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CASE / AFFAIRE NO.		MICT-13-58-R90.1 (S. MILOŠEVIĆ)	DATE	04 November 2013
FROM / DE		CARLINE AMEERALI, DEPUTY CHIEF CMSS		
TO / A				
<input checked="" type="checkbox"/> Office of the President/ <i>Le Bureau du Président</i>	<input checked="" type="checkbox"/> Office of the Prosecutor/ <i>Le Bureau du Procureur</i>	0 Defense Counsel/Conseil de la Défense		
0 Appeals Chamber/ <i>Chambre d'appel</i>		<input checked="" type="checkbox"/> Former Court assigned Counsel		
0 Trial Chamber/ <i>Chambre de 1ère instance</i>		MR. KAY / MS. HIGGINS		
0 Specially Appointed Chamber/ <i>Chambre spécialement désignée</i>		0 Legal Associates		
0 Single Judge/Juge unique				
0 Embassy/Ambassade				
0 Other/Autre				
<input checked="" type="checkbox"/> Office of the Registrar/Le Bureau du Greffier		<input checked="" type="checkbox"/> WISP		
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe MS. C. MARCHI-UHEL / MR. P. DYGEUS		0 UNDU		
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PLEASE FIND ATTACHED / VEUILLEZ TROUVER CI-JOINT				
0 Order/Warrant/Decision issued by Appeals Chamber/Trial Chamber/Specially Appointed Chamber/Judge on <i>Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel/la Chambre de 1ère instance/la Chambre spécialement désignée un Juge le ___/___/___</i>				
0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___				
<input checked="" type="checkbox"/> Motion/Request/Application submitted by Prosecution/Defence Counsel/Accused/ Third Party on <i>Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense/l'Accusé/le tiers le 04/11/2013</i>				
0 Response/Reply/Brief submitted by Prosecution/Defence Counsel/Accused on <i>Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense/Accusé le ___/___/___</i>				
0 Decision of the Registrar on/Décision du Greffier le ___/___/___				
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THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

CASE Nos. [to be assigned]

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 4 November 2013

THE PROSECUTOR

THE PROSECUTOR

v.

v.

RADOVAN KARADZIC

SLOBODAN MILOSEVIC

Public

REQUEST FOR APPOINTMENT OF
SINGLE JUDGE

Office of the Prosecutor:
Mr. Hassan Jallow

The Accused:
Dr. Radovan Karadzic

[to be assigned]

1



1. Dr. Radovan Karadzic hereby requests that the President issue an order *proprio motu* appointing a Single Judge to consider whether to appoint an *amicus curiae* prosecutor to investigate possible contempt by former ICTY Prosecutor Carla Del Ponte.

2. This motion is based upon a cable authored by Legal Officers of the United States Embassy in The Hague on 16 April 2004 and made available on the web site of Wikileaks. The cable indicates that Prosecutor Del Ponte disclosed confidential information to representatives of the United States of America.¹

3. In the cable, the Legal Officers describe a meeting they had with ICTY Prosecutor Carla Del Ponte on 16 April 2004. The Officers note that on 13 April 2004, President Slobodan Milosevic had filed a confidential defence witness list with the ICTY Trial Chamber. The cable went on to state that:

“Reading directly from a list drawn from the filing, she said that the filing included former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke.”

4. The cable further indicates that Prosecutor Del Ponte “has agreed to keep us informed of developments with respect to Milosevic's witness requests”.

5. This cable provides reason to believe that Prosecutor Del Ponte violated MICT Rule 90(A) by *inter alia* “disclosing information...in knowing violation of an order of a Chamber.”

6. Rule 90(C) provides that where there is reason to believe that a person may have violated Rule 90(A) and thereby be in contempt of the Tribunal, a Chamber or Single Judge shall either (i) direct the Prosecutor to investigate; (ii) direct the Registrar to appoint an *amicus curiae* to investigate; or (iii) initiate proceedings himself.

7. Since there is no Chamber or Single Judge presently seized of the *Milosevic* case, the President is respectfully requested to appoint a Single Judge to consider this matter.

8. Dr. Karadzic recognizes that he does not have legal standing to assert a violation of the rights of Slobodan Milosevic. However, under similar circumstances, the ICTY President appointed a Special Chamber to determine whether former UN Detention

¹ A copy of the cable is attached as Annex “A”.

Unit Commander Timothy McFadden should be investigated for disclosing confidential information to the same representatives of the United States of America.²

9. Since President Milosevic is deceased, a strict application of the concept of standing would mean that there was no one who could bring this matter to the attention of the appropriate authorities. Given the ICTY's history of taking the disclosure of confidential information seriously by obtaining eight convictions for contempt,³ Dr. Karadzic believes that the MICT President would want to be informed of this evidence of an apparent violation of the Tribunal's Rules.

10. The victim of the disclosure of confidential information is not only President Milosevic. Dr. Karadzic also has a personal interest in ensuring that mechanisms are in place to hold prosecutors accountable for disclosing confidential information about defence witnesses. He has filed a confidential revised witness list on 18 October 2013. If a prosecutor can disclose confidential information about defence witnesses with impunity, then Dr. Karadzic can have no confidence that his filings are protected.

