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**Address by Carla Del Ponte
Prosecutor of the International Criminal Tribunal for the former Yugoslavia
OSCE Permanent Council
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Mr. Chairman,
Excellencies,
Ladies and Gentlemen,

It is a distinct pleasure to be here again, eighteen months after my first appearance in front of the Permanent Council. 2005 is a year where Europe is called to remember.

60 years ago, fascism was defeated in Europe. The Nuremberg trials that followed were a breakthrough for international criminal justice. For the first time, the most senior leaders responsible for the crimes committed during the war were brought to justice. This was a breakthrough in the development of international criminal justice.

30 years ago, the Helsinki Final Act was signed, a first step that eventually led to overcoming the artificial division of Europe. The founding act of your organization clearly highlighted the link between peace, security and justice, and all signatories committed themselves to these key principles. Subsequent documents re-affirmed your organisation's commitment to upholding international humanitarian law.

10 years ago, almost 8000 Bosnian Muslim men and boys were summarily executed during the week following the fall of Srebrenica, on 11 July 1995. On 19 April 2004, the ICTY Appeals Chamber confirmed that this crime meets the legal definition of genocide. The main culprits are still at large.

Your organization has been active in promoting justice and the rule of law throughout the countries of the former Yugoslavia. The ICTY is advancing in its completion strategy. The first target date has been met successfully at the end of 2004, with the completion of the remaining investigations. The six final indictments were confirmed

by the Judges in the first months of 2005. Therefore, no more indictments for war crimes, crimes against humanity or genocide will be issued by the Tribunal. Altogether, the ICTY has indicted 162 persons for serious violations of international humanitarian law in the former Yugoslavia. Our focus is now on the completion of all first instance trials by the end of 2008, and of all appeals by 2010, as endorsed by the Security Council in its Resolution 1503 of 28 August 2003.

A number of measures are being taken to make this possible. For instance, my office will propose joining a number of cases where the crime base is the same. For example, we intend to ask the Chambers to have one trial with nine persons accused of the Srebrenica genocide. Similar joinders involving five and seven accused are under consideration in two other cases. These steps will not only speed up trials, but also free up courtroom space for other trials.

If these proposals are accepted by the Chambers, then we hope to be able to come as close as possible to the target dates set by the Security Council.

Another key aspect of the completion strategy is the referral of mid-and lower-level perpetrators to local courts. My office has filed ten motions involving 18 accused for such transfers of cases in the past months, namely 7 to Bosnia and Herzegovina, 1 to Croatia, 1 to Serbia and Montenegro, and one case that could be sent in our view either to Croatia or to Serbia and Montenegro. These are indicted cases involving mid-or low-level accused which were ready to be tried in The Hague. In its first ruling in this regard, the Chamber decided on Tuesday, 17 May, to accept one of our motions involving one accused for referral to the State Court in Sarajevo.

In addition, my office has already started to refer over 60 non-indicted cases to the local judiciaries in Bosnia and Herzegovina, Croatia, FYROM and Serbia and Montenegro. It will now be up to the domestic prosecutors to proceed, complete investigations and issue indictments, unless they find out that there is insufficient evidence to prosecute.

Beyond the cases identified by the ICTY, it should be expected that the local judiciaries also deal with the crimes and perpetrators the Tribunal has not been able to address. In the resolution 1503, the Security Council has directed the ICTY to focus

only on the most senior leaders. The other, lower-level perpetrators, are to be tried by local courts.

The national authorities throughout the region should, with the assistance of the international community and specialized NGOs, work out comprehensive strategies to address this complex, but vital issue. Tolerating impunity for any war crime is creating a liability for the future generations.

Obviously the first duty of the countries of the former Yugoslavia is to build up, with the assistance of the international community, effective judiciaries, capable of conducting war crimes trials in accordance with the international standards of due process.

In my last address to the Permanent Council, I outlined the areas where progress was needed. A number of positive developments took place in the last eighteen months, not least also thanks to the active engagement of the OSCE.

The war crimes chamber within the State Court in Bosnia and Herzegovina is now established. In Serbia and Montenegro, a special chamber for war crimes was created within the Belgrade District Court, and the special prosecutor for war crimes is working in a professional manner on a number of sensitive cases. In Croatia, four regional courts have been granted special jurisdiction to conduct war crimes trials. Laws were drafted, adapted or passed to provide for the protection of witnesses. Investigators, prosecutors and judges were trained. One of the most important developments is certainly the signing of bilateral agreements on direct judicial cooperation between the prosecutors of Croatia, Bosnia and Herzegovina and Serbia and Montenegro, thanks to the initiative of the Croatian State Prosecutor, Mr. Bajic.

I am confident that a basic framework for the conduct of fair trials has been established and have thus filed the 11 motions for referral of indicted cases that I mentioned earlier. However, we are at the beginning of a process, and more efforts will be needed.

- First and foremost, the domestic proceedings will need to be carefully monitored. The monitoring of those cases referred to domestic jurisdictions by

the ICTY is foreseen in the ICTY Rules of Procedure and Evidence. On 28 February 2005, I sent a letter to the OSCE Chairman-in-Office, Minister Rupel, to consider the appropriate modalities for monitoring war crimes trials in Bosnia and Herzegovina, in Croatia and in Serbia and Montenegro. The OSCE is best-equipped to co-operate closely with the Office of the Prosecutor in the fulfillment of this important task. Thus, the OSCE would play an important role in a key aspect of the completion strategy endorsed by the UN Security Council. Furthermore, the relevant OSCE field missions are already involved in monitoring war crimes trials. I have observed that the OSCE has the capabilities to provide the kind of robust monitoring that the ICTY will need. The ICTY has cited OSCE monitoring reports in several of its proceedings. Furthermore, the OSCE's commitment to conduct such monitoring is an important element in the Chambers' decisions on whether to refer cases to the region, and this was stressed by the ICTY Judges in the decision they rendered on Tuesday, whereby they referred the first ever case to Bosnia and Herzegovina. In this decision, the Chambers maintained that "*The standing of (the OSCE) and the neutrality of its approach ought to ensure that reports it provides will adequately reflect Defence as well as Prosecution issues.*" I am therefore particularly pleased with the decision that you are taking today. This is an important element which will facilitate the transfer of cases.

