

War Crimes Tribunals Need State Cooperation

Author: [Caroline Tosh](#)

The deputy prosecutor at the Hague court says state cooperation is essential for international war crimes tribunals to function properly.

David Tolbert, deputy prosecutor at the International Criminal Court for the Former Yugoslavia, ICTY, said this week that the cooperation of states is important not only for the proper functioning of the ICTY, but would also be critical to the future success of the International Criminal Court, ICC, the first permanent international war crimes court, also based in The Hague.

Speaking at a symposium on the Effectiveness of Criminal Tribunals held in Utrecht on November 6, Tolbert said that "without state cooperation you can't conduct a proper trial; you can't conduct any trial at all".

State cooperation, he said, is an "umbrella term" that covers arrest, and also includes other processes needed to indict suspects, such as "obtaining evidence, including documents critical to establishing a case, and interviewing witnesses".

Tolbert pointed out the "extraordinary timing" of the symposium, which came the day after Saddam Hussein was sentenced to death for war crimes by the Iraqi Special Tribunal, IST - an Iraqi court established to try those accused of the gravest war crimes committed in Iraq between 1968 and 2003.

Tolbert, who formerly served as deputy registrar of the ICTY, went on to underline the problems that the Hague tribunal - which has no state infrastructure behind it - has faced in bringing suspects to trial.

He lamented the lack of cooperation by the former Yugoslav countries, where there are six indicted war crimes suspects still at large.

"Unfortunately, particularly Croatia and Serbia have failed to cooperate," he said, although he added that the situation is now "much better than it was".

In spite of this, he said, the tribunal had still been "very effective" in arresting criminals, and all but six of the 161 indicted suspects who are still alive have been brought to The Hague following arrest or surrender.

But Tolbert criticised the UN Security Council, saying it had not been effective in using its powers to apply pressure on countries that failed to cooperate with the tribunal.

When states have failed to follow orders of the court, he said, the Security Council has "really taken no action".

"All we get is a press statement. No sanctions are taken," he said.

The tribunal, he explained, has had to use a number of strategies to compensate for having no powers of arrest.

He outlined the strategies tried and tested by the court to bring war crimes fugitives to the dock.

These included holding special hearings to reconfirm an indictment, in order to “shame” states into surrendering fugitives; using a sealed indictment so suspects could be taken by “surprise”; as well as working with NATO to arrange arrests.

But the most successful strategy used to secure arrests, he said, was bargaining with the tool of EU membership - which worked in the case of Croatia, he said.

EU accession talks were suspended with Croatia after the prosecution complained that it wasn't cooperating with the tribunal - a sanction which resulted in the country providing information on the whereabouts of Croatian general and war crimes suspect Ante Gotovina, which led to his capture in the Canary Islands, he said.

The court's ability to measure a country's cooperation on tracking fugitives is also essential, continued Tolbert.

“We need diplomatic and political support. And you need your own international ability to assess whether the states are cooperating or not. You need assets on the ground to test reports,” he explained.

Using a “two-pronged approach” of denying membership to the EU, with an ability to gauge a state's cooperation, has helped the ICTY make arrests, and allowed it to go from being an “ineffective court” to an effective one, he said.

But he acknowledged that the court's failure to capture “key players” showed there were “limits” to the strategy.

By this he was referring to former Bosnian Serb leader and Bosnian Serb army chief Radovan Karadzic and Ratko Mladic, respectively.

These men, who have eluded arrest since they were indicted for war crimes 11 years ago, are alleged to have been “mostly responsible for crimes in the former Yugoslavia”, said Tolbert.

Talks on Serbia's accession to the EU have been suspended because of its failure to surrender the men, but in spite of this, they remain at large.

Tolbert's talk was followed by that of Goran Sluiter, a law professor from the University of Amsterdam, who also had concerns about the future success of the ICC.

His concerns centred around victim participation in trials.

Under the ICC statute, victims will be able to participate in proceedings, not just as witnesses.

Sluiter expressed concern at how this provision would work in practice, and said that the sheer number of victims who might come forward could cause problems.

Professor Geert-Jan Knoops of the University of Utrecht chaired the event, and other speakers included Gerard Strijards, a law professor from the University of Groningen and Judge Akua Kuenyehia, first vice president at the ICC.

Caroline Tosh is an IWPR reporter in The Hague.

Location: [Balkans](#)
[Serbia](#)
[Iraqi Kurdistan](#)
[Iraq](#)

Source URL: <https://iwpr.net/global-voices/war-crimes-tribunals-need-state-cooperation>