

CHAPTER 4

PROSPECTS FOR PEACE

The Peace Proposals

4.1 The Department of Foreign Affairs and Trade reported to the Committee that up to 12 October 1995 there were some 35 attempts to halt the fighting, none of which lasted very long.¹ The attempt to find a solution to the conflict in the former Yugoslavia was plagued by a number of factors:

- by differences of approach between the individual powers of Europe² and between the Europeans and the United States³;
- by ambivalence as to whether it was a problem to be resolved at a regional level or by the UN;⁴
- by both myths and historical truths about the impossible nature of Balkans wars and Balkans politics; and particularly
- by a lack of willingness on the part of the belligerents to agree to peace plans while they thought there was advantage to be gained by fighting.

The Hague Peace Conference - September 1991

4.2 The first European conference to try to find a settlement was chaired by Lord Carrington. It sought to develop a comprehensive plan which would encompass the whole of the former Yugoslavia, offering independence to each of the republics combined with guarantees for minority rights. It was voted for by the presidents of each of the republics except Serbia. Montenegro which voted for independence at the conference was 'persuaded' by Serbia to reverse its vote retrospectively. This was the last opportunity to settle the whole question of the dissolution of Yugoslavia in a comprehensive and relatively peaceful way. The failure to do so resulted in the piecemeal dissolution of the country and a tragic and protracted war of attrition in Bosnia.

1 DFAT *Submissions*, p. 9.

2 Germany's attitude to the demands for independence on the part of the Croats and Slovenians was more sympathetic than that of Britain and France, who preferred to support the Serbian view of a united Yugoslavia or sought an overall settlement to the disintegration of Yugoslavia. David Anderson, *The Collapse of Yugoslavia: Background and Summary*, Parliamentary Research Service, Research Paper No 14, 1995-96, p. 20.

3 The US pushed for tougher measures by the UN but France and Britain, with troops in the field, were reluctant to become more aggressive and were cautious about UN troops asserting their right to retaliate if under fire, *ibid.*, p. 13.

4 David Anderson argues that the European Community dismissed the crisis in the critical period 1987-1990 when intervention might have been most effective and then after May 1991 seized upon it as an opportunity to assert itself as the 'premier security institution in Europe'. However the EC lacked the appropriate instruments to deal with the crisis and began to hand its tasks to the UN by the end of 1991. *ibid.*, p. 20

The Lisbon Agreement - March 1992

4.3 Portugal, as Chair of the EC, convened talks on Bosnia-Herzegovina in February 1992. An agreement was signed by leaders of all three ethnic parties in Bosnia on 18 March 1992. It organised Bosnia into three territorial units and power was to be shared between the three groups, Bosnians, Serbs and Croats. The President of Bosnia, Izetbegovic, reneged on the agreement within a week for reasons that are still unclear - unhappiness with the ethnic partition implied in the three way split, the promise of United States' support for recognition of Bosnia within the original boundaries or other promises of support from the Middle East. The objection of the Bosnian Government to this plan is consistent with the later rejection of the Owen-Stoltenberg Plan.

The Vance-Owen Plan - January 1993

4.4 In August 1992 at a conference in London, an attempt was made to resolve the rivalry, confusion and tension which had developed over the respective roles of the UN and the European Community. The London Conference created a permanent conference on Yugoslavia based in Geneva, the International Conference on Former Yugoslavia (ICFY) in which David Owen represented the EC and Cyrus Vance represented the UN. In January 1993 after eight months of war and four months of negotiations, Vance and Owen presented a peace plan for Bosnia. It divided Bosnia into 10 provinces each with ethnically mixed groups. It was the last attempt to preserve truly the unity of Bosnia-Herzegovina.

4.5 David Owen had gained the support of President Milosevic and, during the negotiations in Athens, also of Mr Karadzic, leader of the Bosnian Serbs. The plan was agreed to by the Bosnian Croats and reluctantly by the Bosnian Government. However, the new United States administration failed to support it and were not prepared to assist in the necessary implementation force needed on the ground. This significant withdrawal of support by the US encouraged a waning of support on the part of the European partners in NATO.⁵ In the end the Bosnian Serb assembly rejected it. All later plans began with an assumption of ethnic separation.

The Owen-Stoltenberg Plan - June 1993

4.6 At a conference in Geneva chaired by David Owen and Thorvald Stoltenberg, Presidents Milosevic and Tudjman reworked the Vance-Owen Plan to produce a plan which again divided Bosnia along ethnic lines into three republics forming a loose union with a federal constitution. It was rejected by President Izetbegovic as a partition of Bosnia and events, namely the intensification of the war between Croat forces and the Bosnian Government, overwhelmed any serious consideration of it as a solution to the war.

5 After a meeting at the UN with Warren Christopher, Lord Owen reported to the Foreign Office: 'Lord Owen seriously dismayed by performance of Secretary Christopher ... this lack of clear American support is seriously undermining the negotiating position.' Exhibit No. 21, *Transcript of BBC Panorama, A Peace without Honour, 30 October 1995*.

The Contact Group Plan - July 1994

4.7 In April 1994 the European Union/United Nations negotiating group, ICFY (International Conference on the Former Yugoslavia), was replaced by the Contact Group which included the Russian Federation. Members of the Contact Group were the US, Russia, France, the UK and Germany. The Contact Group's Plan was built upon the newly formed Bosnian-Croat Federation formed at the end of the Bosnian Croat war. Fifty-one per cent of the territory was allocated to the Bosnian-Croat Federation and 49 per cent was allocated to the Bosnian Serbs, a reduction from the 70 per cent of territory they had taken during the war.

