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Country specific report: conflict settlement agreement Croatia
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Country specific report: conflict settlement agreement
Croatia

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MIRICO: Human and Minority Rights in the Life Cycle of Ethnic Conflicts
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1. Introduction

This report deals with the numerous domestic and international initiatives for ethnic conflict settlement in Croatia that took place in the first part of the 1990s. The ethnic mobilization that occurred both among the Croat majority and the Serb minority, was conducted by political leaders who exploited: “traits of history, myth and alleged ethnic difference in order to pursue their own power goals and to divert public attention from other pressing questions that could not be so easily resolved”. The ruling elites had been “threatened by changes in the economic and political structures that sustained them” and therefore the roots of this ethnic mobilization had been developing from mid-1980s onwards.

On the side of the Serb population ethnic mobilization was fuelled by the aggressive nationalism manifested in Milošević’s policy, which was then wrapped into the idea of preserving the Yugoslav federation. The ethno mobilization campaigns, propagated by means of the media as well as mob rallies throughout Yugoslavia, predominantly in rural areas, and directed by Serbia’s Milošević regime, built up a myth of the genocidal nature of other Yugoslav nations, who were accused of threatening the preservation of the Serbian nation. The Kosovo Albanians were thus demonized as internal enemies who were eradicating the Serb population in Kosovo, both by killing the Serbs and changing the ethnic demographic of the province through their high birth rate. His regime demonized the Croats by pointing out their collaborationist past. The Second World War Ustaše atrocities against the Serbs, Jews and Roma were recalled to remind and mobilize Serbs, both in Serbia but predominantly in Croatia.

These nationalist political campaigns were possible due to the media controlled by the League of Communists of Serbia’s (the Serb communist party) loyalty to the Milosevic regime (e.g. daily Politika, political weekly NIN, Belgrade Radio Television etc.). In this way parts of the Serb population in the other republics of Yugoslavia, “were mobilised to generate the sympathy of the majority population in their home base, Serbia”. Nevertheless, after it became apparent that it would be impossible to realize the idea of a re-centralized Yugoslavia in which Serbia would have an even greater stand, to a great extent due to the emergence of multi-party democratic systems in Croatia and Slovenia in 1990, a nationalist strategy that pursued the creation of a Greater Serbia (i.e. a country that would re-unite the Serbian nation within one state) was elaborated. It aimed to align ethnicity and territory, suggesting the creation of an entity consisting of the republics of Serbia and Montenegro and parts of Croatia and Bosnia and Herzegovina where either the Serbs constituted the majority population, or that they achieved by conquering territories through ethnic cleansing operations supported by the Yugoslav People’s Army (JNA).

1 The Report on Conflict Settlement Agreements in Croatia was written with the assistance of Daniela Mehler. For more information on ethnic conflict in Croatia see MIRICO country report on Croatia, “Ethnic Mobilization in Croatia” at <http://www.eurac.edu/NR/rdonlyres/1AC2FD36-19E3-463F-B75A-232E8E4856D/0/CroatiaReport.pdf>.


4 The traditional spelling of this term in the English language is ‘Ustashe’, however, this report uses the spelling pertinent to the language of the country it describes.

5 Espen Barth Eide, op.cit., 56.
Even though a small minority of the total number of Croatia’s Serbs supported the nationalist Serbian Democratic Party (SDS) in the 1990 elections, it enjoyed the support of the Serb population in the Krajina region. The SDS:

[R]ejected all compromises with Zagreb; held mass rallies and erected barricades; threatened moderate Serbs and non-SDS members who refused to go along with the confrontational strategy; provoked armed incidents with the Croatia police, and stormed villages adjacent to the regions already controlled by the Serbian forces and annexed them to their territory.\(^6\)

Despite the argument that the Croatian regime could have made conciliatory moves in more efficient way\(^7\), it is true that all attempts to negotiate compromise with the rebellious Serb population were rejected by their local political leaders. At the same time, “moderate Serbs who disagreed with Belgrade’s conflictual strategy were branded as traitors”\(^8\).

Croatian ethnic mobilization was reinforced after the nationalist Croatian Democratic Union (HDZ) won the elections in May 1990. The newly established media entities (e.g. the National News Agency, HINA) and the ethnically purged old ones (e.g. the Croatian Radio Television) contributed to the process of ethnic mobilization and to the ‘war of words’ in which the Serbs were labelled as secessionists, unpatriotic and Yugo-nostalgic. In this way, both the Serbian and the Croatian “elites mutually reinforced each other’s claim, becoming mirrors of one another and doing, in effect, exactly what opposing side accused them of doing”\(^9\).

Ethnically based inflammatory speeches held during public events or circulated in the media in the early 1990s were recurrent on both sides. It soon became inevitable that the ‘war of words’ turned into ‘war of bodies’\(^10\). The Serb minority rebellion in Croatia that had already started in the summer of 1990 turned to bloodshed in 1991 and led to open warfare between the improperly armed Croatian police forces and insurgents backed by the JNA. Elites provoked this violent conflict along ethnic divisions “in order to create a domestic political context where ethnicity is the only politically relevant identity”.\(^11\) By December 1991 the Serbs, supported by the JNA, controlled 15,000 km\(^2\) or 25.5 % of the Croatian territory.\(^12\)

In October 1990 the Serb leaders declared the creation of the Srpska Autonomna Oblast (SAO) Krajina (Serbian Autonomous Region of Krajina), in this way restructuring the former Community of Municipalities of Northern Dalmatia and Lika.\(^13\) The Serbian National Council declared Krajina’s independence from Croatia on 16 March 1991. In the meantime, an armed conflict began in early May 1991 between the Serbs and the Croat police in Eastern Slavonia, the eastern region of Croatia bordering Serbia across the Danube River. After Croatia declared independence in June 1991, the militant Serbs backed by the JNA launched

\(^6\) V.P. Gagnon, Jr. (1994/95), op. cit.
\(^7\) This idea that a deployment of non-radical and not nationalist negotiators on the side of the Croatian authorities could have approached local Serbs, offering them a settlement that would prevent break up of a violent conflict in 1991 is asserted in the works of Ivica Dikić, Domovinski obrat. Politička biografija Stipe Mesića (V.B.Z., Zagreb, 2004) and Drago Kovačević, Kavez. Krajina u dogovorenom ratu (Srpski demokratski forum, Beograd, 2003).
\(^8\) V.P. Gagnon, Jr. (1994/95), op. cit.
\(^9\) Espen Barth Eide, op. cit., 59.
\(^10\) These concepts were introduced by Espen Barth Eide, op. cit.
\(^11\) V.P. Gagnon, Jr. (1994/95), op. cit.
offensives to establish control of the regions with a significant Serb population: Eastern Slavonia and parts of the counties of Baranja and Sirmium, which were declared part of the Serbian Autonomous Region (SAO) of Eastern Slavonia, Baranja and Western Srem. The Serbian forces also assumed control over parts of Western Slavonia, eventually retaining control in and around the town of Okučani. On 19 December 1991, President of the SAO Krajina, Milan Babić, and leader of the SAO Eastern Slavonia, Baranja and Western Srem, Goran Hadžić, proclaimed a new state, the Republika Srpska Krajina (RSK), announcing that the areas were being joined to form a single Serbian state in Croatia. In February 1992, the two areas officially declared their independence from Croatia. The RSK consisted of the Serbian region of Krajina (North-Western Dalmatia, Eastern Lika, Kordun and Banija), the Serbian region of Western Slavonia and the Serbian region of Eastern Slavonia, Baranja and Western Srem.\footnote{On the prosecution of Croats and other non-Serb population from Krajina see ICTY Babić Case (IT-03-72) against former President of the Republic of Serbian Krajina Milan Babić. See also Edith Marko-Stöckl, “The Making of Ethnic Insecurity: A Case Study of the Krajina Serbs”, 1 (2) Human Security Perspectives (2004), 24-33.}

The Croatian authorities of the time, seeking international recognition of the country in late 1991 and early 1992, were conditioned to accommodate the Serb minority. They even offered territorial autonomy in the areas in which Serbs constituted a substantial minority of the population and that had in the meantime been occupied by the Serb rebels.\footnote{See later section on the (Pre)Conflict Settlements, infra, 5.} Despite the preparation of several legislative attempts to accommodate the Serb minority, the ‘solution’ of the ethnic question in Croatia was eventually concluded by a military action in summer 1995 that caused a massive exodus of the Serb population. The only successful peace settlement that allowed for a peaceful reintegration of the occupied territory was achieved in November 1995, when the Erdut Agreement foresaw the incorporation of the Eastern Slavonian territory into Croatian jurisdiction.

Since the open conflict between the JNA-backed Serb rebels and the Croatian authorities took place predominantly during 1991, the majority of victims were registered in that period. It is estimated that in 1991, 3,652 Croatian policemen and soldiers were killed, whereas by the end of conflict an additional 4,000 had died.\footnote{Nikica Barić, op.cit., 124.} Some other authors estimate there were as many as 16,000 killed or missing soldiers, policemen and civilians in the 1991-1995 war in Croatia.\footnote{Dražen Živić, “Izravni demografski gubitci (ratne žrtve) Hrvatske (1990.-1998.) uzrokovani velikosrpsom agresijom i neke njihove posljedice”, 53 (10) Društvena istraživanja, Časopis za opća društvena pitanja, (2001), 451-484, Nikica Barić, op.cit., 125.} The 1999 data of the Ministry of Health reported 4,137 civilian victims killed as a result of Serb aggression.\footnote{Nikica Barić, op.cit., 124-125.} This number did not take into account the victims on the Serb side. The Scholars’ Initiative claims 22,000 dead on both sides (15,000 Croats and 7,000 Serbs).\footnote{Scholars’ Initiative Team Seven, The War in Croatia, <http://www.salzburgseminar.org/ihjr/si/si/Team_7_Full_Text_Report.pdf>}. Refugees and internally displaced persons of Croatian and non-Serb ethnic origin were also victims of the 1991-1995 war. It is estimated that by the end of 1991, 300,000 persons were expelled from the territories occupied by the Serb rebels.\footnote{ibid. See also Andelko Milardović, Ujedinjeni narodi - Rezolucije o Republici Hrvatskoj - UNPRFOR, Osijek, 1995, 118-127, cited in Nikica Barić, op.cit., 125.}

The Serbs were also victims of the ethnic mobilization of the 1990s and the conflict that followed. It is estimated that 200,000 Serbs left the territory controlled by Croatian authorities at the beginning of the 1990s.\footnote{Marcus Tanner, Croatia: A Nation Forged in War (Yale University Press, New Haven and London, 1997), 327-328.} They found new settlements either in the Republika Srpska Krajina, in Serbia or Bosnia and
Herzegovina. For the most part, they left the urban areas where they had settled after the end of the Second World War as a result of industrialization in the SFRJ. Some authors find that the reason for their flight was not only a fear for personal integrity, but was largely a consequence of dissatisfaction with the new Croatian authorities (who were presented as “ustašoid” by Serbian propaganda and media published in Serbia). The (mass-) execution of Serbs in the cities of Gospić, Sisak, Karlovac, Zadar and Split committed by the Croatian (para)military forces or the existence of a collecting camp for the Serbs in Zagreb at the beginning of the ethnic conflicts contributed to a climate of intolerance and fear among the Serb population. Therefore, being both physically threatened and unwilling to accept the changed political system, some Serbs left Croatia hoping they would return to towns such as Sisak, Karlovac and Zadar after they were “regained” by the Serbs and JNA and remained part of the SFRJ. Finally, the issue of minority protection in Croatia has remained closely linked to the return and reintegration of the Serbian minority that left territory of the state in significant numbers after military actions in 1995.

The methodology applied in the preparation of the report on conflict settlement arrangements in Croatia included research on the ethnic conflict, on secessionist attempts on the part of the Serb population, as well as on conflict settlement in Croatia and interviews with the actors involved in the conclusion of the peace agreements. The normative analysis required a thorough investigation of the written texts of the peace agreements as well as of legislative provisions dealing with the rights of minorities, human rights etc. The empirical analysis attempted to encompass the motivation and interests of the actors involved in the conclusion of the peace agreements.

There are several questions the report attempts to answer: What sort of institutional balance between individual human rights and group-related minority rights has been achieved in order to provide for the democratic and legal accountability of political representatives and ethnic accommodation of minorities? What is the role of the return of refugees and displaced persons and the restoration of property in post-conflict pacification?

The report will primarily deal with domestic attempts to accommodate the requests of the Serb minority. Constitutional provisions are analyzed under this heading in order to determine how the Constitution meets the international standards pertaining to human rights and the rights of minorities and how it contributes to post-conflict reconciliation. In addition, the report will examine several related documents from the beginning of the 1990s, which were passed to prevent the break-up of the country and the violent Serb uprising: the Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia and the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.

