever suggestions are made, they must conform to these rules.

Article 6 of the European Convention on Human Rights lays down the following: In the determination of any criminal charge against him, everyone is entitled to a public hearing within a reasonable time by an independent and impartial tribunal established by law. This Article as well as Article 5, lay down further guarantees for the protection of persons charged with criminal offences. Similar provisions appear in Article 14 of the International Covenant on Civil and Political Rights. It is evident that the guarantees laid down in these provisions must be observed.

An additional requirement follows from Article 2 of the Seventh Protocol to the European Convention on Human Rights. According to this provision, everyone convicted of a criminal offence by a tribunal shall have the right to have the conviction or the sentence reviewed by a higher tribunal. This right, however, may be subject to exceptions in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against

---

acquittal. If an international criminal jurisdiction is contemplated, the obligations following from this provision must be examined.

According to Article 1 of the Sixth Protocol to the European Convention on Human Rights, the death penalty shall be abolished. No one shall be condemned to such penalty or executed. There is, however, an exemption in Article 2, which lays down that a State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war. The Rapporteurs would like to emphasize that it is in their opinion inconceivable that the CSCE should endorse the death penalty.

#### 7.2 Collection of information

The first step to be taken is the collection of information. Such collection has already taken place in various instances. (See Section 8)

In the view of the Rapporteurs it is important that the collection of information is performed in accordance with international rules. They have not been able to investigate further the possible existence of such rules. However, they wish to draw attention to the European Convention for the Protection of Individuals with regard to automatic processing of personal data.

#### 7.3 Administration of justice

Ever since the outbreak of the armed conflict in the former Yugoslavia and the first reports of alleged war crimes and crimes against humanity, there has been a growing demand for the establishment of an international tribunal to try the suspected war criminals. Before discussing this possibility, the Rapporteurs wish to emphasize that irrespective of which course is taken, it is necessary to apply a system which covers the entire proceedings from the outset until a convicted person is released from prison having served her sentence.

This means that it is necessary to have a law which covers the period of investigation and the preliminary measures that may have to be taken, such as detention on remand. There must also be rules on which law to apply when the case is examined by the court. Evidently, there must be rules on the formation of a court and the possibilities of appeal. Furthermore, there must be rules on the execution of sentences, containing e.g. provisions for the establishment of the date of release, possible leaves during the serving of the sentence, treatment in the prison, visits by relatives etc. If there is to be an international prison, this would require a special treaty and an agreement with the host State on accepting the prison on its territory. Other rules are also needed.

This information should suffice to indicate the complexity of an international effort in this case.

In determining the question of how to proceed, the Rapporteurs believe that it is necessary to identify the requirements which should be met by a criminal justice system in the present case. These requirements could be defined as follows:

- Suspects should be brought to justice as soon as possible
- The justice system must comply with international norms
- The system must be as cost-effective and accessible as possible
- The persons sentenced must be treated according to the applicable standards for the treatment of prisoners and this should be done under international supervision.

If these conditions are to be met, it is necessary to investigate several options before a definite decision is taken. It may even be that it would be wise to investigate the possibilities of combining different possible solutions.

In this connection, the Rapporteurs would like to point to the fact that, even though this mandate only covers Bosnia-Herzegovina and Croatia, a possible proposal on their part will also inevitably have an impact on other parts of the former Yugoslavia.

## 8 PROPOSAL FOR A SYSTEM FOR ADMINISTRATION OF COLLECTED INFORMATION

A substantial amount of information on alleged criminal acts has been and is at present being collected. Considerable efforts to collect information have already been made by various organizations. The Rapporteurs consider that there is an urgent need to co-ordinate the efforts in a more systematic way. This is in particular so, since the Rapporteurs have observed frustration amongst persons serving in the various organizations because of the fact that there is no central and competent authority to whom they could forward the information. The Rapporteurs, therefore, see a need to institutionalize the collection of information and to entrust the responsibility for this collection to a particular organ on a more permanent basis.

In the view of the Rapporteurs, it is important that a thorough assessment of the necessary rules for a system for administration of collected information be made prior to any such centralized collection.

Before a system of this kind is introduced, it is necessary to lay down the reasons for it. In the opinion of the Rapporteurs, such a system should:

- make it possible to establish personal responsibility
- make it possible for victims or their relatives to participate and at the same time to ease their grief
- give the possibility for witnesses and organizations to deposit their statements or contributions in order to assist in the establishment of personal responsibility
- give a clear signal to the world that the international community is prepared to take action and to pursue such efforts
- save the possibilities for different options with respect to actions needed, in particular the bringing of suspects to justice.

From the above appears that there are many institutions where information is now being gathered. It is, however, an obvious interest that all these efforts are coordinated and that an efficient system is set up. Before such a vast collection of information is commenced, it is necessary to establish the rules according to which this information is to be treated.

It is not the task of the Rapporteurs to make proposals as to where this work is to be done. Irrespective of who is to be responsible, it is necessary to establish an authority with the responsibility for the administration of the information gathered. It is also necessary to lay down rules governing the right of access to this information. This is important in particular with respect to information deposited by persons who run the risk of being intimidated, if not worse, because of their deposition. In the view of the Rapporteurs, access to the information should only be granted to police officers and prosecutors engaged in the preparation of indictments against suspects. This means that rules on secrecy have to be laid down before any substantial gathering of information is commenced.

The Rapporteurs believe that it is also necessary, in particular in view of the situation in the former Yugoslavia, to establish the collection of information as an international enterprise. It may be possible to perform this work under the auspices of the United Nations (provided the necessary rules are laid down). If the registration is to take place elsewhere, it would be necessary to lay down the rules for such international cooperation.

The Rapporteurs foresee that the work to be performed in this context will be of considerable proportions. Thousands of incidents will be reported, thousands of people may make depositions, be they victims, the relatives of victims, witnesses or otherwise. It is also obvious that the preparation of the prosecution of suspects will take time; no effort should be spared, and prosecution may occur at a relatively late stage, depending on the results of the investigation and the rules on statutory limitation.

It is evident, therefore, that a system for administration of collected information must be managed by computers. Such a system should be elaborated with the participation of experienced police investigators, prosecutors, judges, military experts, experts on humanitarian law, and computer experts. It may be that participating States can already provide ready-made systems in this field. The system should provide opportunities for cross references, the retrieving of data from full-text documents, etc. A special problem to be dealt with is the fact that it may not be sufficient to use the latin alphabet only. The possibilities of entering data in the cyrillic alphabet must also be examined.

The Rapporteurs are convinced that it is not sufficient that data are collected only through intermediaries. It should be possible for victims, witnesses, etc. to make their depositions directly. They see no reason why the system should deviate from normal procedure when crimes are reported at the national level.

The opening of the registration system for individuals will mean that a considerable amount of data will be submitted to the administrator. It is, therefore, necessary to organize this collection of data in a streamlined fashion, thus making it possible to feed the information into the computers with as little effort as possible. This means that some kind of form should be elaborated (in the latin and cyrillic alphabet). This form should be structured in such a way that registration could be made in a very simple way, while at the same time it would be possible to retrieve the data through the employment of cross references. To illustrate how such a form could be elaborated, the Rapporteurs would like to convey the following:

First, there should be a page containing information and instructions as to the completion of the form. The form itself should provide, inter alia, for the following items: name of depositor; plaintiff/witness/other; suspects, if any; the alleged violation; time; place.

