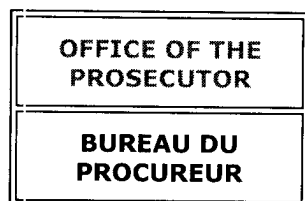


**Press Release . Communiqué de presse
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The Hague, 23 November 2004
CDP/P.I.S./917-e

ADDRESS BY CARLA DEL PONTE, PROSECUTOR OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, TO THE UNITED NATIONS SECURITY COUNCIL

23 NOVEMBER 2004

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 was distributed already, and I intend to concentrate now on the major concerns. The completion strategy has two components: the trial in The Hague of the most senior leaders responsible of the most serious crimes, and the referral of mid-and low-level perpetrators to domestic courts. Although significant progress was achieved on both fronts in the reporting period, it has to be stressed that a number of obstacles which are outside of the Tribunal's control may still derail the completion strategy.

The first such obstacle is the lack of co-operation of States, mainly in the arrest and transfer of persons indicted by the ICTY. There are still 20 fugitives at large, and most of them should be tried in The Hague. There are however a few of them who could be tried by domestic jurisdictions, and the relevant motions for their transfer have already been filed or will soon be filed. Among the fugitives are three individuals mentioned repeatedly in Security Council resolutions, unfortunately to no avail so far: Radovan Karadzic, Ratko Mladic and Ante Gotovina. In addition to these three key indictees, the other most senior fugitives are Borovcanin, Pandurevic, Popovic and Nikolic, who have been indicted for the Srebrenica genocide, but also the four generals Lukic, Lazarevic, Pavkovic and Djordjevic, indicted for their direct individual responsibility, as well as for their command responsibility in the crimes committed in Kosovo in 1998 and 1999. The objectives of the Tribunal, as established by the Security Council, will not be fulfilled before these accused are tried in The Hague. The Ministers of the European Union made the same assessment when they stated, on 12 July 2004, that "the work of the ICTY would not be completed without the arrest and transfer to The Hague of key indictees such as Radovan Karadzic, Ratko Mladic and Ante Gotovina."

Furthermore, the delays in the arrests and transfers of these fugitives make the planning of the trials more complicated and undermine judicial efficiency, as it is not possible to join similar cases in one trial. For instance, Karadzic could have been tried together with Momcilo Krajisnik, another former senior leader of Republika Srpska within Bosnia and Herzegovina, whose trial is on-going. Lukic, Lazarevic, Pavkovic and Djordjevic can still be tried together with Milutinovic, Ojdanic and Sainovic, who are waiting their trial in the Tribunal's detention unit. The situation is similar for Gotovina. His two co-accused, Cermak and Markac, are also waiting their trial. Borovcanin, Pandurevic, Popovic and Nikolic should be tried with Beara, who was arrested and transferred recently. It is therefore of crucial importance for the completion strategy timeline that these arrests be carried out as soon as possible so as to avoid duplication of efforts and waste of resources.

The governments of Croatia, Serbia and Montenegro and Bosnia and Herzegovina have the

main responsibility in bringing these fugitives to The Hague. A vast majority of them, probably more than a dozen, live freely in Serbia. Prime Minister Kostunica has made it clear that he is not willing to arrest fugitives, but only to try to convince them to surrender voluntarily. On 13 July, the sealed indictment against Goran Hadzic, the former President of the so-called Republika Srpska Krajina, in Croatia, was given to the relevant authorities in Belgrade. They were also provided with the precise whereabouts of Hadzic. Only hours later, my investigators observed that he was informed and left immediately. He has since disappeared. On 8 October, detailed information about the location of Ljubisa Beara, a close aide to Ratko Mladic indicted in 2002, was forwarded to the Serbian Prime Minister. Beara did not oppose resistance to his arrest, and he was transferred to The Hague in the night of 9 October. Obviously, this arrest happened only because my office provided all information on the fugitive's location, and because Belgrade knew that we were monitoring Beara's residence. Furthermore, I was due to address the Ministers of the European Union two days later. Only such immediate pressure seems to produce results. However, my office can not be expected to do the same for each and every fugitive! Furthermore, for their own domestic political reasons, the Serbian authorities presented this arrest as a voluntary surrender. They underlined thereby their official policy, which is that all fugitives should voluntarily surrender. But this policy has not produced any result so far, and it is in blatant contradiction with the international obligation of the country, namely Article 29 of the ICTY Statute and numerous Security Council resolutions. The Serbian Government has deliberately chosen to ignore its legal obligations. The consistent failure of Serbia to cooperate was again brought to the attention of the Council on 4 May 2004 in a report forwarded by the President. In the meantime, the Serbian Government's attitude of defiance towards the Tribunal, which challenges also the Council, has not changed.