This heading will also cover the recently adopted Constitutional Law for Minority Protection, which follows the blueprint of the most developed international minority rights standards. This heading will then provide a short overview of the electoral mechanisms in place, whose aim is to allow for the just accommodation and political participation of national minorities.

In the second part, the report will deal with international attempts at conflict-management, and will particularly examine the Minorities Working Group of the Conferences on Yugoslavia, the opinion of the Badinter Committee on the right to self-determination of the Serb minority in Croatia, as well as the Erdut Agreement on the normalization of relations with the FR Yugoslavia. Under this heading, the report will analyze stages of conflict-prevention and resolution and introduce the main elements and actors of each stage of the process. Successful and failed proposals for state organization and territorial structure will be

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22 Drago Kovačević, op.cit., 53.
23 Nikica Barić, op.cit., 132.
introduced, and the actors who participated in their drafting and elaboration will be discussed.

2. Domestic Attempts at Conflict-Management

Ethnic conflicts are often treated as a political and/or security, rather than a legal problem. Some authors criticize such an approach as being constricting, claiming that “in relying on political solutions, states have failed to exploit the potential of legal processes to resolve conflicts at an early stage, before they become entrenched.” Nevertheless, numerous legislative efforts that attempted to prevent ethnic conflict from breaking out in Croatia in the early 1990s demonstrate that such a claim cannot be universally applicable.

The obvious need for a broad legislative framework for the protection and inclusion of minorities resulted in constitutional provisions guaranteeing certain minority rights, as well as in a set of laws guaranteeing the preservation and protection of minorities. Nevertheless, while a legislative framework for minority inclusion was already developed at the end of 1990, its implementation has often fallen short. Official legal documents and mechanisms for minority protection in Croatia will be analysed in this section of the report in order to demonstrate this argument. The report will highlight the limitations and the practical efficiency of each document presented. This section of the report describes strategic decisions with regard to territorial arrangements and the distribution of populations made by the parties involved in the conflict. Finally, the section will explain how Croatia has improved its minority rights record as a result of its efforts to join the EU.

2.1. (Pre)Conflict Settlements from 1990-1992

2.1.1. Constitution

Tibor Varady argues that:

The maintenance of a multicultural and multiethnic society is certainly dependent on the attitudes adopted by all participants. The responsibilities and the chances to influence events, however, are not equal. The more dominant minority is, the higher is the accountability. The key to solution is in the hands of the majority and in the state which is de facto a nation-state; the majority can more or less be equated with a state.

The so called “Christmas Constitution”, voted in just before Christmas 1990, or more precisely on 21 December 1990, was approved with a vast majority of 356 votes and only one dissenting vote. The 16 deputies representing the Serbian minority in Croatia walked out before the final vote, objecting to the fact that the draft had not taken into consideration the needs of the Serbian people in Croatia. The Constitution was promulgated on 22 December 1990.

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27 Nikica Barić, op.cit., 87-90.
It was preceded by a set of amendments to the former socialist constitution — firstly legalizing multi-party elections in January 1990, and secondly, dropping communist and Yugoslav symbols, language and the Serbian (Cyrillic) script as co-official ones on the territory of the whole country and introducing the name of the Republic of Croatia on 25 July 1990. The amendments nevertheless guaranteed the official status of the Serb language and Cyrillic script in those territories where Serbs constituted a majority of the population. This amendment, and particularly the introduction of new state symbols, already caused great dissatisfaction among the Serbs, since according to their interpretation it constituted the re-establishment of Ustaša symbols.\textsuperscript{28}

In its historical foundations, the Constitution stated that the Republic of Croatia was established as “the national state of the Croatian nation and the state of members of other nations and minorities who are its citizens.” This means that in 1990 the “Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews” were given the constitutional status of national minorities, and were “guaranteed equality with citizens of Croatian nationality and the realization of ethnic rights in accordance with the democratic norms and standards of the United Nations Organization and the free world countries.”\textsuperscript{29}

Article 3 of the Constitution determines the highest values of the constitutional order as the grounds for the interpretation and implementation of the Constitution itself. These are, amongst others, freedom, equal rights, national and gender equality, respect for human rights, the inviolability of ownership, the rule of law, and a democratic multi-party system. Chapter III of the Constitution guarantees civil and political rights as well as economic, social and cultural rights. Croatia, as a successor State of the SFRY, had agreed to assume all the international obligations of the former Yugoslavia in the area of human rights. Article 140 of the Constitution provides that international agreements in force are part of the internal legal order of the Republic of Croatia and take precedence over domestic legislation.\textsuperscript{30} Article 5 of the Law on Courts stipulates that courts

\textsuperscript{28} Ibid, 66-68. See also Reana Senjaković, \textit{Lica društva, likovi države} [Institut za etnologiju i folkloristiku [Biblioteka Nova etnografija], Zagreb, 2002], 22-24. The Croatian flag of consists of three bands of red, white and blue with the coat of arms in the centre. The coat of arms has a shape of a shield with a checked pattern of twenty-five alternating red and white fields. The crown is made of five smaller shields with the historical Croatian coats of arms. A similar coat of arms was used in the Ustaša Independent State of Croatia, though without the five-pointed crown that arches above the shield. See also Zakon o grbu, zastavi i himni Republike Hrvatske te zastavi i lenti predsjednika Republike Hrvatske, Official Gazette, 55/90, 26/93.


\textsuperscript{30} Croatia is currently party to the following UN treaties and their optional protocols: (a) International Convention for the Elimination of All Forms of Discrimination; (b) International Covenant on Civil and Political Rights, its Optional Protocol and its Second Optional Protocol on the Abolition of the Death Penalty; (c) International Covenant on Economic, Social and Cultural Rights; (d) Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment together with its Optional Protocol; (f) Convention on the Rights of the Child and its two optional protocols on child prostitution and pornography, and on the involvement of children in armed conflicts. Croatia has ratified the ECHR together with its Protocols 1, 4, 6, 7, 11, 12 (on anti-discrimination), 13 (abolition of death penalty in all circumstances), and 14. Croatia has in addition ratified all the Council of Europe minority rights related conventions, the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages.
also rule according to the international treaties that are part of the Croatian legal order.

The Constitution set down fundamental freedoms and the rights of individuals and citizens. A general provision on non-discrimination was introduced, guaranteeing that all citizens enjoy all rights and freedoms, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics, and all are equal before the law (Article 14). Moreover, it guaranteed minorities their existence and preservation in a precise constitutional provision stating that:

Members of all nations and minorities shall have equal rights in the Republic of Croatia. Members of all nations and minorities shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy (Article 15).

Finally, the Constitution regulates the rights of national minorities through laws passed by the Croatian Parliament by a two-third majority of all the MP votes (also known as organic laws), which “speaks in favour of special care with which Croatian authorities treat national minorities and their equality in rights and freedoms” (Article 82).

Despite numerous constitutional provisions dealing with the rights of minorities, the Constitution did not suit Croatian Serbs as it “degraded” them to the status of a national minority from previously being one of the republic’s constituent nations. This Constitutional change has widely been used as an argument by the Serb political leaders for ethnically mobilizing the Serbs in Krajina to start the violent uprising. They simply disregarded the fact that under the previous Constitution and political regime the Serbs, like the Croats, had not been given the possibility to organize associations and parties along ethnic lines. In addition, they intentionally ignored the fact that, in accordance with the earlier Constitution of the SR Croatia from 1974, the Serbs had not been allowed territorial autonomy or secession.33

On 21 February 1991, the Croatian parliament passed a motion on the defence of the constitutional order in the Republic of Croatia and a resolution accepting a procedure for secession from the Socialist Federal Republic of Yugoslavia (SFRY). The possibility of association within a union of sovereign republics was recognized with a two-thirds majority vote in the Parliament.

Reacting to the increased influence of Serbia on the Croatian Serbs, the Republic of Croatia published a declaration on 17 April 1991 accusing the National Assembly of the Republic of Serbia of interfering with its internal affairs. Since the presidents of the Yugoslav republics had failed to negotiate an agreement on the future federal or confederal relations at the talks in Ohrid on 19 April 1991, Croatia and Slovenia called referendums in order to decide whether they would remain in a federal or confederal Yugoslavia. A referendum on the sovereignty and independence of Croatia took place on 19 May 1990. Of the total votes, 93.24% were in favour of:

[T]he Republic of Croatia as a sovereign and independent state which guarantees cultural autonomy and all civil rights to Serbs and members of other nationalities in Croatia, entering into a union of sovereign states with other republics (in line with the proposal put forward by the Republic of Croatia and Slovenia as a means of resolving the political crisis in the Socialist Federal Republic of Yugoslavia)?

32 Marcus Tanner, op.cit., 269.
33 Nikica Bartić, op.cit., 89-90.
On the other hand, 5.38% were in favour of:

[T]he Republic of Croatia remaining in Yugoslavia as an integral federal state (in line with the proposal put forward by the Republics of Serbia and Montenegro as a means of resolving the political crisis in the Socialist Federal Republic of Yugoslavia)  

As a result of the referendum, the Parliament passed a Declaration on the Establishment of the Sovereign and Independent Republic of Croatia, stating that:

The Republic of Croatia guarantees to Serbs in Croatia and to all national minorities living on its territory respect for all human and civil rights, particularly freedom of speech and the cultivation of their own languages and promotion of their cultures, and freedom to form political organizations. The Republic of Croatia protects the rights and interests of its citizens regardless of their religious or ethnic affiliation or race.

In this way, a guarantee of cultural autonomy was established for the Serbs as well as for the other minorities. On 25 June 1991, the Parliament passed a Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia. This document guaranteed to all “citizens their national and all other fundamental rights and freedoms of man and the citizen, a democratic order, the rule of law and all other great values of its constitutional order and the international legal order.” Nevertheless, the declaration of independence from Yugoslavia soon escalated into coordinated military actions by the JNA and paramilitary Serb forces. Actions took place across Croatia, but were especially violent in western and eastern Slavonia and in Krajina. Ethnic cleansing and mass expulsion, the siege of cities, mass killings and permanent artillery fire were used to a large extent against civilians.

2.1.2. The Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia

Under international pressure to address the Serb minority question, the Croatian Parliament adopted the Charter Relating to the Rights of Serbs and Other Nationalities in the Republic of Croatia on 25 June 1991 in its first session as the parliament of an independent state. The Charter underlined that:

[A] just solution relating to the issue of Serbs and other nationalities [...] is one of the important factors to democracy, stability, peace and economic advancement, and to cooperation with other countries. The protection and full realization of rights for all nationalities [...], as well as the protection of individual rights is a composite part of international protection of human and civil rights and the protection of nationalities and as such they belong to the area of international cooperation. The rights of nationalities and international cooperation will not allow any activity which is opposed to the regulations of international law, especially sovereignty, territorial integrity

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37 Ibid. point V.
38 Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia, Official Gazette 31/91.
and the political independence of the Republic of Croatia as a united and indivisible democratic and social state.\textsuperscript{39}

The Charter furthermore emphasized that “all nationalities in Croatia enjoy legal protection against any and all activities which may endanger their existence, and have the right to respect, self-preservation and cultural autonomy.”\textsuperscript{40} In addition:

Serbs in Croatia and all nationalities have the right to proportionally engage in bodies of local self-government and appropriate government bodies, as well as security for economic and social development for the purpose of preserving their identity and for the protection of any attempts of assimilation, which will be regulated by law, territorial organization, local self-government as well as institutionalizing parliamentary bodies which will be responsible for relations between nationalities.\textsuperscript{41}

In its final article, the Charter deals with minority associations, prescribing that:

Organizations which will adhere to the aims of its constitution and which are involved in protecting and developing individual nationalities, and as such are representative of the said nationality, have the right to represent the nationality as a whole and each individual belonging to that nationality, within the Republic as well as on an international level. Individual nationalities and members have the right, in order to protect their rights, to turn to international institutions which are involved in the protection of human and national rights.\textsuperscript{42}

Despite the fact that the Charter provided the Serbs and other nationalities in Croatia political proportional participation in the bodies of local self-government and in suitable governmental bodies, at that time the Serbian minority did not see the proclamation as an adequate solution.

The Charter specified that the rights of nationalities and the international cooperation to which they are entitled, “do[es] not allow any activities contrary to the principles of international law, and especially of the sovereignty, territorial integrity and political independence of the Republic of Croatia.”

