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*Address by Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia to the Security Council  
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Mr. President, Excellencies, Ladies and Gentlemen,

It is a great honour to be here again to provide an assessment on the progress made in the implementation of the completion strategy. A written assessment has previously been distributed, and I intend to concentrate today on the major issues. For six years now, I have had to report to the Council that the failure to bring Radovan Karadzic and Ratko Mladic into the custody of the Tribunal is the major impediment to the success of our work. As we advance in the implementation of the completion strategy, it is becoming every day more crucial to bring these two indictees to The Hague, because any further delay will impact on the strategy.

On 13 June, I presented my last assessment to the Council, and it was cautiously optimistic. There was a momentum at that time, and it was legitimate to believe that the issue of fugitives could be resolved once and for all in a matter of a few months. The Serbian Government, in particular, had raised expectations that Ratko Mladic would be transferred to The Hague before the commemoration of the Srebrenica genocide, on 11 July, or at the latest at the beginning of October. This did not happen, as we all know. There was also hope that, once Mladic would be in The Hague, efforts would focus on Radovan Karadzic. As far as I know, there is no reliable or confirmed information on either of these two accused, and I am not aware of any credible attempt to locate and apprehend them.

The Office of the Prosecutor has no explicit mandate to arrest indictees. However, the Tribunal, and in particular its Prosecutor, has a responsibility to ensure that arrest warrants are executed and that indictees are tried. Since trials in absentia are not permitted at the ICTY, the accused must be brought to The Hague, either through arrests or voluntary surrenders. In 2001, I decided to begin carrying out small-scale tracking activities for a combination of reasons. First, many arrest warrants were left unexecuted at the time: 24 accused were at large. Second, I was not receiving any information from the other relevant actors. Finally, since the completion strategy was being developed at the time, it became clear that the arrest of fugitives would be a key condition for a successful implementation of the strategy. It was therefore essential for the OTP to build a small but effective in-house capability.

Our tracking activities are meant to remain of a mainly co-ordinating nature, because my Office cannot and will not build up the technical and human resources that would allow us to carry out sophisticated intelligence operations. Despite our limited resources, we were successful on a number of occasions in locating fugitives. But when significant resources are required, we have to turn to the relevant States, inside and outside the

region, or to NATO and EUFOR, previously to SFOR, in Bosnia and Herzegovina. We are systematically passing our information to these national and international bodies. Unfortunately, we rarely get any feedback on the information we provide, and it is only recently that my office has begun to receive some information. As far as I know, neither these States nor international organisations have ever managed to come close to arrests of Karadzic or Mladic, and, until recently, they have been unwilling to provide the ICTY with useful information on these fugitives or to coordinate efforts. I could give many examples to illustrate this dysfunctional situation, but this is not the place or the time to go into detail. After ten years of failures, it is however legitimate to ask ourselves: what did we do wrong? What can we do better?

It is obvious to all informed observers that, in the first years after the indictments were issued, there was no political will, either from the local authorities in Republika Srpska or in Serbia, or from the international forces in Bosnia and Herzegovina, to arrest Karadzic or Mladic. It was perceived that arrest operations against either of them could undermine the stability of Bosnia and Herzegovina and the security of the international troops there. It is in particular well documented that, two years after they were indicted, Karadzic and Mladic were moving freely in Republika Srpska. Karadzic was giving interviews and running party and State business with the full knowledge of the international community. Mladic even participated in military ceremonies. From 1998 onwards, Karadzic's movements became more discreet, and his whereabouts became unknown, while Mladic probably moved his permanent residence at that time to Serbia. Efforts were made in 1998 and 1999 to arrange for Karadzic's voluntary surrender, but eventually he broke all contacts. It is only after the fall of Milosevic, in 2000, that the international community expressed the political will to bring Karadzic and Mladic to justice. However, this political will was never translated into the creation of the effective operational instruments that would be necessary for this purpose. What are the principal shortcomings?