4.8 The rejection of this proposal by the Bosnian Serbs led to a rift in the relations between the Bosnian Serb leader Radovan Karadzic and the President of Serbia, President Milosevic. The rejection meant a continuation, with some minor adjustments, of the UN imposed economic sanctions which by that time had crippled the economy of the Federal Republic of Yugoslavia and caused the collapse of the currency. President Milosevic closed the border between the Federal Republic and Bosnia thereby imposing sanctions on the Bosnian Serbs.

The Dayton Peace Agreement 1995

4.9 The changed military circumstances of the Bosnian Serbs in August 1995 brought the parties back to peace negotiations⁶. Three major conferences have taken place so far. One in Geneva, 8 September, and another in New York, 26 September, agreed on the basic principles for a settlement. On 5 October, the parties agreed on a ceasefire to come into effect on 12 October. The third meeting took place in Dayton, Ohio, beginning on 1 November and lasting until 22 November when final agreement was reached between all parties. President Milosevic was authorised to negotiate on behalf of the Bosnian Serbs. The peace agreement was signed at a final conference held in Paris in December.

4.10 The basic terms agreed are:

- Bosnia will continue as a single state with full respect to its sovereignty by its neighbours.
- It will have a constitution creating a federal state, a Presidency, a bicameral legislature and a Constitutional Court.
- It will have a central bank and a single currency.
- There will be two administrative zones - the Federation of Bosnia-Herzegovina, 51 per cent and the Bosnian-Serb Republic, 49 per cent.
- Sarajevo will be reunified within the Federation of Bosnia-Herzegovina, it will be open to all the people of the country. Gorazde will be linked to the federation by a land corridor.
- Free and fair elections will be held next year and people displaced by the war will be able to vote in their original place of residence.

6 See Chapter 1, paragraph 1.6.

- The agreement commits Serbia, Croatia and Bosnia-Herzegovina to cooperate fully with the international investigation and prosecution of war crimes and violations of international humanitarian law. The agreement prohibits indicted war criminals from holding elected office .
- The agreement commits the parties to respect internationally recognised human rights, to grant human rights monitors unrestricted access to their territory, to cooperate with the ICRC in the search for missing persons and to release all persons detained in relation to the conflict.
- It creates a Human Rights Commission and a Human Rights Ombudsman with the authority to investigate and act upon human rights violations.
- Refugees and displaced persons will have the right to return home or to obtain just compensation. There will be a Commission for Refugees and Displaced Persons to adjudicate this.
- The agreement obliges all parties to withdraw their forces behind agreed ceasefire lines within 30 days
- The agreement provides for the creation of an implementation force (IFOR), under the command of NATO and headed by a US General. This force is expected to be 60,000 strong with 20,000 troops coming from the United States.⁷
- There will be a comprehensive program of reconstruction assistance.
- A resolution will be introduced to the UN Security Council to lift the arms embargo against all the states of the former Yugoslavia. Trade sanctions against Serbia will be suspended but may be reimposed if Serbia or any other Serb authorities fail significantly to meet their obligations under the peace agreement.⁸

4.11 On 12 November 1995, a separate agreement was signed between the Serbian and Croatian presidents to settle the peaceful reintegration of eastern Slavonia into Croatia within a period of 12 months - or that 12 months period could be extended by a further 12 months if either party requests it. An international force is to be established to oversee the region's demilitarisation and to keep the peace.⁹

4.12 Further conferences are to be held in London to work out the details of the implementation of the civil administration under IFOR and in Bonn to forge a comprehensive arms control regime for the former Yugoslavia. The European Commission in Brussels is also preparing a pledging conference at which governments will decide on details of the reconstruction package for the region.¹⁰

7 This is twice the size of the UN force which nations of the world were prepared to contribute during the height of the fighting in Bosnia. The US was a notable absentee from UNPROFOR.

8 Exhibit No. 20, *Summary of the Dayton Peace Agreement*, pp. 1-2.

9 *Evidence*, 24 November 1995, pp. 162-63.

10 Reuters, 22 November 1995.

Responses to the Dayton Peace Agreement

4.13 Whereas the Dayton Peace Agreement has been greeted with relief and hope by the international community at large, some doubts remain for those who have been most closely involved in events in the former Yugoslavia. For President Clinton, for whom the agreement is a personal achievement, it was 'a chance to turn from the horror of war to the promise of peace ... an historic and heroic choice.' For the Russian President, Boris Yeltsin, it was 'a big step towards a comprehensive settlement of the most tragic conflict in Europe since World War II.' The Secretary-General of the United Nations, Mr Boutros Boutros-Ghali, said, 'The accords announced in Dayton give us hope that peace can now become a reality in the war torn lands of the former Yugoslavia.' Germany, Britain and France all hailed the accords. UNHCR representatives, however, issued a note of warning that the return of refugees would not be easy and that the European powers would need to exercise some patience.¹¹ Kris Janowski, a UNHCR representative, said that 'No minorities whatsoever will go back to Serb controlled areas. [And] ... there's no real commitment to multi-ethnicity in the Bosnian-Croat Federation, let alone in the Serb region where people are still being violently persecuted.'¹²

