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SITUATION OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA, THE
REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA
(SERBIA AND MONTENEGRO)

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the periodic report submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina, in accordance with General Assembly resolution 53/163 of 9 December 1998 and Economic and Social Council decision 1999/232 of 27 July 1999. Pursuant to the requests of the Commission on Human Rights and the Council, the report will also be made available to the members of the Security Council and the Organization for Security and Cooperation in Europe.

PERIODIC REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE FEDERAL
REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO), THE REPUBLIC OF
CROATIA AND BOSNIA AND HERZEGOVINA, SUBMITTED BY THE SPECIAL
RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS

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I. INTRODUCTION

1. This is the third comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. The last report of the Special Rapporteur was completed in December 1998 and submitted to the fifty-fifth session of the Commission on Human Rights (E/CN.4/1999/42). The present report considers human rights developments in the countries of the Special Rapporteur's mandate through mid-August 1999. The Special Rapporteur once again notes with regret the United Nations practice of requiring early submission of reports for the purposes of editing and translation, resulting in the official dissemination of outdated reports.

2. The Special Rapporteur would like to extend his appreciation to the Office of the United Nations High Commissioner for Human Rights, and especially to the field officers of the Office of the High Commissioner in the countries of his mandate, for the support which they have provided to him, often under very difficult circumstances.

II. GENERAL OBSERVATIONS

3. The Special Rapporteur believes that it continues to be essential to consider the situations in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) from a regional perspective. The Kosovo crisis which erupted in 1999 is another problem which is best viewed in the overall context of the violent disintegration of the former Yugoslavia. Major issues such as the question of refugees and internally displaced persons are most effectively addressed on the level of all three countries of the Special Rapporteur's mandate, and the same applies to other issues including the development of civil society and democratic structures, good governance, and the problems of trafficking in human beings and other international criminal activities.

4. Indeed, if the international community wishes to succeed it must pursue a comprehensive political, economic and humanitarian strategy for all of south-eastern Europe. The current international presence in Kosovo cannot be merely a "holding operation" but must be linked to a peace strategy for the entire Balkan region. To this end the Special Rapporteur welcomes the newly-created Stability Pact of the European Union for south-eastern Europe, which outlines a comprehensive approach to the region and promises the States of south-eastern Europe international assistance and eventual integration into European political and economic structures in return for ongoing progress towards democracy, respect for human rights, and regional cooperation. He believes that it is important that civil society actors are given an active role in the implementation of the Stability Pact, especially with respect to democratization and human rights. The wide support for including opposition parties and civil society and making women's issues a priority concern is encouraging. However, some deficiencies may already be seen in the Stability Pact's implementation, such as the tendency to isolate Serbia, which is the geographical and economic

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centre of the region. The Special Rapporteur believes that embargoes and similar policies of the international community can only help to strengthen anti-democratic regimes in the region, and are themselves a major violation of human rights.

III. BOSNIA AND HERZEGOVINA

5. The Special Rapporteur visited Bosnia and Herzegovina from 15 to 20 May 1999 and travelled mainly in the Republika Srpska entity, where he stopped in Banja Luka, Brcko, Bijeljina and other towns in order to assess the impact of the Kosovo crisis on human rights. He met with local authorities, civil society representatives and officials of human rights institutions, as well as representatives of international organizations, in order to get a full picture of the human rights situation. He also briefly visited Bosnia and Herzegovina in April 1999 and discussed the impact of the Kosovo crisis with representatives of civil society and international organizations in Sarajevo.

A. Political context

6. The last year has been dominated by events in the Republika Srpska which followed the dismissal of the entity's President, Nikola Poplasen, by the High Representative and the announcement of the Brcko Arbitration Award on 5 March 1999. The response of the Republika Srpska National Assembly to these decisions was to call for the withdrawal of Republika Srpska representatives from joint government institutions. Some violence and demonstrations followed, mainly targeting representatives of the international community. The military operation of the North Atlantic Treaty Organization (NATO) against the Federal Republic of Yugoslavia, which commenced on 24 March, increased tensions in Bosnia and Herzegovina and caused serious damage to the economic and social situations, particularly in the Republika Srpska, as some 75 per cent of Republika Srpska exports had been to the Federal Republic of Yugoslavia. The influx of persons seeking protection in Bosnia and Herzegovina at its peak reached some 100,000 persons including Kosovo Albanians, Muslims from Sandzak and Montenegro, and Serbs and Croatian Serbs from Serbia and Kosovo. Some concerns were expressed that the arrival of refugees would slow down the return process in Bosnia and Herzegovina itself. Owing to security concerns, minority returns, in particular to the Republika Srpska, had already been decreasing in any event. Overall, however, the situation in the country remained relatively calm through this difficult period and has somewhat improved since the end of the NATO operation.

