

## **Arbour Goes Home**

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Tribunal Update 129: Last Week in The Hague (7-13 June, 1999)

Arbour, it seems, could not resist the temptation of such a job and accepted the appointment. In her statement of 11 June, Arbour said that "the decision to accept this appointment has been a very difficult one for me to make." However, Arbour added, the decision "has been made easier by the confidence that I have that the two Tribunals (ICTY and ICTR) are now successful mature institutions, and that they are considerably greater than the sum of their parts."

Arbour postponed taking up her new post until 15 September so that - as she pointed out - she had "enough time to complete some important on-going projects in the two Tribunals," and to make her contribution "to ensure an easy transition to a new leadership in the Prosecutor's Office."

Giving her own statement, the President of the Tribunal, Judge Gabrielle Kirk McDonald, said that "Prosecutor Arbour will leave a very different Tribunal from the one she joined three years ago... The number of indictees in custody has more than tripled, as has our capacity to try them.

Against great odds the Tribunal and the principles on which it is founded are beginning to prevail, ensuring that impunity will no longer be the norm. This is due in no small part to the Prosecutor's determined pursuit of indicted persons and those who would offer them shelter. She has discharged her mandate bringing the full force of her considerable legal skills to bear on the unique challenges faced by the Tribunal."

Calling her departure "unfortunate", Arbour's deputy Graham Blewitt said Friday that "there is no doubt we are going to lose a very strong, independent, articulate and knowledgeable Prosecutor", who has adopted "courageous positions" in her dealings with politicians. "It is our hope that the Security Council will look for another Prosecutor with similar qualities," Blewitt said.

This, however, could be the biggest problem with Arbour's departure. It is apparently ever more obvious now that China and the Russian Federation - two permanent member states of the Security Council which were among the Tribunal's "founding fathers" - have recently been having second thoughts in respect of their judicial offspring.

Both countries believe that certain actions taken by the Prosecutor - such as the indictment of the President of Yugoslavia, Slobodan Milosevic, and four of his collaborators - was politically motivated. But the heart of their objection appears to be the fact that the 'motivation' came from the West, rather than from them.

Even if such second thoughts are not of a recent origin (see previous Tribunal Updates for a rundown of vehement Russian reservations about the practice of sealed indictments, introduced by Arbour), they were clearly expressed last week, during the discussions and adoption of the Security Council Resolution 1244 on Kosovo. The Resolution contains two paragraphs devoted to the Tribunal, one in the Preamble and the other in the operational part of the Resolution. They read as follows:

"G. Recalling the jurisdiction and the mandate of the International Criminal Tribunal for the Former Yugoslavia; "14. [The Security Council] Demands full cooperation by all concerned, including the international security presence, with the International Criminal Tribunal for the former Yugoslavia;"

Both paragraphs are merely a confirmation of what was already said in numerous Security Council Resolutions, including the ones on Kosovo that were voted for by both Russian Federation and China. This time around, however, the two members of Security Council have problems with those same formulations.

Russia, which had participated in the drafting stages of the Resolution, persisted in trying to exclude any reference to the Tribunal up until the final draft. Representatives of the seven Western industrial powers were, for once, not ready to compromise at the expense of justice. The only concession to Russians, given under their insistence, was the deletion of the reference to the indictment of President Milosevic in paragraph G of the preamble.

One of the reasons quoted by China for its abstention in the voting for the Resolution, were references to the Tribunal and, particularly, to the indictment of Milosevic. "We believe that indictment is politically motivated," China's representative Shen Guofang said at the UN Security Council.

Russia and China will soon have a new chance to air their reservations about the Prosecution and its "politically motivated" indictments. This will come when UN Secretary-General Kofi Annan submits the Security Council his recommendation for the new Prosecutor.

Each of the five permanent members of the Security Council will be able to veto any of the candidates they disapprove of. Some will certainly see this as an opportunity to rectify the 'mistake' made in May 1993 when Resolution 827 and the Statute of the Tribunal established that the Prosecutor "shall act independently (...) and shall not seek or receive instructions from any Government or from any other sources." China already announced its reluctance to accept a candidate from any of the NATO member-states. It is equally inconceivable that USA, Britain and France would accept a Prosecutor coming from China, Russia or Belarus.

"It is difficult to foresee the Russian or Chinese behaviour in the selection of the new Prosecutor," said Blewitt last week. He, however, conceded that - despite reservations - specific references to the Tribunal still remain in UNSC Resolution 1244. He concluded: "I take some comfort in the fact that the Security Council continues to support the work of the Tribunal."

**Location:** [Balkans](#)  
[China](#)  
[Stavropol](#)  
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