

## Annex II

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

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## **I. INTRODUCTION**

1. The Prosecutor submits this fourteenth completion strategy report pursuant to Security Council resolution 1534 (2004).

2. In the present reporting period, the Office of the Prosecutor (OTP) had four main priorities. First, the OTP remains committed to the expeditious completion of trials and appeals, while at the same time ensuring that the interests of justice are not adversely affected. The OTP has utilized all available measures for expediting the presentation of its evidence in court and otherwise streamlining its procedures. Through the flexible allocation of its resources, the OTP has so far been able to present its cases at trial and on appeal as required notwithstanding staff attrition.

3. Second, one of the OTP's foremost priorities is the arrest of the two remaining fugitives, Ratko Mladić and Goran Hadžić. Their arrest and transfer to The Hague for trial is essential to ensure justice for victims and the successful completion of the ICTY's mandate more generally.

4. Third, the OTP continues to strengthen its partnerships with counter-parts in the region of the former Yugoslavia. Building capacity for domestic systems to continue establishing accountability for crimes committed during the conflict is essential.

5. Finally, the OTP is focused on closing the Office in an efficient and considered manner. This involves ensuring that downsizing takes place in a fair and transparent way. It also involves ensuring that institutional knowledge and lessons learned are collected and recorded as part of the Tribunal's legacy.

## **II. THE COMPLETION OF TRIALS AND APPEALS**

### **A. Measures taken to expedite the presentation of evidence in court**

6. During the reporting period, the OTP continued to employ all reasonable measures for expediting trials, without adversely affecting the overall interests of justice. The OTP has developed a consistent methodology across the cases for streamlining the presentation of evidence in court. Key aspects of this methodology include, to the maximum extent feasible, the following measures: working with Defence counsel towards agreement on background, historical, or other suitable facts to reduce time spent on proving such matters in court; working together with Defence counsel to identify areas of agreement and dispute regarding documents prior to presenting the evidence, thereby reducing the amount of time spent discussing these matters in court; requesting judicial notice of adjudicated facts from other proceedings under Rule 94(B); seeking admission of witness evidence in written form under Rule

92*bis* (without cross-examination where appropriate) and Rule 92*ter* to reduce the court time required for witness testimony; tendering documents from the bar table to avoid the lengthy procedure of tendering documents through witnesses; asking witnesses to review documents in advance of their testimony and then tendering their observations in a written chart or in Rule 92*ter* statements; and requesting extended sittings or extra sessions to finish scheduled witnesses, thereby avoiding the cost and delay associated with keeping the witnesses in The Hague over the weekend or requiring them to return at a later date.

7. When accepted by the Trial Chambers, these procedures have resulted in significant savings in court time. In particular, as described below, in the *Perišić* and *Stanišić and Simatović* cases, the OTP has concluded, or is concluding, its evidence-in-chief in substantially less time than originally forecast due to the effective use of these procedures.

### **B. Measures taken to ensure efficient use of the *Mladić* materials**

8. In February 2010, Serb authorities located the war-time notebooks kept by Ratko Mladić and associated tapes (Mladić materials). Their transfer to the OTP was an important and positive development for ICTY proceedings.

9. The OTP gave priority to devising strategies that would minimize any delay associated with the material. In particular, the OTP established a task force to ensure that all issues related to the Mladić materials were handled uniformly and expeditiously. The OTP allocated all available resources to processing the materials. In total, OTP staff transcribed 3,731 pages of materials in three months to facilitate the work of the translation service and review by Defence teams. The materials were processed expeditiously notwithstanding difficulties caused by the fragile condition of some of the notebooks and the need to carefully preserve the evidence.

10. The OTP also centralized disclosure of the materials to Defence teams and provided disclosure on a rolling basis. The electronic disclosure system was updated regularly with English translations and transcripts. In some cases, materials were disclosed the day after translations were completed. Particularly in cases that were at an advanced stage, the OTP limited the volume of material tendered into evidence to only the most critically relevant items.