7. In the entity of the Federation of Bosnia and Herzegovina, institutions have functioned only with great difficulty. There is clearly a lack of political will to make these institutions work, and parallel institutions continue to exist and pose problems. On 16 March 1999, a car bomb exploded in the centre of Sarajevo, fatally injuring the (Bosnian Croat) Federation Deputy Minister of the Interior, Jozo Leutar. Bosnian Croats reacted with a boycott of Federation institutions, and the assassination fuelled demands for the formation of a third entity in the country to protect the rights of Bosnian Croats. The perpetrators of the killing have not been found.

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40. Discriminatory practices in the areas of economic and social rights, which impact severely on minority returns, must be stopped. Implementation of the decisions and recommendations of the Federation Ombudsmen and the Commission on Human Rights (the Ombudsperson and the Human Rights Chamber) dealing with discrimination must take place without further delay. A legal framework which forbids discrimination in employment must be put in place in both entities as well as at the State level. The Special Rapporteur would like to emphasize both to the authorities of Bosnia and Herzegovina as well as to the international community that economic and social rights should be given the same weight as civil and political rights.

41. The international community will continue to be decisive in Bosnia and Herzegovina as the State and the entities continue to function poorly. However, all efforts must be made to ensure State responsibility for the protection of human rights. The State has to fulfil its responsibility, and the Special Rapporteur strongly recommends that Bosnia and Herzegovina start complying with its reporting obligations to United Nations human rights treaty bodies.

42. International representatives present in the country must be better coordinated, as there is still too much overlap between the various organizations. The same applies for national and quasi-national human rights mechanisms. The system remains too complex and should be simplified and made more effective.

IV. REPUBLIC OF CROATIA

43. The Special Rapporteur conducted his third mission to the Republic of Croatia from 25 July to 4 August 1999. He began in Opatija, where he gave a lecture on the situation of human rights in the territory of the former Yugoslavia to law students at a summer school organized by the Office of the High Commissioner for Human Rights. The Special Rapporteur also visited Istria and Rijeka in western Croatia, Knin and Split in central and southern Croatia, and Zagreb. During his visit, he met with government officials, journalists, international representatives and members of NGOs.

A. Security of person

44. The question of security, including the conditions to which people are returning, remains a key concern of the Special Rapporteur. In Berak, in the Danube region (Eastern Slavonia), there has recently been a series of ethnically motivated incidents of violence, with increasingly serious cases of intimidation, threat and arson against minority ethnic Serbs. In early August 1999, an ethnic Serb was beaten to death in what some villagers described as a lynching. The police arrested one suspect but witnesses claim that the murder was committed by a mob. Berak and its adjoining villages have been at the centre of several politically motivated incidents since November 1998 which have undermined the process of reconciliation and trust in the Danube region. In May, the situation deteriorated when demonstrations by Croat returnees over the issue of missing persons led to assaults against local Serb residents. International monitors accuse the local Croat mayor of organizing a campaign of

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intimidation in which pressure groups erect crosses and light candles in the front yards of Serb-owned houses.

45. In central and southern Croatia, the security situation has been generally calm, although there has been a slight increase in ethnically related incidents in Petrinja, Hrvatska Kostajnica, Karlovac and especially in Kistanje, where tension is said to be on the rise between Serb residents and Croat settlers from Kosovo.

46. Near Knin, the Special Rapporteur was present on 28 July 1999 at an unsuccessful attempt to execute a court order of the eviction of an illegal occupant, a Bosnian Croat from Tuzla. Although the authorities promised that they would do everything necessary to carry out the court order, there has been no progress in that or similar cases. The Special Rapporteur expresses his great concern at threats by the Croatian Party of Rights (HSP) that it will form intervention squads to prevent - by force, if necessary - the evictions of Bosnian Croat refugees illegally occupying Serb-owned property in the Knin area. It is unacceptable that a party that is represented in Parliament would use threats of violence to prevent the implementation of court decisions.