11. President Karadzic made this request to the President of the ICTY on 27 September 2013.⁴ The President appointed a Special Chamber on 1 October 2013.⁵ The Special Chamber decided on 18 October 2013 that the MICT and not the ICTY had jurisdiction over this matter.⁶

12. Therefore, it is respectfully requested that the President of the MICT appoint a Single Judge to determine whether appointment of an *amicus curiae* prosecutor to investigate possible contempt by former Prosecutor Carla Del Ponte is warranted.

² See *Prosecutor v Milosevic*, No. IT-02-54-Misc.6, *Decision on the Initiation of Contempt Investigations* (18 July 2011) at para. 3

³ *Prosecutor v Marijagic & Rebic*, No. IT-95-14-R77.2-A, *Judgement* (27 September 2006); *Prosecutor v Margetic*, No. IT_95-14-R77.6, *Judgement on Allegations of Contempt* (7 February 2007); *Prosecutor v Jovic*, No. IT-95-14 &4/2-R77-A, *Judgement* (15 March 2007); *Prosecutor v Haxhiu*, No. IT-04-84-R77.5, *Judgement on Allegations of Contempt* (24 July 2008); *In the Case Against Vojislav Seselj*, No. IT-03-67-R77.2-A, *Judgement* (19 May 2010); *In the Case Against Florence Hartmann*, No. IT-02-54-R77.5-A, *Judgement* (19 July 2011); *Prosecutor v Vojislav Seselj*, No. IT-03-67-R77.3-A, *Judgement* (28 November 2012); *Contempt Proceedings Against Vojislav Seselj*, No. IT-03-67-R66.4-A, *Judgement* (30 May 2013)

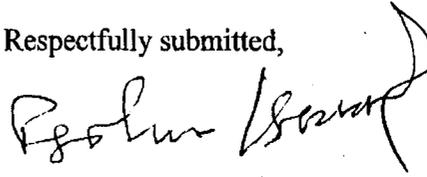
⁴ *Request to Appoint Special Chamber*

⁵ *Order Assigning a Specially Appointed Chamber*

⁶ *Decision on Jurisdiction Following the Assignment of a Specially Appointed Chamber*

Word count: 821

Respectfully submitted,



Radovan Karadzic

[to be assigned]



ANNEX "A"

[to be assigned]



1. (C) Summary: Slobodan Milosevic -- in one of his first filings before the International Criminal Tribunal for the Former Yugoslavia (ICTY) -- submitted to the trial chamber on April 13 a confidential document describing the witnesses he may call during his upcoming defense case. While the list itself remains under seal, Embassy Legal officers have confirmed reports that it includes over 1600 individuals, although only 300 or so of them are named in the document. Of these, the list names the following current and former American officials: former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of

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Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke. OTP sources are confident that the trial chamber will permit only a fraction of the 1600 individuals to be called as witnesses. End summary.

2. (C) On April 13, Milosevic filed with the trial chamber a confidential document describing the witnesses he intends to

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call to support various parts of his defense. The document is not strictly speaking a witness list; rather, it is a memorandum divided into sections keyed to the indictments. After each section, the document lists the individuals whose testimony he believes would rebut that particular charge. Most of the 1634 individuals referenced are described with general placeholders, such as their position or role. Only about 300 of them are specifically named.

3. (C) In a meeting with Embassy legal officers on April 16, Chief Prosecutor Carla Del Ponte confirmed that the document included USG officials. Reading directly from a list drawn from the filing, she said that the filing included former President Bill Clinton, former Secretary of State Madeleine Albright, former Secretary of Defense William Cohen, Ambassador Christopher Hill, General Wesley Clark, and former Ambassador Richard Holbrooke. She said that it also included a long list of Russian officials, followed by French and British officials, and finally, in the words of a senior adviser, Anton Nikiforov, a number of Chomskyite anti-globalists whose proposed contributions are somewhat mysterious. Nikiforov was perplexed by the Russians listed, noting that a number of them would be damaging rather than helpful to Milosevic. Del Ponte said that the list indicated that Milosevic was planning a primarily political defense.

4. (C) The filing is now with the trial chamber and the Prosecution will have an opportunity to respond to it at a May 17 pre-defense phase conference in chambers. Given that

the defense has been allocated 150 days for its portion of the case, it is inconceivable that the trial chamber will approve anything more than a fraction of the list. (NB: By contrast, the OTP called nearly three hundred witnesses during its case, though its witness "wish lists" involved substantially more names and placeholders as well.) Further, any decision with respect to specific witnesses is not likely to occur for some time given that Milosevic has to decide first to call the witness, request that the witness appear, and then justify and pursue a court order if the witness refuses. The USG would have an opportunity to weigh in at the stage a court order is sought, if not sooner, and Del Ponte has agreed to keep us informed of developments with respect to Milosevic's witness requests.

5. (C) Comment. Milosevic's filing does not come as much of a surprise as Milosevic has been saying for over two years that he would call former senior officials of the United States and other governments. While Del Ponte may be right that the list reflects a political rather than a legal defense, the proof of that will be not in the three hundred witnesses identified but in the remaining 1300. Some of these witnesses may be insiders from the Milosevic regime who would be in a position to challenge specific aspects of the prosecution case. Until those witnesses are identified, it will be difficult to characterize the defense phase with any definite degree of certainty. End comment.

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