

December 4, 2012

H.E. Mr. Ban Ki-moon
Secretary General
United Nations
New York, NY 10017
Tel: + 1 212-963-5012
Fax: +1 212-963-2155
Email: SG@un.org

Re: Request for Investigation and Sanctions Against Ms. Carla Del Ponte

Excellency,

We, the undersigned, were counsel for Mr. Ante Gotovina, who on 16 November 2012 was acquitted of all charges by the Appeals Chamber of the United Nations' International Criminal Tribunal for the Former Yugoslavia (ICTY).¹ On 20 November 2012, in an interview with the Serbian newspaper *Blic*, Ms. Carla Del Ponte, former ICTY Prosecutor and currently a member of the UN Independent International Commission of Inquiry on Syria,² reacted to the ICTY Judgment with the following comments:

“This is not justice; this is denial of a huge crime.”³ She further elaborated on her position stating that the “Serbian Government and the Serbs cannot accept such a verdict and I completely agree with their televised statements because it is clear that the crime has been committed. We shall see what is going to happen next, but surely this is not justice.”⁴

Her remarks were later published by other regional and international media.⁵

Ms. Del Ponte's improper media statements constitute a grave violation of Mr. Gotovina's fundamental rights and are an unacceptable interference with the reputation and authority of the ICTY. As detailed below, we ask that all necessary steps be taken to ensure that Ms. Del

¹ *Prosecutor v Ante Gotovina and Mladen Markac*, Case No. IT-06-90-A, 16 November 2012, available at: http://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf.

² The United Nations Human Rights Council resolution S-17/1 of 22 August 2011 created the Independent International Commission of Inquiry for the Syrian Arab Republic (also referred to as 'UN Syria Commission' in this letter) to investigate and document alleged violations of international law, and in particular human rights law in Syria. The Human Rights Council extended the mandate of the Commission by virtue of resolution 19/22 of 23 March 2012. Ms. Del Ponte was later appointed as a member of the Commission.

³ See Tamara Spaic, *Blic Online*, 20 November 2012, available at: <http://english.blic.rs/In-Focus/9224/Carla-Del-Ponte-This-is-not-justice-this-is-denial-of-a-huge-crime/print> (last visited 29 November 2012). Please find a copy of the interview attached in the Annex to this complaint.

⁴ *Ibid.*

⁵ See, for example, http://english.ruvr.ru/2012_11_20/Carla-del-Ponte-shocked-by-the-acquittal-of-2-Croatian-generals/, http://www.b92.net/eng/news/politics-article.php?yyyy=2012&mm=11&dd=20&nav_id=83250, and <http://dalje.com/en-world/carla-del-ponte-shocked-by-the-acquittal-of-croatian-generals/451145>.

Ponte desists from similar comments in the future and ensure that measures are adopted to remedy the prejudice to Mr. Gotovina.

A. The impugned statements of Ms. Del Ponte

The relevant extracts of the interview given by Ms. Del Ponte to newspaper *Blic* read as follows:

“Q: How is it possible that in the same court, two chambers reach such different verdicts?”

A: ‘I have not read the judgement yet. I completely disagree with the new verdict and I do not know how possibly it could be accepted. Serbia’s Government and the Serbs cannot accept such verdict and I completely agree with their televised statements because it is clear that the crime has been committed. We shall see what is going to happen next, but surely this is not justice.’

Q: How do you view your experience and work of the Hague Tribunal after destruction of evidence concerning body organ trade in Kosovo and after this verdict of acquittal?

A: ‘We made huge efforts to collect all evidence at one place and present numerous facts to the court. Destruction of the evidence and especially release of Gotovina bring the credibility of the Hague Tribunal in question. I am expecting verdict against Ramush Haradinaj to be made in fifteen days and there is danger that the same happens again. You know I am very disappointed.’

Q: Do you think that the prosecution you led collected sufficient evidence such that Gotovina and Markac should be put in prison?