- Second, bilateral agreements and European Conventions on judicial co-operation will need to be effectively implemented, particularly as related to the transfer of proceedings between countries of the region. Existing mechanisms may need to be supplemented by additional agreements to better facilitate the transfer of proceedings and barriers to direct and effective judicial cooperation should be eliminated. Since nationals cannot be extradited under the present legislation in all countries of the former Yugoslavia, the aim is to make sure that persons indicted in one country may be tried in the country of which they are nationals when they reside or have found refuge there. The forthcoming Brijuni seminar, co-organised by the OSCE, should allow significant progress in this area.

- Third, legislation on witness protection will have to be effectively implemented. Whereas proper legislative frameworks are now in place, their implementation may well pose problems. In relatively small communities, the protection of witnesses is a difficult challenge, for obvious reasons. Action will have to be taken for any threat on witnesses, be it a direct threat, or an indirect threat, like the disclosure of a witness's name in the media. At the ICTY, one person, a Kosovo Albanian, was sentenced two weeks ago for exerting pressure on a witness. Furthermore, two indictments for contempt of the Tribunal were issued recently against four Croatians, including three journalists, who disclosed the name of a protected witness and the contents of the protected testimony. Disclosing the identity of protected witnesses may have very serious consequences. In addition to potentially exposing the individual witness to physical harm, it could have a much broader impact on the willingness to testify, particularly in national courts, if guarantees of protection cannot be maintained.

With the transfer of mid- and low-level cases, and other measures to increase the efficiency of the trials, the ICTY is trying its best to meet the 2008 deadline for the completion of first instance trials. There is however one big uncertainty in our planning. There are still ten accused at large, including three of them who have been mentioned by name in several Security Council Resolutions taken under Chapter VII of the UN Charter: Radovan Karadzic, Ratko Mladic and Ante Gotovina.

This being said, it is true that, in the past six months, there has been much progress. The number of accused having been transferred since the beginning of the year is unprecedented. 19 indictees have come into the custody of the Tribunal since January, including nine who had been indicted for one and a half year or more. The other ten were indicted recently and transferred immediately. Only one accused out of 11 on the final indictments released this year has managed to escape so far, former General Tolimir, a close aide of Ratko Mladic, who is accused for the Srebrenica genocide.

Among those transferred in the last six months, there is a Prime Minister who was in office when the indictment was issued, two former Ministers of Interior and three former army chiefs of staff. All those committed to international justice should look at these facts with some satisfaction. The International Tribunal for the former Yugoslavia is taken seriously, both by the governments of the former Yugoslavia and by the international community. It would have been impossible to achieve such results without the steady support provided to the ICTY by the international community. The powerful attraction exerted by the European Union on the countries of the former Yugoslavia has a decisive impact on their willingness to co-operate with the Tribunal. Beyond the ICTY, international justice as such is acquiring more authority and has now become a key factor in any conflict. A trademark of international justice is that it does not recognize immunity for any perpetrator, whatever his rank and function, not even Heads of State. Herewith, the ICTY is sending a clear message to all leaders in the world: no power is unlimited; everyone is accountable for one's deeds.

Indeed, the ICTY has the potential to be remembered as a milestone in the development of a world ruled by law. We are not there yet. Ten accused are still at large. Two are in Russia, Ante Gotovina is between Croatia and Bosnia and Herzegovina, Radovan Karadzic is between Serbia and Montenegro and Bosnia and Herzegovina, and the others, including Ratko Mladic, are in Serbia. As long as these ten fugitives are at large, the work of the ICTY will not be a complete success. As long as Radovan Karadzic, Ratko Mladic, as well as Ante Gotovina remain at large, the achievement of the ICTY will be very mixed.

The reason why they are still at large is very simple: the relevant authorities are not making sufficient efforts to locate and apprehend them. It is mainly a matter of political will to break the networks protecting them and create a favorable climate in the public. The Serbian authorities have said repeatedly that they favor the voluntary surrender of indictees, and that they are not ready to carry out arrest operations. We may have reached the limits of this policy. The Croatian authorities have also preferred for a long time to try to convince Gotovina to surrender. They may now be ready for coercive measures. When soft methods are not working anymore, then tough action is required.

Europe is based on the power of law. All States must comply with their international obligations. Full co-operation with the ICTY is an international obligation enshrined in several Security Council resolutions adopted under Chapter VII of the UN Charter.

Time is pressing. Not because the fugitives could enjoy impunity if they are not arrested before the ICTY closes its doors. No. There will always be courtrooms, prosecutors and judges in The Hague to try Karadzic, Mladic or Gotovina. Time is pressing because, this summer, we will commemorate the tenth anniversary of the Srebrenica genocide. How could internationals participate in this commemoration when they proved unable to bring Karadzic and Mladic to justice? This is a shame, and, myself, I have decided not to participate to any commemoration of Srebrenica if Karadzic and Mladic are still at large by then.

Thank you for your attention and for your support.