



**OIOS**

Office of Internal Oversight Services

## **INTERNAL AUDIT DIVISION**

# **AUDIT REPORT**

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### **ICTY Completion Strategy**

**While ICTY has effectively marshaled its resources to achieve the completion strategy, it is unlikely to meet the original target dates of 2008 and 2010 for completing trials and appeals respectively, given the impact of external factors.**

**29 October 2008**

**Assignment No. AA2008/270/01**

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United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

OFFICE OF INTERNAL OVERSIGHT SERVICES • BUREAU DES SERVICES DE CONTRÔLE INTERNE  
INTERNAL AUDIT DIVISION • DIVISION DE L'AUDIT INTERNE

TO Judge Fausto Pocar, President, International Criminal  
A. Tribunal for the Former Yugoslavia (ICTY)

DATE 29 October 2008

REFERENCE IAD: 08- 01892

Mr. Serge Brammertz, Prosecutor, ICTY

Mr. Hans Holthuis, Registrar, ICTY

FROM Dagfinn Knutsen, Director  
DE Internal Audit Division, OIOS



SUBJECT **Assignment No. AA2008/270/01 - Audit of the ICTY Completion Strategy**  
OBJET

1. I am pleased to present the report on the above-mentioned audit.
2. Based on your comments, we are pleased to inform you that we will close recommendations 5 and 6 in the OIOS recommendations database as indicated in Annex 1. In order for us to close the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Your response indicated that you did not accept recommendations 3 and 4. In OIOS' opinion however, these recommendations seek to address significant risk areas. We are therefore reiterating them and requesting that you reconsider your initial response based on the additional information provided in the report.
4. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendations 2, 3, 4, 5, 9, 11 and 12), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. John Hocking, Deputy Registrar, ICTY  
Ms. Catherine Marchi-Uhel, Head of Chambers, ICTY  
Mr. Kevin St. Louis, Chief Administrative Officer, ICTY  
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors  
Ms. Maria Gomez Troncoso, Officer-in-Charge, Joint Inspection Unit Secretariat  
Ms. Christina Post, Oversight Support Unit, Department of Management  
Mr. Byung-Kun Min, Programme Officer, OIOS  
Mr. Normand Ouellet, Chief, Nairobi Audit Service, OIOS

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## INTERNAL AUDIT DIVISION

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### FUNCTION

*“The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization” (General Assembly Resolution 48/218 B).*

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## **EXECUTIVE SUMMARY**

### **Audit of the ICTY Completion Strategy**

OIOS conducted an audit of the completion strategy at the International Criminal Tribunal for the former Yugoslavia (ICTY). The overall objective of the audit was to assess the efficiency and effectiveness of arrangements for achieving the completion strategy targets. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

The overall conclusion is that while the three organs of ICTY have effectively marshaled resources at their command to achieve the completion strategy, it is unlikely that the original target of completing trials and appeals by 2008 and 2010 respectively will be met. The Tribunal accepts that the completion of first instance trials and appeals within the timelines envisaged are no longer considered feasible and is now working with targets that envisage completion of trials by 2010 and appeals by 2011. The ICTY had set up facilitating mechanisms that would enable it to conceptualize and initiate suitable measures for achieving its completion strategy. Of the 161 indictees, ICTY had completed proceedings relating to 113 individuals, although several trials and appeals are still to be completed. External factors, such as illness of the accused or counsel and level of cooperation received from states in the region are beyond ICTY's control and could impact on its ability to achieve the current completion targets. There are a number of issues that are within ICTY control, such as improving inter-organ coordination, effective information management and reducing trial/appeals length which, if addressed, could assist in improving the efficiency and effectiveness of existing arrangements. The major findings from the audit are as follows:

- ICTY did not have an effective management information system that collated critical performance measures systematically. As a result, OIOS could not assess the impact of the efficiency measures and multi-accused trials on reducing the lengths of cases. To address this, OIOS suggested supplementing the existing Management Information Report with appropriate court and case related data. *The ICTY Administration did not accept OIOS assessment and questioned the need for such an information resource at this stage in the Tribunal's life.* In OIOS' assessment, without an effective information resource, it will be difficult to effectively monitor progress made towards achieving goals and to provide feedback on the impact of efficiency measures.
- The average length of pre-trial was calculated at 997 days and exceeded the eight to ten months timeframe envisaged in 2000 by the former President of the Tribunal, Judge Jorda. Analysis also showed that on average it took 1,933 days for a final decision (first instance trial plus appeals judgment) to be rendered. Given past trends and averages, the nature of the judicial process and the impact of factors outside the control of ICTY, it was unclear whether new cases would be completed as scheduled by the first half of 2010, and appeals two years later. OIOS recommended that ICTY should consider performing an analysis of similar trials to determine any reasons for significant delays. *ICTY did not agree with OIOS' comments on*

*trial length stating that the complexity of each specific trial, the number of accused persons and witnesses, the number and complexity of interlocutory appeals, and the leadership of the particular chamber during the proceedings impacted on trial length. In OIOS' view, it is necessary to look at past ICTY performance on lengths of trials and appeals to assess whether adequate action has been taken to achieve the completion strategy targets.*

- *The merger of the Investigations and Trials Divisions suggested a need for a review of the traditional role of investigations staff in the trial process, and staffing norms for appeals needed to be evolved. OTP has developed norms for appeals staff, and is reviewing the role of investigations staff.*
- *While ICTY approached the workforce reduction programme in a transparent and consultative manner, ICTY should review the comparative review formula used for downsizing to avoid any unforeseen consequences. ICTY management reported that it is still in discussions with the Staff Union and will continue to work on the already agreed upon comparative review formula.*
- *While ICTY had made substantial progress with regards to its record keeping and archiving, the lack of a policy and accountability structure for record keeping and archiving needed to be addressed by ICTY and United Nations Headquarters' Archives and Records Management Section. In doing so, attention needed to be paid to key issues including creation of retention and reclassification schedules which are now being addressed by ICTY. A policy on record keeping and archiving is being prepared and the Under-Secretary-General for Management has now authorized ICTY to be the pilot for a records management project for the entire Secretariat, relative to policy development, digitizing, and physical record keeping.*

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## I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the completion strategy at the International Criminal Tribunal for the former Yugoslavia (ICTY). The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. Organizationally, the Tribunal is a self-contained entity, consisting of three organs: the Chambers (comprising three Trial Chambers and an Appeals Chamber), the Office of the Prosecutor (OTP) and the Registry. The President of the Tribunal is its highest judicial authority and also acts as the institutional head. The Chambers is the judicial organ of the Tribunal and hears cases presented to its three Trial Chambers and considers appeals from the Trial Chambers to its Appeals Chamber. The OTP is headed by an independent Prosecutor. The Registry is responsible for administering and servicing the judicial and prosecutorial organs of the Tribunal, and works under the authority of the President.

3. When the Security Council created ICTY in 1993, no specific end date was stipulated, and the evolution of the term 'completion strategy' can be traced back to the presidency of Judge Jorda (November 1999 to February 2003)<sup>1</sup>. The initial idea was given a more concrete shape in June 2002 when ICTY presented a programme of action that set out the manner in which the three principal organs would coordinate to move towards winding down the mission of the Tribunal. Subsequently, Security Council Resolution 1503 (2003) called on ICTY and the International Criminal Tribunal for Rwanda (ICTR) to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work by 2010. These target dates were determined by ICTY and were not imposed externally by the Security Council.