The Croatian Response

4.14 There has been a mixed reaction from Croatians to the Dayton Peace Agreement. For some ordinary citizens and refugees in Zagreb it offered hope for a welcome end to hostilities and the possibility of returning home.¹³ However, there was a strong note of disillusionment and scepticism for many. Bosnian-Croat and Opposition parties in Zagreb accused President Tudjman of giving away too much to the Serbs, especially in the light of the military gains which the Bosnian-Croatian Federation had made prior to the peace talks. Others were sceptical that there could be any peace when hatreds had become so extreme. For many people there was little hope for any resettlement of refugees.¹⁴ On 28 November 1995 a demonstration of approximately 1,000 people protested the loss of land around Posavina in north eastern Bosnia and part of Croatia's sea coast to the Bosnian Serbs. However, in Australia the Croatian Congress welcomed the peace agreement as a 'vital window of opportunity'.¹⁵

The Serbian Response

4.15 Serbian people from the Federal Republic have been remarkably quiet on the matter of the Dayton Agreement. President Milosevic who negotiated for the Serbs of Bosnia pronounced that the time had come for 'economic recovery and cooperation and for the crippling sanctions against his country to be lifted.' He has pledged to get compliance from the Bosnian Serbs.

4.16 Serbs within Bosnia and those in eastern Slavonia have shown considerable hostility to the agreement. In Vukovar the reaction was one of distrust:

11 *ibid.*

12 The Associated Press, 23 November 1995.

13 Comments from people in the streets of Zagreb such that 'I don't think its the end of the war, but its certainly some improvement.' seemed to be as positive as Croatians were prepared to be.

14 Reuters, 22 November 1995 reported Marina Hranjec as saying, 'It will be difficult to live as neighbours and it will take a long time to heal the wounds.'

15 Australian Croatian Congress, *Submissions*, p. S50.

Mutual hatred is such that no political agreement, nobody's word, nothing can persuade us to live together again.

It's either them or us - no chance of co-existence any more.

Politicians pushed us into this, we accepted and the war took its toll. Now they want everything to stop and everybody to forget. That's impossible ... at least for the majority on both sides.¹⁶

In Bosnia, the agreement was rejected even by one of its negotiators, Momcilo Krajisnik. He described the agreement as a 'big mistake' and the maps as 'bad, servile and in the nature of blackmail.' The leaders of the Bosnian Serbs, Radovan Karadzic and Ratko Mladic, have both rejected the agreement and have encouraged large, noisy and hostile demonstrations against it by Serbs within Sarajevo and in eastern Bosnia.

4.17 The Serbian National Federation of Australia described the Dayton Agreement as 'fundamentally flawed'; it did not 'inspire much confidence as being the basis of a sustainable peace settlement' as it failed 'to accommodate what we perceive to be legitimate Serbian concerns.' In particular, the Federation listed the lack of resolution on the northern corridor linking western and eastern Bosnia, concern over the fate of the 120,000 Serbs in Sarajevo and the fragility of the Bosnian Croat Federation. Mr Radan for the Serbian National Federation argued that the Bosnian Croat Federation was a *de facto* annexation. He said:

The Federation is a fiction. ... If you look at the Croat section, for example, to what extent can you realistically expect any multicultural Bosnia to emerge when in the Croat section, roughly 25 per cent of Bosnia, the Croat flag flies and not the Bosnian flag; Croatian currency is the currency and not Bosnian currency; Croatian laws are applied to its citizens and not the laws of Bosnia-Herzegovina? [A]nd what is more ... there are 12 members in the Croatian parliament representing Croats outside of Croatia, primarily in Bosnia, but also in this country, in Canada and wherever the Croatian community lives abroad.¹⁷

4.18 Finally, the Serbian Federation expressed distrust of the human rights guarantees detailed in the agreement. On the likelihood of the return of refugees, Mr Radan said, 'Quite frankly, I do not think the international community has made a genuine effort to implement its rhetoric on human rights.'¹⁸

The Bosnian Response

4.19 The Bosnian Government has accepted the agreement although what is offered is not greatly different from previous plans which they had rejected in 1992 and 1993. This plan has the advantage of the assurances of the United States which others lacked. The Bosnian President, Mr Alija Izetbegovic, expressed the reluctance and doubt of his people when he spoke after the Paris signing of the treaty:

16 Comments quoted from Associated Press, 3 November 1995.

17 *Evidence*, 24 November 1995, p. 183.

18 *ibid.*, p. 188.

My Government is taking part in this agreement without enthusiasm. ... Bosnia was a patient resigned to swallowing his prescribed medicine. The treaty guarantees Bosnia's unity. But will this truly materialise or just remain a piece of paper.¹⁹

4.20 The people of Sarajevo have reacted with caution, recalling numerous agreements which have 'foundered on broken promises.'²⁰ Nevertheless, in December 1995, there was a notable, large demonstrations in Sarajevo by the citizens of the city wanting to reassure the Serbian population in particular that they were desirous of a peaceful and ethnically integrated city.