The Rapporteurs are fully aware that many of the persons concerned will not be in a position to complete a form of the kind they contemplate. Some would be too frightened to submit information in this way, and others would not be able to do it without assistance. In the latter case, they could of course be assisted. In the former case, however, there is little one can do. Nevertheless, in view of the functioning of the system, it should gain confidence, which may entail more courage among the people concerned.

In many cases there will be no problem for people who want to make depositions to forward these to the administrator of the system. In other cases, e.g. in the UNPAs, it would be necessary to establish some kind of collection with the help of the international organizations operating in the area.

Proposed action:

In order to investigate the possibilities of establishing a system of the kind outlined, the Rapporteurs propose that a committee of experts be convened immediately. The committee could consist of two experienced police investigators, one prosecutor, one judge, one military expert, one expert on humanitarian law, and one computer expert. The Government of Croatia should be invited to appoint one expert to sit on the committee. Its mandate should be to propose, within a very short time, the necessary rules and the administrative and technical solutions, and to make an estimation of costs.

## 9 DELIBERATIONS ON A COMPETENT JURISDICTION

### 9.1 National courts

From Section 6.2 above, it appears that the court system in Croatia is structured in such a way that it would, in principle, be possible to use it for the purpose of bringing suspected war criminals to justice. Under present conditions, however, the Rapporteurs see no real possibility for an effective prosecution of war crimes and crimes against humanity at the national level. There are several reasons for this:

First, the Croatian courts are still in a transformation process from the court system under communist rule into a judiciary which would meet the prerequisites for courts in States operating under the rule of law.

Second, the antagonism which the Rapporteurs have experienced between Croats and Serbs as a result of the armed conflict is so intense at the moment, that it is unlikely that the courts in Croatia would be considered as impartial and independent by many of the persons concerned.

Third, the trials will inevitably mean that witnesses and other persons concerned will have to appear before the courts. In such cases, it can be assumed that persons from e.g. Serbia would hesitate to go to Croatia to appear as witnesses against suspected Croatian war criminals. The same would apply vice versa.

Fourth, the bringing to justice of suspected war criminals presumably encompasses persons of high level in the respective countries. In such cases, it could be argued that it is less appropriate that the administration of justice be entrusted to any of the parties to the conflict.

Fifth, a reassuring impression from the visit of the Rapporteurs to Croatia is that the Government of Croatia is, in principle, in favour of an international tribunal and would

seem to be ready to cooperate with other States in order to establish such a jurisdiction. This issue is further discussed under Section 9.3 below. The Knin-authorities, however, indicated that they would not favour the creation of such an institution.

## 9.2 Establishment of an international criminal court

The possibility of establishing an international criminal court has been discussed for a long time. Many proposals have been forwarded, but so far these proposals have not been successful. The well-known Nuremberg and Tokyo tribunals should of course be mentioned in this connection. It should be borne in mind that these tribunals were set up under special régimes by the victors of the Second World War. The scope of the present report, however, does not allow for an elaboration on these experiences.

The material available on this topic is extensive. It may suffice in this connection to refer to the latest contribution of the International Law Commission (ILC) in the 1992 report on the work of its forty-fourth session. This report also contains the report of a working group set up by the ILC on the question of an international criminal jurisdiction.

The subject-matter has been on the agenda of the General Assembly of the United Nations for more than forty years. Even if there are at the moment some indications that progress can be made, the Rapporteurs are of the firm opinion that it will still take a considerable time before a permanent international criminal court can be established. There are several reasons for this. One important reason is that there is a linkage between the establishment of such a court and the applicable law. In spite of the efforts by the ILC over the past years, it has not been possible for the Commission to get further than a first reading of the relevant draft articles. The Rapporteurs expect that these provisions will be subjected to thorough scrutiny by Member States and that the Commission will not be able to present a final draft in the near future.

---

Although the Rapporteurs are very much in favour of the establishment of an international criminal court, they would now strongly advise against waiting for such a court to be established before action is taken against serious criminal acts committed in connection with the armed conflict on the territory of the former Yugoslavia.

The Rapporteurs, therefore, conclude that it will not be possible at present to entrust jurisdiction over the suspected war criminals in former Yugoslavia to an international criminal court of the kind contemplated in the work within the United Nations.

### 9.3 An International ad hoc Tribunal for certain crimes committed in the former Yugoslavia

As follows from the foregoing discussion, it remains to be examined whether an international ad hoc criminal jurisdiction would be feasible. The Rapporteurs believe that such an undertaking is feasible. However, many aspects remain to be considered. The Rapporteurs have examined some of these aspects and should like to mention the following as a basis for further considerations.

#### Applicable law

One of the most difficult issues to deal with in the establishment of an international criminal jurisdiction is the question of the applicable law. Even if the jurisdiction is described as international, it would still be dealing with a process which under ordinary circumstances would be a matter for national courts, namely adjudication of criminal cases.

A special feature in this connection is the principle nullum crimen sine lege. The meaning of this principle is that the alleged crime must have been punishable at the time it was committed. In other words, the suspect should have been under the obligation to observe the rule in question when he committed the act. Whether he in fact did know about the rule is of no relevance.

The question in this connection is whether international instruments such as the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide would be a sufficient basis for action by an international jurisdiction. The same holds true of the 1949 Geneva Conventions and the additional Protocols of 1977. The characteristic of these instruments is that they require contracting States to provide penal sanctions for violations of certain provisions in the instruments in question. The instruments themselves, however, do not contain any provisions as to the punishments which should follow upon conviction. Such provisions ought, therefore, to be found in national laws.

If an international jurisdiction is set up, one option would be to formulate international provisions laying down the punishment which should follow upon the finding that a person is guilty of a crime against any of the provisions in question, e.g. the Geneva Conventions. Another solution is to examine whether the national legislation in force is a sufficient basis for legal action.

In this connection, the Rapporteurs have examined Articles 141 through 155c of the Penal Code of the Socialist Federal Republic of Yugoslavia (see Annex 6) as well as the corresponding provisions in the present Penal Code of Croatia. In our view these provisions provide a sufficient legal basis for the administration of justice with respect to suspected war criminals in the former Yugoslavia. It should in this respect be noted that Croatia has abolished the death penalty, which is prescribed in the Penal Code of the former Yugoslavia.

We emphasize that the examination of the Rapporteurs is a very preliminary one, and that it would be necessary before any further action is taken to examine in greater depth the possibilities of applying the provisions in question. (See Section 6.1 and Annex 6).

### Procedural law

Another important matter is the procedural law which should be applied. The Rapporteurs have not been able to examine whether the procedural law of Croatia would provide rules which could be applied by an international jurisdiction. It is self-evident that many rules have to be laid down in the treaty establishing the jurisdiction in question. It is also self-evident that the court, in accordance with international practice, would have to establish its own rules of procedure. For further examination, however, it is necessary to investigate whether there are rules in the Croatian national legal system which could serve as a basis for measures that have to be taken by an international jurisdiction.

### The establishment of a jurisdiction

The normal procedure for the establishment of a jurisdiction (the Rapporteurs will use the term "court" in the following) is to conclude a treaty. This treaty would, in the present case, have to be agreed upon by the interested States.

