

**Security Council**

Distr.: General  
1 June 2010

Original: English

---

**Letter dated 31 May 2010 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council**

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Criminal Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I should be grateful if you could transmit these assessments to the members of the Security Council.

(Signed) Patrick **Robinson**  
President



## Annex I

[Original: English and French]

**Assessment and report of Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)**

(covering the period from 15 November 2009 to 15 May 2010)

## Contents

	<i>Page</i>
I. Introduction . . . . .	3
II. Measures taken to implement the completion strategy . . . . .	6
A. Trial proceedings . . . . .	6
B. Contempt proceedings . . . . .	13
C. Appeal proceedings . . . . .	14
III. Retention of staff . . . . .	17
IV. Referral of cases . . . . .	19
V. Outreach . . . . .	20
VI. Victims and witnesses . . . . .	21
VII. Cooperation of States . . . . .	22
VIII. Residual mechanism . . . . .	22
IX. Legacy and capacity-building . . . . .	25
X. Conclusion . . . . .	27

1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph 6 of the resolution, requested the International Tribunal for the Former Yugoslavia “to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions”.<sup>1</sup>

<sup>1</sup> The present report should be read in conjunction with the previous 12 reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007; S/2007/663 of 12 November 2007; S/2008/326 of 14 May 2008; S/2008/729 of 24 November 2008; S/2009/252 of 18 May 2009; and S/2009/589 of 13 November 2009.

2. As requested by the Secretary-General in his letter of 8 October 2009 to the President of the Tribunal, following instruction from the Security Council, this report complies with recommendation (m) of paragraph 259 of the report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the Tribunal and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals,<sup>2</sup> and reports to the Security Council on the Tribunal's progress on the tasks listed in recommendation (l) of paragraph 259.

## I. Introduction

3. The Tribunal has commenced all trials, and there are no more accused at the pretrial stage. Regrettably, two accused — Ratko Mladić and Goran Hadžić — are still at large.<sup>3</sup> Of the 161 persons indicted by the Tribunal, a total of 25 accused are currently on trial,<sup>4</sup> and another 10 have appeals pending.<sup>5</sup> The cases of all other accused persons have been completed.

4. During the reporting period the Tribunal ran 10 trials simultaneously, far more than ever in the history of the Tribunal. The judgement in one of these cases will be rendered in June, two cases are scheduled to end later this year, two next year, and the remaining five in 2012.<sup>6</sup> Conscious of the necessity to complete trials as soon as possible, the Tribunal was able to get all trials started by assigning ad litem and permanent Judges to two cases simultaneously, and sharing staffing resources between trials running at the same time. These measures reduced the courtroom space available to each trial. However, it must be stressed that in-court time is only one part of the work that must be completed by a Trial Chamber hearing a case. Throughout the trial proceedings, motions are filed by the parties, requesting various types of relief, such as the admission of evidence, which require discussion and deliberation among the Judges and drafting of decisions outside of the courtroom. The amount of out-of-court work generated at trial by such motions is vast. For example, the *Šešelj* case has generated 330 written decisions and around 70 oral decisions. The assignment of Judges and staff to more than one trial simultaneously has also presented challenges to scheduling time for consultations and deliberations on the many motions and issues that arise during the trial proceedings.

5. The high number of cases running simultaneously has placed pressure on the Tribunal's resources. The Tribunal's courtroom capacity and staffing levels are insufficient to adequately support 10 ongoing trials, and the number of trials has also impacted on the speed of translations, which are relied upon in all cases, but particularly those involving self-represented accused. The Tribunal is taking all measures it can to reduce the impact of these factors on the pace of trials, by prioritizing materials to be translated and by focusing its staffing resources on supporting trials to the detriment of appeals. However, the Tribunal continues to

---

<sup>2</sup> S/2009/258.

<sup>3</sup> Enclosure III.

<sup>4</sup> Enclosure II.

<sup>5</sup> Enclosure V.

<sup>6</sup> Enclosure VII.

suffer the loss of highly experienced staff, which has invariably increased the pressure on its remaining experienced staff.

6. During the reporting period, one appeal case was heard, one appeal judgement was rendered, and one appeal from a contempt judgement was decided. Another appeal judgement will be issued in June. Appeals from three trial judgements — concerning 10 persons — are currently pending before the Appeals Chamber. The Judges of the Appeals Chamber also continued to work at maximum capacity on appeals from the International Criminal Tribunal for Rwanda.<sup>7</sup> The pace of the appellate work was affected by staffing shortages and the loss of highly experienced staff.

7. The Tribunal has transferred all low- and mid-level accused from its trial docket in accordance with Security Council resolution 1503 (2003). The Prosecutor, with the assistance of the Organization for Security and Cooperation in Europe (OSCE), continued to monitor the progress of referred proceedings still ongoing in the region. Additionally, the bench constituted to handle requests for confidential information for use in national proceedings continued to function in an efficient manner, rendering six decisions during the reporting period.

8. It must be stressed, as stated in previous reports, that the estimation of the length of trial and appeal proceedings is more an art than a science; it is not like creating a bus schedule. The forecasts made by the Trial and Appeals Chambers are based on an assessment of a number of factors that are considered to be within their control, such as the time allocated to the parties to present their cases, the number of witnesses permitted to be called, and the scope of the indictment. In most cases, there has been slippage in the trial and appeal schedule, resulting from unforeseen factors not immediately within the Tribunal's control, including witness intimidation, failure of witnesses to appear, illness of accused, the complexities associated with self-represented accused, and staff attrition. In a couple of cases, as the trials progressed, it became apparent to the Trial Chambers that the estimates made by the pretrial Judge were based on inadequate information provided by the parties. It was only as the Trial Chambers received more information from the parties regarding the scope of their cases that more accurate assessments could be made. The delay in the completion of trials has ramifications for the expeditious completion of appellate activity, and it is now estimated that appellate activity will continue into 2014.<sup>8</sup> However, strategic planning is under way to ensure that the Appeals Chamber takes all measures within its power to expedite appeal proceedings and to minimise the slippage caused by delays in trials. One such measure, the redeployment of resources to the Appeals Chamber, is part of the Tribunal's downsizing strategy, and measures are being adopted now to reduce anticipated delays caused by the need for translations.

9. In light of the slippage in the trial schedule, the President reconstituted the Working Group on Speeding up Trials to undertake a third review of the Tribunal's practices in order to assess whether further improvements could be implemented into the work of the Chambers. The Working Group submitted a preliminary report in April 2010, which identified work practices to be examined. To properly assess these practices, the Working Group undertook a survey of the practices in each Trial

---

<sup>7</sup> Enclosure IX.

<sup>8</sup> Enclosure VIII.

Chamber. The Working Group submitted its report on 21 May 2010 and recommended a number of reforms to the Tribunal's procedures. The Judges will discuss how these recommendations can best be integrated into the ongoing proceedings at an extraordinary plenary on 7 June 2010, which has been convened expressly for this purpose.

10. Contempt of the Tribunal continues to pose serious challenges. The investigation, trial, and appeal of contempt allegations sap the finite resources of the Tribunal. Nevertheless, attempts to frustrate the administration of justice must be dealt with in an efficient and effective manner in order to safeguard the integrity of the Tribunal's core proceedings. The Tribunal is taking all possible measures to limit the impact of contempt allegations on the conduct of its core proceedings, but where the alleged effect of the contempt is to prevent witnesses from appearing before the Tribunal, the continuation of those core proceedings may nevertheless be substantially hindered. In particular, the *Šešelj* trial was suspended for 11 months (from February to December 2009) pending the resolution of the contempt issues arising therein, so as to protect the integrity of the trial.

11. I note that the Security Council by resolutions 1837 (2008) of 29 September 2008 and 1877 (2009) of 7 July 2009 extended the terms of office of the Tribunal's permanent and ad litem Judges until 31 December 2010. In light of the trial and appeal schedule presented to the Security Council in this report, it is clear that this extension is insufficient and that a number of Judges will require further extensions of their terms of office. In resolution 1900 (2009) of 16 December 2009, the Council underlined its intention to extend, by 30 June 2010, the terms of office of all trial Judges based upon the Tribunal's projected trial schedule and the terms of office of all appeal Judges until 31 December 2012, and requested the President to submit an updated trial and appeals schedule. I urge the Security Council to take this matter up as quickly as possible and grant extensions to the Judges consistent with the anticipated trial and appeal schedules. A failure to grant Judges necessary extensions as soon as possible may result in Judges leaving the Tribunal because of the insecurity in their tenure prior to the completion of their mandates. An extension on the basis of the anticipated workload of the Judges would also align their mandates with the intention of General Assembly resolution 63/256, by which the Assembly authorized offering contracts to staff in line with the trial schedules and planned post reductions. This was a measure adopted by the General Assembly to remove uncertainty regarding our staff's future employment at the Tribunal and as an incentive for them to remain with the Tribunal until their efforts are no longer required. It must be stressed that, while this measure is welcomed, it has failed to stem the alarming rate of attrition because the Tribunal has not been authorized to implement this recommendation by the budget authorities at United Nations Headquarters, who have insisted that the Tribunal continue to offer contracts in line with approved budget submissions. The Registrar is currently negotiating with the Controller to be permitted to offer contracts to critical staff longer than budgetary submissions allow. The situation is critical, and the departure of our uniquely qualified staff for more secure employment has begun to adversely impact the proceedings. This situation is expected to further deteriorate if more effective staff retention measures are not taken immediately.

## II. Measures taken to implement the completion strategy

12. Despite the many challenges faced during the reporting period, the Trial and Appeals Chambers have taken all measures within their power to expedite their proceedings with full respect for the rights of the accused. An appreciation of the steps taken by the Trial and Appeals Chambers to guarantee that proceedings are conducted in a fair and expeditious manner is best gained through an understanding of the context of each case. Accordingly, the following contains a brief summary of the cases currently before the Tribunal, as well as the solutions adopted to meet the specific challenges they have raised.

### A. Trial proceedings

13. The multi-accused case of *Prosecutor v. Vujadin Popović et al.* — with seven accused — contains eight counts, including charges of genocide and crimes against humanity allegedly committed at more than 20 different crime sites. Closing arguments were completed on 15 September 2009, and since then the work on the case has focused almost entirely on the preparation of the judgement. It had been expected that the judgement would be delivered early in 2010, but this estimate has been slightly delayed. Staff turnover and other judicial commitments of the Judges have been important causes of this delay. The Presiding Judge, Judge Agius, is a member of the Appeals Chamber and Chair of the Rules Committee, and Judge Kwon is the Vice-President of the Tribunal and the Presiding Judge in *Prosecutor v. Karadžić*. Throughout the course of the trial, there has been a lack of continuity in the legal support provided to the Judges of the Chamber not only because of departures of staff from the Tribunal, but also because of the need for many of the staff to contribute to other cases. Of the six staff members currently working full time on the case, only one has been doing so since the commencement of the trial in July 2006. In addition, three experienced members of the legal staff, who had worked on the trial for years, left shortly before the end of the evidentiary phase of the trial. During the judgement drafting phase, promotion and illness have further reduced the continuity of the legal support. The delivery of the judgement is scheduled for 10 June 2010.

14. In the case of *Prosecutor v. Vlastimir Đorđević*, the accused is charged with crimes committed in 14 municipalities in Kosovo between January and June 1999, including the deportation of over 800,000, and mass killings of over 900, Kosovo Albanians. These crimes form the basis for the five counts of crimes against humanity and violations of the laws or customs of war, which are alleged in the indictment. Since the last reporting period, the estimate for the completion of this trial has been increased by two months. The defence case, which commenced on 30 November 2009, has been more extensive than was anticipated, in part because of the use of evidence from domestic trials in the region, which concerned the same crimes. Nevertheless, by virtue of careful management of the proceedings and strong encouragement to the parties to drop witnesses who were not essential, it is anticipated that the evidence will conclude during the third week of May. Deliberations in the trial will be lengthened because two of the three Judges of the *Đorđević* bench are also sitting in other trials (Judge Flügge as Presiding Judge in *Tolimir* and Judge Baird in *Karadžić*). While conscious of these uncertainties, the

Chamber still hopes it will be able to receive the final submissions in time to deliver the judgement in September 2010.

15. Notably, had Đorđević been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Milutinović et al.* trial. However, he is now being tried alone in a separate case.

16. The case of *Prosecutor v. Ante Gotovina et al.* — with three accused — involves nine counts of crimes against humanity and violations of the laws or customs of war allegedly committed against the Serb population in 14 municipalities in the southern portion of the Krajina region in the Republic of Croatia in 1995. This is the first trial before the Tribunal involving crimes allegedly committed against the Serb population in Croatia. The progress of the defence cases has been faster than expected, due to the reduction in the number of witnesses and the use of less time for examination-in-chief than originally anticipated. After the defence cases concluded at the end of January 2010, the Chamber decided to call seven witnesses itself. However, the evidence of these witnesses has become more complicated than expected due to developments in Croatia in December 2009, namely a domestic criminal investigation that is interlinked with some of the witnesses the Chamber wishes to hear. The last Chamber witnesses were heard in April 2010. The Prosecution also filed a motion to reopen its case to hear another three witnesses. This motion was a direct consequence of the criminal investigation launched in Croatia. The witnesses the Prosecution wishes to call were questioned for the first time in connection with Croatia's criminal investigation, and the Prosecution was only alerted to this evidence when this material was disclosed to the Prosecution. The Chamber granted the Prosecution motion, and the Defence requested certification to appeal this decision, which was granted by the Trial Chamber in late April 2010 and which is pending before the Appeals Chamber. Consequently, the full consequences in terms of delay are still unknown. Throughout the trial, there has been extensive litigation regarding unfulfilled Prosecution requests for production of documents by Croatia. In addition, in December 2009, another criminal investigation in Croatia led to arrests and searches of members of the Gotovina Defence team, which created a series of challenges related to the fair and expeditious conduct of the proceedings. These matters have absorbed a great deal of resources on the part of the parties and the Chamber. Finally, since the beginning of 2009, two of the Judges and members of the legal support staff have been engaged in another case (*Stanišić and Simatović*), which has allowed both trials to move forward, but which has also resulted in resources being diverted from the *Gotovina et al.* trial. In addition, one staff member left the legal support staff and was replaced with a new, less experienced person. Given these circumstances, the estimate for the completion of this trial has increased by eight months since the last reporting period. The judgement is tentatively anticipated to be delivered in December 2010.

17. In the trial of *Prosecutor v. Momčilo Perišić*, the accused is charged with 13 counts in relation to crimes against humanity and violations of the laws or customs of war allegedly committed in Sarajevo, Zagreb, and Srebrenica. Since the last reporting period, the estimate for the completion of this trial has increased by about six months. Although the Prosecution case was smaller than anticipated in terms of witnesses called to give evidence, in terms of calendar months, it took longer than originally estimated due to scheduling problems and the late admission of a substantial number of documents. The Trial Chamber reduced the number of

hours for the defence case and has been sitting as much as possible in order to complete the case as expeditiously as possible. There have also been late developments with the Prosecution discovering substantial new evidence following fresh investigations undertaken by national authorities. This new evidence, which consists of a substantial number of documents, has necessitated an adjournment of the proceedings while the materials are translated and so that the Defence can reassess its case. Currently, it is not possible to provide an accurate assessment of the impact of this development on the expeditious conclusion of the proceedings. It should be noted that the team leader of the legal support staff left the Tribunal and had to be replaced internally during the autumn of 2009, and this departure and reassignment has had some impact on the expeditious conduct of the proceedings. The current expectation is that judgement will be delivered in April 2011.

