

Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1998

-- 8 September 1998 --

Introduction

1. The Mission's first Progress Report (20 May 1998) concluded: "many positive steps have been promised, some of these steps have been announced, but few have been implemented. Regrettably, in some areas no steps have been made." This Progress Report, covering the period from mid May to early September 1998, shows **more positive momentum** due to the adoption of the Government's Return Programme and to an improvement in the atmosphere of co-operation with the international community¹.

2. Early in the reporting period, on 20 June 1998, the Government adopted a **Return Programme** that confirmed Croatia's international commitments to the principle of the right to return and improved conditions for the repossession of property. Although the implementation of this Programme is still hampered by political resistance at the local level and by administrative obstacles, there is an increase in the previously very low level of returns. Furthermore, the Programme stipulates that legislative steps must be taken by the end of September, to secure equal treatment for all citizens upon their return. The adoption of the Programme substantially **improved the climate of co-operation with the international community** in general and specifically with the Mission. Also in mid-June, a satisfactory solution was found for the Mission to assume the duties of police monitoring in the Danube Region, after the expiry of the United Nations mandate there on 15 October 1998.

3. International readiness to participate in a **Conference on Reconstruction and Development** (to be organised by the Government, currently scheduled for late October) was renewed on two conditions: the Return Programme should be swiftly implemented and the Government should present a coherent and non-discriminatory plan for reconstruction. (The Government had promised to present such a plan by the end of August but no plan has been presented yet. International participation in such a conference was suspended in May due to the lack of progress regarding return.)

4. **Progress has been less evident, or indeed altogether absent, on other issues** monitored by the Mission. While there has been some slight improvement in coverage of sensitive political themes by Government-influenced media, necessary legal reforms have not taken place. Nor have any steps been taken to fulfil the Government's commitment to implement international recommendations for changing electoral legislation. Hardly any progress has been made in eliminating discriminatory legal provisions. Only very limited steps have been undertaken to address the serious shortcomings in the administration of justice and the rule of law. Also noteworthy has been the Government's continuing failure to implement its Programme on Establishment of Trust.

5. Although the **Danube Region** has been fully reintegrated from the institutional point of view, the integration of citizens of Serb nationality both as individuals and as a community has not

¹ However, the Mission is aware that this improved co-operation has very recently been put under some strain.

yet succeeded – as evinced by the continuing departure of such citizens for the Federal Republic of Yugoslavia (FRY) and other countries. Moreover, the lack of information and transparency concerning amnesty fosters a sense of insecurity.

6. The Mission is convinced that in order to maintain positive momentum, the **following steps should be taken without delay**:

- **The swift implementation of the Return Programme.** This should not only enable more people to return but should also include qualitative progress, which can only be achieved by graduating from the ‘easy’ cases, currently being resolved, to the ‘difficult’ cases of returns. (‘Easy’ cases involve family reunification and return to already available houses, whereas ‘difficult’ cases concern returns to houses that are temporarily being occupied by others and that should be made available under the Programme.)
- **Substantial reform in the broadcast media sector.** The draft amendments to the HRT Law should be revised in order to reform the state broadcast network (HRT) according to the norms of public service broadcasting, thereby eliminating domination of HRT by the ruling party.
- **Reform of electoral legislation.** This should address the problem of ‘out of country voting’ (10 per cent of the seats in the lower house of Parliament are reserved for representatives elected by Croats abroad), as well as other issues (the role of media, minority representation, election commissions, etc.) presented in Chapter V *infra*.

7. The following assessment of Croatia’s progress in meeting international commitments from mid-May until early September 1998 is organised in eight chapters as in the first Progress Report (hereafter May Progress Report):

- I. Displaced persons and refugees
- II. Housing
- III. Human rights and rights of minorities, administration of justice, and local democracy
- IV. Freedom of media
- V. Elections
- VI. Amnesty and reconciliation
- VII. De-mining
- VIII. Integration of the Danube Region

I. Displaced persons and refugees

Background

8. At the time of our May Progress Report, issues relating to organised return centred largely on movements of displaced persons into and out of the Danube Region as governed by the “Agreement of the Joint Working Group on Operational **Procedures of Return**”.² However, as described in our May Progress Report, the Government introduced “Procedures for the individual return of persons who have abandoned Croatia” (hereafter Procedures), on 27 April 1998. This document distinguished between persons who were forced to leave their homes of origin (in practice, mainly Croats) and those who had supposedly departed of their own free will (in practice, mainly Serbs). This distinction effectively reserved the right to return for certain citizens only, and required all others to apply for naturalisation instead of the Government’s simply verifying their citizenship. Furthermore, the mechanisms set forth in this document confronted applicants with

² Signed on 23 April 1997 between the Government of Croatia, UNHCR and UNTAES.

bureaucratic obstacles and did not provide for effective appeals. The Procedures were supplemented in May with “Mandatory Instructions”³ which improved the possibilities for individuals to prove citizenship and obtain documents.

9. In light of this limited progress, the Mission in its May Progress Report called for the Government to accelerate the production of a comprehensive plan for the return of refugees that the Government had promised, in January, to present in March 1998. The Government presented such a plan on 20 June 1998. It was then debated in Parliament and adopted on 26 June 1998 as “The Programme for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons” (hereafter **Return Programme**).

Assessment of the Return Programme

10. The Return Programme represents a major step forward and was favourably received by the international community. In particular, it contains the **following positive points**:

- i) The Programme is based on the principle of the unconditional right to return of all citizens and other categories of persons who could be regarded as refugees in accordance with relevant international instruments and in compliance with Croatia’s commitments as a Dayton signatory and guarantor.
- ii) Unlike the Joint Working Group (JWG) mechanisms⁴, which apply solely to movements into and out of the Danube Region, the Programme includes cross-border movements.
- iii) The Programme clearly acknowledges the unconditional right of return of those who were former residents of Croatia, regardless of citizenship.
- iv) The Programme is based on the principle of the equal status of all returnees, thus recognising equal treatment for organised and spontaneous returns.⁵
- v) The Programme stipulates that the Government “will within three months propose to Parliament to change the existing laws [...] in a way that all of the different categories to whom this Programme refers would be equal in their status as returnees.”⁶
- vi) The Programme sets forth procedures through which returnees should be able to repossess property.
- vii) The Programme facilitates the return to Bosnia and Herzegovina and to the Federal Republic of Yugoslavia of persons from those countries who had found refuge in Croatia.
- viii) The Programme promises the opening of offices in Croatia of the ‘Commission for Real Property Claims’ established on the basis of Annex 7 of the Dayton Peace Agreement.
- ix) The Programme stipulates changes in the competences of the Housing Commissions as implementing agencies charged with registering the status and usage of property, with enabling owners to repossess their property and with accommodating returnees and temporary users.