4. ICTY has implemented several measures to expedite trials and appeals to achieve the completion strategy targets without affecting the right to a fair trial or diminishing the quality of its judgments. The Tribunal has indicted a total of 161 individuals, and has already completed proceedings with regard to 113 of them. 9 individuals have been acquitted, 55 sentenced (3 were awaiting transfer and 31 have been transferred to the countries where they serve their sentences, 19 have served their terms, and 2 died while serving their sentences), and 13 had their cases referred to local courts. Another 36 cases were terminated (either because indictments were withdrawn or because the accused died, before or after transfer to the Tribunal). Proceedings were ongoing with regard to 48 accused persons: 10 were at the appeals stage, 2 were awaiting the Trial Chamber's judgment, 26 were currently on trial, 7 were at the pre-trial stage, and 2 were still at large.

5. Since its inception in 1993 up to the end of December 2007, the Tribunal has incurred expenditure of \$1.38 billion for its mandated activities. The 2008-2009 biennium budget anticipates expenditures totaling \$356.31 million. Since

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<sup>1</sup> Report on the operations of the ICTY dated 12 May 2000, detailing measures for expediting proceedings including creating a pool of *ad litem* judges.

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2003, the authorized staff strength ranged between 900 and 1,000. During the period June 2003 to December 2007, the number of ongoing trials has ranged between 4 and 8 per six-month period, while those at the pre-trial stage declined from 21 to 8.

6. The Tribunal accepts that the completion of first instance trials and appeals within the timelines envisaged in the Security Council Resolution 1503 are no longer considered feasible. In view of recent developments, the President, in his reports to the Security Council, acknowledged that the trial of two newly-arrived indictees would not be completed until 2010 while all other trials would be completed in 2009, with appeals estimated to be concluded by end of 2011. It is the intention of the President to update the Security Council in the fall of 2008 as to the current status of the trial schedule during the bi-annual briefing. The Security Council has not yet formally commented on this likely extension of the completion strategy targets.

7. Comments made by ICTY are shown in *italics*.

## **II. AUDIT OBJECTIVES**

8. The overall objective of the audit was to assess the efficiency and effectiveness of arrangements for achieving the completion strategy targets. This included assessing:

(a) The adequacy of arrangements for providing the three principal organs of the Tribunal with requisite guidance and support for the formulation and execution of the completion strategy and also whether the three organs coordinate their actions for this purpose;

(b) The adequacy of arrangements for ensuring that Chambers undertook effective and efficient deployment of resources and adopted suitable measures aimed at achieving the completion strategy targets;

(c) Whether court management and planning were effectively undertaken and geared towards achieving the completion strategy;

(d) Whether the Office of the Prosecutor had taken adequate measures for managing its structure, programme and deployment of resources for attaining the goals of the completion strategy; and,

(e) Whether adequate arrangements had been put in place to ensure that the Registry efficiently and effectively supported trials and appeals, in reaching the completion strategy goals including resolution of the relevant legacy/residual issues.

## **III. AUDIT SCOPE AND METHODOLOGY**

9. The audit, which focused on the arrangements put in place by ICTY for achieving the completion strategy targets, covered the three principal organs, the

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Chambers, the Office of the Prosecutor and the Registry, as well as the critical processes and activities undertaken for the completion of the mandate. The audit methodology comprised reviews of statistics on ICTY performance from its inception through March 2008, reviews of semi-annual and annual reports of the President and Prosecutor, observation and verification of processes and interviews with responsible personnel.

## **IV. AUDIT FINDINGS AND RECOMMENDATIONS**

### **A. Governance and accountability**

#### Adequate arrangements for accountability are in place

10. The ICTY is a subsidiary organ of the United Nations with the Security Council as the parent organ. In practice, a combination of factors such as the manner of establishment of the Tribunal by the Security Council, prescription of completion strategy goals, requirement for six-month and annual reports, capacity for administrative and financial oversight by United Nations Headquarters and reliance on staff who are United Nations staff members, indicated that satisfactory mechanisms exist to hold the Tribunal accountable for its performance.

#### Current practices for coordination not in line with Rules of Procedure and Evidence

11. Coordination between the principal organs had recently improved, which was necessary to ensure efficiency and smoothness in operations. The independence and nature of functions assigned to two of the Tribunal's principal organs, namely the Chambers and the Office of the Prosecutor, were factors that affected smooth coordination critical to the achievement of the completion strategy. The primary mechanism for high level coordination between the three principal organs was the Coordination Council (CoCo) composed of the President, the Prosecutor and the Registrar. This high level body was required to meet once a month for the coordination of the activities of the three organs of the Tribunal, having due regard for the responsibilities and independence of members. Statistics showed that while this body convened periodically, the meetings were not as frequent as required under the Rules, and from June 2003 through until March 2008, the CoCo convened only 14 times. *In January 2008, however, ICTY leadership committed to regularly scheduled meetings, and the CoCo had met five times since January 2008 giving a much needed impetus to a critical coordination mechanism.*

12. The Management Committee comprising of the President, the Vice-President, one judge, the Registrar, the Deputy Registrar and the Chief Administration Officer had not convened for several years though it was required to meet twice a month to deal with administrative and judicial support provided to Chambers. *Chambers commented that the functions of the Management Committee, in particular the coordination functions, envisaged under Rule 23 ter*

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were being undertaken by the newly created post of Head of Chambers. In addition, other forums, such as the Registrar's Consultative Meetings, were held periodically to examine such tasks. The Registrar added that the convening of the Committee was not practically useful given the exclusion of the Office of the Prosecutor from the group and given that the functions are being undertaken by other groups and committees. The Management Committee has now been determined to be duplicative of other coordination mechanisms and ICTY did not see it as a matter of concern that it is not being used. However, as the Management Committee is a requirement under the Rules of Procedure and Evidence, ICTY should amend the rules appropriately, if they have concluded that the Management Committee serves no useful purpose.

### **Recommendation 1**

**(1) The ICTY Administration should amend Rule 23 ter of the Rules of Procedure and Evidence governing the functioning of the Management Committee to better reflect the current needs of the Tribunal.**

13. *The ICTY Administration accepted recommendation 1 and stated that a proposal is being made to the Chambers (Rules Committee) to delete Rule 23 ter. Recommendation 1 remains open pending the amendment/deletion of Rule 23 ter.*

### Coordinated planning for completion strategy is in place

14. OIOS, in its audit report presented to the General Assembly (A/58/677 dated 7 January 2004), recommended Tribunal-wide steering committees comprising senior representatives with mandates and terms of reference that explained their roles and responsibilities for monitoring progress towards the completion dates. However, no action was actually initiated to set up such committees until February 2008 during the ICTY management retreat, which decided that in order to ensure a coordinated approach, a "Completion Strategy Steering Group" would be set up with representation at the D-1 staff grade or above from all three organs. This body would make recommendations on completion strategy matters requiring a Tribunal-wide approach to the CoCo for decision-making. Various working groups were to develop a series of recommendations and actions to be carried out by operational units. Since January 2004, several actions have been taken by ICTY to strengthen coordinated planning, for example, records management initiatives, setting up of the joint archive working group, development of downsizing plans and creation of an Asset Disposal Unit. As a satisfactory framework for coordinated planning has now been set in place, no recommendation is being raised.

### A risk-based planning approach is not adopted

15. There were no dedicated arrangements for risk identification and management. Quite recently ICTY had the benefit of risk assessments done by OIOS and the Department of Management. However, consideration was not given to the risks identified in formulating strategic and tactical plans.

