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**Keynote Speech by Carla Del Ponte Prosecutor of the International Criminal Tribunal for the former Yugoslavia**  
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Excellencies, Ladies and Gentlemen

It is a great honor for me to be given the opportunity to offer my views on the region to which we have all been devoting so much energy. But, please, do not expect from a prosecutor some magical solutions to the problems of South-East Europe! The Security Council unfortunately forgot to provide me with magical powers and I have not yet managed to convince Harry Potter to join my office. Otherwise, Karadzic and Mladic would have materialized in Scheveningen long time ago!

In the course of my work, I have become accustomed to a number of issues that are at the core of the challenges this region must address sooner rather than later. Based on this experience, I would like to address a few basics which are in my view key conditions for the future of South-East Europe. They deal with truth, justice and reconciliation. James Joyce once wrote *"History is a nightmare from which I am trying to awake"*. This could actually serve as a lead for all political and religious leaders in the former Yugoslavia. But it concerns the whole society. It is sometimes difficult for Western Europeans, in particular for Swiss, who escaped the most dramatic events of the world for one century or more, to grasp why the past remains so important for so many. Speak to any average Croatian, Serbian, Bosnian or Albanian: the history of his or her nation is at the heart of his or her own identity. The mechanisms through which a collective memory is shaped remain mysterious. One thing seems clear however: collective memory is seldom based on objective facts. The perception of a given fact, so it seems, is always relative, depending on the position of the observer. Srebrenica may be an evil act for us, but, quite unbelievably so, it remains a heroic action for others. Nations, both inside and outside of the Balkans, tend to build their national identity on the basis of history filled with myths, legends and heroes. Trying to correct the popular image of a myth through scientific research or new facts is bound to steer strong emotions. The reassessment of Switzerland's attitude during the Second World War, or the questioning of Wilhelm Tell's existence were two relatively recent instances where new approaches to Swiss mythology triggered high emotions. Today in the Western Balkans, we can study live how the fabrics of new myths and heroes are working. Let me give you a few examples of how factual events are being manipulated to create such myths.

On 11 July, the world commemorated the genocide of Srebrenica. Close to 8000 Muslim boys and men were slaughtered in and around Srebrenica between 11 and 17 July 1995. It is a proven fact. Those who would doubt it should go through the thousands of pages of written materials and the videos and transcripts presented during the Krtic trial in The Hague. The evidence is undisputable, and the Appeals' Chamber of the ICTY has found on 19 April 2004 that these killings deserve the legal qualification of genocide. Calling this crime differently, diminishing its magnitude and avoiding to accept the Tribunal's ruling is a first step towards the denial of the truth.

The Serbian public was at first shocked when, early June, a video was shown in our Court, and afterwards on Serbian televisions, showing forces from Serbia participating in the genocide. We thought it would prompt the Serbian society to finally accept the truth about Srebrenica. As you all know, the mere existence of a crime in Srebrenica is still, today, denied by a third of the Serbian population, and the fact that this crime amounts to a genocide is rejected by an overwhelming majority.

The counter-attack of the nationalist circles in Serbia was well-organised and effective. Firstly, a massive media campaign was mounted to demonstrate that there were nearly as many Serbian victims in and around Srebrenica. The facts and figures were grossly manipulated to fit the purpose and there was of course no word about the trial in The Hague of Naser Oric, the Muslim defender of Srebrenica. It was pretended that 3000 Serbs were killed by Muslims in Srebrenica and the neighboring Bratunac. What was not said is that the alleged number of Serb casualties in these two municipalities, which is probably closer to 2'000, concerns the whole period of the war, 1992 to 1995, and that it concerns both combatants and non-combatants. Secondly, a huge monument was hastily built in Kravica, a village not far from Srebrenica, and a commemoration called for July 12<sup>th</sup>. The maneuver was a success: the attention in Serbia moved to the Serb victims and the public was largely convinced that, indeed, in Srebrenica, the crimes committed against Serbs were about as important as those committed against Muslims. And, of course, the international community, because it devoted so much attention to the Srebrenica genocide, is perceived as biased and anti-Serb.

Another example of how to create a selective memory is the Croatian perception of "Operation Storm". Last

month, the tenth anniversary of this military operation, which liberated the parts of Croatia occupied by Serb forces, was commemorated. "Storm" was celebrated as a great heroic liberation action of the Croatian forces, but the crimes committed in the course and in the aftermath of this operation were only marginally mentioned. Over 100'000 Serb civilians were forced to leave and several hundreds were killed, not to speak of the lootings and destructions of property which have made the return of refugees almost impossible.

