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I. Introduction

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1. Continued movements of ethnic Serbs out of Eastern Slavonia to the Federal Republic of Yugoslavia and elsewhere abroad have triggered a request to UNHCR to provide guidance on how to deal with asylum applications which have been or may be lodged by these asylum-seekers. It has been observed that many of those seeking asylum have travelled holding valid Croatian passports. Some have also transited through Belgrade, prior to proceeding to their final destinations abroad.

2. UNHCR believes that the automatic grant of refugee status, without an examination of the individual facts underlying each claim, is not justified by the factual situation. It is inappropriate and would create the risk of accelerating movements. Nevertheless, harassment, discrimination and inequalities as regards property and other issues do characterize the every-day life of many Serbs in Eastern Slavonia. It is a judgement to be made in each case whether such harassment and discrimination are so severe on a cumulative basis as to amount to "persecutions" and, hence, warrant the grant of refugee status. UNHCR encourages States, when carrying out an individual analysis of asylum claims, to look carefully at whether instances of cumulative discrimination, in a situation where the country of origin has been negligent in taking remedial action or may be seen as having condoned or encouraged such discriminatory action, should be interpreted as persecution within the terms of the 1951 Convention.

II. Background

3. The Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium ("Erdui Agreement") was signed on 12 November 1995 by the Croatian Government and local Serb leaders (and witnessed by the U.S. Ambassador and the United Nations Mediator). The Erdui Agreement called on the UN Security Council to establish a United Nations Transitional Administration to govern the region during a transitional period, following which what is today called the "Croatian Danubian region" would revert to full Croatian authority.

4. The Erdui Agreement also set out the undertakings of the Croatian Government vis-à-vis Croatian citizens of Serb ethnicity and recommended, inter alia, that the following tasks be undertaken during the transitional period: the demilitarization of the region, respect for the rights of the inhabitants to remain in the region or to return to their former home areas, resolution of property issues and the holding of local elections. It was hoped that full implementation of the Erdui Agreement, including respect for the right of Serbs to remain in the Croatian Danubian region or return to former home areas, would build confidence in the process of peaceful transition and thereby limit the number of people leaving the region. The United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) concluded its mission on 15 January 1998.

III. Population Movements during the Period of UNTAES' Administration

5. While all observers agree that UNTAES accomplished its mission with distinction, it is equally true that there were movements of people out of Eastern Slavonia during the period of international administration, albeit in smaller numbers than initially anticipated.

Throughout 1997, for example, there were movements of ethnic Serbs out of Eastern Slavonia, principally into the Federal Republic of Yugoslavia, but also to Bosnia and Herzegovina and other countries abroad. At the same time, some 9,000 to 10,000 displaced Serbs from Eastern Slavonia moved back to their homes in other areas of Croatia. The largest number of movements from Eastern Slavonia abroad were witnessed between November 1996 and February 1997. During this period, UNTAES Border Monitors registered over 30,000 individuals leaving to the Federal Republic of Yugoslavia. It was later observed, however, that many of those departing either returned to Eastern Slavonia and/or maintained their house/dwelling or direct family links there. This indicated a desire to set the stage for long-term departure while remaining present and able to monitor developments.

6. Movements in late 1996 and early 1997 can be attributed to a number of factors which created a general state of apprehension and uncertainty:
 - Uncertainty about whether UNTAES would extend its mandate for a second year.
 - The fact that Serb displaced persons had been unable to return to former home areas owing to the lack of return mechanisms and restrictions on travel into and out of the region.
 - The predominant view among the population that fair and equal elections (which did take place in March 1997) would not take place.
 - Alarming rumours that the Federal Republic of Yugoslavia would close all bridge links with the region.

7. The March 1997 elections marked a sharp decline in the number of departures to the Federal Republic of Yugoslavia. Most adults were allowed to vote in the elections. The Serb party won 11 municipalities in Eastern Slavonia. In addition, most residents and displaced persons received their Croatian documentation and the tension and anxiety of the Serb population substantially lessened.