11. As described further below, as a result of these efforts, the OTP has been able to make use of this key evidence, while minimising the delays associated with tendering the Mladić materials in on-going cases.

### **C. Effective management of resources**

12. The Prosecution has successfully absorbed unexpected extra work arising out of trial and appeal proceedings in an efficient and cost-neutral manner through the flexible management of its existing resources. Whenever staff members in the Trial Division had extra capacity due to the status of their trial schedule, they have been assigned to assist on other short-term projects within the Office. Similarly, staff in the Appeals Division have assumed responsibility for conducting the re-trial ordered by the Appeals Chamber in the *Haradinaj* case (see further below), the *Rašić* contempt

trial (see further below) and the *Šljivančanin* review proceedings (see further below) in addition to their regular appellate work.

13. The departure of OTP staff to take up other employment opportunities prior to the completion of their assigned trials has become an increasingly frequent problem. Nevertheless, so far, the OTP has been able to meet all of its obligations because remaining staff have taken on substantial additional responsibilities and added extensive over-time to already demanding work schedules. Staff attrition (including in some cases the departure of senior trial attorneys leading teams) has made it significantly more difficult for the OTP to meet its obligations in *Gotovina et al.*, *Perišić*, *Prlić et al.* and *Stanišić* and *Simatović*. The loss of key trial team members in the critical final stages of our cases imposes greater burdens to ensure the effective preparation of final briefs and the presentation of evidence.

14. The OTP has taken measures to minimize the impact of attrition on productivity within the Office. For example, the OTP has adopted strategies for minimising the time taken to recruit staff against vacant positions, including creating rosters of qualified candidates who can be selected rapidly for future vacancies.

15. The OTP will continue to find pragmatic solutions to resource problems where possible. However, given that staff members are already working beyond reasonable limits, any further major strain on resources would present a significant challenge.

#### **D. Update on the progress of trials**

##### *1. Dorđević*

16. The presentation of evidence and final arguments in this case have now been completed and the Trial Chamber is preparing its Judgement. The parties filed their final trial briefs on 30 June 2010 and presented their closing arguments on 13 and 14 July 2010.

##### *2. Gotovina et al.*

17. The trial in this case has now been completed and the Trial Chamber is preparing its Judgement. The presentation of the evidence concluded on 10 June 2010. As foreshadowed in the last report, the Prosecution called its final three witnesses between 2 and 3 June and Čermak called two witnesses in rebuttal on 10 June. The parties filed their final trial briefs on 16 July 2010 and presented closing arguments between 30 August and 1 September 2010.

18. The final phase of the case was conducted expeditiously with the five final witnesses concluding their evidence in just three days. In addition, the parties filed their final briefs for this two and-a-half year trial less than five weeks after the close of evidence. The speed of the trial was further facilitated by the fact that the Trial Chamber proceeded to hear the Prosecution's further evidence and Čermak's rebuttal evidence pending the Appeals Chamber's ruling on the Trial Chamber's decision to allow the Prosecution to reopen its case. Consequently, on 1 July 2010 when the Appeals Chamber affirmed the Trial Chamber's decision, all of the relevant evidence had already been heard.

19. This case has been characterized by resource intensive parallel litigation under Rule 54*bis* concerning the Prosecution's requests for documents from Croatia that have not been forthcoming (see further below). The Trial Chamber rendered its decision pursuant to Rule 54*bis* on 26 July 2010. The Prosecution managed the litigation within the deadlines set by the Chamber. Staff on the trial team dealt simultaneously with the main trial and the Rule 54*bis* proceedings so as to meet all the Prosecution's obligations within the confines of existing resources.