The main purpose of the treaty should be to lay down the statute of the court. By becoming a party to such a treaty the States have to accept certain obligations. The most important would be that they have to contribute to the budget of the court. On the other hand, they may also be in a position to nominate judges to the court. Another matter to be examined is whether there are obligations with respect to holding accused persons in custody or providing means for imprisonment of convicted persons.

Another important matter is the composition of the court. The Rapporteurs assume that there will be numerous cases brought before the court. Therefore, it is to be expected that the court would have to work on a full-time basis. It is also necessary to lay down requirements for judges to serve on the court. As the Rapporteurs have already indicated (Section 7.1 above) it is necessary to examine whether Article 2 of the

Seventh Additional Protocol to the European Convention of Human Rights requires that the treaty provide for an appeals court within the system.

### Prosecution

Another equally important matter is the arrangement of the prosecutorial system. In this respect, there are different possibilities to be examined. These would all have to be studied in detail before any decision is taken. The Rapporteurs would, however, assume that a permanent prosecutorial institution would have to be established. This is particularly so because this is the organ which would have to take all preliminary measures such as deciding on which cases to bring forward, which preliminary measures to be taken, which investigation to be pursued, etc. The functions of the prosecutors would be to investigate alleged crimes, to collect information and to examine information available in the collection system, to examine the necessary evidence and to instigate the accusation and, finally, to act as prosecutor before the court.

The Rapporteurs have been informed that there are a number of cases in Croatia in which accused persons have been sentenced in absentia. We would, therefore, point out that Article 14 (3) (d) of the International Covenant on Civil and Political Rights stipulates that an accused person has the right to be tried in her presence. This means that all accused persons have to be brought before the court. As long as States are prepared to collaborate with the prosecutor there will be no problems in this connection. However, it will be necessary to examine the relation between the rules of the court and existing extradition systems.

### Implementation of sentences

As the Rapporteurs have already indicated, it will be necessary to solve the question of where the sentences handed down by the court should be served. They recall that those condemned by the

Nuremberg tribunal had to serve their sentences in a prison managed by the four Allied Powers. One way of solving this question would be, therefore, to establish an international prison. If the matter is pursued with efficiency the number of prisoners may be considerable. Another aspect is that prisoners would have to be treated according to the applicable international standards for the treatment of prisoners, which may influence the location of the prison.

In this respect, the Rapporteurs note that the Government of Croatia has expressed its willingness to consider international supervision concerning the execution of sentences in Croatian prisons. The possibility of such a system would have to be examined. In this respect, it would be necessary to connect the national rules on parole, etc., with the provisions of the treaty.

#### Language

An additional question is the language which should be used. Since the court would be designed to deal with alleged crimes from a particular region, the languages of this region could be used as official languages of the court.

#### Summary

The foregoing discussion demonstrates that there is a viable possibility of establishing an international jurisdiction to deal with alleged war crimes and crimes against humanity committed in the former Yugoslavia. The review which the Rapporteurs have made is certainly not exhaustive. They are anxious to stress that the review is made only for the purpose of making an illustration of the problems which would have to be solved if an international jurisdiction were contemplated. There are no shortcuts, and an international jurisdiction must be set up to meet the highest standards of legal protection as well as efficiency. This examination would have to be made by experts in the field.

Proposed action:

In order to prepare a draft treaty establishing an international ad hoc tribunal for certain crimes committed in the former Yugoslavia we propose that a committee of experts from interested States be convened as soon as possible. The committee should be instructed to elaborate such a draft and to make an estimation of costs.

## 10 OTHER PROPOSALS

### 10.1 Exhumation

As appears in Section 5, there are clear indications concerning the specific location of three mass-graves in the Vukovar area (Sector East). The Rapporteurs were informed by competent experts that if the exhumation of these mass-graves does not take place before the coming winter (i.e. 1 November), the condition of the bodies might not allow their identification or the establishment of the cause of death.

The Rapporteurs have discussed this matter and come to the conclusion that it is imperative that these allegations be examined immediately, so as to allow for the identification of possible victims and the collection of information which may lead to attribution of responsibility.

The Knin authorities should be willing to extend the necessary cooperation to make this undertaking possible. Should they not be willing to do so, the individuals responsible for this lack of cooperation should be identified and reported to the CSO.

#### Proposed action:

An international group, including forensic experts, should be immediately sent to Sector East to investigate the existence of mass-graves. They should exhumate the possible victims in order to identify them and to establish the cause of death. This operation should be undertaken before 1 November 1992.

In this connection, attention is drawn to the establishment of the International Fact-Finding Commission under Article 90 of the 1977 Protocol I additional to the Geneva Conventions of 1949, from among the members of which such an international group could be constituted.

## 10.2 Alleged execution of the villagers of Kip

As appears from Section 5.2, it was reported that in mid-November 1991, eighteen Serbian men from the village of Kip were arrested by members of the Croatian army: it is alleged that these men were executed in December 1991. The Rapporteurs noted that in their presence the Croatian Minister of the Interior gave immediate instructions to the authorities to conduct a thorough investigation. (See Section 5.2)

### Proposed action:

The Committee of Senior Officials should ask for a final report concerning the outcome of this investigation.

## 10.3 International assistance in creating a democratic system of administration of justice

In their talks during their visit to Croatia the Rapporteurs were told of insufficient professional preparation - with respect to democratic European standards - of police personnel, court staff and other officials involved in the administration of justice. This situation is understandable considering the difficult circumstances of transition from communist rule to democracy under war-time conditions.

A prerequisite for a society under the rule of law is professionalism on the part of those engaged in the administration of justice. The Rapporteurs would, therefore, like to draw attention to the difficulties in this field which Croatia now experiences. They urge Governments and international organizations to offer assistance programmes in order to promote an effective, modern, and democratic system for the administration of justice in Croatia.

### Proposed action:

The Committee of Senior Officials should invite Governments and international organizations to offer assistance programmes in order to promote an effective, modern, and democratic system for the administration of justice in Croatia.

11 PROPOSAL FOR AN EXTRAORDINARY MEETING OF THE COMMITTEE OF SENIOR OFFICIALS - PUBLICATION OF THE REPORT

It is known to the Rapporteurs that the next Meeting of the Committee of Senior Officials is scheduled for 4 November 1992. In view of the urgency of some of the proposals, in particular the proposal of establishing a committee with the task of preparing a document on a system for administration of collected information (Section 8 above) and the exhumation of possible victims for identification (Section 10.1 above), the CSO might consider meeting already in October. If this should not be possible, the participating States might find another solution in order to deal immediately with these very important matters.

According to paragraph 11 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (see Annex 1) Croatia has the possibility of submitting observations on the Report to the ODIHR no later than three weeks after the submission of the Report, unless all the States concerned agree otherwise. In view of the co-operation demonstrated vis-a-vis the Rapporteurs by the Government of the Republic of Croatia, they are convinced that it would be possible to shorten this time. This would allow the ODIHR to transmit the Report to all participating States without further delay.

The Rapporteurs are aware that - according to the provision quoted - the Report should be placed on the agenda of the next regular meeting of the CSO. They, however, feel confident that due to the humanitarian aspects of the proposals, it will be possible to speed up the procedure. They also recommend that the confidentiality of the Report be lifted as soon as possible.

## 12 ACKNOWLEDGMENTS

The Rapporteurs wish to express their gratitude to the Government of the Republic of Croatia for the co-operation extended to them during their visit which facilitated their difficult task.

