

FRY V. ICTY: President McDonald's Quest For 'Compelling Measures'

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The immediate cause for this renewed approach to the Security Council is the hardening of official Belgrade's stance regarding the Tribunal's jurisdiction in the investigation of alleged violations of humanitarian law in Kosovo, and the prevention of the Tribunal's Chief Prosecutor, Louise Arbour, from travelling to Kosovo at the head of Tribunal's investigative team (see Update 100).

United Nations Headquarters are still to reply whether - and if so, when - the Security Council will discuss the issue. Meantime, the EU Council of Ministers has also discussed this latest in the series of FRY's non-compliances with the Tribunal.

Foreign ministers from fifteen European nations meanwhile, last week issued a statement reminding Belgrade of UN SC Resolutions 1160, 1199, and 1203, "which spell out the FRY's obligation to cooperate fully with ICTY on Kosovo, including compliance with its orders, requests for information and investigation."

The Council of Ministers, it added, "demands that the FRY authorities stop preventing ICTY prosecutor Louise Arbour and her team from accomplishing their mission in Kosovo."

Due to the importance of the issues raised, we are republishing the full text of the letter ICTY President Gabrielle Kirk McDonald's sent to Ambassador A. Peter Burleigh, President of the Security Council on November 6, 1998:

"Excellency,

I have the misfortune to report once again to the Security Council the continuing refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the International Tribunal, as required by Resolutions of the Security Council and the Tribunal's Statute.

The occasion for making this report is the failure of the Federal Republic of Yugoslavia to issue visas to investigators of the Office of the Prosecutor so that they may conduct investigations in Kosovo.

In doing so, the Federal Republic of Yugoslavia has stated that it "does not accept any investigation of ICTY in Kosovo and Metohija." Clearly this position contravenes the explicit decisions of the Security Council. In Resolution 1160 of 31 March 1998, the Security Council urged the Prosecutor of the Tribunal to begin gathering information related to the violence in Kosovo.

On 23 September 1998, in Resolution 1199, the Security Council found that events in Kosovo constitute a threat to peace and security in the region. In that Resolution the authorities of the Federal Republic of Yugoslavia were obligated to "cooperate fully with the Prosecutor of the International Tribunal for the Former Yugoslavia in the investigation of possible violations within the jurisdiction of the Tribunal."

Finally, less than two weeks ago, on 24 October 1998, the Security Council adopted Resolution 1203 which called for a prompt and complete investigation of all atrocities committed in Kosovo. Further, full cooperation with the Tribunal was required, "including compliance with its orders, requests for information and investigations."

In her letter dated 15 October 1998, the Prosecutor advised Slobodan Milosevic, President of the Federal Republic of Yugoslavia, of her intention to lead an investigative mission to Kosovo. She sought assurance that visas would be issued to enable the investigations to continue forthwith.

The failure of the Federal Republic of Yugoslavia to provide her office with the appropriate travel documents for investigators prevents her from carrying out the mandate of the Security Council. By letter of 5 November 1998, the Prosecutor requested that I notify the Security Council of the failure of the Federal Republic of Yugoslavia to fulfil its obligations under Article 29 of the Statute of the Tribunal.

Excellency, I need not remind you that this is the fourth time the President of the Tribunal has notified this body of the Federal Republic of Yugoslavia's non-compliance. As recently as last month, I addressed the Council regarding the failure of the Federal Republic of Yugoslavia to arrest and transfer to the custody of the Tribunal three persons indicted by the Tribunal on 7 November 1995.

The intentional and continuous refusal by the Federal Republic of Yugoslavia to comply with its clear and

incontrovertible legal obligations to the Tribunal, I submit, is an affront to the Security Council and to all law-abiding nations.

The Security Council has issued Presidential Statements in response to prior reports of the Tribunal of non-compliance by the Federal Republic of Yugoslavia. This has failed to bring about the required cooperation with the Tribunal. Therefore, I respectfully seek from the Security Council measures which are sufficiently compelling to bring the Federal Republic of Yugoslavia into the fold of law-abiding nations.

The Tribunal was created by the Security Council to investigate and prosecute persons responsible for some of the most horrific human rights violations the world has witnessed since the United Nations was established some 53 years ago.

As a subsidiary organ and creation of the Security Council, and lacking mechanisms to enforce State compliance, we rely on the Security Council to bring non-cooperating States into compliance. I urge you to provide the support necessary to enable the Tribunal to discharge its mandate.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

Gabrielle Kirk McDonald

President"

Location: Balkans
Serbia
Kosovo

Focus: International Criminal Tribunal for the former
Yugoslavia

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