### 3. *Karadžić*

20. Since April 2010, the trial in this case has been proceeding without significant interruptions. The Prosecution uses a small proportion of court time for presenting its witnesses. For example, "crime-base"<sup>1</sup> witnesses take, on average, 30 minutes to present their evidence and lengthier "international"<sup>2</sup> witnesses present their evidence within two to four hours. The limited time taken by Prosecution witnesses in court is possible due to the Prosecution's extensive pre-court work in preparing the witnesses' evidence in written form. According to statistics published by the Trial Chamber, in the period from 13 April until 30 September 2010, the Prosecution used only 20.6 percent of total court time, notwithstanding the fact it was presenting its case-in-chief. Karadžić used 71.7 percent and the Trial Chamber used 7.7 percent (for questioning witnesses as well as procedural and administrative matters).

21. The Prosecution is on schedule to conclude the presentation of its case-in-chief within the 300 hours the Trial Chamber allocated. However, the overall time estimate for completion of the trial has increased due primarily to the time taken in court by Karadžić in cross-examination. Based on the current situation, the Prosecution's case will be completed between the end of December 2011 and mid April 2012.

22. Karadžić's self-representation presents challenges to the expeditious conduct of the proceedings. In particular, Karadžić has chosen to personally conduct all pre-testimony interviews with Prosecution witnesses. Scheduling these interviews with Karadžić in the UN Detention Unit is difficult and limits the Chamber's capacity to schedule more court sessions. In addition, as reflected in the statistics given above, Karadžić's cross-examination of witnesses tends to be lengthier than would be expected of assigned legal counsel. The Trial Chamber has taken measures aimed at addressing these problems. For example, since June 2010, the Trial Chamber has imposed some time-limits on Karadžić's cross examinations, but he still takes considerable time. Further, a counsel appointed in November 2009 continues to function as stand-by counsel to minimize the risk of any further improper delays associated with the fact that Karadžić represents himself in the proceedings.

23. Notwithstanding the unpredictable length of Karadžić's cross-examinations, the Prosecution has managed to avoid delays in scheduling witness testimony.

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<sup>1</sup> Witnesses, often victim witnesses, who testify solely or predominantly about the crimes committed.

<sup>2</sup> Witnesses from other countries who worked in the region of the former Yugoslavia during the war, often as personnel for international bodies.

24. A short delay in this case resulted from admission of the Mladić materials. The Prosecution tendered into evidence 20 of Mladić's notebooks in their entirety, after which Karadžić was granted a two-week adjournment to review the materials. Another short delay resulted from disclosure of a large volume of materials seized by the authorities of Serbia from the premises of a former VJ General. Karadžić was granted six court days to review the materials.

25. In addition, on 3 November 2010, the Trial Chamber adjourned the proceedings for one month primarily to permit Karadžić to review over 14,000 pages of material disclosed to him in October 2010. The materials formed part of an evidence collection obtained by the Prosecution earlier in 2010. The disclosed materials came from electronic files on a computer hard-drive that had been deleted and a complex process of recovering and reconstructing the files was carried out to enable disclosure of the material to Karadžić in a useable format. The Prosecution takes its disclosure obligations very seriously and is employing all practical measures to ensure that its responsibilities are met.

#### 4. Perišić

26. This trial is now in the final stages of the Defense case, with approximately four witnesses remaining, including one witness for whom written statements will be admitted in *lieu* of oral testimony pursuant to Rule 92*bis*. The Prosecution anticipates calling one rebuttal witness whose evidence will be concluded in less than one day. The parties will submit their final trial briefs before the winter recess in December 2010 and the trial team is taking every possible step to ensure that it meets the remaining deadlines, notwithstanding critical shortages of staff. Final submissions will likely take place after the winter recess.

27. The Prosecution concluded the presentation of its case in-chief in 167 hours – a major achievement as this was less than half the time originally estimated (355 hours).

28. The Prosecution has tendered, and the Chamber has admitted, excerpts from Mladić's notebooks. The trial was delayed for two months between April and June 2010 so that that the notebooks could be translated and analyzed.

29. Another source of delay during the trial was difficulty with scheduling Prosecution and Defence witnesses due to limitations on their availability.

