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PRE-ELECTION STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

Zagreb, Croatia
April 4, 1997

I. THE DELEGATION AND ITS WORK

This pre-election statement is offered by a delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited the Republic of Croatia March 17 through March 22, 1997. The purposes of the delegation were to demonstrate the interest of the international community in the democratic process underway in Croatia, and to examine preparations and conditions for Croatia's April 13 elections.

This assessment delegation included Edward R. McMahon, NDI Senior Program Officer and a member of the Institute's 1995 pre-election assessment delegation to Croatia and numerous election observer delegations to other countries, and Henry T. Berger, an American lawyer, specializing in election issues, who has participated in NDI election law reform programs and election observer missions in Eastern Europe and Africa.

The delegation was charged with several tasks: (1) to assess the legal framework for the elections in light of international standards for fair electoral competition; (2) to review the state of preparedness of the electoral administration; and (3) to gauge the political environment surrounding the elections and the degree to which the public is being notified about the electoral process and about the candidates so that they may make free and informed choices. In addition, the delegation conducted its assessment in light of findings and recommendations concerning Croatia's 1995 elections presented by NDI's 1995 pre-election delegation and election observer delegations organized by the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). The delegation's activities were conducted in accordance with recognized standards for international election observation, which is now accepted throughout the world. The delegation did not seek to interfere with or to certify the election process, and it recognized that ultimately it is the people of Croatia who will judge the fairness of the electoral process.



The pre election delegation conducted meetings in Zagreb and Karlovac with government officials responsible for administering the elections, leaders of the governing party and opposition parties competing in the elections, representatives of nongovernmental organizations concerned with the electoral process, members of the news media, representatives of the diplomatic community and international organizations monitoring the electoral process. The delegation did not include Eastern Slavonia in its assessment and therefore did not address issues, electoral or otherwise, related to reintegration of that territory into Croatia.

The Institute sent a pre-election delegation to Croatia in 1994 to assess the general political environment facing the country's democratic transition. The Institute also sent a pre-election delegation in advance of the country's 1995 elections. Since 1995, NDI has provided technical assistance to Croatia's political parties concerning issues of long-term organizational development and recently has assisted in the training of party pollwatchers for the upcoming elections. The Institute has also advised nonpartisan Croatian civic organizations seeking to monitor the electoral process. NDI maintains permanent offices in Zagreb and Osijek to assist these efforts. While the activities of NDI's pre-election delegation were distinct from its other programs in Croatia, the visits of NDI staff to different parts of the country over the last several months helped in providing background information for the delegation.

II. SUMMARY FINDINGS

The April 13, 1997, elections mark the fourth time that Croatia will have held nationwide elections since declaring independence in 1991. The three preceding elections took place against the background of the breakup of the former Yugoslavia. The conduct of the upcoming elections, and of presidential elections planned for later this year, present important tests of the country's commitment to democratic practices and institutions.

The April 13 elections offer voters the opportunity to choose representatives for three levels of government: (1) city/municipal authorities; (2) county ("Zupanije") offices; and (3) the House of Counties, parliament's upper chamber. Officials at the first two levels of government exercise jurisdiction over matters such as housing, public utilities, child care and social welfare. The House of Counties, while essentially an advisory body, has the power to propose bills and to provide opinions on legislation to the Chamber of Representatives, which is not up for election at this time. In these elections, 25 percent of the seats for local offices will be single-member districts, while 75 percent will be awarded proportionately. All of the House of Counties seats are proportional.

NDI's delegation finds that authorities responsible for electoral administration have once again demonstrated the capacity to organize technical aspects of the elections. And the delegation is encouraged by the broad participation of political parties and by invitations extended to international observers. At the same time, the delegation notes that serious problems, identified by international observers during the 1995 election process, remain unaddressed.

In particular, the delegation is concerned that:

- (1) nonpartisan, independent election monitors from a coalition of Croatian civic organizations have thus far been denied accreditation by electoral authorities;
- (2) changes to the election law, once again, were promulgated without significant public discussion, and the electorate has not been adequately informed: (a) that party leaders' names appear on proportional ballots, rather than the names of candidates; and (b) that changes have been made in electoral districts and polling locations;
- (3) credible reports about unbalanced news coverage and inadequate media access for political contestants pose obstacles to fair electoral competition.

The delegation hopes, as expressed in the recommendations offered below, that these matters can be promptly and effectively addressed by Croatian authorities in order to improve conditions for electoral competition and heighten public confidence in the electoral process.

III. ISSUES RAISED BY OBSERVERS TO THE 1995 CROATIAN ELECTIONS

In 1995, NDI sponsored an international delegation that assessed preparations for parliamentary elections; the Council of Europe and the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) sent international delegations to observe the voting. While observers pointed out positive aspects of the process (i.e. capable election administration, active participation by political parties and candidates, peaceful voting process), one or more of the observer groups raised specific concerns that are relevant to the current electoral process.

