

Address by Ms. Carla Del Ponte
Prosecutor of the ICTY
At the International conference:
“Establishing the Truth in the Aftermath of Conflict:
Current Initiatives and Perspectives in the Western Balkans”
(5 May 2006, Sarajevo)

Dear colleagues,

I say colleagues, as we are attending a conference that unites us in a common effort of search for and promotion of the truth. While our methods and possibilities are different, the aim is the same.

At the outset, allow me to thank Mr. Mirsad Tokai, Ms. Nataša Kandić, Ms. Vesna Teršelić and praise the organisers together with those who sponsored this important conference, for the noble path they have chosen to take. Three prominent NGOs from three neighbouring countries – which went through the hell of dissolution of a common state and violent conflicts burdened by ethnic hatred – united their efforts in the same goal: to push for the establishment, understanding and promotion of the truth regarding the conflicts and crimes of the 90s.

Painful aspects of the truth are visible, sensitive, speculative and differently presented - they remain in the centre of the public attention as ever before, and are subject to continuous varying interpretations. Shockingly cynical as it appears, *Friedrich Nietzsche* (1844-1900) used to say that "whichever interpretation prevails at a given time is a function of power and not truth." Our common effort, obviously, is different and is not a function of power, but a function of humanity and peaceful future.

The Hague Tribunal and the national courts dealing with the war crimes are in a function of truth. Famous British statesman and Prime Minister *Benjamin Disraeli (1804-1881)* liked to repeat that "Justice is truth in action". I cannot agree more – as there is no justice without bold action and there is no acknowledged truth without justice. Indeed, as noted on many occasions, the best way to approach the truth about events of criminal nature is through the judicial process, through fair criminal trials that explore all available evidence and covering opposing views, expert opinions and various controversial facts and data.

Judicial impartial process is especially important in the context of complex and highly contested events, like the conflicts of the 90-es in the former Yugoslavia. In the conflicts where, using the well-known words of *Oscar Wilde*, "the pure and simple truth is rarely pure and never simple." Especially taking into account massive propaganda and distortion of the truth by the conflicting parties. As *Sir Winston Churchill* advised (and indeed he knew well!): "In wartime, truth is so precious that she should always be attended by a bodyguard of lies".

It is not my intention here today to speak much about the ICTY. However, despite all the sceptical views and criticism, the Hague Tribunal served the interests of justice and truth well and achieved significant results in practice and jurisprudence. Practically, all most serious, emblematic, crimes – which vast majority of people in the former Yugoslavia and international community viewed as most tragic events – were reviewed, investigated and put on trial in The Hague and also now transferred to the national courts. However, I have no illusions here – far from all the individual crimes, and not even all serious ones were addressed. Tribunal could only deal with a fair share of the most serious crimes committed almost in a decade.

This leads me to the issue I would like to address today. I am speaking about the victims of various crimes, which were not addressed properly or at all. For the individual victims, for the vast victimised communities, as far as I can see from the numerous letters still being received by my office – all what has been achieved is not enough. It is fully understandable. Even though this feeling of unfulfilled aspiration for justice can sometimes be a result of nationalist propaganda and clever political manipulation of the victims' communities.

Typical feature of such manipulation – extraction of individual examples of the alleged crimes, individual cases, incidents and making sweeping judgements and blunt accusations against the others, or the ICTY, for instance. Just look at the media campaign in Serbia about several examples of alleged crimes which had happened during Slovenia's "10-days war", which was always ridiculed and dismissed in Serbia as "operetta war" in the early 90-s. More than 3 weeks of fierce campaign about "the first proven war crime in Holmec" committed by the Slovenians and not processed by the ICTY or Slovenian courts ended with a statement by the Defence Minister Stankovic, who acknowledged that actually the three "executed" JNA soldiers in question were not shot dead but are all alive, though two were wounded.

Certainly, every single crime is a crime if proven in a court of law. And this is exactly the point. No crime should be left unattended legally by the courts, or other possible serious and responsible mechanisms, no incident of criminal nature should be left in the open vulnerable to political manipulation and nationalist propaganda.