³ “Mandatory Instructions for acquiring documents required for implementation of the ‘Individual return procedure for persons who left the Republic of Croatia’”, 14 May 1998.

⁴ Joint Working Group mechanisms include: The Agreement of the Joint Working Group on the Operational Procedures of Return, Procedures for the individual return of persons who have abandoned Croatia, Mandatory Instructions for acquiring documents required for implementation of the ‘Procedures for the individual return of persons who have abandoned Croatia’, and relevant provisions of the Law on Reconstruction and the Law on the Status of Displaced Persons and Refugees.

⁵ As distinct from ‘organised return’, ‘spontaneous return’ refers to returns outside the established mechanisms.

⁶ Return Programme, Basic Principles, paragraph 2.

11. On the other hand, the important questions raised by the **loss of occupancy rights** are not satisfactorily addressed in the Return Programme (see paras. 29-31 *infra*).

Implementation of the Return Programme

12. It is still **too early to evaluate the progress** of the Return Programme as such. The Mission believes that an assessment can only be made on the basis of actual returns and the quality of the environment to which people return. Qualitative progress in returns can only be achieved if the implementation of the Programme results in the resolution of ‘difficult’ cases as well as ‘easy’ ones (see para. 6 *supra*).

13. On 20 July 1998, the Government ordered the establishment of **Housing Commissions** in areas of return by the end of that month. In the event, many Housing Commissions were set up, though not necessarily within the deadline. However, local authorities in certain areas of potential return refused to establish Housing Commissions. It is the Mission’s view that these Commissions should be established not only in every municipality where they previously existed (i.e. under the rescinded 1995 Law on Temporary Take-over of Specified Property), but in all areas of potential return. Only a few Commissions are yet functioning as envisaged under the Programme. Some Commissions indicate that a lack of financial and administrative resources hinder them from carrying out their tasks.

14. In mid August, the Government promulgated “**Instructions**” governing the activities of the Housing Commissions.⁷ However, ambiguities in these Instructions are causing some confusion in the implementation of the Return Programme. While there may be a need for further clarification of these Instructions, it is the position of the international community that the Housing Commissions are authorised to, and should, commence work immediately.

15. As a further initiative for implementing the Return Programme, the Government has begun accepting applications for return and issuing documents necessary for return at its Belgrade embassy and its recently opened consulate in Banja Luka (Bosnia and Herzegovina). However, the Mission notes that additional capacity is required to handle the number of applications.

16. The **JWG mechanisms** (see para. 10, ii *supra*) for two-way return continue to work in parallel with the Return Programme. The Mission welcomes the fact that issues of property repossession have been taken up under the Return Programme, remedying the failure of the JWG mechanisms to address this issue. However, the JWG mechanisms continue to be applied inequitably to different categories of returnees, particularly with regard to the granting of returnee status and reconstruction assistance. Furthermore, bureaucratic impediments remain at various levels of JWG administration. One indication of the ineffectiveness of the JWG mechanisms is that a majority of displaced persons returning to other parts of Croatia from the Danube Region is doing so outside the mechanisms (see para. 21 *infra*). In sum, the implementation of the JWG mechanisms has not significantly improved since our May Progress Report.

17. **Difficulties** described in our May Progress Report – regarding the issuance of documents, repossession of property, damage to housing stock, mine threats, security, employment, access to social benefits, freedom of movement within the region and so forth – still prevail. Furthermore, there are no indications that the Government will meet its pledge to propose to Parliament the legal

⁷ “Instructions for the work of Housing Commissions and the application of forms for the implementation of the ‘Programme of Return and Providing Care for Exiled Persons, Refugees and Displaced Persons’”, 10 August 1998 (hereinafter Instructions).

changes necessary to equalise the status of returnees within the stated deadline, which expires in three weeks (see para. 2 *supra*).

18. Given the shortage of housing in the country, the **return to Croatia of Bosnian Croats** who found temporary refuge in other parts of Europe raises the question of their accommodation,. The Government has committed itself, specifically by rescinding the Law on Temporary Take-over of Specified Property, not to assign further private property for temporary use. However, the Mission observes that returning Bosnian Croats still settle in empty Serb-owned houses – a situation that the Government apparently tolerates, but that it must resolve if the Return Programme is to succeed.

Movements of returns and departures

19. Despite the generally low rates of return observed so far, the Mission can now identify certain **positive trends**. These include spontaneous returns of refugees (mainly citizens of Serb nationality) to Croatia; spontaneous returns of displaced persons (citizens of Croat and other nationalities) to the Danube Region; and spontaneous returns of displaced persons (mainly citizens of Serb nationality) from the Danube Region to their places of origin. However, no progress has been discerned in facilitating the return of Croats to their places of origin in neighbouring countries, or in halting the continuing departure abroad of citizens of Serb nationality from the Danube Region.

20. **Displaced persons of Croat and other nationalities returning into the Danube Region:** According to the Government's Office for Displaced Persons and Refugees (ODPR), some 84,000 citizens mainly of Croat nationality, who had been domiciled in the Danube Region, were displaced by the war to other parts of Croatia. The ODPR estimates that 20,000 of these citizens, i.e. less than a quarter, have returned to the Danube Region. Although some 17,000 people have received returnee status in the Region,⁸ the Mission estimates that perhaps only some 10,000 of these returnees reside there full-time.

21. **Displaced persons of Serb nationality returning from the Danube Region to other parts of Croatia:** A survey conducted in the Danube Region by the United Nations in August 1996 found that there were 46,000 displaced persons of Serb nationality residing in the Region. According to the ODPR, some 22,000 of these persons have since returned to other parts of the country as of 1 September 1998. This figure cannot be verified and is, in the Mission's view, exaggerated.⁹ However, the Mission's reports do confirm an upward trend compared to last year. These reports suggest that the total number of returns from the Danube Region since 1996 may lie between 10,000 and 15,000.

