

## **ICTY's Message to the Security Council**

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Former president of the ICTY Antonio Cassese approached the Security Council several times during his four-year term to inform it of the refusal of certain states of the former Yugoslavia to carry out the Tribunal's arrest warrants. The Council usually responded with lukewarm statements from the president, reprimanding rogue states for their poor behaviour. No action, however, was ever forthcoming.

Last week, ICTY's current president, Gabriele Kirk McDonald, decided for the first time to embarrass the Security Council by highlighting the issue of the Federal Republic Yugoslavia (FRY), which has stubbornly ignored the Tribunal and all its arrest warrants.

In a letter published in The Hague and sent to the UN in New York, the president writes of the "continuing refusal of the government of FRY to cooperate with ICTY" and in particular its "failure to arrest and transfer to the custody of the Tribunal three persons indicted for the murder of 260 unarmed men following the fall of the city of Vukovar in November 1991" (the Ovchara massacre). A fact with which the Security Council is familiar. The three accused she mentioned are JNA officers Mile Mrksic, Veselin Sljivancanin and Miroslav Radic who, despite international arrest warrants, still live peacefully and safely in FRY.

President McDonald's description of FRY's behaviour is not particularly new. It has been said many times that FRY's intransigence has formed a consistent pattern; that it remains the only signatory to the Dayton Agreement that has neither adopted legislation to facilitate cooperation with the Tribunal, nor taken steps to transfer to the Tribunal's custody those indicted on its territory; that and such conduct, put simply, is illegal.

It has also been suggested that FRY's contempt for the authority of the Security Council and international law should not be countenanced in the modern international community; and that not only does FRY consider itself to be outside international law, it has become a haven for fugitives from international law.

None of this has led the Security Council to take action to force FRY to fulfil its obligations in regard of international law. If there is a chance that it could be different this time it is mostly due to the fact that the latest letter was inspired by some recent initiatives of the Security Council to uphold the international criminal law. These initiatives are in sharp contrast to its toleration of the continued breach of that same law by the FRY authorities.

Unlike earlier communications to the Security Council, sent by former president Cassese at the request of the Trial Chamber, the latest letter to the founders of the Tribunal was sent following a request by the Chief Prosecutor, Louise Arbour. In her letter to President McDonald of 1 September she cited the recent activity in the Security Council, including Security Council Resolution number 1160 urging the Office of the Prosecutor to investigate violations of humanitarian law in Kosovo and an unanimously approved resolution that called Libya to honour its pledges with respect to the transfer for trial of the two suspects in the Lockerbie bombing case.

This resolution, Arbour believes, "stands in stark contrast to the lack of action by the Council regarding the (Vukovar) case which offers much similarity to the Lockerbie case". On her side, President McDonald added to this list of positive signs the adoption of a treaty establishing a permanent International Criminal Court, which she describes as "a further indication that the international community is committed to the principle of accountability for those who violate the law of nations."

But is it really? The Security Council's reply to the latest letter from the Tribunal will indicate if this is so. The letter's main message targets New York, not Belgrade. And the message is the following: what sense does it make to investigate breaches of humanitarian law in Kosovo and what will be the purpose of indictments that may follow that investigation if the supreme body of the international community continues to tolerate the refusal to carry out arrest warrants? What is the point of all of that if the FRY authorities continue with impunity to shelter fugitives from international justice.

If an energetic response to this message from the Tribunal is not forthcoming, the Security Council will send a clear signal of inconsistency to Belgrade, Baghdad, Tripoli and other outcasts of international law.

**Location:** Balkans  
Kosovo

**Focus:** International Criminal Tribunal for the former  
Yugoslavia

