

CROATIA &/v. ICTY: A DIFFICULT YEAR OF CO-OPERATION

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I. INTRODUCTION

In the second half of January 2001 the Chief Prosecutor of the International Criminal Tribunal for former Yugoslavia (ICTY) Carla Del Ponte visited Zagreb and Belgrade and met with state officials of Croatia, the Federal Republic of Yugoslavia (FRY), and FRY's main component, Serbia. On the international scene and media, only the second of these visits was highlighted. The reason for this attention was obvious. FRY, together with Serbia, was going through democratic changes and the international community was considering the co-operation with the ICTY as one of the main topics where FRY and Serbia could prove their real intention towards democratization, or at least normalization.

However, Carla Del Ponte's daylong meeting with Croatian Prime Minister Ivica Račan, which took place on 15 January 2001 in Zagreb, was much more productive than those she had in Belgrade. The two officials discussed solutions to the difficulties resulting from the co-operation between ICTY and Croatia since the political change occurred in this country, marked by the death of President Tuđman and consecutive defeats of Tuđman's party HDZ¹ in a series of parliamentary and presidential elections during January and the first half of February 2000.

Until this political change, Croatia's relations with the ICTY were only marginally better than FRY's current ones. Even, towards the end of August 1999, in a letter sent to the UN Security Council by the ICTY President, Croatia was reported as being uncooperative with the Tribunal². Had the crisis in East Timor not occurred, invading completely its agenda during September 1999, the Security Council would have at least discussed some international sanctions against Croatia, upon the above-mentioned report-letter.

After the political change in Croatia a significant improvement in the relations of this country with the ICTY was noted. Some problems inherited from the previous government were solved in a short period of time, thanks to the goodwill of the new authorities. But the new trend did not mean that the co-operation became an idyllic one. In the course of the first-year-in-office of the new President Stipe Mesić and the coalition government of six center-left/center oriented political parties a number of disagreements deteriorated the comfortable atmosphere of the honeymoons. This paper aims to give a picture of the performance of the new Croatian authorities, between February 2000 and March 2001, as far as the co-operation with the ICTY is concerned.

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¹ HDZ = Hrvatska Demokratska Zajednica (Croatian Democratic Union).

² *Letter from President Gabrielle Kirk McDonald to President of the Security Council*, available at <<http://www.un.org/icty/press.htm> # 25 August 1999> (visited 8 March 2002).

II. BRIEF HISTORY OF RELATIONS CROATIA - ICTY

A. In General

Croatia, as Croatian politicians love to emphasize especially whenever the country is facing serious problems in her relations with the ICTY, was the first country to request from the international community the establishment of an international criminal tribunal to investigate and try war crimes committed during the armed conflict in former Yugoslavia, which then had just started. When Croatia was sending these calls (end of 1991), she was under the attack of the Serbian paramilitary and the Yugoslav National Army (JNA) troops loyal to Belgrade. Thus, she was claiming to be the victim of the Serb aggression. Nevertheless, when the “requested” tribunal was established by a resolution of the UN Security Council in 1993³, Croatia had already assumed a second role in the series of civil wars within the former Yugoslavia territory because of her involvement in Bosnia and Herzegovina, and this time as the aggressor rather than the victim of aggression⁴. This “double identity” marked Croatia’s relations with the ICTY during the whole Tuđman-HDZ rule. Croatia would incline towards co-operation as long as she would be defined as the victim of Serb expansionism. However, she would become reluctant to co-operate as long as her involvement in Bosnia and the manner in which she stopped the rebellion of ethnic Serbs in her territory would be put under serious investigation.

On the other hand, it was not unknown that the international community would request from states issued from ex-Yugoslavia the decrease of nationalistic politics as the first condition of their full integration to regional and global scale international bodies. The decrease of nationalistic politics would mean, *inter alia*, to carry out or at least enable the prosecution of war crimes according to international standards.

Croatia’s new nationalist ruling class, unlike Serbia, was not able to play the card of “national pride” until the end and pay the price through isolation. In Serbia, backed up by

³ The Resolution of the Security Council # 827, dated 25 May 1993, available at <<http://www.un.org/Docs/scres/1993/827e.pdf>> (visited 8 March 2002).

⁴ The Trial Chamber of the ICTY, in two different decisions, described the armed conflict in Bosnia and Herzegovina as an international one, due to the intervention of the Croatian Army. See *Prosecutor v. Blaškić*, Judgement: Trial Chamber, Case IT-95-14-T, 3 Mar. 2000, ¶¶ 125-143 available at <<http://www.un.org/icty/blaskic/trialc1/judgement/index-f.htm>> (visited 8 March 2002) and *Prosecutor v. Kordić & Čerkez*, Judgement: Trial Chamber Case, IT-95-14/2, 26 Feb. 2001, ¶¶ 108-109 and 111-146, available at <<http://www.un.org/icty/kordic/trialc/judgement/index-f.htm>> (visited 8 March 2002). It has to be noted that Croatia is still officially denying that she had any kind of aggressive involvement in the war in Bosnia. For the latest statement of the President of Republic on the issue, in which he points out that there has never been a formal decision of responsible State bodies on intervention of the Croatian Army on Bosnian territory see, NOVI LIST, 28 Feb. 2001, at 3.

the popular myth that throughout history Serbs have always been “misunderstood”, such a policy could bring, in a short or middle term, political profit. For Croats however, the independence was sought in the name of a “better life”. At least, that was the argument used by the secessionist nationalists who were leading the country. Therefore, especially after the military “solution” to the Serb rebellion was found in 1995, it became increasingly harder for rulers to convince the majority of the Croatian population to keep suffering for independence. Following the military victory the population expected from the government also a political victory, i.e. full integration of this newly independent country to all European bodies, which had already been crystallized in the public opinion by the leading team of HDZ. To reach this aim, good records in relations with the ICTY were also assets. These factors led the ruling class of Croatia to follow ambiguous policies towards the ICTY.

B. Legal Aspects of the Co-operation

The Statute of the ICTY⁵, adopted by the UN Security Council⁶ and the Rules of Procedure and Evidence⁷ (hereafter Rules), adopted pursuant to the Article 15 of the Statute, require from nation-states to fulfil some obligations⁸. These obligations, although equally binding for all actors of the international arena, have a special importance and weight for those countries whose territory or citizens have a direct link to the crimes which fall under the jurisdiction of the ICTY.

The enactment of an appropriate implementing legislation is the first step for nation-states to fulfil their obligations towards the ICTY⁹. Croatia took this concrete step in 1996 by adopting the so-called “Constitutional Law on the Co-operation of the Republic of Croatia with the International Criminal Tribunal”¹⁰ (hereafter Co-operation Law). This law is fully in accordance with the Statute and Rules, especially as far as the most

⁵ Available at <<http://www.un.org/icty/basic.htm>> (visited 8 March 2002).

⁶ Resolution # 827, supra note 3.

⁷ Available at <http://www.un.org/icty/basic/rpe/IT32_rev18con.htm> (visited 8 March 2002).