#### 5. Prlić et al.

30. The evidentiary phase of this case – the last of the three largest multi-accused cases – is nearing completion. No evidentiary hearings have been held since 1 April 2010. The delay has resulted in substantial part from litigation concerning Praljak's request to submit voluminous witness testimony pursuant to Rule 92*bis*, including an appeal that was determined by the Appeals Chamber in early July 2010. Delay also resulted from a motion by Prlić, dated 30 August 2010, to disqualify one of the judges in the case. The motion was rejected on 4 October 2010, but the trial was stayed pending the resolution of the disqualification request. An additional matter was the consideration of whether to admit a very small amount of *Mladić* material tendered by the Prosecution, a matter that was decided on 6 October 2010.

31. Admission of the Mladić materials has not significantly delayed the trial, as other matters were pending at the same time. Cognizant of the advanced stage of the proceedings, the Prosecution moved quickly to tender only the most highly relevant materials, comprising six brief excerpts from the notebooks and two written witness statements. The Defence teams have been permitted to tender excerpts from the Mladić materials in rebuttal of the very limited excerpts tendered by the Prosecution. All related pleadings have now been filed and the Trial Chamber's decision on the admission of the Defence excerpts is pending. One of the Accused has asked to give a limited amount of *viva voce* testimony in response to the admitted Mladić material that, if granted, should not take more than two court days.

32. Subject to a pending appeal, the final trial briefs are currently scheduled to be filed on 13 December 2010 and the OTP will continue to take all necessary steps to ensure that it complies with the imposed deadline.

#### 6. Šešelj

33. This trial is nearing the conclusion of the Prosecution's case. Prior to closing its case, the Prosecution is awaiting decisions on evidence-related motions, including requests to call witnesses to demonstrate the unreliability of statements from witnesses who have drastically changed their evidence and refuse to testify against the Accused. The allegations were made by witnesses who were originally Prosecution witnesses, subsequently stated they wished to testify as witnesses for Šešelj and, ultimately, were called as Trial Chamber witnesses.

34. No hearings, other than periodic administrative hearings, have been held since 7 July 2010. Prior to scheduling the Rule 98*bis* hearing to determine whether Šešelj has a case to answer, a number of issues must be resolved. First, there are 14 motions pending before the Trial Chamber, including the one referred to above regarding additional Prosecution witnesses. Second, a report on Šešelj's health must be completed by three medical experts, pursuant to the Trial Chamber's order of 19 October 2010. The Trial Chamber has allowed two months for the experts to complete the report. Third, an analysis of Mladić's notebooks by a hand-writing expert must be completed, pursuant to the Trial Chamber's order of 22 October 2010. The Trial Chamber ordered that the analysis be completed by 15 December 2010. (The Prosecution has moved to tender 13 excerpts from the Mladić materials and two related witness statements.)

35. The trial team has complied with all court ordered deadlines and exhibits have been kept to a minimum to ensure that the Prosecution's case proceeds as quickly as possible.

36. Additional delays have resulted from the fact that large numbers of witnesses have been unwilling to testify, reflecting a systemic problem. Some of the witnesses have ultimately been declared unavailable. The inability to secure their testimony is detrimental to the interests of justice. Delays have also resulted from the fact that Šešelj continues to represent himself and his conduct in court is not focused in the manner that would be expected of assigned legal counsel.

7. Stanišić and Simatović

37. This trial is proceeding without any significant delays and is now in the final phase of the Prosecution case. To date, the Prosecution has used approximately 20 percent less time than originally estimated for its case-in-chief. Based on the current situation, the Prosecution should complete its case by the end of February 2011.

38. The Trial Chamber has announced that it may increase the number of sitting days per week due to Stanišić's improved health. In general, the Trial Chamber has been willing to hold extra hearings to avoid inconvenience to witnesses and to keep the trial running on schedule. This has greatly facilitated the efficient conduct of the trial.

