

Croatian Minister Presents The 'White Book' To Tribunal

Author: IWPR

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The White Book, a reply to Tribunal president Gabrielle Kirk McDonald's own report to the Security Council, has been presented to the member states of the Security Council, and last week to the Tribunal itself.

From a brief insight, Tribunal Update gained the impression that it details Croatia's genuinely exemplary cooperation in the investigation of crimes whose victims were Croats. For example, it reports that thanks to material evidence submitted by Croatia, the Tribunal prosecution was able to issue indictments against Milan Martić (the shelling of Zagreb), Mile Mrksić, Veselin Sljivčanin, Miroslav Radić and the late Slavko Dokmanović (the Vukovar Hospital indictment); Zeljko 'Arkan' Raznатовić, (under a still sealed indictment) and two indictments against Bosnian Serb general Ratko Mladić.

On the other hand, Croatia demonstrated much less enthusiasm in cooperation in the investigations whose alleged perpetrators were Croats and whose victims were non-Croats. This included, for example, investigations into Operation Flash and Operation Storm, the recapture of then Serb-held Western Slavonia and Krajina. These battles are interpreted in Croatia's White Book, as conducted outside an "armed conflict" - i.e. as operations of a "legitimate, military-police character" - and therefore a matter for the Croat judiciary, not the Hague Tribunal.

Croatian Justice Minister, Zvonimir Separović, came to the Tribunal three times last week, first, on Tuesday, to hand over a copy of the White Book to Tribunal Registrar Dorothee de Sampayo. The next day he held "constructive and positive" talks with Tribunal president McDonald and then was the first foreign official to meet new Chief Prosecutor, Carla Del Ponte, on Friday.

Separović emerged from all those talks glowing, announcing that all current problems Croatia presently has with the Tribunal "will be solved at a legal, and not a political level" - that is, before some legal forum, not before the Security Council.

At the same time, the Minister did not try to hide his bitterness at the numerous Croatian journalists who followed his visit to The Hague, accusing them of "scandalous" reporting and "ill-boded expectations" that his mission would be a failure. Instead, he said, "the best happened," telling the astounded journalists that "all responsible people (at the Tribunal) have received us, heard us, and now they still think the way they thought before".

Deputy Prosecutor Graham Blewitt confirmed on Friday that the Minister was right and that the Office of the Prosecutor (OTP) indeed thought the same way after his visit. "On this point there continues to be a problem or a dispute between the OTP and Croatia," Blewitt said. "Croatia is still maintaining that the Tribunal has no jurisdiction over operations Flash and Storm. As a result of the meeting - no solution was found."

The current proposal being put to the Tribunal by the Croatian authorities, he explained, "is that there be some form of independent opinion as to the Tribunal's jurisdiction over Flash or Storm. For us that is such a fundamental issue that we just can't compromise on that point... As we pointed out to the minister, it is such a fundamental issue that the prosecutor is not able to take instructions from anybody."

"We are subject to any decision of the Security Council," he added, "but the Security Council is not equipped to make such decisions. It's only a political body... For the SC to do so I think would be an interference with the work of the Tribunal. Effectively, the SC has given its ruling anyway. Look at articles

16 and 19 of the (Tribunal's) Statute it is quite clear... that the OTP was given clear powers to commence investigations."

Jurisdiction is an issue, he said, "which is not open to negotiations as far as we are concerned".

Though the Croatians did not make a concrete proposal on which body should solve the issue of jurisdiction, it did allow for the possibility that an ad-hoc Trial Chamber or a judge at the Tribunal could make a ruling on the matter. However Blewitt said he simply did not understand why Croatia would accept a ruling by an ad-hoc Trial Chamber if it decided that the Tribunal has the jurisdiction, when it did not accept the same conclusion from the Prosecutor.

"Even if a court decision was made that the Tribunal has no jurisdiction," Blewitt says, "I don't think that would bind the Office of the Prosecutor, since the courts have no jurisdiction to dispute the decision by the prosecution to conduct some investigation. The president (Judge McDonald) said herself that the president nor a trial chamber has any authority to question the prosecutor's decision to commence an investigation."

Stressing that it is not ready to start such negotiations, the prosecution did nevertheless propose one "concession" to Croatia. "If Croatia cooperates in our investigation into operations Flash and Storm," Blewitt said, "that will not prejudge its position in the future. We would not say: 'Croatia has conceded jurisdiction because they have been cooperating with us'."

In other words, Croatia's cooperation in the investigation would not be, a priori, interpreted as recognition of the Tribunal's jurisdiction. Thus the defence counsels of persons indicted on the basis of such an investigation, could, before the Trial Chamber, dispute the jurisdiction of the Tribunal to try those so accused.

Location: Croatia

Focus: International Criminal Tribunal for the former Yugoslavia

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