22. **Displaced persons of Serb nationality departing from the Danube Region to other countries:** UNHCR and the Mission estimate that since the 1996 survey by the United Nations in the Danube Region, some 28,000 displaced persons of Serb nationality have left for the Federal Republic of Yugoslavia (FRY). The overwhelming majority of these departures took place during the two-year mandate of UNTAES, which ended in January 1998. The Mission observes that on average six families have departed for the FRY every day since the May Progress Report. This consistently negative trend of departures is confirmed also by the ODPR's own recent estimate that

⁸ Returnee status is conferred by ODPR and grants access to social benefits.

⁹ There is clear official proof only that some 9600 citizens of Serb nationality have returned from the Danube Region or from other countries, because only this number has been granted returnee status. However, the official statistics provided to the Mission on persons who have received such status do not distinguish between returns from the Danube Region and returns from other countries. As it has proven generally difficult for Serb citizens to obtain such status, the Mission believes that the real number of returnees from the Danube Region and other countries may be substantially higher than 9600.

the total number of Serb displaced persons in the Danube Region has fallen to only 5800, from the above-mentioned UN estimate of 46,000 two years ago. (The difference between the original 46,000 less the 28,000 departures abroad and the remaining 5800 is accounted for by the returnees to other parts of Croatia referred to in para. 21 *supra*).

23. **Domiciled Serbs departing from the Danube Region to other countries:** UNHCR estimates that between August 1996 and July 1998, some 16,000 of the 67,000 Serbs who were residents of the Region before the war, have left the country – mostly to the Federal Republic of Yugoslavia (FRY). Available data do not indicate any change in this negative trend since the May Progress Report.

24. **Refugees of Serb nationality returning from abroad to Croatia:** Since our May Progress Report, the ODPH has for the first time reported on this category. The ODPH cites a figure of 23,000 such returns as of 1 September 1998. This figure should be seen in the context of the 350,000 to 400,000 citizens of Serb nationality who departed Croatia during the war. The ODPH does not explain how it arrived at the figure of 23,000.¹⁰ Indeed, observations made by both UNHCR and the Mission suggest that the real figure is substantially lower. However, the trend of return by this category of refugee is positive compared to 1997. Since late June 1998, when the Return Programme was adopted, steps by the Government have finally allowed the pace of organised returns of refugees to accelerate. Some 400 refugees have returned by organised convoys, while some 500 have been issued with requisite Travel Letters by Croatian diplomatic missions abroad. The ODPH reports that a further 600 persons have returned spontaneously since the adoption of the Return Programme, although neither the Mission nor UNHCR is in a position to verify this. The Mission notes that The ODPH, supported by UNHCR, has increased efforts to organise ‘easy’ returns (see para. 6 *supra*) in the two months since the Return Programme was adopted. This is a positive development.

25. **Refugees (and others) returning from Croatia to other countries:** Returns from Croatia to other countries are negligible or non-existent. At present, there are some 140,000 Croats from Bosnia and Herzegovina and 40,000 Croats and others from the Federal Republic of Yugoslavia (FRY) in Croatia. According to figures from Government sources and UNHCR, all but 35,000 of these people have been granted Croatian citizenship (thus disqualifying them as refugees).

II. Housing

26. The **resolution of property issues** remains crucial to the advancement of the return process, the establishment of trust and post-war normalisation. As called for in our May Progress Report, Croatia has taken some positive steps in this regard. Parliament has rescinded the 1995 Law on Temporary Take-Over of Specified Property (LTTO) and the 1995 Law on Lease of Apartments in Liberated Areas, both of which had discriminatory effects and contravened international commitments.¹¹ The Mission had repeatedly called for the rescission of these Laws. The law rescinding the LTTO makes reference to the Return Programme and the establishment of Housing Commissions to address repossession of property. This is the first time such mechanisms have been established. The Mission welcomes this development.

¹⁰ It is likely that official statistics for returns of citizens of Serb nationality are inflated by duplications, with particular returns counted as occurring both from the Danube Region and also from the FRY. The reason is that refugees in the FRY used the soft border in the Danube Region from January 1996 to January 1998 in order to enter the Region and obtain Croatian documents.

¹¹ Both laws were introduced in August 1995, in the wake of the Government’s military actions “Flash” and “Storm”.

27. However, extensive **revisions of other property laws** are essential for return and reconciliation as well as for eliminating discrimination. The successful implementation of the Return Programme depends on further concrete action by the Government regarding its commitment to guarantee, ensure and support return by eliminating all obstacles, in particular through creating a “favourable legal framework”.¹²

28. The Return Programme also provides that all returnees shall have equal rights upon return, including access to reconstruction assistance. As noted in the May Progress Report, the **Law on Reconstruction** categorises applicants for reconstruction needs in a discriminatory way, *de facto* favouring Croats and excluding Serbs. Extensive reconstruction is going on in the Danube Region, substantially supported by the Government. This is positive. However, apart from a very few individual cases, the Mission has no information about Government support for the reconstruction of houses belonging to members of the Serb community. There are also discriminatory provisions in the Law on Areas of Special State Concern. By adopting the Return Programme, the Government has committed itself to amend all such discriminatory or otherwise incompatible legislation. No such steps have been taken so far.

29. In the former Yugoslavia, an individual could acquire the right to occupy a socially-owned apartment (hereinafter ‘**occupancy right**’, referred to as ‘tenancy right’ in our May Progress Report) only after fulfilling other conditions prescribed by law. This form of property was the main type of real property right in urban areas of the former Yugoslavia. The right itself had virtually all the attributes of a private property right except the right to sell the property.

30. During the course of the war, the Government passed a number of decrees and laws affecting occupancy rights. Holders of occupancy rights who fled their homes were deprived of their rights to live in them – this occurred without notice, hearing or a right of appeal. Declaring the properties abandoned, the Government gave other individuals the right to live in them. On the subsequent privatisation of the properties, the people who now had the occupancy rights were granted the right to purchase the properties. Croatian courts have held that former occupancy right holders who attempted to challenge the sale of their apartments could not do so as they had permanently lost their occupancy rights and thus had no legal standing in the proceedings. Those affected by the loss of their right to a socially owned apartment have had no effective recourse to reclaim the apartment they formerly occupied, to be provided with another apartment of comparable location, size and value, or to receive fair compensation.