⁸ See Ivo Josipović, *Obveze država prema Međunarodnom kaznenom sudu za bivšu Jugoslaviju [Obligations of States to the International Criminal Tribunal for the Former Yugoslavia]*, 2 HRVATSKI LJETOPIS ZA KAZNENO PRAVO I PRAKSU 143 (1995).

⁹ For a short analysis of the Model Law prepared by the Council of Europe and implementing laws of some states see Ivo Josipović, HAAŠKO IMPLEMENTACIJSKO KAZNENO PRAVO, THE HAGUE IMPLEMENTING CRIMINAL LAW (2000), at 188-205. (Josipović’s book was written both in Croatian and English. In the further text the references will be only to the parts of the book written in English.)

¹⁰ “Ustavni zakon o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom”, NARODNE NOVINE (Official Gazette) 32/1996, available at <<http://www.nn.hr/sluzbeni-list/sluzbeni/index.html>> (visited 8 March 2002). For an unofficial translation of the Law into English see Josipović, supra note 9, at 597-604.

sensitive issues, like “extradition”¹¹ of Croatian citizens to the ICTY and the primacy of the jurisdiction of the ICTY over the national one, are concerned¹². However, this did not mean that after its enactment it was also automatically seen in accordance with the Constitution of the Republic of Croatia.

Following its enactment, the discussion on the constitutionality of the Co-operation Law began¹³. The discussion focused on the two following points: 1- The articles of the Co-operation Law regulating “the surrender of the accused” to the ICTY (Articles 13-24) might be considered as unconstitutional if the accused has Croatian citizenship, because the Article 9 of the Croatian Constitution forbids the extradition of Croatian citizens to another country. 2- The regulation of the Co-operation Law (Article 9) concerning the deferral of criminal prosecution and proceedings conducted before the national judicial instances to the ICTY¹⁴ might be considered as not being in accordance with the Article 2 of the Constitution, which regulates that the sovereignty is non-transferable.

The discussion remained purely as a theoretical one until the Constitutional Court brought a decision in a case initiated by a Croatian citizen, Mladen Naletilić-Tuta, whose requested extradition to the ICTY was ordered by Zagreb County Court, and approved by the Supreme Court. As an ultimate legal remedy Mr. Naletilić-Tuta lodged a complaint before the Constitutional Court, claiming that the decision of extradition, which was taken in accordance with the Co-operation Law, was violating his rights. Constitutional Court in its decision¹⁵, *inter alia*, discussed the question of constitutionality of the Co-operation Law and did not find any contradiction between its regulations and constitutional norms. Moreover, in the same decision the Constitutional Court ruled that by the virtue of the Article 134 of the Constitution, which regulates that international

¹¹ In fact, the technical term used in the text of the Co-operation Law was “the hand-over” (*predaja*), not “the extradition” (*izručenje*). This nuance is important to avoid the constitutional ban on extradition of Croatian citizens to another country (see the Constitution of the Republic of Croatia, Article 9/2).

¹² For a full commentary on regulations of the Co-operation Law see Josipović, *supra* note 9, at 263-334.

¹³ The first legal problem was to determine the status of the Co-operation Law within the Croatian hierarchy of legal norms. Namely, the problem was to determine whether this was a simple law, which has to be in accordance with the Constitution, or an amendment to the Constitution. During the adoption of the Co-operation Law in the parliament the procedural rules related to the enactment of a normal law and of an amendment to the constitution were used together, but both in an uncompleted manner. Therefore, it was not possible to determinate the status of this legal text from the procedure followed in front of the parliament. For the academic discussion on the legal status of the Co-operation Law see Josipović, *supra* note 9, at 213-19.

¹⁴ The deferral would take place only upon the request of the ICTY and only if the crime in question falls under its jurisdiction.

¹⁵ Constitutional Court of Croatia, decision # U-III-854/1999, dated 21 Oct. 1999. For the full text of the decision see NARODNE NOVINE [Official Gazette], 109/1999, available at <<http://www.nn.hr/sluzbeni-list/sluzbeni/index.html>> (visited 8 March 2002).

agreements ratified in accordance with the Constitution would be part of the domestic legal order and would have legal force superior to law, the Statute and the Rules had become part of the internal legislation.

Thus a satisfactory legislation was in place to permit a full co-operation. Nevertheless, the time would show that a political goodwill was also necessary to make the co-operation a functioning one.

C. Uncooperative Co-operation during Tuđman-HDZ Rule

The problems occurred between Croatia and the ICTY after the adoption of the Co-operation Law made clear that without political decisiveness, the sole existence of adequate legislation was not good enough to ensure a sufficient co-operation.

The first serious crisis between Croatia and the ICTY appeared in Blaškić case¹⁶. The essence of the dispute consisted in the request of the Chief Prosecutor to obtain some documents related to the case from Croatian State authorities and the refusal of the Croatian Government to hand them over¹⁷. Although the dispute had been finalized by a decision of the Appeal Chamber¹⁸, and although this was partly in favor of arguments presented by the Croatian side, Croatia kept not delivering the requested material to the Prosecutor's office during the whole Tuđman-HDZ rule.

Another burning issue between Croatia and the ICTY was the dispute over the latter's jurisdiction over the military actions "Bljesak" (Flash) and "Oluja" (Storm), which took place in 1995 on Croatian territory. After these operations, which were carried out in a very quick and effective¹⁹ manner by the Croatian army and special police units, Croatian forces took control of the greater portion of territory which used to be under the so-called

¹⁶ Tihomir Blaškić was an ethnic Croat from Bosnia and Herzegovina, who assumed at one stage of the armed conflict in this country the position of chief of staff of Croat armed forces in Bosnia (HVO: Hrvatsko vijeće obrane = Croatian Defence Council). He was accused of committing crimes against humanity and grave breaches and violations of the laws of war. He was found guilty by the Trial Chamber and sentenced to forty-five years of imprisonment. See *Prosecutor v. Blaškić*, supra note 4. The case is still pending at appeal stage.

¹⁷ For an analysis of the legal side of the crisis see Jacob Katz Cogan, *The Problem of Obtaining Evidence for International Criminal Courts*, 22 HUM. RTS. Q. 405 (2000). For another analysis from a different point of view see Herwig Roggemann, *The Problem of Legality and the Limits of a Sub Poena Ducis Teum Decision in the Blaškić Case*, 35 ZBORNIK RADOVA PRAVNOG FAKULTETA U SPLITU 17 (1998).

¹⁸ Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108bis, App. Ch. (ICTY 29 Oct. 1997), available at <<http://www.un.org/icty/blaskic/appeal/decision-e/71029JT3.html>> (visited 8 March 2002).

¹⁹ Officially, operation "Bljesak" lasted less than 40 hours and "Oluja" only 48.

“Republika Srpska Krajina”²⁰ rule, and thus ensured almost complete territorial integrity of the Republic of Croatia. These operations however, resulted also in a massive exodus of the civilian ethnic Serb population living in these parts of the country, who sought refuge in Serbia or Serb controlled parts of Croatia (Eastern Slavonia region) and Bosnia and Herzegovina.