2.1.3. Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia

Issues that were negotiated at the Hague Conference on Yugoslavia also dealt with the status of national minorities.\textsuperscript{43} Indeed, Croatia was the only country that applied the requirements set by the Hague Conference to its legislation, passing the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia\textsuperscript{44} (1991 Constitutional Law).\textsuperscript{45} The adoption of the 1991 Constitutional Law was a

\textsuperscript{39} Ibid. Articles II and III.
\textsuperscript{40} Ibid. Article IV.
\textsuperscript{41} Ibid. Article V.
\textsuperscript{42} Ibid. Article VI.
\textsuperscript{44} Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, Official Gazette 65/91, 70/91, 27/92, 34/92, 68/95, 105/00.
prerequisite for Croatia’s international recognition as an independent state in January 1992. The 1991 Constitutional Law included a guarantee of the protection of basic human rights and equality (Articles 1-3) and it established a legal frame for the realization of cultural autonomy for minorities (Articles 5, 7-17). The 1991 Constitutional Law also conferred specific rights of representation and proportional participation in public institutions (parliament, government and supreme judicial bodies) to all minorities representing more than 8% of the population. Minorities representing less than 8% of the population were granted five seats in the Parliament (Article 18). It is obvious that the provisions of the 1991 Constitutional Law were designed mainly to protect the largest minorities in Croatia by granting them effective representation at different levels of the legislative, executive and judicial institutions. Although there were at that time 16 minorities with recognized minority status, only the Serb minority rejected these provisions.

The 1991 Constitutional Law provided for proportional political participation of minorities in the bodies of local self-government (Article 19). In addition, the 1991 Constitutional Law established two districts (kotar) with a special, self-administrative status and guaranteed self-government for the Serb minority in the Serb-populated regions of Glina and Knin. The 1991 Constitutional Law prescribed that districts awarded a special status could lodge a constitutional complaint with the Constitutional Court if they believed that decisions of the authorities violated human rights and fundamental freedoms or the rights of ethnic and national communities or minorities protected under the Constitutional Law (Article 61). However, those provisions have never been implemented. Despite the fact that “Croatia offered territorial autonomy to Krajina, [...] this was now considered too little by the Serbs, who would settle for nothing less than secession and incorporation into Serbia.”

The 1991 Constitutional Law had also foreseen the right of individuals and organizations to appeal to international bodies to secure minority protection. In addition, the 1991 Constitutional Law provided that an international body was to supervise the implementation of provisions governing special status districts. This body would have the power to issue recommendations that the Republic of Croatia should implement (Article 58). Moreover the 1991 Constitutional Law envisaged the establishment of a provisional Court of Human Rights consisting of two Croatian judges and three judges appointed by the European Community, to which every citizen of the Republic of Croatia could appeal. The Tribunal was provisionally established pending the establishment of a special Tribunal on Human Rights composed of members nominated by the European Community and by the Republics of the former Yugoslavia under an arrangement contemplated at the Hague Conference (Articles 60 and 61). Nonetheless, the other Yugoslav republics did not accept the provisions envisaged at the Hague conference. Despite the fact that its establishment has been constitutionally prescribed, the Tribunal, whose task is to verify the implementation of the provisions of the 1991 Constitutional Law, has never been created and those provisions relating to international supervision and co-operation as well as those concerning judicial protection were later suspended.

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2.2. Domestic Conflict Settlement Attempts from 1993-2003

After the conclusion of the Sarajevo ceasefire and the deployment of the UNPROFOR, the situation in Croatia resembled neither peace nor war, since the armed conflict continued on a smaller scale. Croatian armed forces managed to reconquer certain strategic points (the hydroelectric dam Peruča and Maslenica, an area near Zadar, in January, as well as Medački džep, an area near Gospić, in September 1993). In the same year the open conflicts began between the Croats and the Bosniaks in BiH. This seriously endangered the international reputation of Croatia, “allowing for the Bosnian Serbs to consolidate war gains conquered in the first months of the war”.  

In February 1993, the Croatian authorities and a local Serb leader Veljko Džakula, president of the Local council of the Serbian territorial district of Western Slavonia, reached an agreement on a gradual return of Croatian refugees into the area of Western Slavonia controlled by the Serbs and vice versa, the return of Serbs into areas controlled by the Croats. The so-called Daruvar agreement provided for a normalization of traffic, i.e. free passage along the highways and roads between Western Slavonia and the territories controlled by the Croatian authorities, the restoration of the power and water supply systems, the establishment of a joint commission to observe refugee return and a general normalization of the situation on the territory of the municipalities of Daruvar, Grubišno Polje, Nova Gradiška, Novska and Pakrac. In order to allow for the ‘integration’ of the rebel areas into Croatian jurisdiction, Džakula requested a high level of the autonomy with a separate police and small army, and inclusion of Osijek, Daruvar and Karlovac into the Serb autonomous area.

The Daruvar agreement was only an initiative made by a local leader and was condemned by the Knin politicians. Goran Hadžić even accused Džakula of collaboration with the Ustaša regime and soon after forced him to resign from his position.  

At this stage, the RSK political leaders were not willing to accept any Croatian initiatives to find a peaceful solution through negotiation. Such initiatives had also been attempted locally in 1993 in Eastern Slavonia.

President Tudman announced his peace initiative on 1 November 1994, inviting a normalization of relations between Zagreb and Knin, offering concessions to the rebel Serbs (such as inclusion in the regular Croatian social and pension system in the areas under UNPROFOR protection, full local autonomy in the kotars of Knin and Glina, in accordance with 1991 Constitutional Law and cultural autonomy on the territory of the whole country). Economically weak and left without support from Belgrade, which wasted away under economic sanctions, the RSK authorities eventually engaged in negotiations with Zagreb in November 1993. These negotiations were initiated in Norway and continued in Dobanovci near Belgrade. The main topics discussed were the establishment of a ceasefire and the re-opening of traffic along roads in the RSK that were of particular importance for Croatia. On 17 November the ceasefire agreement was signed, and was expected to last from 23 December 1993 to 15 January 1994. It nevertheless continued, after that period. Finally, in March 1994, another ceasefire agreement was signed in Zagreb.

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47 Barić, op.cit., 206.
50 Barić, op.cit., 207.
51 See infra, 27.

Although the Serb population of Krajina was ‘officially’ invited over Croatian radio and television not to leave its territory as the Croatian army forces were advancing on Knin on 4 August 1995, Milan Martić, acting in his capacity of the President of the Republika Srpska Krajina, ordered a general evacuation of the civilian population. The Croatian forces also contributed to the exodus, since “as part of psychological operations, the Croats distributed thousands of fake leaflets in which the RSK military authorities ordered that the civilians be evacuated”. Finally, an official push to ethnically purge the Serb populated territories can be confirmed in a statement made by President Tudman shortly after the military Operation Storm; he said that the Serbs “disappeared ignominiously, as if they had never populated this land. We urged them to stay, but they didn’t listen to us and, well, bon voyage.”

In late September 1995, as a consequence of the military operations in the spring and summer of that year that reincorporated parts of the occupied territory, the Parliament ‘temporarily’ suspended several provisions of the 1991 Constitutional Law related to the special rights of minorities amounting to at least 8% of the population. This means that the provisions relating to the Serb minority were put out of effect, while general provisions and provisions related to political participation of smaller minority communities remained in force. The reason put forward for this suspension was that, following population migration, there were no longer units where the Serb minority would be a majority and that, consequently, the prerequisite for the implementation of the provisions at stake could not be met. Such a practice clearly indicates the authoritarian state’s unwillingness to manage ethnic diversity following the termination of the ethnic conflict. Later, the Government attempted to justify the suspension by stating that “the suspension of the said provisions is of a temporary nature, intended to last only until the publication of the first results of the population of the Republic of Croatia census, which will reflect the actual demographic structure of Croatia.”

The international community not only applied constant pressure but also offered its expertise and guidance in the improvement of the minority protection framework. For example, upon its accession to the Council of Europe, Croatia

52 Scholars’ Initiative Team Seven, op.cit., 45.
53 Ibid., cited also in the Croatian Helsinki Committee, Izvještaj: vojna operacija “Oluja” i poslije. I. dio. Viši UN sektor “Jug” (Croatian Helsinki Committee, Zagreb, 1999), 8.
55 The Constitutional Law dated 20 September 1995 suspended Articles 13, 18 paragraphs 1 and 5, 21 to 51, 52 to 57, 58, 60, and 61. The suspension concerned the special status granted to districts where members of ethnic and national communities represent the majority of the population in accordance with the census of 1991; the right to representation and participation in public institutions of communities and minorities which make up more than 8% of the population, also in accordance with the census of 1991; and the international supervision of the implementation of this law, including the question of the provisional Court of Human Rights in Croatia provided for in Article 60 of the Law), See Constitutional Law on Temporary Suspension of Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, Official Gazette 68/95.
57 See the numerous Opinions and Recommendations of the Venice Commission.
undertook to put the Venice Commission’s recommendations to revise the suspended provisions of the 1991 Constitutional Law into effect. The Venice Commission was particularly concerned with the abolition of the provisions dealing with rights in the field of local autonomy. For example, the Venice Commission’s rapporteurs were of the opinion “that the suspension of the law was not indispensable. The provisions could validly have continued in force, although in that case they would not for the moment have any practical application because of the demographic changes which have occurred.”

In October 1996, the Government established a commission entrusted with the task of examining and proposing a revision of the 1991 Constitutional Law. However, the executive lacked the genuine political will to enforce the rights of the Serb minority that had indeed considerably decreased since 1991. Despite the fact that the 1991 Constitutional Law had not been re-established, Croatia became a member of the Council of Europe (CoE) on 6 November 1996. Due to the country’s imperfect human rights record in the second part of 1990s, it was warned by the CoE Parliamentary Assembly “that little progress (had) been made by Croatia in honouring commitments and obligations related to the fundamental principles of the Council of Europe (democracy, rule of law and human rights)”. Therefore, the Croatian authorities were, inter alia, called to “adopt a constitutional law revising the suspended provisions of the 1991 Constitutional Law”. Eventually, in June 2000, after a change in Government in early 2000, the Parliament revoked the 1995 amendments to the Constitutional Law and adopted the Law on the Use of Minority Language and Script as well as the Law on Education in the Language and Script of National Minorities. Nevertheless, the revoked amendment had never been implemented, since in the meantime a new Constitutional Law was passed and the Electoral Law was amended shortly before the parliamentary elections in 2003.

2.2.2. Constitutional Law on the Rights of National Minorities in the Republic of Croatia: Meeting and Starting to Implement International Standards

The international organizations’ conditionality in the sphere of minority rights protection has remained the driving force behind Croatia’s improvement of its minority rights record. Rightly, some domestic theoreticians argue that “[t]he normative regulation and the practical realization of the rights of national minorities became one of the conditions for Croatia’s economic and political integration in the EU and NATO”. One of the crucial steps in Croatia’s demonstration of compliance with minority rights conditionality was the passing of the new Constitutional Law on the Rights of National Minorities at the end of 2002.

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59 See for example Parliamentary Assembly Resolution 1185 (1999) on the honouring of obligations and commitments by Croatia, 29 April 1999.
In accordance with the Constitutional Law on the Rights of National Minorities in the Republic of Croatia (CLNM) a group of Croatian nationals whose members have traditionally lived in the territory Croatia is considered to be a national minority when their members have ethnic, linguistic, cultural and/or religious characteristics differing from those of other citizens, and when they wish to preserve these characteristics. According to the above definition, all national minorities in the Republic of Croatia are recognized. These number 22 in total (Albanians, Austrians, Bosniaks, Bulgarians, Montenegrins, Czechs, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Serbs, Italians, Turks, Ukrainians, Vlachs, Jews) of which 19 are organized. Members of ethnic groups have the right to declare themselves as belonging to a national minority.

The CLNM guarantees broad cultural autonomy to national minorities. The CLNM, the Law on Education in Minority Languages and the Law on the Official Use of the Language and Script of National Minorities cover education in minority languages. There are three existing models for minority education (in minority languages) foreseen by minority education related law. There are also constitutional and legal provisions on public language usage and education that can be implemented in those areas in which minorities form a significant part of the population (i.e. locally or regionally).

The political participation of minorities stipulated in the Croatian Constitution is additionally prescribed both by the CLNM and more comprehensively by the Electoral Law. In addition, the CLNM foresees the right to participate in public affairs through representation in representative bodies at the local and regional levels, including representation in administrative and judicial bodies. In accordance with the Electoral Law, minorities are guaranteed eight places in the parliament: 3 seats are guaranteed to Serbs, 1 to the Italian minority, 1 to Hungarians, 1 to a joint representative of the Czech and Slovak minorities. The other two minority MPs each represent several minority groups: one is a representative of Albanians, Bosniaks, Montenegrins, Macedonians and Slovenes and one is a representative of Austrians, Bulgarians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Turks, Ukrainians, Vlachs and Jews. The formation of ethnic political parties in Croatia is allowed and is free. Everyone is guaranteed freedom of association and may freely form associations, but this freedom is restricted by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia. Additionally, everyone is guaranteed the right of public assembly and peaceful protest. There are several registered parties that gather predominantly minority members, but only two of these are represented in the

64 Article 19(1) and (2) of the CLNM and Article 15 of the Law on Elections for the Representatives in the Parliament of Republic of Croatia, Official Gazette 69/2003.
66 Article 6 of the Constitution.
67 Article 43, ibid.
68 Article 42, ibid.
69 Istrian Democratic Assembly, Istrian Democratic Forum, Istrian Independent Party, Istrian Party and Italian Democratic Union gather mostly Italians from region of Istria. Party of Democratic Action of Croatia is comprised of Bosniaks/Muslims. Serb People's Party, Serbian Democratic Party of Baranja, Party of Danubian's Serbs and Independent Democratic Serb Party have mostly members of Serb ethnic origin. Roma as well have been organized in the political party of Romany Party of Croatia. Albanians however registered Albanian Christian Democratic Party of Croatia.
current assembly of the parliament (the Independent Democratic Serbian Party and the Istrian Democratic Assembly).