Prospects for Peace

4.21 The current agreement offers the best prospect yet for a lasting peace in the former Yugoslavia and so far the ceasefire has largely held. However, by mid January both the Bosnian Serbs and the Bosnian Croats had begun to test the resolve of NATO by kidnapping and sniping in Sarajevo and Mostar. Given the extent of the violence and destruction and the hatreds this has engendered, 'the bitter legacy of the appalling inhumanity',²¹ peace in the long term is by no means assured. Some of the doubts, suspicions and disappointments expressed to the Committee by the different ethnic groups represent only some of the difficulties ahead. The first concern to be considered is whether the twelve month time frame set for the peacekeeping operation will be sufficient to establish a new and firm regime in Bosnia. Beyond that, there are a myriad of issues relating to reconstruction, rehabilitation and the restoration of confidence which are vital to any lasting peace and many of the specifics of the arrangements have yet to be worked out. If not addressed, this agreement will become simply another ceasefire in what one witness before the inquiry described as a conflict stretching back at least to 1914.

Reconstruction Aid

4.22 Parts of Croatia and the whole of Bosnia-Herzegovina have experienced such destruction that the first practical task that must be faced by their governments is the reconstruction of towns and villages, their infrastructure, homes and services. One incentive to the signing of the peace agreement was the promise of reconstruction assistance. Justice Einfeld expressed some scepticism about the reliability of the international community and particularly the United States in fulfilling this promise. He saw it as one element upon which the peace might founder.

They are talking about \$15 billion for the reconstruction of Bosnia. America does not have \$15 billion and it is most unlikely that Congress would vote for it for Yugoslavia, in my assessment. After leaving Bosnia, I went to Gaza which is where the Americans again bought and brokered peace based on money. Practically no American money is there at all. ... There may be a slacking in the fighting for a

19 *The Age*, 16 December 1995, p. 10.

20 Reuters, 22 November 1995.

21 DFAT, *Submissions*, p. S14.

time, but unless the aspirations and goals of the people in the conflict are addressed, it is difficult to see how it can hold.²²

4.23 In order to ensure the success of the peace agreement, the Committee believes it is vital that the United States maintain its leadership in the process and its commitment to Bosnia through continued support for IFOR, even beyond the initial 12 months, and that assistance for the reconstruction of the country be commensurate with the needs.

4.24 Since the agreement reached in Dayton, a conference has been held in London, beginning 8 December, to consider the reconstruction of the former Yugoslavia. Participants included the Contact Group - Britain, France, Germany, Russia and the United States, the European Union, China and Japan, Egypt and Morocco, Hungary, Macedonia, Slovenia and Croatia as well as representatives of the World Bank and the International Monetary Fund.

4.25 The current cost for the reconstruction of Bosnia is put at \$US6 billion over three years. The World Bank and other international institutions are expected to cover half that sum. The rest of the cost will need to be met by other country donors. Already disagreements have been reported between the United States and the European Union over meeting these costs. The European Union suggested that Western Europe and the United States share the cost; however the State Department spokesman, Nicholas Burns, has suggested Europe should take the lead. The United States, he said, is planning to pay about 20 per cent of the bill. Warren Christopher, US Secretary of State, told a Congressional committee that the US Government was prepared to pay \$US600 million, spread over three years.²³

4.26 Given Australia's close links with the people of the former Yugoslavia, the Committee believes it is important that Australia support the international effort to rebuild each of the countries in the region. (See recommendations in Chapter 3)

The Return of the Refugees

4.27 On the return of the refugees, the peace agreement states:

The agreement grants Bosnia's people the right to move freely throughout the country without harassment or discrimination. It gives all refugees and displaced persons the right to return home and regain their property, or to obtain just compensation for their losses. It creates a Commission for Refugees and Displaced Persons to determine the lawful ownership of property and to adjudicate claims for compensation.

4.28 The fate of the three and a half million refugees and displaced people scattered throughout the former Yugoslavia and the world is perhaps the most complicated problem in establishing peace. Over 700,000 people from the former Yugoslavia are in Europe under temporary arrangements. The permanent settlement of people within Croatia or Serbia, and especially within Kosovo, does not appear to offer good prospects for long term peace either. The economic and social strains of this are already extreme.

22 *Evidence*, 30 October 1995, p. 91.

23 Figures quoted from Associated Press, Brussels, 6 December 1995.

4.29 The response of most people who spoke to the Committee was pessimistic about the possibility of any satisfactory resolution to the refugees' plight. The Department of Foreign Affairs and Trade saw this as a 'key element to a successful peace agreement.'²⁴

4.30 There are many factors which will militate against many successful repatriations. First, the sheer numbers are difficult to contemplate. Second, the hatreds resulting from the brutal process of ethnic cleansing will ensure that the victims will be reluctant to return and that the perpetrators will not want them back, whether from guilt or fear of reprisals or some misguided notion of the importance of ethnic purity. Third, so many of the homes and villages have been destroyed or they are occupied by people who have been cleansed from other regions. And yet, there will be many people who, if unable to return, will find themselves homeless or confined to camps and temporary accommodation for a long time.

4.31 This situation is worsened by the scorched earth policy being practised by both sides in the interim between the ceasefire and the signing of the peace agreement. United Nations observers have reported the practice since the retaking of the Krajina. They have complained to the respective authorities but there has been no abatement.