During Tuđman-HDZ rule, Croatia constantly refused to recognize the jurisdiction of the ICTY over the operations “Bljesak” and “Oluja”. Croatia’s official position on the subject was that these two operations were merely simple police actions, whose aim was to restore order to the areas under rebel control. As they did not gain the nature of an armed conflict between two armies, they did not fall under the jurisdiction of the ICTY²¹. This standpoint, which was also criticized by some Croatian legal experts for being inconsistent²², led the Government to refuse to deliver official documents related to these operations to the Prosecutor’s Office of the ICTY.

These two above-mentioned problematic issues, together with the reluctance of Croatian authorities to fulfil the request of the ICTY to extradite Mladen Naletilić-Tuta to The Hague, resulted in an open conflict. On 28 July 1999, the Chief Prosecutor requested from the President of the ICTY to report Croatia to the UN Security Council because of her failure to fulfil its obligations²³. In the annual report of the ICTY, presented to the UN Security Council on 2 Aug. 1999, Croatia was openly criticized because of her

²⁰ Republika Srpska Krajina (Krajina Serbian Republic) was established on the eve of the break-up of the former Yugoslavia, as a result of an armed rebellion of ethnic Serbs of Croatia. This administration, whose proclaimed independence was not recognized by the international community, controlled between 1991 and 1995 almost one third of the territory of the Republic of Croatia.

²¹ See BIJELA KNJIGA VLADE REPUBLIKE HRVATSKE O SURADNJI S MEĐUNARODNIM KAZNENOM SUDOM ZA KAZNENO GONJENJE OSOBA ODGOVORNIH ZA TEŠKA KRŠENJA MEĐUNARODNOG HUMANITARNOG PRAVA NA PODRUČJU BIVŠE JUGOSLAVIJE OD GODINE 1991 [The White Book of the Government of the Republic of Croatia on Co-operation with the International Criminal Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991] (1999), at 52-4. For the letter of the then Croatian Minister of Justice Zvonimir Šeparović, addressed to the President of the ICTY and defending the official position of Croatia, see *Id.*, at 99.

²² For Ivo Josipović’s opinion see the interview published in VEČERNJI LIST, 6 Nov. 1999, at 32-33. The inconsistency laid in the fact that Croatia, while refusing to recognize the jurisdiction of the ICTY over operations “Bljesak” and “Oluja”, was insisting on criminal responsibility of the leaders of “Republika Srpska Krajina” in front of the same judicial body.

²³ *Request by the Prosecutor under Rule 7 bis (B) that the ICTY President inform the Security Council of the failure of the Republic of Croatia to comply with its obligations under Article 29*, available at <<http://www.un.org/icty/pressreal/7biscroatia.htm>> (visited 8 March 2002).

uncooperative attitude²⁴. Finally, on 25 Aug. 1999, the President of the ICTY officially reported to the UN Security Council the points that Croatia had been failing to cooperate²⁵.

III. NEW GOVERNMENT, NEW ERA

A. Winds of Change

As it was mentioned above, the main reason laying behind the problems was the lack of a strong political will in favor of co-operation. The statements of representatives of the Government²⁶ (who was the initiator of the proposal of Co-operation Law) and spokespersons of the ruling party HDZ²⁷ during the parliamentary debate of the Co-operation Law were clearly showing that the real motive for passing that law was just to fulfil the international obligations of the country. In other words, this was conceived merely as an act of having good relations with international community. There was no mention of contributing to a reliable judicial instance in its task to prosecute war crimes, committed by both sides of the armed conflict and which continue to traumatize almost the whole population of the Country. There was no mention that such an action was one of the safest ways to establish a reconciliation atmosphere in the Country.

The same point of view was reflected in a much clearer way in the so-called “Resolution on the Co-operation with the International Criminal Tribunal in The Hague” adopted by the parliament on 5 March 1999²⁸. In this resolution the ICTY was accused of not prosecuting crimes committed against Croats and taking a political position against Croatia. The resolution recommended the Government to continue the co-operation with the ICTY only in a manner that would not harm Croatian national interests.

It is interesting to note also that, until early fall 1999, the standpoint of the then main opposition parties was not much different than the Government-HDZ one. This fact could be observed through their attitude and statements during the parliamentary debate on the Co-operation Law²⁹, as well as the discussions and the result of the vote in the

²⁴ 6th Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, 2 Aug. 1999, ¶¶ 100-6, available at <<http://www.un.org/icty/rapportan/rapport6-e.htm>> (visited 8 March 2002).

²⁵ See supra note 2.

²⁶ See IZVJEŠĆA HRVATSKOGA SABORA [Reports of the Croatian Parliament], 163 (1996) (hereafter IHS/163), at 33-5 and IZVJEŠĆA HRVATSKOGA SABORA [Reports of the Croatian Parliament], 167 (1996) (hereafter IHS/167), at 8-9.

²⁷ IHS/167, supra note 26, at 11.

²⁸ *Rezolucija o suradnji s Međunarodnim kaznenim sudom u Haagu*, published in NARODNE NOVINE [Official Gazette] 24/1999, available at <<http://www.nn.hr/sluzbeni-list/sluzbeni/index.html>> (visited 8 March 2002).

²⁹ For SDP (Socijaldemokratska Partija Hrvatske = Social Democratic Party of Croatia) spokespersons' statements see IHS/163, supra note 26, at 38; IHS/167, supra note 26, at

parliamentary session where the “Resolution on the Co-operation with the International Criminal Tribunal in The Hague” was adopted³⁰.

However, two important factors, the pre-election period atmosphere, which started to dominate Croatia’s political scene from the beginning of autumn 1999, and the risk of facing international sanctions because of the Government’s uncooperative attitude, resulted in a radical change in the main opposition parties’ opinion, as far as the relations with the ICTY were concerned. On 2 Sep. 1999 six opposition parties³¹ of left and centrist orientation constituted an opposition block against HDZ. The opposition block parties, already in the beginning of their unofficial pre-election campaign started to criticize HDZ and the Government, *inter alia*, for leading the Country into isolation on the international scene. One of the arguments used in this criticism was the deteriorating relations with the ICTY. It is important to note that the change of tune of the opposition block was synchronized with an open change in public opinion concerning government policies towards the ICTY. On 28 Aug. 1999 a public opinion poll published in a national newspaper³², demonstrated that most of the population held the government and the ruling party mainly responsible for the bad relations with ICTY.

The parliamentary elections held on 3 Jan. 2000 brought the opposition block to the power with almost 2/3 majority in the parliament. On 7 Feb. 2000, at the second round of the presidential elections, which were anticipated because of the death of President Tuđman, one of the biggest supporters of an unconditional co-operation with the ICTY, Stipe Mesić was elected as the second president of Croatia³³.