In accordance with the CLNM and the Law on Associations, members of (persons belonging to) national minorities have been given equal rights as Croatian citizens to establish trading companies, institutions, associations, endowments and foundations, religious communities, political parties and other legal persons, in the manner and under the conditions stipulated by law.

Members of national minorities are entitled to elect their representatives as a way of participating in public life and are entitled to manage local affairs through councils and representatives of national minorities in self-government units, in order to improve, preserve and protect the position of national minorities in the society. This newly established institution provides for more active participation of minorities at the local level, particularly in the local and regional self-government units (municipalities, cities and counties). The CLNM established the Council for the National Minorities at the state level. The introduction of these new institutions expanded a bill of minority rights to a certain extent. Therefore it was necessary to secure special measures in order to implement these new rights in practice. This refers in particular to the appointment of councils and national minority representatives whose first mandates ended in May 2007. The second elections for the councils and national minority representatives took place in June 2007. However, the turnout of minority members was extremely low both times; no more than 8% of persons from the minority ethnic background voted. Such a practice puts into question both the necessity and legitimacy of the recently established institution.

2.3. Constitutional Separation of Powers and Horizontal and Vertical Division of Responsibilities between Different Branches of Government

2.3.1. Separation of Powers

The Government is organized on the principle of the separation of powers into legislative, executive and judicial branches. The principle of the separation of power includes levels of mutual co-operation and reciprocal control prescribed by the Constitution and law. The Croatian Parliament (Sabor) is the body of elected representatives of the people (no less than 100 and no more than 160) and is vested with legislative power. The Parliament also performs the function of control over the executive power. Currently, the Parliament is a one-house assembly as the Chamber of Counties was abolished on 28 March 2002 as a part of the Constitutional changes introduced by the coalition government.

Executive power is divided between the President and the Government. The President represents the country at home and abroad, and is responsible for defending the independence and territorial integrity of the country. S/he is elected on the basis of direct universal and equal suffrage by secret ballot for a term of five years with a maximum of two mandates. The Government exercises executive power in conformity with the Constitution and laws. Organization, operation and decision-making is regulated by the Law on the Government and its rule of procedures. The Government is responsible to the Croatian Parliament. It proposes laws and other acts to the Parliament, proposes the state budget, implements laws and other decisions of the Parliament, passes regulations for the implementation of laws, conducts foreign and internal politics, directs and controls the work of state administration, works on the economic growth of the country,

70 Article 23 of the CLNM.
directs the activities and expansion of public services, and conducts other affairs as specified by the Constitution and laws, etc.

The Constitutional, Supreme and other courts exercise judicial power and administer justice on the basis of the Constitution and laws.

2.3.2. Decentralization and Political Participation of Minorities

Issues of decentralization and participation are crucial for the successful accommodation of national minorities. International documents pay attention to the necessity for national minorities’ participation in the decision-making process, particularly in those cases when the issues being considered affect them directly.\(^7\)

Constitutionally prescribed decentralization through the right to local self-government includes the right to decide on needs and interests of local significance, particularly on regional development and town planning, organization of localities and housing, public utilities, child care, social welfare and culture. The Constitution defines Croatia as a unitary state, divided into twenty units of local self-government with a special status for the capital. On the basis of the Constitution, the 1992 Law on Local and Regional Self-Government\(^7\) outlines regional authorities’ competences, which are divided into those belonging to the state administration and those belonging to the counties as local self-government units. The law established two levels of local territorial units. Municipalities and towns are the basic local self-governmental units, while counties (županije)\(^7\) are the units of regional local self-government and administration (municipalities and cities).\(^7\) The Constitution also opened up the possibility of establishing local communities (mjesna zajednica) in an inhabited place or in parts of inhabited places, as sub-form of local self-government.\(^7\)

The first Law on Local and Regional Self-government was set down in 1992 and confirmed municipalities and cities as units of local self-administration and counties as units of local administration and self-administration. In accordance with the 1991 Constitutional Law, two special autonomous districts were foreseen to shape the organization of Serb national minority’ participation into units (kotar) with a special, self-administering status. This was a legislative guarantee allowing territorial autonomy in the Serb-populated regions of Glina and Knin. The preceding law on the Election of the Members of Representative Bodies of Local and Regional Self-government Units\(^7\) stipulated that the number of the members of the representative body from among the ranks of the members of national

\(^7\) See Article 15 of the Framework Convention for the Protection of National Minorities (FCNM), paragraph 30 of the CSCE Document of the Copenhagen Meeting and Article 3 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.


\(^7\) The status and competencies of counties (županije) are regulated by the Law on Local and Regional Self Government. Units of regional self-government carry out affairs of regional significance and in particular: education, health service; area and urban planning; economic development; traffic and traffic infrastructure; development of network of educational, health, social and cultural institutions. Article 5 of the Law on Local and Regional Self- Government.

\(^7\) Units of local self-government carry out affairs of local jurisdiction by which the needs of citizens are directly fulfilled, inter alia organization of localities and housing, area and urban planning, public utilities, child care, social welfare, primary health services, education and elementary schools, culture, physical education and sports, customer protection, protection and improvement of the environment, fire protection and civil defence. Article 4 of the Law on Local and Self- Government.

\(^7\) Article 133 of the Constitution.

minorities shall be determined by the statutes of self-government units, in compliance with their proportional share in the total population of the self-government unit.\textsuperscript{77}

The Law on the State Administration System stipulates that the members of national minorities be assured representation in ministries and state administrative organizations at the state level, taking into account their total share of the population.\textsuperscript{78} Nevertheless, implementation of the minority employment guarantee has remained problematic to this day. The European Commission’s 2006 Report noted, for example, that limited progress had been made in CLNM implementation, particularly regarding the under-representation of minorities in state administration, the judiciary and the police.\textsuperscript{79} In accordance with the Law on Civil Service\textsuperscript{80} and the Law on Local and Regional Self-Government, state bodies are required to develop employment strategies to ensure appropriate levels of minority representation. However, “[m]inority provisions in these laws, as well as in the Law on Courts\textsuperscript{81} and Law on State Judicial Council\textsuperscript{82}, basically only mirror the provisions of CLNM without providing for more detailed regulation”.\textsuperscript{83}

In accordance with the 1992 Electoral Law, members of national minorities who constituted more than 8% of the population of Republic of Croatia based on the 1991 census had the right to proportional representation in the Parliament. However, the right to political participation in the Parliament regarding the Serb minority was suspended in 1995. Amendments to the Law on Elections for the Representatives in the Parliament of Republic of Croatia (Electoral Law)\textsuperscript{84} passed on 2 April 2003 prescribed the proportional representation method, which applies the d’Hondt formula for finding the outcome of the elections. A political party that has reached a five percent threshold in a single constituency is entitled to enter the Parliament. The Croatian diaspora elects their representatives through a non-fixed quota based on voter turnout. The Constitution established that the number of seats in Parliament must not be larger than 160 or smaller than 120. Eight parliamentary seats are reserved for national minorities.

The former Law on Local Elections had foreseen a mixed electoral system in which one quarter of the deputies in the local assemblies were elected through majority system constituencies, and three quarters via a proportional system. The preceding Law on Local Elections stipulated the right of minorities to be proportionally represented if they constituted more than 8% of the electorate of the local self-government unit. The CLNM amended this Law so that the representative bodies of self-government units had to be filled by an appropriate number of members of national minorities. The deadline for the re-election of minority representatives was set by the CLNM but was not respected. Eventually by-elections to correct this remaining under-representation took place on 15 February 2004. Soon after, in May 2005, nation-wide elections for local and regional self-governments took place, but the proportional representation of minorities was not achieved in all constituencies and the government has had to organize additional by-elections. The Law on the Election of Members of

\textsuperscript{77} \textit{Ibid.} Article 9(1).
\textsuperscript{79} European Commission, Progress report on Croatia COM(2006)649 final 8 November 2006, at
\url{http://www.delhrv.cec.eu.int/uploads/dokumenti/c0a541b8faf795a3ae01d34d7be6104.pdf}.
\textsuperscript{80} Law on Civil Service, Official Gazette 92/2005.
\textsuperscript{82} Law on State Judicial Council, Official Gazette 58/93, 49/99, 31/00, 129/00 and 150/05.
\textsuperscript{83} \textit{Supra note} 73.
Representative Bodies of Local and Regional Self-Government Units (Law on Local Elections)⁵⁵ promulgated on 10 April 2001 introduced a proportional system with the 5% threshold. Amendments to the Law on Local Elections were undertaken in March 2003 in order to bring the Law into compliance with the CLNM.⁶⁶ Amendments allowed for additional elections to be held in those local administrations that had not achieved proportional minority representation.

2.4. Unfavourable 1990s: Denying Status Rights to Minorities

The right-wing HDZ government that held power throughout the 1990s was severely criticized for its discriminatory practices towards minorities. Not only was minority related legislation often changed and suspended, but discriminatory treatment by civil servants who were in charge of implementing minority related legislation probably contributed even more to monitoring bodies’ unfavourable picture and enhanced criticism. It is therefore not surprising that policies applied in the 1990s towards minorities are assessed as being “married by intolerance and jingoism towards diversity”.⁵⁷ The discriminatory practices were particularly apparent in the area of acquisition of citizenship and other status rights, but also in the right to access the court. Unjust trials of Croatian nationals who had committed war crimes against the Serbs have also contributed to the tense inter-ethnic climate. In the second part of the 1990s Croatian soldiers were often amnestied for war crimes committed against the Serb population and property. Only in recent years have some killings of Serbs at the beginning of the 1990s been prosecuted.⁹⁸

The Law on Croatian Citizenship⁹⁹ establishes ways of acquiring Croatian citizenship through ethnicity, birth in the territory of the Republic of Croatia, naturalization, and through international agreements. The introduction of a ius sanguinis model, where citizenship is determined by descent rather than residence, created an impediment to numerous members of minority groups, particularly long-term Serb residents, obtaining citizenship by naturalization. Namely, the Law on Citizenship required more stringent requirements for the naturalization of those long-term residents who had a nationality of a different Yugoslav republic. Those persons, often Serbs or Bosniaks/Muslims, were discriminated against by the Ministry of Interior, which could decide that the applicants’ conduct did not demonstrate their attachment to the Croatian legal system and customs (Article 8) or would simply unilaterally conclude that citizenship could be denied on the sole basis of national interest (Article 26).¹⁰ At the same time, ethnic Croats with no

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⁶⁶ The CLNM prescribed that representative bodies of self-government units be filled by an appropriate number of members of national minorities within 90 days of the CLNM’s entering into force in all self-government units with on-going mandates, and where the right to representation of members of national minorities has not been implemented in accordance with Article 20 of the CLNM. Elections for minority representatives in those self-government units in which minorities are under-represented should happen after such self-government units adjust their respective statutes to prescribe the exact number of minority representatives for each of their units.
⁵⁷ Siniša Tatalović, op.cit., 46.
history of residence in Croatia were granted Croatian citizenship by documenting their ethnic belonging to the Croat nation or writing a statement that they considered themselves Croatian citizens, despite not even having citizenship of the Socialist Republic of Yugoslavia.91 The European Commission against Racism and Intolerance (ECRI) therefore continuously recommended that the Croatian authorities introduce a simplified naturalization procedure for all those who were citizens of the former SFRY and were residing in Croatia when it gained independence.92

The Citizenship Law is based on the principle of legal continuity of citizenship according to which every person will be considered as a Croatian national who has acquired such status based on regulations in force by the date the Law on Croatian Citizenship entered into force, i.e. by 8 October 1991 (Article 30, paragraph 1). Taking into consideration the fact that not all residents in Croatia were able to acquire citizenship in accordance with the Law on Citizenship and under international pressure, Law on Foreigners gave persons with residence in Croatia on 8 October 1991, who did not have citizenship of the Republic of Croatia but held citizenship of another republic, the possibility to regulate their alien status with permanent residence in Croatia under more favourable conditions (Article 115).93 The deadline for submitting such requests expired on 30 June 2005.

