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**STATEMENT BY MS. MIROSLAVA BEHAM,
PERMANENT REPRESENTATIVE OF SERBIA,
IN RESPONSE TO
THE CHIEF PROSECUTOR OF THE ICTY,
MS. CARLA DEL PONTE,
AT THE 623rd MEETING OF THE OSCE PERMANENT COUNCIL**

7 September 2006

Mr. Chairman,

On behalf of the delegation of the Republic of Serbia I very warmly welcome the Chief Prosecutor of the ICTY, Ms. Carla del Ponte, to this meeting of the Permanent Council and thank her for her address.

The transformation of war societies into peace societies is a highly demanding task, it is the task of challenging a violent past in order to shape a non-violent future based on the respect of human rights, the rule of law and democratic values. As a member of the former Yugoslav Commission for Truth and Reconciliation, which was modelled on the South African example, but which, unfortunately, could not complete its mandate due to adverse circumstances, allow me to point out that there is no universal formula or recipe to respond to these grave challenges. Given not only the experience of our Commission and about 30 similar Commissions throughout the world, but also the expert knowledge of history, each society has its own way of going through an indispensable catharsis, and this process is never complete, nor is it completed.

One of the essential preconditions for restoring peace and a system of law and order and to contribute to reconciliation is to punish committed crimes and war crimes, though, as the Chairman of the South African Truth Commission, Bishop Desmond Tutu, elaborated, “the criminal justice system is not the best way to arrive at the truth. There is no incentive for perpetrators to tell the truth and often the court must decide between the word of one victim against the evidence of many perpetrators”. Still, the cathartic effect of war crimes trials lies, beyond the proof of guilt, in the public debate that inevitably goes along with the exposure of committed war crimes or grave human rights violations in a courtroom.

For this and many other reasons, the democratic authorities of the Republic of Serbia have, since the political changes of the year 2000, always favoured domestic war crimes trials, firmly determined to overcome the past in this way.

Mr. Chairman,

Allow me to point out that Serbia adds her voice in support of the Tribunal’s completion strategy, specified in the Security Council Resolutions 1503 and 1534. The essential precondition for the success of the strategy is the existence and the ability of domestic jurisdictions to try the referred cases and meet international legal standards in the proceedings. The War Crimes Panel within the Belgrade District Court, its judges and the War Crimes Prosecutor have proved that they are professionally and technically capable of

prosecuting war crimes, as for example the Ovčara, Sjeverin, Zvornik, Skorpioni and Batajnica cases show, which, by the way, had a high cathartic impact on the Serbian public opinion. This enhanced capability of prosecuting war crimes is, due, last but not least, to the excellent cooperation of the Belgrade District Court War Crimes Prosecutor Vladimir Vukcevic with the distinguished Chief Prosecutor of the ICTY, Ms. Carla del Ponte.

This is due, however, as well to the comprehensive support of the OSCE, the UNDP, the Council of Europe and those countries assisting Serbia in amending her domestic criminal legislation according to ICTY standards and in training prosecutors and judges dealing with war crimes trials. Being grateful for that support, we are looking forward to further training opportunities in order to even more improve Serbia's capacity to prosecute war crimes, especially through the field missions.

In this regard, Serbia also welcomes the agreement between the OSCE and the ICTY that allows OSCE field missions in the region to monitor the war crimes trials that are transferred from the ICTY to the judiciaries of the respective countries.

Having in mind the nature of the wars in former Yugoslavia, regional co-operation is of crucial importance. Prosecutors of Serbia, Montenegro, Croatia and Bosnia and Herzegovina have met several times in Belgrade and other places in the region to explore and discuss further possibilities in their co-operation regarding the prosecution of war crimes. The Prosecutor of the Republic of Serbia has signed a memorandum of understanding with his counterparts from Croatia and Bosnia-Herzegovina, a similar Memorandum is expected to be signed with the prosecutor of Macedonia.

An essential share in the enhancement of interstate judicial co-operation in war crimes proceedings can be attributed to the "Palic Process", initiated by the OSCE two years ago, which, by improving the exchange of experiences and information between the relevant judicial and state administrative actors and by identifying common difficulties and solutions to them, boosted mutual trust and reliance and can further enhance it.

Based on this growing mutual trust, and for the reasons of cathartic effects already elaborated, Serbia would have welcomed the transfer of war crimes cases involving Serbian nationals to the national Serbian jurisdiction, as for example the case of the "Vukovar Troika", which would, by the way, have saved also a lot of costs for the ICTY. The psychological impact of Serbs trying their own people would again have shown to be incomparably higher than of Serbs being tried in the court of another country.

Mr. Chairman,

Before concluding I would like to draw the attention of the Permanent Council to the fact that the Republic of Serbia is firmly committed to the same basic ideas as the ICTY and the international community – it is the idea of overcoming the past by punishing committed war crimes and in this way pave the path to reconciliation and a peaceful future.

The authorities of the Republic of Serbia have worked and continue to work hard in their efforts to fulfil their international obligations towards the ICTY, which we regard as our national interest, particularly through the National Council for the Co-operation with the ICTY, which was established in April 2002 and has taken far-reaching decisions in its 33 meetings leading to decisive action.

Let me recall the effectiveness of these efforts:

- The Government of the Republic of Serbia has so far granted waivers of state and military secrecy to more than 500 members of the Army, the Police and the Government. In this field of co-operation Serbia is providing effective assistance to the Office of the Prosecutor and the ICTY in tracking down, interviewing and taking testimonies from witnesses and suspects, as well.
- The Office of the Prosecutor has so far been provided with several thousand documents, including classified ones from sessions of the Supreme Defence Council, the Parliament of the Republic of Serbia, the Counter-Intelligence Service of the Army of Serbia, the Ministry of the Interior of Serbia and so on.
- The number of requests addressed to the Republic of Serbia for the assistance of the Office of the Prosecutor has reached almost 1300. They are being processed in a prompt and timely manner, with less than 2 – 3 % of requests still pending or being unanswered in a period not longer than two months, while new requests arrive almost on a daily basis.
- This year, the National Council for the Co-operation with the ICTY has decided to allow OTP investigators general access to the state archives, including the archives of the Ministry of the Interior and the Ministry of Defence, the archives of the Presidency and the Government of the Republic of Serbia and the archives of the State Security.
- The new Criminal (Penal) Code of the Republic of Serbia, adopted last September, has officially included command responsibility into the legal system of Serbia. Furthermore, the recent adoption of the Law on Witness Protection is instrumental for processing war crimes.
- 10 indictees have been arrested in Serbia, and 27 surrendered voluntarily. All have been transferred to The Hague, among them almost the complete leadership of the Milosevic government, including the main indictee himself. At the same time, the authorities of the Republic of Serbia are showing firm commitment in fulfilling their international obligations by continuous efforts to find, and if possible apprehend, six remaining fugitives, regardless of their whereabouts. Within the search for Mladic, several of his former associates have been arrested. A law has been passed on freezing the assets and funds of those indicted by the ICTY.
- And, last but not least – in July the Government of the Republic of Serbia adopted the Action Plan for finalizing the co-operation with the ICTY, which is being implemented by serious activities on a daily basis and with all necessary efforts.

All in all, Mr. Chairman, the authorities of Serbia are doing their utmost not only to comply with their international obligations, but also to contribute to the highly important process of justice and reconciliation. In these efforts, which are not always visible in public, Serbia needs the co-operative support and sincere understanding of the international community.

We thank Ms. Del Ponte once more for her address and wish her all the best in her future endeavours.

Thank you, Mr. Chairman