12-13. For HSLs (Hrvatska Socijalno Liberalna Stranka = Croatian Social Liberal Party) spokespersons’ statements see IHS/163, supra note 26, at 33; IHS/167, supra note 26, at 10-11, 11-12, 14-15. For HSS (Hrvatska Seljačka Stranka = Croatian Peasant Party) spokespersons’ statements see IHS/163, supra note 26, at 33, 34; IHS/167, supra note 26, at 13, 17. SDP, HSLs and HSS became the three biggest partners of a coalition government of six political parties after the January 2000 parliamentary elections.

³⁰ For the parliamentary debate on the Resolution see IZVJEŠĆA HRVATSKOGA SABORA [Reports of the Croatian Parliament], 236 (1999), at 3-39. The Resolution was adopted in the House of Representatives of the Croatian Parliament by 57 votes against 7, while 11 MP chose abstention. See IZVJEŠĆA HRVATSKOGA SABORA [Reports of the Croatian Parliament], 237 (1999), at 42.

³¹ Alongside with SDP, HSLs and HSS the following three parties were part of the block: HNS (Hrvatska Narodna Stranka = Croatian People’s Party), LS (Liberalna Stranka = Liberal Party) and IDS (Istarski Demokratski Sabor = Istrian Democratic Parliament).

³² See JUTARNJI LIST, 28 Aug. 1999, at 2.

³³ Mesić was one of the founders of HDZ and a close colleague of Franjo Tuđman. After the victory of HDZ in elections in 1990, he became the first non-communist Prime Minister of Croatia. Couple of months later, he was sent to Belgrade as the representative of Croatia in the collegial presidency of former-Yugoslavia. In 1993, when the fights between Muslims and Croats started in Bosnia and Herzegovina, he publicly criticized Tuđman’s policy vis-à-vis Bosnia and resigned from HDZ.

B. Cleaning the Debris

The new government, almost immediately at the beginning of its mandate, initiated some positive steps for a better co-operation with the ICTY and in less than two months resolved three problematic issues inherited from the previous government.

On 10 Feb. 2000 Croatia concluded a status agreement with ICTY and thus regulated the legal status of its liaison office in Zagreb and the movement of its personnel in Croatia³⁴. Through this agreement the Government recognized for the ICTY personnel the unimpeded freedom of entry to and exit from the Country, and committed itself to provide assistance for the purpose of ICTY investigations carried out on the territory of Croatia. Thus, the official way for future ICTY investigations on war crimes committed by Croatian Army or paramilitary members became available. ICTY investigators would shortly begin to use this new opportunity³⁵.

In the course of March 2000 another problematic issue between Croatia and ICTY, which was mentioned in the letter of the President of ICTY to the UN Security Council³⁶, was solved by the extradition of Mladen Naletilić-Tuta to The Hague. In fact, the County and Supreme Court decisions on this extradition was brought while HDZ was still the ruling party. Even the legal procedure was finalized by the decision of the Constitutional Court³⁷, favorable for extradition, during Tuđman-HDZ rule. His “transfer” to The Hague has been postponed many times, due to his health condition. On 2 Mar. 2000, on the initiative of the new government, a medical team from ICTY examined Naletilić-Tuta and declared him fit to travel. The “transfer” was executed on 21 Mar. 2000.

Finally, on 14 Apr. 2000 the new parliament dominated by MPs of the coalition government parties adopted a declaration³⁸, through which Croatia officially recognized ICTY’s jurisdiction over Operations “Bljesak” and “Oluja”. This was not at all surprising. The early signs of such a move were noticeable from the very first days of the

³⁴ SPORAZUM REPUBLIKE HRVATSKE I UJEDINJENIH NARODA O STATUSU UREDA ZA VEZU TUŽITELJSTVA MEĐUNARODNOG KAZNENOG SUDA ZA BIVŠU JUGOSLAVIJU I NJEGOVOG OSOBLJA (Agreement between the Republic of Croatia and the United Nations on the Status of the Liaison Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and its Personnel). The Agreement was concluded by an exchange of letter between the Secretary General of the UN and the Permanent Representative of Croatia to the UN. For the text of the Agreement, see Josipović, supra note 9, at 363-4. For an unofficial translation see Josipović, supra note 9, at 619-20.

³⁵ For more information see infra, under title “IV. C. Gospić Case”.

³⁶ See supra note 2.

³⁷ See supra note 15.

³⁸ *Deklaracija o suradnji s Međunarodnim kaznenim sudom u Den Haagu* (Declaration on the Co-operation with the International Criminal Tribunal in The Hague), published in NARODNE NOVINE 41/2000 [Official Gazette] 24/1999, available at <<http://www.nn.hr/sluzbeni-list/sluzbeni/index.html>> (visited 8 March 2002).

new government in office³⁹. During February and March 2000 numerous State officials made statements, announcing that Croatia would not oppose ICTY's investigations on these operations. The Parliament's declaration was the official confirmation of this new policy line. Upon the Declaration, the Prosecutor's Office of the ICTY declared that it would withdraw its notification to the UN for the lack of co-operation⁴⁰.

In this positive atmosphere some statements, which would have created a harsh public reaction under previous government rule, started to appear in printed media without facing any single protest. In the first months of 1999, when discussions on the ICTY's jurisdiction over Operations "Bljesak" and "Oluja" were massively published and broadcast in the media, the simple mention of the possibility to see indictments raised against Croatian Army members was good enough to create severe criticisms against ICTY⁴¹. However in February 2000, ICTY Deputy Chief Prosecutor Graham Blewitt and ICTY spokesman Paul Risley openly stated for Croatian journalists that the name of the late president Tuđman could appear in court records regarding his role in the Croat-Muslim war in BiH and also his connection to the events which occurred during and after Operation "Oluja". Furthermore, they said that three Croatian Army generals might be formally indicted regarding their role in Operation "Oluja"⁴². None of these statements created a public hysteria, which would have not been the case if it had happened a couple of months earlier. The same cold-blooded public attitude was to be observed when, at the end of March 2000, Blewitt repeated his statement concerning Tuđman, confirming that there had been an investigation on him, which was not over and also included a number of other officials⁴³.

On the other hand, in the same period a first potential crisis was avoided thanks to the clever moves of the new government. In the beginning of March 2000, ICTY Trial Chamber condemned Gen. Tihomir Blaškić to 45 years' imprisonment, finding him guilty of all charges, except one⁴⁴. Blaškić was seen in the public opinion as an honest soldier, who had just carried out the tasks given to him by the political leadership. Moreover, his voluntary surrender to the ICTY was conceived generally as proof of his innocence. Thus, his condemnation and the severity of the sentence was a real shock for the average Croatian citizen. This was a moment of shock for the new government also, because it found itself for the first time between ICTY and the public opinion.

³⁹ For a first analysis published during the first week in office of the new government and where it was mentioned that the government had discarded the strategy of denying the ICTY jurisdiction over operations "Bljesak" and "Oluja" see JUTARNJI LIST, 5 Feb. 2000, at 36.

⁴⁰ For an example of the press reports on the statement of the spokesperson of the Prosecutor's Office, Paul Risley, see JUTARNJI LIST, 18 Apr. 2000, at 3.