A: ‘Yes, certainly. We proved the crime and the first verdict indicates that we did our job.’

Q: Is there anything else that can be done in this case?

‘This is a final verdict and there is nothing that can be done’.

Q: Do you think that it was politics, money for lobbying or something else that has influenced the verdict?

A: ‘I do not know, but certainly such suspicion is justified.’”

Clearly, Ms. Del Ponte is accusing the Appeals Chamber judges of corruption. This is highly inappropriate, especially where there is no basis whatsoever for such serious allegations. The United Nations must act immediately both to protect Mr. Gotovina’s fundamental rights and to protect the reputation of the United Nations and its judges. Remarkably, Ms. Del Ponte admitted that she made these statements before she had even read the judgement of the ICTY Appeals Chamber.

B. Ms. Del Ponte's record of inappropriate statements

This is not the first time that Ms. Del Ponte has made improper statements concerning cases before the ICTY. In April 2008 the Swiss Federal Department of Foreign Affairs reprimanded Ms. Del Ponte for remarks in her book which the Swiss Government said did not "befit her role as ambassador" and contain "statements which are not permissible for a representative of the Swiss government."⁶ She was banned by the Swiss Government from promoting her book.⁷

Ms. Del Ponte consistently commented on the merits of ICTY cases whilst proceedings were ongoing and suggested that defendants were guilty.⁸ Whilst not formally sanctioned for these statements, ethical complaints were filed against her.⁹ Ms. Del Ponte was also criticized by the respected former President of the ICTY, Professor Antonio Cassese, who noted the following:

"All Ms. Del Ponte's statements before the debate, in which she shouted from the rooftops about having damning evidence against Milosevic, have allowed him to use the ICTY as a political platform."

Judge Cassese further commented on Ms. Del Ponte's unfortunate habit of turning criminal trials into political affairs through the media:

"My concern is that the ICTY, in such a big trial, is being transformed into a political platform. It's what Milosevic is doing, it's what on some occasions Carla Del Ponte has a tendency to do. That creates a malaise and is damaging to the ICTY. Justice is not done by statements to the media. I must say that it's Ms. Del Ponte who started it."¹⁰

On 29 November 2012, three other ICTY defendants, indicted by Ms. Del Ponte, were acquitted.¹¹ On that occasion, Ms. Del Ponte again insinuated that they had been unjustly acquitted.¹² We wish to note that nine (9) high-ranking individuals indicted at the behest of Ms. Del Ponte – *all of them non-Serbs* – were all acquitted following their trials and appeal.¹³

⁶ As reported in the following article by Nedim Sarac "Del Ponte Banned from Promoting Book," in *Institute for War and Peace Reporting*, 18 April 2008, available at: <http://iwpr.net/report-news/del-ponte-banned-promoting-book>. See also "Parfum de soufre autour du livre de Carla del Ponte," in *SwissInfo*, 11 April 2008, available at: http://www.swissinfo.ch/fr/Parfum_de_soufre_autour_du_livre_de_Carla_del_Ponte.html?cid=6574054;

"Calmy Rey pfeift Carla Del Ponte zuruck," in *Tagblatt Online*, available at: <http://www.tagblatt.ch/altdaten/tagblatt-alt/tagblattheute/hb/inland/tb-in/art807.203593>.

⁷ *Ibid.*

⁸ See *B92*, "Del Ponte: Haradinaj is guilty," 21 October 2007, available online: http://www.b92.net/eng/news/crimes-article.php?yyyy=2007&mm=10&dd=21&nav_id=44745.

⁹ See *Prosecutor v. Ramush Haradinaj et al.* Case No. IT-04-84-T, 30 October 2007, Public with Annexes A to D, Idriz Balaj's Citation of Prosecutorial Violation of Ethical Code of Conduct and Request for Evidentiary Hearing Regarding Interview of Carla Del Ponte. A copy of this submission is attached in the Annex to this complaint.