18. In the case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, the two accused are charged with four counts of crimes against humanity and one count of war crimes. Since the last reporting period, the estimate for the completion of this trial has increased by 13 months. The presentation of the Prosecution's case-in-chief commenced on 29 June 2009; however, on 2 August 2009, as previously reported to the Security Council, lead counsel for Simatović passed away, and the case was forced to adjourn until a replacement was assigned. Although the new Simatović Defence team requested an adjournment of eight months in order to prepare for the trial, the Trial Chamber granted a shorter time period and recommenced at the end of November 2009. Another short adjournment was necessary in March and April in order to allow the new Simatović Defence team to adequately prepare to cross-examine Prosecution witnesses. In addition, despite the fact that Stanišić's poor health has been an obstacle to the trial, he is currently able to attend court hearings with the assistance of special sitting arrangements. The Chamber and its legal support staff continue to conduct this case in parallel with other cases (Presiding Judge Orić and Judge Gwaunza on *Gotovina et al.* and Judge Picard on *Perišić*) by means of rigorous management of the court calendar. The case only has one person assigned to it full time, and the remainder of the staff providing legal support to the Judges in this trial is also providing support to Judges in other cases. The original assessment of the length of time anticipated for this case was based on the Chamber sitting more days per week than the current court schedule and commitment of the Judges to other cases allow. There are also issues with the health of the accused that necessitate the case sitting shorter court times even when courtrooms become more available and the Judges finish their commitments to other cases. Additionally, due to the death of counsel in this case and the need for the new counsel to properly prepare the defence, it is anticipated that, at the close of the Prosecution case, the Defence will have to be given additional time to prepare the defence case, which will add to the length of the proceedings. Provided that the current pace of the trial is maintained, the judgement should be issued in July 2012.

19. However, this assessment of the date of completion of the *Stanišić and Simatović* trial is tentative at most. The Prosecution has recently filed a motion seeking to add to its exhibit list the recently discovered 18 military notebooks of Ratko Mladić allegedly made during the period 1991 to 1995. If the Trial Chamber determines that it is in the interests of justice to grant this motion, it will take longer for this case to conclude than currently anticipated. It is too early at this time to make any assessment of the additional time this new evidence will add to the proceedings.



20. The case of *Prosecutor v. Jadranko Prlić et al.* — with six accused — is an exceptionally complicated trial, involving 26 counts of war crimes and crimes against humanity, related to approximately 70 crime sites, allegedly committed by Bosnian Croats against Bosnian Muslims in Bosnia and Herzegovina from 18 November 1991 to about April 1994. The Trial Chamber has continued to take rigorous measures to ensure the expeditiousness of the proceedings by, inter alia, limiting the time within which the Defence teams may present their evidence; liaising with the Conference and Language Services Section to ensure the timely translation of documents; engaging with the parties to efficiently schedule witnesses to prevent breaks in the trial schedule; obtaining waivers from ill accused so that the trial can continue in their absence; encouraging the Defence to present evidence in written form; strictly enforcing time limits on examination of witnesses; discouraging duplicative evidence; and entertaining Defence motions for the admission of documents from the bar table rather than requiring each document to be tendered through a witness on the stand. Nevertheless, since the last reporting period, the estimate for the completion of this trial has increased by about seven months. The tremendous out of court workload generated by this complicated case is borne out by the court record: since the start of the trial, the Chamber has dealt with more than 489 written motions and to date has issued 654 written decisions. Some of these motions have been exceedingly complicated, including motions for the admission of 735 adjudicated facts and the admission of more than 5,000 exhibits from the bar table. Additionally, the Chamber has issued decisions on oral motions for the admission of evidence through 208 *viva voce* witnesses. The Trial Chamber has analysed 216 written statements for admission pursuant to Rule 92 bis. To date, 9,575 exhibits have been admitted. Presiding Judge Antonetti is also serving as the Presiding Judge in the *Šešelj* trial, and Judge Mindua sits on the bench in *Tolimir*; scheduling is therefore a challenge for these three trials. Moreover, a high turnover of the staff has had an impact upon the work of the Chamber: since the beginning of the trial, there have been four different Senior Legal Officers assigned to the case in succession, as well as two different P-4 Legal Officers, and three different P-3 Legal Officers. Currently, out of the eight-person legal support team, one member has less than six months experience within the Tribunal, another just one year of experience, and two others 18 months experience. Taking into account the length and complexity of the case, several months are required for each replacement to become familiar with the case. The constant staff attrition in this trial impacts upon the time needed for the Chamber to decide the numerous motions filed by the parties, as well as upon the time required for analysis of the evidence and preparation of the final judgement. For all of these reasons, it is anticipated that the judgement will be delivered in September 2011.

21. However, the progress of the *Prlić et al.* trial may be significantly impacted by a motion filed by the Prosecution on 25 May 2010 to reopen its case-in-chief so that it can tender as evidence excerpts of the recently discovered 18 military notebooks of Ratko Mladić. The motion is currently pending before the Trial Chamber, and it is not possible at this time to provide an estimate of the impact that the motion may have upon the proceedings. However, if the motion is granted by the Trial Chamber, it has the potential to add many months to the trial, as Prosecution and Defence witnesses are recalled or additional witnesses called by either party. In this circumstance, the estimated date for the delivery of the judgement in September 2011 may be impacted by a number of months.

22. In the case of *Prosecutor v. Vojislav Šešelj*, the accused is charged with nine counts of crimes against humanity and violations of the laws or customs of war allegedly committed in the territory of Croatia, in large parts of Bosnia and Herzegovina, and in Vojvodina (Serbia) from August 1991 until September 1993. The first Prosecution witness was heard on 11 December 2007. After 11 months of suspension (from February to December 2009) due to the allegations of witness intimidation that are still pending before other Chambers, the Trial Chamber decided on 23 November 2009 to resume the trial on 12 January 2010. The Trial Chamber took into account, in particular, the amount of time that had elapsed since the adjournment and considered the resumption of the trial to be indispensable in order to ensure its expeditiousness. In order to ensure that the integrity of the proceedings would be respected, the Trial Chamber decided that the remaining witnesses would be called to testify by the Chamber itself (rather than by the Prosecution), so that they could give their evidence in as safe an environment as possible. The Trial Chamber also has admitted a sizable amount of evidence of unavailable witnesses in writing in order to expedite the proceedings. As Šešelj has consistently maintained that he would not mount a defence, the original assessment of the length of trial had been based on that representation. However, Šešelj has now advised that he will bring a defence and stated that he would need two years for its preparation. This new development has had a substantial impact upon the anticipated length of the proceedings. Since the last reporting period, the estimate for the completion of this trial has increased by 20 months. The tremendous out-of-court workload generated by this case also cannot be overlooked. Since 2007, the Trial Chamber has issued approximately 333 written decisions and around 75 oral decisions. The Chamber is seized of approximately 10 to 15 motions monthly and issues an average of 10 decisions per month. The Prosecution has submitted numerous motions for the admission of adjudicated facts and other evidence, which require extensive analysis by the staff and deliberations on the part of the Judges. It should also be kept in mind that all three Judges in the trial are involved in other trials — Presiding Judge Antonetti is also the Presiding Judge in *Prlić et al.*; Judge Harhoff also sits in *Stanišić and Župljanin*; and Judge Lattanzi in *Karadžić* — which makes scheduling these four trials a challenge. It must also be highlighted that the team of lawyers assisting the Trial Chamber on the *Šešelj* case is understaffed: at the beginning of the case, the team was composed of seven staff members; due to significant turnover in the staff working on the case, the team is currently composed of only four staff members, among whom three have less than six months of experience with the case and two have less than six months of experience within the Tribunal. This adversely impacts upon the work of the Trial Chamber as a whole, in particular on the rate of determining and disposing of motions and the analysis of evidence. This case may also be impacted by the discovery of the 18 Mladić notebooks, which the Prosecution has requested additional time to analyse. Due to the magnitude of the new material, the Trial Chamber has granted the Prosecution until 16 July 2010 to file a motion in relation to these notebooks. It is only at that time that any assessment can begin to be made of the possible impact of the evidence upon this case. For all of these reasons, the judgement estimate of March 2012 can be considered tentative only.

23. In the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, the accused are charged with 10 counts of crimes against humanity and violations of laws or customs of war for crimes allegedly committed against Bosnian Muslim and Bosnian Croat populations in Bosnia and Herzegovina between 1 April and

31 December 1992. The scope of the indictment in this case is at least comparable to that of the *Karadžić* trial. The current estimate for the completion of this trial has increased by 14 months. The pretrial assessment of the anticipated length of the proceedings was based on the limited information available at the time and is now considered to have been overly optimistic for a number of reasons. The pressing need to start this eighth concurrent trial in September 2009, coupled with the departure of three Judges from the Tribunal at the same time, necessitated the creation of a bench with two permanent Judges both new to the Tribunal and an existing ad litem Judge already assigned to another ongoing case. At the time of the last Completion Strategy report in November 2009, the trial in this case had only just commenced, and no clear assessment of the length of the case could be made (a) until a pattern emerged of the time necessary to deal not only with the direct testimony of witnesses but also with re-examination, objections, and procedural matters in the specific instances of this case and (b) until the Defence was in a position to provide basic information with respect to the scope of its case. The Chamber has regulated the evidentiary phase of the proceedings by reducing the number of witnesses sought to be called by the Prosecution, as well as through the admission of written evidence and the use of adjudicated facts from prior cases. Although the use of Rule 92 ter witness statements has resulted in some time savings, many witnesses are still required to testify partly in-chief, as their prior testimony admitted from a previous case does not include relevant evidence directly relating to the accused in this case. Recent decisions on the admission of adjudicated facts are also expected to lead to a request for further witnesses to be added. Multiple and complex procedural issues are raised by all parties as the trial progresses. Hearings have been adjourned on three occasions, first for two weeks early in the trial to enable further preparation by both the Chamber and the parties, and twice following the winter recess for periods of one week to allow the Chamber time to deliberate on some of the many outstanding motions. Progress on these matters has been hindered by a number of factors, the most pressing of which is the combination of the low level of staffing for a case of this size and complexity and the relative inexperience of the legal support team. The team consists of four staff members plus a fellow, of whom only two have more than one year of experience at the Tribunal. This has impacted adversely upon the rate of disposing of motions. Consequently, the presentation of the Prosecution case, while still within the overall parameters set by the Chamber, is progressing much more slowly than expected in the number of days actually required to hear that evidence. After a full examination of the situation in March 2010, including for the first time estimates from the Defence, the Trial Chamber now projects that the presentation of evidence by the parties will continue throughout 2010 and 2011. The judgement is then expected to be delivered in June 2012.

24. However, this assessment of the date of completion of the *Stanišić and Župljanin* case is subject to further change based upon anticipated applications to call additional witnesses. Moreover, the Prosecution has recently filed a motion to add the recently discovered 18 military notebooks of Ratko Mladić to its list of potential exhibits. If the Trial Chamber grants this motion, the case may be delayed by the need to allow the Defence time to deal with this new material.

25. In the case of *Prosecutor v. Radovan Karadžić*, the accused — the former President of Republika Srpska — is charged with 11 counts of genocide, crimes against humanity, and violations of the laws or customs of war. Since the last

reporting period, the estimate for the completion of this trial has increased by three months. The trial commenced on 26 October 2009, and the Prosecution made its opening statement over a period of two days. However, the accused maintained that he had not had enough time to prepare for the trial and refused to attend the proceedings. As a consequence, the Chamber ordered the Registrar to appoint a Defence counsel to begin preparing to represent the accused at trial, should the Chamber order him to do so, and adjourned between November 2009 and March 2010 to allow the appointed counsel sufficient preparation time. During that period, the Chamber continued to address a number of the motions filed by the parties. For example, the Chamber has rendered decisions on all of the motions filed by the Prosecution for the admission of the written evidence of approximately 200 witnesses, in addition to decisions taking judicial notice of a significant number of adjudicated facts. The Chamber has also continued to take the necessary steps to move forward the resolution of the numerous motions filed by the accused for binding orders against States for the production of documents. These steps included a hearing in February 2010, with the participation of several States.

26. The accused challenged the selection of the counsel appointed by the Registrar pursuant to the Chamber's November 2009 decision, and sought additional Tribunal resources for his own Defence team. While the Appeals Chamber ultimately upheld the Registrar's selection of the appointed counsel, the President ordered that additional funds be provided for both the pretrial and trial phases. The accused then filed a motion for further postponement of the trial on the basis that he remained insufficiently prepared due in part to the Registrar's decisions on Defence funding. This motion was denied by the Chamber, and the accused's opening statement was heard on 1 and 2 March 2010. However, on 1 March, the accused sought certification to appeal the Chamber's decision on the postponement of trial, which was granted by the Trial Chamber. The Trial Chamber also stayed the effect of its decision on postponement until the matter was resolved by the Appeals Chamber. On 31 March 2010, the Appeals Chamber dismissed the accused's appeal in its entirety, and the Trial Chamber subsequently ordered that the trial should resume on 13 April 2010, with the hearing of the first witness. Following the resumption of the trial, the accused is actively participating in the proceedings, with the appointed Defence counsel being designated as standby counsel who can step in at any stage to represent the interests of the accused, should the Trial Chamber find that to be necessary. At present, the trial is anticipated to continue into 2012, with the judgement to be rendered at the end of that year, at the earliest. However, the Prosecution has recently filed a motion seeking to add to its exhibit list the recently discovered military notebooks of Ratko Mladić. Should this motion be granted by the Trial Chamber, this may have a substantial impact upon the overall length of the trial.

27. Like other ongoing trials, the legal team assigned to the *Karadžić* Chamber is significantly understaffed, with only four full-time legal staff plus a part-time fellow and unpaid interns as the hearing of evidence begins. This staffing shortage will continue to impact the time required to deal with the ongoing motions and practical issues arising during the course of the trial and to conduct the necessary analysis of evidence. Since the start of the proceedings, the Trial Chamber has coped with a significant out-of-court workload, dealing with approximately 169 motions and issuing 159 written decisions. The vast majority of the Prosecution's witnesses are being brought pursuant to Rule 92 ter. Although Rule 92 ter constitutes a time-

saving measure by which a written statement is substituted for *viva voce* testimony before the witness takes the stand, the Chamber must read the written evidence, which in some cases is hundreds of pages.

28. In the case of *Prosecutor v. Zdravko Tolimir*, the accused is charged with eight counts — including charges of genocide, murder, extermination, and forcible transfer — arising from events at over 20 crime sites. Since the last reporting period, the estimate for the completion of this trial has increased by 12 months. The start of the trial had been scheduled for mid-December 2009; however, on 9 December 2009, the Trial Chamber ordered a postponement of at least two months due to a Prosecution motion to amend the indictment and add significant new charges. The motion was granted by the Chamber, and the indictment amended accordingly. Since Tolimir's transfer to The Hague in June 2007, legal support in the case has been handicapped by the staff's responsibilities in other proceedings. Of the five staff currently providing legal support, three have significant commitments in other cases, and this inevitably sets limits on the speed with which the trial can be conducted. The trial is now progressing steadily, despite the commitments of the Judges in other proceedings (currently Presiding Judge Flügge in *Dorđević* and Judge Mindua in *Prlić et al.*), a situation that is anticipated to continue throughout the remainder of this year and beyond. Additionally, Tolimir is representing himself, and the consequent need for translation into Bosnian/Croatian/Serbian inevitably makes the proceedings more protracted than they otherwise would be. The judgement is expected to be completed in February 2012.

29. Notably, had Tolimir been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Popović et al.* trial. However, he is now being tried alone in a separate case.