Special tribute is due to UNPROFOR, in particular Mr. Cedric Thornberry, Director of Civil Affairs. Without his invaluable assistance, the Rapporteurs would not have been able to gain many of the insights reflected in this Report nor to visit areas not under the control of the Croatian Government.

The Rapporteurs furthermore wish to express their gratitude to Ambassador Jean Noel Wetterwald, Head of the UNHCR office in Zagreb, Mr. Rafael Gaillard, Field Coordinator of the ICRC and Ambassador Ramsay Melhuish of the ECMM as well as their colleagues.

The Rapporteurs should also like to thank all persons who in an official or unofficial capacity put themselves at their disposal to provide valuable information for this Report or to assist in arranging and executing their extremely dense programme. They should in particular like to mention the helicopter pilots and the drivers of the Czech Battalion.

The Rapporteurs should further like to express their gratitude to Mr. John Zerolis and Mr. Tom Mitnacht of the US-Embassy in Zagreb for their excellent organization of the mission.

Finally, the Rapporteurs wish to thank the Federal Ministry for Foreign Affairs of the Republic of Austria and the staff of the Legal Office of the Ministry for making possible the prompt completion of this Report.

### 13 CONCLUDING REMARKS

It is beyond any doubt that gross violations of human rights and norms of international humanitarian law, including war crimes and crimes against humanity, have been committed in connection with the armed conflict in the former Yugoslavia. It is also common knowledge that every day atrocities continue to be committed. The evidence is overwhelming and undeniable. The international community cannot allow this horrifying situation to persist. In various fields, decisive measures should be taken to put an end to this tragic situation. One such field is the legal field.

One of the fundamental principles underlying the Charter of the United Nations, the Statute of the Council of Europe, and the documents of the CSCE is respect for the rule of law.

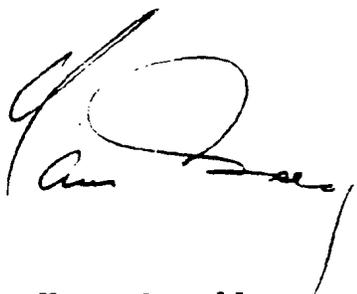
Over the past forty years efforts have been made in order to establish an international criminal court; so far, without tangible results.

This is, however, a historical moment with unprecedented opportunities. There is a willingness expressed by concerned States outside the area to contemplate action regarding the atrocities committed. But even more important is the indication of cooperation that has been made to the Rapporteurs by the Government of the Republic of Croatia. Within the near future, therefore, it should be possible to establish an international jurisdiction to deal with the individuals responsible for the crimes committed. The course of action which the Rapporteurs foresee should also make it possible to bring to justice criminals from other parts of the former Yugoslavia.

The Rapporteurs already foresee cooperation on the part of the Government of Bosnia-Herzegovina which has repeatedly affirmed its commitment to the punishment of such atrocities (see the Letter dated 10 August 1992 from the President of the Republic of Bosnia and Herzegovina to the Secretary-General of the United Nations, U.N. Doc. E/CN.4/1992/S-1/5 of 13 August 1992).

In the opinion of the Rapporteurs, the international community shares a common responsibility to bring to justice those who have committed crimes in connection with the armed conflict in the former Yugoslavia. The rules enshrined in the relevant international legal instruments should be enforced in order to punish those responsible and to demonstrate the determination of the international community to take action now - and in the future.

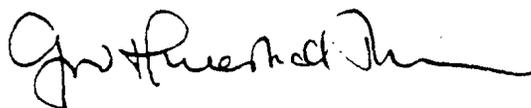
Vienna, 7 October 1992



Hans Corell



Helmut Türk



Gro Hillestad Thune

Articles 4, 6, 10- 12 and 14 of  
the Moscow Meeting of the Conference  
on the Human Dimension of the CSCE

- (4) A participating State may invite the assistance of a CSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. In such case, the State will select the person or persons concerned from the resource list. The mission of experts will not include the participating State's own nationals or residents or any of the persons it appointed to the resource list or more than one national or resident of any particular State.

The inviting State will inform without delay the CSCE Institution when a mission of experts is established, which in turn will notify all participating States. The CSCE institutions will also, whenever necessary, provide appropriate support to such a mission.

- (6) The inviting State will co-operate fully with the mission of experts and facilitate its work. It will grant the mission all the facilities necessary for the independent exercise of its functions. It will, inter alia, allow the mission, for the purpose of carrying out its tasks, to enter its territory without delay, to hold discussions and to travel freely therein, to meet freely with officials, non-governmental organizations and any group or person from whom it wishes to receive information. The mission may also receive information in confidence from any individual, group or organization on questions it is addressing. The members of such missions will respect the confidential nature of their task.

The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts or of any publicly available information transmitted to it. The inviting State will comply with any request from a mission of experts to be accompanied by officials of that State if the mission considers this to be necessary to facilitate its work or guarantee its safety.

- (10) The requesting State or States may appoint one person from the resource list to serve as a CSCE rapporteur. The requested State may, if it so chooses, appoint a further rapporteur from the resource list within six days after notification by the CSCE Institution of the appointment of the rapporteur. In such case the two designated rapporteurs, who will not be nationals or residents of, or persons appointed to the resource list by any of the States concerned, will by common agreement and without delay appoint a third rapporteur from the resource list. In case they fail to reach agreement within eight days, a third rapporteur (who will not be a national or resident of, or a person appointed to the resource list by any of the States concerned, will be appointed from the resource list by

the ranking official of the CSCE body designated by the Council. The provisions of the second part of paragraph 4 and the whole of paragraph 6 also apply to a mission of rapporteurs.

- (11) The CSCE rapporteur(s) will establish the facts, report on them and may give advice on possible solutions to the question raised. The report of the rapporteur(s), containing observations of facts, proposals or advice, will be submitted to the participating State or States concerned and, unless all the States concerned agree otherwise, to the CSCE Institution no later than three weeks after the last rapporteur has been appointed. The requested State will submit any observations on the report to the CSCE Institution, unless all the States concerned agree otherwise, no later than three weeks after the submission of the report.

The CSCE Institution will transmit the report, as well as any observations by the requested State or any other participating State, to all participating States without delay. The report may be placed on the agenda of the next regular meeting of the Committee of Senior Officials, which may decide on any possible follow-up action. The report will remain confidential until after that meeting of the Committee. Before the circulation of the report no other rapporteur may be appointed for the same issue.

- (12) If a participating State considers that a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State, it may, with the support of at least nine other participating States, engage the procedure set forth in paragraph 10. The provisions of paragraph 11 will apply.

- (14) The participating State or States that have requested the establishment of a mission of experts or rapporteurs will cover the expenses of that mission. In case of the appointment of experts or rapporteurs pursuant to a decision of the Committee of Senior Officials, the expenses will be covered by the participating States in accordance with the usual scale of distribution of expenses. These procedures will be reviewed by the Helsinki Follow-up Meeting of the CSCE.