39. To date, the introduction of the Mladić materials has not caused delays.

8. Stanišić and Župljanin

40. The Prosecution's case-in-chief is nearly completed. The Prosecution expects to conclude with all but one of its witnesses by the first week in December. The remaining witness is a military expert who is scheduled to testify in January 2011. The Trial Chamber has allowed the Defence additional time to prepare for this witness, taking into account the recently seized Mladić materials. Based on current circumstances, the Prosecution believes that all of the evidence will be concluded by September 2011.

41. As a result of the Trial Chamber's decision to deny or modify adjudicated facts that had been previously approved, the Prosecution has been permitted to call 44 additional witnesses. The Prosecution has eliminated the need to call ten other witnesses as a result of facts agreed with the Defence. Significant time savings have also resulted from agreement between the Prosecution and Defence on a "Law Library" consisting of relevant laws, regulations and constitutional provisions in effect during the time period of the Indictment that both parties agreed were authentic and relevant.

9. Tolimir

42. The Prosecution continues to present its case-in-chief and has 82 witnesses remaining. Based on the current situation, the Prosecution estimates that it will complete its case by about November 2011. This takes into account the Trial Chamber's 7 July 2010 ruling requiring 47 of the Prosecution's Rule 92bis witnesses to attend for cross-examination.

43. Notwithstanding that Tolimir is representing himself, the case is proceeding under the Trial Chamber's guidance without any significant interruptions. The case has moved from sitting two to three days a week to a four-day sitting schedule, which has enabled faster progress.

44. The Mladić materials have been provided to the Defence without delaying the proceedings. None of the materials have yet been tendered into evidence.



10. Haradinaj et al. (re-trial)

45. In a Judgement rendered on 21 July 2010, the Appeals Chamber partially allowed the Prosecution's appeal and ordered a re-trial of the three co-Accused in relation to six of the 37 counts on which the first trial proceeded.

46. The Prosecution is ensuring an efficient use of its resources by taking a focused approach to the re-trial. This involves being selective about the witnesses and exhibits for the trial and working to reach agreement with the Defence on as many issues as reasonably possible. The Prosecution anticipates that its case-in-chief will be concluded within two months of the start of the trial, a date that has not yet been set.

47. The Prosecution is also facilitating the expeditious conduct of the pre-trial phase of the case. The Prosecution has proposed short deadlines for filing its list of witnesses and pre-trial brief, which the Trial Chamber has adopted.

**E. Update on the progress of appeals**

48. The Prosecution's work on appeals has proceeded expeditiously during the reporting period and the Prosecution has not delayed the progress of the cases to completion of the appeal phase.

49. During the reporting period, the Appeals Chamber dismissed the appeal of Rasim Delić as a consequence of his death on 16 April 2010. The Trial Judgement is therefore final. The Prosecution withdrew its appeal following Delić's death.

50. Appeals filings are complete in the *Milan Lukić and Sredoje Lukić* cases and the *Šainović et al.* case, the first multi-accused case to reach the appeals stage. The Prosecution awaits the oral hearings. The *Lukić and Lukić* oral hearing has been indicated for February 2011.

51. Notices of appeal in the second of the largest multi-accused cases, *Popović et al.*, have been filed and the appeals briefing process is well underway. All appeals filings for this case will be completed in the next reporting period.

52. On 14 July 2010, the Appeals Chamber granted Šljivančanin's request to review the 5 May 2009 Appeal Judgement convicting him for aiding and abetting murder and raising his sentence from five years to 17 years imprisonment. On 12 October 2010, the Appeals Chamber heard evidence and arguments. Written submissions were completed by 1 November and the Appeals Chamber's decision is now pending.

**F. Contempt cases**

1. Jelena Rašić

53. The Prosecution filed an Indictment against Rašić on 9 July 2010. Under Rule 77, the Prosecution can only investigate and prosecute a contempt matter at the direction of a Chamber. Rašić, formerly the case manager for the Milan Lukić Defence team, is charged with five counts of contempt of the Tribunal for attempting to generate false witness testimony for the benefit of Milan Lukić. She had her initial appearance on 22 September 2010. On 12 November 2010, Rašić was granted

provisional release. Arrangements to appoint permanent counsel for Rašić are currently being finalized.

