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[***Wikileaked* cable on Judge Theodore Meron’s criticism of Carla Del Ponte**](https://docs.google.com/document/d/1YD0UWYW-RApXBAI_TgAQptFmPFoCUTZq2p46PLTT7dY/edit?usp=sharing)

This record is a partial extract of the original cable.

The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 THE HAGUE 001827

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SIPDIS   
  
DEPARTMENT FOR S/WCI - PROSPER/MILLER, EUR - JONES, IO -   
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LAHNE, DRL, INR/WCAD - SPRIGG, USUN - ROSTOW   
  
E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY   
TAGS: [HR](http://wikileaks.org/tag/HR_0.html) [KAWC](http://wikileaks.org/tag/KAWC_0.html) [KJUS](http://wikileaks.org/tag/KJUS_0.html) [NL](http://wikileaks.org/tag/NL_0.html) [PHUM](http://wikileaks.org/tag/PHUM_0.html) [PREL](http://wikileaks.org/tag/PREL_0.html) [SR](http://wikileaks.org/tag/SR_0.html) [ICTY](http://wikileaks.org/tag/ICTY_0.html)  
SUBJECT: ICTY: PRESIDENT MERON URGES USG TO OPPOSE DEL   
PONTE RENEWAL   
  
1.  Classified by Charge d'Affaires, a.i., Daniel R. Russel  for reason 1.5 (d).

2.  (C) Summary.  President Theodor Meron of the  International Criminal Tribunal for the former Yugoslavia  (ICTY) met with the Ambassador on July 16 to convey his serious concerns about the performance of Chief Prosecutor  Carla Del Ponte  and the risk the renewal of her tenure  would pose to the completion strategy.

Meron urged the USG  to oppose renewal and expressed reservations about a one-year extension of her mandate.  Meron further advised that  the UN secretariat had contacted his chief of staff on July  15 to "float" the idea that no action be taken by the  Security Council in September and that Del Ponte  term  simply be allowed to lapse.  Under such an approach, which  Meron found promising, the Deputy Prosecutors of the ICTY  and ICTR would serve as "acting" prosecutors of their  respective offices until replacements were named.

End  summary.

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Del Ponte  Weak Penal Policy and Management

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3.  (C) President Meron (protect),  an American and former  Counselor for Public International Law  at the State  Department,  discussed in frank terms his unease with Carla  Del Ponte  leadership of the Office of the Prosecutor  (OTP).

Meron observed  that for the USG to persuade skeptics  that it remained committed to the vigorous  prosecution of war crimes  despite its principled opposition  to the International Criminal Court,  it was essential for the Chapter VII model of a war crimes tribunal represented by the ICTY and ICTR to succeed both in terms of achieving  its mission  and finishing its work in a finite period of  time.

In this context he commented that Del Ponte had both  strengths and weaknesses.  Meron thought she was "very  good" in sensitizing governments to the importance of capturing outstanding fugitives  and delivering them to the Tribunal.  She has "pushed like a bulldozer -- in a  positive sense"  to bring indictees into custody.

4.  (C)  Del Ponte  two principle [*sic*] weaknesses  according to Meron  were with respect to penal policy and management.

Meron explained that Del Ponte is

"primarily a media person  who is primarily interested in her own legacy."

She has  "absolutely no idea about management" and is "not in  control of her staff."

He described "tremendous unrest" in  the OTP, noting that a senior OTP official had met with him  to convey a detailed litany of concerns about the poor  management of the office and the threat it posed to achieving completion strategy targets.

Meron provided a  confidential memorandum of that conversation reporting the [SIPDIS]  official's view  that

"the current Prosecutor  lacks the  required vision, lacks the needed managerial competence,  and lacks the commitment to the completion strategies that  will be necessary to bring them about as promised."

(Note:  The memcon, which provides examples in both the  ICTY and ICTR to support these conclusions, is being secure  faxed to S/WCI.   End note.)

On penal policy,  Meron noted  that the OTP brings prosecutions  that are too broad in  scope which result in unnecessarily lengthy and resource-consuming trials.

Instead of focusing on a few significant  charges that are supported by strong evidence, the OTP  brings indictments  with too many charges  of which many are ultimately not readily provable.

He added that the  presiding judge of a trial chamber  had complained to him  this week that in a small case with a mid-level defendant,  the OTP had informed the chamber  that it planned to present  80 to 90 witnesses.  This request prompted the defense to request a similar number of witnesses, guaranteeing a long  and complex trial.