Considering other status rights of the Serbs, the Law on Convalidation94 was adopted in October 1997 to permit the validation of official documents issued by RSK authorities to Serbs subject to its authority. However, the Law was inadequately implemented, affecting key areas such as the receipt of pensions and unemployment benefits.

2.5. Refugee Return: Paying the High Price of Ethnic Cleansing

Some estimate that the total number of Serbs who fled Croatia beginning in 1990 is 400,000 people.95 The greatest portion of this number belongs to some 150,000-200,00096 people who fled Croatian territory after the retaking of Krajina by the Croat authorities in August 1995 when an exodus of Serbs to the Serb controlled areas of Bosnia and Herzegovina and to the Federal Republic of Yugoslavia occurred. The majority of Croatian Serbs settled in Vojvodina. Smaller numbers agreed to move to Kosovo. The Croatian Government claimed that ‘accusations' that over 200,000 people fled in the aftermath of Operation Storm were fabricated. It stated that the actual number of Serb refugees from Krajina was 90,000.97 The UNHCR office in Belgrade registered 170,000 refugees from former Krajina in May 2006. Nevertheless:

93 Law on Foreigners, Official Gazette 109/03 and 182/04.
94 Law on Convalidation, Official Gazette 104/97.
95 Stipe Suvar and Milorad Popovac in Ivo Banac (ed.), Srbì u Hrvatskoj: Jučer, danas, sutra (Hrvatski Helsinski odbor za ljudska prava, Zagreb, 1998), 51 and 101, respectively.
The total figure of wartime refugees would be far higher, because many men did not register for fear of being sent back to fight and because, after settling down, many refugees were no longer counted as such. The Belgrade figure also does not include Serbian refugees within the Republika Srpska and Serb-held Eastern Slavonia.  

The official position of the Croatian Government, expressed in a letter to the Commission on Human Rights, states that Croatia:

[D]id not undertake ‘an aggression against the Republic of Serb Krajina’, but liberated part of its territory which was occupied and was declared as such by the United Nations General Assembly. It was a legitimate action, conducted strictly in accordance with international law, the Charter of the United Nations and under explicit orders to limit to the absolute minimum civilian casualties and damage to property.  

It is indisputable that Croatian authorities did allow the ICRC and other international humanitarian organizations into the liberated area. They signed an agreement with the United Nations Confidence Restoration Operation in Croatia (UNCRO), whose aim was to ensure that the human rights situation was fully monitored in the Krajina region. The UNHCR monitored the situation of those Krajina Serbs remaining and had a mission to ensure the right to return of those who had fled. It reported that “the departing Krajina Serbs suffered widespread maltreatment, injuries and some deaths at the hands of Croatian troops and civilians”, whereas “UNCRO personnel reported much looting and burning of houses”.  

Unconditional and sustainable return, terms introduced by the international organizations advocating human rights in the Western Balkans, affirms the right of all former habitual residents to return to their pre-war homes regardless of their citizenship status and the responsibility of the state to ensure economic conditions for the return. In the second part of the 1990s, the Croatian Government found various excuses for not allowing this to happen. In order to encourage the Government to take a more eager approach in the return process, numerous international actors became involved (the UNHCR, EU, OSCE). Since 1997, the Return and Integration Unit of the OSCE Mission to Croatia has been mandated to ensure and monitor the protection of IDP and refugee rights in the territory of Croatia. Such a comprehensive approach to ensuring unconditional return is supported by reasoning that the return should be perceived as a “means of resolving crises and paving the way for post-conflict reconciliation” as the repatriation of refugees plays a crucial role in the post-conflict peace-building process. Therefore peace agreements as a rule include “specific provisions relating to the return of the displaced populations”. This contributes to peace-building in four main interlocking ways: refugee return signifies peace and the end of conflict; repatriation plays an important role in validating the post conflict political order; refugee return is a precondition for peace if the refugees are politically and military active; and finally, population return is often a precondition for the

99 Supra note 91.
economic recovery of war-torn states. The Agreement on the Operational Procedures of Return was the first agreement to address the return of IDPs and refugees. It was signed in 1997 by the United Nations Transitional Administration in Eastern Slavonia (UNTAES), UNHCR and the Croatian government, which confirmed the right of the displaced to return to and from the Croatian Danube region.

With the change of government in 2000, more concrete measures to realize the return of all Croatian refugees were introduced. The unfavourable economic situation in return areas, i.e. the areas formerly directly affected by the conflict, constitutes the major obstacle to the return of refugees and displaced persons of all nationalities. It results in a high unemployment rate and a lack of basic infrastructure in some places, such as access to electricity or schools. In addition, Serbs very often were unable to access their houses, which had been looted, destroyed or populated by other refugees. In addition to legal inconsistencies and administrative obstacles, minority return was often hindered by hostile attitudes of the local population and local government officials. The Croatian authorities’ unwillingness to legalize various documents issued by the judicial or administrative authorities of Republika Srpska Krajina meant that the returnees could not count on the validation of their years of employment before and during the war. For part of the returnee population, the fear of not being covered by the amnesty law and of being arrested and prosecuted for war crimes may have contributed to the decision not to return. Sporadic incidents of interethnic violence also act as a deterrent to the return of refugees and displaced persons.

In 1996, the Croatian Government, under pressure international monitors, particularly the Organization for Security and Cooperation in Europe (OSCE), launched a return and reconstruction programme that to provide returnees with the necessary resources to survive and reintegrate into society. In addition to the Government Return Plan, a Government Reconstruction Programme was created through the Law on Reconstruction. Nevertheless, the 1996 Law on Reconstruction set strict eligibility criteria for reconstruction that were unfavourable to Serb returnees, such as formal proof of pre-war residence, clear ownership status, certified war-damage categorization, and a provable commitment to return. Such initial criteria resulted in a high number of negative decisions.

In March 2004, a Commission for the Return of Refugees and Displaced Persons and the Restitution of Property was set up to co-ordinate government activities. In addition to programmes aimed at providing access to housing, steps have been taken to help boost the economy of the hardest hit regions and to provide social assistance benefits for those returnees wishing to settle in Croatia. Finally, as part of the current government’s comprehensive return efforts, a public

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104 According to polls taken in September 2004 63% of Croats who live in areas where the Serb refugees should return are rather negative about their return, 42% think that the Croatian government should not help the refugees to return and 57% think the government should not secure housing for Serbian refugees. See Marko Kovac, “Serb struggles for Croatian home”, 23 September, 2004, at <http://news.bbc.co.uk/1/hi/world/europe/3682930.stm>.

105 The Amnesty Law, Official Gazette 58/92.


107 Since then approximately 140,000, out of a total of 195,000, war-damaged housing units have been reconstructed. Even though the reconstruction process had initially benefited citizens of Croat ethnicity, it has progressively embraced the Serb applicants, who since 2003 have accounted for more than 70% of all reconstruction beneficiaries. See OSCE Mission to Croatia, News in brief 2 May - 15 May 2007, at <http://www.osce.org/documents/mc/2007/05/24625_en.pdf>. 
information campaign on reconciliation and the return of refugees to Croatia was launched in November 2005 and a website was created where all information related to the return and requisition of property can be found.

Croatia, Bosnia and Herzegovina, and Serbia and Montenegro signed the Sarajevo Ministerial Declaration on regional refugee returns on 31 January 2005 under the auspices of the OSCE, the United Nations High Commissioner for Refugees (UNHCR) and European Community (EC) delegations. The three countries agreed to develop national strategies (so called ‘road-maps’) to resolve outstanding refugee issues by the end of 2006. The Croatian government presented its draft road-map to the international community partners in July 2005 when it also adopted a Conclusion on providing assistance to owners of temporary occupied housing units. In September 2005 the Government and the OSCE Mission in Croatia launched a public awareness campaign to stimulate minority return.

As the above-mentioned programmes have not significantly increased the number of returnees, a new option was introduced on 1 August 2006 regulate the status in the Republic of Croatia under more favourable conditions of persons who had been residing in the Republic of Croatia on 8 October 1991 and who have stated a serious intention to return and live in Croatia.

Recent UNHCR reports show that approximately 137,000 Serb refugees have returned to their pre-war homes in Croatia. International pressure certainly encouraged the government to take concrete and costly actions in the sphere of minority return. However, much still remains to be done to implement various programmes as well as to influence public opinion on realizing the rights of returnees.

2.6. Changing Climate: EU Conditionality Pressure and the Improvement of the Minority Regime

The coalition government elected in 2000 initiated wide legislative reform to uphold minority rights and facilitate the return of Serb refugees. Several discriminatory legislative provisions were amended or cancelled, including the Law on the Status of Displaced Persons and Refugees, the Return Programme, the Return Programme, the Law on Reconstruction, and the Law on Temporary Take-Over and Administration of Specified Property. In addition, two minority rights pieces of legislation were passed: one on the official use of minority language and education in minority language in 2000, and the Constitutional Law on the Rights of National Minorities in 2002.

This trend was not disrupted by the change of government in 2003, as the pro-European centre-right government: “entered into coalition agreements with the representatives of national minorities and pledged it would take some concrete measures to continually promote the protection of national minorities and solve the remaining open questions that the national minorities in Croatia are confronted with” by the end of 2004. At the symbolic level, the Prime Minister in particular has made several gestures in favour of national minorities. This change in the treatment of minorities came as a surprise, as the HDZ of the 1990s was

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109 Return Programme, Official Gazette 92/98.
110 Law on Reconstruction, Official Gazette 24/96, 54/96, 87/96, 57/00.
111 Law on Temporary Take-Over and Administration of Specified Property, Official Gazette 73/95, 7/96 and 100/97. See also Law on Termination of the Law on Temporary Take-Over and Administration of Specified Property, Official Gazette 101/98.
112 Sinjiša Tatalović, op.cit., 46.
remembered for its rigid rejection of minority rights. Nevertheless, the actions of Sanander’s government demonstrate that the facilitation of multicultural and multiethnic scenery could have been established long before.\textsuperscript{114} Some authors explain the shift in official policy towards national minorities by applying a social constructivist approach that perceives socialization to international norms as “a critical process through which states become members of the international society”. In other words, a process by which states join the space of “[s]hared ideas, beliefs and expectations shape structure, order and stability”\textsuperscript{,115} Indeed, aspirations of EU membership played a significant role in ensuring minority rights. The ambition of Sanander’s government to be the one that would get Croatia into the EU has therefore been a predominant factor in achieving a fair human and minority rights record.

The European Union has been conditioning Croatia since contractual relations were first introduced. For example, widespread reports of human rights violations by Croatian forces during and after the military operations Flash and Storm in 1995 led the EU to suspend its assistance programme (PHARE). In March 1995 the negotiating mandate for the Trade and Cooperation Agreement between the EU and Croatia was suspended and the resumption of negotiations was made dependent on a continued UN presence in Croatia. In the following years Croatia was required to implement democratic and economic reforms, show a commitment to upholding minority rights and basic human rights, make progress on relations with its former Yugoslav neighbours, and demonstrate cooperation with the ICTY before the EU would consider admission. Croatia eventually signed a Stabilisation and Association Agreement (SAA) with the EU on 29 October 2001 and submitted an application for EU membership on 21 February 2003. On October 3 2005, the Council of the European Union decided to open formal negotiations on membership. The issue of minority rights is covered in Chapter 23 “Judiciary and Human Rights”.

3. International Attempts at Conflict-Management

This section of the report deals with the role of the external mediators in addressing inter-ethnic conflict in Croatia. The international community reacted to the on-going incidents in Croatia relatively early because of calls from the Croatian leadership, which attempted to internationalize the conflict and to gain support by arguing that the armed conflict was between two states — according to international law Yugoslavia was seen as the aggressor as the JNA troops were on Croatian soil. The role of the local Serbs and their involvement was not taken into account in these arguments. Initially, in early 1991, the international community regarded the conflict predominantly as an internal affair of Yugoslavia, and attempted to preserve a single state. This made some scholars conclude that Yugoslavia, at that time, existed “merely as a fairy-tale of the Western collective


\textsuperscript{115} Compare Natasa Zambelli, “Contested rights-constructed identities: The changing discourse on minority rights in Croatia”, paper presented at the ECPR 1st Graduate Conference at the University of Essex, September 2006.
imagination”. Though there were no bigger economic interests at stake involving international actors in the conflict, the international community did have several different interests in preserving the Yugoslav federation. The US opinion that the SFRY represented an example of why the uncontrolled disintegration of the Soviet Union should be prevented was especially important.\textsuperscript{117}

The European Commission reacted to the ‘crisis’ in Yugoslavia after the end of the military conflict in Slovenia and at the onset of incidents and military actions in Croatia in July 1991. The European Commission Monitoring Mission (ECMM) was mandated to supervise military, political, humanitarian and economic developments in former Yugoslavia, and to assist in building stability in the region as a diplomatic mission. Its members reported directly to EU member states.\textsuperscript{118}

Soon after, the European Commission (EC) foreign ministers convened a peace conference in September 1991 in the Hague to find a political resolution to the crisis in Yugoslavia. It resulted in the so called Carrington Plan, devised by Lord Carrington, former Secretary General of NATO and UK foreign minister, who chaired the conference and put forward the EC security plan on 18 October 1991. The plan proposed a loose confederation of six sovereign republics, with no change in the existing internal borders. The confederation would be bound into a loose economic association in which all six republics would become independent states and would secure UN membership. Ethnic minorities within the republics, particularly the Serbs in the Croatian region of Krajina, would be granted a second nationality of their kin-state and a large degree of autonomy (e.g. own schooling and legislatures), with strong internationally secured assurance of the implementation of guaranteed minority rights. In addition, economic sanctions and a UN-backed oil embargo would be imposed on a republic not implementing the plan. Serbia was the only republic that openly rejected the plan.

