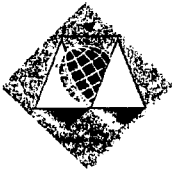


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Criminal Tribunal  
for the former Yugoslavia

Tribunal  
Pénal International  
pour l'ex-Yougoslavie

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The Hague, 17 June 2008

Dear Mr. Secretary-General,

Please find attached a letter of today's date addressed to the President of the Security Council. I would be most grateful if you could bring the letter to the attention of the President and members of the Council.

Accept, Sir, the assurances of my highest consideration,

Fausto Pocar

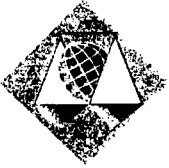
H.E. Mr Ban Ki-moon  
Secretary-General  
United Nations  
New York, NY 10017  
USA

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law  
Committed in the Territory of the Former Yugoslavia since 1991  
Tribunal International chargé de Poursuivre les Personnes Présument Responsables de Violations Graves du Droit International Humanitaire  
Commises sur le Territoire de l'ex-Yougoslavie depuis 1991

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17 June 2008

Excellency,

Pursuant to my responsibilities as President of the International Criminal Tribunal for the former Yugoslavia, I am duty-bound to bring to your attention the fact that the Government of Serbia, in light of the failure to cooperate in the case of *Prosecutor v. Milutinović et al.*, is in breach of its international legal obligations. In particular, it is in breach of Article 29 of the Statute of the International Tribunal which requires it to "comply without undue delay with any request for assistance or and order issued by a Trial Chamber" including with respect to "the taking of testimony and the production of evidence" and "the service of documents".

Pursuant to Rule 7 *bis* of the Rules of Procedure and Evidence of the International Tribunal, I am reporting this matter to you as President of the Security Council upon the advice of the Trial Chamber in the *Milutinović et al.* case. The Trial Chamber, composed of Judges Bonomy, Chowhan, Kamenova and Nosworthy, is satisfied that the Government of Serbia has failed to comply with an obligation under Article 29 of the Statute in relation to the proceedings in the abovementioned case.

The Trial Chamber has sought to contact General Aleksander Dimitrijević, former head of the Yugoslav's Army Security Administration, since the end of March 2008, with a view to have him appear as a witness in the case before it. On 28 March 2008, the Registrar of the Tribunal wrote to Mr. Rasim Ljajić, the Head of the National Council for Co-operation (NCC), requesting the NCC to provide a current mailing address for General Dimitrijević. Having received no response to this request, I sent on 15 April 2008 a letter requesting the NCC to provide prompt co-operation with the International Tribunal and fulfil the request immediately. The address and telephone numbers of General Dimitrijević were provided by Mr. Dušan Ignjatović, Director of the Office of the National Council on 17 April 2008.

On 6 May 2008, I had to intervene once again after receiving information sent by Mr. Ignjatović to the Registrar that the delivery of the letter of the Trial Chamber's Presiding Judge dated 18 April 2008, which invited General Dimitrijević to testify before the Chamber in May 2008, "could not be confirmed". It was also reported that General Dimitrijević was undergoing medical treatment following heart surgery and that he would spend the second half of May at a rehabilitation centre outside Belgrade. I noted in my letter that it was clear that the authorities of the Republic of Serbia knew where General Dimitrijević was and that they were capable

of serving the letter upon him and confirming that service. I therefore urged Mr. Ljajić to take all measures within his power and secure the immediate service of the letter of the Presiding Judge on General Dimitrijević and relay immediate confirmation of that service to me.

On 9 May 2008, the Tribunal's Field Office in Belgrade learned on an informal basis that the letter had been delivered. On 13 May 2008, the Trial Chamber issued a Summons to General Dimitrijević ordering him to appear on 23 May to testify as a witness. The Summons was attached to an Order to the Government of Serbia, directing the Government to serve the Summons on General Dimitrijević as soon as possible and to file a written report providing the details of the service or attempted service within 48 hours.

On 21 May 2008, I sent a third letter to the Head of the NCC, following an informal report received by the Belgrade Office that the Summons had not yet been serviced and stated that I did not believe vigorous efforts were being made to serve the Summons in sufficient time for General Dimitrijević to appear as a witness on 23 May. On 22 May 2008, we received two letters from the NCC. The first letter was a report on the delivery of the 18 April letter, which indicated that General Dimitrijević had provided them with a document signed by three doctors from the Military Medical Academy dated 9 May 2008, which advised that General Dimitrijević should immediately receive rehabilitative treatment and avoid stressful situations. The second letter described the NCC's attempts at serving the Summons on 21 May 2008 but provided no further details of any continuing efforts to serve the Summons. On 29 May 2008, Mr. Ljajić responded to my letter of 21 May expressing regret that General Dimitrijević did not appear as a witness at the date required by the Trial Chamber and describing the steps previously taken to ensure the service of the Summons. However, the letter failed to confirm that ongoing efforts were being made to locate General Dimitrijević and serve the Summons on him.

In my fourth letter to Mr. Ljajić of the NCC, dated 30 May 2008, I expressed in the strongest terms my and the Trial Chamber's concern with the Serbian Government's failure to take reasonable steps to secure General Dimitrijević's appearance as a witness in the *Milutinović et al.* proceedings. I recalled Serbia's duty to co-operate with the International Tribunal and indicated that I did not find the efforts undertaken thus far by the authorities of Serbia to carry out the requests related to General Dimitrijević to be reasonable, highlighting in particular the fact that nothing in the report showed that the police had made the most basic enquiries to establish General Dimitrijević's whereabouts. I also referred to certain circumstances giving rise to suspicions that General Dimitrijević might be assisted by the authorities of the Republic of Serbia to avoid attendance, noting that it was strange that the information regarding General Dimitrijević's medical situation was reported on 5 May 2008, while the decision to undergo the prescribed treatment was not made until 9 May 2008. I indicated that if indeed there were legitimate medical issues affecting General Dimitrijević's ability to give evidence, these should be brought to the Trial Chamber's attention in an appropriate and transparent manner. I finally urged the NCC to take immediate steps to ensure delivery of the Summons to General Dimitrijević, emphasizing that the Trial Chamber might otherwise have to

consider further action which could have serious implications for General Dimitrijević and adding that in the absence of any further indication of reasonable steps being taken, a report to the Security Council on Serbia's failure to co-operate was being contemplated.

I made further reference to Serbia's failure to co-operate with the International Tribunal in relation with this case at the occasion of the presentation of the ninth Completion Strategy Report before the Security Council on 4 June 2008. However, since 30 May 2008, no further responses or confirmation of the Summons's delivery have been received from the Government of Serbia.

I view this situation as a very serious one. The Security Council in establishing the International Tribunal gave it certain powers, one of which was to issue binding orders for the appearance of key witnesses before it. By failing to comply with its duties, the Government of Serbia is challenging the authority of the International Tribunal and the Security Council. Article 29 of the Statute is particularly clear in that regard and demands that the orders of the Trial Chamber be implemented swiftly and categorically and with the greatest diligence.

For all these reasons, I would be most grateful, Excellency, if you would bring this matter to the attention of the members of the Security Council.

Please accept, Excellency, the assurances of my highest consideration.



Fausto Pocar  
President

H.E. Dr. Zalmay Khalilzad  
The President of the Security Council  
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