

VIEW FROM THE HAGUE

Why Cooperate with The Tribunal?

Last week, the President of the International Criminal Tribunal for the former Yugoslavia, Theodor Meron, reported to the United Nations Security Council that Serbia and Montenegro (SCG) had failed to cooperate with the Tribunal. Since then, politicians and the media have speculated on what consequences SCG will suffer as a result of this act. They have asked, for example, how this will affect the country's chances of getting into the European Union, and whether international institutions will follow the American lead and cancel financial assistance. While consideration of such negative economic and political consequences is important, what it misses is the point of cooperating in the first place.

First, cooperating with the Tribunal is an international legal obligation. All member states of the United Nations are by law required to cooperate with the Tribunal, not only SCG and not only the countries of the former Yugoslavia. Observers have noted that failure to cooperate with the Tribunal serves as an example of SCG's unwillingness and inability to live up to its international obligations. In other words, how can international institutions rely on SCG to fulfill its obligations to them if the country fails to honour its legal obligations to the Tribunal?

Second, cooperating with the Tribunal is also SCG's obligation according to its own law. Article 1 of SCG's "Law on Cooperation of SCG with the ICTY," reads that the country "shall respect and implement the ICTY's court decisions and verdicts and provide legal assistance to the Tribunal's investigators." Thus, as commentators have observed, failure to cooperate with the Tribunal serves as an example of SCG's lack of respect for the rule of law in general.

However, there is another reason why SCG must cooperate with the Tribunal. Serbian politicians never mention it, and it rarely appears in the press. The reason is centered upon the victims of war crimes and their families. Anyone who reads the Tribunal's indictments cannot fail to recognize the gravity of the crimes charged and the overwhelming importance of holding those responsible accountable.

For example, in its indictment against generals Nebojša Pavković, Vladimir Lazarević, Sreten Lukić and Vlastimir Djordjević, the Tribunal alleges that forces under their command committed a multitude of crimes, including killing over 700 named individuals and deporting over 800,000 Kosovo Albanian civilians. Just one among these crimes is the rape and murder of eight Kosovo Albanian women from the town of Ćirez in March 1999, whose bodies were thrown in a well. The families of the victims of these and similar crimes deserve to know the truth. They deserve justice.

The Tribunal relies upon states, among other things, to arrest its indicted individuals and to provide documents and access to witnesses and crime scenes. This cooperation is crucial for the Tribunal's efforts to establish the truth of what happened in the cases it is investigating, whether the evidence requested serves the defense or the prosecution.

The Tribunal's President Theodor Meron reported SCG to the Security Council on 4 May because SCG has failed to execute arrest warrants and to respond to the Tribunal's requests to explain why. The President also states that SCG has failed to provide the Tribunal's Prosecutor with documentary evidence and access to witnesses.

The President takes the issue of reporting a state to the Security Council for failure to cooperate very seriously. He or she carefully considers both the Prosecutor's, and in some cases the Registrar's reports, on the status of a country's cooperation and only then takes a decision on

whether further action is warranted. The President has reported SCG to the Security Council on previous occasions; he has also reported the Republic of Croatia.

It bears mentioning that the Prosecutor is fair in preparing her evaluations of a state's cooperation. For example, while she criticized Croatia's failure to cooperate in a number of instances in the past, recently she has been able to report that the Croatian government has fully complied with her requests for access to documents, archives and witnesses, assisted with the surrender of eight high-level accused and undertaken convincing measures to locate General Ante Gotovina, who stands accused of crimes committed against predominantly Serbian civilians during and in the aftermath of Operation Storm in 1995.

The obligation to cooperate with the Tribunal should not be one that states grudgingly accept at best, or willfully attempt to avoid at worst, as is the present case. Cooperating with the Tribunal should also not be motivated by financial or political interests. SCG should have a genuine interest in adhering to the rule of law. Most importantly, SCG should share the Tribunal's desire to find out who committed crimes such as the rape and murder of the eight Kosovo Albanian women from Ćirez, and the killings of over 700 Kosovo Albanian civilians, among many other crimes. While failure to cooperate with the Tribunal may have serious economic and political consequences, the most serious consequence is that SCG is disappointing the victims of serious crimes committed in the former Yugoslavia.

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