8. During 1997, the Government of Croatia also took a number of additional positive steps. A mechanism was established in an agreement between the Government of Croatia, UNTAES and UNHCR to facilitate the so-called two-way return process into the Croatian Danubian region and out of the region to other parts of Croatia (Joint Working Group Agreement on Returns). On 7 October 1997, the Government of Croatia launched a Program on the Establishment of Trust, Accelerated Return, and Normalization of Living Conditions in the War Affected Regions of the Republic of Croatia. Amongst its stated goals are the creation of a general climate of tolerance and security; the realization of equality of all citizens (...); and the speedy and organized return of all Croatian citizens to those regions of Croatia from which they were expelled or displaced. Nevertheless, movements from the Croatian Danubian region, principally to the Federal Republic of Yugoslavia, continued on a small scale throughout the year. The above measures were essentially targeted at the Croatian Danubian region by the authorities and failed to result in an increase of repatriation to Croatia, notably from the Federal Republic of Yugoslavia. The Government has repeatedly stated that any organized repatriation movements of ethnic Serbs into Croatia should occur on a small scale so as not to generate fear in the Croat community or lead to disturbances. As a result, no concrete measures have been introduced to facilitate repatriation of ethnic Serb refugees from abroad.

III. More Recent Population Movements

9. As the date of the conclusion of UNTAES mandate drew near, however, departures increased in November and December 1997 and in January 1998. These departures may be

exploded by a number of factors which, in combination, have worked to create a general state of apprehension and anxiety, and led the local Croatian Serb population to believe that the authorities are discriminating against them and are not genuinely committed to protecting their rights. A significant factor is the full assumption of Croatian sovereignty over the Croatian Dalmatian region at the end of the UNTAES mandate on 15 January 1998. It had already been anticipated that completion of the UNTAES mandate would inevitably lead to some departures.

10. Amongst other factors underpinning the most recent movements are insufficient progress in addressing the legal (especially property and tenancy rights issues), procedural and financial obstacles standing in the way of the two-way return process out of the Croatian Dalmatian Region to other parts of Croatia; the increasingly precarious situation of Serb displaced persons in the Croatian Dalmatian region combined with growing concerns about security; and uncertainty about the application of the Amnesty Law.

A. Housing and the Two-Way Return Process

11. The authorities have failed to demonstrate their commitment to facilitating the return of Serbs out of the Croatian Dalmatian region to other parts of Croatia. The Joint Working Group (JWG) Agreement on Return led initially to positive results by resolving the so-called "easy cases" (e.g. situations of family reunion or of people returning to their own unoccupied inhabitable dwellings). Little concrete progress has been made, however, in resolving the so-called "difficult" cases" (e.g. return to damaged or destroyed property, or return to occupied property). Applications for return often take months to process. Faced with delays in addressing their concerns and seeing the prospects of returning under the JWG Agreement on Return as increasingly remote, a growing number of families belonging to the "difficult" categories opted to leave the Dalmatian region to the Federal Republic of Yugoslavia or to return unassisted ("spontaneous returns") to other parts of Croatia and stay with friends or relatives. Despite commitments to the international community by the Government of Croatia that such spontaneous returnees would enjoy treatment comparable to that of those returning formally under the JWG procedures, spontaneous returnees to other parts of Croatia have been facing the most serious administrative obstacles. In addition, despite having returned to their former home areas, such spontaneous returnees see the possibility of rebuilding their damaged property or repossessioning their presently occupied homes as increasingly remote.

12. Serbs leaving the Dalmatian region to reoccupy their homes in other parts of the country have met, *inter alia*, the following obstacles directly attributable to the authorities: no official action to resolve the problem of temporary occupancy of homes in favour of the original owner; delays in providing financial assistance to which they are entitled, as well as necessary personal documentation; and inefficiency of the judicial system in addressing claims lodged by them. Spontaneous returnees have been plagued the most by these obstacles, although they have also experienced by people whose return had been formally cleared under the JWG procedure.

13. Commenting on progress in the two-way return process formally initiated in April 1997, the Report of the Secretary-General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium of 22 January 1998 noted that "while some progress has been made in facilitating the return of displaced persons to their homes, the process has been increasingly limited by continued legal and financial obstacles to the return of occupied property to its legal owners, delays in providing Government funding for the reconstruction of houses owned by Serb citizens and

uncertain economic and social conditions in areas of potential return." (S/1998/59, para.