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## Recommendation 2

**(2) The ICTY Administration should ensure that in formulating its strategic and tactical plans, a risk-based approach is adopted that encompasses identification of risks across all activities, mitigation measures and assessment of the residual risk.**

16. *The ICTY Administration accepted recommendation 2 and stated that ICTY now needs to take the two risk assessments, review them, and make decisions on appropriate actions to take within the resources available. The Registry has decided that in the first instance, various senior staff require training and guidance and in that regard, they have competitively selected a consultancy firm to provide training and professional guidance as to the best manner to move forward as neither the OIOS nor the Department of Management consultant's reports provided such advice. ICTY intends to keep both OIOS and the Department of Management apprised of subsequent actions in this regard. Recommendation 2 remains open pending the adoption of a risk-based approach towards planning.*

## **B. Chambers**

### Inadequacies of current information and data collection systems

17. The Registry did not have an effective information system for making management decisions, and data on the impact of the efficiency measures<sup>2</sup> was not systematically collected. For management purposes, the Registry was using a mix of automated and manual information systems for producing the data presented in the Management Information Report. While the report collected large amounts of data, its usefulness as a planning tool was somewhat restricted due to the type of data recorded and stored. It was unclear if these reports and other data were being used to measure performance in relation to goals and how the information collected was being fed back into improving performance. OIOS suggested that more relevant data could include time taken from filing to disposition of cases, age of pending caseload, trial date certainty and length of cases currently being heard. Information on time taken for appeals, interlocutory motions, numbers of documents and witnesses per case should also be collected per trial. By collecting information by trial, ICTY would then be able to look at trials with similar circumstances and determine if and why variations in length occurred.

18. *The ICTY Administration questioned the need for an information resource as depicted by OIOS at this stage in the Tribunal's life. OIOS takes note of ICTY's comments and is not raising a related recommendation. However, in OIOS' view, the ICTY Administration should review the management information system issue as highlighted by OIOS as part of the Tribunal's lessons learned.*

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<sup>2</sup> Measures introduced as a sequel to the Reports by the Working Groups on Trial and Appeals.

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### Assessment of measures to expedite trials

19. Significant steps had been taken to expedite the disposal of cases. However, the positive impact of the efficiency measures was not backed up by any formal assessment. Concerning multi-accused trials, the Chambers commented that since the Tribunal combined six or seven accused persons into a single case in three of the ongoing trials, the impact on the completion strategy was that there was a clear time savings in terms of time taken by the Prosecution as cases did not need to be separately prosecuted. In March 2008, the President re-established the working groups on speeding up trials and appeals to assess the impact of measures adopted and to make further recommendations as necessary. Even if collecting more specific data would assist in making such an assessment, the Chambers commented that it could not replace the assessment made by judges in charge of applying the measures in question and who are intimately familiar with the specificity of the cases at hand.

20. While it is reasonable to conclude that savings should be realized in multi-accused cases, the Tribunal needed to ascertain savings in time and cost at a more detailed level. For planning and judicial management purposes, a far greater level of empirical detail should be known, for instance, are such trials more prone to delays on account of health issues, do they generate additional motions, the review of the standstill times, the difficulty in managing conflicting schedules of defense counsel and the length of trial at different stages. Without this information, OIOS was not able to make a definitive assessment of the impact of the efficiency measures and multi-accused trials on reducing the length of cases.

### **Recommendation 3**

**(3) The ICTY Administration should assess the impact of the efficiency measures and adoption of multi-accused trials, to ascertain whether they have had the desired impact of expediting trials and reducing their length.**

21. *The ICTY Administration partially accepted recommendation 3 and stated that, although multi-accused trials have gone on for longer than single accused trials, they have saved tremendous time vis-à-vis individual trials (e.g. each single accused trial was at least a year in length while a six-person multi-accused trial has lasted just over two years and therefore overall saved the Organization an estimated four years of trial time. However, with almost all remaining trials now in progress, the analysis of the impact of the efficiency measures may only serve as a historical/academic review. OIOS appreciates ICTY's response but considers that an assessment of the impact of the efficiency measures would be of great use to ICTY and current and future tribunals, and that at some point during the remaining life of the Tribunal, such an assessment should be made. Recommendation 3 remains open pending a formal assessment of the impact of the efficiency measures and adoption of multi-accused trials.*

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### Criteria evolved by the ICTY on length of proceedings

22. From 1994 onwards, the steady growth in the number and complexity of cases brought before the Tribunal made it increasingly difficult to keep the length of proceedings within acceptable limits and this became a matter of concern since it directly impacts on the completion strategy targets. In his letter dated 12 May 2000 (A/55/382) to the President of the Security Council, the former President of the Tribunal, Judge Jorda, referred to statistical analysis of cases then before the Tribunal and laid down some broad norms regarding length of cases, length of pre-trial preparation, and length of appeals, based upon averages calculated by ICTY. For pre-trial preparation, the time envisaged was 8 to 10 months; the average length of trial was expected to be 12 months (not including multi-accused trials, the norm of which was determined to be not more than three years); and the appeals stage was expected to take 24 months. These are benchmarks used by OIOS for its assessment.

23. *ICTY was concerned that OIOS has used estimates of trial and appeal lengths which were suggested in 2000 as the basis for analysis/comparison purposes. The criteria relied upon related to a very different Tribunal than that which exists currently and these criteria should not be used as a benchmark as these figures were based on nothing except a desire to secure ad litem judges.* OIOS agrees that it would have been useful if it had been able to use more recent benchmarks. Unfortunately, the only benchmarks which were available were the ones developed in 2000 and provided to the Security Council. OIOS is of the opinion that such an analysis, which is commonly used in other judicial systems, would assist in measuring progress. To illustrate this point, the following statistical analyses were undertaken: pre-trial detention, length of pre-trial and trial stages, overall duration of trials and appeals and time taken to write judgments.

#### Pre-trial detention

24. The number of accused under pre-trial detention declined as a result of disposal of cases. The number of accused in detention for more than two years declined from eight accused in 2004 to only two accused in 2007. The duration of pre-trial detention is commonly measured as an index of performance for a judicial system, and in terms of Article 21 of the ICTY Statute, the accused is entitled to be tried without undue delay. There are several procedural requirements and capacity constraints that may contribute to extended periods of pre-trial detention, such as assignment of counsel, disclosure requirements, form of indictment, preliminary motions (besides translations) and courtroom availability. ICTY has concentrated its efforts on expediting trials of persons who have been in custody for prolonged periods.

#### Length of pre-trial and trial phases in completed first instance trials

25. The pre-trial stage was a matter for concern to OIOS as it exceeded the 8 to 10 months timeframe envisaged by President Jorda in 2000. The average length of pre-trial was 377 days in 1996 and this increased to 1,095 days in 2005. This trend should reverse as recent arrestees/accused are brought to trial. The

average time taken from initial appearance to the trial judgment also showed a rising trend increasing from 742 days in 1996 to 1,691 days in 2005. Effective pre-trial management and reducing the time taken for this phase are critical to timely completion of trials. The Chambers pointed out that one of the factors affecting pre-trial and making it longer was the influx of accused - a large number came in at the same time and this increased the length of pre-trial proceedings. Further, the limited numbers of courtrooms and judges as well as the Office of the Prosecutor's limited capacity to conduct more trials than were already underway were constraints.

Pre-trial length for cases currently under trial

26. For the three multi-accused cases, the average length of pre-trial was 723 days, with the actual pre-trial length ranging from 438 to 1,529 days. For single-accused trials, the average length of pre-trial was 997 days and the trend data varied from 721 to 1,715 days.

Overall analysis of completed cases through to appeals judgment

27. From 1995 to 2003, on average it took 1,933 days (five years and three months) for a final decision (the decision of the Appeals Chamber) to be rendered. It should be noted that this data was only for cases where both the trial and the appeal were concluded, and it was encouraging to note that there was a marked decline over the past nine years.

Length of trials is reducing

28. The average duration of trials has reduced rapidly, as shown in the following Table 1, which analyses the average length of trials in 27 cases where the first instance trials had been completed, and the time taken to render judgment.