These concerns included the following:

- restrictive regulations on political party observers;
- the prohibition on nonpartisan, domestic observers;
- passage of electoral legislation without public debate;
- media bias, particularly by the state controlled Croatian Radio and Television (HRT) (problems of media bias were also raised by observers as early as Croatia's 1992 elections);
- limited access to the media for opposition political contestants;



- disproportionate representation in the parliament by members of the Croatian diaspora, which advantaged the governing party;
- arbitrary reduction of legislative seats reserved for the Serbian minority following their departure from the Krajina after Croatian military operations.

In 1995, the NDI delegation recognized that Croatia was in the very early stages of its democratic transition and that political reform had been affected adversely by the tragic war in the region. The fact that many of these problems persist 18 months later, however, raises questions about a genuine commitment to open, competitive elections. If safeguards in the system are not significantly strengthened, citizens may lose faith in the electoral process and the development of democratic institutions in Croatia will be threatened.

IV. 1997 ELECTION

A. Election Monitoring

International Observers. International delegations have once again been invited to observe the April 13 elections. This illustrates a willingness to open the election process to the international community and meets partially Croatia's obligations concerning election observation under the OSCE's 1990 Copenhagen Document.

Nonpartisan Domestic Observers. Croatian authorities have thus far refused accreditation of independent election observers from Croatian nongovernmental organizations. Paragraph 8 of the OSCE's Copenhagen Document notes the significance of both foreign election observers *and domestic election observers* "from appropriate private institutions and organizations..." The failure to accept the legitimate role of such domestic observers from Croatian civic groups would be inconsistent with Croatia's obligations as a Participating State of the OSCE.

Croatian authorities have provided for international election observers through promulgation on February 14, 1997 of "Mandatory Instructions OLS-IV" for implementation of the election law, even though the law itself does not specifically provide for international observers. It would therefore be within their authority to issue instructions to accredit Croatian election observers from nongovernmental organizations. Such observers help to raise public confidence in the election process by reporting on sound electoral practices, deterring irregularities and providing accurate election information to the public.

Political Party/Candidate Monitors and Representatives. The national Election Commission issues "Mandatory Instructions" for implementation of the election law. "Mandatory Instructions OLS-IV" set forth detailed provisions for registered political parties and groups of voters who propose candidates to designate monitors to observe the work of election bodies in the run-up to the elections, on election day and in the complaints process.

In addition to party/candidate monitors, "Mandatory Instructions OZ-IV" provides for one representative of the governing party and one representative for all of the opposition parties to participate, in non-voting roles, in the work of electoral bodies -- from the national Election Commission down to the polling stations' Election Boards. Such representatives may participate in discussions along with members and deputy members of the electoral bodies, rather than simply acting as observers for parties and candidates. This provides a potentially important avenue for participation of political contestants in the work of the electoral bodies.

Opposition parties, however, are required to select their representative to each body by agreement, or selection will be decided by lottery. The governing party, however, automatically gets a representative on each body. This presents an apparent disproportionate advantage to the governing party. While the number of political parties may make it administratively difficult to allow each to have a representative at every election body, and notwithstanding the positive role of party/candidate observers attending the sessions of election bodies, the number of party representatives should be increased to allow a broader range of views to be presented in discussions of the electoral bodies.

The delegation also notes that the opposition parties have not fully met the challenge of defending their own interests on issues of electoral administration. While they have undertaken some notable efforts to ensure a more level playing field for electoral competition, such as the successful court action to secure coalition parties the same media allotments as those available to unallied parties, opposition parties have allowed changes to the electoral system to proceed without serious challenge. In addition, opposition parties have not yet placed all of their representatives on electoral bodies as non-voting participants, and they have not mounted comprehensive efforts to mobilize party/candidate monitors for the polling stations on election day.

B. Electoral Preparations, the Campaign Environment and Voter Education

Authorities responsible for the elections appear capable, once again of organizing technical aspects of the elections, and administrative preparations for election day appear to be on course. Copies of protocols from the polling stations will be made available to observers on request. This is a notable safeguard for the integrity of the electoral process and helps to ensure public confidence in official election results.

The election environment is generally peaceful. There is broad based participation in the elections by political parties, and political contestants are actively and freely campaigning throughout the country. There were, however, numerous and credible complaints that focused principally on the news media.

In January 1997, new municipalities were created and county boundaries were altered, changing the constituency of some municipalities. In February 1997, just prior to announcing the elections, boundaries for single member districts were presented to and voted upon in parliament. This followed a July 1996 change of the number of representatives of

city/municipal and county officials selected by proportional representation from 50 percent to 75 percent. As noted in the OSCE/ODIHR 1995 report on Croatia's elections, such changes "reinforce a pattern of changing election regulations in each election since 1990, creating an unstable and unpredictable environment in which political parties in Croatia compete for election."

Media Access. A recent court action by several opposition political parties resulted in a ruling that provides all parties, whether or not they are in coalitions, with the same allotment of television time to present messages and to respond to questions. This is a positive development both as it equalizes access to the media and demonstrates the ability of political contestants to seek redress through complaint mechanisms.