54. The Prosecution is ready to proceed and is awaiting the appointment of counsel to Rašić. The Prosecution proposes to expedite the proceedings by using all reasonable measures under the Rules of Procedure and Evidence to reduce the need for oral testimony in the presentation of its case.

## 2. Vojislav Šešelj

55. The *Šešelj* case has generated multiple contempt proceedings, including two contempt Indictments against Šešelj for publishing confidential witness information. Šešelj was convicted based on the first Indictment and the second contempt trial is postponed awaiting the decision on Šešelj's 13 April 2010 motion alleging that two Judges of the Trial Chamber are biased. In addition, an *Amicus* Prosecutor has been appointed to investigate Šešelj's contempt allegations against OTP staff. These matters have resulted in significant additional work for the OTP. Although these contempt matters are the responsibility of appointed *Amici*, the Prosecution is required to carry out evidentiary analysis, compile documents and communicate with the *Amici* Prosecutors as appropriate. Further, Šešelj has failed to remove protected material from his website in violation of an order by the Appeals Chamber, which requires continual monitoring to ensure the protection of witnesses.

### **G. Rule 75(H) proceedings**

56. During the reporting period, the OTP responded to seven applications submitted by judicial authorities in the States of the former Yugoslavia under Rule 75(H) to vary protective measures in ICTY proceedings. Rule 75(H) provides an avenue for national judicial authorities in the region of the former Yugoslavia to access confidential information from ICTY proceedings that is relevant to their domestic war crimes cases.

### **H. Access orders**

57. Orders by the Chambers granting an accused person in one case access to confidential materials in related cases (access orders) require a substantial allocation of resources across the OTP on a regular basis. The OTP is required to review the voluminous trial record to identify the materials to be provided or withheld pending follow-up with the provider of the materials or other relevant persons. If access is limited to certain categories of confidential materials, the OTP must review the voluminous trial records to identify the material falling within the relevant categories. There are currently also 18 orders granting access to confidential materials in ongoing trials on a continuing basis. For these cases, the OTP is required to continuously review the trial records as the cases progress and to notify the Registry of materials to be provided or withheld from the accused person who has been granted access.

### **III. COOPERATION**

#### **A. Cooperation from the States of the former Yugoslavia**

58. Cooperation from the States of the former Yugoslavia remains crucial, particularly in: locating, arresting and transferring the two remaining fugitives; access to archives, documents and witnesses; and protecting witnesses.

59. To promote and assess cooperation during the reporting period, the OTP maintained a direct dialogue with key State officials, including national Prosecution offices. The Prosecutor and senior officials in the OTP also met with government and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina prior to preparing the present report.

#### **B. Cooperation of Serbia**

60. The OTP requires cooperation from Serbia in two principal areas. First, the OTP requires Serbia's assistance in the key matter of the arrest of the two fugitives, Ratko Mladić and Goran Hadžić. The arrest of the fugitives remains the OTP's highest priority. Secondly, the OTP requires Serbia's support in ongoing trials and appeals.

##### **1. Arrest of fugitives**

61. Serbia's efforts to apprehend the two remaining fugitives remain problematic. This is the most critical outstanding aspect of Serbia's duty to cooperate with the OTP.

62. The responsibility for locating and arresting the fugitives rests with Serbian authorities. Nevertheless, during the reporting period, the OTP maintained regular and close contact with the Serbian agencies in charge of locating and arresting the fugitives. This interaction has intensified in recent months and will continue so as to ensure the OTP is apprised of ongoing activities.