**Table 1: Average lengths of trials and judgement**

<b>Trial commenced</b>	<b>Number of trials</b>	<b>Trial length (trial commenced to trial judgement)</b>	<b>Weighted trial length total</b>	<b>Judgement length (closing arguments to trial judgement)</b>
1996	1	365	365	160
1997	2	800	1,600	147
1998	3	412	1,236	110
1999	1	686	686	73
2000	4	490	1,960	123
2001	4	628	2,512	182
2002	2	712	1,424	120
2003	3	620	1,860	165
2004	3	660	1,980	66
2005	3	517	1,551	141
2006	-	-	-	-
2007	1	335	335	63
<b>Weighted average</b>			<b>574</b>	

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29. From an average of 712 days in 2002, there had been a 27 per cent decline by 2005, to an average of 517 days in trial lengths. One case that started in 2007 took 11 months to complete. These averages could not be applied to the multi-accused trials which are more complex trials and involve several accused persons. Projections for the completion of the three multi-accused cases showed that these would take 34, 33 and 27 months respectively and two of the cases are expected to end in the first half of 2009. One of the multi-accused trials is not expected to keep to the projected timeline and this could have repercussions for the end of mandate. The Chambers stated that even with the slippage, they still hoped to adhere to the 2011 deadline for completing appeals. Classifying the cases according to length of time required to hear them shows that 19 per cent were concluded in one year, 59 per cent between one and two years and 22 per cent were between two and three years.

30. The time taken for rendering judgments was still beyond the two-month target mentioned earlier, though in 2007, one judgment was rendered in 63 days. With the introduction of the e-court system and its acceptance across all Chambers, one could expect to see a decline in the time taken for writing judgments. Time saved in any of the stages would be an encouraging development and help in the achievement of the completion strategy targets. *ICTY commented that the use of the e-court system may not necessarily justify a reduction in the time used for judgment writing. In principle, it would be a more effective manner of writing the judgment but it would be the complexity of the case which would determine the length of time taken.*

#### Projections for current and future trials

31. The current trial schedule showed eight cases under trial and seven pending cases. Projections for these cases, contained in the President's November 2007 letter to the Security Council, showed that at least three of them (including one multi-accused trial) will end in the first half of 2010. Subsequent developments indicated that as of July 2008, it was projected that six cases (including recent arrestee Karadzic) would most probably conclude only in 2010. Four of the seven cases that were yet to commence trial were projected with timelines of less than one year and six months.

32. On average, cases (other than multi-accused ones) took up to one year and seven months (574 days weighted average - see Table 1), but there were cases that took less time. Two of the pending cases (one at pre-trial) involved self-represented accused, which had a higher likelihood of slippages. One of such cases before the trial Chambers tended to sit two or three times a week only for half-day sessions, in terms of a Chamber's order, to allow the accused time to prepare. For instance, in this particular self-represented case, since the trial started in November 2007, there had been only 29 sittings in six months. The sittings were half-day as court time was available only for either morning or afternoon sessions. Therefore, the progress in this case would be slower, more so as the accused insisted on translations of voluminous documents. Chambers commented that the presiding judge in the self-represented accused case also presided over a multi-accused case and that so far, the two *ad litem* judges also sat on a second case. In another case in which trial had recently commenced, the

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actual trial date had been changed several times on account of the health condition of one of the accused and had been deferred for three months. In another case, the trial chamber sat only four days per week due to the health of the counsel for the accused. This underscores the huge impact that the health condition or age of an accused can have on the smooth running of trials. As noted in the 2008-09 budget documents, a number of external factors beyond the Tribunal's control may have a major impact on the anticipated completion dates. Recent developments, such as the arrest of a major fugitive, will also impact on the completion dates.

33. Given the past trends and averages, and the special circumstances in some cases, it was unclear whether the seven new cases and all the multi-accused cases would be completed as scheduled by the first half of 2010, unless special efforts were made to expedite proceedings and reduce trial lengths. The ongoing contempt cases also added considerably to the workload of the Tribunal, even as it was engaged with first instance trials. Similar concerns have been addressed in national court jurisdictions on the adoption of time standards for expeditious case-flow management. In setting each time standard, ICTY needed to decide on the average length of time that it would be reasonable to expect the court to complete each stage of the process. While the standards do not require that every case be processed within the time periods specified, the standards serve as goals for both the court and staff to process all cases as promptly and efficiently as possible.

#### **Recommendation 4**

**(4) The ICTY Administration should, keeping the completion strategy in mind, evaluate its performance against agreed performance standards. The performance standards could include time standards relating to the processing of cases.**

34. *ICTY did not accept recommendation 4 and stated that in general, it did not agree with OIOS comments about length of pre-trial or trial and that this was a matter of concern to the Tribunal leadership as they believed it may reflect OIOS' lack of understanding of court operations. Whether speaking in terms of trials, judgment writing or appeals, the perception that it would be appropriate to compare trials or average number of days is almost meaningless in terms of justice or the comparison of one trial with another. The complexity of each specific trial, the number of witnesses, the number of accused, the number and complexity of interlocutory appeals, the leadership of the particular chambers during the proceedings all impact on trial length. The use of performance standards such as "average length of trial" is almost meaningless in such circumstances.*

35. *ICTY added that all cases are different and that it is a defining feature which makes statistical analysis of little use - what happens in one case is what happens in that case - not what can be expected to happen in any other case - if it does that is exceptional. This type of logic simply has little relevance in a judicial institution. With regards to performance standards, ICTY stated that they*

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*have performance standards of time already in place and these are there for the world to see. The Tribunal leadership reports directly to the Security Council and to the Member States on the trial schedule, with the most recent demonstration in May 2008. Recently, in seeking the appointment of ad litem judges, ICTY indicated the anticipated length of the cases and the trial schedule. ICTY proposed an estimated trial length and any slippage is recognizable and generally results from factors out of its control. Slippage is also reported to the Security Council and these reports are available to OIOS.*

36. In OIOS' view, it is necessary to look at past ICTY performance on length of trials and appeals to assess whether adequate action is taken to achieve the completion strategy targets. Complexities of individual cases can vary, but the duration of the pre-trial, trial and appeals processes remain relevant indicators of the efficiency of the Tribunal. The performance targets reported to the Security Council should be further translated into specific standards and closely monitored. OIOS reiterates recommendation 4.

#### Appeals assume importance as ICTY approaches completion strategy targets

37. The Appeals Chamber is common for the ICTY and the ICTR and consists of seven judges and hears appeals from the six Trial Chambers of the two Tribunals. Appeals are heard by a bench of five judges. As the numbers of first instance trials are completed, and (almost inevitably) appealed, the workload in the Appeals Chambers will build up. Chambers had already initiated several measures to speed up appeal hearings based on the Appeals Working Group recommendations.

38. An analysis of appeals based on the year in which they were decided, indicated that the number of appeals being decided registered a sharp increase from 2004 onwards to December 2007 and some 20 appeals have been decided. On average, the weighted average of time taken for appeals disposal was 693 days and as such it is still within the two-year limit envisaged by the former President Judge Jorda. The Chambers (President's office) clarified in April 2008 that they envisaged appeals to be concluded within two years of the trial judgment, which meant that appeals would be cleared within 730 days; the current average time calculated at about 693 days meets this target. However, the average time taken to decide appeals was more than the average time taken to render a first instance judgment. OIOS categorized appeals on the basis of time taken to dispose appeals and noted that 62 per cent were decided within two years of filing and the balance of 38 per cent took more than two years.

#### Projections for the future

39. ICTY anticipated that there will be 43 pre-appeal procedures and 43 appeals from Trial Chamber Judgments. This comprised 17 appeals from ICTY and 26 from ICTR. Since the Appeals schedule prepared by ICTY was not available, an assessment was not made to determine if the appeals completion target of end 2011 will be complied with. Based on current and anticipated growth in workload, OIOS could reasonably anticipate the possible rise of up to 10 appeals on judgments every year starting 2008. However, given the average

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time taken for disposal (693 days) with a projected workload of 43 pre-appeal and appeal proceedings, it appeared difficult to determine that the revised completion of appeals date of 31 December 2011, was feasible. In addition, Chambers anticipated an enormous increase in complexity of multi-accused cases, one of which would reach appeal stage in 2008 and two, later in 2009/2010 as compared to single accused cases. Another recent development that would impact on the completion dates was the recent announcement by ICTR that at least two of their cases would reach judgment phase only in 2009, for which appeals lie with the Appeals Chamber.