First, the circulation of information among the interested actors, domestic and international, is inadequate. Intelligence gathering efforts are carried out at the national level, and the products of intelligence are jealously guarded by the various national authorities for themselves. Generally, information, especially when it is relevant, is not shared with other actors, and certainly not with my Office. As a consequence, we cannot compare sources and knowledge which would allow us to make progress towards locating Karadzic or Mladic. It was only after cumbersome procedures and long delays that, recently, my Office was finally given partial access to useful information obtained by NATO or, previously, SFOR. These materials are of interest in drawing a profile of Karadzic's or Mladic's movements, contacts and networks. Sometimes, my Office found out about the existence of key documents seized by the international forces in Bosnia and Herzegovina through the media. The reasons given for these unhelpful practices are the necessity to protect sensitive sources and methods of work, as well as the suspicion that such documents or intelligence could be leaked should it reach the Office of the Prosecutor.

A high degree of confidentiality is an understandable condition for intelligence activities, when an early disclosure could threaten the lives of individuals involved or jeopardize arrest operations. However, most of the information collected in the course of search operations, or intelligence-gathering activities, are not that sensitive operationally. Still, they are rarely shared with others. Furthermore, over recent years, the Office of the Prosecutor has proven that it can handle intelligence adequately, so as to facilitate surrenders by national authorities. Data provided by my Office prompted the surrenders of Ljubisa Beara , Momir Nikolic and Milan Lukic, to name just a few, and you may remember that my staff took pictures of Goran Hadzic while he was tipped off and fled.

My second point is that, beyond the sheer sharing of data, there is also a lack of coordination of efforts which has counter-productive effects. In Bosnia and Herzegovina, for instance, since we were unable to know who is doing what to track Karadzic and Mladic, we have asked the local authorities to implement certain surveillance measures. At that point in time, and without consulting or informing my office, a third party interfered to request these authorities to discontinue these measures. My attempts to receive explanations were never answered. Such communication gaps feed the confusion and cannot lead to positive results. Karadzic, in particular, is fully aware of the unorganised way in which the international community is proceeding against him, and he is taking full advantage of it. In an undated letter that reached my office only recently, but that was probably written shortly after he disappeared, one of his close supporters wrote to him: "I found out from a source that SFOR forces take action in certain cases exclusively on the basis of approval by their governments and not from some center. That should be taken advantage of. (...) Exclude any kind of communications except through couriers. I think that, from what can be found in various manners, some action aimed at capture is nevertheless of a limited nature and they will avoid risky, spectacular actions." He planned well, indeed.

Third, the capture of Radovan Karadzic and Ratko Mladic is no longer such a high priority for the international community that it would justify allocating substantial technical and human resources to it. Most international intelligence assets have left the Balkans. Therefore, we have principally to rely on the local authorities in Republika Srpska and Serbia and Montenegro to carry out the arrests. Until recently, there was no political will on either of these parties to go aggressively after Karadzic and Mladic. At the rhetorical level at least, this has changed now, and there are numerous statements by Serb and Bosnian Serb political and even religious leaders saying that Karadzic and Mladic must be brought to The Hague. These intentions at the top have, however, not necessarily filtered through all the layers of the institutions involved.

To sum up this most crucial issue, my main partners in the hunt for Karadzic and Mladic are now the Governments of Serbia and Montenegro and the relevant authorities of Bosnia and Herzegovina. The international community, through conditionality, is providing political incentives for the local authorities to arrest these indictees. On operational issues, however, the involvement of the international community has been minimal, at least over the past two years. I am ready to provide more details to the Council, but they should not be discussed in a public session.

On the basis of this assessment, I would like to offer a few suggestions, as possible remedies, that I have been pursuing over the past months despite my limited resources.

First, mechanisms must be set up or revived that offer the possibility for meaningful planning and exchanges of information between those involved in intelligence-gathering activities. The relevant national authorities, inside and outside the region, and international organisations, including the ICTY, should join forces in setting up such a framework for sharing information on Karadzic and Mladic. Since last spring, I have taken the initiative to encourage Serbia, Montenegro and the relevant services in Bosnia and Herzegovina to intensify their co-operation, both among themselves and with my Office. This has already produced some results, but further energy should be put in this effort. I would expect all international assets present in the region to take part as well in this coordinated effort. International actors must finally co-operate with each other, and with the ICTY, sharing promptly information on the location of fugitives, but also co-ordinating operations against fugitives or their support networks. I have developed a fruitful relationship at the highest levels with the civilian and military leadership of NATO in this context, and the situation has begun to improve very recently.