Not surprisingly, the picture emerges of a common attitude towards war crimes throughout the region: in a just war, there can be no war crimes; one side's heroes are the other side's war criminals. It is a pity that the Church, on all sides, is adding legitimacy to visions of history which are twisted in accordance with nationalist biases. There is an African proverb saying *"As long as lions will not have their own historians, hunting stories will continue to glorify the hunters."* And indeed, throughout the countries and regions of the former Yugoslavia, this proverb proves to be absolutely correct. The natural tendency of those in power, government, religious, and army leaders in particular, remains to build myths, and to create myths - one needs heroes. Victims' sufferings are sacrificed to boost the national egos. Unfortunately, most segments of the society seem to be ready to accept the vision of history spread from the top. There are many individuals - more than we think - who know precisely what happened and who committed crimes against whom. But how many dare to speak out the truth? The very few admirable persons who do - quite often women, I wish to stress - face intimidation, death threats and public ostracism. How many people in Serbia support human rights activists like Natasa Kandic? Less than 5%? Probably even less than 1%! When the living memory of those who know the truth because they have seen the crimes will be gone, textbooks will stay, and only the official, heroic vision of history will be transmitted to the next generation.

This process can follow its natural path, and conflicts, wars and atrocities would come back in cycles like winter after the fall. Look at the history of the Balkans in last century. The smooth functioning of the nationalistic reproduction machinery is however disturbed by two trends. First, we are not in the nineteenth or early twentieth century. Today, societies need to interact intensely with each other. Lies or distorted facts being spread in Bosnia, Croatia or Serbia trigger immediate reactions in the neighboring State. Second, the international community does not tolerate war crimes to go unpunished anymore. Societies cannot live in isolation anymore, as was the case in previous centuries. They interact constantly. People need to travel, work abroad, do business with neighboring countries. Information circulates at light speed. There is a world integration process going on. At the regional level, the European integration process remains dynamic despite the current problems within the European Union. The countries of the former Yugoslavia have no choice but to be part of this process. It is a matter of survival as sustainable nations. No one in South-East Europe envies the fate of North Koreans or of Albanians at the time of Enver Hodja. It is hard to imagine Croatia, Serbia and Montenegro, including or not Kosovo depending on the solution found for its status, and Bosnia and Herzegovina joining the European Union with each nation preparing ideologically the next conflict. The founding act of the European Union was an act of repentance for the crimes committed by Nazi Germany. There will be no reconciliation in South-East Europe without the sincere recognition of the crimes committed by one's own nation. This in turn requires from leaders and from the public that they accept that terrible crimes were committed in their name. It further requires from the authorities that they undertake a serious, long-term effort to present history to the public and especially to the next generation as it truly happened, even and especially also in its less glorious parts. We are still waiting for a Konrad Adenauer to emerge in South-East Europe. Actually, several would be needed. The European Union is confronted with a dilemma: either integrate the Western Balkans even before a genuine reconciliation process has taken place and risk importing conflicts, or wait until a solid peace is established, but this may mean decades, and nobody can predict what can happen in the mean time: fresh crises may start, the desire to join the EU may vanish. The EU has seemingly opted for something in-between. A set of conditions has been presented to each country with a strong focus on structural reforms which include legislative and institutional changes. The bet is that these changes will slowly but surely bring about solid democratic States, governed by the rule of law and the full respect for human rights. Such States, it is believed, are unlikely to go to war. Once all conditions will be met by the individual State, it will be allowed to become a member of the club. The French and Dutch "No" votes on the Constitution do not affect the basic commitment of the EU to the Western Balkans. Various senior EU officials have made it clear in the aftermath of the votes. This is of tremendous importance. Nothing would be more detrimental to the region than the European perspective fading away. The prospect of these countries joining the EU is the engine of change, and only the EU has the necessary leverage to press for justice and reconciliation. As long as a country remains a candidate, the EU has the power to force reforms. As soon as it will be in the club, this power will get lost. Lessons should be learnt from the enlargement of the Council of Europe, and the same mistakes should not be repeated. In other words, the standards should not be lowered to allow some less-advanced countries to join in, but, rather, there should be a strict adherence to the accession criteria as defined in various EU documents, including the so-called Copenhagen criteria. As you all know, full co-operation with the ICTY is one of the conditions set by the European Union for the countries of the former Yugoslavia to join in. The ICTY can be grateful to the EU member-States and the Commission for having given such a high profile to its work. Without the strong European support, the process of justice in the Balkans would be a sad failure. Croatia and Serbia and Montenegro, in particular, have been co-operating with the Tribunal only thanks to the international pressure. Their co-operation is not perfect, nor full, but the serious improvements we could notice in the past year and a half or so are definitely the result of the well-articulated and consistent EU policy.