The UN Security Council did not react to the crisis in Yugoslavia until 25 September 1991, when it imposed an embargo on the delivery of arms and military equipment to the region.\textsuperscript{119} This worsened the situation for the Croat party in the conflict, which could not rely on the external delivery of weapons, while the Serb rebels, who had seized the Territorial Defence weapons and were backed by the JNA, were well equipped.

Several European Council and UN attempts to conclude a number of cease-fire agreements between the parties were largely ineffective and were violated again and again. This policy was obviously inadequate to manage the conflict, but deeper involvement was avoided at least in the first years, because of the norm of non-intervention.

3.1. Peace Conference on the Former Yugoslavia and the Rights of Minorities

After fruitless European Community initiatives that gave the ECMM a very weak diplomatic mandate and the rejection of the Carrington Plan, the London Conference established the joint International Conference on the Former

\textsuperscript{116} Daniele Conversi, “Tko su bili secesionisti?”, in Carole Hodge and Mladen Grbin, Europa i nacionalizam: nacionalni identitet naspram nacionalnoj netrpeljivosti (Durieux, Zagreb, 1998), 64.

\textsuperscript{117} See Matjaz Klemencic and Mitja Zagar, The Former Yugoslavia's Diverse Peoples: A Reference Sourcebook (Santa Barbara, ABC-Clio Inc., 2004).


Yugoslavia (ICFY) in August 1992 as a joint EC and UN project. David Owen and Cyrus Vance were appointed as European Community and UN co-chairs. They provided a framework and an information channel for ongoing peace negotiations. This was the main diplomatic forum during the conflict that wanted to ensure a peaceful political conflict settlement. In April 1994 the ICFY was superseded by the Contact Group, consisting of representatives of the US, Russia, the UK, France and Germany. During that time the US and Russia began to play a gradually greater role in international attempts to negotiate a peaceful settlement.

Several working groups were active within the Conference, one of them being the Ethnic and National Communities and Minorities Working Group led by German diplomat Geert Ahrens. Its main task was to recommend initiatives to resolve ethnic questions in the former Yugoslavia. Its efficiency, however, has been negatively assessed, as its chairman concentrated on the Croatian delegation’s meeting with the Serbs represented by Milorad Pupovac and Milan Dikić, who were considered to be a minority among the Serbs who had already proclaimed their para-state. The talks held under the auspices of the Working Group could have been led by the negotiation partners themselves, whereas the rebel Serbs in the UNPA zones at that time had no interest in acquiring minority protection within the Republic of Croatia. Therefore, the efforts of the Working Group were for the most part marginal.

Another body active within the Conference was the Arbitration Commission of the Peace Conference on the Former Yugoslavia (the so-called Badinter Committee). The Badinter Committee delivered eleven recommendations on major legal questions arising from the split of the SFRY. One of them dealt with the right to self-determination of the Serb minority in the republics of the SFRY, Croatia and Bosnia-Herzegovina. Namely, the Republic of Serbia asked whether the Serbian population, as one of the constituent peoples of Yugoslavia, had the right to self-determination. The Committee considered that the right to self-determination should not involve changes to existing frontiers at the time of independence (uti possidetis juris) except where the states concerned agreed otherwise. The Badinter Arbitration Committee also stated that norms of international law required states to ensure respect for the rights of minorities. In other words, the Serbian population in Bosnia-Herzegovina and Croatia had to be afforded every right accorded to minorities under international conventions as well as national and international guarantees consistent with the principles of international law. The Committee explained its opinion noting that:

Article 1 of the two 1986 International Covenants on human rights establishes that the principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.

In the Committee’s view, one possible consequence of this principle might have been:

[F]or the members of the Serbian population in Bosnia-Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the states concerned.

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121 Višnja Starešina, *Vježbe u laboratoriju Balkan* (Naklada Ljevak, Zagreb, 2004), 133-134.
The Arbitration Committee finally concluded that:

(i) [T]hat the Serbian population in Bosnia-Herzegovina and Croatia is entitled to all the rights concerned to minorities and ethnic groups under international law and under the provisions of the draft Convention of the Conference on Yugoslavia of 4 November 1991, to which the Republics of Bosnia-Herzegovina and Croatia have undertaken to give effect; and (ii) that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality.

In this way, the Badinter Committee gave the Croatian authorities the goal of attempting to pass a legislative framework that would accommodate the Serb minority.

3.2. The Vance Plan: Cementing the Status Quo

In September 1991, the UN Security Council passed a Resolution on the peaceful resolution of the crisis in Yugoslavia and introduced an embargo on the import of weapons to the territory of Yugoslavia.\(^{123}\) A meeting in Geneva on 23 November 1991 between the Presidents of Serbia and of Croatia, and the Secretary of State for National Defence of Yugoslavia under the supervision of the UN envoy Cyrus Vance and the EC envoy Lord Peter Carrington opened the prospect for an immediate cease-fire.\(^{124}\) It mandated that concessions be made by both sides – the Croats had to lift the blockade of all JNA barracks and installations and the JNA had to begin withdrawing from Croatian territory.

The parties to the agreement expressed the desire for the United Nations to deploy a peacekeeping operation. Cyrus Vance, the special envoy of the UN Secretary General, and Marrack Goulding, Under-Secretary-General for special political affairs, drafted a proposal that envisaged a UN peacekeeping force under the command of the Secretary General of the United Nations on the territory of Croatia, which at that time had not been internationally recognized. Nevertheless, the Geneva cease-fire, like many before it, broke down almost immediately and the parties to the Geneva agreement were informed that the United Nations could not envisage deploying a peacekeeping operation without the full compliance of all parties.\(^{125}\)

Eventually, military representatives of the Republic of Croatia, represented by President Tudman and a representative of the JNA, General Veljko Kadijević signed the Implementing Accord on the unconditional cease-fire in Sarajevo on 2 January 1992. The incomplete SFRY Presidency also adopted the proposed peace operation plan on 31 December 1991. This made it possible for the then UN Secretary-General, Boutros Boutros-Ghali, to recommend that the Security Council establish the United Nations Protection Force (UNPROFOR).\(^{126}\) The peacekeeping plan “initially called for the deployment of 13,000 troops (12 battalions), civilian personnel, and civilian police”.\(^{127}\) The original United Nations plan in Croatia rested

\(^{124}\) Nikica Barić, op. cit., 147-150. See also Snežana Trifunovska, op. cit., 412.
\(^{126}\) UN Security Council Resolution 743 of 21 February 1992 established UNPROFOR for an initial period of 12 months. UNPROFOR was deployed in United Nations Protected Areas (UNPAs), areas in which Serbs constitute the majority or a substantial minority of the population and where inter-communal tension had led to armed conflict. There were three UNPAs: Eastern Slavonia, Western Slavonia and Krajina. For United Nations purposes, they have been divided into four sectors: East, North, South and West. There have been several enlargements of UNPROFOR mandate in Croatia. See Security Council Resolution 762 (1992) of 30 June 1992.
\(^{127}\) Allcock et. al., op.cit., 309.
on two central elements: (a) the withdrawal of the JNA from all of Croatia and the
demilitarization of the UNPAs; and (b) the continued functioning, on an interim
basis, of the existing local authorities and police, under UN supervision, pending
the achievement of an overall political solution to the crisis. Later the UNPROFOR
was given a mandate to monitor functions in so-called ‘pink zones’ — areas
controlled by the JNA and at that time populated largely by Serbs that were
outside the agreed UNPA boundaries.

Both Serbia and Croatia were in favour of the Vance Plan at the end of
1991. Croatia, striving for international recognition, wished to demonstrate its
readiness to cooperate with the international community and to resolve the
conflict peacefully. Milošević and the JNA believed it favoured their position as it
cemented the borders of the RSK. The RSK authorities, however, were not eager to
accept the peace plan, arguing that, “the entry of the UNPROFOR forces on the
territory of the RSK without consent of Knin could be considered as an act of
aggression and the disruption of territorial-political integrity and sovereignty of the
RSK Krajina”.128 The Serbs in Krajina were willing to accept the deployment of
UNPROFOR only under the condition that it engage on the demarcation line
between the two conflicting parties. They assessed the JNA withdrawal as being
unacceptable because they believed they were entitled to its protection, having
decided to remain in the SFRY. At the same time, the Serbs of Eastern and Western
Slavonia, Baranja and Western Sirmium as well as the SFRY Presidency and JNA
were in favour of the Vance Plan. This brought Milošević and Milan Babić, a leader
of Krajina Serbs and that time President of the RSK into an open conflict. In short,
Babić and the Government of the RSK rejected the Vance Plan as it “treated the
Serb people in RSK as a national minority without collective rights.”129 They also
accused Belgrade of not recognizing the RSK as a newly created state and not
taking into account the referendum on independence held in May 1991, in which
the Serbs of Krajina declared their wish to become part of a single state with
Serbia and Montenegro. Babić and the Assembly of the RSK requested a referendum
Milošević’s direction, Babić was removed from the position of the President and
succeeded by Goran Hadžić. International recognition of Croatia took place in
January 1992, before the UNPROFOR forces were deployed.

The task of UNPROFOR was to demilitarize the UNPAs and to help create
“the circumstances for a peaceful negotiated resolution”130 of the inter-ethnic
conflict in Croatia. Therefore the mission needed to “control access to the UNPAs,
sure their demilitarization, and monitor the functioning of local police forces.”131 Within each UNPA, the UN forces’ first goal was to stabilize the
situation. The measures therefore included even maintaining existing interim
arrangements for local administration. It furthermore provided protection for all
inhabitants of the UNPA zones, and was meant to ensure the return to their homes
of all those who had been driven out by force. In addition, UNPROFOR’s mandate
was enlarged as of September 1992 to include a right to intervene to support the
provision of humanitarian aid — the UN forces were thus authorized to provide
protection for UNHCR convoys.

The aims of the mission were adequate to the conflict, but the mandate
itself was not proportionate to the reality of the conflict, and its implementation
was difficult. Namely, none of UNPROFOR’s missions were fully fulfilled, since the
return of the Croatian population to UNPAs did not happen under the UNPROFOR’s
mandate and the expulsion of the population of Croatian origin continued in the
UNPAs. For example, “[u]nder the ‘protection’ of UNPROFOR the entire Croatian
population of the town of Ilok (7,000 people) was expelled, while terrorist attacks
with artillery and rockets on Croatian towns and the civilian population have

128 Nikica Barić, op.cit., 150-162.
129 Ibid., 157.
130 Allcock . op.cit., 304.
131 Ibid.
continued unabated. Despite the efforts of the peacekeeping mission, the UNPAs were never fully demilitarized and the mission was powerless against permanent violations of cease-fires and therefore not really successful in fulfilling its tasks. It did not re-pacify the region, but at least it regulated the conflict and prevented it from escalating during the time of its deployment.

The deployment of the mission was delayed because of financial arguments within the UN and because of the outbreak of war in Bosnia-Herzegovina. Only in late June 1992 was UNPROFOR full-deployed and “[o]ne result of this delay was that ‘ethnic cleansing’ continued virtually unchecked, so that by the time the UNPROFOR was operational, most of the area’s non-Serb population has already expelled from the UNPAs”. The work of the mission was made difficult by permanent violations of the cease-fire and martial incidents in the unprotected areas surrounding the UNPAs (the so-called pink zones). Despite this, UNPROFOR managed to set up the basics for fulfilling its mandate. UNPROFOR’s tasks were extended several times; in 1992 it was extended to monitor the demilitarization of the Prevlaka Peninsula. Violations of the negotiated cease-fires continued and there were also many objections by the Croatian government. For this reason UNPROFOR was restructured at the end of March 1995.

In conclusion, despite the efforts of the peacekeeping mission, the UNPAs were never fully demilitarized and the mission was powerless against permanent violations of cease-fires and therefore not completely successful in fulfilling its tasks. It did not re-pacify the region, but at least it regulated the conflict and prevented it from escalating during the time of its deployment. In the view of the Croatian Government and public opinion, the deployment of UNPROFOR cemented the status quo, allowing for the existence of the Republika Srpska Krajina.