31. The magnitude of the problem and the conditions surrounding the loss of occupancy rights (*force majeure*) are the grounds for the international community’s repeated requests to the Croatian authorities to resolve issues relating to the loss of these rights. The Mission did so most recently in June, during discussions on the Return Programme. The abrogation of occupancy rights through the introduction of a series of arbitrary and discriminatory laws (including unreasonably short deadlines for applications to preserve these rights), the absence of a proper domestic legal basis for obtaining appropriate compensation for the losses incurred and the continuing lack of effective domestic remedies all remain matters of serious concern. As it did in its May Progress Report, the Mission strongly recommends that the Government of Croatia take urgent action to address effectively these issues.

III. Human rights and rights of minorities, administration of justice, and local democracy

¹² Return Programme, Introductory Remarks, paragraph 1.

32. In the May Progress Report, the Mission noted as positive Croatia's formal **adherence to many important human rights instruments**.¹³ Also welcome is Croatia's amendment in December 1997 of Article 14 of the Constitution, in accordance with recommendations made by Council of Europe experts and supported by the Mission. This Article guarantees that all individuals within Croatia, rather than citizens alone, are entitled to enjoy all rights and freedoms under the Constitution on a non-discriminatory basis. The Mission, however, notes that the Government has not yet addressed the concerns expressed in the May Progress Report about the possible negative effects of reservations lodged under the European Convention on Human Rights and the European Charter on Regional and Minority Languages.

33. In 1991, the Government passed a **Constitutional Law on Human Rights and Freedoms and on Rights of Ethnic and National Communities or Minorities in the Republic of Croatia**. The passage of such a law was a precondition for Croatia's international recognition as an independent state in January 1992. In late September 1995, shortly after the Government regained control of most of the former Serb-controlled territories, Parliament suspended many provisions of this Law. The suspended provisions provided in particular for the protection of political representation and social and cultural rights of minorities, applying above all to the Serb minority. On entry into the Council of Europe in 1996, the Government committed itself to revise the suspended provisions of the Law. No progress has been made on these revisions since the May Progress Report, thus leaving the minority population without such protection.

34. The Mission regrets that the Government has not yet accepted the **right of individual petition** under the UN Convention on the Elimination of All Forms of Racial Discrimination, as this Convention covers many rights not covered under other instruments.

35. General concerns remain about the **administration of justice** and the independence and impartiality of the judiciary, as expressed in the May Progress Report. The Government has not taken any steps since then to ensure the availability of full judicial review of decisions taken by administrative authorities.¹⁴ Such a review gives an individual the right to appeal to a court not only on the procedural aspects of an administrative decision but also on the substance of that decision.

36. Furthermore, the Government has **failed to ensure that judicial decisions at all levels are enforced**. This is a particular problem with regard to orders calling for the eviction of persons occupying property belonging to others. Restrictive access to court and to effective right of appeal, as well as lengthy administrative and judicial proceedings, continue to be evident throughout the country. Many positions within the judiciary remain vacant, although new procedures currently under discussion may allow for the accelerated filling of these positions.¹⁵

37. There is still a **massive backlog of cases in both administrative bodies and the courts**, which, according to the new Minister of Justice, are estimated to number between 700,000 and over one million. In addition, the rules that accord priority to urgent cases remain unpublicised. As already noted in the May Progress Report, excessive court fees may prevent people from being able to pursue claims in the civil courts. In some instances, such fees are assessed in a discriminatory manner, as remarked in the May Progress Report. Individuals are often not informed that cases in

¹³ The Government accepted the right of individual petition and of inter-State complaints under the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁴ The availability of such judicial review is a key aspect of fair proceedings as required under Article 6 of the European Convention on Human Rights.

¹⁵ The Draft Law on Amendments to the Law on the State Judicial Council.

which they have an interest have been initiated. Where those individuals cannot be located, proceedings are conducted and decisions taken *in absentia*.

38. Implementation of the 1997 **Convalidation Law** is uneven. The purpose of this Law, and of three related Government decrees of April 1998, is to validate documents issued by the authorities in the formerly Serb-controlled areas. Some progress to this end has been achieved, primarily with regard to administrative matters and the recognition of judicial decisions. The most problematic area is the validation of documents related to pensions and other social benefits. However, the Mission has observed some progress since the May Progress Report in the validation of workbooks for time counted towards pension rights between 1991 and 1997. But at least one deadline for applying for the validation of documents expired in June 1998, and two others will expire in October. In order to fulfil their commitments in the context of reintegration, the Government should remove all obstacles to the validation process, including cancelling deadlines. There is still no public information campaign to clarify the terms of validation.

39. On 3 September 1998, the Minister of Social Welfare informed the Mission that the Ministry had sent **instructions** to social welfare offices a few days previously. These instructions should facilitate the validation of pensions and other social and employment benefits. It is too early to be able to assess the practical effect of these instructions.

40. The 1991 **Law on Citizenship** permits the State to grant citizenship, on the basis of ethnic criteria, to "members of the Croatian people" living abroad, a practice that is unprecedented in other OSCE participating states (see para. 52, *infra*). By contrast, members of the Serb minority and other minorities face great difficulties in verifying their citizenship due to the application of vague norms and arbitrary practices.

41. In our May Progress Report, the Mission noted as positive both the **Government's legal consultations with the international community** and its intensified contact with the Mission.¹⁶ This co-operation has continued to develop since that time. In his first contact with the Mission on 28 August 1998, the new Minister of Justice indicated his readiness to consider enhanced international assistance in reforming the judiciary.

IV. Freedom of media

42. The central and most urgent issue of **media reform** is the transformation of Croatian Radio-Television (HRT) from a state broadcaster into a public service broadcaster. This transformation has been mentioned publicly by Government ministers, for example by Foreign Minister Granic on 26 June. The Mission is informed that a final draft of amendments to the HRT Law will be presented to Parliament during September. It is the view of the international community that the draft, which passed a first reading in Parliament in April, would not serve to convert HRT into a public service broadcaster. That draft did not adequately separate HRT from political structures; Parliament would continue to dominate the HRT Council, the Supervisory Board and the senior appointments.

