

Croatian Parliament debates co-operation with the International Criminal Tribunal on the former Yugoslavia (ICTY) following report on Completion Strategy to UN Security Council; Government establishes special council to assist indicted Generals

The Parliament conducted a ten-hour debate on 2 July regarding Croatia's co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Prime Minister Ivo Sanader outlined his Government's approach to co-operating with the ICTY, namely to defend the truth about the Homeland War; provide assistance to Croatian indictees, including seeking their provisional release and serving as *amicus curiae*; and to seek to have Croatian cases transferred from the ICTY to Croatia. The Prime Minister further indicated that the Government was providing assistance to the families of all Croatian citizens detained in The Hague. The Minister of Justice repeated the Government's intention to co-operate with the ICTY, but indicated that the Government may challenge allegations deemed unacceptable regarding claims of ethnic cleansing of Serbs in Croatia and Croatia's aggression against Bosnia and Herzegovina.

While the debate may have put the controversial issue of ICTY co-operation to rest as a source of domestic political contention, it also highlighted the question whether prosecutors and the judiciary will be able to act impartially in cases involving members of the Croatian armed forces, particularly against the backdrop of the stated policy of Government support for ICTY indictees. This could also have an adverse impact on the public acceptance of such proceedings as well as on the willingness of witnesses to testify.

Previously, the Government issued a formal decision on 30 June establishing a council to act in the capacity of "friends of the court" (*amici curiae*) in the proceedings against former Generals Cermak and Markac, indicted by the ICTY for alleged crimes during and after "Operation Storm" in 1995. The purpose of the *amici curiae* council is to protect the interests of Croatia and to oppose politically unacceptable allegations in the indictment, in particular that members of the Croatian armed forces undertook a joint criminal enterprise to ethnically cleanse Serbs in parts of Croatia. Council members include international lawyers, historians and sociologists.

On 29 June, the ICTY President and the Chief Prosecutor presented their first periodic reports to the UN Security Council on progress in the implementation of the Completion Strategy. The Chief Prosecutor noted that the deadline to conclude all investigations by the end of 2004 would be fulfilled on schedule. She noted that two indictments had been recently confirmed, including the one against former General Mirko Norac. She reiterated her intention to request that the Trial Chamber transfer the Norac indictment to Croatia. She further indicated that some investigations had been suspended and would be referred to national jurisdictions for further investigation and possible indictment.

The ICTY Chief Prosecutor noted that the deadline for the completion of all trials by 2008 depended upon the co-operation of States. She noted how the failure of Governments to arrest or surrender fugitives, including Ante Gotovina in Croatia, seriously affects the strategic planning of the Prosecution. An unintended consequence of the Completion Strategy is that fugitives and their protective networks are "trying to buy

time until 2008” in hope of evading justice. The Chief Prosecutor repeated that Croatia is at this time fully co-operating with her office and expressed her expectation that this co-operation would continue and that Croatia would locate and transfer Gotovina to The Hague as soon as possible.

The Prosecutor stressed that successful fulfillment of the Completion Strategy depended upon reform of domestic jurisdictions so that they could complete the work of the ICTY and take over the remaining cases. The Prosecutor underscored that the support of the international community, including the OSCE, was of paramount importance in this process.

The ICTY President noted that “... there are still doubts that credible war crime trials can take place in the domestic jurisdictions of Croatia and Serbia and Montenegro”. In relation to Croatia, he cited EC and OSCE concerns about the capacity and impartiality of parts of the Croatian judiciary. However, the President also emphasized that Croatia’s co-operation with the ICTY had improved significantly and that, despite the failure to arrest Gotovina, he viewed Croatia’s progress with great satisfaction. He noted that Croatia had acknowledged the need to enhance the capacity of the domestic judiciary. He referred to recent Mission reports noting improving conditions for the conduct of domestic war-crime trials, including the assessment that there is no reason to believe that the Croatian judiciary would not be able to handle a limited number of cases in a fair and efficient way, particularly when assigned to those judges and prosecutors who have already received special training that the Tribunal had undertaken in Croatia aimed at preparing the national judiciary for the referral of cases.