Second, the current efforts aimed at breaking the support networks protecting Karadzic and Mladic must be further aggressively pursued. My Office is in contact with NATO and EUFOR in Sarajevo, and we are working on a joint programme in this context. However, this strategy will be much more likely to bear fruit should it be complemented by efficient intelligence and operational activities. Furthermore, it comes very late in the day. Such comprehensive strategies should have been put in place long ago!

Third, the States of Bosnia and Herzegovina and Serbia and Montenegro must be made accountable for their failure to bring Radovan Karadzic and Ratko Mladic to justice. At the end of the day, the responsibility is theirs, and the international community will increasingly want to limit its involvement to a supportive role in this process. Experience shows that the political pressure from the European Union and the United States is the most significant factor encouraging the States of the former Yugoslavia to transfer indictees to The Hague. The first half of 2005 has demonstrated how efficiently international pressure works. Unfortunately, a number of deadlines have passed in the second half of the year, including the commemoration of Srebrenica, the anniversary of the Dayton-Paris accords, the beginning of negotiations between the EU and Serbia and Montenegro, but no progress has been recorded on Karadzic and Mladic. As the two most important leaders responsible for the worst crimes are still at large, the international community must remain fully committed.

As the Prosecutor of the ICTY, I am expected to do my utmost to bring all indictees to justice. However, there is no domestic judicial system where the prosecutor has such limited coercive powers and cannot instruct police forces to collect intelligence or arrest accused individuals. Let me stress that, under Article 29 of the Statute, all States are legally obligated to comply without undue delay with any request for assistance. Moreover, Resolution 1534 of the Security Council of 26 March 2004 “calls on all States to intensify cooperation with and render all necessary assistance to the ICTY, particularly

to bring Radovan Karadzic and Ratko Mladic, as well as Ante Gotovina and all other indictees to the ICTY". If the States having the power to locate them are not interested in providing information or otherwise co-operating with my Office in the search, then it certainly makes the fulfilment of the Tribunal's mandate impossible.

This assessment reflects the situation regarding Karadzic, Mladic, and the other fugitives who are within the reach of Serbia and Montenegro and Bosnia and Herzegovina.

One fugitive who is not within reach of Serbia and Montenegro or Bosnia and Herzegovina is Vlastimir Djordjevic, a former police general from Serbia indicted for crimes committed against Kosovo Albanians in 1999. In June 2004, my Office informed the Russian authorities of Djordjevic's exact address in Moscow. We received a response in August saying that Djordjevic had not been detected at that address, but that the investigation work was continuing. In June of this year, my Office passed information to the Russian authorities, according to which Vlastimir Djordjevic was residing in Rostov on the Don. On 21 July, the Embassy of the Russian Federation informed me that checks were made and that no documented record of his stay in the Rostov region could be found. I wish to urge the Russian authorities to continue their search, as they have promised, because the trial of Djordjevic's co-accused is due to start towards the middle of next year. Otherwise, this accused would have to be tried separately, with the resulting waste of resources.

Djordjevic is not the only accused who had fled to Russia. Other accused, such as Gojko Jankovic, Vujadin Popovic, and, most recently, on 13 September, Sredoje Lukic, were brought to The Hague from Russia thanks to the assistance of the Serb and Bosnian Serb authorities. In June, I also passed information to the Russian authorities on another accused at large, Dragan Zelenovic. My Office had located him on the territory of the Khanty-Mansijsk Autonomous District, where he was residing under a false identity. My Office received an answer on 21 July saying that he had not been found, but that the search was continuing. He was arrested there on 22 August and is now awaiting his transfer to The Hague. I call upon the Russian authorities to accelerate the procedure so that he can arrive in The Hague in the near future.