The practice [of scorched earth] is being carried out on a large scale by Bosnian Croats (HVO, the Croatian militia), who are systematically burning houses in territory due to be handed over to the Serbs. Also several thousand Serbs pulling out of three villages south of Gorazde are burning their homes as they leave them.²⁵

This appears to be a measure of prevalent and uncompromising hatreds and an unwillingness to accept the Dayton Peace Agreement which does not bode well for its successful implementation. UNHCR has warned that unmanageable mass population movements destabilising the region and causing further humanitarian suffering would be harmful to the settlement itself. UNHCR will continue to be the coordinating agency for the repatriation of people. It will be assisted by the International Red Cross. It has requested patience and the resources to undertake the repatriation and the reintegration in an orderly manner taking cognisance of internationally accepted principles.

The Protection of Human Rights

4.32 This war, in its conduct and in its intentions, has been a violation of all the principles of human rights laid down by the international community. It has been so brutal that the legacy fear, suspicion and hatred is particularly acute. Therefore, any expectation of peace must take account of the future protection of human rights.

4.33 The peace agreement sets out human rights protections in considerable detail. There is a requirement for:

- human rights guarantees in the new Bosnian constitution and the acceptance that the European Convention for the Protection of Human Rights and Freedoms will have precedence over Bosnian law in all cases;

24 *Evidence*, 24 November 1995, p. 177.

25 Agence France Presse, 6 December 1995.

- the creation of a Commission on Human Rights comprising a Human Rights Chamber with over half its members appointed by the Council of Europe and an Ombudsman, appointed by the Organisation for Security and Cooperation in Europe (OSCE);
- the Human Rights Chamber will be able to hear human rights cases and complaints and will have the authority to order any of the parties to stop any actions it finds to be in violation of their human rights commitments;
- a Constitutional Court to hear appeals, with three of nine judges appointed by the President of the European Court of Human Rights;
- all parties to give access to the ICRC and to release, without delay, all civilians and combatants who have been held in prison or detention in relation to the conflict;
- all parties to cooperate with the ICRC in finding all missing persons and to allow UN and OSCE monitors full access to Bosnia;
- recognition of the right of free movement of people without harassment throughout Bosnia and the right of return of all refugees and displaced persons to their homes or the payment of compensation for the loss of homes for those unable to return; and
- wide powers to be given to IFOR to supervise repatriation, to arrest indicted war criminals and to respond to any violence against citizens.²⁶

4.34 The Committee believes these are substantial and significant protections which must be implemented fully. They are essential starting points for any long term peace in the Balkans. Peace in the Balkans can only be preserved by recognition and genuine implementation of individual and minority rights. Genuinely establishing human rights at the centre of the constitutional arrangements for the new states of the Balkans will go a long way towards restoring the states' international reputations for civilised behaviour, so damaged by the conduct of these wars.

4.35 The Committee recommends that:

- 11 the Australian Government maintain its commitment to the implementation of the human rights aspects of the Dayton Peace Agreement and that it urge the implementing parties to ensure adherence to these aspects of the agreement.**

4.36 The peace agreement has given a significant role to the European institutions in the implementation and monitoring of human rights in Bosnia. The Committee believes that this is important, especially as the mechanisms of the European Union and the Council of Europe are some of the most sophisticated human rights mechanisms in the world. However, it is disturbing that the authorities in the Federal Republic of Yugoslavia (FRY) continue to refuse to cooperate with the UN Special Rapporteur on Human Rights and with the Office of the High Commissioner for Human Rights and with the European Union human rights

26 Exhibit No 21, *Summary of the Dayton Peace Agreement*, p.9.

mechanisms, particularly the Organisation for Security and Cooperation in Europe (OSCE). Human rights complaints are made in relation to the forcible return and mistreatment of displaced persons, the activities of police and security forces, the independence of the judiciary, media freedom, the use of the media in promoting racial hatred and the treatment of opposition groups.²⁷ The failure of the Government of the FRY to cooperate with the War Crimes Tribunal is a matter of great concern. See paragraph 4.47.

4.37 There are also continuing concerns about the situation of minority groups in the FRY, particularly the Albanian people of Kosovo where repression is severe and claims of abuses are constant. For some years now the Committee has received submissions, Amnesty International reports and reports from the US State Department on the situation in Kosovo. It is a matter urgently in need of dialogue, mediation and resolution. Frequent complaints are also made by other minorities in Vojvodina and Sanjak.

4.38 The Committee recommends that

12 the Australian Government urge the Government of the Federal Republic of Yugoslavia to address the grievances of the Albanian people of Kosovo and the minorities in Vojvodina and Sanjak in line with the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

4.39 In Croatia, human rights problems remain in relation to the protection of refugees and displaced persons (See Chapter 1), the protection of minorities, forcible evictions of minorities from homes and flats, access to citizenship, the independence of the judiciary and the treatment of persons in custody or pre-trial detention.²⁸ Problems have also arisen about the legal limit of 90 days that has been applied to the return of Serbs who have fled from the Krajina. The failure of the Croatian government to stop the burning and looting of homes and villages by Croatian forces in both the Krajina and western Bosnia and to cooperate with the War Crimes Tribunal is particularly serious.

4.40 The Committee recommends that:

13 the Australian Government urge the Government of Croatia to ensure that the guarantees of minority rights set down in their constitution are fully implemented in accordance with UN human rights treaties and the Dayton Peace Agreements, particularly with respect to the rights of minorities and returning refugees to citizenship and property.

