

The Prosecutor's Letter To Ministers Vedrine And Cook

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In a letter addressed to British Foreign Minister Robin Cook and his French counterpart Hubert Vedrine, who are presiding over a second round of Kosovo peace talks, The Hague Tribunal's Chief Prosecutor Louise Arbour requested - among other things - that any foreign military presence agreed to as part of any peace settlement be given explicit instructions to support the work of the Tribunal.

"There should be language in the agreement whereby the parties would agree to an explicit mandate on the part of any military international presence in Kosovo to support fully the work of the Prosecutor and of the Tribunal generally," Louise Arbour said during the a press briefing last week.

"I would be looking, at the very minimum, at language similar to that contained in the Dayton agreement... but frankly, at this stage in the history of the Tribunal, I would be looking at something considerably better than that."

Recognising that the issue of war crimes may complicate the negotiators' agenda, Arbour at the same time expressed her concern that the negotiators' agenda - that is their search for a political compromise - may impede the work and standing of the International Criminal Tribunal for the Former Yugoslavia (ICTY). According to Tribunal Update's sources, her letter to ministers Vedrine and Cook is not seen as a mere wish-list of conditions she would like to see incorporated into the text of the Kosovo Agreement, but a reminder of certain fundamental principles that ought to be taken into consideration by the two co-chairmen of the talks.

"To compromise on those fundamental principles" - Arbour warns - "would not only be damaging to the ICTY in the short term, but would also erode the long term prospects of the international peace and justice."

The Chief Prosecutor added that she would rather ICTY was not even mentioned in the Agreement than concede to a "compromise" such as the one adopted in the Interim Agreement (see Tribunal Update No. 114).

If the text of the final Agreement does refer to the Tribunal, Arbour thinks it would be best if it was done with explicit wording that compels both sides unequivocally to co-operate fully with the Tribunal, and to facilitate on-site investigations in particular.

If that is perceived as 'too much', Arbour went on then the agreement must not in any way diminish the jurisdiction of the ICTY, or the power of its Prosecutor.

That jurisdiction and power, Arbour reminds the mediators, stems from the Security Council Resolution 827 of 25 May 1993, and derives directly from its mandate under Chapter VII of the UN Charter.

In view of that fact, only the Security Council can alter the Tribunal's mandate, or redefine the role of the ICTY. Until then, the International Tribunal will have a primacy over national courts and cannot be in any way subordinated to the national authorities in matters of investigation, indictment, arrest or prosecution.

Arbour also warned bluntly that the International tribunal would refuse to be bound by any amnesty granted as part of any agreement to alleged perpetrators of crimes committed in the conflict.

Finally, evoking once again the ICTY unique standing as a Chapter VII subsidiary organ of the Security Council, Arbour suggests ministers Vedrine and Cook that the mandate of the future international military force in Kosovo should include support to the ICTY's Kosovo investigation and activities as part of its core purpose. This force should provide no less support to the ICTY than does SFOR in Bosnia, Arbour argues, and should have the authority to detain indicted persons on the basis of the Tribunal's arrest warrant.

Location: Balkans
Kosovo
Bosnia and
Herzegovina

Focus: International Criminal Tribunal for the former
Yugoslavia

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