30. An event that has a potential impact on several of the ongoing trials, including the *Karadžić, Stanišić and Župljanin, Stanišić and Simatović, Šešelj, and Prlić et al.* trials, is the recent transfer to the Tribunal of 18 notebooks apparently written by Ratko Mladić — the Commander of the Main Staff of the Bosnian Serb Army — during 1991 to 1995. The translation of these notebooks, which run to over 3,000 pages, is yet to be completed, but the Prosecution has already applied in those cases for them to be added to its list of exhibits or applied to reopen its case-in-chief so that it can tender the notebooks as evidence. The Mladić notebooks may yet impact upon other cases, including by way of applications to reopen the Prosecution's case-in-chief and to recall witnesses. The possible impact of this development on the length of the affected trials cannot yet be assessed, and the current assessments of the length of trials must be read with this factor in mind.

## **B. Contempt proceedings**

31. The Tribunal's administration of justice continued to be disrupted by contempt allegations. Currently, there are 10 contempt cases in various levels of preparation, and the Tribunal is taking what measures it can to ensure that those cases are concluded as quickly as possible and without disrupting the ongoing trial processes.

32. The case of *Prosecutor v. Shefqet Kabashi* is still pending the accused's arrest and transfer to The Hague.

33. In the case of *Prosecutor v. Vojislav Šešelj*, on 17 December 2009, the Appeals Chamber reversed a Trial Chamber decision not to proceed in relation to contempt allegations levelled by the Prosecution against Šešelj. Consequently, on 3 February 2010, the Trial Chamber issued an order in lieu of an indictment charging Vojislav Šešelj with contempt for knowingly disclosing in one of his books the identifying information of 11 protected witnesses. Šešelj's initial appearance was held on 20 April 2010, and preparations for the trial are under way.

34. In the case of *Prosecutor v. Zuhdija Tabaković*, the accused faced six counts of contempt of the Tribunal arising out of allegations of receiving payment for the provision and procurement of false witness statements that were then presented for use by the Defence in the *Lukić and Lukić* case. On 11 March 2010, the parties filed a joint motion for consideration of a plea agreement, in which Tabaković pleaded guilty to three counts and the other three were withdrawn. This agreement was considered and accepted by the Trial Chamber on 15 March 2010. Tabaković was sentenced the same day to three months' imprisonment. Written reasons for the judgement were issued three days later.

35. Based upon the efforts of the Working Group on Contempt and the Rules Committee, the Judges, at the 38th plenary session held on 10 December 2009, adopted a new rule of procedure and evidence — Rule 92 *quinqüies* — in order to regulate the admission of evidence in a trial where witnesses have been made unavailable due to intimidation and bribery. This procedural innovation, which provides for the admission of the written statement of a witness who has been intimidated or bribed, will enable core proceedings to go forward even where there are attempts to interfere with the administration of justice.

### C. Appeal proceedings

36. During the reporting period, one appeal case was heard, one appeal judgement was rendered, and one appeal from a contempt judgement was decided. Another appeal judgement will be issued in June. Appeals from three trial judgements — concerning 10 persons — are currently pending before the Appeals Chamber. The Appeals Chamber also issued seven interlocutory appeal decisions and three other decisions.

37. On 19 May 2010, the Appeals Chamber rendered its judgement in the appeal of *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*. The appeal judgement in the case of *Prosecutor v. Ramush Haradinaj et al.*, concerning three persons, is anticipated to be delivered in June 2010. Both judgements had been tentatively projected for delivery in February 2010, but had to be extended due to staff attrition that necessitated the re-composition and reduction of the legal support teams assisting the Judges of the Appeals Chamber. This situation was exacerbated when the primary drafter in the *Boškoski and Tarčulovski* case was required to support additional cases, while judgement drafting continued at a slower pace.

38. The Appeals Chamber delivered its judgement in the contempt case of *Prosecutor v. Vojislav Šešelj* on 19 May 2010. The briefing in this case took an inordinately large amount of time due to the need to translate all Bosnian/Croatian/Serbian documents into one of the working languages of the Tribunal and all documents in one of the working languages into Bosnian/Croatian/Serbian because of Šešelj's choice to represent himself.

39. Regarding the *Delić* case, three pre-appeal orders were rendered during the reporting period, and the appeals were heard by the Appeals Chamber on 19 January 2010. Rasim Delić passed away on 16 April 2010, while on provisional release. The Appeals Chamber is currently deliberating on the parties' request to continue the appeal proceedings. It is anticipated that a decision in this regard will be rendered before the end of May 2010.

40. In the *Lukić and Lukić* case, the projected time frame for delivery of the appeal judgement has been adjusted three months from the last reporting period to reflect December 2010 (rather than September). The replacement of Milan Lukić's lead counsel resulted in the briefing stage being finalized only on 22 February 2010, three weeks late. This, along with some slowing of the drafting progress due to staff turnover, resulted in the delay. During this reporting period, 10 pre-appeal decisions and orders were rendered. The appeal hearing is tentatively planned for September 2010.

41. The *Šainović et al.* case continues to warrant special attention. All five accused convicted at trial filed an appeal, as did the Prosecution. Due to the voluminous nature of the case — a trial judgement exceeding 1,700 pages, and Prosecution and Defence appeal briefs exceeding 250,000 words combined — a number of time extensions were granted in order to safeguard the fairness of the proceedings. Two of the appellants were granted authorization to amend their grounds of appeal twice, each resulting in the re-filing of their respective notices of appeal and briefs. The briefing of the appeals was completed on 15 February 2010. Translation of the trial judgement (the largest ever) into Bosnian/Croatian/Serbian has been delayed and, instead of April 2010, is currently scheduled to be completed in July or August 2010. Following the service of the translated trial judgement upon the parties, there remains the possibility of amendments to the existing grounds of appeal, an exigency which the Appeals Chamber has formally noted could prolong scheduling of the briefing in the case. Additionally, ongoing evidentiary disclosure to the Defence by the Republic of Serbia and the Prosecution, as well as ongoing trial proceedings in factually related cases (e.g., *Dorđević*), result in continuous motions for consideration of additional evidence. The Appeals Chamber has already disposed of four such voluminous motions, partly granting one of them. This led to supplementary briefing, which was completed on 18 March 2010. The number of staff assigned to support this case is reflective of its size and complexity. However, delays are already being projected due to continuous changes in the composition of the legal support staff due to attrition, including staff with supervisory responsibilities. This turnover necessitates additional time for newly assigned staff to obtain case-specific familiarity. During this reporting period, 19 pre-appeal decisions and orders were rendered, including several decisions on motions for provisional release and those seeking admission of additional evidence. The appeal hearing is tentatively planned for early February 2011, with the judgement to be delivered at the end of 2011.

42. During the reporting period, the Appeals Chamber of the International Criminal Tribunal for Rwanda delivered three appeal judgements, in the cases of *Protais Zigiranyirazo*, *Simon Bikindi*, and *Simeon Nchamihigo*. It also delivered one appeal judgement in the *Léonidas Nshogoza* contempt case; six decisions on interlocutory appeals; three decisions on post-appeal requests, including review; and 33 pre-appeal orders or decisions. Currently, the Rwanda Tribunal Appeals Chamber is seized of five appeals from judgement, which it is preparing for hearings.

43. In order to proactively address case slippage in the Appeals Chamber, contributing factors have been identified, and the means to prevent or minimize their impact are to be implemented wherever practicable. The five factors with the most potential to cause slippage in projected estimates for completion of judgements on appeal are the delays associated with or caused by: (a) the nature of multi-appellant cases; (b) the inordinate amount of pre-appeal motions; (c) the inordinate length of time for translation of trial judgements into Bosnian/Croatian/Serbian, as well as for translation of written submissions into one of the Tribunal's working languages and Bosnian/Croatian/Serbian, especially in cases of self-represented appellants; (d) amendments to grounds of appeal, especially following translation of the trial judgement (mainly for represented appellants); and (e) understaffing and/or lack of experience in appeals support.

44. Multi-appellant cases, themselves the outgrowth of time-saving joinder decisions, are by nature more complex than single-appellant cases. The Tribunal deals with the delays associated with such complexity by allocating appropriate numbers of staff, including several persons with coordinating responsibilities, and, where appropriate, by organizing judgement drafting according to subject matter rather than individual appeals in order to avoid repetitive tasks and analysis.

45. The inordinate number of pre-appeal motions, which can only be expected to increase as litigation intensifies, calls for the prioritization of urgent matters, especially those with a serious impact on the preparation of the case for the appeals hearing, over substantive drafting where appropriate. Multiple team members, as opposed to solely the Pre-Appeal Judge's associate legal officer, are assigned to work on the motions, contributing to both timely draft preparation and input from the team members dealing with the relevant substantive matters.

46. The inordinate length of translation times, especially in cases of self-represented appellants, calls for greater explanation than suitable for a report of this size, but it can be said that efforts are under way to more effectively liaise with the supervisors in the Conference and Language Services Section on a continual basis in order to assess progress and determine the need for requesting prioritization of specific translations, and to readdress the internal requirement of the Conference and Language Services Section that the revision process for translation of a judgement must be accomplished as a whole, rather than volume by volume (which would allow for gradual release of translated portions).

47. Regarding amendments to grounds of appeal, especially following translation of the trial judgement, a judicial remedy exists to limit amendments related to the late service of the translated trial judgements to questions of fact, on the basis that counsel could have identified all potential legal errors from review of judgement in the original language. This is a matter resting in the sole purview of each individual appeal panel to determine, taking into account the circumstances of the case and the interests of justice.

48. Finally, delays associated with understaffing and/or lack of experience in appeals support has led to the creation of a redeployment plan in order to project the number and levels of staff needed on appeals through 2014. However, redeployment of staff from completed trials to ongoing trials — rather than to appeals — is the immediate priority, and the resultant understaffing in appeals will probably remain until mid-2011. To offset the lack of staff members who are experienced in appeals support, those few who possess substantial experience are being — and will



continue to be — apportioned among teams and cases to prevent any situation in which the support is exclusively provided by inexperienced staff. Efforts are also under way to keep Appeals Chamber staff whose contracts will not be extended after 1 March 2011, in accordance with the comparative review results.

49. In November 2009, the Working Group on Speeding up Trials embarked upon a third review of the Tribunal's practices in order to assess whether further improvements could be implemented into the work of the Chambers. The Working Group submitted its report on 21 May 2010 and recommended a number of reforms to the Tribunal's procedures, including disallowing direct examination on issues that are directly and fully covered by Rule 92 ter statements or transcripts; requiring parties to identify in advance the issues in dispute and to refrain from unnecessary direct examination and cross-examination; issuing oral rulings in lieu of written decisions; eliminating the need for superfluous translations; increasing, as trials are completed, the sitting times of the remaining trials; and monitoring the use of in-court time so as to reduce the time spent on procedural matters. The Working Group also expressed the "greatest concern" over the effect that staff turnover has had on the speed of trials and upon a Chamber's ability to process evidence and motions in a case, explaining that a delay in dealing with procedural matters often can result in additional procedural matters arising from the unresolved matters, thereby causing a "snow-ball effect". The Working Group noted that, even if departing experienced staff members are replaced with highly competent recruits, the Tribunal still loses institutional knowledge, and the experienced staff who remain must take on the extra responsibility of training the newly arrived staff, which diverts their attention from the primary work of the Chamber. The Working Group therefore recommended that the management of the Tribunal does all it can to retain the Tribunal's experienced staff. The Judges will discuss how these recommendations can best be integrated into the Tribunal's ongoing proceedings at an extraordinary plenary on 7 June 2010, which has been convened expressly for this purpose.

50. Proceedings in respect of 124 of the total 161 persons indicted by the Tribunal have been completed. Only two indictees — Ratko Mladić and Goran Hadžić — remain to be brought to justice, and their apprehension relies on the cooperation of the international community. The achievements of the Tribunal far surpass that of any other international or hybrid court, both in respect of the number of persons tried and its contribution to international criminal law, and demonstrate the Tribunal's commitment to the expeditious and efficient completion of its mandate.

### **III. Retention of staff**

51. As the Tribunal nears the end of its mandate, highly qualified and essential staff continue to leave the Tribunal at alarming rates for more secure employment elsewhere. In the last year, we lost one in every five — or 21 per cent — of our Professional level staff from the Chambers Legal Support Section. Moreover, the Tribunal is in a downsizing phase at a time when it is at its highest ever level of productivity, with no coordinate increase in its staffing levels since the 2006-2007 biennium.

52. I have repeatedly stressed to the Security Council that we need its assistance to stem this tide of departures. Inadequate and inexperienced staffing for the Tribunal

has already begun to slow trial and appellate proceedings, which places a much heavier financial burden on the international community in the long run. I acknowledge the efforts made by the General Assembly to assist the Tribunal by its resolution 63/256, authorizing the Tribunal to offer critical staff longer contracts, thereby alleviating some of their job insecurity.

53. Intensive intercessions with the United Nations Secretariat have resulted in an agreement whereby Tribunal staff members at the Professional level whose posts will be abolished will be considered alongside internal candidates at the 30-day mark for vacancies within the Secretariat. It has also been agreed that staff members at the General Service level whose posts will be abolished are eligible for vacancies in the General Service category at other duty stations, under conditions prevailing in the location of the vacancy. These measures apply for one year before and one year after the abolition of the relevant posts. But this still falls short of full internal status, and more must be done to effectively stem the tide of staff departures.

54. A desperately needed staff retention measure that I have been including in my reports for some time now is the end-of-service grant recommended by the International Civil Service Commission for those staff separating from the Organization upon completion of their contracts, who will have served continuously for 10 years. The efficient and effective conduct of our proceedings does not merely rest with the number of bodies we have present in the building; it is also dependent upon retaining the expertise that our irreplaceable staff have accrued over their years of service to the institution. The end-of-service grant would be an amply deserved — and essential — incentive to staff members who have faithfully served the Tribunal for many years of their professional lives to stay until the completion of the work of the Tribunal. The grant would ensure that they would have some security at separation, in order to assist them in transitioning to the next step in their professional lives.

55. The Office of Human Resources Management has now changed its policy, after extensive lobbying on my part, with respect to the right of staff of the Tribunal to be considered for conversion to permanent contracts. However, concerns still remain as to whether the Tribunal staff members who apply for permanent contracts will receive the same consideration and treatment as applicants from the Secretariat. I urge the Office of Human Resources Management to conclude its review of the conversion of our eligible staff as expeditiously as possible to ensure that the right of our long-serving staff to conversion is protected. This conversion will be a strong incentive to our experienced staff to remain with the Tribunal until they are no longer needed.

56. A matter that is pending before the General Assembly is the new contractual regime of continuing contracts. The adoption of this regime would be a particularly important retention incentive for many of our staff, who are currently leaving the Tribunal for positions elsewhere in the United Nations. A speedy resolution of this matter would greatly assist the Tribunal in retaining its experienced staff.

57. While the Tribunal continues to suffer from losses of staff, its actual vacancy rate remains remarkably low due to the Tribunal's diligent management of its attrition rate. For example, the preparation of a roster of candidates from a single vacancy announcement first requires Human Resources to analyse several hundred applications. Then, a team of six lawyers conducts a second review to create a shortlist of acceptable candidates. Third, the Senior Legal Officers of the Chambers

review the shortlist and select around 15 applicants to be interviewed. Finally, two senior staff members, one Tribunal Judge, and one Human Resources representative conduct the interviews for about two full days. While only one applicant will successfully secure the vacancy, the remaining applicants are placed upon a roster to be called should a similar vacancy arise in the future. Although this process is necessary in order to recruit the best candidates, it is a significant divergence of resources from the core business of the Tribunal. Moreover, when a staff member leaves the Tribunal before the downsizing of his or her post, remaining staff members are invariably required to take on a higher workload until a new staff member is recruited. When the new staff member arrives, the remaining staff members must also assume responsibility for the intensive training of their new colleague. Finally, continuous departures of long-serving staff impact the morale of those left behind.