ICTY sentences former Serb political leader to 13 years imprisonment for crimes against humanity committed against Croats in Croatia

On 29 June The ICTY sentenced Milan Babic, a former Serb political leader in the so-called “*Republika Srpska Krajina*” to 13 years imprisonment for crimes against humanity against Croats and other non-Serbs between August 1991 and February 1992. Babic voluntarily surrendered to the Tribunal in late 2003 and pleaded guilty in early 2004 to the crime of persecutions, committed through a joint criminal enterprise, the goal of which was the forcible and permanent removal of Croats and other non-Serbs from approximately one-third of the territory of Croatia for purposes of transforming the territory into a Serb-dominated state. Among the acts perpetrated were the murders, routine and prolonged imprisonment, deportation or forcible transfer of hundreds of Croat and non-Serb civilians as well as the deliberate destruction of property including cultural institutions of these populations. The Trial Chamber rejected the Prosecutor’s sentencing recommendation of 11 years, finding that it did not adequately achieve the purpose of punishment. While the Chamber found mitigating circumstances in Babic’s co-operation and voluntary surrender to the ICTY as well as in his expressions of remorse, it also found aggravating circumstances in his high political leadership, the gravity of the crimes, the ruthlessness and savagery with which they were carried out and the impact on victims and their families.

Enhanced regional co-operation on refugee return agreed upon at joint OSCE/EC/UNHCR meeting in Zagreb

On 22 June the Heads of the OSCE Missions, the Delegations of the European Commission and the UNHCR representatives in Bosnia and Herzegovina, Croatia and Serbia and Montenegro met in Zagreb in order to establish a regional framework for co-operation on refugee return among the three international organizations and to improve co-operation with the three respective Governments. The meeting represented a new interagency format on return. Such meetings have previously taken place between the OSCE and UNHCR representatives in the region. The next meeting is tentatively scheduled to take place at the end of 2004 in Bosnia and Herzegovina.

A number of conclusions on refugee return were agreed upon at the meeting. The participants agreed to suggest to the host Governments that a Road Map be developed for the completion of the refugee return file, involving the creation of adequate conditions for those who wish to return and support for those who wish to integrate locally in their countries of refuge. To this end, the Governments need to ensure that adequate conditions are in place for returning refugees and IDPs, particularly housing for all those who wish to return. The importance of adequate local infrastructure and economic development in return areas was also acknowledged. The OSCE, the EC and the UNHCR should support a more effective co-operation and exchange of information between the respective central Governments and local authorities.

The OSCE HoMs also highlighted the importance of the *Joint Action Plan on the Implementation of the Common Principles on Regional Return and Respect for Acquired Rights* as a framework towards advising and assisting their host Governments on return and guarantees for acquired rights of refugees and IDPs.

New asylum law enters into force, providing additional support to refugees in Croatia

The Law on Asylum adopted by the Parliament in June 2003 entered into force on 1 July. The EC has identified implementation of the Law on Asylum, including the establishment of a temporary reception centre, as a short-term priority in the *European Partnership* with Croatia that was adopted by the European Council on 18 June. The UNHCR has assessed that the Law provides a good basis for the establishment of a national asylum procedure that meets applicable international standards. The previously applicable law, the Law on Movement and Stay of Foreigners, defined refugees in a manner significantly different than the 1951 Geneva Convention on Refugees. Under that law the Ministry of the Interior rejected all requests for asylum.

In anticipation of the entry into force of the Law on Asylum, an Asylum Unit has been formed within the Ministry of the Interior and some administrative regulations and forms have been issued. At the same time, the UNHCR has identified a number of open questions that still need to be addressed, primarily the lack of clarity in outlining the rights and obligations of asylum seekers, including the right to legal assistance and right to health care. The establishment of a separate Government Asylum Reception Centre is

also an outstanding need, since asylum seekers are presently accommodated either in a detention centre for illegal migrants or in the UNHCR-funded reception centre. The EU will be supporting the Government's efforts to develop an asylum system through the CARDS programme.