Annex 2

MOSCOW MECHANISM TO CROATIA

Rapporteurs

Ambassador Hans CORELL, appointed by the  
United Kingdom and co-sponsors

Ambassador Helmut TÜRK, appointed by  
Bosnia-Herzegovina and Croatia

Mrs. Gro HILLESTAD THUNE, appointed by Hans Corell  
and Helmut Türk

Assistants

Mr. Jan NYBERG, First Secretary, Swedish Ministry  
for Foreign Affairs (assistant to Ambassador  
Corell)

Ms. Birgit KOFLER, Legal Officer, Austrian Federal  
Ministry for Foreign Affairs (assistant to  
Ambassador Türk)

Mr. Payam AKHAVAN, Danish Center of Human Rights  
(assistant to Mrs. Thune)

Interpreters

Mr. Franjo SCHRUIFF

Ms. Gerlinde GREGORITZ

Liaison Officers in Croatia

Mr. John ZEROLIS, Deputy Head of Mission,  
US Embassy, Zagreb

Mr. Tom MITTNACHT, Economic Office, US Embassy,  
Zagreb

PROGRAMME OF  
THE MISSION OF THE MOSCOW MECHANISM RAPPORTEUR GROUP  
TO CROATIA  
SEPTEMBER 30 - OCTOBER 5, 1992

Wednesday, 30 September 1992

Arrival at Zagreb

Briefing with the heads of the diplomatic missions of Austria, Ambassador Andreas Berlakovich, Norway, Mr. Leif Larsen, Sweden, Ambassador Sune Danielsson and the United States of America, Mr. Ronald Neitzke

Meeting with representatives of the ECMM: Ambassador Melhuish, Ambassador MacDonald, General Cranston, LtCol Eiting and others

Meeting with representatives of the UNPROFOR: Mr. Cedric Thornberry, Director of Civil Affairs and Ms. Yolanda Auger

Meeting with the General Secretary of the Serbian Democratic Forum, Mr. Petar Ladjevic

Thursday, 1 October 1992

Meeting with the former Head of the Croatian office for prisoner exchanges, Professor Dr. Ivica Kostovic

Meeting with the Vice President of the Parliament of the Republic of Croatia, Ms. Katerina Fucek

Meeting with the Croatian Public Prosecutor, Mr. Stjepan Herceg and the Military Prosecutor, Mr. Mirsan Baksic

Meeting at the Foreign Ministry with Assistant Minister Smiljan Simac; Legal Adviser Stanko Nik; Head of the CSCE Unit, Mr. Ivan Starcevic and Acting Spokesperson, Ms. Ivona Moric

Meeting at UNHCR with Ambassador Jean Noel Wetterwald, Chargé de mission for Croatia

Meeting at ICRC with Mr. Rafael Gaillard, Field Coordinator for Croatia, and Mr. Pierre Gassman

Friday, 2 October 1992

Meeting with Vice Premier Dr. Mate Granic

Visit to Daruvar, UNPA Sector West:

Meeting with representatives of the UNPROFOR: Civil Affairs Coordinator Gerard Fischer; Mr. Sergej Cherniawsky, Civil Affairs officer; Sector Commander General Zabala and others

Meeting with the acting Mayor and Government Commissioner of Daruvar, Mr. Tomislav Stefanovic and Mr. Boris Belic, responsible for liaison with UNPROFOR

Meeting in Pakrac with Mr. Veljko Dzakula, "President" of Western Slavonia (attended also by other representatives of the Knin authorities)

Saturday, 3 October 1992

Visit to Knin, UNPA Sector South:

Meeting with representatives of the UNPROFOR: Sector Commander Brig.Gen. Arab Rob; the Coordinator for Civil Affairs, Mr. Victor Andreev; Ms. Yvette Pass of the UNHCR and others

Meeting with representatives of the Knin authorities:  
"Minister of Defence", Mr. S. Spanovic; "Minister of  
Interior", Mr. M. Martic; "Minister of Justice"  
Mr. V. Stevovic; "Chairman of the Assembly of Knin",  
Mr. R. Matrovic; Mr. K. Novacovic, responsible for liaison  
with the police and Mr. N. Krosnjar, liaison with UNPROFOR

Sunday, 4 October 1992

Visit to Vukovar and surroundings, UNPA Sector East:

Meeting in Erdut with UNPROFOR: Coordinator for civil  
affairs, Mrs. Blandina F. Negga; Civil Affairs Officer,  
Mr. Phillip Corman; Dep. Sector Commander, Col. Pierre  
Peeters; UNCIVPOL Deputy Chief, Mr. Larry Moore and  
Mr. Ronny Fingren (UNCIVPOL)

Meeting with representatives of Knin authorities: Mr. Milan  
Ilic, "President" of Eastern Slavonia; Mr. Nemanja Jovcic,  
"Secretary of the Regional Council"; Mr. Milos Vojnovic,  
"President of the Supreme Court of the Republic of Serbian  
Krajina"; Mr. Milorad Trosic, "Public Attorney of the  
Republic of Serbian Krajina"; Mr. Milorad Visic, "President  
of the Municipal Council of Vukovar"; Mr. Milorad  
Nedeljkovic, member of the "Human Rights Committee" and  
others

Return to Zagreb and meeting with Prof. Dr. Zvonimir  
Separovic, former Minister of Foreign Affairs of Croatia  
and Head of the newly created "Centre for the investigation  
of genocide"

Meeting with Prof. Zarko Puhovski, Professor of Philosophy,  
University of Zagreb

Monday, 5 October 1992

Visit to the Dubrava (Hidra) refugee camp near Zagreb by the assistants to the Rapporteurs

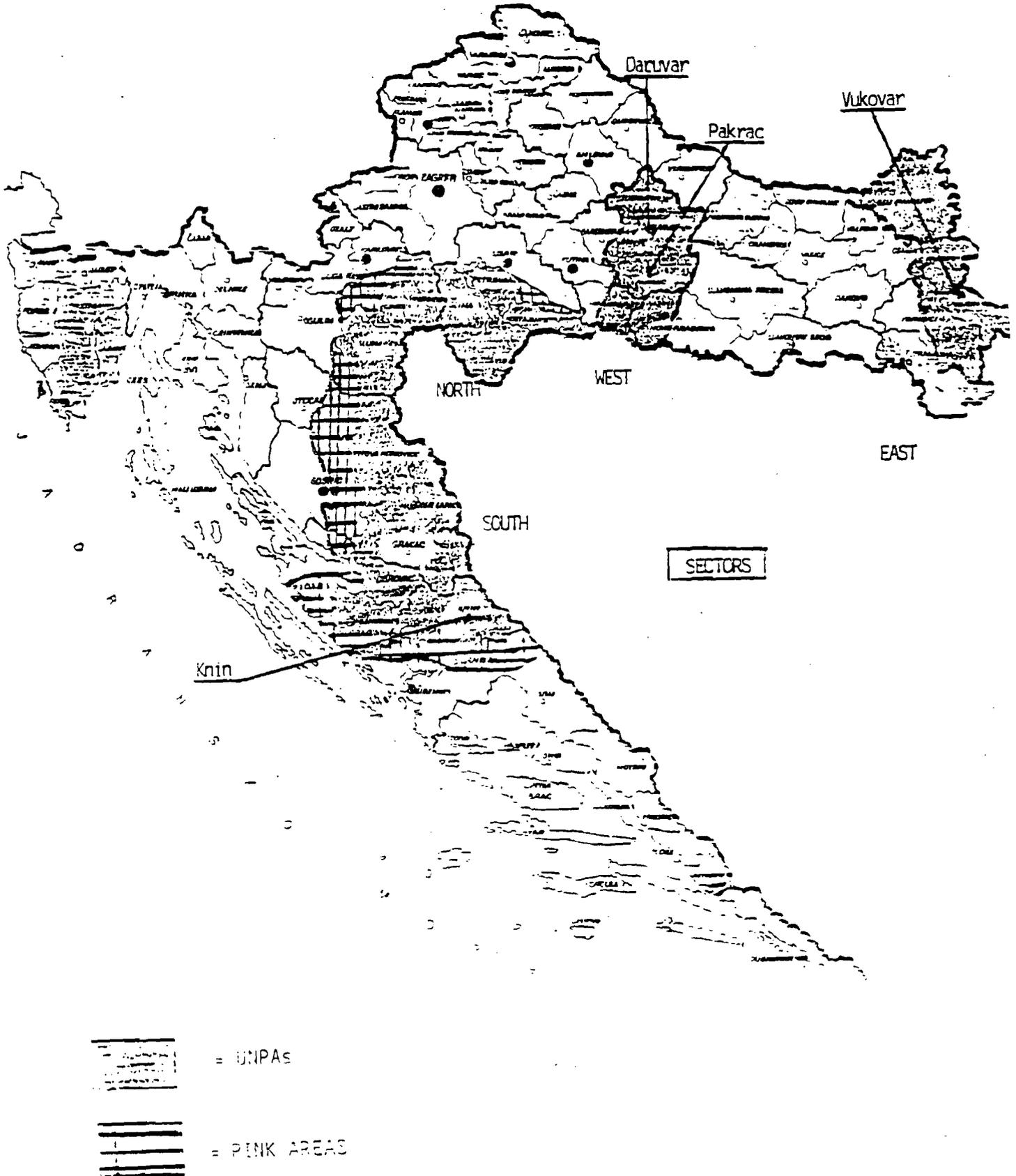
Meeting with Minister of Justice, Mr. Ivica Crnic; Deputy Minister Marijan Ramuscak and Assistant Minister Josip Kardum