¹⁰ See "Cassese blasts Del Ponte," in *Agence France Press*, 5 March 2002, available at: <http://www.mail-archive.com/sin@antic.org/msg01249.html> (last visited 29 November 2012).

¹¹ <http://icty.org/sid/11159>.

¹² "Del Ponte: I'm not surprised with verdict," in *M-Magazine*, 29 November 2012, available at: <http://www.m-magazine.org/en/Region/Del-Ponte-I-146m-not-surprised-with-verdict-3634>.

¹³ This includes General Sefer Halilovic (BiH), Naser Oric (BiH), Ljube Boskoski (Republic of Macedonia), General Ante Gotovina (Croatia), General Mladen Markac (Croatia), Cermak (Croatia), Ramush Haradinaj (Kosovo), Idriz Balaj (Kosovo), Lahi Brahimaj (Kosovo).

As a result of her decisions, these nine innocent people have cumulatively spent more than 40 years in detention.¹⁴ Ms. Del Ponte should not be permitted to use her UN immunity to continue to tarnish the reputations of people whom she indicted wrongly, prosecuted unfairly and now continues to slander.¹⁵ The United Nations system does not provide for any remedy to compensate these individuals for the grave prejudice caused by their incarceration. At the very least the United Nations should protect them from ongoing abuses attributable to UN personnel – in this case, Ms. Del Ponte.

C. Violations of UN Standards

Ms. Del Ponte's public and inarticulate denunciation of the ICTY Appeals Chamber Judgement, whilst claiming to serve the purposes of the United Nations in her capacity as a former UN Prosecutor and now a UN commissioner, falls far short of Article 101(3)'s expectation of the highest standards of competence and integrity. Ms. Del Ponte had no authority to comment on ICTY decisions and her public statements constitute a clear case of abuse of her authority.

i. The UN Code of Ethics

The UN Code of Ethics (A/64/316) provides minimum professional standards of conduct for all UN personnel. Ms. Del Ponte chose to ignore the Code and violated many of the most significant standards:

- **Loyalty:** includes a requirement to abstain from public criticism of a verdict of a United Nations Tribunal. She must have been well aware of this, since under the Standards of Professional Conduct for Prosecution Counsel that she was bound by at the ICTY, she was required “to avoid, outside the courtroom, making public comments or speaking the media about the merits of particular cases or the guilt or innocence of specific accused while a judgment is pending before a Chamber of the Tribunal.”¹⁶
- **Impartiality:** Defined as an obligation of UN personnel to “ensure that expression of personal views and convictions does not compromise or appear to compromise the performance of their official duties or the interests of the United Nations.” Ms. Del Ponte's statements clearly fall short of this standard.
- **Respect for human rights:** The United Nations is committed to upholding high standards of human rights law. Ms. Del Ponte's statements constitute a grave violation of Mr. Gotovina's presumption of innocence insofar as she suggests that the ICTY's

¹⁴ The approximative time for the persons individually is as follows: Sefer Halilovic - 1 year and 1 month; Naser Oric - 3 years, 2 months; Ljube Boskski - 4 years; General Ante Gotovina - 6 years and 11 months; General Mladen Markac - 5 years and 7 months; Ivan Cermak - 4 years; Ramush Haradinaj: 3 years 11 months; Idriz Balaj: 5 years; Lahi Brhimai: 6 years and 9 months.

¹⁵ We note in that context that Ms. Del Ponte has also made public comments even about currently pending matters before the UN Inquiry Commission. At a press conference given at the United Nations on 25 October 2012, she has qualified - in advance of the pending report by the Commission – the events in Syria as war crimes and crimes against humanity, and has expressed the position that, as former Prosecutor, she expects senior leadership in Syria to be charged. See, e.g. “Del Ponte Cites 'Crimes Against Humanity' In Syria,” in *Radio Free Europe*, 25 October 2012, available at: <http://www.rferl.org/content/del-ponte-cites-crimes-against-humanity-in-syria/24750669.html>. See also the video of the press conference, where she made this statement: <http://video.xin.msn.com/watch/video/crimes-against-humanity-in-syria-uns-del-ponte/yqm3j6x4>.