14) The Secretary-General also observed that, "Despite repeated calls by the Security Council, no progress has been achieved in establishing concrete mechanisms for returns to occupied property, or in resolving the issue of lost tenancy rights for Serb citizens." (S/1998/59, para. 14)

14. Energetic and effective action by the Croatian authorities on the above issues is therefore deemed necessary to speed up the two-way return process and restore the confidence of the ethnic Serb community. The Secretary-General reported that "so far most of those leaving the region are displaced persons with outstanding property claims which were not addressed by the Government. In many instances, there have been placed by courts against properties elsewhere in Croatia owned by Serb displaced persons who are currently residing in Croat houses in the region, thus making it impossible to sell these properties while their cases are pending." (S/1998/59, para. 15) In a joint letter to the President of the National Committee for the Establishment of Trust of 19 December 1997, UNHCR Chief of Mission Robinson and Transitional Administrator Walker also noted that, "Although some assessments of damaged homes in other parts of Croatia are taking place, only a handful of displaced persons from the UNTAES region have been given cash grants for reconstruction of slightly damaged homes and there has been no progress on more seriously damaged homes." The letter went on to express concern that the actual deadline and procedures for regional reconstruction applications are unclear and cause further uncertainty about this process.

B. Security

15. Ethnic Serbs, both in the Croatian Dalmatian region and elsewhere in the country, are also increasingly concerned about threats to their security. Return movements which have occurred out of the Croatian Dalmatian region to other parts of the country have not been without incident. The UNHCR Field Office in Knin reported a number of incidents which occurred in the period from 30 December 1997 to 15 January 1998. For example, two inhabitable houses of Serb returnees exploded in the village of Crno near Zadar. An elderly Serb woman was attacked by Bosnian settlers who wished to move into her house in the village of Zagrovc near Knin. On 25 January, the HINA news agency reported that the Serb community had issued a statement on attacks on Serb returnees and elderly people who remained in the areas of Banovina and Lika (former UN Sector North).

16. The situation of Serb displaced persons still in the Croatian Dalmatian region has been described as "precarious" in the report of the Secretary-General and is deemed to be serious in light of the numerous documented incidents of harassment and evictions by Croat displaced persons wishing to reoccupy their homes. Serb displaced persons in particular feel pressure to leave their present accommodation to make way for former Croat inhabitants. Illegal evictions of Serb displaced persons or refugees occupying houses or apartments emerged as a major threat to public order during the first two weeks of 1998. Increased tension and a higher number of security incidents, the majority of which occurred over the weekend of 17 and 18 January, were reported. The worst of these was an incident in Grabovac (near Ball Manastir in Baranja) where a 77 year old Serb displaced person was shot to death.

17. On 10 January 1998, UN Transitional Administrator Walker made a statement to the press expressing deep concern over spontaneous attempts by Croat displaced persons entering the Croatian Dalmatian region and seeking possession of their pre-war homes. Government authorities reacted energetically to these evictions by issuing regulations and

orders to the police and other relevant authorities. Police also received instructions to intervene if the verbal harassment of owners against occupants were to be considered threatening. On 16 January 1997, President Tudjman made a statement to the effect that the authorities would "not allow any acts of individuals who would jeopardize state politics and the interest of peace" and that "nobody, including the rightful owner, is allowed to take law into his own hands and evict tenants without proper procedures." Meeting on 19 January 1998, the Defence and National Security Council chaired by President Tudjman "strongly condemned the incidents."

18. According to the report of the Secretary-General, "Despite assurances provided by Government officials to UNTABG that Serb displaced persons will be able to stay in the houses they are now occupying, many Serb displaced in the region have been harassed by Croat house owners telling them that they must vacate the houses by 15 January 1998." (S/1998/59) Hate mail, telephone harassment and personal intimidation of Serbs by Croats increased following the easing of access to the region. In a much-publicized case, a 67 year old Serb woman in Tovarnik suffered a broken rib and nose on 28 January at the hands of a relative of the owner of the house which she was occupying. On 23 January 1998, a Commission established in line with Article 11 of the Erdut Agreement expressed concern that "certain events -- threats, harassment and evictions -- could jeopardize the continuation of the peaceful reintegration of the region and fully supported the efforts of the Government of Croatia to maintain the stability in the region, noting specific action to avoid evictions."