There is however some progress to report in the areas of co-operation that are within the competence of the State Union of Serbia and Montenegro. Thanks to the effective work of the National Co-operation Council, the huge backlog of waivers authorising officials or former officials to be interviewed has been solved. There is also a desire to solve the issues related to the access to documents, but many difficulties remain, principally because the requested documents are in the hands of authorities who are blocking co-operation with the Tribunal. All in all, the lack of co-operation of Belgrade remains the single most important obstacle faced by the Tribunal in the implementation of the completion strategy.

Whereas most fugitives have found a safe haven in Serbia, there are still some residing in Bosnia and Herzegovina, or who travel regularly to that country. They continue to enjoy there the protection of powerful networks. The High Representative has taken energetic measures against these networks. These measures include the beginning of structural reform at the State and Entity level. But it remains the case that, nine years after Dayton, the authorities of Republika Srpska have not apprehended a single individual indicted by the ICTY. This raises fundamental questions both about the willingness of RS leaders to match their pledges to cooperate with the ICTY with firm action. It also now confirms, I believe, that there are fundamental systemic weaknesses built into the law enforcement and security structures in Bosnia and Herzegovina, and in particular the Republika Srpska. They must be tackled so that these structures finally help, not hinder the country in co-operating with the Tribunal. The Ministries of Defence and of the Interior of Republika Srpska cannot, by any reasonable standards, be judged to have helped in this regard. The report of the Srebrenica Commission imposed upon the Republika Srpska by the international community, once published, should help raise awareness about the genocide and the necessity to punish those responsible.

SFOR has supported the Tribunal in the course of the years, and it will soon have completed its mandate, which should be taken over by EUFOR and NATO. It is a great frustration for me that SFOR has to leave while Radovan Karadzic is still at large, especially since all SFOR commanders promised me that they would arrest him during their tenure. In my view, success will come only when the relevant authorities in Serbia and Republika Srpska will finally work together with international forces. This type of trans-border co-operation needs to be further encouraged throughout the region. In this context, the transfer of Miroslav Bralo on 12 November is a positive development. This accused had been indicted on a sealed arrest warrant since 1995. There were strong indications that he was in Croatia, although this was denied by the Croatian authorities. The seal was lifted on 12 October 2004, and he was

surrendered in Bosnia and Herzegovina just one month later.

Whereas most of the fugitives are in Serbia or in Bosnia and Herzegovina, there is one senior accused which was seen repeatedly in Croatia, as recently as last summer. Ante Gotovina disappeared in June 2001, just after he had been informed by the Croatian authorities of a sealed indictment against him. In the course of this spring, Croatia has apparently stepped up its efforts to locate and arrest Gotovina. However, doubts may be raised concerning the efficiency of these measures, or even their seriousness, as they have not produced any concrete results so far, not even relating to his whereabouts inside or outside of Croatia. On the other hand, there are strong indications that Gotovina, whose public image of a national hero is not denied by anyone, has enjoyed, and continues to benefit from a well-organised support network, including within State structures. It is of paramount importance for the completion strategy and for the overall achievements of the ICTY that Gotovina be brought to justice in The Hague. This is the only remaining obstacle to the co-operation of Croatia with the ICTY. As soon as Gotovina will be in The Hague, it will be possible to say that, indeed, Croatia is co-operating fully with the Tribunal. Until Gotovina is located, be it inside or outside of Croatia, and transferred, it will mean that the networks protecting war criminals are more powerful than this part of the Government that genuinely wants to co-operate fully with the Tribunal. Should international pressure recede in this case, this will be perceived as a signal that the international community may not be interested anymore in having the most senior leaders responsible for the most serious crimes, including Karadzic and Mladic, appearing in front of the ICTY.