40. In terms of judicial capacity, with its current strength of seven appeals judges, it could be difficult to deal with the huge workload and a bottleneck could emerge leading to backlog and as a consequence delaying completion of the mandate. Chambers agreed and stated that it must be foreseen that there will be a few more appeal judges following the end of trials.

41. Given the past trends, possibility of slippages in some of the ongoing and new trials and the absence of a detailed appeals schedule, OIOS assessed that it is unclear whether ICTY would be able to achieve its target of concluding all appeals within two years of conclusion of trials. While it would be difficult to predict the number of review cases and interlocutory appeals, some contingency plans needed to be prepared, based on previous trends. As for appeals, the number could be predicted with accuracy and requisite projections made. While ICTY made plans for 27 staff to be redeployed to work on appeals, it was unclear whether this would cater for the increased complexities arising in the multi-accused cases which underscored the need for a comprehensive manpower analysis for handling appeals. *However, ICTY reiterated that they now had substantial experience dealing with appeals in multi-accused cases (e.g. Celibici, Kvočka), and ICTY believes it has sufficient staff with the necessary skills to complete the appeals work.*

#### **Recommendations 5 and 6**

##### **The ICTY Administration should:**

**(5) Assess the number of anticipated appeals and where possible, review cases that can reasonably be expected to arise and decide whether judicial and staff capacity are adequate to handle the expected inflow. Norms for support staffing need to be separately worked out for individual and multi-accused cases; and**

**(6) Formulate an appeals schedule and timetable for determining appeals, which should be shared with the Registry and the Office of the Prosecutor so that staff and other resources can be allocated effectively.**

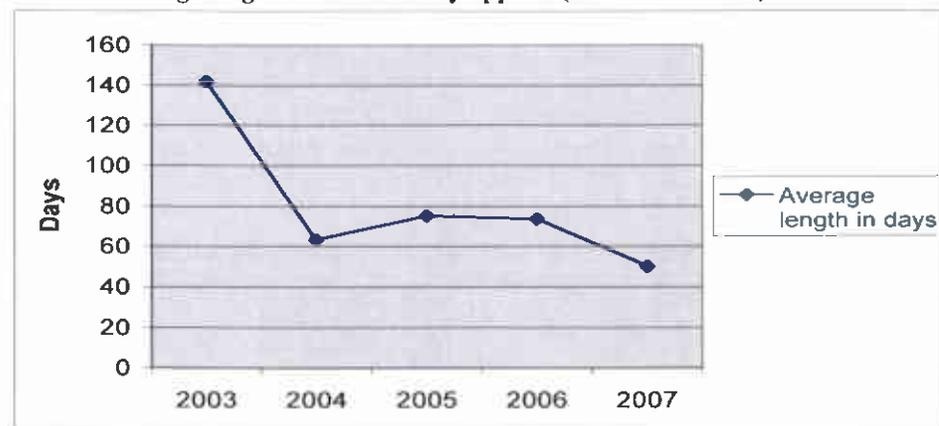
42. *The ICTY Administration accepted recommendations 5 and 6 stating that it strongly believed that it not only has current and projected appeals schedules, but also the analysis that is being requested for has already been*

accomplished for the current 2008 and 2009 budget cycle and the projection into 2010 and 2011. ICTY believes that it does have the capacity to handle the appeals cases in an appropriate and timely manner. The appeals schedules are shared with all three organs of the Tribunal. It is important to note that although there is no way in which ICTY can project the total number of appeals that will be filed by the defendants, historically to date, there has been an appeal of judgment and/or sentencing in every single case of conviction. ICTY can therefore fairly accurately anticipate the number of appeals, however, again for those cases which are only projected, they will be maintained within the ICTY leadership. Based on the action taken by ICTY recommendations 5 and 6 have been closed.

#### Closer attention required for interlocutory appeals

43. The Appeals Chamber also dealt with interlocutory appeals from both ICTY and ICTR. Since these interlocutory appeals could sometimes be on an important legal issue, it was possible that they could cause suspension of trial proceedings in cases in which complex legal questions may have arisen. Obviously this had implications for the overall length of cases hence such appeals were no less important than appeals on the merits. Time taken for disposal was declining over the years and overall for the past five years, on average it had taken 71 days to dispose off interlocutory appeals. The number of such interlocutory appeals was also declining, suggesting that important legal issues that could arise had already been adjudicated and precedents set in place. The Chambers added that the decline was a sign that the provisions requiring certification by the Trial Chambers for appeals in cases where the appeal was not as of right, were functioning well. In separately examining the time taken for disposal for the ICTR in the past four years, it was noted that on average it had taken 30 days more to dispose of ICTR appeals as compared to those relating to ICTY. This suggested that closer attention to ICTR interlocutory appeals would bring down the overall average time taken for disposal.

**Chart 1: Average length of interlocutory appeals (ICTY and ICTR)**



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## Recommendation 7

**(7) The ICTY Administration should ensure timely disposal of interlocutory applications, so that the cases in which these have arisen can be proceeded with and are not kept on hold for long periods.**

44. *The ICTY Administration accepted recommendation 7 and stated that ICTY will keep OIOS updated on the disposal of interlocutory applications and their length.* Recommendation 7 remains open pending the institution of a mechanism to track and submit periodic reports on interlocutory applications.

### Review of the use of written statements in lieu of viva voce testimony

45. ICTY Rules of Procedure and Evidence permit the usage of written statements and transcripts of witnesses in lieu of viva voce examination under 92 bis, 92 ter and 92 quarter in order to save court time and expense. While data on the use of 92 bis was reported in the Tableau de Bord, similar reporting arrangements were not in place for 92 ter and 92 quarter. There had been no overall assessment of whether the application of these rules had resulted in savings of court time and ultimately in reducing lengths of cases. Court Management Support Service (CMSS) needed to assess what percentage of testimony was filed through written statements as compared to live testimony. The 92 bis data collected from the Registry indicated a rapid decline in the use of this Rule.

**Table 2: Use of 92 bis testimony**

	2003	2004	2005	2006	2007
Submitted	510	15	22	106	-
Admitted with cross	(262)	(6)	-	(13)	-
Admitted without cross	(113)	(6)	-	-	-
Testimonies apparently unused	135	3	22	93	-

46. However, the data shown in the Tableau de Bord may not have been accurate as it was unlikely that no 92 bis testimonies were submitted at all in 2007. Since the Tableau de Bord was a management information report, it should have contained accurate data. Information in respect to the usage of 92 ter and 92 quarter was not systematically kept by all Trial Chambers. In addition, the Office of the Prosecutor did not systematically collect data on 92 bis, although they clarified that 673 such statements had been recorded in their Witness Management Systems database. The OTP did not indicate the time period to which the data they had provided pertained. The OTP was also unable to indicate the number of 92 ter statements received. The Tribunal lacked overall information on the efficiency measure, even though individual Chambers sometimes did record this information. However, average testimony times were significantly less for 92 bis and 92 ter witnesses as compared to viva voce witnesses.