2.3. Zagreb Agreement on Ceasefire in Krajina: A Light at the End of the Tunnel

The negotiations on a ceasefire in Krajina recommenced in the Russian Embassy in Zagreb between the representatives of the Republic of Croatia and the Republika Srpska Krajina in March 1994. The meeting was chaired by Ambassador Kai Aide, representative of the UN, and ambassador Gerd Arens, representative of the EU. Vitaly Churkin, special envoy of the President of Russia, and Peter W. Gulbright, American Ambassador in Croatia, also took part in the negotiations. They discussed a cease-fire and a separation of the warring parties. The negotiations were interrupted on 23 March so that both parties could consult on the draft agreement. They resumed on 29 March.

In Zagreb on 29 March 1994, the heads of the delegations of Croatia, Hrvoje Šarinić, and of the RSK, Dušan Radić, eventually signed an agreement on a cessation of fire and all armed hostilities. The representatives of the peace conference on the former Yugoslavia, Ambassadors Gerd Arens and Kai Aide, as well as by the Commander of the UN peacekeeping forces in former Yugoslavia, General Bertrand de Lapprele signed the agreement as witnesses. The agreement, which contained 9 items, provided that the cease-fire should be fully observed and would become effective on 4 April at 9am. All units at the front lines were to be separated by 8 April at 9am. Heavy weapons were to be withdrawn and some crossings along the front lines were to be opened. The role of the UN forces would be to see to it that the cease-fire and the agreement were being observed.

The implementation of this cease-fire agreement involved, inter alia, the interposition of UNPROFOR forces in a zone of separation of varying width, the establishment of additional control points, observation posts and patrols, as well as the monitoring of the withdrawal of heavy weapons out of range of the contact

132 Gorazd Nikić (ed.), op.cit.
133 Allcock. op.cit., 310
line. In order to enable UNPROFOR to perform the functions called for in the agreement, the Secretary-General recommended that the Council increase the authorized strength of the Force by four mechanized infantry companies (one mechanized infantry battalion of 1,000 all ranks) and four engineer companies (600 all ranks). In addition, a helicopter squadron of at least six helicopters with 200 all ranks would be needed for effective monitoring of the cease-fire agreement.

The agreement significantly reduced active hostilities between the conflicting sides in Croatia. By the end of May, UNPROFOR reported almost total compliance, characterized by a general cessation of hostilities, the withdrawal of forces beyond fixed lines of separation and the placement of heavy weapons in agreed storage sites. UNPROFOR assumed exclusive control over the zone of separation, covering an area of over 1,300 square kilometres. In the following months, UNPROFOR focused on strengthening compliance with the cease-fire agreement. These efforts, however, faced several setbacks involving a number of violations by both sides of the cease-fire agreement in the UNPAs.134

### 3.4. The Washington Agreement: The American Role in Conflict Termination Becomes More Apparent

The American involvement in the Yugoslav wars, beginning in 1993, introduced new peace initiatives in addition to the unconvincing UN attempts to ensure a peacekeeping arrangement and numerous unsuccessful initiatives by the European Community’s envoys to come up with peaceful solutions.135

The first clear manifestation that the American administration of that time decided to assume a more active role in the peace process in the Balkans was the conclusion of the Washington Agreement on 18 March 1994 that allowed for the establishment of the Croat-Bosniak Entity in Bosnia and Herzegovina. The Washington Agreement was preceded by a cease-fire agreement signed by the military representatives of the Bosnian Government and the Bosnian Croats on 23 February 1994, at a meeting hosted by UNPROFOR in Zagreb. The two parties agreed to the immediate and total cessation of hostilities commencing at noon on 25 February 1994, a halt to all forms of propaganda against one another, and the establishment of lines of contact and positions as of the time of the cease-fire. UNPROFOR forces were to be positioned at key points; heavy weapons were to be withdrawn or put under UNPROFOR control, and a Joint Commission was to be established, with representatives of both sides and chaired by UNPROFOR.

When it became apparent that the UN-EC brokered peace negotiations for a solution in BiH under the auspices of Owen-Stoltenberg had failed, the American administration made it clear it was going to assume a more active role in finding a viable solution to the BiH crisis. Proximity talks between a Croatian delegation led by Foreign Minister Mate Granić and a Bosnian delegation led by Prime Minister Haris Silajdžić took place at the end of February 1994 at the State Department in Washington, under the supervision of Ambassadors Charles Redman and Peter W. Galbraith. On March 1 the Croatians and Bosniaks agreed to a framework for a federation of Croat and Bosniak majority areas in Bosnia-Herzegovina and a

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135 The USA was sending mixed signals at the end of the 1980s and in the beginning of the 1990s regarding the preservation of the Yugoslav Federation. Such signals were often differently considered and interpreted by all sides in the Yugoslav conflict, usually as US support for their position.
preliminary agreement for a confederation between the Federation and Croatia.¹³⁶ The Washington Agreement also encompassed an agreement granting the Federation of Bosnia and Herzegovina access to the Adriatic through the territory of the Republic of Croatia and an agreement granting the Republic of Croatia transit through the Federation of Bosnia and Herzegovina. It also contained a proposed Constitution of the Federation of Bosnia and Herzegovina which was eventually signed on 18 March 1994 by the Prime Minister Silajdžić and the Bosnian Croat leader Zubak at a White House ceremony. In March 1995 Zubak and Ejup Ganić signed the Petersburg Agreement on the implementation of the Bosniak-Croat Federation.

3.5. Z4 Plan: Failed Chance for the Rebel Serbs

The Zagreb-4 Plan (Z-4)¹³⁷ was a part of the (American led) attempts to bring a political settlement to the conflict in Croatia. It was put forward by a mini contact group consisting of ambassadors of the United States, the Russian Federation and representatives of bodies of the European Union and the United Nations.¹³⁸ At the end of 1994 they drafted a peace plan proposal that was designed to “reconcile Croatia’s insistence on preserving the integrity of its frontiers with Serbs insistence on self-determination”¹³⁹ and to reintegrate the RSK politically. On 30 January 1995 the Z-4 plan was presented to the Croatian Government and RSK leadership.

The plan represented a remedied version of the Vance plan following the slogan “more than autonomy, less than independence”. It proposed that the RSK would exist in a ‘state-within-a-state-construct’, without independence to preserve the Croatian territorial integrity, and have its own political representation, institutions, national symbols etc. The plan also comprised provisions regarding the rights of minorities and ethnic communities, such as local self-administration, and the return of refugees.

It was hoped that the Z-4 plan would be a basis for further negotiations, since the Croatian Government at least took the plan into consideration. The Serb authorities of the RSK rejected the plan categorically without even considering it. For them, even at that stage, it was pointless to accept any association with Croatia, despite of the fact that the Z-4 plan would have allowed that “Serb areas would in fact have had the position of a state within the state”.¹⁴⁰ In addition, the RSK politicians found an excuse not to consider the plan until guarantees of

¹³⁶ See Washington Agreement, signed by Bosnian Prime Minister Haris Silajdžić, Croatian Foreign Minister Mate Granić and Bosnian Croat Representative Krešimir Zubak, 1 March 1994, at <http://www.usip.org/library/pa/bosnia/washagree_03011994.html>. In case the agreement was fulfilled in this part, it would have been necessary to amend the Croatian Constitution that prescribes that “Croatia is a unitary and indivisible democratic and social state” (Article 1, paragraph 1). The Constitution states as well that “[t]he Republic of Croatia may conclude alliances with other states, retaining the sovereign right to decide by itself on the powers to be transferred and the right freely to withdraw from them” (Article 2, paragraph 5). The Constitution states also that “[t]he sovereignty of the Republic of Croatia is inalienable, indivisible and untransferable” (Article 2, paragraph 1). See also Comments by Council of Europe’s Venice Commission expert C. Economides, The Croatian Constitution and the Washington Agreements of 18 March 1994, CDL(1994)044e-restr, at <http://www.venice.coe.int/docs/1994/CDL(1994)044-e.asp>.


¹³⁸ The contact group Z-4 was composed of Peter Galbraith (US), Leonid Kerastedžijanc (Russian Federation), Jean-Jacques Gaillard (France), Geert-Hinrich Ahrens (Germany) and Alfredo Mattacota Cordella (Italy).

¹³⁹ Marcus Tanner, op.cit., 294.

¹⁴⁰ Višnja Starčina, op.cit., 164-166, see also 201-202. See also Nikica Barić, op.cit., 583.
UNPROFOR’s presence beyond 31 March were received. Shortly before, on 12 January 1995, the Croatian Government announced it was going to renew the UNPROFOR mandate after 31 March as it had not been able to fulfil its mission of reintegration of the areas controlled by rebels. Nevertheless, on 12 March President Tudman announced that a reconfigured UN force could remain on Croatian soil and shortly thereafter the UN set up the UNCRD (Confidence Restoration Operation) in Croatia.UNCRO’s mandate was to include the implementation of the aforementioned 1994 cease-fire accord and facilitate the implementation of an Economic Agreement between the Croatian and RSK authorities. The Economic Agreement was signed on 2 December 1994 under the auspices of the Co-Chairmen of the International Conference on the Former Yugoslavia and the Ambassadors of the Russian Federation and the United States of America to Croatia. It allowed for the restoration of traffic along the highway in Slavonia and allowed the Serbs to patronize Croatian shops and gas stations. The financial situation in the RSK was extremely unfavourable. Even before the occupation, those areas were economically underdeveloped parts of Croatia. The international blockade and the lack of any investment, along with the decreasing financial investment from the FR Yugoslavia, which had been under economic sanctions since 1992, meant that the majority of the RSK population lived on humanitarian aid. The Economic Agreement was meant to improve this grim picture, as well as to allow commuting between Western and Eastern parts of Croatia as the Zagreb-Belgrade highway through Sector West and the Adriatic oil pipeline were re-opened.

At the beginning of May 1995, Operation Flash liberated Western Slavonia and started the process of restoring Croatian authority within the country’s borders. This operation caused more than 10,000 Serb civilians to flee to the Serb-controlled areas in Bosnia and Herzegovina. The pretext for Operation Flash was a chain of inter-ethnic disputes on the highway in which four people were killed. In addition to this operation, a military enhancement of the Croatian and the Bosnian forces in the territory of BiH undertaken earlier that year had contributed to a change in the power-relations vis-à-vis the occupied Croatian territories around Knin. The Serbs there were brought under siege. The RSK authorities had even prepared to defend themselves from Croatian ‘aggression’, expecting it ever since Tudman announced the rejection of the prolongation of the UNPROFOR mandate in January 1995. At the end of July 1995, the special envoy of the UN Secretary-General in former Yugoslavia and Chief of UNPROFOR Yasushi Akashi met both President Tudman and the RSK President Martić with the aim of averting a Croatian offensive against the RSK.

But now Tudman dictates the conditions: he is requesting that the local Serb authorities from the occupied territories to recognize and integrate into Croatian legal-political order, offering protection of the Serb minority and the right to autonomy in accordance with the [1991] Constitutional Law, that was drafted in accordance with the instructions of the Badinter commission.

Serb political leaders were not willing to accept this offer as it would imply a political defeat. Despite the predictable outcome, Yasushi Akashi and Thorvald Stoltenberg once again entered UN-brokered talks between representatives of the Croatian Government and RSK leaders in Geneva on 3 August 1995. The RSK delegation was represented by a lower ranked staff that lacked the mandate to accept the offer of the Croatian Government. At the meeting in Geneva it became apparent that the Z-4 plan would not be accepted by any of the parties, finally

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143 Višnja Starešina, op. cit., 221-243.
144 Nikica Barić, op. cit., 488-530.
145 Višnja Starešina, op. cit., 244.
revealing that there was no real interest on the side of the Croatian authorities to accept it.

What happened the following day indicates that the Croatian Government had prepared a military offensive to recapture the Krajina region. On 4 August 1995, Croatian military forces launched Operation Storm, which rapidly retook the UNPA Sectors North and South. The pretext for this military operation was an offensive against the Bosnian Army Fifth Corps in the Bihać pocket launched by the Krajina army and the forces loyal to the Bosnian local leader Fikaret Abdić on 19 July 1995. Croatian authorities warned that the displacement of the population of Bihać would be considered as a serious threat to its security and stability. Shortly before, the Presidents of Croatia and Bosnia and Herzegovina signed the Split Declaration on “joint defence against a common enemy” on 22 July 1995 which gave legitimacy to the Croatian army in militarily assisting Bosnian forces in the Bihać pocket. Since Croatian military forces had been trained during the previous months (by former US military personnel) to regain the Krajina territory, thus contributing to the change of power that would eventually help bring the war in Bosnia and Herzegovina to an end, Croatian authorities started a major military offensive that re-established Croatian control in those areas in the following two days.