Another accused awaiting his transfer to The Hague is Milan Lukic. Thanks to the good co-operation between the authorities of Serbia, Croatia and Argentina, Milan Lukic was arrested in Buenos Aires on 8 August. I also urge the authorities of Argentina to transfer him to The Hague as soon as possible.

The three other remaining fugitives, Goran Hadzic, Zdravko Tolimir and Stojan Zupljanin are all within reach of the authorities of Serbia and Montenegro. Tolimir should be tried together with his eight co-accused for the crimes committed in Srebrenica. Like Djordjevic's, his transfer is urgent, because the trial is due to open also towards the middle of next year. Regarding Zupljanin, my plan is to have a joint trial with an accused who has already appeared before the ICTY, Mico Stanisic.

Serbia and Montenegro's cooperation has, unfortunately, deteriorated in the past months. There is no serious, well-articulated action plan on the fugitives. Moreover, there is a lack of co-ordination between the State Union authorities and the two Republic's Governments, and the rivalry between the involved agencies is palpable. The information passed to my Office is scarce and unconvincing. The Army of Serbia and Montenegro continues to hamper, both actively and passively, the co-operation of Serbia and Montenegro with the ICTY. Serbian civilian authorities admit today that the Army as an institution was protecting Ratko Mladic until as late as at least May 2002. They contend it is not the case anymore. However, on other issues, like the access to military documents, for instance Mladic's military and medical files, or documents related to Kosovo, the military authorities of Serbia and Montenegro obstruct co-operation with my Office despite the admirable efforts of the National Cooperation Council's President, and the assurances given to me by the civilian authorities. I would note that on my recent visit to Belgrade the authorities again gave assurances that we would be given full access to these materials, but it remains to be seen if these assurances will be honoured. However, in view of the authorities' unwillingness thus far to provide me with these materials, I have requested the Chamber to issue binding orders. The irony is that some of these materials are sometimes being produced by Defence witnesses in the Milosevic case. From whom did they obtain them, if not from those who refuse to provide them to us?

In Kosovo as well, my Office encounters difficulties in accessing documents from UNMIK. They are at times redacted or delivered in such a way that they cannot be used in court. The co-operation provided by UNMIK in the protection of witnesses has also been sometimes less than optimal. Furthermore, my Office is not convinced that UNMIK is properly exerting its control over the conditions set by the Chambers for Haradinaj's provisional release.

Indeed, as was also noted by Ambassador Kai Eide in his recent report, the intimidation of witnesses is a grave problem in Kosovo. It is widespread, systematic, and it has a very serious impact on court proceedings at the ICTY. In the Limaj et al. case, several witnesses eventually refused to appear and testify in front of the court, or withdrew or changed their testimony because they were intimidated or afraid. This may have influenced the outcome of the first instance judgment, which was rendered on 30 November.

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The arrest of the remaining six fugitives and the access to key documents and witnesses are issues deeply affecting the completion strategy. They are largely beyond our control, even though my office continues to use all means at its disposal to try to make progress towards their arrest. We are confronted with powerful structures that see no interest in co-operating with the ICTY.

Among the issues which are under the control of the ICTY, let me mention three areas where significant progress was achieved since my last report.

First, we have continued to pursue consistently our policy of referring cases involving mid- and low-level perpetrators to the domestic jurisdictions. Three cases involving four accused have already been transferred to the State Court of Bosnia and Herzegovina and to Croatia. Six other motions involving twelve accused are pending before the Chambers. We are also preparing for the transfer of non-indicted cases to Croatia, Serbia and Montenegro, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina. It will be up to the local judiciaries to decide whether to complete the investigations and prosecute the cases.

Second, we have undertaken to save time and resources by proposing to the Chambers to join certain cases where there are similar crime bases. One motion involving seven accused, including Djordjevic, who is at large in Russia, was approved by the Chambers on 8 July. Another motion involving nine accused, including Tolimir who is at large in Serbia, was approved by the Chambers on 21 September. Both trials are scheduled to begin towards the middle of 2006. On 19 July, the prosecution filed a third motion requesting the joining of three cases involving four accused. The Trial Chamber denied this motion on 10 November. As a result, three trials will have to be conducted instead of one.