43. Accordingly, the Mission has suggested to the authorities that the **draft amendments should be revised**: (a) to provide for the appointment of non-parliamentary delegates to the HRT Council by their own organisations, as stipulated by the original 1992 law; (b) to mandate the HRT

¹⁶ In contrast to this positive development, the Mission regrets that on 4 September 1998, the authorities retracted an earlier invitation to the Mission to participate in a meeting between Government representatives and representatives of the Council of Europe concerning the examination of the compatibility of Croatian legislation with the European Convention on Human Rights.

Council to appoint the Managing Director and the Supervisory Board and to set the subscription fee; (c) to acknowledge the incompatibility of management or editorial responsibility with political party office; and (d) to limit substantially the amount of advertising revenue that HRT can collect. These suggestions are in line with the March 1998 “Recommendations by the Council of Europe experts for the further democratisation of the broadcasting sector in Croatia”.

44. The Mission is not aware that a **second draft** of the amendments to the HRT Law has yet been finalised. However, there is no indication yet that positive revisions will be made. Indeed, several senior Government officials have argued publicly that HRT should not privatise the third national television channel – despite the fact that privatisation was foreseen in the April draft law. Instead, these officials favour the option of putting a fourth national channel up for tender. However, in the prevailing economic and political circumstances, and without prior revision of the Telecommunications Law, a politically independent bidder might find it very hard to win the concession for a fourth channel, and then to obtain an adequate share of the advertising market.

45. Regarding **media coverage of the return** of refugees and displaced persons, and other issues relevant to the Mission’s mandate, there have been some slight and partial improvements since May. Television programmes sometimes offer a more balanced and responsible presentation of political items. In the field of printed media, with the exception of the daily *Vjesnik*, newspaper coverage has also improved in the sense that there is less negative propaganda against ‘Serbs’, ‘Muslims’ and other collective targets or individuals stigmatised as ‘opponents of independent Croatia’. On the role of the international community, however, there has been no change. Media attitudes still fluctuate between suspicion or resentment on one hand, and lukewarm acceptance on the other.

46. Despite these improvements, the Government **still fails** to meet its commitment – under the Programme on Establishment of Trust – to urge the media to promote “the equality of all citizens and the need to coexist in tolerance”, and “an atmosphere of tolerance, coexistence, [and] respect for human rights”. Above all, unequivocal public endorsement by the authorities of the return process has been lacking. The Mission believes that the absence of such endorsements serves to deter the media from adopting a more independent editorial stance.

47. There has been no progress toward resolving another crucial problem identified in the May Progress Report, namely the application of **political pressure** through informal as well as legal means. Some printed media continue to be burdened by a large number of libel lawsuits taken up by Government and ruling party officials. In addition, certain newspapers are unable to recover, through the courts, revenue from the Tisak and Slobodna Dalmacija distribution companies, both with close ties to the ruling party. Exacerbated as they are by pressure from the ruling party on the judiciary, these problems contribute significantly to a climate of self-censorship among journalists.

48. In the **Danube Region**, local media broadcasting for the Serb community have succeeded in registering themselves as businesses. This welcome development followed the award to these media of temporary concessions (frequency licences), valid until the end of 1998, by the Telecommunications Council, in fulfilment of the Government’s 1997 promise to UNTAES. However, the possibility of long-term survival for these media depends on their obtaining concessions permitting them to broadcast after 1998. Bidding for such concessions will open in October. In preparation for this crucial step, stations have combined with other electronic media in the Region to improve their access to the advertising market. Such positive initiatives for co-operation among local media have been actively encouraged by international organisations.

49. Among international commitments on media, Croatia is bound by obligations as a signatory and guarantor of the **Dayton Peace Agreement**. In the context of the September 1998 elections in Bosnia and Herzegovina, the international community delivered demarches, in July and August, to the Government and to HRT, drawing attention to the following: Firstly, HRT occupies transmission equipment and frequencies that are either the legal property of RTVBH (the state broadcaster in Bosnia and Herzegovina), or were installed on the territory of Bosnia and Herzegovina. Secondly, HRT uses this equipment and these frequencies to broadcast in Bosnia and Herzegovina biased coverage of the campaign for the elections.

50. By favouring the HDZ-BH party – the Bosnian partner of the ruling party in Croatia – the aforementioned coverage **violates the rules and regulations** regarding fair reporting, equal access to the media and equitable treatment of all political parties during the election campaign. For its part, the Mission has commissioned a media research company to monitor HRT's television news broadcasts for a six-week period in August and September 1998. These broadcasts are produced in Croatia and carried by the above-mentioned transmission equipment and frequencies into Bosnia and Herzegovina. Quantitative analysis of these broadcasts between 3 August and 25 August has confirmed that the HDZ-BH party and its candidates received vastly more coverage than other parties and their candidates.¹⁷

V. Elections

51. The May Progress Report assessed that no progress had been made by the Government in meeting the **international recommendations from 1996 and 1997** concerning elections. In view of the significance of this issue, the Mission subsequently developed this chapter on elections in consultation with experts from the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR). The Mission refers – in addition to addressing the matters covered in the following paper – to all recommendations contained in the Council of Europe and OSCE/ODIHR reports on the 1995 elections as well as the OSCE/ODIHR report on the 1997 elections. Head of Mission presented the Government with the positions contained in this chapter during a meeting with the Minister of Foreign Affairs on 14 August 1998. The Minister acknowledged the necessity to discuss the issues raised including the question of representational rights of members of the Croatian people living abroad.

Representational rights of members of the Croatian people living abroad

52. The **Croatian Law on Citizenship** permits the State to grant citizenship to "members of the Croatian people" living abroad, based on ethnic criteria. Accordingly, the Croatian Government has granted citizenship to a large group of people living abroad based on ethnicity and self-identification with Croatia rather than by virtue of residence, birth or factors standard in other OSCE and Council of Europe countries. In most cases, neither they nor any of their ancestors of Croat ethnicity have ever lived on the territory of the Republic of Croatia. Nor do they themselves have any genuine link to the country. The practice of granting people without a genuine link to the state and on purely ethnic grounds the right to citizenship is unprecedented in the OSCE area. Approximately 380,000 ethnic Croats of voting age have acquired citizenship in accordance with these practices, of whom approximately 330,000 reside in Bosnia and Herzegovina.