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## **Recommendation 8**

**(8) The ICTY Administration should obtain accurate information on the extent of utilization of Rules 92 bis and 92 ter statements and assess their impact on reducing the length of court proceedings.**

47. *The ICTY Administration accepted recommendation 8 and stated that it would coordinate with OIOS to ensure that correct data is shared. Recommendation 8 remains open pending analysis of the extent of utilization of written statements and assessment of their impact on reducing the length of court proceedings.*

### **C. Courtroom utilization**

#### Court utilization is adequately monitored

48. *ICTY adequately monitors and reports on courtroom utilization. Court utilization has been generally below the norm of 85 per cent. ICTY commented that it has three courtrooms and was running two sessions per day per court room. There are six trials (sometimes seven) in various stages at any one time. There are other times when courts may not be physically in session for a variety of reasons (e.g. sickness of a defendant, absence of a witness, submission of interlocutory appeals, etc.). Most of these events cannot be forecast. Therefore a vacancy in one court room is not any true indication of court activity. As there are acceptable controls in place, no recommendation is being raised.*

### **D. Office of the Prosecutor (OTP)**

#### Organization structure and mission

49. *In the context of the completion strategy, OTP had a reasonable basis for the size and shape of the organizational structure it envisaged over the remaining life of the Tribunal, although some norms could require to be reworked. The 2008-09 budget documents detailed the staff complement within the OTP over the current biennium, including plans for staff reductions. On 1 January 2008, the Prosecutions and Investigations Divisions merged into a single division, the Trial Division. This was in recognition that the investigative work being conducted at the Tribunal was almost exclusively geared to supporting trials. As part of this restructuring, the Chief of Investigations post was to be redeployed and become the post of Director, Appeals Division, in light of the increased workload. In order to cope with the anticipated volume of work, the Appeals Division would redeploy an additional 37 posts during 2008 and 2009. Unlike the Prosecutions Division, the Appeals Division had not developed any norms or standards with regards to the number of staff allocated to an appeal. OTP was taking necessary steps to encumber the post of Director, Appeals Division. OTP should examine staffing norms for the next budget and also establish staffing norms in the new Appeals Division.*

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50. In her letter dated 23 November 2007, the then Prosecutor stated that “The fusion of the Investigations and Prosecutions Division will not initially represent a dramatic change in how trial teams work, but there may over time be scope for a review of the traditional roles of former investigation staff in the trial process”. While the merger of the Investigations and Prosecution Division had taken place, the review envisaged by the former Prosecutor had not been carried out. OTP stated that the role of the investigative staff was evolving and a more flexible approach to using the staff within trial teams would be taken into account when assessing staffing needs in the coming months.

### **Recommendations 9 and 10**

#### **The Office of the Prosecutor should:**

**(9) Evolve suitable norms for appeals, and also estimate required staffing levels, as its workload shifts towards appellate support. The norms should distinguish between single and multiple-accused cases; and**

**(10) Review the traditional role of investigation staff in the trial process and, as envisaged by the Prosecutor in November 2007, factor this into determining staff norms.**

51. *The OTP accepted recommendation 9 and stated such staffing norms have been prepared and are now available. The OTP Appeals Section has begun the process of assessing the number of staff and the required needs per case. It should be noted, however, that distinguishing between single and multiple-accused cases does not necessarily reflect the amount of work required. The size, scope and nature of the appeals is dependent on the number of grounds of appeal, the volume of evidence to be reviewed, whether additional evidence is presented on appeal, whether new relevant archives are located etc. The single criterion of the number of accused is not determinative. Recommendation 9 remains open pending receipt and review thereof by OIOS, of the new appeal norms.*

52. *The OTP accepted recommendation 10 and stated that the process is underway, but will be gradual, and will increase as staffing levels fall and greater flexibility is required of remaining staff. It is too early to say how far this process can be taken since there are limits on the type of prosecution work that non-lawyers can be asked to do. Recommendation 10 remains open pending preparation and receipt of a report incorporating results of review of the role of investigators.*

## **E. Registry**

### Infrastructure and rentals are well managed

53. The Registry had satisfactory arrangements in place for managing office space and to ensure that decisions about the Tribunal’s office estate were based

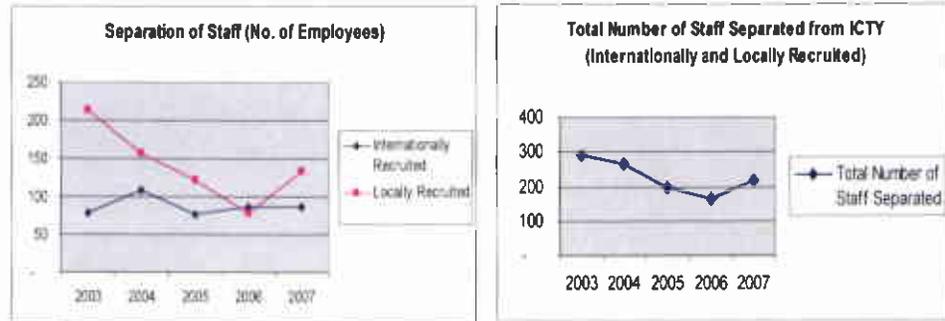
on analysis of current and future accommodation needs, the utilization of buildings and the need to make better use of available space.

Human resource management is a critical issue to achievement of the completion strategy

54. Considering the nature of the Tribunal’s functions, the human resource element is of paramount importance. The three principals (the President, the Prosecutor and the Registrar) of the Tribunal have repeatedly stressed the importance of retaining staff for as long as they were required or else the Tribunal’s ability to complete its mandate in a satisfactory and timely manner would be seriously compromised. In spite of a proactive personnel policy, staff members continued to leave the Tribunal at the critical completion strategy phase. The Secretary General in his Report<sup>3</sup> on ‘Staff Retention and Legacy Issues’ noted that “The Tribunals are required to function at maximum speed and efficiency in order to meet their targets of finalizing trials by the end of 2008 and completing appeals by 2010. A critical aspect of reaching these targets is maintaining the highly skilled and specialized staff, even in the face of the need for an orderly downsizing of staff. The loss of institutional knowledge sometimes has serious consequences that may result in the slowing of the progress of trials.”

55. Based on data in the ICTY human resource system, the trends of staff departures/separations from ICTY over a five year period are presented graphically in Charts 2 and 3. While the reasons for the departures could not be separately analyzed, it is evident that the departures of local staff have increased during 2006 and 2007. The departures/separations in 2003/2004 were most likely due to the phase related to completion of investigations and the funding shortfalls experienced during that period.

**Charts 2 and 3: Trends in staff separation**



Existing retention measures need reconsideration

56. No one single measure would be sufficient to ensure that staff remain with the Tribunals until completion of the mandate, but an appropriate mix of certain incentives, if offered, could have a positive impact on retaining staff for a longer period of time. Accordingly, the Tribunal had been quite diligent in pursuing different options that might induce staff to stay. Following negotiations

<sup>3</sup> A/60/436, 17 October 2005

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with the Office of the Human Resources Management (OHRM), the Tribunal announced in June 2007, a number of exceptional measures that included: (a) exceptional use of special post allowance; (b) exceptional use of roster; (c) step protection for ICTY staff transferred or appointed to Secretariat or DPKO; (d) grant of internal status for recruitment within Secretariat during a specified period of time and (e) waivers pertaining to education grant and home leave reimbursement.

57. However, the Tribunal's attempt during the last four years to provide staff with a retention bonus as an inducement to stay was deferred by the Fifth Committee of the General Assembly in March 2008 to the 63<sup>rd</sup> (fall 2008) session. The Staff Union of the ICTY was disappointed with the decision stating that "it limits the Tribunal's ability to retain staff in the crucial, final stages of its mandate". There has been considerable discussion on the possibility of accelerated departures from the Tribunal following the setting up of other *ad hoc* criminal tribunals such as the Lebanon and Cambodia Tribunals. In order to assess the impact of the retention measures taken so far and to assess the potential departures to other organizations, the ICTY needed to undertake a thorough analysis of various factors and developments. A recent staff survey undertaken by the Staff Union (May 2008) revealed that 83 per cent of staff stated that exceptional measures introduced in June 2007 would not make a difference to their decision. Fifty four per cent of staff indicated that they were less likely to stay as the retention bonus had been rejected.