Third, we have taken steps to adapt the structure and management of the Office to the evolution of the completion strategy. 2006 will be the busiest period in the Tribunal's history. In 2006, we expect to have some 33 accused on trial as opposed to 12 in 2005. Despite this increased activity, significant reductions in staff were made in the Office of the Prosecutor following the achievement of the first phase of the completion strategy. The size of the investigation division has been reduced by 37% or 79 posts. Furthermore, in the context of the 2006-2007 budget, the redeployment of 15 posts from the investigation division to the prosecution division and the appeals section has been proposed. This move is aimed at addressing the increased trial activities and the growing appeals work load. The budget also foresees a reduction of non-post items, such as travel, resulting from our efforts to streamline our processes. The proposed OTP budget for 2006 and 2007 reflects an overall net reduction amounting to over \$11 million or 13.7%.

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I wish to express my thanks to the Governments of Croatia and Spain for having brought Ante Gotovina to The Hague. My gratitude also goes to the European Union and its Member-States for having provided the ICTY with the political support that contributed so much to this result. Gotovina's arrest will also be positive for the completion strategy. I will request the Chambers to join his case with Cermak and Markac, two other former Croatian Generals who are presently on provisional release. Thereby, we will save a substantial amount of court time and resources.

On 29 September, the Croatian authorities provided me with undisputable evidence that Ante Gotovina was in Spain. Contacts were established immediately by Croatia with the Spanish authorities and we quickly learned that he was in the Canary Islands. I had told the Council in June that full co-operation by Croatia meant that either Gotovina would be

in The Hague or that Croatia would provide me with actionable intelligence on his whereabouts. Since this later condition was met, I was pleased to inform the European Union Task Force on Croatia, on 3 October, that, indeed, Croatia was fully co-operating with us. For operational reasons, however, details were kept among a small circle in Zagreb, Spain, and The Hague. As you all know, he was arrested on the Tenerife island on 7 December. The successful outcome of this operation shows that this methodology was the right one.

This can serve us as a model to overcome the difficulties we meet in Bosnia and Herzegovina and in Serbia and Montenegro. The key to success was a combination of international incentives, provided mainly by the European Union's consistent policy of conditioning EU accession to the full co-operation with the ICTY, and an effective joint operational plan between Croatia and the ICTY. The United States have also provided valuable support by insisting that Croatia could not join NATO before Gotovina would be in The Hague. Except for Spain, since the end of September, there was no involvement of outside actors. After the European Union, in March of this year, postponed the beginning of the accession talks with Croatia, the authorities drew an operational plan together with the ICTY and its implementation started in April. The operation was coordinated on the Croatian side by a very limited number of highly motivated, highly professional individuals under the leadership of the State Prosecutor, who had received the proper, strong backing from the political leadership. They were entitled to instruct all relevant services. A solid relation of trust, based on full transparency, was established with my Office, where, also, only a small number of individuals were involved, first and foremost the Chief of my Investigation Division. Since the operation was launched, we received well over 100 reports from different Croatian agencies which were, for the most part, of a good professional quality. These reports were reviewed in The Hague, suggestions were made so as to direct further action. This mix of political will and operational effectiveness leads to results.

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For ten years, we have been facing grave systemic deficiencies in the efforts made to capture Karadzic and Mladic. There is no co-ordination mechanism, there is not even the desire to co-ordinate the various activities, not to speak about sharing the most basic information.

For ten years, the international community has been playing cat-and-mouse with Karadzic and Mladic. And for much of this time, the cats chose to wear blindfolds, to claw at each other, and to allow the mice to run from one hole to another. It is time now for the cats to remove their blindfolds. It is time for the international community and the local governments, especially in Serbia and Montenegro and the Republika Srpska, to take concerted action to find the places where these fugitives are hiding and to arrest them and turn them over to the ICTY, so it can administer the justice the Security Council promised the people of the former Yugoslavia in 1993. It is time now for the cats to stop suffering the ridicule of the mice.