¹⁶ See ICTY, *Standards of Professional Conduct for Prosecution Counsel*, available at: http://www.icty.org/x/file/Legal%20Library/Miscellaneous/otp_regulation_990914.pdf.

judgement of acquittal was somehow unjustified. This fundamental right is guaranteed, *inter alia*, by Article 14(2) ICCPR and by Article 21(3) of the ICTY Statute. She also violated Mr. Gotovina's reputation in violation of, *inter alia*, Article 17 ICCPR and other relevant international standards.¹⁷ Ms. Del Ponte knew the importance of respecting those standards as they were part of the minimum standards of professional decency binding on her as ICTY Prosecutor.¹⁸

- **Post-employment:** According to the Code of Ethics, "United Nations personnel shall not act in such a manner as to take improper advantage of their official functions and positions, including privileged information obtained from such functions and positions, when seeking employment or appointment after leaving their service with the United Nations." Again, her conduct violates this standard. Everything that Ms. Del Ponte knows or claims to know about the *Gotovina* case results from her previous role as Prosecutor of the ICTY.

With her public statements, Ms. Del Ponte violated the duty of loyalty she owed to the United Nations, disregarded her duty of impartiality, ignored basic human rights standards, and abused her authority – all of it to the prejudice of Mr. Gotovina.

ii. The Standards of Conduct

Ms. Del Ponte *publicly* criticized the authority of the ICTY Appeals Chamber, without having properly familiarized herself with the Appeals Judgment, and insisted on the "unquestionable guilt" of Mr. Gotovina. Moreover, Ms. Del Ponte stated that it would be "justified" to suspect that ICTY judges had been subjected to corruption. By doing so, Ms. Del Ponte violated the *Standards of Conduct for the International Civil Service* regarding ethical and professional standards regulating the conduct of UN Personnel.

Ms. Del Ponte has also tarnished the reputation of Mr. Gotovina by suggesting that he was guilty of serious crimes despite his acquittal. This blatant defamation of Mr. Gotovina's reputation amounts to the complete disregard of his right to be presumed and now treated as innocent.¹⁹ Ms. Del Ponte should not be permitted to violate those fundamental standards with impunity. Because her statements are associated with UN positions, her comments also affect the authority, reputation and dignity of the United Nations.

¹⁷ See e.g. Articles 8 and 10 of the ECHR and the relevant jurisprudence in *Chauvy and Others v. France* (no. 64915/01, § 70, ECHR 2004-VI); *Abeberry v. France* (dec.), no. 58729/00, 21 September 2004; *Leempoel & S.A. ED. Ciné Revue v. Belgium*, no. 64772/01, § 67, 9 November 2006; *White v. Sweden* (no. 42435/02, §§ 19 and 30, 19 September 2006); *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005; *Gunnarsson v. Iceland* (dec.), no. 4591/04, 20 October 2005; *Fayed and the House of Fraser Holdings plc v. the United Kingdom; Pfeifer v. Austria*, Application No. 12556/03, 15 November 2007, § 35.

¹⁸ http://www.icty.org/x/file/Legal%20Library/Miscellaneous/otp_regulation_990914.pdf. The Standards of Professional Conduct for Prosecution Counsel provides that "the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and right to fair trial and public hearing by an independent and impartial tribunal." Pursuant to these Standards, Ms Del Ponte would have been expected to "promote the principles of fairness and professionalism."

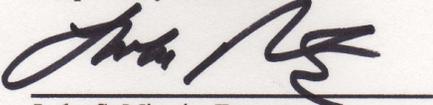
¹⁹ See Article 17 of the International Covenant on Civil and Political Rights, and Articles 8 and 10 of the European Convention on Human Rights (ECHR). It is to be noted that Article 10 of the ECHR refers to the right to reputation as one of the legitimate aims warranting interference with freedom of expression.

