



THE SECRETARY-GENERAL

Security Council
ICTY

5 December 2008

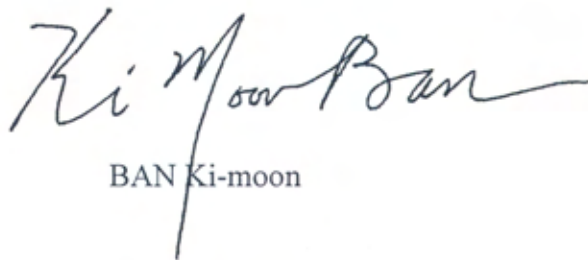
Dear Mr. President,

I attach for your information a letter dated 26 November 2008 from H.E. Judge Patrick Robinson, President of the International Tribunal for the former Yugoslavia.

President Robinson seeks an extension of the terms of Security Council resolution 1800 (2008) adopted on 20 February 2008, so that the Tribunal may be authorized to have more than the statutory maximum of twelve *ad litem* judges beyond 31 December 2008. Resolution 1800 (2008) requires that the Tribunal returns to a maximum of twelve *ad litem* judges by 31 December 2008.

I would be grateful if you could bring his letter to the attention of the members of the Security Council.

Please accept, Mr. President, the assurances of my highest consideration.


BAN Ki-moon

His Excellency
Mr. Neven Jurica
President of the Security Council
New York

28-14088





United Nations
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International
Criminal Tribunal
for the former Yugoslavia

Tribunal
Pénal International
pour l'ex-Yugoslavie

H.E. JUDGE PATRICK ROBINSON
PRESIDENT

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S.E. JUDGE PATRICK ROBINSON
PRÉSIDENT

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26 November 2008

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

Excellency,

I refer to the letter of President Pocar of 14 January 2008, which was circulated to the members of the Security Council under cover of your letter to its President dated 22 January 2008. That letter clarified an earlier letter from President Pocar dated 12 December 2007, which was circulated to members of the Security Council under cover of your letter to its President dated 31 December 2007. I further refer to the letter of President Pocar of 4 February 2008, which was also circulated to the members of the Security Council under cover of your letter to its President. In those letters, President Pocar had the honor of referring to the 116th plenary meeting of the fifty-ninth session of the General Assembly on 24 August 2005, during which 27 *ad litem* Judges of the International Criminal Tribunal for the former Yugoslavia were elected for a term of four years. By virtue of that resolution and pursuant to Security Council resolution 1329 (2000), President Pocar advised that he would be requesting the appointment of additional *ad litem* Judges in order to allow the Tribunal to start two new trials.

President Pocar advised that these additional appointments were necessary for the Tribunal to achieve our objectives within the 'completion strategy' and to ensure the right to a fair and expeditious trial, but that they would also amount to a temporary increase of the number of *ad litem* Judges from the maximum of 12 *ad litem*s at any one time, as established by Article 12(1) of the Statute of the International Tribunal. President Pocar further advised that the number of *ad litem* Judges would most likely return to the statutory maximum of twelve by September 2008, when the close of the Tribunal's first multi-accused case, *Milutinović et al.*, to which three *ad litem* Judges are currently assigned, was scheduled to be completed. In total, he sought authorization to appoint on a temporary basis a maximum of 16 *ad litem* Judges.

At the time of making the request, President Pocar advised that while he could reasonably predict that the number of *ad litem*s would return to the statutory maximum of twelve by September 2008, with the issuing of the *Milutinović et al* Judgment, there were a number of unforeseen factors that could intervene to delay a

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 Responsables de Violations Graves de Droit International Humanitaire
Commises sur le Territoire de l'ex-Yugoslavie depuis 1991

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trial, which are not reasonably within the Tribunal's control. Upon that basis, he considered it would be prudent not to specify a precise time at which the Tribunal will return to its statutory maximum of 12 *ad litem* Judges.

As a result of the request of President Pocar, the Security Council adopted Security Council resolution 1800 (2008), authorizing the appointment,

"within existing resources of additional *ad litem* upon the request of the President of the International Tribunal in order to conduct additional trials, notwithstanding the fact that the total number of *ad litem* Judges appointed to the Chambers will from time to time temporarily exceed the maximum of twelve provided for in article 12(1) of the Statute of the International Tribunal, to a maximum of sixteen at any one time, returning to a maximum of twelve by 31 December 2008".

Currently, the International Tribunal has a total of 14 *ad litem* Judges assigned to cases and due to unforeseen factors related to the complexity of the deliberations in the case of *Milutinović et al.*, to which three *ad litem* Judges are assigned, the delivery of Judgment in that case is delayed. On the basis of consultations with the Presiding Judge, Judge Bonomy, it is currently anticipated that Judgment in that case will not be rendered before the 12th of February 2009. Accordingly, it has become necessary to seek an extension of the terms of Security Council resolution 1800 (2008) as the International Tribunal will continue to have a total above the statutory limit of *ad litem* Judges until the delivery of the Judgment in that case.