4.41 In Bosnia, Amnesty International is particularly concerned to follow up the cases of some 20,000 people who have disappeared during the conflict. Amnesty International says that all sides have been responsible for these disappearances, although most of the perpetrators appear to have been Serbs. The UN Commission on Human Rights has established a special process to determine the whereabouts of disappeared people in the former Yugoslavia; however, like much of the human rights system of the UN, it is an under resourced arrangement, comprising one expert, Mr Manfred Nowak, who has one assistant and has been able to make only one trip to Bosnia in the last year. He has had 5,000 cases

27 DFAT, *Submissions*, p. S25.

28 DFAT, *Submissions*, p. S25.

forwarded to him already.²⁹ Authorities in Bosnia are also refusing access to internationally recognised bodies such as the ICRC which are seeking to find disappeared people.

4.42 The Committee supports the recommendations in Amnesty International's submission that:

14 the Australian Government work within the UN to require all authorities in Bosnia-Herzegovina and the Republic of Croatia and the Federal Republic of Yugoslavia to provide access as needed to the UN Special Rapporteur on Human Rights and representatives of the Commission on Human Rights and of the ICRC; and

the Australian Government support the provision of adequate financial and personnel resources through the UN and other recognised agencies, for the investigation into the disappeared, the inspection of detention camps and alleged grave sites, and the exhumation of bodies.

The War Crimes Tribunal

4.43 International law is weakened by its lack of enforceability. The weakness is most grievously felt when the world sits by helplessly watching carnage on the scale of Rwanda and the war in the former Yugoslavia. In domestic law, the principle which serves to deter a recurrence of crime and preserves order and justice is the certainty of detection and punishment, not the severity of the punishment. The decision of the international community to establish a war crimes tribunal on the former Yugoslavia and Rwanda is an important one. Unlike the Nuremberg Court it is not a tribunal of the victors; it is broadly based and its judges are highly respected jurists, impartial and detached from the conflict and the combatants. If it is successful, it will strengthen international humanitarian law in ways that will greatly improve the prospects for peace in the world.

4.44 On 25 May 1993, Resolution 827 of the Security Council established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the territory of the former Yugoslavia since 1991. The Tribunal was established to investigate, indict and prosecute persons responsible for serious violations of or crimes against international law, including:

- grave breaches of the 1949 Geneva Conventions;
- violations of the laws and customs of war;
- genocide;
- crimes against humanity; and
- command responsibility.³⁰

This Committee recognises that it is unrealistic to expect that this tribunal will be able to follow up all perpetrators of war crimes in the former Yugoslavia; however it is important that the principals, especially those so far indicted should answer the charges made against them.

29 *Evidence*, 30 October 1995, p. 103.

30 DFAT, *Submissions*, p. S27. For further information on International Humanitarian Law, see Chapter 1.

4.45 The Tribunal has been established in the Hague. It is funded from the General Assembly's regular budget, a budget under considerable pressure because of the funding crisis at the UN.³¹ For the first biennium, 1994-95, it was estimated that the Tribunal would need \$US32.7 million; \$US11 million was allocated for the first year. In the first year of operation a staff of 108 posts was provided. In the second year this rose to 260 posts. Eleven judges were elected for a four year term by the General Assembly from lists of nominated judges provided by member countries. The elected Judges were: Mr Georges Abi-Saab (Egypt), Mr Antonio Cassese (Italy), Mr Jules Deschenes (Canada), Mr Adolphus Karibi-Whyte (Nigeria), Mr Germain le Foyer de Castil (France), Mr Haopei Li (China), Ms Gabrielle Kirk McDonald (United States), Ms Elizabeth Odio Benito (Costa Rica), Mr Rustam Sidhwa (Pakistan) Sir Ninian Stephen (Australia), Mr Datuk Wira Lal Vohrah (Malaysia).

4.46 Resolution 827, like all Security Council resolutions, is binding on all member states of the United Nations; therefore all states are obliged to cooperate in the investigation and prosecution of accused persons. This may require a state to identify and locate persons, take testimony, produce evidence, serve documents and arrest, detain and surrender persons to the Tribunal.³²

4.47 Support for the War Crimes Tribunal is not general throughout the UN. It is underfunded. Only 15 of the 185 UN member states have so far enacted legislation which would help the Tribunal function properly and most importantly there is considerable resistance on the part of each of the new states emerging from the former Yugoslavia to meet their obligations as members of the UN. The President of the Tribunal, Mr Antonio Cassese, has warned that:

To allow the Tribunal to fade away ... would ultimately mean that the world community is impotent in the face of terrible human tragedies. ... If at the end of the war, torturers and their victims are treated alike, the war's legacy of hatred, resentment and acrimony will not have been snuffed out ... rather it will continue to smoulder.³³

4.48 So far the Tribunal has indicted 52 suspects; one only is in custody, Mr **Dusko Tadic**, charged with mistreatment, rape and killing of civilians within and outside the Omarska camp. The first indictment was issued against **Dragan Nikolic**, a former commander for a camp for Muslim detainees in Bosnia. The most notable of the other indictments attach to the Bosnian Serb leader **Radovan Karadzic** and his general **Ratko Mladic**, charged with genocide, crimes against humanity and breaches of the war conventions during the attack on Srebrenica. Also charged are **Ivan Santic**, the Vitez mayor, **Pero Skopljak**, the Vitez police chief and **Zlatko Aleksovski**, head of the Croatian Defence Council prison in the Croatian held town of Mostar, **Dario Kordic**, Chairman of the Croatian Democratic Union, and **Tihomir Blaskic**, Head of the Croatian Defence Council, three officers, **Mile Mrksic**, **Veselin Sljivancanin** and **Miroslav Radic** accused of responsibility for the massacre of 261 non-Serbs taken from the hospital at Ovacara near Vukovar and beaten before being executed. One Muslim has also been indicted so far.