Meeting with the Minister of Interior, Mr. Ivan Jarnjak; Deputy Minister Zeljko Tomljenovic; the Assistant Minister responsible for personnel and public information, Mr. Zdravko Zidovec; Assistant Minister responsible for uniformed police, Mr. Josko Moric and the Head of Section for the criminal police, Mr. Marizan Benko

Meeting with the President of the Republic of Croatia, Dr. Franjo Tudjman

Departure for Vienna

UNPAs AND PINK AREAS IN THE REPUBLIC OF CROATIA 1992



UNOFFICIAL TRANSLATION

Annex 5

RELEVANT PROVISIONS FROM THE CONSTITUTION  
OF THE SOCIALIST FEDERATIVE REPUBLIC OF  
YUGOSLAVIA OF 1974

Article 201

Aliens in Yugoslavia shall enjoy the freedoms and rights of man spelled out by the present Constitution and shall have other rights and duties specified by statute and international treaties.

Article 203

The freedoms and rights guaranteed by the present Constitution may not be restricted.

No one may use the freedoms and rights established by the present Constitution in order to: disrupt the foundations of the socialist self-management, democratic order established by the present Constitution; endanger the independence of the country; violate the freedoms and rights of man and citizen guaranteed by the present Constitution; endanger peace and equality in international cooperation; foster national, racial, or religious hatred or intolerance; or abet the commission of criminal offenses - nor may these freedoms be used in a way which offends public morals. It shall be specified by statute in which cases and under what conditions the use of these freedoms in a way contrary to the present Constitution will entail a restriction or a ban on their use.

These freedoms and rights shall be realized and duties performed pursuant to the present Constitution. The mode of realization of individual freedoms and rights may be regulated only by statute and only when so provided by the present Constitution or when this is indispensable to their realization.

The freedom and rights guaranteed by the present Constitution shall enjoy judicial protection.

Article 210

International treaties shall be applied as of the day they enter into force, unless otherwise specified by the instrument of ratification or by an agreement concluded on the authority of the competent agency.

International treaties which have been promulgated shall be directly applied by the courts.

RELEVANT PROVISIONS FROM THE  
CONSTITUTION OF THE REPUBLIC OF  
CROATIA OF 1990

Article 20

Any person who violates the provisions of this constitution concerning basic liberties as well as human rights and the rights of citizens is personally responsible and cannot invoke superior orders.

Article 21

Each human being has the right to life.

In the Republic of Croatia there is no capital punishment.

Article 134

International Treaties concluded, confirmed and published in conformity with the Constitution are part of the international legal order of the Republic and have a binding force superior to that of laws. Their provisions can be amended or abrogated only through the means and methods they provide themselves or in accordance with the general rules of international law.

UNOFFICIAL TRANSLATION

Annex 6

RELEVANT PROVISIONS FROM CHAPTER XVI  
OF THE PENAL CODE OF THE SOCIALIST  
FEDERATIVE REPUBLIC OF YUGOSLAVIA

Article 141 - Genocide

Any person who, with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, orders with respect to members of such a group their killing, the infliction of serious physical injuries, the destruction of their mental or physical health, their forcible dispersal or deportation, the infliction of conditions of life which bring about the physical destruction of the group in whole or in part, the imposition of measures preventing births within the group or the forcible transfer of children to another group or who commits, with the same intent, any of the acts mentioned

is to be punished by a prison sentence of at least five years or by the death penalty.

Article 142 - War crimes against the civilian population

(1) Any person who, in contravention of the provisions of international law, during a war, an armed conflict or an occupation, orders

an attack against the civilian population, a settlement, individual civilians or incapacitated persons hors combat causing the death, serious physical injuries or health defects, an indiscriminate attack which affects the civilian population, the killing, torturing or inhuman treatment of the

civilian population, its subjection to biological, medical or other scientific experiments, the taking out of tissues or organs for transplantation purposes, the infliction of serious suffering and damage to the physical integrity and health, the dispersal, deportation or forcible change of the national identity or conversion to another creed, forcible prostitution and rape, measures aiming at threatening and terrorising, the taking of hostages, collective punishment, illegal confinement of persons in concentration camps and other illegal prisons, the denial of the right of a lawful trial before an independent court, forced enrolment in hostile armed forces or in its communication services or administration, forced labour, the denial of food supplies to the population, the confiscation of property, pillage, the illegal and unauthorized destruction or appropriation of property on a large scale and unless justified by the necessities of warfare, illegal and disproportionately high contributions and requisitions, the devaluation of the local currency or the illegal circulation of money

or who commits any of the acts mentioned

is to be punished by a prison sentence of at least five years or by the death penalty.

(2) The punishment according to para. 1 of this article is to be inflicted on any person who, in contravention of the provisions of international law, during a war, an armed conflict or an occupation, orders

an attack against objects which are under the special protection of international law as well as against potentially dangerous objects and installations like e.g. barrages, protective dams and nuclear power stations, an indiscriminate attack against civilian objects which are under the special protection of international law as well as unprotected places and demilitarized zones, an attack causing long-term and widespread destruction of the environment and prejudice to the health and the survival of the population,

or who commits any of the acts mentioned.

(3) Any person who, in contravention of the provisions of international law, during a war, an armed conflict or an occupation, orders or executes, as part of the occupying force, the resettlement of parts of his civilian population to the occupied territory is to be punished by a prison sentence of at least five years.