It is always much easier to point the finger at the misdeeds of the others; that is why we did not see in Serbia so far, unfortunately, a similar public outrage in regard to Srebrenica or siege of Sarajevo, as we saw it in the case of the single incident in Holmec. While, for the sake of the truth and future relations, it is much more important for each side to address the crimes committed by their own forces. Especially those who strongly believe that their fight was just – shall remember the words of *Mohandas (Mahatma) Gandhi (1869-1948)*: "Truth never damages a cause that is just". Even if the truth is painful and unpleasant.

Let me return back to the frustration and justified anger of the victims. Not only they often did not see justice done to them in their individual cases, many of them had no proper respectful forum to tell their story beyond judicial process. Probably to a lesser extent, those who would like to relieve their soul and confess may wish to have such

forum as well. Though, I have to say, in our practice, there is no indication that many people would wish to voluntarily recognise their responsibility for the atrocities committed; even some notoriously known offenders expect deals and do not wish to plead genuinely guilty.

Therefore, and it is an obvious conclusion, even the proper judicial process, as the one in The Hague – might not be enough for the thousands victims. For many - not all crimes were investigated, not all known and unknown perpetrators were accused, tried and convicted, and not all victims had ability to speak out about their suffering, to share their pain. And for many victims this is unbearable burden, which is well understood through the words of the Greek classic playwright *Sophocles*: “How dreadful knowledge of the truth can be when there's no help in the truth.”

This conference, as far as I understand, is exactly in the function of looking for different options, possibilities, initiatives and perspectives in order to address the issue of the truth in the aftermath of the conflicts. The organisers of the conference have been contributing for years to this effort and proved their leadership in bringing the civil society, human rights activists and victims’ communities in the countries of the former Yugoslavia together. Together with the ICTY’s Outreach programme a number of very successful seminars and conferences were organised, like the “Bridging the gap” events. This work with the victims and court documents is very important and deserve all possible praise.

The Hague Tribunal was not created to work alone, in some international distant forum and dealing with some abstract concepts of international criminal justice. Tribunal was always meant to work together with the domestic courts. Presently, we are proud to say that we indeed work together and share information, documents, cases. My Office is directly in contact, almost on a daily basis, with the prosecutors for war crimes in Belgrade, Sarajevo and Zagreb, and this co-operation is expanding as we go forward. Apart from this prosecutorial co-operation my staff is constantly in touch with the relevant NGOs and associations of victims, whom we support and in many ways depend on.

However, despite all the efforts and court proceedings, all outreach activities and conferences – it seems to me that it is not enough. I see it from many appeals, letters, statements of the victims groups and communities. Other additional mechanisms seem to be necessary to address their needs. Certainly, not to replace the judicial process, but rather in addition to it.

So far, the Tribunal and my Office believed that a mechanism such as the Truth and Reconciliation Commission, for instance, could be interfering with our work. At the earlier stages (before all indictments were issued) we believed that competition for witnesses could be of serious danger for the court and cause of justice, that it could place unbearable burden on the witnesses. Situation is different now and the Tribunal’s programme of trials is well known. It is also known that only small part of the witnesses interviewed during all these years will participate in The Hague proceedings (or even before the national courts as their capacity to deal with the thousands of crimes is limited as well).

In such circumstances alternative mechanisms of the searching for truth, truth telling, which undoubtedly contributes to the process of reconciliation, are only logical. Certainly, to be genuine such process, in whatever framework or name, requires a broad consensus between the parties, former enemies, peoples and states. It requires ability, will, honesty and dignity primarily to recognise one's own responsibility, guilt, in whatever form; it requires true humility and genuine desire to forgive. And frankly speaking, it is not for me to judge – or give you advice – if such preconditions exist. However, they shall be helped to develop.

Naturally, the Tribunal and my Office, I believe, will be always willing to assist a true and genuine effort in establishing the truth about the conflicts of the past. However, I have to say – to the extent possible, as our resources are being reduced while the workload with the full trial schedule is at maximum. At the same time the ICTY leadership and management are doing serious effort to make our documentary collections and proceedings as accessible as possible for the outside users through Internet.

Allow me to finish by quoting the great Albert Einstein, whose words speak for themselves: “In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same”. And this is the essence of our common quest for the truth and justice – it is all about people, their lives, their suffering and their right to know the truth and see justice done.

Thank you.