The drive towards the European Union obliges South-East Europe to move towards reconciliation. The work of the International Criminal Tribunal for the former Yugoslavia obliges them to face the truth and to deliver justice. For the first time, crimes committed during a Balkan war have been impartially investigated and prosecuted. The most senior leaders responsible for the worse crimes have been indicted. 162 individuals have been accused by

the Tribunal, and all but nine, who are still at large, are at one stage or another of the judicial procedure. It is of course painful for the prosecutor and shameful for Serbia, Bosnia and Herzegovina and the international community that the two most important accused, Radovan Karadzic and Ratko Mladic, are still at large ten years after they were indicted. The protection they continue to receive from State institutions shows that these institutions have important things to conceal. The Serbian Army, in particular, remains afraid to confront the truth that Mladic and Karadzic may disclose. I can't exclude that some parts of the international community as well may prefer to keep certain facts hidden. Not everybody in the world is interested to see Karadzic and Mladic in front of the ICTY.

Truth is at the core of justice. Judgments are based on proven facts, and it is the task of the prosecutor to provide solid evidence proving the responsibility of an accused in the crimes for which he is indicted. Therefore, in the course of its existence, the Tribunal has accumulated a formidable wealth of documentary evidence. It must serve to generate an accurate perception of what really happened during that dark decade in the former Yugoslavia. But truth cannot be accepted if imposed from outside. Governments and NGOs should for once join forces and use the millions of pages presented in court to write history as it really happened. NGOs in Belgrade, Sarajevo and Zagreb are working on this. Their efforts must be supported, also by the respective governments. Excellencies, Ladies and Gentlemen, We could have done as usual. We could have forgotten the crimes. We could have allowed the people in power to stay in power. We could have allowed the history to be manipulated before being transmitted to the next generation. We could have ignored the seeds of new conflicts sown before our eyes. Fortunately, we have not. The international community has done part of the work, but, now, the most important part belongs to the locals. Setting the agenda is not complicated. Assembling the necessary energy and political will to implement it remains a huge challenge.

First, the remaining fugitives must be brought to The Hague before the end of the year. This may seem to be an unrealistic demand, but, trust me, it is not. It is mainly a matter of political will, and, as we all know, political will is influenced by outside pressure. The European Union and the United States must stand firm. Should the EU begin stabilization and association talks on 5 October while Mladic is still at large, this would gravely compromise the prospect of an arrest anytime soon. It may actually well amount to a passport for impunity. Belgrade, Podgorica and Banja Luka must also do more to locate and arrest Karadzic. They can do it, while I am skeptical whether NATO and EUFOR are capable of finding Karadzic. Croatia must finally step up its efforts to locate and arrest Ante Gotovina. It is obvious that Croatia will do even less to locate him the moment accession talks start with the EU. Russia has apparently arrested recently Dragan Zelenovic. This is a very positive development. He must be transferred to The Hague shortly. Zelenovic is the third fugitive caught in Russia. There is a fourth one still at large in Russia, the former Serbian Police General Vlastimir Djordjevic, who has been indicted for very serious crimes committed in Kosovo. It is urgent that he is arrested and transferred, so that he can be tried with his co-accused.

Second, the work of justice must not stop with the completion of the ICTY's mandate after 2010. The most important perpetrators could be tried only in The Hague, but there are many more mid- and lower-level individuals that must be tried by local courts. There has been some progress in the building-up of domestic jurisdictions capable of trying war crimes. However, most of them remain fragile and subject to political pressure. Witness protection mechanisms are only beginning to function, and they are still not perfect. Moreover, regional co-operation between judicial authorities must be further enhanced to overcome the legal problems connected to the principle of non-extradition of one State's nationals. NGOs, journalists, and international organizations like the OSCE must watch closely how the proceedings develop. This is a key guarantee for their integrity. On this basis, I have requested the Judges to transfer cases involving 18 accused to Bosnia and Herzegovina, Croatia or Serbia and Montenegro. So far, positive decisions were taken concerning nine of them. Thirdly, the seeds must be sown that will bring about truth and reconciliation. The process of creating collective memories must not be left to those forces that deny the truth and create myths and heroes. Is this generation ready to confront honestly and objectively the past, also on the basis of the evidence presented at the ICTY? I am not sure. But don't miss the chance to give to the next generation the possibility to do the work their fathers were unable to do. Archives, videos, photos, testimonies, the documents are there. They need to be made available to everyone and processed into history books, manuals and documentaries. We have a chance to write a history presenting both the lion and the hunter in a fair manner. Let us not miss it.

Truth and justice are not abstract concepts. At the Tribunal, every day, we are establishing facts and relating them to those responsible for war crimes. The process of truth and justice must now move from The Hague to the region of the former Yugoslavia. It must be given a high visibility, it must impress on the minds and hearts of all citizens. It is in my view the only way for these societies to awake from their nightmares. Otherwise we may all one day receive a brutal wake-up call.

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***Courtroom proceedings can be followed on the Tribunal's website.***