47. Besides the many unresolved property issues, much of the mounting tension in areas of return in Croatia can be blamed on the failure of the Government's Programme for the Establishment of Trust - set up in October 1997, and overseen by a National Committee - which has been ineffective and which lacks concrete programmes in the areas where they are most needed, namely at the local level.

B. Return-related issues

48. While the Special Rapporteur appreciates the Government's decision to accept several thousand Kosovar refugees in 1999 under a burden-sharing principle, he is disheartened to again report that there has been little substantial improvement in the Government's protection of the right to return to one's place of origin. The low number of returns of ethnic Serbs and the slow rate at which claims to citizenship are processed is of concern, especially in light of the winter 1999 Parliamentary elections. Considering the care that has been shown by the ruling party to grant citizenship, and thus voting rights, to the "diaspora" (ethnic Croats who live abroad), the Special Rapporteur places special emphasis on the rights of all those who qualify for Croatian citizenship, irrespective of ethnicity, and especially refugees, to claim citizenship in a timely manner, thus enabling them to participate in the forthcoming Croatian elections.

49. Return statistics for internally displaced persons and refugees are complicated by the fact that the publicized number of returns includes persons who have returned to Croatia, but have been unable to claim their properties. International organizations report that 39,812 ethnic Croats have returned to the Danube region from other areas of Croatia while 27,353 ethnic Serbs have returned from the Danube region to their homes elsewhere in the country, and 33,001 - of an estimated 250,000 ethnic Serbs who fled their homes during the conflict - have returned from the Federal Republic of Yugoslavia, Bosnia and Herzegovina and other countries. Regardless of the adoption in June 1998 of the

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Programme for Return and Accommodation of Expelled Persons, Refugees and Displaced Persons (hereafter, "the Return Programme"), the large majority of returns has occurred without the active assistance of the Croatian Office for Displaced Persons and Refugees (ODPR) and the Office of the United Nations High Commissioner for Refugees (UNHCR). The ODPR has cooperated with UNHCR and its implementing partners to facilitate "go-and-see visits", allowing potential returnees to make informed decisions regarding return and to obtain personal documents. However, the low percentage of assisted returns points to problems with the return assistance mechanisms, specifically the slow work by the Ministry of the Interior in checking the citizenship of applicants, as well as the fact that returnees are not assisted if their house is occupied or heavily damaged. NGOs report that potential returnees are dissuaded from returning to their places of origin because of reports and rumours of the Government's non-implementation of the Return Programme, delayed issuance of social welfare, hostile attitudes, mines, and poor economic prospects in the former United Nations Sectors.

50. The Government of Croatia has been more successful in facilitating the return of ethnic Croat internally displaced persons (IDPs) to the Danube region, success accompanied by continued strains in inter-ethnic cooperation in the region, as well as the direct and indirect displacement of ethnic Serbs, both displaced persons and domiciled residents. Compared to other regions to which ethnic Serbs return, the Danube region continues to have housing disputes, sometimes with incidents of physical threats. Most Croat returnees face the same objective problems as other returnees, namely the assignment of their properties for temporary use by others. However, NGOs and international monitors report that ethnic Croat returnees are more successful in "convincing" the occupants of their properties to leave, whether through legal action or outright intimidation.

51. In relation to the Return Programme, the Special Rapporteur notes that regardless of recently proposed amendments, the Government has not yet fulfilled its commitment to amend certain discriminatory legislation, such as the Law on the Status of Expelled Persons and Refugees, the Law on Areas of Special State Concern, and the Law on Reconstruction. These three laws confer superior benefits upon ethnic Croats.

52. The Government has discontinued its efforts towards a solution for the widespread problems caused by the dissolution during the war of occupancy rights, a form of residential property ownership in the former Yugoslavia. In the update to his last report at the Commission on Human Rights, the Special Rapporteur welcomed the decision that requests for the return of property based on occupancy rights would be catalogued by the housing commissions, the local government bodies responsible for administering the property-related aspects of the Return Programme. In the Danube region, some citizens have been able to regain property on the basis of their former occupancy rights. However, the Special Rapporteur awaits further progress in this regard.