⁴¹ For more information see Josipović, *supra* note 9, at 229, note 207 and 208.

⁴² JUTARNJI LIST, 10 Feb. 2000, at 7; NOVI LIST, 10 Feb. 2000, at 4.

⁴³ JUTARNJI LIST, 27 Mar. 2000, at 3.

⁴⁴ See *Prosecutor v. Blaškić*, *supra* note 4.

The first reaction of new State officials was to declare that they were surprised by the severity of the sentence, but mentioning at the same time that the Country would continue to co-operate with the ICTY. A couple of days later Prime Minister Račan declared that the Government discovered in the State archives some documents, which could, according to him, help to the defense of the General at appeal stage⁴⁵. Thus, he managed to put the blame on the former government who refused to hand over official documents to the ICTY in the case of Blaškić. By promising the hand-over of newly found documentation to the Prosecutor's office, the new government marked two successes at the same time. First, by solving one more controversial issue, which again was inherited from the old government, it proved once more that the co-operation was going to be much better than during HDZ time. Secondly, it calmed down the furore in the public opinion without losing the support for its co-operation policy.

IV. THE END OF HONEYMOONS

The comfortable atmosphere of the first two months was not to last longer. Extreme-right oriented printed media did not hesitate to make clear already from the very beginning that they would become the harshest opponents of the new government's policies of co-operation with the ICTY⁴⁶. For the supporters of this point of view, especially for some war veterans' organizations the equation was very simple: Any move towards the investigation of war crimes allegedly committed by Croat forces was an open insult to the integrity of the so-called "Patriotic War"⁴⁷. According to them, this was a legitimate defensive liberation war fought against Serb aggression, and this fact itself was good enough to legitimize all actions carried out during this war.

The time passing would show that the other segments of the Croatian population were also not entirely indifferent to the criticisms raised against the government on this issue. In the course of the year 2000 some events, which attracted great public attention, resulted in the growth of public support to the extreme-right opposition to the new type of co-operation and gained the shape of a crisis which threatened the unity of the coalition government and the consistency of co-operation policies. These events, although linked to each other especially in results they produced, could be examined under four separate lines.

A. Veterans against the Government

The protests of members of different organizations of "Patriotic War" veterans against the new co-operation strategy of the new government started to take place as early as the

⁴⁵ See interview with Prime Minister Račan, GLOBUS, 10 Mar. 2000, at 10.

⁴⁶ For an early-messenger article, in which the new policies of co-operation were described as a trade-off Croatian generals for good relations with the international community and as humiliation of the nation, see SLOBODNA DALMACIJA, 22 Feb. 2000, at 9.

⁴⁷ "Domovinski rat" (Patriotic War) is the appellation used by the official terminology to describe the armed conflict that took place on Croatian territory between 1991-1995.

beginning of March 2000. The reason for the first protest mass gathering was the prison sentence against Gen. Blaškić. However, as the new government managed to attract public attention on the former government's uncooperative policies and to declare them as the real responsible ones for this "catastrophic" ICTY sentence, the public protests turned out to be limited to the "labeled" opponents of all forms of co-operation with the ICTY, which they consider as evil⁴⁸. Finally, some 5.000 protesters who gathered in the capital Zagreb, mainly upon the call of HVIDRA⁴⁹, were presented as the supporters of extreme-right wing parties⁵⁰.

The second wave of demonstrations came with the exhumations carried out by ICTY investigators in and around the town of Gospić⁵¹. This time, though the protests were again exclusively organized by some war veterans' associations and extreme-right wing parties, the language used by the protesters was much more violent. The leader of a war veterans' association, namely the president of the UHBDDR⁵² Branko Borković, stated openly that the ICTY investigation in Gospić violated the sovereignty of the country, adding that the veterans were armed and ready to use any means necessary to defend the dignity of the Patriotic War⁵³. That standpoint was not reflecting the attitude of the entire war veterans' population. But even the mild positioned war veterans' associations were emphasizing their opposition to the ICTY-led investigation on Croatian territory, while condemning the belligerent statements of others⁵⁴.

Two factors, first Stipetić case, which was to occur as a brand-new issue in relations Croatia-ICTY and secondly new developments in the Gospić case would change the picture of "isolated war veteran in his battle against ICTY". Starting from the beginning of October 2000, public support for the cause of those who are openly against to a broad range co-operation with the ICTY would increase in a considerable manner. This new trend began to threaten not only the government's popularity but, because of different points of view between coalition partners, its unity and thus also its destiny.

⁴⁸ The Head Army Chaplain Bishop Juraj Jezerinac, in the beginning of September 1999, on the eve of the worst ever dispute between Croatia and ICTY, described the existence of the ICTY as the proof that evil still existed. See, NOVI LIST, 6 Sep. 1999, at 3.

⁴⁹ HVIDRA = Udruga Hrvatskih vojnih invalida Domovinskog Rata (The Association of Croatian Invalid Militaries of the Patriotic War).

⁵⁰ See Sanja Modrić, *Desničarski marš protiv Račanove vlade i Mesića* (The Rightists' March Against Račan's Government and Mesić), published in JUTARNJI LIST, 8 Mar. 2000, at 7.

⁵¹ For more information see *infra*, under title "IV. C. Gospić Case".

⁵² UHBDDR = Udruga Hrvatskih branitelja i dobrovoljaca Domovinskog rata (The Association of Croatian Defenders and Veterans of the Patriotic War).

⁵³ See interview with Borković, published in SLOBODNA DALMACIJA, 19 Apr. 2000, at 5.

⁵⁴ For an interview with Miro Laco, the President of ZUHDDR (Zajednica udruga Hrvatskih dragovoljaca Domovinskog rata = The Union of Associations of Volunteers of the Patriotic War), see GLOBUS, 11 May 2000, at 36.

The rally organized in Split on 11 Feb. 2001 marked the zenith of public protests against the investigations of war crimes allegedly committed by members of Croatian forces. That day a large crowd estimated anywhere between 100.000 and 200.000 gathered under the slogan “We Are All Mirko Norac”, to protest the arrest warrant issued by Rijeka County Court for retired general Mirko Norac because of his alleged involvement in killings of ethnic Serbian civilians in Gospić town⁵⁵. After this rally, the veterans started to collect signatures, requesting a referendum on a law, which would recognize a broad immunity for Patriotic War veterans in the cases of criminal investigations against them. They claim that total number of the signatures collected is over 400.000⁵⁶.

B. Stipetić Case

August in Croatia, as in many other countries, is a month of summer holidays. Therefore, nobody expects important political events to happen in this period. But the issue of the weekly political magazine *Globus* dated 4 Aug. 2000 was to make that month a considerable exception to this rule. In this issue *Globus* reported that ICTY was preparing an indictment for the Head of the General Staff of Croatian Army, Lt. Gen. Petar Stipetić, because of his commanding position in the so-called “Medački đep” (Medak Pocket) military operation in 1993, during which civilian ethnic Serbs were allegedly killed by Croat forces⁵⁷.