3.6. The Erdut Agreement: Ending the Occupation and Bringing the Conflict to the End

After the greater portion of the Croatian territory was regained in the military operations Flash and Storm146, the question of the still occupied region of Eastern Slavonia remained. Croatian President Tudman linked the solution of the Eastern Slavonia issue to the Dayton Agreement negotiations, conditioning the solution of the peaceful integration to his endorsement of the later Dayton Accords.147 At Dayton, Tudman and Milošević discussed the issue, eventually agreeing that its solution should be facilitated by discussions between American Ambassador to Croatia Peter W. Galbraith and the UN negotiator Thorvald Stoltenberg and the local leaders. The recent events from summer 1995 “had given [Tudman] a central role in the peace process” and:

Tudman could prevent a settlement in Bosnia until he got control of Eastern Slavonia, the last piece of the Serb-controlled land in Croatia. Given his previous behaviour, his threats to go to war soon after Dayton if he did not get the region back peacefully had to be taken seriously.148

Galbraith and Stoltenberg presented the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement)149 to representatives of the Serbs and of the Croatian Government on 12 November 1995. It was estimated that at that time “some 120,000 to 150,000 Serbs were living in that region”.150

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146 There are numerous authors who suggest that these military operations were undertaken with the tacit support of the American Government. There is evidence that the Croatian top military brass were trained by the Military Professional Resources, Inc. (MPRI). For the record, they were hired to help Croatia establish a military system which works in harmony with a democratic government. See Višnja Starešina, op. cit., 195-196.
147 Richard Holbrooke, To End a War (Modern Library, New York, 1999), 213, 236-238.
148 Ibid., 238.
The Croatian Government claimed at that time there were 96,000 non-Serbs who were displaced from Eastern Slavonia.151

The draft dealt with the re-integration of Eastern Slavonia into Croatia, anticipating a complete demilitarization, and the installation of an UN transitional administration to maintain peace and security in the only remaining Serb-held region of Croatia. It also supported the return of exiled refugees to their homes and ensured the rights of those in Eastern Slavonia to remain (Article 3 and 6). It foresaw the right to restoration of any property that was taken during the armed conflict. In addition, it provided for local elections and foresaw a transitional police force “meant to build professionalism among the police and confidence among all ethnic communities” (Article 4), as well as human rights monitoring (Article 5). The Agreement foresaw that the elections for all local government bodies, including for municipalities, districts, and counties should happen not later than 30 days before the end of the transitional period. It also anticipated the right of the Serbian community to appoint a joint Council of Municipalities (Article 11). After the expiration of the transition period, and consistent with established practice, the international community was expected to monitor and report on the respect for human rights in the region on a long term basis (Article 9). In addition, a commission authorized to monitor the implementation of this Agreement was established with the task of monitoring the Agreement’s human rights and civil rights provisions, of investigating all allegations of violations of the Agreement, and of making appropriate recommendations (Article 10). Finally, the parties agreed there would be a transitional period of 12 months which could be extended at most to another period of the same duration upon the requested of one of the parties. Originally, the Agreement anticipated that Eastern Slavonia would return to Croat authority by 15 January 1997. Nevertheless, as the Erdut Agreement permitted an extension of the transition period, in response to a request by the local Serb community, the Security Council extended the transition period and UNTAES' mandate to 15 July 1997. The same Resolution anticipated a reduced UNTAES presence that would remain from 15 July 1997 until 15 January 1998.152

The Head of the Serb Negotiation Team, Milan Milanović, signed the Agreement at the Yellow House in Erdut, a small village on the bank of the Danube River at 1pm. The Croatian negotiator Hrvoje Šarinić signed it in Zagreb’s Presidential Palace at pm the same day. With the formal end of hostilities, the way was free for peaceful development under a neutral UN administration – the United Nations Transition Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was installed.153 The military component under the UNTAES consisted of 5,000 soldiers and civilian police monitors, a transitional police force and civilian staff to handle election, refugee and other integration issues. The armed peace mission was authorized to keep and to build up peace and security in the region and to stress the importance of human rights in eventually pacifying the area.

Joint cooperation between the UNTAES mission, international organizations and monitors and the Croatian government was very important. The Croatian Government presented detailed plans for the implementation of the Erdut Agreement in a Letter of Intent submitted to the Security Council on 13 January 1997.154 The Letter of Intent set forth general voter qualifications, provided for

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154 Letter dated 13 January 1997 from the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council, attaching the Letter from the Government of the Republic of Croatia on the completion of the peaceful
cultural and educational autonomy for the Serbs and minorities and proportional representation in the police and the judiciary, set a two-year deferment from military service for Serbs, and ensured that various senior government posts would go to Serbs.\(^{155}\) This eventually made it possible for responsibility over the region to be given back to the Croatian government in January 1998, a year later than originally planned in the Agreement’s text. Nevertheless, the Serb population in the region considered the transition period to be too short, and “most of the region’s remaining Serb population fled, fearing for their prospects in a nationalist Croatian state”\(^{156}\) before reintegration took place.

The Erdut Agreement is nevertheless generally assessed positively. Unlike earlier UN peacekeeping missions, it allowed for a peaceful solution to the conflict.\(^{157}\) To date, most of the provisions of the Erdut Agreement and the Government’s Letter of Intent have been implemented, with the important exception of proportional representation of Serbs in the judiciary.\(^{158}\)

### 3.7. Agreement on Normalization of Relations with the FR Yugoslavia

The Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia was signed on 23 August 1996.\(^{159}\) Since then, bilateral relations between the two countries have been improving, and 49 interstate acts and agreements have been signed and ratified. The Agreement laid the groundwork for mutual recognition of the two states (Article 2). It also constituted a basis for the establishment of diplomatic and consular missions in the signatory parties (Article 3), which eventually happened on 9 September 1996 when full diplomatic relations between two countries were established. In addition, the Agreement foresaw a peaceful settlement of the Prevlaka issue, as well as the southern border on the sea between the two countries (Article 4), which was eventually solved in December 2002.\(^{160}\)

The signatory parties agreed to address the issue of succession in accordance with the international law on the succession of states and through agreements (article 5). The Agreement foresaw that all information relating to victims who were also prisoners of war and missing persons (it is estimated there were 1,200 missing Croatian victims and approximately 820 missing Serbs)\(^{161}\) be exchanged between the contracting parties (Article 6). The Agreement dealt extensively with the issue of refugee return. The parties agreed to ensure conditions for the free and safe return of refugees and internally displaced persons (IDPs) to the places of their former residences or other places of their choice. The parties agreed to ensure the restitution of property or a just compensation to the reintegrating of the region under the Transitional Administration, Republic of Croatia, January 13, 1997, S/1997/27.


\(^{156}\) Allcock , op.cit., 314.


returnees. In addition, the parties committed themselves to ensuring the security of all returnees and IDPs as well as the necessary conditions for a normal and safe life in the areas of return. The clause on the pardon for all misdeeds committed in relation to the armed conflicts, apart from the greatest violations of humanitarian law that have attributes of the war crimes is also included, as is a mutual commitment on the full and concise implementation of the Erdut Agreement. This article prescribed the drafting of an Agreement on the compensation of destroyed, damaged and missing property and the establishment of a joint commission that would contain three representatives of each of the signatory parties (Article 7). The remaining articles dealt with the establishment of contractual relationships in the sphere of mutual recognition of social rights, normalization of traffic, postal and telecommunication services, cultural cooperation, etc.

Cooperation and normalization in the so-called Dayton Triangle (i.e. Croatia, Bosnia and Herzegovina, and FR Yugoslavia, later Serbia and Montenegro) has been steadily intensifying since the end of open conflict in 1995. Minority rights related successes of this cooperation include the passage of the Sarajevo Declaration on refugee return\textsuperscript{162} as well as of the Igman Declaration in 2005,\textsuperscript{163} which, inter alia, dealt with national minority issues and the return of all refugees (Article 4 and 5). In addition, in 2001 two common declarations on the resolution of refugee problems and property issues of Serbs in Croatia have been signed.

\textsuperscript{162} Sarajevo Declaration of the ministers responsible for refugees and internally displaced persons in Bosnia and Herzegovina, Croatia and Serbia and Montenegro, signed on 31 January 2005 at <http://www.unhcr.ba/protection/as@refugee/Sarajevo%20Declaration%20January%202005.pdf>.

\textsuperscript{163} The Mount Igman declaration signed by the President of Serbia and Montenegro, the President of the Republic of Croatia and the Representative of the Presidency of Bosnia and Herzegovina on 27 June 2005, at <http://www.predsjednik.hr/default.asp?ru=201&gl=200507010000002&sid=&jezik=2>. 
4. Conclusions

Human rights and fundamental freedoms in Croatia are constitutionally guaranteed, and since the beginning of the country's independence have been aligned with international standards to a great extent. Although certain shortcomings in the implementation of human, and particularly minority rights related legislation was a common phenomenon in the 1990s, today they are generally respected.

Nevertheless, there is always room for improvement and all emerging issues and possible sources of conflict escalation need to be addressed promptly and adequately. Since 2002, Croatia has had a broad, all-encompassing minority rights framework that should allow for the protection of the approximately 7.5% of its population that is made up of national minorities. One should, however, keep in mind that the ethnic picture of Croatia has been drastically changed, since the Serbs alone constituted 12.5% of the country's population in 1991. Representing a significant part of the population, the Serbs—who at the time of the SFRY were considered one of constituent nations in Croatia—resented their new minority status and aspired for secession. Influenced and fuelled by nationalist slogans and leaders on both sides, who used nationalism as a political instrument for the mobilization of the masses, the Serbs rebelled. Backed by Belgrade and the JNA, the rebelling Serbs in Croatia managed to establish a breakaway state, the Republika Srpska Krajina. All domestic attempts initiated in the beginning of 1990s were purely a manifestation of Croatia’s compliance with the requirements to obtain international recognition. At the same time, the Krajina Serbs had no real will to negotiate an arrangement that would accommodate them within a newly independent state, as the rebel part of the Serb population in Croatia hoped for unification with Serbia. Any form of association with Croatia, even the envisaged territorial autonomy, was at that point unacceptable to them.

The interference of different international actors during the ethnic conflict in the first part of the 1990s took place in several stages: whereas in the first stage this was mostly executed at the diplomatic level, later the international community's involvement was gradually extended to include using the instruments of international organizations, predominantly the UN, to regulate and settle the conflict through the deployment of UN resources for protection areas and peacekeeping missions. The UN and its mission followed the traditional concept of peacekeeping, and were therefore guided by neutrality and pacifism, which often perverted the mission to the embarrassing function of observing the conflict, without a mandate to stop or prevent ongoing injustice and incidents. This showed the inadequacy of traditional peacekeeping in an ongoing military conflict, in which the objective of the international community should be to stop the fighting through adequate intervention.

The biggest problem of the international community’s response to the Yugoslav wars was a lack of coordination between the different actors as well as the inability of the European Community to act unanimously. During the first phase of the ethnic conflict in Croatia, strategy how to deal with the crisis and to settle the conflict was completely absent, as the international community was focused on the preservation of the Yugoslav federation.

Technically, it was possible at that time to assure a peaceful dissolution of Yugoslavia - by international recognition of the republics that strived to independence in the republican borders, by imposing strong international monitoring in the field of respect of human and minority rights after their recognition, and by the neutralisation and deconstruction of the JNA. The recognition would discourage the Serbian occupation, ahead depriving the option that favoured creation of the Greater Serbia of any legitimacy. Monitoring would force new states to encompass European democratic standards. By assuring acceptable dismissal for officers of the JNA who were
predominantly Serbs, in the form of pension and prequalification, the motive for starting the war that assured existence of Milošević would disappear. European Community, being a group of states without a common leadership, could not have apprehended this at that time, not to mention to impose and implement it. It was not, considered through the prism of certain states, even willing to do it.”

The international community’s hesitation to intervene with coercive action (until the last phase of the conflict in Bosnia and Herzegovina in which NATO attacks occurred under the command of the United States) or at a minimum to properly mandate the peacekeeping forces, certainly contributed to the spill-over of the conflict into Bosnia and Herzegovina and cemented the status quo in the so-called UNPAs in Croatia without fulfilling the mandate of UNPROFOR. A more efficient peacekeeping initiative would not have enabled the Croatian authorities to conduct unilateral military actions in 1995 that caused a massive exodus of the Serb minority accompanied by looting of property belonging to Serbs. Croatia is nevertheless still paying a high price for letting this exodus happen. Croatia, conditioned by the international community, particularly in the course of the EU accession process, is required to ensure resources for the sustainable return of the Serb refugees to former Krajina.

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164 Višnja Starešina, op.cit., 38.
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