¹⁷ For example the HDZ-BH party was featured for more than twice the time given to its main rival, the NHI party. Particularly striking was the disparity in coverage during news reports ostensibly not directly linked to the elections. In this category of coverage, the HDZ-BH party was on screen almost 15 times more than the NHI party. (The calculations are based on the number of seconds on screen.)

53. As in all other OSCE countries, citizenship brings with it the right to vote to all Croatian citizens above a certain age. Also, as in many other OSCE countries, Croatian electoral laws permit out-of-country voters to vote in Presidential and Parliamentary elections. However, unprecedented in the OSCE area is Croatia's practice of reserving full special representation in Parliament to be elected by the **out-of-country voting bloc**. The Law on Parliamentary Elections reserves twelve special Parliamentary seats to be elected by this bloc.

54. These practices of **granting citizenship purely on ethnic criteria** and reserving special representation for an out-of-country bloc undermine the basic idea of representative democracy – that elected bodies act in the interests of the population as a whole and not those of a specific part of the community – and OSCE and Council of Europe principles that Croatia has accepted. According voting rights and mandating representation of this special out-of-country bloc distort the political process. These practices were also criticised by the Council of Europe after the 1995 Parliamentary elections and by the OSCE/ODIHR after the 1997 elections. In 1996, the Government of Croatia committed itself to examine these practices as a condition of its accession to the Council of Europe. Furthermore, the conferring of Croatian citizenship and the franchise on ethnic Croats living in Bosnia and Herzegovina is in violation of both the letter and the spirit of the Dayton Agreement.

55. **Recommendations:** The Croatian Citizenship Law is at variance with OSCE norms and should be changed, especially the provisions pertaining to granting citizenship on purely ethnic grounds. Croatian legislation relating to citizenship and franchise should be amended to bring it into line with OSCE and Council of Europe standards. The Croatian Law on Parliamentary Elections should be amended to abolish special seats reserved for out-of-country voters. Croatia should therefore address the criticism that was voiced by international observers following the 1995 Parliamentary elections, which it agreed to do as one of the conditions for its accession to the Council of Europe.

Disenfranchisement of individuals with the right to Croatian citizenship

56. Through the imposition of political and administrative barriers, the Government of Croatia has **effectively revoked and denied citizenship**, and thereby the right to vote in 1995 and 1997 elections, to many long-term residence of Croatia of voting age (theoretically up to 300,000 or approximately 8 per cent of the overall electorate). This population is primarily comprised of ethnic Serbs living in the FRY and Bosnia as refugees who have been rendered stateless or who have been denied the benefits of citizenship by the Government of Croatia. The international community holds that the vast majority of these individuals have claims to Croatian citizenship based upon the Croatian law on citizenship, as reflected in the OSCE/ODIHR report on the 1997 elections. In adopting the mandatory instructions and the Program for Return, the Croatian Government has taken steps that, if implemented, should in part alleviate the problem.

57. **Recommendations:** The Government of Croatia should ensure that all individuals with the right to citizenship are enabled to have their citizenship reconfirmed expeditiously and without impediment in order to make it possible for them to vote in future elections. The Government of Croatia should take steps to resolve the large number of citizenship cases pending and to institute adequate infrastructures and procedures to accommodate a potentially large number of applications for citizenship verifications.

Role of media in the context of elections

58. Although Croatian electoral legislation states generally that HRT, the state-controlled Croatian Radio and Television, and other means of public communication must "enable all political

parties and minority communities to put forth their platforms with equal time," the provisions are vague and open to manipulation. In practice, the **HDZ's use of the incumbency and its complete control of the electronic media** (the board of directors of HRT is largely composed of influential HDZ members) have ensured overwhelming media coverage of the HDZ relative to opposition parties, including coverage of political party representatives for activities not directly related to elections and election campaigns. The Government committed itself to increasing the independence of HRT when acceding to the Council of Europe in 1996. Furthermore, upon joining the OSCE, the Government accepted the OSCE principles of the Copenhagen document of June 1990 which require governments to ensure free access to the media. The 1995 Council of Europe and OSCE/ODIHR reports and the 1997 OSCE/ODIHR report on elections all criticise the lack of independence and impartiality of the state-owned media.

59. **Recommendations:** The Government should take immediate action to reform HRT and relevant media legislation to ensure the impartiality and to increase the independence of HRT (see paras. 42—44 *supra*). Furthermore, Croatia should also amend its legislation to include more explicit provisions guaranteeing electoral coverage that is independent and balanced in quantity and that is neutral in tone. Relevant laws should be revised to clarify which body regulates the media with regard to elections, placing the competence for regulating the content of election broadcasts under the control of neutral authorities.

Minority representation

60. Croatian election legislation dealing with minority voting and representation requires **mandatory disclosure of ethnic affiliation** in many cases. Members of minority groups must identify their ethnic affiliation in order to vote, either by voting for a special minority list or by formally renouncing their right to vote for that list in favour of voting for the regular state list. Electoral law stipulates that all candidates must identify their ethnicity in order to register to be a candidate. Procedures as they stand now are in contravention of Article 3 of the Council of Europe's Framework Convention on Minority Rights, ratified by Croatia in 1997. Decisions on the number of seats reserved for minorities and which minorities will receive them were taken without national and international consultations and not in a transparent manner. In 1996, the Government of Croatia committed itself to an examination of these practices as a condition of its accession to the Council of Europe. These practices were also criticised in the Council of Europe and OSCE/ODIHR reports on the 1995 elections and the OSCE/ODIHR report on the 1997 elections. In addition, the OSCE/ODIHR criticised the fact that in the 1997 Presidential election, voter registers identified registered voters according to ethnic identity.

61. Croatia has also not revised the suspended provisions of the 1991 Constitutional Law protecting the rights of minorities with respect to **local self-government** as it committed itself to do in 1996 as a condition of its accession to the Council of Europe.

62. **Recommendations:** The Government should consult with representatives of ethnic minorities in Croatia and with OSCE and Council of Europe experts about the most appropriate means to secure the political rights of minorities. The assistance of international experts should be solicited with a view towards amending the relevant electoral laws and other related legislation.