Provision of equal time on the state-controlled broadcast media for the political contestants to present messages, however, does not automatically address all media access issues. There are 45 parties and independent groups contesting the elections. There should be sufficient time for each to present messages that allow the voters to understand their positions on important electoral issues and to differentiate among the contestants.

Moreover, international standards for freedom of expression strongly disfavor prior restraints, such as subjecting messages of political contestants to censorship before broadcast, and demand latitude for respectful presentation of differences of opinion among the contestants for office. These standards conflict to a significant degree with past official interpretations of Croatian restrictions that prohibit political contestants from "attacking" or "underestimating" other parties or their representatives. While it is appropriate to guard the rights of political contestants from false and malicious statements, such protections should not restrict legitimate and robust political debate. In addition, the delegation was able to review questions used in an HRT program to highlight political parties, and was concerned that they address national rather than local issues and appear to be phrased in a way that favors government policies and priorities. More neutral questions and a less restrictive format could better inform the electorate about the differences among the political contestants.

Since opposition parties have limited financial resources, the governing party is likely to benefit disproportionately from the opportunity to buy political advertising at regular commercial rates, charged by Croatian Radio and Television (HRT). In Croatia, private broadcast media exist but play little role in providing political discourse, while state-controlled broadcast media play such a role. Under those conditions, it may be appropriate to consider measures to assure equitable access to paid political advertisement through subsidies or by placing limitations on the amount of time a party may purchase.

Unbalanced News Coverage. There were numerous reports from political contestants, journalists, members of the international community resident in Croatia and others following the election process, that news coverage of political parties, issues of import to the elections and government personalities, particularly as presented on state-controlled radio and television, favors the governing party.

While providing media access to political candidates to present messages to prospective voters is an important and positive factor in electoral competition, such access can easily be undermined -- if not overshadowed -- by bias in news coverage. Considerations of freedom of expression should limit a government's ability to control private and independent media, although guidelines for fair coverage are not inappropriate for such media. The government has an obligation, however, to ensure accurate and nondiscriminatory coverage of all political contestants in state-controlled media. This obligation flows from the political contestant's right to free political expression and from the voters right to receive accurate and sufficient information in order to make a free choice at the ballot box. The delegation therefore recommends that immediate and effective steps be taken by Croatian authorities to establish balanced news coverage throughout the election period and between elections.

Voter Education. Voters will cast five separate ballots in the April 13 elections. These include ballots for: single member districts for city/municipal offices; single member districts for county offices; proportional lists for city/municipal offices; proportional lists for county offices; and proportional lists for the upper house of parliament. In addition, the election law allows a party to designate a leading party personality ("list bearer") to appear on proportional list ballots even though that person is not standing for election. A further complicating factor is introduced by the practice of including deputies on the candidate lists along with candidates who are well-known to voters but who hold higher offices. By law, if a party receives enough votes to award a seat to such a person that individual would be required to resign from the higher office (an unlikely event) or decline election in favor of the deputy. Lists do not appear on the ballot but are made public. Thus voters could be confused about the effect of casting a ballot for a particular party.

These factors, in addition to issues raised by changes to electoral boundaries, create a need for widespread and vigorous voter education. The delegation was seriously concerned that such efforts were not yet underway. Political parties may conduct voter education to protect their interests, but effective and timely voter education from election authorities is urgently required.

V. SUMMARY RECOMMENDATIONS

The delegation noted certain positive elements of the pre-election environment, electoral organization and the legal framework for the elections. In the spirit of international cooperation, the delegation offers the following recommendations to enhance confidence and participation in these and future elections:

1) **Nonpartisan Croatian Election Observers:** In order to heighten public confidence the elections, provide increased citizen participation to enhance the integrity of the election process and fully meet international standards under the OSCE's Copenhagen Document, "Mandatory Instructions" should be immediately issued authorizing independent election observers from Croatian nongovernmental organizations.

2) **Media Access and Fairness:** Immediate steps should be taken to guarantee equitable access to the media for all political contestants to present meaningful messages to prospective voters, as described above. Freedom of political expression necessary for robust political competition should be ensured and unnecessary restrictions on such expression lifted. Immediate and effective steps also should be taken to ensure accurate and balanced news coverage on state-controlled broadcast media. Voluntary guidelines for such news coverage should also be considered for other media.

3) **Voter Education:** Vigorous nationwide voter education should begin immediately and continued throughout the entire pre-election period through all mass media. Such a voter education campaign should address: the types of ballots; the true meaning and effect of a "list bearer's" name appearing on a ballot and the likely result for this election of persons holding higher office appearing at the top of party lists; and the delimitation of electoral boundaries and polling station locations. In addition to such information, it may be advisable to address the nature and powers of the offices to be decided in this election as well as the importance for the nation of voting on April 13.

The delegation greatly appreciates the hospitality extended to it by governmental officials, political party leaders and candidates, leaders of nongovernmental organizations, members of the media and civic leaders. The delegation could not have accomplished its tasks without the generous cooperation of those with whom it met. NDI remains committed to assisting those who are working to advance the democratic process in Croatia. NDI will continue its activities in Croatia through its staff presence throughout the election and immediate post-election periods. Further reports may be issued as part of these activities.

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