

Mr. Chairmen and Members of the Commission,

Before I begin, I would like to introduce my chief of staff, or as we say in the U.N., Chef de Cabinet, Larry Johnson. Larry is a distinguished international lawyer who, among his many other accomplishments, was a leading member of the U.N. group that drafted the Statute of the International Criminal Tribunal for the Former Yugoslavia in 1993.

I am honored to have been asked to speak to you today. For nearly three decades, this commission has been a quiet but wonderfully effective outpost of bipartisanship and multilateral cooperation in U.S. foreign policy. Through diligent research, skilful publicity, and careful diplomacy, the commission has greatly advanced the causes of human rights, democratization, and economic and social development in Europe.

Like the OSCE/CSCE, the organization of which I have the privilege to be President represents an enormous experiment in international cooperation. Let me begin by giving you an overview of its operations as it reaches its tenth anniversary.

Created by the U.N. Security Council in 1993, the International Criminal Tribunal for the Former Yugoslavia, or ICTY for short, has 16 permanent judges from 16 countries and nine ad litem judges from a further eight nations. The judges sit in three trial chambers, with a total of nine three-judge benches, and one appeals chamber. The Tribunal has held 28 trials involving 44 defendants, with another 31 defendants currently in pre-trial proceedings. A further 15 defendants have pleaded guilty. After nearly 10 years in operation, the Tribunal's chambers have handed down hundreds of decisions.

As you know, the United States took a leading role in the creation of the ICTY and remains a staunch supporter. The U.S.'s financial contribution accounts for approximately a quarter of the Tribunal's annual budget of approximately \$ 120 million.

During its 10 years of life, I believe the ICTY has made a fundamental and lasting contribution to bringing justice to the peoples of the former Yugoslavia. The Yugoslav conflicts involved terrible crimes that destroyed or devastated hundreds of thousands of lives. The vast scale of those crimes--the murders, rapes, and deportations, the acts of torture, destruction, and cruelty--would dwarf the capacity of any single court to bring more than a very partial reckoning. But, if with painful slowness at first, with growing confidence and efficiency the ICTY has helped bring to account a considerable number of accused of high rank.

It has been the Tribunal's task, to use a phrase of Justice Robert Jackson, the U.S. Chief Prosecutor at Nuremberg, to "patiently and temperately disclose" the record of the crimes that scarred the Balkans in the 1990s. By doing so, our Tribunal has given victims a chance to see their sufferings recorded and, at least in some small measure, vindicated. The trials held at The Hague have helped, as former President Clinton said at the opening of the Srebrenica Memorial a few weeks ago, to "la[y] bare, for all the world to see, the vulnerability of ordinary people to the dark claims of religious and ethnic superiority." Thus, they have helped demonstrate the viciousness of those who built their power by encouraging their followers to embrace such hate-

filled claims and have sent a powerful message that only through genuine reconciliation can all the peoples of the former Yugoslavia create thriving societies.

Speaking during the debate on the resolution that committed the U.N. Security Council to the creation of the ICTY, Secretary of State Madeline Albright asserted that "[t]his will be no victor's tribunal. The only victor that will prevail in this endeavour is the truth." I believe the ICTY has lived up to that contention. Our Statute and Rules of Evidence and Procedure provide for independent and impartial judges; an independent Prosecutor; a right of appeal; and an array of defendant's due process and fair trial rights recognized in our own Bill of Rights and in international human rights instruments: the right to counsel; the right to public proceedings; the right to present evidence and to challenge the evidence presented by the prosecution.

Of the 44 defendants tried at the ICTY, five, from three different trials, have been acquitted. As important as the Tribunal's ability to reach careful judgements of guilt for the terrible crimes within its jurisdiction, one of the essential tests of its fairness and legitimacy has been its insistence on acquitting defendants when the prosecution has failed to meet its burden of proof.

Even as the ICTY is running at full steam, we are moving forward with a "completion strategy," a plan of internal reforms and external initiatives designed to enable the Tribunal to complete its mission in an orderly and equitable way within the timetable established by the Security Council. The Council has stated that the ICTY should complete all investigations by the end of 2004, all trials by the end of 2008, and all appeals by the end of 2010.

