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## ICTY: PRESIDENT MERON URGES USG TO OPPOSE DEL PONTE RENEWAL

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### 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 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

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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 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

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"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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Comment  
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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.

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