The news created the expected effect and a public hysteria, supported by populist statements of politicians, began to gain shape. This time, notorious figures from some parties of the ruling coalition were also among those who gave heated speeches against the ICTY⁵⁸. The old rhetoric declaring the ICTY as the enemy of the Croatian nation and accusing it to prosecute not the aggressor (i.e. Serbs and Muslims) but the victim (i.e. Croats) was reincarnated.

The government was caught once more completely unprepared for the crisis. Some members of the government tried to diminish the effects by denying the authenticity of

⁵⁵ For more information see *infra*, under title “IV. C. Gospić Case”.

⁵⁶ For the statement of Mirko Čondić, the President of SSODDR (Srednji Stožer za obranu digniteta Domovinskog rata = Central Headquarters for Protection of the Dignity of the Patriotic War), see *SLOBODNA DALMACIJA*, 29 Mar. 2001, at 7.

⁵⁷ See *GLOBUS* 4 Aug. 2000, at 6. Stipetić was appointed as the Head of the General Staff of Croatian Army at the beginning of March 2000, by President Mesić. He is one of the rare generals of the Croatian Army who received a formal military education in former Yugoslavia and had a successful career within the Yugoslav National Army. Contrary to many other generals of the Croatian Army, he did not have any political party affiliation during HDZ rule (the new government does not allow army members to join political organizations). He is generally considered as a pure professional and honest soldier.

⁵⁸ For the speech of Zdravko Tomac, Deputy Speaker of the House of Representatives and the then Deputy President of the biggest political party in the Parliament and the coalition government, see *NACIONAL*, 16 Aug. 2000, at 6.

the news. Additionally, another weekly *Nacional* soon reported that according to the unnamed sources “close to the top of the State”, the whole case had been launched by the right wing of HDZ with the aim to destabilize the government⁵⁹. However, despite denials, *Globus* did not renounce to cover the case. In the following issue of the weekly there was an interview with the leader of the second biggest party of the coalition government and a statement of the Prime Minister. In the interview the leader of HSL, Drazen Budiša was declaring that the Prime Minister had confirmed to him that the ICTY would raise an indictment for Gen. Stipetić⁶⁰. On the other hand, in previous pages of the same issue of the weekly, Prime Minister Račan was stating that he had been speaking only about different indictments prepared by the ICTY, without naming Stipetić or anybody else⁶¹. Thus, the crisis turned into an open dispute between the leaders of the two biggest parties of the coalition government.

The break-up of the coalition government, which became predictable at that stage, was avoided by the initiative of Zlatko Tomčić, Speaker of the Parliament and leader of the third biggest coalition partner, HSS. He organized a “summit” where the leaders of the six coalition parties got together and discussed the origin of the crisis. The concrete outcome of the “summit” was the continuation of the coalition. According to the organizer, a common policy on how to react in case of ICTY issues indictments against Croatian generals was discussed too⁶².

New developments in the Gospić case, which occurred almost immediately after the summit, erased the Stipetić case from the political agenda of the country, creating another nebula of confusion around Croatia’s relations with the ICTY⁶³. Stipetić case remained forgotten until mid-November 2000, namely until the publication of an interview with Graham Blewitt, the Deputy Chief Prosecutor of the ICTY. In the interview Blewitt was announcing that ICTY would shortly issue indictments for those Croats who were accused of war crimes during the military operations of “Bljesak” and “Oluja”⁶⁴.

This statement resumed the discussion on relations with the ICTY. The statements of some governmental officials, containing severe criticisms against ICTY, were this time louder than the protests of war veterans’ associations. Additionally, the government announced the so-called “13 points” to show its intention to narrow the frame of the co-operation. Throughout December 2000 and the first half of January 2001 almost every day there were different types of speculations in the media on “ICTY indictments” for Croatian army generals or high ranking political figures.

⁵⁹ See *NACIONAL*, 16 Aug. 2000, at 4-5.

⁶⁰ See *GLOBUS*, 18 Aug. 2000, at 8-11.

⁶¹ See *GLOBUS*, 18 Aug. 2000, at 6-7.

⁶² For a detailed media report on the meeting see *GLOBUS*, 25 Aug. 2000, at 7-9. For an interview with the organizer, Zlatko Tomčić, on the content of the meeting see *GLOBUS*, 25 Aug. 2000, at 18-21.

⁶³ For more information see *infra*, under title “IV. C. Gospić Case”.

⁶⁴ See *GLOBUS*, 17 Nov. 2000, at 18-21.

In the discussion the name of Gen. Stipetić was very often mentioned as a potential accused⁶⁵. However, with intensified discussions, the range of speculations increased considerably. Finally, all media organs began to publish “news” that ICTY would issue indictments to all members of the “government of national unity”, which ran the country in the beginning of the armed conflict and which was formed by members of all political parties represented in the then Parliament⁶⁶. The concrete result of this media campaign was the creation of an image that the ICTY was ready to incriminate not only individuals but the whole “Patriotic War” and thus the independence of Croatia would be put under question.

Surprisingly enough, this heavy atmosphere dissolved very quickly after the visit of Carla Del Ponte to Zagreb, which was realized on 15 Jan. 2001 upon the invitation of Prime Minister Račan. After the meeting between the two officials both parties declared their satisfaction and confirmed that solutions have been found for all problems which occurred during the last months⁶⁷. In the wake of these reconciliatory declarations, Gen. Stipetić was interrogated by ICTY investigators in Zagreb on 27 and 28 Mar. 2001. This event did not create any public reaction.

C. Gospić Case

Allegations of killings of ethnic Serb civilians in and around Gospić town committed by Croatian defense forces were reported to the responsible bodies of the Croatian Government as early as the beginning of the armed hostilities in that region. Even, one of the main suspects, the secretary general of Gospić defense council, Tihomir Orešković, was arrested by the Croatian military police. But, he was released immediately upon the intervention of the then Minister of Defense, Gojko Šušak. The case was almost forgotten in the public during 90s, except for some media reports, which were published after the end of the armed conflict in Croatia. During the HDZ rule, ICTY formally requested from the Croatian government to let ICTY investigators examine these allegations directly on the scene of crime. These requests have been constantly refused by the HDZ-led government⁶⁸.

⁶⁵ The intensity of the discussion over the name of Gen. Stipetić forced the government to renounce to its policy to deny that ICTY was interested in him. The 20 Dec. 2000 Parliamentary Committee for National Security confirmed that the General was invited to The Hague to testify as a “suspect”.

⁶⁶ These “news” were considered as serious and authentic. Upon these allegation the members of the “Government of National Unity”, together with all former prime ministers of Croatia, met the very same day when Carla Del Ponte came to Zagreb to meet with the Prime Minister, in order to show their readiness to defend themselves against “accusations”.

⁶⁷ For two different analyses, based on information given by unnamed sources, on the content of the meeting see NACIONAL, 16 Jan. 2001, at 6-7; GLOBUS, 19 Jan. 2001, at 6-10.

⁶⁸ For more information on the past of Gospić Case see GLOBUS, 15 Sep. 2000, at 6-9; GLOBUS, 22 Sep. 2000, at 6-10; GLOBUS, 9 Feb. 2001, at 13-15.