"-- This is no way to run a court," Meron  observed.

5.  (C)  The Ambassador asked Meron  whether vesting the  management functions in OTP in another official  might be a way of addressing this weakness while allowing Del Ponte to  focus on other matters.

Meron agreed that the OTP had a number of senior officials  who could be very effective  managers,  but said that Del Ponte  did not give them the  necessary authority  to play that role.

Further, the kinds  of management deficiencies Meron was flagging related to  core prosecutorial functions  such as determining which indictments to bring,  the number of charges,  which and how many witnesses to call,  and where to deploy prosecutorial  resources.

Meron also said that Del Ponte actively  undercut her subordinates when they sought to make such  decisions.  Embassy Legal Counselor noted that an OTP  attorney  had advised him last week  that Del Ponte had interceded to reject a plea agreement that the attorney,  in coordination with senior OTP managers,  had negotiated with  a defendant.  As a result, an accused who would have been  guaranteed a sentence in a 15 to 20 year timeframe would  now go to trial because the Chief Prosecutor had, for  optics reasons, insisted on pressing for a 15 to 25 year  range.

6.  (C)  Meron, based on his conversations with Del Ponte  and others in OTP as well as his observation of how the OTP  was drafting indictments and trying cases,  has concluded  that Del Ponte "is not interested the completion strategy."

He acknowledged that in conversation with the Chief Prosecutor this week she had expressed interest in  working with Meron on a security council resolution  that would constrain future indictments.  Meron attributed this  approach reflected her growing unease about the renewal of  her tenure  and noted that even if she signed off on such a  resolution, her management deficiencies would threaten its implementation.

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Renewal Options and Letting the Mandate Lapse

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7.  (C)  Meron said that Del Ponte told him this week that she understood the USG was supporting the British idea for the splitting of the ICTR and ICTY functions.

Del Ponte  also told Meron  that she understood that the USG would drop its effort to press for a one year term.  Meron expressed to the Ambassador his support for the splitting of the prosecutorial functions  noting that the ICTR deserves a "first class prosecutor."

He also noted that concerns  about divergent penal policies  arising from such a split  were unwarranted  because the appeals chamber would continue  to preside over both tribunals, thereby ensuring a consistency in approach and jurisprudence.

Commenting on  the possibility of a one-year renewal,  Meron expressed his concern that a [*sic*] such an approach (as opposed to nonrenewal)  would leave a "diminished" prosecutor in power and encourage fugitives and countries in the region to "wait  out" the end of her term and not cooperate with the OTP.

8.  (C)  Meron noted that a legal officer from the UN Secretariat had contacted his Chief of Staff yesterday to [SIPDIS]  "float" the idea of simply allowing Del Ponte  term to  lapse in September without any Security Council action.  Such a lapse would result in a *de facto* splitting of the prosecutorial functions  in the OTP  as the Deputy Prosecutors of the ICTY and ICTR  would become the "acting"  prosecutors for their respective tribunals.

The UN legal  officer advised that one question was whether the Deputy Prosecutors under such a scenario would have the authority  to sign indictments and exercise other core functions of  their office.

Meron  office replied that this would not  be a problem because Rule 38(B) of the ICTY Rules of Evidence and Procedure explicitly provides that

"The Deputy  Prosecutor shall exercise the functions of the Prosecutor  in the event of the latter absence from duty or  inability to act ...."

9.  (C)  Summing up,  Meron explained  that "two or three years ago" having a Chief Prosecutor who was especially  vigorous in pressing governments in the region to apprehend  fugitives may have overshadowed other weaknesses.  At this  point in the Tribunal  life, however, particularly given  the dramatic changes in Belgrade, Meron believed that it  was much more important for the institution to have a Chief  Prosecutor with the sound penal policy and effective  management skills that are essential to implementing the  completion strategy.  In Meron  analysis, Del Ponte fails  to meet these requirements.

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10.  (C)  Meron  description of the problems in the OTP  tracks Embassy's observations and has been detailed in  previous reporting.

What is new is that the perception of  a floundering OTP  has become so pervasive that it has become common knowledge  in the Chambers.

The indication  that the UN Secretariat is exploring the idea of letting  the prosecutor's mandate lapse  is intriguing and suggests  that the USG  may have additional leverage and options in  pursuing its positions with respect to the renewal of Del Ponte  mandate.

End Comment.

RUSSEL