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United States Mission to the OSCE

Response to Carla Del Ponte, Special ICTY Prosecutor

As delivered by Ambassador Julie Finley
to the Permanent Council, Vienna
September 7, 2006

Thank you, Mr. Chairman.

In a formal way, on behalf of the United States I would like to welcome you, Madame Del Ponte, back to the Permanent Council. In a very informal way, I say, "Come back every week." I cannot tell you how I appreciate your directness, your clarity and your candor.

Your efforts and those of your staff remain absolutely vital in bringing to account the high-ranking political and military leaders who bear the greatest responsibility for the atrocities that occurred in the former Yugoslavia. The United States continues to believe strongly that the work of the Tribunal will ultimately pave the way for reconciliation within this region.

Regional reconciliation in turn will facilitate and speed the integration of the western Balkans into Euro-Atlantic institutions. The United States supports these aspirations for a European future. Europe cannot be whole without the countries of the western Balkans as partners.

Unfortunately, Serbia's lackluster cooperation with respect to war criminals remains an impediment to realizing the vision of integrating all of the former Yugoslavia into the Euro-Atlantic community.

This is especially regrettable given the substantial progress Serbia made between mid-2004 and mid-2005, when 16 war crime indictees were turned over from Serbia to The Hague for prosecution. During this period, Serbia also dramatically improved cooperation with the Tribunal on providing requested documents and witnesses, and opening its archives.

Since mid-2005, however, Serbian cooperation with the Tribunal has lagged. None of the remaining six persons indicted for war crimes -- most of who are believed to be in Serbia -- have been turned over to The Hague.

The United States is particularly disappointed that Ratko Mladic and Radovan Karadzic remain at large. As you stated to the UN Security Council this June, Madame Del Ponte, "impunity for these two most serious architects of the crimes committed in Bosnia and Herzegovina, both accused of genocide, would represent a terrible blow not only to the success or failure of the Tribunal, but to the future of international justice as a whole."

The United States was encouraged by Belgrade's recent announcement of an "Action Plan for future ICTY cooperation," and has provided suggestions to help put the plan into operation. More important than any specific steps, however, is for Belgrade to undertake a serious effort to apprehend remaining ICTY fugitives. We were also heartened by public comments made

by Prime Minister Kostunica on August 25 regarding Serbia's heightened effort to locate and transfer Mladic to The Hague. While these steps are in the right direction, we believe Serbia's highest-ranking government and political leaders can and must do more.

The United States continues to support use of the OSCE to monitor trials transferred by the ICTY to domestic courts in the region.

With respect to a case that was referred by the Tribunal to the State Court of Bosnia and Herzegovina, the United States is concerned about the access of OSCE trial monitors to case files. We have learned that an international judge currently presiding over this case has questioned the OSCE's mandate, which is derived from Annex Six of the Dayton Accords, to access case files as part of the ongoing trial monitoring program. We urge the President of the State Court and the High Representative to Bosnia and Herzegovina to look into this issue as soon as possible.

Madame Del Ponte, we are also open to your suggestion that the OSCE might do more in promoting regional cooperation to help close the "impunity gap" that can arise when a war crimes case is opened in one jurisdiction but the suspect remains in another jurisdiction. Specifically, the OSCE might take the lead in encouraging the states of the former Yugoslavia to permit extradition of nationals for serious offenses such as war crimes. Where extradition is not possible, another option is to transfer the case to the jurisdiction where the suspect is located. We understand, however, that this is often not possible due to domestic laws that prohibit the transfer of cases where the possible sentence for the alleged crimes is greater than ten years. The OSCE could play an important role in helping to draft national laws that would close this impunity gap by allowing for the transfer of proceedings where the potential sentence is greater than ten years.

We conclude by noting that this is likely to be a pivotal year in the history of the western Balkans, particularly for Serbia, which faces a number of important challenges. But this is also a year of opportunity, where all of us, working together, have the chance to put the conflicts of the 1990s behind us, promote long-term stability in the region and accelerate the path of the entire region into Euro-Atlantic integration.

The United States remains committed to seeing Serbia and its people move forward from the isolation of the past toward sharing this integrated future. This cannot happen, however, until Mladic faces justice in The Hague.

Madame Del Ponte, the United States thanks you once again for the vital work you and your staff perform in The Hague, and for making room in your very busy schedule to be with us again here today.

Thank you, Mr. Chairman.