58. *The ICTY Administration stated that ICTY is constantly reviewing attrition rates, has conducted staff surveys, has met with the leadership of the various organs and regularly with the Staff Union. In addition, ICTY did not agree that there was general dissatisfaction with the measures that have been exceptionally approved by OHRM. The only case of disenchantment is with the failure of the Member States to approve a retention bonus. Furthermore, in August 2007 when the Controller authorized ICTY to issue two-year appointments till the end of 2009, the attrition rates dropped dramatically. ICTY operates under the rules and regulations of the Secretariat and are not at liberty to take extraordinary measures without the approval of headquarters or the Member States. It is evident that in any situation where there is a finite mandate for an organization, it is going to be difficult, if not impossible, to get staff to remain until the end. Once ICTY has given to Office of the Programme Planning, Budget and Accounts (OPPBA) a revised estimate based on the current trial schedule including the new detainee, ICTY intends to get authority to extend contracts into 2010 to the extent possible. This action is the only one which will have a direct impact on staff retention rates. Based on these comments, OIOS is not raising a recommendation.*

#### Downsizing and the comparative review scheme

59. Staff Rule 109 (1) required "due regard to relative competence, to integrity and to length of service" where posts are being abolished. Thus both length of service and competence are the primary criteria to be considered, although the Rule is silent on the relative importance or preference to any one of these factors. Human resource levels and any decision as to whether, where, by

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how many, and by what means staff should be reduced and/or expanded should follow a rational and structured process. The 2008-09 budget document detailed the staff complement within the ICTY over the current biennium, including plans for staff reductions. In order to ensure that critical staff reductions were managed in a transparent manner, management and staff should determine the criteria to be used while downsizing. Any criteria to determine employee retention and separation should have due regard to skill, knowledge and experience requirements of the organization, which would enable retention of staff indispensable to discharge the essential functions of the Court.

60. As envisaged by ICTY, in terms of comparative review formulation, the criteria for making determinations as to which staff will be retained, would be based on a combination of factors such as seniority and performance. For service until 2002, a point was given for each month of service. From 2002, the points vary per month based on performance. Months of service that resulted in the highest rating in the Electronic Performance Appraisal System (E-PAS) would be multiplied by three; months of service that resulted in the second highest E-PAS rating would be multiplied by factor two; and months of service that resulted in the third highest E-PAS rating would be multiplied by one. In this formula, performance was a very important part of the equation, with the length of service element following close behind. This formulation had reportedly been agreed upon by the Staff Union, although ICTY did not make available any document on the subject. The Staff Union planned to have the formula renegotiated with the Joint Negotiation Committee.

61. A breakdown of the E-PAS ratings received by ICTY staff members during 2005-6 and 2006-7 shows that overall, 60 per cent and 58 per cent of staff received the two highest EPAS ratings in the respective years. For staff in the professional category, 66-68 per cent of staff received the highest two grades in the two years and consequently the application of the current formula could give undue weight to performance as compared to longevity.

62. In the circumstances, a formulation needed to be developed that best addresses all factors involved (performance and longevity) including the organization's operational needs. Attempts to ensure consistency in grading had not been successful, with some organs being more conservative in their assessment than others. Since the weighting attached to high grading is disproportionate, the comparative review process could theoretically be manipulated to retain certain staff to the exclusion of others. The Staff Union accepted that certain targeted staff like Senior Legal Officers or Senior Trial Attorneys, could be exempted from the scheme, however the extension of such an exemption to other categories of staff would not be justified. The Tribunal was to discuss the above issues in the context of the Joint Negotiation Committee as well as the recently created Working Group on Human Resources and Staff Welfare.

63. Save for the lack of clarity on the modalities for downsizing, ICTY had approached the workforce reduction programme in a transparent and consultative manner. They had informed employees on a regular basis of developments in regard to human resource levels within the Tribunal. The Registrar's

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management retreat held in February 2008 also focused at length on human resources issues. In addition, ICTY had allocated \$945,900 for training and staff development activities, which specifically included \$435,000 towards training activities in the area of supervisory skills, personal development and technical training. Also envisaged were career counseling and outplacement services for those leaving the organization in 2009.

#### **Recommendation 11**

**(11) The ICTY Administration should consider undertaking selective simulation modeling and studies to ascertain the likely results of the comparative review scheme and assess the potential impact of its implementation, to obviate any unexpected developments when staff reductions are actually carried out.**

64. *The ICTY Administration accepted recommendation 11 and stated that management is still in discussions with the Staff Union and will continue to work on the already agreed upon comparative review formula, which was in fact implemented in 2004. There are discussions on the issue of operational requirements being a criterion in the process and these discussions will continue.* Recommendation 11 remains open pending the assessment of the impact of the comparative review scheme.

#### Residual functions

65. In a joint paper prepared by the ICTY and ICTR, the two Tribunals stressed on the need to maintain capacity to carry out specified residual functions. The following residual functions had been identified: (i) trials of fugitives; (ii) review of earlier judgments; (iii) referral of cases to national jurisdictions; (iv) supervision of prison sentences, early release, pardon and commutation; (v) contempt or perjury proceedings; (vi) prevention of double jeopardy in national courts; (vii) witness protection; (viii) issues relating to defense counsel and legal aid; (ix) claims for compensation; (x) archives; (xi) public information, capacity building and outreach and (xii) human resources issues. The first six were considered essential residual functions requiring judges while the remaining were also designated as essential functions but do not require judges. The paper, which elaborated on the institutional mechanisms by which the functions could be performed, was stated to be under submission to the Security Council. As the paper details the issues on which decisions were expected, OIOS does not have substantive comments at this stage, save on archiving.

#### Archiving

66. ICTY archives, which comprise vast quantities of records in a variety of formats (paper, electronic, audio-visual, physical evidence), are a powerful reflection of its achievements. The size of physical records was estimated at around 4,330 linear meters while the electronic records could be over two terabytes and accretions were expected on a daily basis. The budget submission

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(2008-09) contained a provision of \$4.38 million for archiving and records management. A P-4 Archivist position had been filled and the selection of a P-2 staff member for the digitization was at an advanced stage. General Temporary Assistance funds had also been made available for archiving. The central element of the funding concerns the digitization project for which some \$3.4 million had been made available.

67. Following a visit by an Archives and Records Management Section (ARMS) expert in 2003 and 2004, an action plan that listed priority actions that needed to be taken by different sections, was formulated. In June 2007, the plan was expanded to include ICTR and the Office of Legal Affairs and a document was produced that exhaustively dealt with all aspects of archiving and record keeping in the Tribunals. The Tribunal also set up an Archives Working Group to oversee progress of work. This group was recently reconstituted following the management retreat held in February 2008, but is yet to convene. While the Tribunal has already undertaken substantial work for archiving and record keeping and in many ways functioned as a catalyst for policy formulation at the Headquarters level, some important issues still remain to be addressed.

Existing policy and accountability framework for records management need re-examination

68. While the United Nations Archives and Records Management policy, as set forth in ST/SGB/2005, is the overall policy containing the broad principles applicable to records management, the policy framework was not conducive to the effective and efficient management of Tribunal's records and archives given its unique nature and functions. Furthermore, the UN policy had not kept abreast with the recent developments such as digital signatures, management of electronic files and other technological advancements. The Archives Working Group recognized this in May 2007, when the task of creating an 'ICTY Archives and Records policy' was entrusted to the Archives Unit.

69. A clear accountability structure had generally not been established for record keeping and archiving. It was unclear whether the responsibility for archiving and records management vests with the Archives Unit or with the respective sections. Some sections for instance believed that the authority to make decisions in managing their files rested only with them. The correct position should be that while the Archives Units assists and advises sections on record keeping and related issues, the primary responsibility for implementing the work plan vests with the sections concerned.