Election Commissions

63. The system for selecting the **state and local election commissions** and the voting boards as stipulated by Croatian election laws calls into question the impartiality of the members of these

bodies. Electoral legislation provides only for opposition party observers to the election commissions and not full-fledged multi-party election commissions.

64. The work of the election commissions is of fundamental importance to ensuring the fairness of the overall electoral process in the country. Although not all democratic countries have election commissions, the principle governing those that do is that the members of such commissions should be neutral and respected members of the society. Croatian election laws stipulate that election commission members must be drawn from the judiciary and the legal profession. In part due to the control exercised by HDZ over the judiciary, there is at a minimum a public perception that the election **commissions are dominated by persons loyal to the HDZ**, which undermines confidence in their impartiality. These points were criticized by the OSCE/ODIHR observation mission following the 1997 elections.

65. **Recommendation:** Croatia should amend its electoral laws to ensure multi-party representation on electoral commissions at all levels.

Domestic non-partisan election observers

66. In the absence of legislation governing the accreditation of election observers, the central election commission has **never permitted domestic non-partisan organisations to observe elections** in Croatia. The OSCE/ODIHR and Council of Europe reports on the 1995 elections and the OSCE/ODIHR report on the 1997 elections criticised the election commission for refusing such accreditation, citing para. 8 of Annex 1 to the Copenhagen Document of 1990 which encourages election observation.

67. **Recommendation:** In order to enhance the credibility and fairness of elections, Croatia should enact provisions to accredit domestic, non-partisan observers for all elections, as recommended by the 1990 Copenhagen Document.

Campaign resources and financing

68. Croatian electoral **legislation does not contain adequate regulations** governing campaign financing and transparency. Not only did OSCE/ODIHR note an overwhelming imbalance in resources devoted to the April 1997 Presidential campaign (paid political advertising for the HDZ/President Tudjman exceeded that of the two opposition candidates by a factor of twenty during one week of the campaign), HDZ control of state resources enabled it to benefit from additional "unofficial campaigning."

69. **Recommendations:** Croatia should adopt regulations and/or legislation governing campaign financing and transparency that better ensure that all parties are able to compete with each other on the basis of equal treatment. These regulations should govern the use of state resources for campaign purposes as well as the ways and means to guarantee transparency of information and accountability for the use of both public and private resources.

VI. Amnesty and Reconciliation

Amnesty

70. The Government's intransigence in not providing clear information about the number, status and resolution of amnesty cases continues to foster a **sense of insecurity** amongst people who might

wish to return to Croatia. Individuals are still unable to ascertain whether or not they might be subject to criminal charges should they enter the country. In addition, there is evidence that the authorities have already convicted *in absentia* an unknown number of persons for war crimes, with the result that some persons may face detention and retrial on their return to Croatia.¹⁸

71. The Mission has been informed that the Government made a commitment to the United Nations **not to issue new war crimes indictments without informing the international community** in advance. The Ministry of Justice undertook to comply with this commitment. War crimes charges against 43 individuals in the Danube Region were reconsidered following the Mission's contacts with the Ministry and the charges were subsequently dismissed.

72. In a reconciliatory move during the UNTAES period, the Government made a **verbal commitment** relating to a small number of individuals who had been convicted *in absentia* for war crimes. The Government agreed that once any of the specified individuals applied for retrial, they would remain at liberty pending completion of the new trials. At the end of August, the international community closely monitored the Government's handling of the cases of three individuals covered by this agreement. The individuals were released after a brief period in detention, during which time their applications for retrial were reconfirmed. The Mission welcomes the Government's adherence to its commitments.

73. According to the International Criminal Tribunal for the former Yugoslavia (**ICTY**), there has been no improvement since May in the Government's co-operation with ICTY. The Government still fails to respond to requests from ICTY for information on investigations and pending cases and continues to claim, in contradiction to ICTY's own view, that the Tribunal has no jurisdiction over events that took place during or were linked to military operations "Flash" and "Storm" in 1995.

Reconciliation and the establishment of trust

74. **Nothing has happened** since the May Progress Report concerning the Government's obligation to encourage reconciliation and the establishment of trust. The National Committee to Establish Trust has failed to make progress towards the broad and very ambitious goals defined in the Government's Programme on Establishment of Trust.¹⁹ Moreover, except within the Danube Region, the Government has not yet appointed Committees at county and municipal level throughout war-affected areas.

75. The overall lack of progress relates partly to the composition of the Committees, which at all levels exclude relevant elements in society such as the media, churches and non-governmental organisations. These shortcomings have fostered **indifference among national and other minorities** towards the Government's Programme on Establishment of Trust and the Committees.

¹⁸ Such detention and retrial would not contravene international standards *per se*. However, if these measures were to be used in an arbitrary and selective way, this would be contrary to the Government's obligations to promote return and reconciliation.

¹⁹ The Programme, adopted on 2 October 1997, sets seven such goals: "the creation of a general climate of tolerance and security"; "the realisation of equality of all citizens"; "the establishment of trust between all citizens with regard to the State administration"; "the creation of general social, political, security and economic conditions for normalisation of life in the war affected regions"; "the speedy, secure and organised return of all Croatian citizens to those regions of Croatia from which they were expelled"; "the inclusion of all citizens ... in the building of democratic society within the framework of the existing democratic system"; "the creation of a political framework for the implementation of relevant legal norms". The committees address the following categories specified in the Programme: "political, legal, administration and internal affairs, economic affairs, social affairs, media, culture, education, reconstruction and return".

76. Where Committees have been established, they tend to be passive in their attitude to programme goals, preferring to await guidance from the national level. Even more discouraging has been the National Committee's failure to present itself convincingly as a forum where the concrete issues of trust establishment are seriously addressed. In so far as the National Committee is active, it concentrates mainly on the Danube Region, addressing disputed issues only on an ad-hoc basis.

77. Outside the framework of the Programme on Establishment of Trust, the Mission notes that **some individual steps toward reconciliation** have taken place. For instance, certain Catholic and Orthodox priests have established good relations and have encouraged their congregations to do likewise. Elsewhere, residents of Croat nationality have on their own initiative provided practical assistance to returnees of Serb nationality.