Article 144 - War crimes against prisoners of war

Any person who, in contravention of the provisions of international law orders with respect to prisoners of war their killing, torturing or inhumane treatment, their subjection to biological, medical or other scientific experiments, the taking out of tissues or organs for transplantation purposes, the infliction of serious suffering and damage to the physical integrity and health, their forced enrolment in hostile armed forces or the denial of the right of a lawful trial before an independent court,

or who commits any of the acts mentioned

is to be punished by a prison sentence of at least five years or by the death penalty.

Article 150 - Rude treatment of the wounded, sick or prisoners of war

Any person who, in contravention of the provisions of international law, inflicts a rude treatment upon the wounded, sick or prisoners of war or who prevents that they avail themselves of their rights granted by international law is to be punished by a prison sentence of between six months and five years.

Article 151 - Destruction of cultural and historical monuments

(1) Any person who, in contravention of the provisions of international law, during a war or an armed conflict, destroys cultural or historical monuments and buildings or installations serving scientific, artistic, educational or humanitarian purposes is to be punished by a prison sentence of at least one year.

(2) If by an act falling under para. 1 of this article a clearly recognizable object is destroyed which is under the special protection of international law as belonging to the cultural or intellectual heritage of a people, the perpetrator is to be punished by a prison sentence of at least five years.

Article 152 - Incitement to a war of aggression

Any person who calls for or incites to a war of aggression is to be punished by a prison sentence of between one and ten years.

Article 154 - Racial and other discrimination

(1) Any person who violates the elementary human rights and the freedoms recognized by the international community by discriminating for reasons of race, colour, nationality or ethnic origin is to be punished by a prison sentence of between six months and five years.

(2) The punishment according to para. 1 is to be inflicted on any person who forcibly removes an organisation or individual persons because of their advocacy of the equal rights of all human beings.

(3) Any person who disseminates the idea of the superiority of one race over the others or who propagates or incites to racial hatred is to be punished by a prison sentence of between three months and three years.

Article 155 - Enslaving a person and trafficking of slaves

(1) Any person who, in contravention of the provisions of international law, makes another person enter into slavery or a similar relationship and keeps her in such a relationship, buys her, sells her, hands her over to another person or procures her for buying, selling or handing over, or who incites another person to sell her freedom or the freedom of a person for whom she has to provide or whom she supports to be punished by a prison sentence of between one and ten years.

(2) Any person who transports a person who is a slave or is in a similar relationship from one country into another is to be punished by a prison sentence of between six months and five years.

(3) Any person who commits an act falling under paras. 1 or 2 of this article with regard to a minor is to be punished by a prison sentence of at least five years.

Article 155 b - Endangering of persons under international protection

(1) Any person who kidnaps or otherwise uses force against a person who enjoys international protection, or who attacks such person in her office, residence or in a means of transport is to be punished by a prison sentence of at least one year.

(2) If an act falling under para. 1 of this article causes the death of one or several persons, the perpetrator is to be punished by a prison sentence of at least five years.

(3) If by an act falling under para. 1 of this article a person is intentionally killed, the perpetrator is to be punished by a prison sentence of at least ten years.

(4) Any person who endangers the security of a person falling under para. 1 of this article by seriously threatening to attack this her, her office, residence or means of transport is to be punished by a prison sentence of between one and ten years.

#### Article 155 c - Taking of hostages

(1) Any person who abducts a person and threatens to kill her, to injure her or to keep her as a hostage in order to force a State or an international organisation to do or not to do something as explicit or implicit condition for the liberation of this hostage is to be punished by a prison sentence of at least one year.

(2) If an act falling under para. 1 of this article causes the death of an abducted person, the perpetrator is to be punished by a prison sentence of at least five years.

(3) If by an act falling under para. 1 of this article an abducted person is intentionally killed, the perpetrator is to be punished by a prison sentence of at least ten years or by the death penalty.

Z A K O N

O OPROSTU OD KRIVIČNOG PROGONA I POSTUPKA ZA KRIVIČNA  
DJELA POČINJENA U ORUŽANIM SUKOBIMA I U RATU PROTIV  
REPUBLIKE HRVATSKE

Članak 1.

Protiv počinitelja krivičnih djela u oružanim sukobima, ratu protiv Republike Hrvatske ili u svezi s tim sukobima, odnosno ratom, počinjenih u razdoblju od 17. kolovoza 1990. do dana stupanja na snagu ovoga Zakona, obustavlja se krivični progon, odnosno krivični postupak. Za ta djela krivični progon neće se poduzimati, a krivični se postupak neće pokrenuti.

Ako je krivični postupak pokrenut sud će postupak opustaviti po službenoj dužnosti.

Ako je osoba na koju se odnosi oprost iz stavka 1. ovoga članka lišena slobode, sud će odrediti da se pusti na slobodu.

Članak 2.

Ođ oprosta za krivična djela označena u članku 1. ovoga Zakona izuzeti su počinitelji krivičnih djela na čiji je progon Republika Hrvatska obvezna prema odredbama međunarodnog prava.

Članak 3.

Protiv rješenja iz članka 1. stavka 2. i 3. ovoga Zakona javni tužitelj može podnijeti žalbu u roku od 24 sata

od dana dostave rješenja, ako ocijeni da je rješenje protivno članku 2. ovoga zakona.

Članak 4.

Ovaj Zakon stupa na snagu danom objave u "Narodnim novinama".

Klasa: 740-02/92-01/06  
Zagreb, 25. rujna 1992.

ZASTUPNIČKI DOM  
SABORA REPUBLIKE HRVATSKE

PREDSJEDNIK  
ZASTUPNIČKOG DOMA SABORA

Stjepan Mesić, v.r.

UNOFFICIAL TRANSLATION

**LAW ON  
ABOLITION OF CRIMINAL PROSECUTION AND CRIMINAL  
PROCEEDINGS FOR CRIMINAL ACTS PERPETRATED IN THE  
ARMED CONFLICTS AND IN THE WAR AGAINST THE  
REPUBLIC OF CROATIA**

*Article 1*

*Criminal prosecution or criminal proceedings are hereby discontinued against perpetrators of criminal acts in the armed conflicts, in the war against the Republic of Croatia, or in connection with such conflicts or war, perpetrated in the period from August 17, 1990 until the day of entering this Law into force. Criminal prosecution will not be initiated, and criminal proceedings will not be continued for such acts.*

*If criminal proceedings have been initiated, the court will discontinue the proceedings ex officio.*

*If the person to whom the abolition from paragraph 1 hereof refers, has been taken into custody, the court will decree that he/she be released.*

*Article 2*

*The perpetrators of criminal acts whom the Republic of Croatia is liable to prosecute in accordance with the provisions of international law are exempt from abolition for criminal acts under Article 1 hereof.*

*Article 3*

*The public prosecutor may appeal against the decision under paragraphs 2 and 3 of Article 1 hereof within 24 hours of the date of delivery of such a decision if, in his evaluation, the decision is contrary to the provisions of Article 2 hereof.*

*Article 4*

*This Law shall enter into force on the date of its publication in "Narodne novine" National Gazette.*

### *Explanation*

*The President of the Republic of Croatia, Dr. Franjo Tuđman, in outlining the guidelines of activity of the new Government of the Republic of Croatia at the constitutive session on August 13, 1992, and in his Message to the Chamber of Representatives of the Parliament of the Republic of Croatia (constitutive session of the Chamber of Representatives of the Parliament of the Republic of Croatia, September 7-9, 1992), pointed out the necessary measures to be taken in order to establish the sovereignty of the Republic of Croatia, the legal system, legal security and peace throughout the territory of the Republic.*