58. I therefore renew my plea for the international community to exercise foresight and assist the Tribunal with incentive measures to retain its staff and reduce the burden on the institution of constant staff recruitment. The longer this problem is ignored, the longer the work of the Tribunal will be extended, and the more money it will cost the international community in the long run.

#### **IV. Referral of cases**

59. Between 2005 and 2007, the Tribunal referred a total of eight cases, involving 13 accused of intermediate or lower rank, to national jurisdictions in accordance with Security Council resolutions 1503 (2003) and 1534 (2004). This significantly reduced the overall workload of the Tribunal, making it possible to bring the cases of the most senior leaders to trial as early as possible. The referral of these cases to national jurisdictions also served to forge the Tribunal's relationship with national judiciaries in the former Yugoslavia and to strengthen the capacity of those jurisdictions in the prosecution and trial of violations of international humanitarian law.

60. The decisions on referral of cases were made by a specially appointed Referral Bench, followed by appeals against the referral decisions in some cases. As a result, 10 accused were transferred to Bosnia and Herzegovina, two to Croatia, and one to Serbia. Requests for the referral of four accused were denied due to the alleged level of responsibility and the gravity of the crimes charged, requiring that these cases be heard before the Tribunal. Possibilities for referrals were maximized. Accordingly, no cases eligible for referral according to the seniority criteria set by the Security Council remain before the Tribunal.

61. Of the 13 accused transferred to national jurisdictions, proceedings against 9 have been concluded before the Court of Bosnia and Herzegovina, all resulting in convictions and sentences ranging from 6 to 34 years of imprisonment. During the reporting period, the Supreme Court of Croatia reduced Mirko Norac's sentence to six years of imprisonment and upheld Rahim Ademi's acquittal. Proceedings against two accused are still under way. Milorad Trbić was convicted in the first instance and sentenced to 30 years of imprisonment, and appeal proceedings are currently pending. Vladimir Kovačević has been deemed unfit to stand trial pending any change in his mental health status. The Prosecution continues to monitor the ongoing cases with the assistance of OSCE.

## V. Outreach

62. The Outreach Programme maintained its engagement in the region and continued providing objective and reliable information about the Tribunal and its work to stakeholders in the countries of the former Yugoslavia. Outreach's role is increasing in importance as the end of the Tribunal's mandate nears. Outreach facilitated a variety of activities aimed at capacity-building of the local judiciaries to adjudicate war crimes cases. The Tribunal is currently redesigning the Outreach Programme in order to meet the continuing challenges presented by the Completion Strategy, by intensifying its efforts to make its work understood by local stakeholders, and by providing key support to its legacy efforts.

63. The Tribunal continues to rely on voluntary contributions to achieve its Outreach objectives, given the fact that no funds have ever been allocated to the Outreach Programme from the regular budget. In this regard, the European Commission has shown generosity and dedication to the goals of the Outreach Programme, and the Tribunal is hopeful that the European Commission, as well as other international agencies, will continue to show their commitment to the rule of law by supporting the renewed Outreach efforts at this crucial time when the responsibility for dealing with the atrocities of the conflicts is shifting more and more on to the States in the former Yugoslavia.

64. During the reporting period, regional offices in Sarajevo, Belgrade, Zagreb, and Priština continued to bring the Tribunal's work closer to local communities. With a focus on working with the youth, an ambitious project was implemented in Kosovo, where the Outreach Programme visited 14 high schools and spoke to over 450 teenagers about the role of the Tribunal in fighting impunity in Kosovo and the former Yugoslavia. Similar initiatives are being explored elsewhere in the region.

65. Outreach representatives continued to travel throughout the region in order to engage with civil society, the judiciary, media, and students. At more than 10 conferences and round-table discussions, the Tribunal delivered its message that persons who have violated international humanitarian law must be held accountable for their actions. Almost 200 people from the region visited the Tribunal, including lawyers, investigators, and victim protection officers, in order to visit the courtrooms and engage in discussions with Tribunal Judges and staff: such direct dialogue with local actors is one of the best tools for fostering understanding of the Tribunal's work.

66. Following the success of the first edition, Outreach finalized and started distributing the second edition of five "Bridging the Gap" publications, which provide an insight into the Tribunal's early work concerning some of the most notorious crime locations in Bosnia and Herzegovina. The books are based on a series of five conferences which were held from 2004 to 2005 in towns in which some of the most serious crimes occurred.

67. The new website has remained one of the key tools for Outreach and has continued to attract three times as many visitors as the old website, a large percentage of whom come from the former Yugoslavia. Popular features include live broadcasts of the trials and pages devoted to each of the cases. Features such as "Voice of the Victims" and the interactive map of crimes make information accessible to a broader public. The Outreach Programme continues to work closely with relevant units of the Tribunal in order to make the website more comprehensive and user-friendly.

## VI. Victims and witnesses

68. More than 5,700 witnesses from all over the world have been called to appear before the Tribunal. Most witnesses come from diverse and remote locations within the former Yugoslavia. It should never be forgotten that, without the courage of these witnesses to step forward and give evidence, there would be no trials, and impunity would reign. Yet many witnesses have experienced a range of difficulties resulting from their brave decision to give evidence before the Tribunal, and this is in addition to the suffering and loss they have had to endure due to the crimes committed in the region. The Tribunal's resources are simply incapable of meeting these needs. In the absence of any restitution or compensation programme, or specific budget for the provision of basic living essentials, the Victims and Witnesses Section endeavours to negotiate and encourage assistance to vulnerable witnesses via voluntary State contributions. However, this resource is very limited. In certain cases, the Victims and Witnesses Section has had to intervene to provide short-term assistance to witnesses urgently in need of basic necessities such as food, clothing, or wood for heating.

69. Victims of the conflict of the former Yugoslavia have an undoubted right to compensation in international law for the crimes committed against them. In my last report to you, I discussed the legal bases for such compensation, urged you to consider the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly,<sup>9</sup> and made a plea for the Security Council to breathe life into paragraph 13 of the Declaration, in which it is stated that “[t]he establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm”.

70. Since my exhortation to the Security Council in November 2009, I have received a wellspring of positive responses from the victims of the atrocities that were committed during the destructive dissolution of the former Yugoslavia during the 1990s. They were heartened that someone had finally heard their pleas for justice and tried to further their cause. On behalf of the victims, I appeal again to the Security Council to take action to implement paragraph 13 of the Declaration. The failure to properly address this issue constitutes a serious failing in the administration of justice to the victims of the former Yugoslavia. Criminal justice is not enough to satisfy the needs of the victims, and the Tribunal cannot, through the rendering of its judgements alone, bring peace and reconciliation to the region. Other remedies should complement the criminal trials, and if lasting peace is to be achieved, the many victims in the region must receive adequate reparation for their suffering.<sup>10</sup>

---

<sup>9</sup> Resolution 40/34, of 29 November 1985.

<sup>10</sup> The General Assembly has found that victims have the right to “[a]dequate, effective and prompt reparation for harm suffered”. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005 (resolution 60/147, annex, para. 11).

## VII. Cooperation of States

71. It again must be reported that Ratko Mladić and Goran Hadžić remain at large. I am, however, pleased to note the general agreement among members of the Security Council that there will be no impunity regardless of when these remaining fugitives are apprehended. I ask all States, especially those of the former Yugoslavia, to intensify their efforts and deliver these fugitives to the Tribunal as a matter of urgency.

## VIII. Residual mechanism

72. On 21 May 2009, the Secretary-General published his report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). On 8 October 2009, the Secretary-General advised the Tribunal of the Security Council's endorsement of the recommendations and requested that the Tribunal comply with recommendation (m) in paragraph 259 and report, in detail, upon the Tribunal's implementation of the tasks identified under recommendation (l) in paragraph 259.

73. Each of the recommendations of the Secretary-General in paragraph 259 (l) is addressed below in turn.

*(i) Referral of further cases (where possible and appropriate) to national jurisdictions, and in this regard, the further strengthening of the capacity of the affected countries:*

The Tribunal does not anticipate any further referrals of cases to the region; however, the Tribunal's commitment to assisting the capacity of the affected countries to prosecute breaches of international humanitarian law remains steadfast and is being intensified as part of the Tribunal's legacy strategy. Further details of these efforts are reported below in the section on legacy and capacity-building.

*(ii) Consideration of possible ways to review witness protection orders and decisions with a view to withdrawing or varying those that are no longer necessary:*

As part of a comprehensive review of the possibility of lifting confidentiality of court records, the Tribunal has implemented a plan to review records of closed proceedings. The review will include: (a) identifying all protected witnesses and the associated protective measures in relation to them; (b) identifying the need for amendments (if any) to the Tribunal's Rules of Procedure and Evidence to vary protective measures where such action may be appropriate; and (c) making recommendations regarding each protected witness as to whether it is feasible and/or advisable to attempt to re-contact the witness to determine whether variance of the previous protective orders is appropriate.

*(iii) Implementation of an approved records retention policy in order to identify archives for permanent preservation, duplicate records for disposal, administrative records eligible for disposal in situ, and administrative records with continuing value for transfer to the Archives and Records Management Section:*

Following the resignation of the Tribunal's archivist in November 2008, a new archivist was recruited and arrived at the Tribunal on 6 July 2009. She is working diligently to establish a system to identify records at the institution; is developing, in conjunction with the Archives and Records Management Section and the Joint Tribunals Archival Strategy Working Group, a records retention policy for records throughout the Tribunal; has begun a comprehensive review of the several different retention schedule recommendations within the Tribunal; and is leading a review to ensure that the records retention schedule represents an internally consistent system.

*(iv) Preparation of all digital records for future migration into the recordkeeping systems of the residual mechanism(s):*

Upon the approval from the Headquarters Committee on Contracts on 28 October 2009, the Tribunal entered into a contract with Memnon Archiving Services on 19 November 2009 to digitize the complete collection of audio-visual recordings of court proceedings. Memnon has begun the digitization process using only public material, starting with prototyping and testing phases. The bulk of the material (approximately 60,000 hours) will be digitized during the pre-industrial and industrial phases to commence in May 2010. The completion date for the project is December 2010 by which all recordings produced to that date will have been digitized. Memnon is contracted to perform ongoing digitization services throughout 2011 and 2012, should the Tribunal wish to make use of this option.

*(v) Preparation of all hard-copy archives and inventories for transfer to the residual mechanism(s):*

The archivist, in conjunction with the various organs of the Tribunal, is establishing a means to identify the hard-copy records that should be included in this type of information transfer. This project is labour-intensive and involves the creation of schedules of hard-copy records to be included in the archives, as well as the identification of those that should not, or cannot, be included (e.g., judicially privileged materials, attorney work product materials). Once there is a schedule of these records, they will be prepared in the most efficient format for eventual transfer to the residual mechanism.

*(vi) Development, in collaboration with the United Nations Secretariat, of a regime to govern the management of, and access to, the Tribunal's archives, including for the continued protection of confidential information provided by individuals, States, and other entities under Rule 70 of the Tribunal's Rules:*

The Tribunal is working with the Joint Tribunals Archival Strategy Working Group to ensure that such a regime is implemented. Three representatives of the archives team from the Court Management and Support Services of the Tribunal attended the Working Group meeting in Arusha from 28 to 30 September 2009. With respect to the continued protection of information contained in the trial record provided to the Tribunal under the confidentiality provisions of Rules 54 bis and 70, the President has constituted a senior-level working group to prepare a strategy, which is being further discussed with the United Nations Secretariat.

*(vii) Development and implementation of an information security strategy that includes the appropriate (de)classification of all records and archives:*

As referred to in section (ii) above, on 16 September 2009, I approved a plan to begin a review of case records with a view to determining whether they could be

declassified and whether witness protection measures could be varied. I also appointed the Chief of the Court Management and Support Services as the Focal Point for Declassification and charged her with implementing the plan. The first declassification “Pilot Team” was identified and met on 24 September 2009 to begin the process of reviewing the record of proceedings in the case of *Prosecutor v. Duško Tadić*. The Pilot Team is creating terms of reference and methodologies for the review of the various types of confidential materials, such as transcripts, exhibits, motions, decisions, and orders. Reasons for confidentiality and recommendations as to whether documents should be made public are being noted. The Pilot Team meets regularly to coordinate their work and maintain their progress. Once this initial review is completed, additional teams will be formed and will utilize the terms of reference and methodologies of the Pilot Team to review the other completed trial records. After the review of a trial record is complete, recommendations will be forwarded to the Judge or Chamber assigned to handle the declassification of the closed case, and appropriate decisions will be rendered.

The declassification process is a monumental undertaking and will require the Security Council to devote a significant amount of additional resources to the Tribunal, if each case is to be judicially scrutinized for whether any of its confidential records can be made public. Where procedural requirements require the Victims and Witnesses Section to contact witnesses for their consent/views on such variation, this represents a significant increase of the Section’s workload, especially based upon the thousands of witnesses involved. Transcript coordinators will have to revert to the original transcript to prepare and make available a revised public version of the transcript, identifying the new portions of the record that can be disclosed and making the necessary revisions. Once the public transcript has been prepared, the audio-visual record will also have to be modified to comply with the new public version of the transcript. As we will already have digitized the public versions of the audio-visual records, this will mean revision of the digitized records — in other words, a duplication of the digitization project that is currently in progress. Staff members from Chambers and the Registry will need to be devoted to assisting the Judge or Chamber assigned to conduct the declassification of a case, and even the Prosecution and the Defence may be called upon to provide submissions on each case to be declassified, with Defence counsel having to be remunerated for their work. The implementation of this recommendation will, therefore, require a review of the current downsizing schedules.

As detailed in section (iii) above, the Tribunal is establishing, in conjunction with the Archives and Records Management Section and the Joint Tribunals Archival Strategy Working Group, a records retention policy for non-judicial records throughout the Tribunal in order to ensure that the records retention schedule represents an internally consistent plan that meets the Section’s standards. Individual schedules are amended on an ongoing basis to include new categories of documents and to reflect changes in recordkeeping practices, and the schedules are applied to both active records held in offices and inactive records held in the storage vaults. An important part of this systematic assessment is the requirement of information security: where a document is designated as “confidential” or “strictly confidential”, the rationale and duration for such a classification will be recorded.

As discussed in section (vi) above, Rule 70 and Rule 54 bis materials will be handled by a specially designated working group.



*(viii) Review of all agreements with States and other international bodies, and contracts with private entities, to determine whether there are any that should not continue in force after the closure of the Tribunal:*

A project to compile all agreements with States and other international bodies signed to date by the Tribunal is under way. All agreements will be reviewed to determine whether there are any that do not need to remain in force when the residual mechanism starts functioning. Consideration will be given to whether there are any that need to be amended to ensure their continuity beyond the closure of the Tribunal. All security contracts with private entities will be reviewed prior to the closure of the Tribunal with the intention to discontinue such contracts upon closure, and security contracts required to support the residual mechanism will need to be renegotiated in line with the scope and size of its security requirements.

The General Services Section, together with Procurement, has been planning service and supply contracts with private entities for some time in accordance with the downsizing and upcoming closure of the Tribunal. No such contracts are currently planned to extend beyond the expected closure date. The Tribunal has, where possible, taken optional extensions to give flexibility to continue with required services depending upon operational requirements. This includes the Tribunal's building leases. Utilities contracts have similarly been negotiated with optional extensions and built-in flexibility.