Our ability to meet those goals will depend on many factors.

Above all, while States in the region have improved their cooperation with the Tribunal recently, that cooperation must still be made much more complete. Sixteen individuals already indicted by the Tribunal remain at large. Those fugitives from justice include some figures accused of playing leading roles in the crimes committed during the Yugoslav conflicts, such as Ratko Mladić, Radovan Karadžić, and Ante Gotovina. The pressure must be kept on to secure the arrest and transfer of all fugitives and the prompt provision of requested sources of evidence.

The Tribunal's ability to finish its work in a timely fashion will depend as well on the choices the Prosecutor makes about future indictments. But that is a subject upon which it would be inappropriate for me, as a judge, to comment.

A third factor that will affect the speed with which we complete our mission is our ability to improve the efficiency of our proceedings. In recent years, the judges of the Tribunal have adopted a number of changes in our procedural rules and practice in an effort to make our trials and appeals more expeditious, while at the same time protecting defendants' rights. We have reformed our procedures for interlocutory appeals to reduce the number of interruptions in trials; we have given trial chambers greater powers to restrict the scope of the evidence presented by the prosecution when some of that evidence appears duplicative or unnecessary to the establishment of the charges presented; we have changed our system for appointing substitute judges when one member of a three-judge bench is unable to continue sitting in a trial, thus reducing the chances of mistrials necessitating time-consuming re-trials. I chair a group of judges

assigned to search for additional ways to improve our efficiency, and the Prosecutor has also offered a number of helpful suggestions that the judges are actively considering.

A fourth important influence on the Tribunal's completion strategy will be its ability to transfer some cases of lower- and mid-level accused to competent courts in the region of the former Yugoslavia. On this score, I have some encouraging news to report and would like to ask for your help. Over the past year, the Office of the High Representative for Bosnia and Herzegovina and the ICTY have undertaken a joint initiative to create a special War Crimes Chamber within the newly re-constituted State Court of Bosnia and Herzegovina. This past February, my predecessor as President of the ICTY, Claude Jorda of France, and Lord Ashdown's Senior Deputy, Ambassador Bernard Fassier, initialled a joint proposal outlining the structure and financing of the War Crimes Chamber. I twice had the honor to address the steering board of the Peace Implementation Council about the proposal, and I am grateful that PIC steering board endorsed the project in June. I am grateful as well that the U.N. Security Council added its imprimatur to the War Crimes Chamber in Resolution 1503 of the 28 August 2003, called for its "expeditious establishment," and urged the donor community to support the project financially.

We are now moving from plans to action. On the 30th of this month, the OHR and the ICTY will jointly host a donors' conference at The Hague. That conference, which builds on two earlier meetings in Sarajevo, should put in place the War Crimes Chamber's financial foundation. We will soon create a series of working groups that will establish many of the detailed policies needed to get the War Crimes Chamber running. Those groups, staffed by representatives from the OHR, the ICTY, relevant departments of the Bosnia-Herzegovina government, and interested groups such as the OSCE, the Council of Europe, and the European Union Police Mission, will address such issues as rules of procedure and evidence, witness protection, investigations, detention, and transfer of cases and evidence from the ICTY.

The U.S. has expressed its support for the Sarajevo War Crimes Chamber and its commitment to make a generous financial contribution to ensure the Chamber's prompt creation. I am grateful for those initiatives, and I urge you to support them.

Let me say in closing that, while the work of the ICTY has been aimed principally at the peoples of the former Yugoslavia, it has had a broader significance as well. This Tribunal represents an historic step in the effort to end the tradition of impunity for mass crimes by establishing an effective system of international criminal law. As I said at the outset of my remarks, our work involves a remarkable experiment in international co-operation and legal institution-building, bringing together individuals from varied cultures and legal heritages. The jurisprudence we have patiently built has given new life and strength to international humanitarian law, far beyond what anyone would have imagined prior to the Tribunal's creation. That jurisprudence will offer an important foundation upon which other criminal tribunals, both international and national, in the United States, in Sierra Leone, perhaps in Iraq, and around the globe, can build as they join in our common mission of bringing the long era of impunity for mass atrocities to an end.

Thank you very much for your attention. I would be happy to answer any questions you may have.