*As one of the measures for the achievement of the above mentioned objective the President of the Republic also indicated the enactment of a law on abolition from criminal prosecution for perpetrators of criminal acts related to the conflicts and the war against the Republic of Croatia.*

*Abolition of criminal prosecution is one of the institutes of modern criminal legislation, a delicate legal and political question which is also expected by the international community in accordance with its efforts to achieve peace in the territory of the former Yugoslavia.*

*The implementation of this Law will enable the Government of the Republic of Croatia to insure the observance of the imperative provisions of the Convention on the Nonapplicability of the Statute of Limitations to War Crimes and Crimes Against Peace and Humanity of November 26, 1968, and of the principles of international cooperation in the detection, taking into custody, punishment and extradition of perpetrators of such crimes, in accordance with the Resolution of the UN General Assembly No 3074 (XXVIII) of December 3, 1973.*

*In relation to persons against whom final judgements have been passed, the institute of pardon shall be used in accordance with the provisions of indented paragraph 5 of Article 98 of the Constitution of the Republic of Croatia and the respective provisions of the Criminal Procedure Law of the Republic of Croatia.*

*The appeal of the public prosecutor under Article 3 hereof has a suspensive action.*



REPUBLIKA HRVATSKA

JAVNO TUŽILAŠTVO HRVATSKE

Broj: O-14/92

Zagreb, 29. rujna 1992.

SH/GD

OKRUŽNA JAVNA TUŽITELJSTVA  
VOJNO TUŽITELJSTVO

S V I M A

Predmet: Primjena Zakona o  
oprostu od krivič-  
nog progona i pos-  
tupka za kriv.dje-  
la počinjena u oru-  
žanim sukobima i  
ratu protiv Repub-  
like Hrvatske.

Zbog mogućih nesigurnosti u primjeni predmetnog Zakona (koji do danas 29. rujna 1992.g. nismo primili u službenoj verziji objavljenog u "Narodnim novinama") ocjenjujem svrsishodnim uputiti naslovna tužiteljstva da svako rješenje suda o obustavi krivičnog progona i krivičnog postupka iz stavka 2. i 3. članka 1. citiranog Zakona pažljivo ispituju i žalbu obavezno ulože kada ocijene da je rješenje protivno članku 2. Zakona.

Od oprosta za krivična djela označena u članku 1. citiranog Zakona izuzeti su počinitelji krivičnih djela na čiji je progon Republika Hrvatska obvezna prema odredbama međunarodnog prava (članak 2. Zakona).

To su djela iz Glave XVI Zakona o preuzimanju Krivičnog zakona SFRJ (NN br. 53/91) kao zakona Republike Hrvatske.

Glava XVI - Krivična djela protiv čovječnosti i međunarodnog prava

- Članak 141. - genocid
- Članak 142. - ratni zločin protiv civilnog stanovništva
- Članak 143. - ratni zločin protiv ranjenika i bolesnika
- Članak 144. - ratni zločin protiv ratnih zarobljenika
- Članak 145. - organiziranje grupe i poticanje na počinjenje genocida i ratnih zločina
- Članak 146. - protupravno ubijanje i ranjavanje neprijatelja
- Članak 147. - protupravno oduzimanje stvari od ubijenih i ranjenih na bojištu
- Članak 148. - upotreba nedopuštenih sredstava borbe

- Članak 149. - povreda parlamentara
- Članak 150. - surovi postupak s ranjenicima, bolesnicima i ratnim zarobljenicima
- Članak 150-a. - neopravdana odgoda repatrijacije ratnih zarobljenika
- Članak 151. - uništavanje kulturnih i povijesnih spomenika
- Članak 152. - poticanje na agresivni rat
- Članak 153. - zloupotreba međunarodnih znakova
- Članak 154. - rasna i druga diskriminacija
- Članak 155. - utemeljivanje ropskog odnosa i prijevoz osoba u ropškome odnosu
- Članak 155-a. - međunarodni terorizam
- Članak 155-b. - ugrožavanje osoba pod međunarodnom zaštitom
- Članak 155-c. - uzimanje talaca.

Mišljenja sam da pri ocjeni svakog pojedinačnog slučaja djela iz članka 236-g. terorizam i čl. 236-h. diverzija Glave XX Krivičnog zakona i vezano za odredbe Dopunskog protokola o zaštiti civilnih objekata ulaze među krivična djela koja nisu obuhvaćena oprostom.

Žalba javnog tužitelja uložena temeljem čl. 3. Zakona ima suspenzivan karakter.

JAVNI TUŽITELJ REPUBLIKE HRVATSKE  
Stjepan Herceg



UNOFFICIAL TRANSLATION

29 September 1992

THE PUBLIC PROSECUTOR OF THE REPUBLIC OF CROATIA TO THE DISTRICT AND THE MILITARY PROSECUTORS

Ref.: Application of the Law on Abolition of Criminal Prosecution and Criminal Proceedings for Criminal Acts Perpetrated in the Armed Conflicts and in the War Against the Republic of Croatia

In order to avoid possible uncertainties in the application of the said law which we have as at 29 September 1992 not received in the official version published in "Narodne Novine" it appeared useful to draw the attention of the said prosecutors to the fact that each court decision to discontinue the procedure or to release a person under Art. 1 paragraph 1 and 2 of the said law should be thoroughly checked. Such decisions must be appealed to, if the prosecution holds the opinion that the decision contradicts Art. 1 of the law.

Perpetrators of criminal acts whom the Republic of Croatia is liable to prosecute in accordance with the provisions of international law are exempt from accusation for criminal acts under Art. 1 (Art. 2 of the law).

These are perpetrators according to Chapter XVI of the Law on the Application of the Penal Code of the SFRY (Narodne Novine Nr. 03/91) as a Law of the Republic of Croatia.

Chapter XVI: Crimes against humanity and international law:

- Art. 141 - Genocide
- Art. 142 - War crimes against the civilian population
- Art. 143 - War crimes against the sick and wounded
- Art. 144 - War crimes against prisoners of war
- Art. 145 - Conspiracy and instigation to genocide or war crimes
- Art. 146 - Unlawful killing and injuring of enemies
- Art. 147 - Unlawful taking of property of wounded and dead on the battlefield
- Art. 148 - Use of prohibited weapons
- Art. 149 - Offending parliamentarians
- Art. 150 - Rude treatment of the wounded, sick or prisoners of war
- Art. 150a - Unfounded delay of repatriation of prisoners of war
- Art. 151 - Destruction of cultural and historical monuments
- Art. 152 - Incitement to a war of aggression
- Art. 153 - Abuse of international norms
- Art. 154 - Rape and other sexual exploitation
- Art. 155 - Transportation of slavery and the traffic of slaves
- Art. 156 - International terrorism
- Art. 157 - Threatening of persons under international protection
- Art. 158 - Taking of hostages

I hold the opinion that when considering single cases, criminal acts according to "miscellanea" Art.236-g, terrorism and Art.236-h, Chapter XX of the penal code and the decree on the additional protocol on the protection of civilian objects also fall within those criminal acts not falling under the abolition. The appeal of the public prosecutor according to Art. 3 has a suspending effect.

Stjepan Herceg