In the wake of the Status agreement concluded with the ICTY⁶⁹, the new government gave the permission to ICTY investigators to carry out an investigation and exhumations in Gospić⁷⁰. The arrival of ICTY investigators, as mentioned above, received the protests of some war veterans' associations and one part of the town population. But after a while, along with the decrease of public attention on these developments, the protests came to an end.

Mysteriously, exactly when the governmental crisis caused by the Stipetić case had reached its peak, a bomb attack opened brutally the second phase in Gospić case too. This attack, happened on 28 Aug. 2000, caused the death of Milan Levar, the most prominent prosecution witness in the Gospić case. No one assumed the responsibility for the attack, but an until-then-unknown terrorist group sent a letter to the President of Republic, who also witnessed in front of the ICTY while he was an opposition politician, threatening him that his end would be the same as Levar's⁷¹.

The government's answer to these developments was to arrest, on 12 Sep. 2000, Tihomir Orešković and four other suspects, accusing them of being involved in the Gospić killings committed in 1991. The criminal procedure against the suspects started a couple of days later before the Rijeka County Court. The first consequence of these arrests was to confirm the allegations that ICTY had agreed to let the Croatian justice prosecute some cases falling under its jurisdiction⁷². The second consequence was the nationwide mobilization of war veterans to establish permanent non-governmental bodies to protect "the dignity of the Patriotic War". The first "Headquarters for Protection of the Dignity of the Patriotic War" (hereafter Headquarters) were founded in Split in September, to

⁶⁹ See supra, under title "III. B. Cleaning the Debris".

⁷⁰ First news on this investigation were published in GLOBUS even before the commencement of exhumations. See, GLOBUS, 6 Apr. 2000, at 8-10.

⁷¹ See JUTARNJI LIST, 3 Sep. 2000, at 3. On the eve of the new euphoria created around the new developments in the relations with the ICTY, at the end of November 2000, a daily Slobodna Dalmacija and a weekly Globus started to publish the text of Mesić's secret testimony given in front the ICTY. ICTY immediately reacted and on 4 Dec. 2000 requested from Croatian authorities to take necessary measures to prevent publication of secret testimonies of protected witnesses. (For an unofficial Croatian translation of the text of the letter of Claude Jorda, the President of the ICTY, see SLOBODNA DALMACIJA, 3 Dec. 2000, at 4-5). But the Government did not take any step, probably in order not to be seen as an "executor of a dictate given from abroad and which violates the freedom of press".

⁷² Comments that the strategy of the new government would be based on starting the processes in Croatian courts with the agreement of The Hague Tribunal, which could demand insight into the procedure or the final verdict at any point, commenced to occur in printed media as early as the beginning of February 2000. For the first media report on the issue see JUTARNJI LIST, 5 Feb. 2000, at 36. Another confirming example for this new policy trend would be set in Ahmići case. See infra, under title "IV. D. Ahmići Case".

become shortly the national center of the organizations bearing the same appellation, established in each county. Their first action was to collect signatures for a petition, in which the Government was invited either to accept the principle that no member of the Croatian Army has ever committed any war crime or to resign.

The developments gained more gravity on 28 Sep. 2000, when 12 army generals, who had commanding positions during the Patriotic War⁷³, made an open letter public. In the letter “the responsible persons and institutions of the State” were invited to stop blackening the Patriotic War⁷⁴. The answer of the President of Republic was to send immediately to retirement 7 active ones of these 12 generals⁷⁵. In the meantime, the main opposition party took side with the 12 generals. In the declaration of the Central Committee of HDZ, issued on 30 Sep. 2000, the government was accused of creating an atmosphere of civil war in the country⁷⁶.

On the eve of these events, the House of Representatives met to discuss the petition of the “Headquarters”, which reached the parliament. At the end of the session the “Declaration on the Patriotic War” was adopted⁷⁷. The declaration was confirming that the Patriotic War was a legitimate defensive war. But, it was also emphasizing that the crimes committed during this war would be prosecuted, regardless the ethnic background of the perpetrators.

The Declaration had a calming effect on public opinion and the protest rallies came to an end. But, the arrest warrant issued by the Rijeka County Court on 7 Feb. 2001 for retired general Mirko Norac in the Gospić case, activated again war veterans’ organizations. While the retired general stayed at large, veterans blocked roads⁷⁸ in different parts of the Country and organized several mass protest meetings. The protesters were accusing the government of kidnapping the general and handing him over to the ICTY secretly. The government though, chose a policy of non-confrontation with protesters, without renouncing to make efforts to catch the wanted general. This policy proved to be successful. Finally, after a two-week runaway the protests lost considerably their

⁷³ One of the signatories of the letter was Admiral Davor Domazet-Lošo, former Head of General Staff of the Croatian Army; one other was Gen. Damir Krstičević, the then Deputy Head of General Staff of the Croatian Army.

⁷⁴ For the text of the letter see JUTARNJI LIST, 29 Sep. 2000, at 3.

⁷⁵ According to public opinion polls conducted by two different daily newspapers the majority of the population was supporting the decision of the President. See JUTARNJI LIST, 1 Oct. 2000, at 2; NOVI LIST, 1 Oct. 2000, at 2.

⁷⁶ See NOVI LIST, 1 Oct. 2000, at 3.

⁷⁷ *Deklaracija o Domovinskom ratu*. For the text see JUTARNJI LIST, 15 Oct. 2000, at 8.

⁷⁸ A declaration containing threats to block main roads and undermine the upcoming tourist season was done already on 4 May 2000 by the President of HVIDRA, Marinko Liović. But, that time the threats were not related to war crime prosecutions, but to the governmental project to make some reforms on rights and privileges of the veterans of the Patriotic War.

intensity and the general, after receiving the guarantee directly from the Prime Minister that he would not be extradited to The Hague⁷⁹, surrendered without incident. The very same day the Office of the Prosecutor of the ICTY declared that the investigation of all crimes allegedly committed by Mirko Norac would be let to the hands of Croatian authorities⁸⁰. On 5 Mar. 2001 the public prosecutor of Rijeka County raised the indictment against Norac, Orešković and three others for war crimes against civilians in the Gospić case.

D. Ahmići Case

The massacre of Bosnian Muslim civilians by Croat forces in Ahmići, a Central Bosnian village, was one of the chief accusations of which Gen. Blaškić was found guilty by the Trial Chamber of the ICTY⁸¹. The decision of the Trial Chamber brought in Blaškić Case had revitalized the discussion on his responsibility in this massacre. The general public opinion was that the massacre was organized by secret services of Croatia and Bosnian Croats and that the general was nothing, but the black sheep chosen by the former-government to be held responsible for this crime in front of the ICTY.