The arrest of all fugitives is also a measure of the States' ability to proceed with domestic trials, as it is indicative of their commitment to the rule of law. The second key component of the completion strategy is the deferral to the States of the former Yugoslav of indicted and non-indicted cases concerning medium- and low-level indictees. However, the ICTY must be cautious that the States to which cases are transferred are able and willing to proceed with trials, and that those trials will be led in accordance with the highest judicial standards. The ICTY has been actively supporting the establishment of specialised war crimes courts throughout the region. The Prosecutor's Office has contributed its expertise to training seminars for prosecutors and judges so as to enhance the capability of national jurisdictions to try war crimes in fair and credible trials. We continue to support the efforts of the Office of the High Representative to establish a War Crimes Chamber within the State Court of Bosnia and Herzegovina to try accused of lower and intermediate rank who were originally indicted by the Tribunal. However, ultimately, the proper functioning of these institutions is beyond our control.

There is a legitimate concern that a country like Serbia, which is not willing to arrest indictees, will not either be interested in, or capable of, trying alleged war criminals domestically. The networks supporting persons accused of war crimes are so powerful there, that they can interfere with the judicial proceedings, including by intimidating witnesses, exerting political pressure on judges and prosecutors, or even by threatening the stability of the country. Both in Serbia proper and in Kosovo, aggressive nationalist rhetoric are being used in smear campaigns against the Tribunal and its Prosecutor. The message is the same: if the authorities co-operate with the ICTY, this will destabilize the country. Those groups orchestrating such propaganda are talented in threatening or causing violence and blaming the ICTY, incarnated by its Prosecutor, for this. The international community, and the democratically-elected authorities in the region, should take further decisive measures against these networks.

When selecting the jurisdiction to which it intends to refer cases back, the ICTY will have to consider the general climate in the countries concerned. It will also have to take into account the interests of the victims. In accordance with the principle that justice should be rendered as closely as possible to the victims and to the place where the crimes were committed, the Prosecutor's policy is that, where possible, a case should be referred to the authorities of the State where the crimes took place. By the end of the year, 11 indicted cases concerning 20 accused will have been proposed to the Chambers for transfer to domestic jurisdictions in accordance with Rule 11bis of the ICTY Rules of Procedure and Evidence.

The third area of concern impacting on the completion strategy which is beyond our control is the provision of adequate resources to my Office. As you are well aware of, the Secretariat has imposed in May 2004 a freeze on new recruitment. Moreover, the budget for the investigation division was not approved for 2005. These measures were taken at a moment when other bodies, including UN bodies, are offering very competitive packages to investigators and prosecutors. Over the past year the Office of the Prosecutor has lost over 40% of its senior investigators and almost 50% of its senior legal staff. Due to the hiring freeze, they can be replaced only through internal promotion, and that creates additional problems, as it is becoming increasingly difficult to continue to promote internally to senior levels without compromising professional standards. The vacancy rate in my Office is now close to 25%. This situation is already impeding the work of the Office and could soon impact on the efficiency of the trials.

The lack of co-operation of States, the state of preparedness of domestic jurisdiction and the financial crisis are the three major factors impacting negatively on the completion strategy. I remain however committed to the completion strategy and to its timeframe. The first major milestone in the implementation of the completion strategy will be the closure of all investigations by the end of this year. All of the six remaining investigations will be completed before 31 December, with a number of new indictments issued. However, since two of these indictments could be joined with two existing cases, they would only result in a maximum of four additional trials to be carried out in The Hague. On the prosecution side, efforts are continuously made to support the Judges in their efforts to streamline the procedures and increase the efficiency of trials. My office is currently ready to begin five trials, and it is involved in five other on-going trials.

However, these efforts will have no effect unless all accused are brought to The Hague in time to be tried before the end of 2008. As we enter the second phase of the completion strategy, 2005 will be crucial. If some of the most important indictees, like Karadzic, Mladic and Gotovina, are not arrested and transferred in the months to come, it may be necessary to revise the target dates of the completion strategy. 2005 will also mark the 10th anniversary of three key events: the Srebrenica genocide, the Dayton agreement and the indictment against Karadzic and Mladic. If the international community could not prevent the genocide, it should at least not allow this and other most serious crimes to be left unpunished.