31 This crisis is largely occasioned by the failure of so many states paying their dues.

32 DFAT, *Submissions*, p. S24.

33 Reuters, 7 November 1995.

4.49 Despite the requirement inherent in the Security Council resolution 827 and the requirement in the Dayton Peace Agreement that each of the parties 'cooperate fully with the international investigation and prosecution of war crimes and with orders of the War Crimes Tribunal'³⁴ Croatia, the Federal Republic of Yugoslavia and the Bosnian Serbs have all so far expressed contempt for this requirement. Mr Borislav Jovic, Vice-President of the Serbian Socialist Party claimed that there was no extradition provision in the constitution to allow for the indicted to be handed over. The Prime Minister of Croatia, Mr Zlatko Matesa, announced that Croatia would only cooperate with the Tribunal 'within the framework of its national interests' and that those Croatians charged would not be handed over. President Tudjman's contempt for the Tribunal and the international community was indicated by his promotion of one of the indicted, Mr Tihomir Blaskic, on the day the indictment was released.

4.50 The Committee considers that these are serious deficiencies in the commitment of the Governments of the Federal Republic and Croatia to lasting peace in the region.

4.51 The Committee recommends that:

- 15 the Australian Government urge the Governments of the Federal Republic of Yugoslavia and Croatia and the Government of Bosnia to meet their obligations under the Dayton Agreement to 'cooperate fully with the international investigation and prosecution of war crimes' and to surrender suspects in detention whenever the Tribunal requests it.'**

Australia's Response to the War Crimes Tribunal

4.52 In response to this requirement, Australia has enacted the *International War Crimes Tribunal Act 1995* and the *International War Crimes (Consequential Amendments) Act 1995*. This legislation as well as amendments to the *Migration Act 1958*, the *Proceeds of Crime Act 1987* and the *Telecommunications (Interceptions) Act 1979* enables Australia to comply with requests from the Tribunal and to gather evidence and arrest any individuals indicted by the Tribunal.³⁵ The Attorney-General's Department, the Department of Immigration and Ethnic Affairs and the Australian Federal Police are all expected to be able to gather evidence and channel it to the War Crimes Tribunal. At the time of the hearing, the Committee did not believe that satisfactory arrangements were in place to deal with the possibility of the entry of alleged war criminals from the former Yugoslavia into Australia.

4.53 Allegations were made at public hearings of the Committee that war criminals had been sighted in Australia. In response to questions from the Committee, the Department of Immigration reported that they had received only three names which they had investigated. On the first allegation, the Department stated that investigations were made with the ethnic communities, the Department of Foreign Affairs and Trade, the Department of the Prime Minister and Cabinet and with ASIO about the advisability of granting a visa to the man. No objection was raised, although the man was warned not to incite discord as a condition of his entry. On the two other cases the Department reported that investigations found no link between the person sighted and war crimes. However in both cases both the Australian Federal Police (AFP) have been informed of the allegations. In one case further information

34 There is scope for the reimposition of sanctions for significantly failing to comply with the Tribunal; however the lack of political will on the part of the international community is already evident in NATO's announcement that it will not seek out or arrest war criminals. AFP, 29 November 1995.

35 DFAT, *Submissions*, p. S28.

on file at the overseas post has been sought; this will be sent to the War Crimes Tribunal after examination of the file.

4.54 The Australian Federal Police informed that Committee that a list of 250 names had been supplied to them and placed on the Department of Immigration and Ethnic Affairs Movement Alerts List. This list was made up of names of suspected Yugoslav war criminals listed by the War Crimes Tribunal, names supplied to the UN by Austrian authorities following interviews of 145 Bosnian men liberated from the camp at Trnopolje and names supplied by other international organisations with an interest in the subject.³⁶

4.55 On the question of what human rights protection existed within the process for the extradition of suspected war criminals, the AFP put the view that the *International War Crimes Tribunal Act, 1995* sought to provide a balance between Australia's international obligations to assist the specialist tribunal³⁷ and matters of procedural fairness and individual rights within Australia. They noted that the *International War Crimes Tribunal Act, 1995* was a 'more streamlined' process than that provided for under the *Extradition Act 1988*. It had a more limited role for the Court, although amendments to section 12 of the Act made it clear that a magistrate could only remand a person to await a surrender decision by the Attorney-General if satisfied that the person is the person named in the Australian arrest warrant, and the person is the person named in the Tribunal warrant.³⁸

4.56 Representatives of ethnic communities in Australia and service providers to refugees told the Committee that there was considerable reluctance on the part of some refugees to approach official bodies, despite the belief on their part that they had seen in Australia prison guards from detention camps.³⁹ They were already traumatised by their experiences and feared reprisals against themselves or against their relatives still in the former Yugoslavia. The Committee was told that there was a need for clearly institutionalised protection for people wishing to give evidence and also for those accused.