*(ix) Examination of the feasibility of establishing information centres in the affected countries to give access to copies of the public records or the most important parts:*

On 22 September 2009, the Head of Chambers was appointed to carry out this feasibility study. On 19 October 2009, the Head of Chambers commenced a mission to the region of the former Yugoslavia. On 11 January 2010, her report on that mission was sent to the Security Council for its consideration.

## **IX. Legacy and capacity-building**

74. On 23 and 24 February 2010, the Tribunal staged an international conference, on assessing the legacy of the Tribunal, in The Hague. This Conference gathered more than 350 participants from the international community and the countries of the former Yugoslavia to discuss aspects of the Tribunal's legacy, particularly in the region of the former Yugoslavia. The event was highly successful in bringing together high-level representatives of States, United Nations agencies, international organizations, think tanks, and members of the academic community, as well as eminent individuals from governments, the judiciary, and civil society from the region of the former Yugoslavia. The Tribunal is grateful to the co-organizers and sponsors of the Conference — the Sanela Diana Jenkins Human Rights Project at UCLA School of Law and the Governments of Finland, the Netherlands and Switzerland.

75. The Conference provided a unique opportunity for panel experts and audience participants to exchange views on the Tribunal's legacy and to identify ways of securing a long-lasting and positive impact of the Tribunal's work. Members of the international community had an opportunity to hear the opinions of key government officials and victim representatives from the region on the significance of the

Tribunal's legacy. The Conference provided the Tribunal with guidance for its legacy strategy and allowed it to build new relationships with potential partner organizations and donors.

76. The principle of national ownership emerged from the Conference, and the discussions indicated that solutions imposed from the outside could not secure sustainable results in the region. It was widely agreed that the Tribunal had made a tremendous contribution to bringing justice to the affected populations in the former Yugoslavia, but the communities were still not reconciled: this was something that could not be achieved by the Tribunal, but rather only by the key players in the process of reconciliation — national governments, civil society, academia, and the media. The Tribunal will intensify its efforts to forge links with those actors and will consult and coordinate with national authorities and non-governmental organizations on projects of common interest, such as outreach activities and the possible creation of Tribunal information centres.

77. Effective access to the Tribunal's records was stressed throughout the Conference as an essential cornerstone of the legacy for a number of purposes, one being the proposed creation of a regional truth commission, which is widely supported by a civil society coalition. Such a commission would assist in the creation of a shared historical record and would be an important move towards reconciliation.

78. The discussions at the Conference stressed that the international community's support for the national justice systems' capacity to prosecute war crimes must meet the needs of the domestic actors and be designed in ways that are acceptable to them. Strong support was expressed for the Tribunal's Bosnian/Croatian/Serbian transcription project, which was designed in accordance with the expressed needs of the judicial institutions of the region. Following the recommendation of several participants at the Conference to provide the same amount of support to Kosovo as that given to Serbia, Croatia, and Bosnia and Herzegovina, the Tribunal has approached potential donors with a proposal for the production of transcripts in Albanian for relevant cases.

79. Insufficient coordination among international agencies was highlighted as a recurring problem of capacity-building and related activities. The Tribunal has since made steps to increase its cooperative activities, particularly with the United Nations Development Programme, which plays a key role in the former Yugoslavia with its continuing presence and expertise in supporting sustainable development.

80. On 1 May 2010, the Tribunal and the Office for Democratic Institutions and Human Rights of OSCE launched a joint 18-month project aimed at assisting the national judiciaries of the region in securing their capacity to investigate, prosecute, and adjudicate war crimes cases. The €4 million project, generously supported by the European Commission, has been designed upon the basis of a study conducted in 2009 that identified a number of outstanding needs of the judiciaries in the former Yugoslavia, as well as best practices in capacity-building programmes. Some of the best practices for knowledge transfer, for example, include the need to account for and respect local legal traditions, study visits specifically tailored to the participants, and peer-to-peer meetings among Judges, as is discussed more below.

81. The Tribunal is directly implementing project elements worth €1.2 million, including the production of selected transcripts and the translation of its Appeals

Chamber Case Law Research Tool into Bosnian/Croatian/Serbian. The Tribunal will also lend its participation and expertise to project components administered by OSCE, including a range of training activities, updated curricula on international criminal law, online self-learning systems, analytical tools, support for witnesses, training for Defence counsel, and publication of a Defence manual. Furthermore, the project will sponsor a limited number of key support personnel, such as analysts or witness support staff in the region. Finally, the project entails a series of peer-to-peer meetings among judicial officials in the region.

82. The Tribunal's Judges continue to pursue meetings with their counterparts from the region as the preferred method of interaction, previous experiences having shown that such joint working sessions are deemed highly useful by Judges on both sides. During the reporting period, the Judges held discussions with colleagues visiting the Tribunal from Bosnia and Herzegovina and from Sandžak, Serbia. Judge Moloto participated in two seminars in Bosnia and Herzegovina organized by the country's Judicial and Prosecutorial Training Centre, and Judge Morrison attended a seminar in Serbia that gathered leading practitioners from the region.

## **X. Conclusion**

83. This report demonstrates the Tribunal's steadfast commitment to the expeditious conduct of its proceedings in full compliance with due process standards. The delays in estimated completion dates are mainly attributable to factors beyond the Tribunal's control. As much as possible, the Tribunal has taken measures to minimize the impact of delays and has implemented reforms to ensure the proper management of those delays.

84. It is clear that staff attrition has contributed significantly to slippage in practically all 10 cases currently being tried. The need for measures to assist in retaining staff at this very critical juncture in the Tribunal's life cannot be overstressed. The previous reports have repeatedly brought this need to the attention of the Security Council. As this report shows, the high rate of attrition results in either inexperienced or insufficient staff manning the Trial Chambers, leading to longer time being taken to dispose of motions and generally impact negatively on the pace of proceedings. If this problem is not addressed, the situation will worsen and slippage will continue to thwart the implementation of the Completion Strategy. The Security Council must heed the call for remedial measures. It has already been pointed out that the budgetary authorities in New York have not allowed the Tribunal to make use of General Assembly resolution 63/256 as a retention measure. That resolution in its relevant part reads: "Requests the Secretary-General to use the existing contractual frameworks to offer contracts to staff, in line with dates of planned post reductions in accordance with the relevant prevailing trial schedules, in order to remove uncertainty with regard to future employment with the aim of ensuring that the Tribunals have the necessary capacity to complete their respective mandates effectively, as recommended by the International Civil Service Commission in paragraph 21 (b) of its report." It is surprising that a provision that is so clear in its language and unambiguous in its purpose has given rise to difficulty in its interpretation and application. Everyone with whom the Tribunal has consulted, including the International Civil Service Commission and members of the Fifth Committee, emphasized that the purpose of the resolution was to enable the Tribunal to retain staff at this particular time when, because the Tribunal is in the

final stages of its work, staff will be disposed to leave. The Tribunal would be grateful for any help the Security Council can give in securing the speedy implementation of this resolution. Failing the use of that resolution, some other measure has to be devised by the United Nations to retain staff. Otherwise, implementation of the Completion Strategy will be adversely affected.

85. Another factor that contributes to slippage is that Judges are obliged to sit in more than one case at the same time. Not only is that physically and mentally exhausting, but since conflicts have to be avoided, it becomes increasingly difficult to find a convenient time to schedule the cases in which they sit. It is also the case that, when Judges sit in two cases at once, there is often little time for deliberations and consultations between the Judges due to the fact that they are almost always sitting in court.

86. Moreover, as the report indicates, staff, because of their limited number, must also work in more than one case at the same time. As the report has shown, the high turnover in staff results in inexperienced staff manning the trials, thereby placing a burden not only on themselves, but more importantly on the more senior staff who must shoulder the responsibility to train them.

87. The Tribunal has always acknowledged the difficulty in estimating the length of a trial. The main reason for this difficulty is, quite frankly, that it is almost impossible to anticipate and make provision for all the factors that might impact on the length of a trial. For example, it would have been difficult to anticipate the death of lead counsel in *Stanišić and Simatović*; the *volte face* of Šešelj in deciding at this stage to call a defence; the extensive litigation in *Gotovina et al.* resulting from the investigations carried out by the Croatian Government; the discovery of the 18 notebooks of Ratko Mladić relevant to the *Karadžić* trial and other cases; and an application by the Prosecution to amend the indictment to add significant new charges on the eve of trial, as happened in the *Tolimir* case. I am sensitive to the tendency to give overly optimistic estimates in response to the Completion Strategy, and I do apologize for the estimate that was given in the *Mičo Stanišić and Stojan Župljanin* case. I have brought this matter to the attention of all those concerned in providing information on the basis of which amendments are made and stressing the need for estimates to be as realistic as possible.

88. Since its inception, the Tribunal's achievements have been numerous and varied. In bringing to trial those accused of serious violations of international humanitarian law, this institution has issued the clear and unequivocal signal that impunity for such offences will not be tolerated. By balancing this objective with a keen attentiveness to the rights of the accused, the Tribunal has helped to fortify the rule of law in the former Yugoslavia and in the wider global community. Towards this end, I urge the Security Council to adopt all possible measures to secure the immediate apprehension of the two remaining fugitives — Ratko Mladić and Goran Hadžić. I also encourage the Security Council to support the judicial institutions in the region in continuing the work initiated by the Tribunal and the Council.

89. The Security Council's continued support is vital to the Tribunal's efforts to expeditiously complete its mandate in a manner consistent with the highest possible standards of international criminal justice. This support is also critical to the proper management of the necessary residual functions by an appropriate body once the Tribunal has completed its core functions.

## Annex II

[Original: English and French]

### **Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)**

#### **1. Introduction**

1. The Prosecutor submits this thirteenth completion strategy report pursuant to Security Council resolution 1534 (2004).
2. Ratko Mladić and Goran Hadžić are the only two fugitives at large. The Office of the Prosecutor remains committed to securing their arrest. This is one of the Office's highest priorities.
3. All remaining 10 cases are active at the trial level. There are no more cases at the pretrial stage. This represents a major milestone for the Tribunal. Judgement is imminent in one case, two are near completion, two are in the Defence phase and five are in the Prosecution phase.
4. As trials end, the Office of the Prosecutor Trial Division is downsizing. This process started on 1 January 2010. To date, 20 posts in the Office of the Prosecutor have been abolished.
5. During this reporting period, the Office of the Prosecutor's key priorities were: (1) completing all trials and appeals expeditiously; (2) securing evidence and apprehending the fugitives with the cooperation of the States of the former Yugoslavia and the international community; (3) strengthening relationships with regional prosecution services; and (4) downsizing efficiently, fairly and transparently.

#### **2. The expeditious completion of trials and appeals**

##### ***Progress in trials***

6. The Office of the Prosecutor's priority remains completing trials and appeals. During the reporting period, further progress has been made. Nine trials are currently ongoing in the Tribunal's three courtrooms. Where future dates are given below, they are based upon the Prosecutor's understanding of expected progress in the cases. Actual decisions remain, of course, a matter for the individual Trial Chambers.
7. Judgement in *Popović et al.*, the second multi-accused leadership case, will be rendered on 10 June 2010. Two other cases, *Dorđević* and *Gotovina et al.*, are close to completion. *Prlić et al.*, the last multi-accused case, and *Perišić* will finish with the evidence phase in the next reporting period. The evidence phase of the *Karadžić*, *Šešelj*, *Stanišić and Simatović*, *Stanišić and Župljanin* and *Tolimir* trials will continue into 2011.
8. During this reporting period, an appeal judgement was rendered in *Boškoski and Tarčulovski*. The *Haradinaj et al.* and *Delić* appeals will be decided in the next

reporting period. *Lukić and Lukić* and *Šainović et al.* will be argued in the next reporting period(s).

9. The Office of the Prosecutor is working at full capacity to prosecute trials and appeals efficiently and expeditiously. Emphasis is given to presenting evidence through witness statements and documents instead of live witnesses. Unfortunately, delays in several trials could not be avoided. Difficulties with witness availability, the unpredictable length of Defence cases and resource constraints have impacted the speed of trials. Some cases have also been adjourned in order to allow Prosecution and Defence teams time to translate and analyse a large volume of new and important evidence from Serbia. This evidence comprises the war-time notebooks of Ratko Mladić, and associated tapes.

10. Significant developments in individual cases relevant to this reporting period are set out below.

*Popović et al.*

11. The judgement will be released on 10 June 2010. The evidence in this leadership case against seven accused ended in September 2009, after 424 trial days.

*Gotovina et al.*

12. The trial phase of this case is nearing completion. The Defence cases of the three accused concluded in late January 2010. The Trial Chamber called six witnesses. The last Chamber witness testified on 22 April 2010.

13. On 21 April 2010, the Trial Chamber granted the Prosecution's motion to reopen its case to present evidence that only recently came to light. The Trial Chamber subsequently granted the Čermak and Markač Defence certification to appeal the decision allowing the Prosecution to reopen its case. The Čermak and Markač Defence filed their appeals on 18 May 2010.

14. The Trial Chamber has not stayed the proceedings pending appeal. The Prosecution will reopen the case by calling three witnesses the first week of June. The Čermak and Markač Defence will call final defence witnesses in rebuttal in the second or third week of June, which is expected to bring an end to the presentation of evidence in this case.

*Dorđević*

15. The Defence case began on 30 November 2009 and concluded on 20 May 2010. Final trial briefs will be filed in July 2010, and oral arguments have been scheduled for 13 and 14 July 2010. Judgement will likely be rendered in the next reporting period.

*Perišić*

16. The Prosecution case closed in early November 2009, as scheduled. Following delays connected with inadequate Defence disclosure, the Defence case began on 22 February 2010.

17. The presentation of Defence evidence was recently adjourned for three weeks to give the Defence team time to analyse the Mladić notebooks. The Mladić

notebooks mention the activities of many witnesses scheduled to testify for the Defence.

*Prlić et al.*

18. Five of the six Defence cases in this leadership trial were concluded early April 2010. The case of one accused, Praljak, remains open as to the admission of various written witness statements. The Praljak Defence wishes to tender 155 witness statements and this issue is before the Appeals Chamber. Depending on the ruling by the Appeals Chamber, a number of additional Praljak witnesses may still be presented. Of these witnesses, it is expected that a number will be required to appear in court for cross-examination.

19. On 20 May 2010, the Prosecution applied to the Trial Chamber to reopen its case. The Prosecution relied upon five excerpts from the Mladić notebooks, and reserved the right to seek leave to rely upon the Mladić tapes once they have been digitized and analysed. The Prosecution does not expect the reopening of its case to have a significant impact upon the trial schedule.

*Šešelj*

20. The Prosecution began leading evidence against Vojislav Šešelj on 11 December 2007. The trial has been adjourned several times for a variety of reasons. The trial resumed again in January 2010. Recently, the Trial Chamber converted all but one of the remaining Prosecution witnesses into Chamber witnesses to address their refusal to appear as Prosecution witnesses. Problems securing their attendance have delayed the trial for several months. The last Chamber witness testified on 11 and 12 May 2010.

21. The medical condition of two further Chamber witnesses is unclear. The Trial Chamber has not yet indicated whether the two witnesses will be required to testify in court, or whether their written evidence will be accepted in lieu of their appearance.

22. The Trial Chamber has ordered the Prosecution to file motions in relation to all outstanding matters by 1 June 2010. The Prosecution expects that it will close its case before the judicial recess in July 2010.

