

Forum Column

Gotovina Should Get Lawsuit Protection From Washington

By V. M. Raguz

The Bush administration has determined how it will protect U.S. citizens from potential politically charged lawsuits filed at the International Criminal Court and similar courts: nonrecognition. It also is signing the so-called Article 98 agreements with friendly states that prevent the transfer of U.S. citizens and select noncitizens serving abroad to such institutions. So far, it has signed on 35 countries.

However, Washington has yet to formulate a policy to protect all of its worldwide employees from similar hazards, let alone its foreign agents and allies.

At a time when Washington will need foreign proxies to help fight its war on terrorism and will rely on friendly governments, such as Poland, to support U.S.-led solutions in Iraq and elsewhere, this policy gap must be filled quickly.

An opportunity to move in this direction exists with the case of Croatian General Ante Gotovina, who is under indictment at the International Criminal Tribunal at The Hague.

Gotovina was an operational U.S. agent on the ground in 1995, when his troops were used to break the siege of the U.N. safe area of Bihac by Serb General Ratko Mladic. He was used later as a ground advance component to supplement the U.S.-led NATO bombings of Serb troops in western Bosnia.

This joint action altered territorial control in Bosnia between the Serbs and the Muslim-Croat coalition close to a 49-51 split, as envisioned in the peace plan on the table at that time, which was later concluded in Dayton.

Western policy on Bosnia was in disarray in 1995, and inaction at Srebrenica, where 6,000 mostly noncombatant men were massacred, reinforced its haplessness. The Europeans were gearing up for complete withdrawal from Bosnia. The United States was preparing a peace plan that would have severed the country in two. Then, in July 1995, the government in Zagreb proposed a plan to deblockade Bihac and offer Bosnia a chance for survival.

A Washington Post editorial Aug. 1, 1995, three days before Croatia commenced Operation Storm, stated: "All along, the United States and its allies have been looking for a force - other than themselves - that could check Serbian and Bosnian Serb adventurism and produce a military balance on which a realistic settlement could be built. Maybe such a force is now emerging: Croatia."

Washington gave Zagreb a clandestine green light - in order not to anger the other permanent members of the Security Council - and jumped in with assistance to ensure that Operation Storm would succeed. It provided the Croats with Predator drone intelligence-gathering facilities two weeks before the operation began and neutralized the Serb communication systems with single-purpose Prowler aircraft on the day it started.

The Hague Tribunal indicted Gotovina on the grounds that Operation Storm was carried out with the intention of expelling Serbs from Croatia. Serbs did suffer because of the operation, but not because of Gotovina's campaign. They were victims of the unrealistic plans of their leaders and, on the day that the operation began, of orders by those leaders to withdraw.

Operation Storm had completely different objectives (one was to save the Muslim community in Bosnia) which the United States aided. In that respect, Gotovina is innocent. Washington has ample evidence that would overturn the indictment.

In the past, the Clinton administration hesitantly accepted the fallacious charges of the tribunal for a number of reasons. They included the convenient "all sides are equally guilty" policy objectives in the region, the administration's unconditional support for the tribunal which it saw as a forerunner to the International Criminal Court, and the traditional U.S. firmness in not sharing intelligence in order to protect its sources and methods.

However, the Clinton policy objectives regarding the Balkans and the International Criminal Court no longer are relevant. Moreover, because overcoming obstacles that would make potential agents and allies diffident at a crucial time is becoming more important, the Bush administration needs to find ways to improve its credibility. Gotovina's case, if not handled properly, could end up being a negative precedent and hurting U.S. efforts worldwide.

Washington should relax its intelligence safeguarding rules where necessary, which would solve the problem for Gotovina. Other steps should be considered, such as refocusing State Department consistency on the subject and extending Article 98 protection to all U.S. employees and relevant foreign nationals.

Gotovina was, in the language of some Article 98 agreements, a "contractor" and would be entitled to protection. The same should be true for the Polish soldiers and officials in Iraq; Poland does not yet have the international weight to fob off possible future lawsuits at the International Criminal Court and other venues.

Clearly at issue is not only Gotovina but many other men and women around the world who are taking on the burden of serving U.S. interests in fighting terrorism and are at risk of falling victim to governments and international bodies that are, at times, hostile to any and all use of force.

Also at issue are other U.S. allies such as top Israeli officials. Ariel

Sharon already is facing judicial harassment in Belgium and elsewhere by those who would like to warp international law to limit the right of national self-defense and to harm the strength of the United States by indirectly indicting America through its friends and proxies.

The Gotovina case is interesting because it is easy to substantiate and crucial because it would send a message that those who serve the interests of the United States, and serve them with honor, can count on equal protection from wrongful lawsuits, as can U.S. citizens and some employees. This is not much to ask of the United States, and the benefits would be substantial.

V.M. Raguz was ambassador of Bosnia-Herzegovina to the European Union and NATO in 1998-2000.