4.57 The respective Departments were not able to explain clearly to the Committee what procedures were in place to deal with the possible entry of war criminals to Australia; there appeared to be a lack of guidelines. In response to questions from the Chairman and Deputy Chairman, the Department of Immigration and Ethnic Affairs (DIEA) subsequently developed guidelines and informed the Committee that DIEA will be taking the lead as the agency responsible for informing community leaders of the information channels available to people in connection with the sightings of possible war criminals. This will take the form of the names and numbers of DIEA officers in the regions and in Central Office who have been designated as contacts for reports of sightings. Officers will be nominated by the Department to be contact points to receive information. They will seek to obtain names and addresses if possible, advise witnesses that information will go to the Tribunal for investigation and advise that witnesses may be contacted by the Australian Federal Police. It will be the responsibility of the DIEA officers to:

36 Australian Federal Police *supplementary submission*, p. S222.

37 Australia has a duty as a member of the UN to implement decisions of the Security Council under which the War Crimes Tribunal was established. Furthermore persons surrendered to the Tribunal would not be surrendered to another state but to an international organisation with the benefit of internationally recognised procedural and legal safeguards. *ibid.*, p. S224.

38 *ibid.*, p. S225.

39 *Evidence*, 30 October 1995, p. 80.

- liaise with the AFP to ensure that their investigative officers are aware of cultural sensitivities and language difficulties;
- coordinate all sightings reported to DIEA for appropriate referral;
- undertake basic checking of databases and files and seek background information from security agencies as appropriate;
- in the case of indicted persons, pass all information to the International Division of the AFP for action and copy to the Attorney-General's Department; - if initial checks indicate a likelihood that a person has breached migration laws, and would therefore be subject to cancellation procedures, DIEA will coordinate its activity with the AFP to ensure it does not undertake action which could prejudice any investigation which the Tribunal or the AFP intends to make;
- in the case of persons not indicted, pass all information to the Tribunal through the Australian Embassy in the Hague, and copy to the AFP and the Attorney-General's Department for information; - if initial checks indicate a likelihood that a person has breached migration laws, and would therefore be subject to cancellation procedures, DIEA will coordinate its activity with the AFP to ensure it does not undertake action which could prejudice any investigation which the Tribunal or the AFP intends to make;
- if allegations are proven, DIEA will consider options in consultation with the Attorney-General's Department, including the cancellation of visas.⁴⁰

4.58 The Committee welcomes these developments. However, while these procedures appear to be comprehensive and a significant improvement on what was previously in place, there is still scope for greater assurances of privacy and confidentiality to be offered to witnesses, most of whom will be traumatised by their experiences and fearful of reprisals.

4.59 The Committee proposes to monitor the progress of arrangements put in place to fulfil Australia's obligations under the *International War Crimes Tribunal Act, 1995*. Therefore the Committee recommends that:

16 the Minister responsible for the operation of the *International War Crimes Tribunal Act, 1995*, the Attorney-General and/or the Minister for Immigration and Ethnic Affairs, report to the Parliament on this matter on an annual basis for the next three years.

4.60 It was in response to this fear and this need that the Australian Committee of Investigation into War Crimes (ACIWC) was established. ACIWC is an incorporated non-government organisation, made up of unpaid volunteers with expertise in law and social sciences. This committee seeks to assist the Tribunal in the Hague by gathering evidence from former refugees in Australia and to establish rape and sexual assault as a violation of international criminal law. The group explained their processes to the Committee and

40 DIEA, *Submissions*, pp. S174-75.

emphasised that they offered a highly confidential screening service, which had been approved by the Tribunal in the Hague.⁴¹

Conclusion

4.61 This Committee believes that there can be no lasting peace without justice and reconciliation and that recognition of the wrongs inflicted on the other party rather than an emphasis on grievances is an essential part of reconciliation. What is most disturbing about the dispute in the former Yugoslavia is the continuing determination on the part of the major players, Croatians and Serbs, to excuse or ignore their own culpability in the conflict and stridently accuse the other side or the international community. Self-justification rather than reconciliation remains the prevailing mood. The leaders of Serbia and Croatia and particularly of the Bosnian Serbs, who must bear much of the responsibility for the war, continue to stir nationalist grievances or refuse to cooperate in vital areas of the peace process.⁴²

4.62 A willingness to cooperate with the International War Crimes Tribunal would indicate a huge step towards reconciliation and peace. There is a responsibility on the part of all the leaders of the Balkans states to repair some of the damage they have inflicted upon their people. They cannot do that without admitting to and bearing their responsibility for the disaster.

4.63 The Committee hopes that the peace signed in Paris on 14 December 1995 will endure; that the now independent states which once comprised Yugoslavia will begin to rebuild themselves within their internationally agreed borders; that territorial ambitions will be permanently put aside in favour of mutual recognition and that the leaders of the individual states will see that it is in their interests to lead their people towards prosperity and mutual understanding rather than an exaggerated sense of their differences.

**ROGER PRICE, MP
CHAIR**

41 *Evidence*, 27 October 1995, p. 44. For those people who wish to understand the work of this committee, they should go to submission No 3, Volume 1, Submissions and Incorporated documents for this inquiry.

42 One exception to this was the Statement by the Croatian Foreign Minister to the Croatian Parliament in December 1995 when reporting on the Dayton Peace Agreement. He noted that atrocities committed by Bosnian Croat and Croatian forces had weakened Croatia's negotiating position at the conference table.