53. Regarding the slow implementation of the Return Programme, the Special Rapporteur continues to note what seems to be a lack of will on the part of both the central and local authorities, the Government Commission on Return and local housing commissions. The few housing commissions that attempt sincerely to

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implement the Return Programme have their efforts blocked by the Government Commission's silence on related requests for alternative accommodation and its failure to process forms. The Government reported that as of 14 July 1999, 22 per cent of the 6,613 filed claims for property repossession had been completed. It should be duly noted that the Government faces a difficult economic challenge in regard to providing alternative accommodation. However, its failure to actively seek solutions to the issues relating to the return of ethnic Serbs, including the failure of some housing commissions - such as the one in Knin - to thoroughly catalogue available alternative accommodation, leads the Special Rapporteur to doubt the Government's claims of financial constraints as the main reason for poor implementation of the Return Programme. The Special Rapporteur expects that the administrative reorganization, by which the local housing commissions will be coordinated by the ODPR, will lead to improvements in the work of both the housing commissions and the central Government Commission.

54. In spite of the impressive record of the Government in reconstructing war-damaged houses and infrastructure, the Special Rapporteur notes that reconstruction continues according to ethnic priorities. In Lisane Ostrovicke, Knin municipality, for example, one ethnic Croat village has been reconstructed while two ethnic Serb villages have not. Of the 26 villages included in the Government's plans for reconstruction in Benkovac municipality, 20 are almost entirely inhabited by ethnic Croats. In six villages of mixed population, only houses owned by ethnic Croats are scheduled for reconstruction.

C. Administration of justice

55. The Special Rapporteur considers the persistent judicial vacancies to be egregious. Nearly all the branches of the judiciary have vacant positions: for example, as of October 1998, the Supreme Court and the Administrative Court, two branches of the judiciary that are crucial to the protection of human rights, had vacancy rates of over 30 and 35 per cent, respectively. The Korenica and Udbina civil courts were without judges from May 1998 until April 1999 while the Donji Lapac civil court has been without judges since 1995. Commendably, the Government has instituted an interim arrangement by which judges visit periodically, though this will not solve the problem of the large number of pending cases. All other courts in these communities are operational, a situation that enables the Government to deliver justice in cases of crimes and misdemeanours while leaving citizens unable to resolve their civil disputes, such as those involving housing, effectively hindering the property-related aspects of the Return Programme.

D. Labour rights

56. The Special Rapporteur welcomes the Constitutional Court's decision overturning the Zagreb city ordinance prohibiting demonstrations in the city's main square. He hopes that workers' rights to freedom of association, assembly and expression will be further protected, Croatia's economic difficulties notwithstanding.

57. The Special Rapporteur expresses concern for the many Croatian workers who receive their salaries late, if at all. Trade unions estimate that over 100,000 workers are affected. In some cases, when the responsible company is State owned, employees work without salaries or payments into their pension or health plans. Workers are without effective means for securing their wages as they are not legally protected when striking for the non-payment of their wages, and legal remedies are ineffective because of judicial inefficiency and the ability of employers to declare bankruptcy during hearings and thus avoid their obligation fully to remunerate employees, regardless of the trial's outcome.

58. The Special Rapporteur is also concerned about continued reports of harassment, including one case of severe beating, of union representatives, and expects that law enforcement and judicial officials will fully investigate and resolve these cases.

E. Freedom of expression

59. Government control of the electronic media sector as well as indirect pressure, both economic and legal, on press freedom remain major concerns of the Special Rapporteur. The legislation relating to media and information still falls short of addressing key concerns of international observers. To be highlighted are the need for legal amendments to transform Croatian Radio and Television (HRT) into a public service broadcaster, and the need for the removal of obstacles to the development of the private broadcasting sector, which could include, for instance, privatization of one of the HRT channels.

60. The Special Rapporteur condemns the use of defamation legislation to silence the media and journalists. Lawsuits by public figures for so-called "psychological anguish" have almost financially destroyed several independent magazines. At the same time, a scandal in which the State secret services were accused of having illegally wiretapped journalists and public figures has grown into a lawsuit in which a private magazine is suing the Ministry of the Interior.