*Stanišić and Simatović*

23. After a series of delays attributable to Stanišić's ill health and the death of Simatović's lead counsel last year, the trial is now proceeding on a two day per week sitting schedule. The Prosecution is now presenting its case. Simatović's newly constituted Defence team has been given allowance for preparations, including two adjournments totalling seven weeks and an agreement to schedule the Prosecution's more complex witnesses later in the trial (so as to provide additional time to prepare their cross-examinations).

24. The Prosecution has been allocated 130 hours for its case. By the end of April 2010, the Prosecution had completed the evidence of 25 of its 101 witnesses in less time than originally estimated. The time saved resulted from efforts to adduce certain evidence from *viva voce* witnesses in written form (such as evidence related to background, and assessments of the authenticity of documents). The Prosecution and Defence teams engage in pre-hearing discussions of legal issues to focus and

resolve contentious matters before they are raised in court, and deal with many issues by way of filings and/or correspondence to ensure that court time is used for the taking of evidence.

*Stanišić and Župljanin*

25. The trial, which commenced on 14 September 2009, is more than halfway through the Prosecution case. The trial schedule has slipped for a variety of reasons, including scheduling problems due to the ill health of witnesses, outstanding decisions on various key matters and procedural issues.

26. The Prosecution has significantly shortened the time needed to present its case by making the best possible use of written evidence and adjudicated facts. For instance, the Prosecution and Defence agreed on a “Law Library” (a large collection of constitutional, statutory and regulatory documents pertinent to the case). The Prosecution has also sought admission of large collections of documents.

27. However, on 1 April 2010, the Trial Chamber rendered an important decision holding that it would no longer rely upon many previously adjudicated facts. Certification to appeal has been requested because the decision, coming more than six months after the commencement of the Prosecution’s case, undermines the basis upon which Prosecution witnesses were selected. If certification is refused, the Prosecution will seek to add as many as 20 new witnesses, which will extend the trial by several weeks.

*Karadžić*

28. The Prosecution presented its opening statement in the *Karadžić* case on 27 October 2009 and 2 November 2009. The accused refused to attend the opening and the trial was adjourned. On 5 November 2009, the Trial Chamber ordered counsel to be assigned to represent the interests of the accused at trial, if ultimately required. The trial was further adjourned to 1 March 2010, to accommodate assigned counsel’s preparations.

29. The accused delivered his opening statement on 1 and 2 March 2010. The proceedings were delayed due to a further request of the accused for a postponement. His request was rejected by the Trial Chamber, and later, the Appeals Chamber. The trial resumed on 13 April 2010, with the first of the Prosecution’s witnesses. The accused is self-represented and the assigned counsel functions as stand-by counsel. The trial is now progressing at a steady pace, initially on a three day per week and now on a four day per week schedule.

30. The Prosecution is making every effort to shorten the presentation of evidence during trial while meeting its obligations to prove the case alleged against *Karadžić*. The evidence of *all* Prosecution witnesses has been submitted in written form. Some witnesses will not have to testify in person. For those witnesses who do need to testify, having their evidence in written form considerably reduces the length of their oral testimony. The Prosecution has filed motions for the Trial Chamber to take judicial notice of adjudicated facts from previous cases. In addition, the Prosecution routinely requests the Chamber to admit documents directly into evidence where appropriate, avoiding extra time required for presenting each document during the testimony of a witness.



*Tolimir*

31. In February 2009 the Prosecution filed a motion requesting that the evidence of 118 of its 189 witnesses be accepted by the Trial Chamber in written form, without those witnesses having to attend court. If granted, this measure will help to accelerate the trial. The Prosecution began calling witnesses on 11 March 2010.

32. The trial is progressing steadily. On 1 June 2010, the trial will move to a four day per week schedule.

*The two fugitives*

33. Two fugitives, Ratko Mladić and Goran Hadžić, remain at large. Ratko Mladić's indictment was severed from the *Karadžić* case on 15 October 2009 to allow that trial to proceed.

34. The Prosecution has updated and streamlined the *Mladić* indictment to conform with the latest *Karadžić* indictment, and presented it to the Confirming Judge on 10 May 2010. This updated indictment will allow the case against Ratko Mladić to proceed more efficiently when he is arrested and brought to trial.

*Progress in appeals during the reporting period*

35. During the reporting period, the Appeals Chamber rendered judgement in the case of *Bošković and Tarčulovski*. Judgement in the *Haradinaj et al.* case is expected in the next reporting period. The Appeals Chamber heard oral submissions in the case of *Rasim Delić* in January 2010. Delić died on 16 April 2010 before the Appeals Chamber could render judgement. His family has asked the Appeals Chamber to issue a judgement in the interests of justice. Appeals filings are complete in the *Milan Lukić and Sredoje Lukić* case. The Appeals Chamber will hear oral submissions from the parties on 21 September 2010. Appeals filings are also complete in the *Šainović et al.* case, the first multi-accused case to reach the appeals stage.

36. In the next reporting period, the Office of the Prosecutor will receive the trial judgement in *Popović et al.* The appeals briefing is expected to continue until early 2011. In addition, during the next six months, the Appeals Division should receive trial judgements in several other cases: *Gotovina et al.*, *Dorđević* and maybe *Perišić*. All trial judgements will require review for legal and factual errors and may result in a Prosecution appeal. Each accused who is convicted is expected to appeal. During this period, the Appeals Division will carry a continuing inventory of at least 20 appeals.

### 3. International cooperation

37. The Office of the Prosecutor continues to seek the full cooperation of the States of the former Yugoslavia and other States to fulfil its mandate, and to meet completion strategy goals. Failure of States to satisfactorily comply with requests from the Prosecution in a timely manner could affect the Prosecutor's ability to adequately present evidence, and possibly result in an extension in time of court proceedings.

***Cooperation from the States of the former Yugoslavia***

38. Cooperation from the States of the former Yugoslavia remains vital, particularly in the areas of: (a) access to archives, documents and witnesses; (b) the protection of witnesses; and (c) efforts to locate, arrest and transfer the two remaining fugitives (including taking measures against those who support them).

39. To assess cooperation, during the reporting period the Prosecutor met with political and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina. Throughout the past six months, members of the Office of the Prosecutor have also maintained a direct dialogue with key State officials, including national prosecution offices.

***Cooperation of Serbia***

40. The Office of the Prosecutor continues to seek cooperation from Serbia in two principal areas. Firstly, the Office of the Prosecutor requires Serbia's support in ongoing trials and appeals. Secondly, the Office of the Prosecutor seeks Serbia's assistance in the key matter of the arrest of the two fugitives, Ratko Mladić and Goran Hadžić.

***Support to ongoing trials and appeals***

41. Serbia's responses to the Office of the Prosecutor's requests for access to documents, archives and witnesses have been timely and adequate. At this point, no requests remain outstanding. Serbia's Council for Cooperation with the Tribunal continued to successfully fulfil its coordination function between various government bodies, in order to address the Office of the Prosecutor's requests.

42. The Serbian authorities have continued to facilitate the appearance of witnesses before the Tribunal, including serving summonses on individuals. The Office of the Prosecutor has communicated its concerns about the possible involvement of certain officials within government institutions allegedly intimidating and threatening Prosecution witnesses. The Serbian Office of the War Crimes Prosecutor and law enforcement bodies acted promptly and took necessary measures to ensure the protection of witnesses under threat.

43. In the reporting period, Serbian authorities successfully conducted certain investigative activities, including search and seizure operations. On 23 February 2010, Serbia's Action Team responsible for tracking fugitives conducted a search of the apartment of the wife of Ratko Mladić. Numerous items were seized in the course of the search, including 18 notebooks containing the handwritten war-time notes of Ratko Mladić, and associated tapes. The notebooks contain over 3,000 handwritten pages.

44. At the end of March 2010, the Serbian Government provided the Prosecution with scanned images of the Ratko Mladić notebooks. In early May 2010 they delivered the original notebooks and tapes. Based upon the Prosecution's preliminary review of these materials, they contain highly valuable information, which is now being submitted as evidence in a number of trials. The Office of the Prosecutor welcomes this important development, as well as the authorities' effective investigative action and prompt hand-over of the seized material.

45. Bearing in mind the tight trial schedule, the Office of the Prosecutor encourages Serbian authorities to continue responding effectively to its requests for assistance. Assistance by Serbia will remain crucial to the Tribunal's successful completion of the remaining trials and appeals.

#### *Arrest of fugitives*

46. The most critical outstanding aspect of Serbia's assistance to the Office of the Prosecutor remains the apprehension of the two fugitives. To date, no evidence has been uncovered indicating that Ratko Mladić is not in Serbia.

47. During the reporting period, the Office of the Prosecutor remained in close contact with the Serbian agencies in charge of locating and arresting the fugitives. The Prosecutor and members of his senior staff were regularly apprised of the work undertaken by the Serbian agencies charged with locating and arresting the fugitives. Briefings by Serbia's officials covered the scope and nature of measures taken, investigative avenues pursued and operations conducted.

48. Six months ago, the Office of the Prosecutor reported a number of improvements in the efficiency and professionalism with which the Serbian authorities were conducting the search for fugitives. The Office of the Prosecutor recognizes the continuing efforts of Serbia's operational services, and the key role of the National Security Council in coordinating the efforts of different security agencies. However, in the absence of tangible results and after careful examination of operational activities conducted, the Office of the Prosecutor strongly recommends an in-depth review of the strategies employed.

49. The Office of the Prosecutor has identified and raised areas in which the Serbian authorities' operational approach, analysis and methodologies can be improved. Valuable time has been invested by the Serbian agencies in pursuing individual lines of investigation in isolation, rather than following multiple leads simultaneously. Serbia is therefore encouraged to increase its operational capacities, and to adopt a more rigorous and multidisciplinary approach to arresting the fugitives.

50. The Serbian Government must give its full support to the operational services that have been tasked with tracking and apprehending the fugitives. Ongoing financial, logistical and political support is imperative. There can be no alternative to the immediate arrest of the two remaining fugitives, Ratko Mladić and Goran Hadžić.

#### *Cooperation of Croatia*

51. Croatia's cooperation is generally responsive to the needs of the Office of the Prosecutor. Requests for assistance are answered efficiently and access to witnesses and evidence is provided without hindrance or undue delay. However, the Office of the Prosecutor's request for important military documents related to Operation Storm remains outstanding.

52. In last December's report to the Security Council, despite the lack of progress in Croatia's administrative investigation, the Office of the Prosecutor welcomed the creation of an inter-agency Task Force. This Task Force was specifically established to examine the identified shortcomings of the administrative investigation and to locate or account for the missing military documents.

53. During this reporting period the Croatian Government Task Force submitted six reports. These reports primarily described the work conducted by the Task Force since its creation. None of the missing military documents were provided to the Office of the Prosecutor in the reporting period.

54. While the Office of the Prosecutor notes a general improvement in the quality of Croatia's administrative investigation in terms of the manner in which interviews were conducted, the investigation falls short of providing a full account of the whereabouts of the requested documents. Key investigative avenues remain unexplored.

55. In the most recent submissions to the Trial Chamber regarding this long-standing issue, the Office of the Prosecutor has maintained its position that documents have not been provided or accounted for and areas of investigation have not been adequately pursued.

56. The Trial Chamber remains seized of this matter. With the *Gotovina et al.* trial nearing completion, the Office of the Prosecutor continues to seek the documentation which has been the subject of Rule 54 bis proceedings since June 2008. The Office of the Prosecutor, therefore, once again urges Croatia to intensify its administrative investigation and to fully account for the missing documents before the end of the trial.

#### ***Cooperation of Bosnia and Herzegovina***

57. The authorities of Bosnia and Herzegovina responded adequately to requests for assistance regarding documents and access to government archives. The authorities also continue to assist by facilitating the appearance of witnesses before the Tribunal.

58. Bosnia and Herzegovina continues to take measures against those supporting fugitives. The Office of the Prosecutor encourages law enforcement and judicial authorities in Bosnia and Herzegovina to take all necessary measures against those helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate.

59. Radovan Stanković, indicted by the Tribunal for crimes against humanity and war crimes (including rape), is still at large. This remains a matter of concern. He was transferred by the Tribunal to Bosnia and Herzegovina in May 2005 pursuant to Rule 11 bis, but escaped from prison while serving his 20-year sentence in Foča. The Court of Bosnia and Herzegovina convicted three persons (including Ranko Stanković, the brother of Radovan Stanković), for the criminal offence of facilitating the escape of a detainee. The Office of the Prosecutor encourages the authorities of Bosnia and Herzegovina, as well as neighbouring States, to take all necessary measures to apprehend Stanković.

60. The Office of the Prosecutor continues to support the ongoing prosecution of war crimes cases in Bosnia and Herzegovina and, in particular, the work of the State Prosecutor and the Special Department for War Crimes. Their offices prosecute 11 bis cases and investigative material transferred by the Office of the Prosecutor. The Prosecutor welcomes the December 2009 decision to extend the mandates of international personnel and support staff. However, the delays in extending mandates have had a negative impact on the work of the office. Many staff members left, resulting in considerable delays in investigations, trials and appeals.

61. Political figures have made statements throughout the reporting period supporting individuals convicted of violations of international humanitarian law, and denying the existence of judicially confirmed crimes. These statements are unacceptable, damaging and directly affect cooperation with the Tribunal. They discourage witnesses from giving evidence, and undermine efforts aimed at reconciling and stabilizing post-conflict societies.

***Cooperation between States of the former Yugoslavia in judicial matters***

62. Cooperation in judicial matters among the States of the former Yugoslavia remains critical to the fulfilment of the Tribunal's mandate.

63. In February 2010, Bosnia and Herzegovina and Croatia concluded an amendment to the "Agreement on Mutual Execution of Court Decisions in Criminal Cases" to allow for persons sentenced in second instance (final verdicts) to serve their sentences in either country. Also, in February 2010, Bosnia and Herzegovina and Serbia signed amendments to the "Agreements on Mutual Execution of Court Decisions in Criminal Cases" and "Mutual Legal Assistance in Civil and Criminal Matters". In addition to facilitating serving sentences in the other country, these amendments expand the scope of legal assistance between the two States. In October 2006, the War Crimes Prosecutor's Office of Serbia and the Public Prosecutor's Office of Croatia concluded the "Bilateral Agreement in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide". The information and evidence exchanged as a result have led to tangible benefits, and serve as a good foundation for future improved cooperation.

64. Despite these developments, legal obstacles to cooperation continue to exist. Each State bars extradition based on nationality and has other legal barriers preventing the transfer of war crimes cases from one State to another. Prosecutors from different States continue to initiate parallel war crimes investigations for the same crimes. This situation threatens the successful investigation and prosecution of war crimes cases and exacerbates the problem of impunity. All States in the region must urgently address these important issues.

65. Following the Tribunal's closure, prosecutions of war crimes cases at the regional level will continue. Professional, impartial and cooperative interactions between domestic prosecution offices will become even more important as case loads expand. Clear lines of communication and information exchange are also essential. The Office of the Prosecutor encourages prosecutors throughout Serbia, Croatia and Bosnia and Herzegovina to address problems which have arisen during the reporting period. Improved regional cooperation will assist with the investigation and prosecution of violations of international humanitarian law.

***Cooperation from other States and organizations***

66. The Office of the Prosecutor relies upon other States and international organizations to provide documents, information and witnesses for trials and appeals. Also of importance is the international community's essential assistance in providing witness protection and, when necessary, in supporting witness relocation.

67. The Office of the Prosecutor appreciates the support of States and of international and regional organizations such as the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Council of

Europe and non-governmental organizations, including those active in the former Yugoslavia. This support will remain crucial until the Tribunal completes its work.