63. In the last Security Council report, after reviewing operations and in the absence of tangible results, the OTP encouraged Serbia to adopt a more rigorous approach to arresting the fugitives. It strongly recommended an in-depth review of the strategies employed and identified areas in which the Serbian authorities' operational approach, analysis and methodologies can be improved. Serbian authorities took into account the OTP's recommendations and started working on their implementation. Over the past six months, Serbia's security services continued their efforts to track fugitives under the leadership and guidance of the National Security Council.

64. Notwithstanding the expressed commitment of authorities, including at the highest levels of government, to arrest the fugitives and the continuing efforts of operational services, few concrete results have been obtained over the past six months. A number of shortcomings in the way operations are conducted need to be addressed urgently.

65. The OTP urges the authorities to intensify their efforts to implement the OTP's recommendations. In addition, the OTP strongly encourages the authorities to explore more expeditiously fresh leads and avenues in the search for the fugitives. Without a more pro-active approach, results will not be achieved.

66. The Serbian authorities must fully and effectively mobilize all available resources and continue to give full support to the operational services that have been tasked with tracking and apprehending the fugitives. It is imperative that the expressed willingness to arrest the fugitives is translated into visible and concrete results.

## 2. Support to ongoing trials and appeals

67. Trial and appeals activity remains highly dependant on Serbia's cooperation. Serbia's responses to the OTP's requests for access to documents and archives have been timely and adequate during this reporting period. A number of urgent requests were handled satisfactorily and, at this point, no responses are outstanding. Serbia's Council for Cooperation with the Tribunal continued to successfully and efficiently coordinate various government bodies to address the OTP's requests.

68. The Serbian authorities have continued to facilitate the appearance of witnesses before the ICTY, including by serving summonses. Serbian authorities have also responded adequately to requests for witness protection. The Office of the War Crimes Prosecutor has provided key assistance in these matters.

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

## **C. Cooperation of Croatia**

70. Croatia is generally responsive to the OTP's requests for assistance, which are answered adequately and access is provided to witnesses and evidence.

71. The OTP's request for important military documents related to Operation Storm is still pending. On 26 July 2010, the Trial Chamber in the *Gotovina et al.* case declined to order Croatia to produce documents due to uncertainties surrounding the whereabouts of the documents requested. However, the Trial Chamber emphasized that Croatia still has a general duty to cooperate with the ICTY regarding the documents in question.

72. In the past six months, the inter-agency Task Force established in October 2009 to locate or account for the missing military documents has continued its administrative investigations. During this six-month period, the Task Force submitted three reports. The Task Force has begun to explore important new avenues in the investigation that the OTP communicated to the Task Force over a year ago. While the OTP welcomes these efforts by the Croatian authorities, the Task Force's reports reveal inconsistencies and raise questions that have not been resolved. The authorities have acknowledged this and expressed commitment to continue their work.

73. None of the outstanding military documents were provided to the OTP and no information was given regarding their possible whereabouts during the reporting period.

74. With completion of proceedings in the *Gotovina et al.* trial, and a Judgement expected soon, the OTP urges the authorities to continue the administrative investigation and to fully account for the missing documents.

#### **D. Cooperation of Bosnia and Herzegovina**

75. During the reporting period, the authorities of Bosnia and Herzegovina, both at the state and entity level, responded promptly and adequately to requests for documents and access to government archives. The authorities continued to assist by facilitating the appearance of witnesses before the ICTY. A number of urgent requests were handled satisfactorily. The authorities have also assisted the OTP with witness protection matters.

76. The OTP continues to encourage law enforcement and judicial authorities in Bosnia and Herzegovina to act against those helping the remaining fugitives to evade justice or who are otherwise obstructing the effective implementation of the ICTY's mandate.

77. Radovan Stanković, indicted by the ICTY for crimes against humanity and war crimes, is still at large more than five years after his escape from prison in Foča. Stanković was serving a sentencing of imprisonment imposed by the Court of Bosnia and Herzegovina after his case was transferred pursuant to Rule 11*bis*. This remains a matter of great concern. The OTP requests that the authorities of Bosnia and Herzegovina, as well as neighbouring States, take all necessary measures to apprehend Stanković.