61. The experience of Nacional, an independent weekly that is well known for its critical stance towards the Government, exemplifies the financial implications the above-mentioned lawsuits can have for the survival of newspapers and for their publishers. Most of the 78 lawsuits against Nacional have been filed by high-ranking government officials or party leaders and seek high compensation. Ante Bakovic, a retired Catholic priest with political connections, filed the last of the lawsuits against Nacional. Mr. Bakovic was awarded 200,000 kuna (US\$ 28,570) for "psychological anguish", forcing the publisher to declare bankruptcy and discontinue printing. According to Feral Tribune, an independent weekly newspaper that is often critical of the Government and which faces the largest number of lawsuits, the total compensation sought for "psychological anguish" in the claims has reached 14,046,000 kuna (about US\$ 2,006,570). Feral Tribune is thus also facing bankruptcy.

62. In this context, the Special Rapporteur would like to emphasize the role of the media in the forthcoming election in ensuring the population's right to

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receive complete and impartial information. He recalls that the election observer mission of the OSCE concluded that the presidential elections of 15 June 1997 may have been free but were not fair, and did not meet minimum democratic standards because the State-owned media - particularly television - showed favouritism towards the ruling party.

F. Missing persons

63. Of the 1,703 persons officially listed in August 1999 as missing or detained since 1991 - and whom the Government is still tracing - 1,467 are Croats while the rest are Serbs, Hungarians, Bosnians, Russians, Ukrainians, Albanians and others. Since the start of the exhumation process in September 1995, a total of 2,990 bodies have been exhumed from both individual and mass graves in Croatia and 2,351 bodies have been identified, according to information provided to the Office of the United Nations High Commissioner for Human Rights by the Government Commission on Missing and Detained Persons. In 1999, 11 mass and individual graves were opened, nine of them in the Danube region. Also this year, a total of 168 persons were identified, including 154 persons exhumed from graves in the Danube region.

64. From 23 to 26 March, senior representatives of the Governments of Croatia, the Federal Republic of Yugoslavia and Bosnia and Herzegovina met in Amsterdam under the auspices of the International Commission on Missing Persons (ICMP) to try and speed up the process of solving the complex and politically sensitive issue of those who disappeared in the former Yugoslavia during the 1991-1995 conflicts. At the unilateral level, Croatia agreed at the conference to prepare a plan of action whose implementation would assist in clarifying the fate of those who went missing in connection with the Croatian army operations "Flash" and "Storm" in 1995. Croatia also notably agreed to take immediate action on the remaining administrative and legal measures to ensure the effective functioning of the subcommission established through an agreement with the former United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) in January 1998. At the bilateral level, Croatia and the Federal Republic of Yugoslavia renewed their commitment to hold regular meetings and improve the level of cooperation between their respective missing persons commissions. However, as of August 1999 no follow-up meeting had been convened, despite the urging of international representatives.

65. At meetings this year of the Government Commission and the Federal Republic of Yugoslavia Commission for Humanitarian Issues and Missing Persons (hereinafter, "the Federal Republic of Yugoslavia Commission"), the Federal Republic of Yugoslavia Commission reportedly showed little willingness either to share information that would help trace those who went missing during the war or to service the request of the Croatian Government Commission for documentation on the more than 300 unidentified persons buried in the Federal Republic of Yugoslavia, most of whom were allegedly taken by force from Vukovar and other areas of the Danube region in 1991. When the next meeting of the Croatian and the Federal Republic of Yugoslavia missing persons commissions will take place depends on the willingness of the Federal Republic of Yugoslavia Commission to resume cooperation in tracing those who are unaccounted for, in accordance with the Agreement on Cooperation in the Tracing of Missing Persons (the Granic-

Milutinovic agreement, Dayton, 17 November 1995) and with the Protocol on Cooperation Between the National Commissions (the Grujic-Todorovic agreement, Zagreb, 16 April 1996).

G. Gender

66. The Special Rapporteur commends the initiative taken by the State Commission on Issues of Equality which organized a seminar in June 1999 in cooperation with the Council of Europe on the subject of domestic violence. The Commission, as well as other relevant State bodies, announced support for the proposal by non-governmental organizations that changes be made to the legislation which would allow public attorneys to prosecute criminal acts of domestic violence. Efforts will also be made to introduce changes through the Sabor (Parliament). Other strategies to combat domestic violence will also be initiated, depending on economic capabilities, jointly by NGOs and relevant State authorities.