While it is regrettable that the anticipated date for delivery of the Judgment has not been met, it needs to be borne in mind that estimation of the length of a trial, including the delivery of Judgment, is not an easy matter. I ask Your Excellency to take into account that this is the Tribunal's first multi-accused case, with as many as six accused persons. My consultations with Judge Bonomy indicate that the delay arises from the difficulty of issues to be resolved and the concern that the current hectic pace of the deliberations will impact on the fairness of the trial. I note that while the Completion Strategy requires the Tribunal to complete its cases as expeditiously as possible, it does not anticipate that principles of fair trial and the rights of the accused should therefore be sacrificed.

The *Milutinović et al.*, case is as I have said, a case against six accused and trial proceedings took two years to complete. During that period, the Trial Chamber heard no less than 231 witnesses. This evidence constitutes in excess of twenty-six thousand seven hundred (26,700) pages. There is in addition a multitude of pages of evidence of witnesses' statements and evidence received in written form via Rule 92bis, ter and quater which form part of the record. There are also literally thousands of exhibits which have been received in evidence, all for careful examination and consideration by the Trial Chamber in the process of deliberations.

Additionally, in order to start an eighth trial in December 2008, and in accordance with the terms of Article 13ter, paragraph 2, of the Statute of the International Tribunal, and having duly considered the criteria established by that provision, I am requesting the appointment of *ad litem* judge Mr. Melville Baird (Trinidad and Tobago) to serve on the trial of Case No. IT-05-87/1-PT, *Prosecutor v. Đorđević*. The trial is expected to commence on 15 December 2008 and is expected to be

completed within 12 months. I would therefore appreciate your appointment of *ad litem* Judge Baird to Case No. IT-05-87/1-PT as of 1 December 2008. This would bring the total of *ad litem* judges to 15 until 12 February 2009. At that time, with the delivery of the Judgment in the *Milutinović et al.* case, the number of *ad litem* judges would return to the statutory limit of 12 *ad litem* judges.

In making this request for the assignment of *ad litem* Judge Baird, I refer to your letters of 1 October 2008 to *ad litem* Judge Lattanzi and to *ad litem* Judge Picard, in which you appointed both of those Judges to the Case No. IT-05-87/1-PT, *Prosecutor v. Đorđević* effective immediately. Due to the existing trial commitments of both Judge Lattanzi and Judge Picard, and the immediate availability of two permanent Judges, Judge Parker and Judge Flüge to sit on the case of *Prosecutor v. Đorđević* with *ad litem* Judge Baird, these appointments are not required and I request that they be withdrawn.

I would be grateful if this matter could be brought to the attention of the Security Council as a matter of urgency.

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

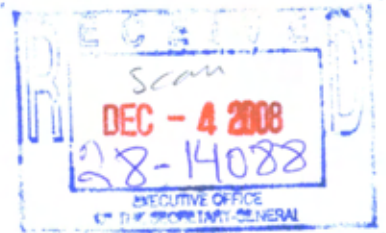
Yours sincerely,



Patrick Robinson
President

Note to the Secretary-General

Through Mr. Nambiar



**ICTY REQUEST FOR EXTENSION OF TERMS OF
SECURITY COUNCIL RESOLUTION 1800 (2008)**

ACTION COPY NH
VN

(28-13834)

1. In the attached letter of 26 November 2008 Judge Patrick Robinson, President of the International Tribunal for the former Yugoslavia, seeks an extension of the terms of Security Council resolution 1800 (2008) so that the Tribunal may continue to have more than the statutory maximum number of *ad litem* judges serving at any one time.
2. Upon the request of the President of the Tribunal, the Security Council decided by resolution 1800, adopted on 20 February 2008, that:

 "[T]he Secretary General may appoint, within existing resources, additional ad litem Judges upon request of the President of the International Tribunal in order to conduct additional trials, notwithstanding the fact that the total number of ad litem Judges appointed to the Chambers will from time to time temporarily exceed the maximum of twelve provided for in article 12 (1) of the Statute of the International Tribunal, to a maximum of sixteen at any one time, returning to a maximum of twelve by 31 December 2008;"
3. President Robinson requests that the term be extended beyond 31 December 2008 because, contrary to projections, the delivery of judgment in one of the cases has been delayed and the Tribunal will not be able to return to a maximum of twelve *ad litem* judges by 31 December 2008.
4. I would be grateful if the Secretary-General could forward President Robinson's letter to the President of the Security Council, under cover of the attached letter, for circulation to the members of the Security Council.

Patricia O'Brien
3 December 2008

2008-12-05

United Nations



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Executive Office of the Secretary-General
Cabinet du Secrétaire général

To: Mr. Nambiar,

Please find attached, for your approval and SG's signature, a letter addressed to the President of the Security Council, transmitting a letter from Judge Patrick Robinson, President of the International Tribunal for the former Yugoslavia, seeking an extension of the terms of SC resolution 1800 (2008).

A handwritten signature in black ink, appearing to read 'N. Haysom'.

Nicholas Haysom
5 December 2008

Cc: KWS

28-14088