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ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

Statement
in response to the Address by Carla Del Ponte
Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia
delivered by Ambassador Jivan Tabibian
at the 623rd Meeting of the OSCE Permanent Council
September 7, 2006

Mr. Chairman,

As usual it is extremely satisfying and interesting to listen to Madame Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia. As usual initially we had not planned to comment. The reason being quite is obvious: we neither have any particular Yugoslav experience, nor do we represent power, nor do we claim virtue. Therefore, without any of those, one would assume we would remain silent. However, what was discussed is too important to reduce simply to exchanges about process and procedures. Our ambivalent feelings are because of the following reasoning. The very success, and let me say unequivocally that the Tribunal under the Chief Prosecutor's guidance is doing a very good job indeed, makes this not a discussion either of its utility or of its effectiveness; we take those for granted. Our reflections are a little bit broader. We believe we have to think of three layers: one is at the level of the criminal, the other one is of the state, or call it country and sometimes nation from where the criminal comes or where the criminal acts are committed. But then there is the third layer the so called "international community", the one we have reluctance to take for granted or to take at face value. We hope we do not disappoint our American colleague by being blunt without naming names. The international community, particularly the United Nations Security Council, who knew how to pass the Resolution 827, does not do so in other places. So, war crimes, murder of all kinds and horrible acts that are crimes we prosecute if they happen in one part of the world but not if they are committed elsewhere in the world, due to whatever double standard. So where does the problem lie? From our prospective it lies in the fact that the so called "crime", instead of being in the nature of the act and its consequences, it is politically contextualized. And the political context says: bother with this case but don't bother with that other. Anybody who reads the papers knows that at a given time and place war crimes are being committed, though not necessarily in our region. However, in other regions, victims may have different colors but they die nevertheless.

Where is the trick? The trick is very simple: the ones who allegedly commit those crimes, particularly at the level you are interested in - the higher levels, those who makes those decisions who whether by omission or commission, allow this acts, encourage, supply the executioners with the weapons or justify those activities, at the time when they order murder they hide behind a "perfect" justification: reasons known as national interest and national security. When they so rationalize to justify such acts to themselves, to their cronies, their supporters, to their passionate and

sometimes blinded followers, they believe that these explanations are justifications in themselves, sufficient. What we need to do is fight the notion that the argument “national interest” and “national security” are valid defenses; as long as that reasoning prevails, crimes against humanity and war crimes are not likely to disappear. If the UN SC were to recognize this trap, it might convey that meaning. However, it turns out that those who through this reasoning in the name of these priorities cause such acts to be committed if they do not lose a “war” appear in front of a court. The idea is to take the International Criminal Tribunal for the Former Yugoslavia as a model, as a lighthouse, as a precedent to convince the world that this method, this approach, this rigor, this blind justice, is valid not only after the fact, but as a preventive measure. Until that time comes we may have to reinvent this International Criminal Tribunal quite often. We are privileged at the OSCE that when it happens in our neighborhood, we as Europeans are able to support this Court and its Chief Prosecutor. We wish there were other “OSCEs” on other continents, in other regions that could do the same thing to give to justice and punish the guilty.

Thank you very much again, and sorry that this has provoked this response on our part.