C. Discriminatory Practices

19. Cases of obstruction in issuing citizenship, pension and birth registration documents have been reported, mainly at the local level. Furthermore, despite the statements and actions of the Croatian authorities to address the legitimate security and other concerns of the local Serb population, many Serbs feel that the authorities are more keen on addressing the situation of Croat displaced persons than their own. This perception was confirmed by the promulgation of an Executive Order on Renting Apartments under the Ownership of the Republic of Croatia in the Croatian Dalmatian Region of 22 January 1998. The order came into effect of 27 January 1998 and would allow the mainly Croat occupants of State-owned apartments in Eastern Slavonia to reclaim their property by 15 March 1998. The current Serb occupants would have to leave within 8 days to temporary accommodation in areas where they lived before the war or other parts of Croatia. The Executive Order, which UNHCR has learned will be abolished on 12 February 1998, drew sharp criticism from international representatives in Zagreb as well as from Serb leaders who described its terms as being "selective" and "discriminatory."

D. Availability of National Protection

20. The Secretary-General's report also referred to "the number of reports involving allegations of misbehaviour and unprofessional conduct by some police officers" (S/1998/59, para. 17). As mentioned earlier, Government authorities reacted energetically to evictions in the Croatian Dalmatian region by issuing regulations and orders to the police and other relevant authorities. Police also received instructions to intervene if the verbal harassment of owners against occupants were to be considered threatening and did so on a number of occasions. Yet Croatian Serbs are convinced that the authorities have, at best, been negligent in providing protection and meeting their concerns and, at worst, have tolerated acts of harassment by civilians and official inaction to meet their legitimate security and other concerns.

E. Amnesty Legislation

21. Uncertainty about the implementation of the Amnesty Law has continued to cause anxiety among local residents. To allay these concerns, the Minister of Justice publicly stated that there are no "secret war criminal lists." Notwithstanding, the Government has yet to conclude investigations of alleged war crimes with the participation of the local Serbs and the United Nations. This situation has contributed to the sense of insecurity felt by some inhabitants of the Croatian Danubian region. In the context of refugee status determination, however, the commission, *inter alia*, of war crimes could be grounds for exclusion from refugee status.

IV. Conclusions and Recommendations

22. In light of the above considerations, UNHCR is of the opinion that, while not everybody leaving the Croatian Danubian region at this time has a valid claim to refugee status, some may indeed have a "well founded fear of persecution" within the terms of the 1951 Convention. As stated earlier, UNHCR believes that the automatic grant of refugee status, without an examination of the individual facts underlying each claim, is not justified by the factual situation, is inappropriate and would create the risk of accelerating movements. Nevertheless, harassment, discrimination and inequalities as regards property and other issues do characterize the every-day life of many Serbs in the Croatian Danubian area (and elsewhere in Croatia) and may be indicative of a wider and more deeply ingrained discrimination which may be attributable to the State.

23. It is a judgement to be made in each case whether such harassment and discrimination are so severe on a cumulative basis as to amount to "persecution" and, hence, warrant the grant of refugee status. UNHCR encourages States, when carrying out an individual analysis of asylum claims, to look carefully at whether instances of cumulative discrimination, in a situation where the country of origin has been negligent in taking remedial action or may be seen as having condoned or encouraged such discriminatory action, should be interpreted as persecution within the terms of the 1951 Convention.

24. UNHCR believes that many of those departing the Croatian Danubian region in possession of Croatian passports would face material and other hardship upon return, particularly if they have abandoned their previous dwellings in the region, but not necessarily face official obstacles to return. If ethnic Serb asylum-seekers from the Danubian region were occupying accommodation in the region which did not belong to them, they would have no accommodation to return to, nor could they return to their own homes in other parts of Croatia when such property is already occupied by ethnic Croat displaced persons or Bosnian Croat refugees. Return would therefore probably entail accommodation in collective centres, until such time as the Croatian authorities take action to resolve the many difficult issues highlighted in this note.

25. Bearing in mind the considerations contained in paragraph 24, UNHCR is of the opinion that, if asylum claims have been properly assessed taking into account cumulative persecution and bearing in mind that non-State agents can be agents of persecution in the sense of the 1951 Convention, rejected cases could be returned safely to Croatia. At this time, it is felt that the fact of their departure and attempt to claim refugee status would have no ramifications upon return. It is also the understanding of UNHCR that those transiting

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via Belgrade would be received by the authorities of the Federal Republic of Yugoslavia
and not deported to Croatia.

UNHCR, 11 February 1998