#### **4. The transition to domestic prosecution**

68. During the previous reporting period, the Office of the Prosecutor completed the transfer of investigative files in accordance with the completion strategy. The Office of the Prosecutor continues to support national prosecution efforts by facilitating access to investigative material and evidence available in The Hague.

69. The Office of the Prosecutor maintains good direct working relationships with the prosecutors' offices in Bosnia and Herzegovina, Croatia and Serbia. Liaison prosecutors from these offices work in The Hague and support the national prosecution of war criminals. The liaison prosecutors are participating in the Joint European Commission and Tribunal Training Project for National Prosecutors and Young Professionals from the former Yugoslavia. The Project is funded by the European Union.

##### ***Rule 11 bis cases***

70. While all Rule 11 bis cases have been transferred to Bosnia and Herzegovina, Croatia and Serbia, monitoring their progress continues.

- Five of the six cases transferred to Bosnia and Herzegovina have concluded with final decisions. The last case, involving Milorad Trbić (who was convicted of genocide and sentenced to 30 years imprisonment), is pending on appeal. OSCE is monitoring the *Trbić* appeal proceedings and reports regularly to the Office of the Prosecutor. The Office of the Prosecutor submits quarterly progress reports to the Tribunal's Referral Bench.
- The one case transferred to Croatia has concluded. On 11 March 2010, the Supreme Court delivered its appeals judgement against Rahim Ademi and Mirko Norac. Ademi's acquittal was confirmed and Norac's sentence was reduced from seven to six years.
- The *Kovačević* case transferred to Serbia remains suspended, pending a determination of his fitness to stand trial. The Serbian authorities provide regular updates on the status of the case.

##### ***Transfer of investigative material to national authorities***

71. The Office of the Prosecutor has completed the transfer of investigative material to national authorities. Seventeen case files with investigative material on 43 suspects were transferred to the prosecutors' offices in Bosnia and Herzegovina, Croatia and Serbia. The Office of the Prosecutor continues to support the cases by providing follow-up assistance.

##### ***Requests for assistance from national judicial authorities***

72. The Office of the Prosecutor's interactions with regional prosecution offices continue to strengthen. Incoming requests for assistance totalled 127 during the reporting period. National judicial authorities in the former Yugoslavia submitted 94 requests (59 from Bosnia and Herzegovina, 26 from Croatia and 9 from Serbia).

A number of these requests are complex and require considerable research and input from the Office of the Prosecutor. For the many requests linked to cases against suspects tried before the Tribunal, the liaison prosecutors played a key role in their processing.

73. The number of requests from other States investigating war crimes in the former Yugoslavia was 33. The majority sought documents and access to conduct searches of the Prosecution's database of unrestricted non-confidential materials. Delegations from prosecutors' offices and other law enforcement agencies consulted with Prosecution trial teams about their national war crimes investigations. Eight requests originated from international organizations.

***Enhancing partnerships and supporting national prosecutions***

74. The Office of the Prosecutor strives to maintain an effective partnership with prosecutors and courts in the region and to promote the successful domestic prosecution of serious violations of international humanitarian law. By assisting its national counterparts, it aims to strengthen the criminal justice system in the region.

75. The European Union/Tribunal Project has contributed to this success. The Project is expected to be continued in the next reporting period. The Office of the Prosecutor is grateful to the European Commission for its support.

76. Three liaison prosecutors from the region (one each from Bosnia and Herzegovina, Croatia and Serbia) work in The Hague and act as contact points for regional war crimes prosecutors. Liaison prosecutors work with the Office of the Prosecutor's Transition Team to search and review unrestricted non-confidential materials in support of local war crimes investigations and cases. Criminal analysts train the liaison prosecutors on prosecution search methodologies and procedures. Liaison prosecutors consult with in-house experts and other specialists on related cases and general issues.

77. The European Union/Tribunal Project also invests in the training of young legal professionals from the former Yugoslavia, and contributes to the future capacity of countries in the region to deal effectively with complex war crimes cases. In the course of the past six months, 12 young legal professionals have participated in basic prosecution casework as part of a trial team. Their work involves factual and legal issues, and includes preparing examinations-in-chief and cross-examinations, drafting motions and briefs, conducting legal research, preparing memos, minutes and correspondence, and reviewing and preparing evidence for trial. They also attend legal lectures and presentations on the work of the Office of the Prosecutor and the Tribunal.

## **5. Management of resources**

***Downsizing***

78. The Office of the Prosecutor implemented its downsizing strategy on 1 January 2010, with the abolition of 20 posts. As part of the downsizing process, six posts from the Evidence Unit were redeployed to Registry. These six staff members now work on transitional issues.

79. Further post reductions will take place in the months ahead. During the next reporting period, the Office of the Prosecutor expects to abolish a total of 32 posts, including the D-1, Chief of Trial Division and P-5, Senior Trial Attorney posts.

80. The Office of the Prosecutor remains committed to completing all trials and to meeting necessary budget cuts. However, a corollary of the downsizing process is the increasing rate of staff attrition. The successful completion of the Office of the Prosecutor's mandate hinges upon the retention of key employees, until the end of trials. Competent, professional and experienced staff who understand the legal and factual basis upon which the Office operates are crucial to meeting completion strategy obligations.

81. The Office of the Prosecutor is committed to assisting its staff to find new employment opportunities. It has approached a number of other international organizations and will continue, with the assistance of the other organs, to find practical and flexible arrangements in order to seek new employment for staff members whose contracts are ending.

82. The Trial Division will continue to be downsized on the basis of trial schedules (in accordance with General Assembly resolution 63/256). In contrast, the Appeals Division has expanded, in order to handle the rise in the number of cases on appeal as trials draw to a close.

#### ***Preparing for the future and legacy issues***

83. The Office of the Prosecutor continues to engage in and contribute to discussions on the establishment of a residual mechanism. Office representatives interact regularly with the Security Council Informal Working Group on the International Tribunals and the Office of Legal Affairs, regarding the residual mechanism's proposed structure, powers and functions.

84. The archiving and future accessibility of the Office of the Prosecutor's records is a matter of increasing importance. Confidential materials (such as information on protected witnesses, Rule 70 material and other sensitive documents received from governments and organizations) must be archived with appropriate restrictions to protect confidentiality, security and privacy rights. The Office of the Prosecutor is taking steps to prepare for archiving, to the extent that its current resources allow. The Office of the Prosecutor is working closely with the Chambers, the Registry and the United Nations Secretariat in order to address these issues.

85. One of the principal measures of the Office of the Prosecutor's legacy will be its impact and influence on domestic war crimes prosecutions throughout the former Yugoslavia. The Office of the Prosecutor continues to strengthen relationships with its regional counterparts, by way of ongoing training, information sharing and the successful European Union/Tribunal Project.

86. The Prosecutor, Deputy Prosecutor and other staff members of the Office of the Prosecutor took an active role in the Tribunal's Conference in February 2010 on assessing the legacy of the Tribunal.

87. The Office of the Prosecutor recognizes the essential role of international and national non-governmental organizations. These organizations support the Tribunal and the rule of law in the States of the former Yugoslavia, and promote international justice. The Office of the Prosecutor will continue to work closely with these organizations in the future.



88. The Office of the Prosecutor recognizes that the Tribunal's work and ultimate legacy are of enormous importance to victims. Throughout the reporting period, the Prosecutor met several times with representatives of victim groups. One of the meetings took place in Srebrenica, Bosnia and Herzegovina. Through its regular communications with victim groups, the Office of the Prosecutor ensures that its approach to legacy matters is informed by victim concerns.

## **6. Conclusion**

89. The Office of the Prosecutor remains fully committed to the completion strategy's goals. In the past six months, further progress was made in trials and appeals work. However, unavoidable delays in trial proceedings have affected the trial schedule. The Office of the Prosecutor will continue to take all necessary measures to ensure that trials and appeals are speedily concluded, while respecting due process standards.

90. In order to successfully complete trials and appeals, the Office continues to rely upon the cooperation of States. The immediate apprehension of the two remaining fugitives, Ratko Mladić and Goran Hadžić, remains of critical importance. These accused should face justice at the Tribunal without further delay.

91. Completing trials and appeals and arresting the fugitives remain the Office of the Prosecutor's core objectives. However, the Office of the Prosecutor continues to work closely with national prosecutors dealing with war crimes cases. These interactions have further developed over the past six months.

92. Seventeen years after the creation of the Tribunal, the victims of the wars in the former Yugoslavia continue to seek justice. As the Tribunal enters the final phase of its existence, it is essential that the Security Council provide the Office of the Prosecutor with the support that is necessary for it to fulfil its mandate, and successfully complete its mission.

**Enclosure I**

<b>1. Persons Convicted or Acquitted between 15 November 2009 and 15 May 2010 (0)</b>			
<b>Name</b>	<b>Former Title</b>	<b>Initial Appearance</b>	<b>Judgement</b>
No convictions or acquittals			

<b>2. Persons Convicted or Acquitted of Contempt between 15 November 2009 and 15 May 2010 (1)</b>			
<b>Name</b>	<b>Former Title</b>	<b>Initial Appearance</b>	<b>Judgement</b>
Zuhdija Tabaković	Witness for the Milan Lukić Defence in the <i>Lukić &amp; Lukić</i> case	22 December 2009	15 March 2010

## Enclosure II

<b>Trials in Progress between 15 November 2009 and 15 May 2010 (25 accused in 10 cases)</b>				
<b>Case</b>	<b>Name</b>	<b>Former Title</b>	<b>Initial Appearance</b>	<b>Start of trial</b>
1.	Jadranko Prlić	President, Croatian Community of Herceg-Bosna	6-Apr-04	“Herceg-Bosna” trial commenced on 26 April 2006
	Bruno Stojić	Head of Department of Defence, Croatian Republic of Herceg-Bosna		
	Slobodan Praljak	Assistant Minister of Defence, Croatian Republic of Herceg-Bosna		
	Milivoj Petković	Deputy Overall Commander, Croatian Defence Council		
	Valentin Ćorić	Chief of Military Police Administration, Croatian Defence Council		
	Berislav Pušić	Military Police Commanding Officer, Croatian Defence Council		
2.	Ljubiša Beara	Colonel, Chief of Security, Main Staff, Bosnian Serb Army	12-Oct-04	“Srebrenica” trial commenced on 14 July 2006
	Drago Nikolić	2nd Lieutenant, Chief of Security, Zvornik Brigade, Bosnian Serb Army	23-Mar-05	
	Ljubomir Borovčanin	Deputy Commander, Ministry of Internal Affairs Special Police Brigade, Republika Srpska	7-Apr-05	
	Vujadin Popović	Lt. Colonel, Chief of Security, Drina Corps, Bosnian Serb Army	18-Apr-05	
	Vinko Pandurević	Lt. Colonel, Brigade Commander, Zvornik Brigade, Bosnian Serb Army	31-Mar-05	
	Milan Gvero	Assistant Commander for Morale, Legal and Religious Affairs, Main Staff, Bosnian Serb Army	2-Mar-05	
	Radivoje Miletić	Chief of Operations and Training, Main Staff, Bosnian Serb Army	2-Mar-05	
3.	Vojislav Šešelj	President, Serbian Radical Party	26-Feb-03	Trial commenced on 7 November 2007

4.	Ante Gotovina	Commander, Split Military District, Croatian Army	12-Dec-05	Trial commenced on 11 March 2008
	Ivan Čermak	Assistant Minister of Defence, Commander of Military Police, Croatia	12-Mar-04	
	Mladen Markač	Special Police Commander, Croatia	12-Mar-04	
5.	Momčilo Perišić	Chief of the General Staff, VJ	9-Mar-05	Trial commenced on 2 October 2008
6.	Vlastimir Đorđević	Assistant Minister of the Serbian Ministry of Internal Affairs (MUP), Chief of the Public Security Department of the MUP	19-Jun-07	Trial commenced on 27 January 2009
7.	Mičo Stanišić	Minister, Internal Affairs, Republika Srpska	17-Mar-05	Trial commenced on 14 September 2009
	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	21-Jun-08	
8.	Jovica Stanišić	Head, State Security Services, Republic of Serbia	12-Jun-03	Trial commenced on 9 June 2009
	Franko Simatović	Commander, Special Operations Unit, State Security Services, Republic of Serbia	2-Jun-03	
9.	Radovan Karadžić	President, Republika Srpska	31-Jul-08	Trial commenced on 26 October 2009
10.	Zdravko Tolimir	Assistant Commander for Intelligence and Security, Main Staff, Bosnian Serb Army	4 June 2007	Trial commenced on 26 February 2010

**Enclosure III**

<b>1. Arrivals Between 15 November 2009 and 15 May 2010 (0)</b>			
<b>Name</b>	<b>Former Title</b>	<b>Place of crime</b>	<b>Arrival date</b>
No new arrivals			

<b>2. Remaining Fugitives Between 15 November 2009 and 15 May 2010 (2)</b>			
<b>Name</b>	<b>Former Title</b>	<b>Place of crime</b>	<b>Date of indictment</b>
Ratko Mladić	Commander, Main Staff, Bosnian Serb Army	BiH	25 July 1995
Goran Hadžić	President, Serbian Autonomous District, Slavonia Baranja and Western Srem	Croatia	4 June 2004

## Enclosure IV

**APPEALS COMPLETED FROM 15 NOVEMBER 2009<sup>1</sup>**

(with date of Filing and Decision)

<b>INTERLOCUTORY</b>		<b>FROM JUDGEMENT</b>	
<b>International Criminal Tribunal for the former Yugoslavia</b>		<b>International Criminal Tribunal for Rwanda</b>	
1. Popovic et al. IT-05-88-AR65.10 <b>Confidential</b>	19/10/09-20/11/09	1. Zigiranyirazo ICTR-01-73-A	29/12/08-16/11/09
2. Prlic et al. IT-04-74-AR65.19 <b>Confidential</b>	08/12/09-17/12/09	2. Nchamihigo ICTR-2001-63-A	20/10/08-18/03/10
3. Prlic et al. IT-04-74-65.23 <b>Confidential</b>	15/12/09-24/12/09	3. Bikindi ICTR-01-72-A	29/12/08- 18/03/10
4. Stanisic and Simatovic IT-03-69-AR65.5	22/12/09-07/01/10	<b>OTHER</b>	
5. Popovic et al. IT-05-88-AR65.11 <b>Confidential</b>	18/12/09-26/01/10	<b>International Criminal Tribunal for the former Yugoslavia</b>	
6. Karadzic IT-95-5/18-AR73.6	19/01/10-12/02/10	1. Mrksic et al. IT-95-13/1-A	07/01/10-22/01/10
7. Karadzic IT-95-5/18-AR73.7	09/03/10-31/03/10	2. Perisic IT-04-81-Ar108bis.4	09/03/10-15/04/10
<b>International Criminal Tribunal for Rwanda</b>		<b>International Criminal Tribunal for Rwanda</b>	
1. Ngirumpatse IT-98-44-AR65	25/09/09-08/12/09	1. Rutaganda ICTR-96-3-R68	28/01/10-23/02/10
2. Bizimungu et al. ICTR-99-50-AR73.8	30/09/09-17/12/09	2. Kamuhanda ICTR-99-54A-AR68	22/02/10-04/03/10
3. Nzabonimana ICTR-98-44D-AR7bis	02/12/09-09/02/10	3. Niyitegeka ICTR-96-14-R	22/02/10-25/03/10
4. Karemera et al. ICTR-98-44-AR91.2	23/09/09-16/02/10	4. Kajelijeli ICTR-98-44A-R	09/03/10-30/03/10
5. Kanyarukiga ICTR-02-78-AR73	27/11/09-23/03/10	5. Nshogoza ICTR-07-91-A	01/02/10-13/04/10
		6. Bizimungu et al. ICTR-99-50-AR73.6	24/03/10-19/04/10
		<b>REFERRAL</b>	
		<b>REVIEW</b>	
		<b>International Criminal Tribunal for Rwanda</b>	
		1. Niyitegeka ICTR-98-44A-R	28/10/09-27/01/10

