

President McDonald Addresses the UN Security Council

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Tribunal Update 95: Last Week in The Hague (28 September - 4 October, 1998)

Addressing the press following the Security Council's closed meeting on 2 October, President McDonald did not hide her feelings. "It seems to me that the 'deploring' and 'condemning' language is helpful, but stronger action needs to be taken", she told reporters. Stronger action, according to her, is any action that would make it unambiguously clear to Belgrade that "the time is now, in fact long overdue, in terms of responding to its international obligations".

The discussion of Belgrade's disregard of the Tribunal was initiated by an 8 September 1998 letter that President McDonald sent to the Security Council following a request from the Prosecutor Louise Arbour. The letter's purpose was to bring to the attention of the Security Council "the continuing refusal of the government of FRY to cooperate with the International Tribunal" and in particular, its "failure to arrest and transfer to the Tribunal three persons (officers of the former Yugoslav People's Army) indicted for the murder of 260 unarmed men following the fall of the city of Vukovar (Croatia) in November 1991". (see Update 92)

Invited to address the Security Council on 2 October, President McDonald gave its members a quick lesson in the basics of international law. She reminded the Tribunal's founders why and on what legal basis they established the ICTY in May 1993 and what obligations that entailed.

President McDonald said: "In resolution 827, creating this Tribunal, the Security Council directed all states to take any measures necessary under their domestic law to implement the provisions of the resolution and the Statute of the Tribunal. Further, the Dayton Agreement requires all signatories to cooperate with the Tribunal. However, FRY stands alone as the only signatory to the Dayton Agreement which has failed to adopt legislation to facilitate cooperation. Article 29 of the Statute of the Tribunal provides that states shall comply without undue delay with an order of a Trial Chamber for the arrest or detention of persons. The Secretary General's Report to the Security Council transmitting the Statute of the Tribunal states that orders of the Tribunal have the status of enforcement actions under Chapter VII. Nevertheless, FRY has refused to transfer to the custody of the Tribunal indicted persons who are nationals of that state. It contends that its constitution prohibits the 'extradition' of its citizens.

"Clearly, the duty of all states to comply with orders of the Tribunal is manifest and is not subject to compromise or exception. Moreover, it is a recognised principle of international law that states may not rely on their domestic law to thwart their international obligations. Thus, there is no basis for FRY's failure to comply.

"In Resolution 827, the Security Council noted widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia. It determined that this situation constituted a threat to international peace and security and resolved to put an end to such crimes and to bring to justice persons who are responsible for such crimes. The Security Council concluded that the prosecution of persons responsible for these serious violations of international humanitarian law would contribute to the restoration and maintenance of peace. Thus, in your wisdom, you made the historic decision that the International Tribunal was an appropriate measure to achieve that result.

"As a court of law, the Tribunal exists to dispense justice. Yet, it cannot act effectively if its orders are disregarded. As a subsidiary organ of the Security Council, and its creation, it looks to the Security Council for the support necessary to discharge its mandate. I implore you, indeed I beseech you, to assist in ensuring that the Tribunal's orders are given effect.

"The request I make is straightforward. The disregard of FRY is clear and its obligation to cooperate is not subject to dispute...

"No state should be permitted to act as if it is 'above the law'. Such transgression is not only unlawful, but importantly sends a message to other states that the measures adopted by the Security Council can be ignored. Therefore, it is imperative that FRY be brought into the fold of nations who believe in world peace and respect the authority of the Security Council..."

In deciding to respond to the ICTY President's beseeching with a relatively mild reprimand to FRY authorities, the Security Council was probably concerned that it has much more important unfinished business with Belgrade. The discussion of the ICTY's problems was held during the break between two Security Council sessions devoted to the Kosovo crisis and possible military action of the international

community to put a halt to the violence against civilians and prevent humanitarian catastrophe.

If this is why the Security Council hesitated to broach the question of compliance with the Tribunal with the Belgrade regime, however, it could have its priorities wrong. Had the Security Council firmly backed the Tribunal two or three years ago and had it demonstrated that its arrest warrants and its orders could not be ignored with impunity, the present tragedy in Kosovo--or at least some of the horrible crimes discovered last week--could perhaps have been avoided.

The Security Council itself has contributed to the undermining of the Tribunal's role as a deterrent by continuing to tolerate FRY's continuing non-compliance. The atrocities reported in Kosovo in late September took place despite the existence of the Tribunal and its ongoing investigation into crimes in Kosovo. The perpetrators know that their state will protect them from international justice, just as it has protected the three officers accused of the massacre in Vukovar for the last three years.

Location: Balkans
Kosovo
Croatia

Focus: International Criminal Tribunal for the former
Yugoslavia

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