D. Conclusions and relief sought

For the reasons set forth above, we respectfully request that you give due consideration to the present complaint and invite you to consider adopting the following measures:

- i. Initiate an internal investigation against Ms. Del Ponte with a view to sanctions, including her removal from the UN Independent International Commission of Inquiry on Syria;
- ii. Instruct Ms. Del Ponte to desist from further comments regarding the *Gotovina* case;
- iii. Remind Ms. Del Ponte of her ethical and professional obligations as UN Personnel;
- iv. Lift any United Nations immunity so that further legal proceedings may be initiated against her; and
- v. Invite her to publicly retract her statements and issue an apology to Mr. Gotovina.

We look forward to your swift action in this matter.

Respectfully submitted,

Luka S. Misetic, Esq.

Law Offices of Luka S. Misetic
207 East Ohio #217
Chicago, IL 60611


Gregory W. Kehoe

Greenberg Traurig PA
625 East Twiggs Street, Suite 100
Tampa, FL 33602



Dr. Guénaél Mettraux
Doughty Street Chambers
54 Doughty Street
London WC1N 2LS
United Kingdom



Professor Payam Akhavan
Faculty of Law
McGill University
3644 Rue Peel
Montreal, Quebec H3A 1W9
Canada

Copies to:

Ms. Carman Lapointe-Young

Under-Secretary-General
Office of Internal Oversight Services
United Nations Headquarters
405 East 42nd Street (mailing address)
380 Madison Avenue (street address)
Room M-10036
New York, N.Y. 10017, USA
Tel: (+1) (212) 963-6196/7
Fax: (+1) (212) 96010
E-mail: lapointe@un.org

Ms. Catherine Pollard

Assistant Secretary-General for Human Resources Management
United Nations Headquarters
405 East 42nd Street (mailing address)
380 Madison Avenue (street address)
Room M-09035
New York, N.Y. 10017, USA
Tel: (+1) (212) 963-8081
Fax: (+1) (212) 963-1944/9514
E-mail: pollardc@un.org

20. 11. 2012. 02:00h | Tamara Spaić

Carla Del Ponte: This is not justice, this is denial of a huge crime

‘I am shocked, very surprised and astonished because it is absolutely unbelievable what happened after ruling the sentence of 24 years in prison to general Ante Gotovina. Unbelievable. I cannot accept that. I sympathize in full with Serbian victims of the crime, a crime that we strongly proved with evidence and facts’, Carla Del Ponte, former chief prosecutor of the ICTY said for Blic.



Carla del Ponte

‘During the first trial the judges recognized that there were proofs enough. I do not know on the basis of what this second decision was made. I saw that two judges had opposite opinions and I am expecting to read their opinion. I am really shocked because this is not justice’, Del Ponte says.

Q: How is it possible that in the same court, two trial chambers rule so different verdicts?

‘I have not read the explanation yet. I completely disagree with the new verdict and I do not know how

possibly it could be accepted. Serbia Government and the Serbs cannot accept such verdict and I completely agree with their televised statements because it is clear that the crime has been committed. We shall see what is going to happen next, but surely this is not justice’.

Q: How do you view your experience and work of the Hague Tribunal after destruction of proofs concerning body organ trade in Kosovo and after this releasing verdict?

‘We made huge efforts to collect all pieces at one place and present numerous facts to the court. Destruction of the evidence and especially release of Gotovina bring the credibility of the Hague Tribunal in question. I am expecting verdict against Ramush Haradinaj to be made in fifteen days and there is danger that the same happens again. You know I am very disappointed’.



Q: Do you think that the prosecution you led have collected sufficient proofs that Gotovina and Markac are put in prison?

‘Yes, certainly. We proved the crime and the first verdict indicates that we did our job’.

Q: Is there anything else that can be done in this case?

‘This is a final verdict and there is nothing that can be done’.

Q: Do you think that it was politics, money for lobbying or something else that has influenced the verdict?

‘I do not know, but certainly such suspicion is justified’.