

President McDonald Clarifies Her Discussions With Croatian Ministe

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That is to say, before some legal forum and not before the UN Security Council, which can impose sanctions on Croatia for non-cooperation with the Tribunal.

Separovic's optimistic spin was not exclusively for the benefit of the Croatian media; he also tried to sell it to the Security Council as well. In a letter to the Security Council's president dated September 22, Separovic claimed that issues such as the transfer to The Hague of indicted Mladen 'Tuta' Naletilic had been resolved to the "satisfaction of the Tribunal President and Prosecutor". Naletilic is accused of ethnic cleansing of Muslims in the divided Bosnian city of Mostar.

Moreover, Separovic further stated that problems relating to investigations into Operations Flash and Storm in 1995 - over which the ICTY President found the Republic of Croatia to be in non-compliance, and thus in danger of UN sanctions - were "on the verge of being resolved".

The optimistic presentation was disputed the very same week by Deputy Prosecutor Graham Blewitt, with the statement that "no solution was found" on jurisdiction matters during the meeting. (See Tribunal Update No. 143).

And last week, President McDonald wrote to Ambassador Peter van Walsum, President of the Security Council, pointing out that "characterisations contained in Dr. Separovic's letter... are at variance with my understanding of our discussion," and which required her to write and "put the record straight".

McDonald added that while Separovic pledged Croatia to send Naletilic to The Hague "immediately and unconditionally," the Croatian delegation admitted they were uncertain when this would happen, as there were, they said, "additional judicial proceedings that might have to take place under Croatian law" first.

"While I welcome the Republic of Croatia's assurance of its commitment to the immediate and unconditional transfer of Mr. Naletilic," wrote McDonald, "I must point out that until the transfer actually takes place the Republic of Croatia continues to be in non-compliance with its obligations under the Statute of the International Tribunal."

Croatia's non-compliance relating to Operations Flash and Storm was also discussed with Separovic, she added. "During the course of our discussions, the Republic of Croatia informed me that it intended to propose an amendment to the International Tribunal's Rules of Procedure and Evidence, which in its view would address this situation.

Making it clear that that such a proposal would be considered if submitted, she noted that so far the ICTY had not yet received one from Croatia, "much less agreed to its adoption". Therefore, she said, "it is not appropriate to speak of a 'resolution' of the Republic of Croatia's non-compliance in this regard".

Despite Separovic's optimistic interpretations, there has been no substantial change in Croatia's attitude towards the Tribunal - and vice versa. McDonald concluded with a hope that her letter "will clarify the record with respect to my findings of non-compliance by the Republic of Croatia, as outlined in my letter to

the Security Council of 25 August 1999".

Croatia not only failed to submit its proposal of the amendments to the Tribunal's Rules of Procedure and Evidence, but it has also failed to - at least publicly - say what it intends to request.

According to Deputy Prosecutor Blewitt's comments after talks with Separovic, the Croatians are suggesting "that there be some form of independent opinion - by an ad-hoc Trial Chamber or a judge at the Tribunal - that could make a ruling as to the Tribunal's jurisdiction over operations Flash and Storm..."

Speaking for the OTP, Blewitt made it very clear that, as they pointed out to Separovic, it was "a fundamental issue that the prosecutor is not able to take instructions from anybody". Even Judge McDonald had herself said, Blewitt noted, that neither "the

President nor a Trial Chamber has any authority to question the prosecutor's decision to commence an investigation." (See Tribunal Update No. 143).

Location: Croatia

Focus: International Criminal Tribunal for the former Yugoslavia

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