**Recommendation 12**

**(12) The ICTY Administration should discuss with Archives and Records Management Section in New York, the formulation of an archives/record keeping policy for ICTY. The policy should provide for an overall framework for archives and record keeping and address such issues as information security classification, information disclosure and declassification regime.**

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70. *The ICTY Administration accepted recommendation 12 and stated that the overall policy for the global UN is set forth in ST/SGB/2005 – Record keeping and management of United Nations archives. While not being specific to the ICTY environment, its broad principles still apply. There was an attempt to draft an ICTY specific policy but in the absence of some key components such as electronic signature, records security classification, and status of official records we cannot proceed further. ICTY has in fact developed a policy at its June 2007 Archive Strategy Meeting which endorsed the creation of an ST/SGB on the Records of the ICTY and ICTR. This will effectively be the policy for the Tribunals and will address all key records and archives areas such as records retention, location, security etc. The ST/SGB will be drafted after the Advisory Committee on the Archives of the UN Tribunals for the former Yugoslavia and Rwanda (ACA) report comes out in September 2008. The Under-Secretary-General for Management has now authorized ICTY to be a records management pilot project for the entire Secretariat, relative to policy development, digitizing, and physical record keeping. Recommendation 12 remains open pending the creation of a suitable policy framework for ICTY records and archives in consultation with UN Headquarters.*

Retention schedules need to be enforced

71. Save for certain segments relating to the Court Management Support Service (CMSS), Victims and Witnesses Section (VWS) and the OTP, ICTY had in place a set of approved retention schedules. The Administration retention schedule was approved in 2005, and in general the Administration records were assessed as well organized. The Administration had been using TRIM<sup>4</sup> for several years and was quite advanced in this respect. The scheduling and disposition should be reviewed to ensure records in hard copy and electronic formats are properly scheduled.

**Recommendation 13**

**(13) The ICTY Administration should develop retention and reclassification schedules for all areas of the Tribunal and should identify records to be retained or destroyed in compliance with approved retention schedules.**

72. *The ICTY Administration accepted recommendation 13 and stated that in fact, ICTY has implemented retention schedules for all the Administrative Sections and is now working on the files of OTP, CMSS, and VWS. The Administrative Records Management Unit (ARMU) has set up a working group to implement them in the substantive and judicial areas, and this has commenced with CMSS. Recommendation 13 remains open pending the development of retention schedules across all organs in the Tribunal and the identification of records for retention/destruction in accordance with the schedules.*

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<sup>4</sup> TRIM is a commercially available record management software

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Policy on e-mails needs to be developed

73. The ICTY did not have a specific policy on e-mails in the context of archives, but a draft policy was under development. The policy needed to recognize the importance of this new form of records and the need to preserve it for legal, informational and historical purposes and to apply appropriate practices to store and make this information available as may be required. The policy needs to acknowledge that an increasing portion of official information would be located in personal computers throughout the Tribunal and unless it is extracted from there, there is a risk that information could be lost due to staff movement.

**Recommendation 14**

**(14) The ICTY Administration should ensure that an e-mail policy is approved and implemented to provide guidance on the extent to which official e-mails will be preserved, archived and the manner of retention.**

74. *The ICTY Administration accepted recommendation 14 and stated that ARMU has reviewed the Headquarters-ARMS e-mail policy and guidelines and will commence implementation and training in September 2008. Recommendation 14 remains open pending receipt and review of the policy and its implementation across ICTY.*

**V. ACKNOWLEDGEMENT**

75. We wish to express our appreciation to the Management and staff of ICTY for the assistance and cooperation extended to the auditors during this assignment.

## STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	Recommendation	Risk category	Risk rating	C/O	Actions needed to close recommendation	Implementation date <sup>2</sup>
1	The ICTY Administration should amend Rule 23 ter of the Rules of Procedure and Evidence governing the functioning of the Management Committee to better reflect the current needs of the Tribunal.	Governance	Medium	O	Amendment/deletion of Rule 23 ter of the Rules of Procedure and Evidence.	Not provided
2	The ICTY Administration should ensure that in formulating its strategic and tactical plans, a risk-based approach is adopted that encompasses identification of risks across all activities, mitigation measures and assessment of the residual risk.	Governance	High	O	Adoption of a risk based approach towards planning.	Not provided
3	The ICTY Administration should assess the impact of the efficiency measures and adoption of multi-accused trials, to ascertain whether they have had the desired impact of expediting trials and reducing their length.	Operational	High	O	Formal assessment of the impact of the efficiency measures and adoption of multi-accused trials	Not provided
4	The ICTY Administration should, keeping the completion strategy in mind, evaluate its performance against agreed performance standards. The performance standards could include time standards relating to the processing of cases.	Operational	High	O	Assessment of performance against agreed performance standards	Not provided
5	The ICTY Administration should assess the number of anticipated appeals and where possible, review cases that can reasonably be expected to arise and decide whether judicial and staff capacity are adequate to handle the expected inflow. Norms for support staffing need to be separately worked out for individual and multi-accused cases.	Operational	High	C	Action completed.	Implemented
6	The ICTY Administration should formulate	Operational	Medium	C	Action completed.	Implemented

Recom. no.	Recommendation	Risk category	Risk rating	C/O	Actions needed to close recommendation	Implementation date <sup>2</sup>
	an appeals schedule and timetable for determining appeals, which should be shared with the Registry and the Office of the Prosecutor so that staff and other resources can be allocated effectively.					
7	The ICTY Administration should ensure timely disposal of interlocutory applications, so that the cases in which these have arisen can be proceeded with and are not kept on hold for long periods.	Operational	Medium	O	Institution of a mechanism to track and submit periodic reports on interlocutory applications.	Not provided
8	The ICTY Administration should obtain accurate information on the extent of utilization of Rules 92 bis and 92 ter statements and assess their impact on reducing the length of court proceedings.	Information Resources	Medium	O	Analysis of the extent of utilization of written statements and assessment of their impact on reducing the length of court proceedings	Not provided
9	The Office of the Prosecutor should evolve suitable norms for appeals, and also estimate required staffing levels, as its workload shifts towards appellate support. The norms should distinguish between single and multiple-accused cases.	Operational	High	O	Receipt and review of the new OTP appeal norms.	Not provided
10	The Office of the Prosecutor should review the traditional role of investigation staff in the trial process and, as envisaged by the Prosecutor in November 2007, factor this into determining staff norms	Operational	Medium	O	Preparation and receipt of a report incorporating results of review of the role of investigators	Not provided
11	The ICTY Administration should consider undertaking selective simulation modeling and studies to ascertain the likely results of the comparative review scheme and assess the potential impact of its implementation, to obviate any unexpected developments when staff reductions are actually carried out.	Human Resources	High	O	Assessment of the impact of the comparative review scheme.	Not provided
12	The ICTY Administration should discuss with Archives and Records Management Section in New York, the formulation of an archives/record keeping policy for ICTY.	Governance	High	O	Creation of a suitable policy framework for ICTY records and archives in consultation with UN Headquarters.	December 2008

Recom. no.	Recommendation	Risk category	Risk rating	C/O <sup>1</sup>	Actions needed to close recommendation	Implementation date <sup>2</sup>
13	The policy should provide for an overall framework for archives and record keeping and address such issues as information security classification, information disclosure and declassification regime. The ICTY Administration should develop retention and reclassification schedules for all areas of the Tribunal and should identify records to be retained or destroyed in compliance with approved retention schedules.	Operational	Medium	O	Development of retention schedules across all organs in the Tribunal and the identification of records for retention/destruction in accordance with the schedules.	Not provided
14	The ICTY Administration should ensure that an e-mail policy is approved and implemented to provide guidance on the extent to which official e-mails will be preserved, archived and the manner of retention.	Governance	Medium	O	Receipt and review of the policy and its implementation across ICTY.	September 2008

1. C = closed, O = open

2. Date provided by ICTY in response to recommendations.