VII. De-mining

78. De-mining is **crucial for normalisation of life** in the war-affected areas in Croatia. The threat of mines remains one of the most serious obstacles to safe and successful return. Mine incidents in areas of return continue to occur, resulting in grievous injuries and numerous fatalities. Mine contamination also represents a significant impediment to economic revitalisation, especially in agriculture.

79. The Government has continued to make **progress in de-mining**. De-mining plans including for activities in 1999 have been developed for all regions. The Croatian Mine Action Centre is fully operational, although its three sub-centres still depend on the UN Mine Action Centre. Changes and amendments to the Law on Mine Clearance, effective 8 June 1998, have streamlined the chain of command and competences of agencies involved in the Government's de-mining effort, and allowed for international participation in mine clearing. Regrettably, **international participation is still very limited**.

80. The Government has reallocated approximately USD 33 million from other parts of the state budget to de-mining, increasing the de-mining budget by more than 200 per cent. Yet even with this injection of funds, the **available financial resources still allow for only very limited mine clearance**. While as many as 13,000 square kilometres may be mine-contaminated – over 20 per cent of national territory – less than 20 square kilometres were cleared of mines in Croatia in all of 1997. Even the increased pace of de-mining in 1998 will not significantly alter these proportions. Still, targeted international support for de-mining activities in Croatia could accelerate the de-mining process and insure the quality of accomplished mine-clearance. Mine awareness training and proper marking of contaminated areas are also needed.

81. Croatia is clearly not in a position to fully de-mine all contaminated areas without considerable assistance. Therefore, the Mission reiterates that **increased international involvement in de-mining programmes is an urgent necessity**. Such assistance should not be subject to any political conditions.

VIII. Integration of the Danube Region

82. The two-way return process into and out of the Danube Region has not functioned as agreed or as expected (see paras. 20—23 *supra*).

83. The **security situation** in the Danube Region is in most cases acceptable and, according to official sources, better than in other parts of the country. Violent crimes are rare. International police monitoring has indicated that the local police perform in a professional manner. Nevertheless, incidents of verbal harassment, intimidation and physical confrontations between Serb displaced persons and Croat returnees are everyday occurrences in the Region. As more people return into the Region, returnees as well as long-term residents of different backgrounds have become targets of intimidation. Despite the generally adequate record of the local police in handling such matters, the Mission believes they could be more proactive, particularly with respect to intervening in housing disputes. Overall, a feeling of insecurity remains amongst members of the Serb community.

84. The **Joint Council of Municipalities** (JCM) was formed in order to establish a link between the Serb community in the Danube Region and the Government in view of the Region's reintegration. Its members are appointed from among the ranks of Serb councillors from all towns and municipalities in the Danube Region. Support for the JCM, whose establishment was called for in the Erdut Agreement,²⁰ is one of the Government's international commitments.²¹ In spite of these commitments, and the Mission's demarches, the legal status of the JCM is still unresolved and its funding is insecure. As a consequence, the Council has recently been virtually paralysed and is now on the brink of collapse.

85. Since the May Progress Report, the Government seems to have fulfilled its commitment regarding **ethnic balance in public employment** in the Region. However, permanent employment contracts are awarded mainly to Croat returnees, whereas Serb displaced persons eligible for permanent contracts actually only receive temporary contracts. This inequitable treatment is in contravention of the terms of Croatia's commitments.²²

86. The Mission is concerned about activities of **Slavonska Banka**, the most important bank in the Danube Region. As a result of *force majeure*, most of the Region was outside the control of the Government from 1991 until 1997. During this time, the bank was unable to contact its customers and vice versa. Since December 1997, the bank has notified many of its former customers that it intends to collect outstanding debts, which have increased enormously due to excessive interest and penalties that have accumulated since 1991. In some cases the bank has resorted to legal action, including property seizures, liens, and wage garnishments, to recover the debts owed. The magnitude of the problem and the conditions surrounding the accumulation of debt (*force majeure*) are the grounds for the Mission's recommendation that the Government address the issue.

87. The **drastic economic situation** in the Danube Region is largely unchanged. The privatisation process remains stalled and reflects the same discriminatory practices as described in our May Progress Report. As also stated in that report, labour problems in the area persist. The majority of employees work without the benefit of labour contracts. Thousands more remain on waiting lists to regain the jobs they held prior to the war. Because of this status, they are ineligible for unemployment or other related social benefits, the receipt of which would require them formally to terminate their employment.

IX. Looking Ahead

²⁰ Basic Agreement on Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement), 12 November 1995.

²¹ The JCM's organisation, status, competences, and financing were formalised in an agreement, signed on 23 May 1997, between the Government and the JCM, and witnessed by the Transitional Administrator of UNTAES.

²² According to stipulations in the Annex to the Affidavit signed by the Government and UNTAES on 14 February 1997.

88. The adoption of the Return Programme clearly proved the Government's capacity to find comprehensive solutions for complex and sensitive political issues in line with its international commitments. As outlined in the Introduction, the Mission is convinced that three immediate actions are essential in order to maintain the positive momentum in political development. First, the swift implementation of the Return Programme, now focusing on cases where return involves the repossession of property by the returnee. Second, the revision of the Law on the state broadcasting company providing for its transformation into a public service broadcaster, eliminating domination by the ruling party. Third, the reform of electoral legislation addressing the problem of 'out of country voting' as well as other issues, presented in international recommendations which the Government has committed itself to fulfil.

89. Such reforms in the fields of electoral and media law constitute two crucial steps in the ongoing process of strengthening democratic institutions in Croatia. A third field, where progress is equally essential for advancing and deepening democracy is the rule of law, where Croatia has also assumed international obligations. In this field, three issues have to be addressed: First, further steps to achieve full compatibility of Croatian legislation with European standards. Second, reforms to strengthen the effectiveness of the judiciary for securing access to court and fair trials. Third, reforms to ensure the full and unimpeded implementation of court decisions. The Mission is convinced that the Government's co-operation with the international community should be strengthened in order to make an even more substantial contribution to the success of these reforms.

90. The democratisation of Croatia makes the most valuable contribution to the stabilisation of the region and lies at the core of international interest in the country's future. Continued progress in this regard has been identified as the main prerequisite of Croatia's further integration into European and Euro-Atlantic institutions. At the same time, the Mission is convinced that only such reforms will create the conditions for Croatia to come to terms with the past and establish a society based on citizenship rather than ethnicity.