67. The Special Rapporteur reiterates the importance of women's equal participation in the country's public, political and economic life. Women's greater representation in political and decision-making bodies would make it more likely that the concerns and needs of women are identified and their interests and rights represented and defended. The question of the introduction of quotas on political party candidate lists has been broached and is currently being discussed in light of the upcoming elections. NGOs working on the promotion and protection of women's rights have initiated a pre-election ad hoc coalition which, through its election platform, has taken measures to educate and raise women's awareness about candidates of parties that represent and promote women's interests.

H. War crimes trials

68. The issue of war crimes prosecutions in national courts remains a matter of great concern. Unreasonable delays in proceedings, doubts as to the fairness of trials, as well as a lack of transparency concerning new indictments have reinforced the belief on the part of the Serb population that they are being victimized by the Government on account of their ethnicity. The Special Rapporteur is concerned that new indictments and arrests in the Danube region on charges of war crimes have led to an increased sense of insecurity on the part of the Serb population and contributed to further departures from the region.

69. On 27 May 1999 the retrial of five individuals from the village of Sodolovci on charges of war crimes against the civilian population was concluded by the Osijek County Court (see E/CN.4/1999/42, paras. 49-51). The Court confirmed the previous convictions (which had been pronounced in absentia), with the exception of that of Goran Vusurovic, whose sentence was modified to eight years' imprisonment; the other four individuals all received sentences in excess of 10 years.

70. The Office of the United Nations High Commissioner for Human Rights has been following the case closely and has monitored the proceedings throughout.

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The Special Rapporteur wishes to express his concern that this trial does not meet international standards of fair trial, specifically as regards the burden and standard of proof. The presumption of innocence, a basic component of the right to a fair trial and fundamental to the protection of human rights, implies that the burden of proof is on the prosecution and that guilt cannot be presumed. In the case of the Sodobovci group, at no time during the proceedings was credible evidence adduced by the prosecution sufficient to substantiate a charge of war crimes and it has not been established beyond reasonable doubt that the defendants committed the crime for which they were charged and convicted. Additional doubts have been raised regarding the impact of statements by public officials regarding the case which, according to some observers, were meant to influence the Court's ruling.

71. The case was followed closely by the Serb population in Croatia, particularly in the Danube region. The outcome was perceived as sending a clear message to the Serb population as to their prospects for receiving a fair trial and may be a further deterrent to the return of ethnic Serb refugees from the Federal Republic of Yugoslavia and Bosnia and Herzegovina.

72. In the case of Milos Horvat, discussed in several previous reports of the Special Rapporteur (see E/CN.4/1999/42, para. 52), the Supreme Court brought a decision on 16 December 1998 confirming his 1997 conviction on charges of genocide. The Special Rapporteur, however, expresses his concern that the written decision of the Supreme Court was delivered only on 30 June 1999.

73. The trial against a group of Croatian former reserve policemen, known as the Pakracka Poljana group, ended in Zagreb County Court on 31 May. The defendants were charged with harassment of several ethnic Serbs and the murder of one of the members of their unit in 1991. In 1996, one of the accused confessed in an interview with the weekly Feral Tribune that together with other reservists he had killed 72 Serbs. Charges against four defendants were dismissed, allegedly for lack of evidence and because of what the court considered to be contradictory testimony of witnesses. One of the remaining two was sentenced to 20 months in prison for extortion. A sixth defendant, accused of unlawful detention and deprivation of liberty and human rights, was sentenced to one year in prison. The Special Rapporteur expresses his great concern over the conduct of these proceedings, having in mind reports by the Office of the United Nations High Commissioner for Human Rights staff monitoring the trial that various witnesses, obviously frightened, claimed on the witness stand that they had forgotten everything relating to key facts in the case. At the time numerous supporters of the accused, dressed in black, were present in the courtroom. On one occasion, the Office of the United Nations High Commissioner for Human Rights staff observed these same supporters surrounding a witness in an intimidating manner during a break in the trial.

74. The level of cooperation of Croatian authorities with the International Tribunal for the Former Yugoslavia (ICTY) is a major concern of the Special Rapporteur who, while on mission in Croatia, was informed of the issues relating to the visit to Croatia of the Chief Prosecutor. Croatian authorities were accused by the Chief Prosecutor of delaying action on two key issues: first, requests from the Tribunal for assistance with its investigations of war crimes committed by the Croatian army in 1995 and second, the transfer to the ICTY of

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two Bosnian Croats, Vinko Martinovic (known as Stela) and Mladen Naletilic (Tuta), indicted by the Tribunal for war crimes, until the co-accused had served sentences in Croatia on separate charges. The ICTY was considering, at the time of writing of the present report, the possibility of reporting the matter to the Security Council.