As it was mentioned above, the new government avoided to be caught in the crossfire between the public opinion, which was openly against the decision, and the ICTY by declaring that they would deliver newly found State archive documents to the Tribunal in order to help the defense of Gen. Blaškić⁸². After this declaration almost every media organ, at least for one time, published or broadcast reports containing speculations on the nature of the “newly found” documents. On 19 May 2000, the national daily paper *Jutarnji List* reported that a document showing the real perpetrators of the massacre and the degree of involvement of the then top Croatian officials to the case was found in the archive of the late President Tuđman⁸³. The day after the same paper reported that the perpetrators of the Ahmići massacre had been given false identities by the Office for the Protection of the Constitutional Order (SZUP)⁸⁴. The report was backed up by the statement of the former Head of SZUP, Ivan Brzović⁸⁵.

⁷⁹ See REPUBLIKA, 22 Feb. 2001, at 1, 3; NOVI LIST, 22 Feb. 2001, at 3.

⁸⁰ See REPUBLIKA, 22 Feb. 2001, at 3; NOVI LIST, 22 Feb. 2001, at 3.

⁸¹ See *Prosecutor v. Blaškić*, supra note 4.

⁸² See supra, under title “III. B. Cleaning the Debris”.

⁸³ JUTARNJI LIST, 17 May 2000, at 3. The document was afterwards largely quoted by a weekly magazine, which managed to come into its possession. See GLOBUS, 25 May 2000, at 6-7.

⁸⁴ SZUP = Služba za zaštitu ustavnog poretka

⁸⁵ See JUTARNJI LIST, 18 May 2000, at 3. A couple of days later a weekly magazine gave rich inside information on the SZUP involvement in the case. See NACIONAL, 23 May 2000, at 2-3. For another detailed analysis on the case see PROFIL (supplement of the daily NOVI LIST), 27 May 2000, at 3.

The prosecution of the perpetrators of the Ahmići massacre was mentioned as one of the cases let into the hands of the Croatian justice by the ICTY⁸⁶. These allegations were confirmed to some extent with the arrest of two of four suspects, who were accused of being the main perpetrators of the massacre, on 6 Sep. 2000 by Croatian police. The suspects were transferred, after the arrest, to the County Court in Rijeka. It is interesting to note that, immediately after the arrests Deputy Prime Minister and the Minister of Justice went to The Hague to meet with the Chief Prosecutor Carla Del Ponte. After the meeting a joint statement, emphasizing that the solution for all current problems were found, was issued⁸⁷.

V. CONCLUSION

A pessimistic observer would assess the Croatian example as proof that in the countries issued from ex-Yugoslavia an entire post-war normalization through, *inter alia*, the prosecution of war crimes would never be possible. In fact Croatia, compared to FRY, which only recently freed herself of the rule of a notorious criminal, and to Bosnia and Herzegovina, which is still kept alive only thanks to the international community, seemed to be a country with big potential to overcome the difficulty of prosecuting or helping to prosecute war crimes committed by her nationals. The reports on war crimes committed by Croats started to appear in some Croatian media organs as early as mid-1993⁸⁸. Three years later Croatia adopted an adequate legislation for co-operation with the ICTY. Finally, in the beginning of 2000 a government and a president, who are in favor of a productive co-operation, were elected by absolute majority. Thus the pessimist would say that if such a country still faces serious problems to fulfill her obligations towards the ICTY because of reactions expressed by mass movements, war crimes issue would remain a hot potato for an indefinite time for the countries affected by wars which followed the break-up of ex-Yugoslavia.

On the other hand, the pessimist would criticize the Prosecutor's office of ICTY for making concessions to Croatian government for political reasons. In fact in Gospić and Ahmići cases, investigations initiated by the ICTY were stopped at a particular moment, in order to allow the national judiciary to take over the cases. Although there is no concrete material to confirm such an opinion, one can read between the lines of official statements that this hand over was done upon the request of the Croatian government, which assessed that in that way it was easier to keep public reaction under control. Thus the pessimist would argue that the Tribunal is also using political considerations to choose cases to prosecute.

An optimist observer though would emphasize the importance of the fact that a country like Croatia, a country which has been in a very painful civil war until only six years ago, raises war crime indictments against generals who are seen by the majority of population

⁸⁶ See Višnja Staresina's comment, published in VEČERNJI LIST, 19 May 2000, at 2.

⁸⁷ See JUTARNJI LIST, 9 Sep. 2000, at 3; JUTARNJI LIST, 10 Sep. 2000, at 3.

⁸⁸ See FERAL TRIBUNE, 9 June 1993. The report mentioned ethnic Serb civilian missing persons from Sisak area.

as heroic commanders who led the army forces of the country to the big victory. The optimist would appreciate the decisiveness of the new Croatian authorities which are not renouncing to the aim to solve war crimes issue, despite the fact that an important proportion of the population of the country is still not ready to acknowledge the truth that some crimes were committed by their co-nationals. Additionally, the optimist would underline the importance of the involvement of national judicial authorities in prosecution of war crimes along with the ICTY, referring to the regulations of the Statute of the ICTY concerning parallel jurisdiction of the Tribunal and the national authorities over war crimes.

To conclude the discussion between the pessimist and the optimist and to present an intermediary but also more realistic approach, one can cite the words of two officials, one from the ICTY and the other from the Croatian Government: “There is no denying that the ICTY must operate in the context of complex political realities or that difficult strategic choices have to be made in the pursuit of ideals”⁸⁹. “There is going to be always conflicts between Croatia and the ICTY. (...) But, this is natural. And it is good that we can solve problems by direct dialogue.”⁹⁰

⁸⁹ Payam Akhavan, *Justice in The Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal*, 20 HUM. RTS. Q. 737 (1998), 740. Akhavan was legal advisor to the Office of the Prosecutor of ICTY when the article was published.

⁹⁰ See interview with Tonino Picula, the Minister of Foreign Affairs of Croatia, published in NOVI LIST, 20 Jan. 2001, at 5.

ABSTRACT:

The international human rights protection mechanisms, which have begun to flourish in the second half of the 20th century, became progressively an important legal instrument that changes classical perception of state sovereignty. The establishment of two *ad hoc* courts, namely U. N. tribunals for Rwanda and former Yugoslavia was a crucial step in this direction. These courts, which are considered generally as preludes for an institutionalized International Penal Court, are based on a purely new concept of protection of human rights. The revolutionary side of this new concept is that the most serious violations of human rights, like genocide or other crimes against humanity, are not considered anymore as a sole topic of internal politics. In other words, in such cases international community does not recognize “non-interference” as valid international law principle and tries to establish directly the penal responsibility of perpetrators. The close collaboration of sovereign nation-states with these supra national instances though, is still crucial for the good functioning of the latter. This necessity creates in general a tension between two sides of the relation, for some national level politicians equal treason and a good cooperation between a given state and a supranational body. This point of view, which is based on an already old-fashioned concept of sovereignty, transforms cooperation policies from a technical question into an internal politics debate, where “national interest” is repeatedly used as a “test criteria”.

This paper aims to describe a concrete case, namely the cooperation between ICTY (International Criminal Tribunal for former-Yugoslavia) and Croatia, which shows all aspects of the above-mentioned tension between a nation-state and a supranational body.