<sup>1</sup> Total number of Appeals Completed from 15 November 2009 = 27

Interlocutory Appeals = 12  
Appeals from Judgement = 3  
Other = 8  
Referral = 0  
Review = 1  
Contempt = 3

<b>CONTEMPT</b>	
<b>International Criminal Tribunal for the former Yugoslavia</b>	
1. Confidential	07/09/09-17/12/09
2. Confidential	10/08/09-27/01/10
<b>International Criminal Tribunal for Rwanda</b>	
1. Nshogoza ICTR-07-91-A	22/07/09-15/03/10

## Enclosure V

<b>APPEALS PENDING AS OF 15 MAY 2010<sup>2</sup></b>			
(with date of filing)			
<b>INTERLOCUTORY</b>		<b>FROM JUDGEMENT</b>	
<b>International Criminal Tribunal for the former Yugoslavia</b>		<b>International Criminal Tribunal for the former Yugoslavia</b>	
1. Prlic et al. IT-04-74-AR73.17	07/04/10	1. Haradinaj et al. IT-04-84-A	01/05/08
2. Gotovina et al. IT-06-90-AR73.5	28/04/10	2. Boskoski and Tarculovski IT-04-82-A (Judgement to be delivered on 19/05/10)	22/07/08
<b>International Criminal Tribunal for Rwanda</b>		3. Delic IT-04-83-A	14/10/08
1. Karemera ICTR-98-44-AR73.18	15/02/10	4. Sainovic et al. IT-05-87-A	27/05/09
2. Karemera ICTR-98-44-AR91.1	19/04/10	5. Lukic and Lukic IT-98-32/1-A	21/07/09
3. Karemera ICTR-98-44-AR91.3	19/04/10	<b>International Criminal Tribunal for Rwanda</b>	
4. Nzabonimana ICTR-98-44D-AR7bis	10/05/10	1. Bagosora et al. ICTR-98-41A	29/12/08
		2. Rukundo ICTR-01-70-A	11/03/09
		3. Kalimanzira ICTR-05-88-A	09/07/09
		4. Renzaho ICTR-97-31-A	02/09/09
		5. Muvunyi ICTR-00-55A-A	15/03/10
		6. Setako ICTR-04-81-A	29/03/10
		<b>OTHER</b>	
		<b>International Criminal Tribunal for Rwanda</b>	
		1. Nsengimana ICTR-01-69-A	02/02/10
		<b>REFERRAL</b>	
		<b>REVIEW</b>	

<sup>2</sup> **Total number of Appeals pending = 22**

Interlocutory Appeals = 6  
 Appeals from Judgement = 11  
 Other = 1  
 Referral = 0  
 Review = 2  
 Contempt = 2



		<b>International Criminal Tribunal for the former Yugoslavia</b>	
		1. Sljivancanin IT-95-13/1-R.1	28/01/10
		<b>International Criminal Tribunal for Rwanda</b>	
		1. Nahimana ICTR-99-52B-R	07/05/10
		<b>CONTEMPT</b>	
		<b>International Criminal Tribunal for the former Yugoslavia</b>	
		1. Seselj IT-03-67-R77.2-A <b>Confidential (Judgement to be delivered on 19/05/10)</b>	25/08/09
		2. Hartmann IT-02-54-R77.5-A	24/09/09

## Enclosure VI

## Decisions and Orders Rendered from 15 November 2009

(with date of disposition)

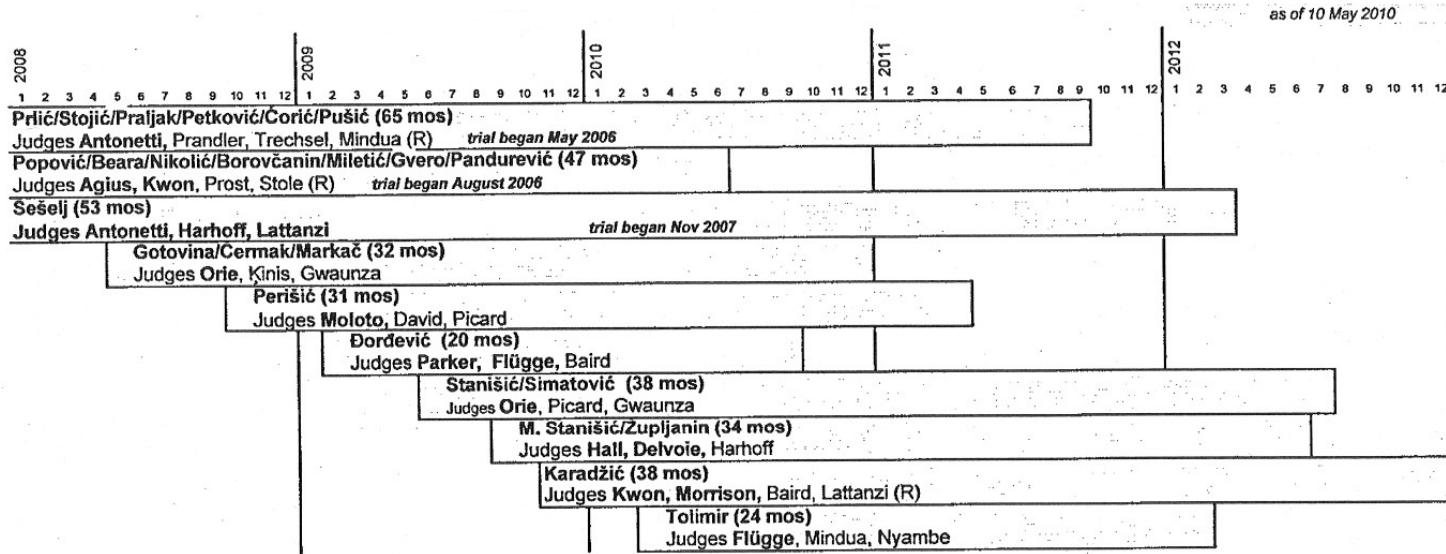
International Criminal Tribunal for Rwanda	International Criminal Tribunal for the former Yugoslavia
1. 07/12 <i>Kanyarukiga</i>	1. 18/11 <i>Šainović et al.</i>
2. 07/12 <i>Nzabonimana</i>	2. 25/11 <i>Lukić and Lukić</i>
3. 07/12 <i>Nsengimana</i>	3. 01/12 <i>Lukić and Lukić</i>
4. 11/01 <i>Bagosora et al.</i>	4. 02/12 <i>Delić</i>
5. 13/01 <i>Kamuhanda</i>	5. 04/12 <i>Šainović et al.</i>
6. 19/01 <i>Bagosora et al.</i>	6. 04/12 <i>Lukić and Lukić</i>
7. 19/01 <i>Bagosora et al.</i>	7. 07/12 <i>Lukić and Lukić</i>
8. 19/01 <i>Bagosora et al.</i>	8. 15/12 <i>Delić</i>
9. 21/01 <i>Rukundo</i>	9. 16/12 <i>Delić</i>
10. 29/01 <i>Bagosora et al.</i>	10. 16/12 <i>Lukić and Lukić</i>
11. 02/02 <i>Rutaganda</i>	11. 16/12 <i>Šešelj</i>
12. 05/02 <i>Rukundo</i>	12. 16/12 <i>Šešelj</i>
13. 05/02 <i>Kalimanzira</i>	13. 22/12 <i>Boškoski and Tarčulovski</i>
14. 05/02 <i>Renzaho</i>	14. 23/12 <i>Šainović et al.</i>
15. 16/02 <i>Karemera et al.</i>	15. 23/12 <i>Boškoski and Tarčulovski</i>
16. 17/02 <i>Kanyarukiga</i>	16. 13/01 <i>Šainović et al.</i>
17. 18/02 <i>Rukundo</i>	17. 19/01 <i>Boškoski and Tarčulovski</i>
18. 19/02 <i>Bikindi</i>	18. 19/01 <i>Boškoski and Tarčulovski</i>
19. 19/02 <i>Nchamihigo</i>	19. 20/01 <i>Šainović et al.</i>
20. 24/02 <i>Niyitegeka</i>	20. 26/01 <i>Šainović et al.</i>
21. 25/02 <i>Renzaho</i>	21. 28/01 <i>Šainović et al.</i>
22. 26/02 <i>Renzaho</i>	22. 28/01 <i>Šainović et al.</i>
23. 26/02 <i>Bagosora et al.</i>	23. 02/02 <i>Šainović et al.</i>
24. 04/03 <i>Kalimanzira</i>	24. 02/02 <i>Lukić and Lukić</i>
25. 05/03 <i>Nchamihigo</i>	25. 09/02 <i>Boškoski and Tarčulovski</i>
26. 05/03 <i>Kalimanzira</i>	26. 12/02 <i>Šainović et al.</i>
27. 05/03 <i>Kalimanzira</i>	27. 16/02 <i>Šainović et al.</i>
28. 05/03 <i>Kalimanzira</i>	28. 17/02 <i>Lukić and Lukić</i>
29. 16/03 <i>Renzaho</i>	29. 22/02 <i>Šainović et al.</i>
30. 16/03 <i>Muvunyi</i>	30. 22/02 <i>Šainović et al.</i>
31. 31/03 <i>Renzaho</i>	31. 22/02 <i>Lukić and Lukić</i>
32. 31/03 <i>Setako</i>	32. 23/02 <i>Boškoski and Tarčulovski</i>
33. 01/04 <i>Bagosora et al.</i>	33. 25/02 <i>Lukić and Lukić</i>
34. 06/04 <i>Kalimanzira</i>	34. 01/03 <i>Šainović et al.</i>
35. 19/04 <i>Nsengimana</i>	35. 02/03 <i>Šainović et al.</i>
36. 20/04 <i>Renzaho</i>	36. 05/03 <i>Šainović et al.</i>
37. 20/04 <i>Renzaho</i>	37. 10/03 <i>Šainović et al.</i>
38. 21/04 <i>Karemera et al. 91.2</i>	38. 11/03 <i>Lukić and Lukić</i>
39. 21/04 <i>Karemera et al. 91.3</i>	39. 11/03 <i>Šainović et al.</i>
40. 22/04 <i>Rukundo</i>	40. 31/03 <i>Šainović et al.</i>
41. 27/04 <i>Renzaho</i>	41. 12/04 <i>Šainović et al.</i>
42. 07/05 <i>Nsengimana</i>	42. 22/04 <i>Boškoski and Tarčulovski Misc.1</i>
43. 13/05 <i>Setako</i>	43. 29/04 <i>Šainović et al.</i>
	44. 05/05 <i>Boškoski and Tarčulovski</i>

---

	45. 05/05 <i>Boškoski and Tarčulovski</i> 46. 05/05 <i>Šlijvančanin</i> 47. 05/05 <i>Lukić and Lukić</i> 48. 14/05 <i>Boškoski and Tarčulovski</i>
--	---

**Total number of decisions and orders rendered = 91**

International Tribunal for the Former Yugoslavia trial schedule



Key: ongoing  
 adjournment  
 pre-trial  
 fugitive

Contempt proceedings (indictment or order in lieu of indictment filed):

- 1. IT-04-84-R77.1 Shefqet Kabashi (at large), indictment issued 5 June 2007
- 2. IT-03-67-R77.3 Vojislav Sešelj, order in lieu of indictment issued on 3 February 2010

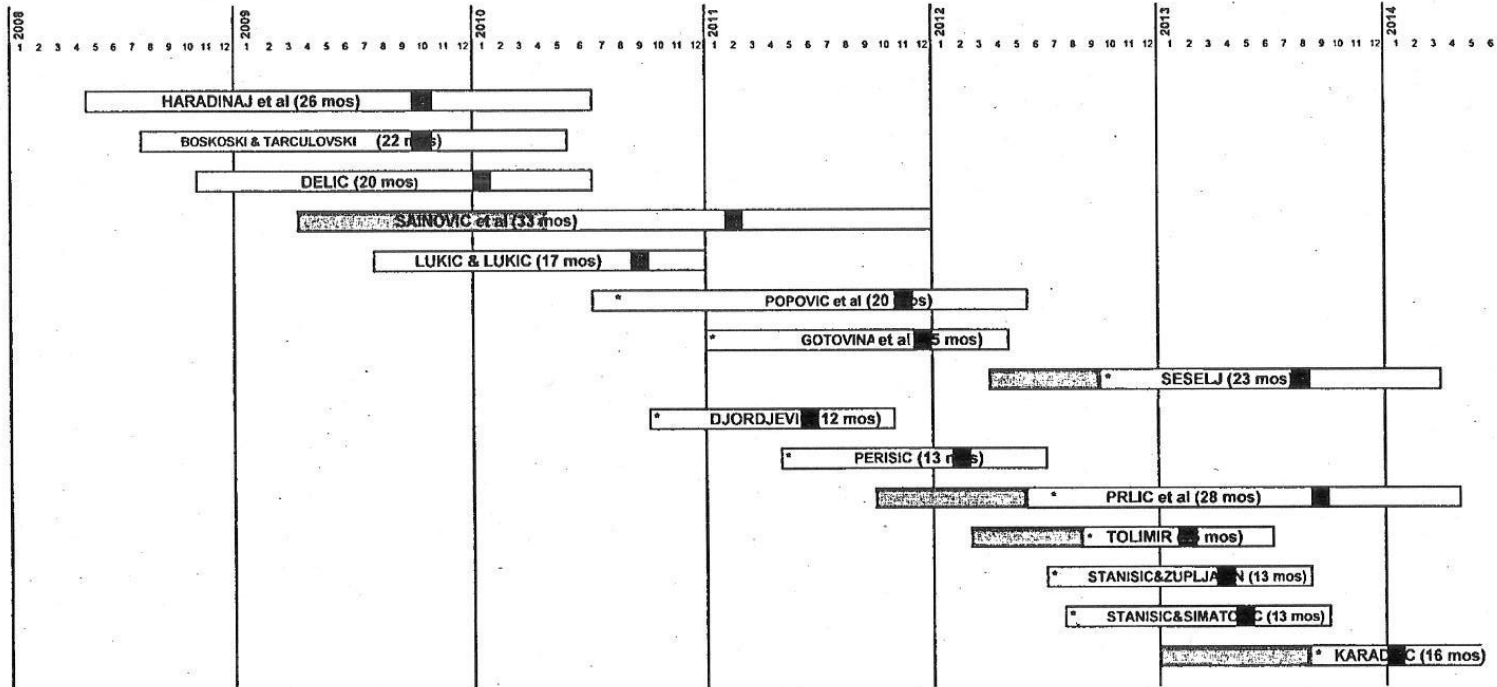
Fugitives: To be tried upon arrival

Mladić  
 Hadžić

Enclosure VIII

International Tribunal for the Former Yugoslavia appeals schedule

based on 10 May 2010 trial schedule



Contempt proceedings

1. IT-02-54-R77.5-A Florence Hartmann, appeal filed 24 September 2009
2. IT-03-67-R77.2-A Vojislav Seselj, appeal filed 25 August 2009

Fugitives

- Mladić
- Hadžić

Key: time to file notice of appeal | translation | Briefing/prep doc | judgement drafting

\* not counted in the overall number of months

International Criminal Tribunal for Rwanda appeals schedule