I. Conclusions and recommendations

75. The Government should finally decide upon a solution to the problem raised by the wartime law abolishing occupancy rights and the dubious application of this law. In this regard, the Special Rapporteur emphasizes the need for the Government to facilitate the repossession of property lost because of war-era legislation and illegal occupation and further recommends that the Government continue strengthening its cooperation with the OSCE and UNHCR in order to improve the effectiveness of the Return Programme. International monitors observing proceedings of the housing commissions should be granted full access to files and meetings, and housing commissions should earnestly proceed in accordance with the guidelines provided to them, which would mean that all applications would be dealt with expeditiously.

76. The Special Rapporteur reminds the Government that an independent and effective judiciary is indispensable for fostering the rule of law. Furthermore, he recommends that all judges and prosecutors be trained in the relationship of domestic law to the international human rights instruments that the Republic of Croatia has ratified.

77. While appreciating the difficult challenge that the Government faces in revitalizing companies, such as those in the tourist industry, the Special Rapporteur notes that employees must either be guaranteed their salaries or effective legal remedies through which salaries can be claimed.

78. With reference to the provisions of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, in particular the general principle governing the right of families to know the fate of their relatives, and to the Government's Programme for the Establishment of Trust, the Special Rapporteur calls upon the Government to continue to actively address the issue of missing persons in Croatia and in particular to clarify the fate of hundreds of Croatian Serbs who went missing before, during and after the military operations "Flash" and "Storm" in 1995. The speedy resolution of these cases is of great importance not only to those who seek information about the fate of loved ones but also to re-establish confidence.

79. The primary responsibility for resolving cases of missing persons rests with institutions of the Government, such as the Commission for Detained and Missing Persons and its Subcommission in the Danube region, which need to start functioning effectively. In this context, the Special Rapporteur sees the current nominations of ethnic Serb representatives to both the Government Commission and the Subcommission as a valuable contribution to the process of finding those who disappeared during the war.

80. Moreover, as a means to bolster inter-ethnic confidence in the Danube region, the Special Rapporteur concurs with international representatives that the post of Assistant Minister of the Interior - vacant since January 1999 - could usefully be filled by an ethnic Serb, and that the local police force should maintain the agreed ethnic balance, following the dismissal of three Serb police station commanders.

81. The Special Rapporteur wishes to express, once again, his concern at the ruling party's domination of the media in Croatia and urges the Government to adopt the requisite measures to ensure that public broadcasting fulfils a public-interest mandate and is entirely independent of political or financial interests. With regard to defamation suits, due attention should be given to the importance of free political debate in a democratic society, and to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals.

82. The Special Rapporteur commends the initiatives of the State Commission on Issues of Equality in regard to changes in the legislation and supports its efforts in promoting and integrating gender issues into the country's public agenda, that is, organizing conferences that promote women's rights and interests, initiating gender studies at universities and mainstreaming gender into all spheres of society through cooperation with United Nations agencies specializing in this theme.

83. The Special Rapporteur encourages the cooperation of the State Commission on Issues of Equality, relevant State bodies and NGOs with the Office of the United Nations High Commissioner for Human Rights in integrating gender perspectives into the technical cooperation project initiated recently aimed at mainstreaming gender into all structures of society, educating and training specific groups of professionals, and raising the awareness of the general public on gender-related issues.

84. The Special Rapporteur again wishes to emphasize that all war crimes must be investigated and tried in accordance with international standards, and that perpetrators of war crimes must be brought to justice. However, unreasonable delays in proceedings, doubts as to the fairness of trials, as well as a lack of transparency concerning new indictments have resulted in an increased sense on the part of the Serb population of being victimized by the Government on account of their ethnicity. This has contributed neither to the goal of reconciliation nor to the institution of accountability for war crimes. It can also be considered as a significant deterrent to the return of refugees of Serb ethnicity to the Republic of Croatia.

85. Finally, the Special Rapporteur would like to repeat his previous recommendation that future war crimes investigations and trials be processed with the participation of international monitors, thus ensuring transparency and a process that reassures the Serb population that war crimes prosecutions transcend victor's justice.