78. The OTP continues to support the work of the State Prosecutor and the Special Department for War Crimes. The Prosecutor welcomes the continued appointment of international personnel and support staff in the Special Department for War Crimes.

79. The OTP also supports the work of the cantonal and district judicial authorities in Bosnia and Herzegovina. The OTP encourages improvement in cooperation between State and entity level jurisdictions, which is crucial for the effective implementation of the BiH National War Crimes Strategy.

80. Authorities are encouraged to continue supporting justice at the national and international level. Any public support from political decision makers for persons convicted of or indicted for serious violations of international humanitarian law could discourage witnesses from giving evidence and undermine efforts aimed at reconciling and stabilizing post-conflict societies.

#### **E. Cooperation between States of the former Yugoslavia in judicial matters**

81. Cooperation in judicial matters among the States of the former Yugoslavia remains critical to fulfilment of the ICTY's mandate. Judicial institutions in the former Yugoslavia continue to face challenges. In particular, legal barriers to the

extradition of suspects and the transfer of evidence across State borders continue to present obstacles to effective investigation. 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.

82. Some progress has been made during the reporting period with agreements signed between (a) Serbia and Croatia and (b) Croatia and Montenegro for the extradition of citizens who are accused and convicted of organized crime and corruption. Although these agreements do not extend to extradition of citizens accused of war crimes, the OTP continues to actively support such initiatives at the regional level.

83. Serbia and Croatia made further progress in implementing the 2006 Bilateral Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide War Crimes Cases between the War Crimes Prosecutor's office in Serbia and the Public Prosecutor's office in Croatia.

84. Professional, impartial and cooperative interactions between domestic Prosecution offices are also essential and will become even more important as caseloads expand. The OTP continues to encourage Prosecutors throughout Serbia, Croatia and Bosnia and Herzegovina to improve their cooperation in the investigation and prosecution of violations of international humanitarian law.

#### **F. Cooperation from other States and organizations**

85. The OTP relies upon other States and international organisations to provide documents, information and witnesses for trials and appeals. The successful completion of the ICTY's work depends on the international community's assistance in providing witness protection and, when necessary, in supporting witness relocation.

86. The OTP appreciates the support of States and of international and regional organizations such as the European Union, the Organisation 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 ICTY completes its work.

### **IV. THE TRANSITION TO DOMESTIC PROSECUTION**

87. With the transfer of suitable ICTY cases and other materials back to national courts near completion, the OTP has shifted its focus in the present reporting period to strengthening horizontal partnerships with its counter-parts in the region of the former Yugoslavia. One of the OTP's foremost priorities is strengthening the capacity of national criminal justice systems to successfully prosecute the large number of war crimes cases stemming from the conflict in the former Yugoslavia.

#### **A. Enhancing partnerships and supporting national prosecutions**

88. An integral component of enhancing working relationships with partners in the region has been the presence in The Hague of three Liaison Prosecutors (one from the

State Prosecutor's Office in Bosnia and Herzegovina, one from the State Attorney's Office in Croatia and one from the War Crimes Prosecutor's Office in Serbia). These Prosecutors are part of the "Joint European Union and ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia" ("EU/ICTY Project") funded by the European Union.

89. In June 2010, the Project entered its second year of operation. The Liaison Prosecutors are integrated with OTP staff in The Hague, giving them a unique opportunity to consult with in-house experts on related cases and general issues. They also function as contact points for other national Prosecutors throughout the region who are working on war crimes investigations and cases. Since the Project began in June 2009, the OTP has received a combined total of 167 requests for assistance from the region through the Liaison Prosecutors as part of the Project. The co-location of the three Prosecutors in The Hague also encourages their collaboration on bilateral issues.

90. Another successful component of the EU/ICTY Project is the education and training of young legal professionals from the former Yugoslavia. In the past six months, nine young legal professionals from Bosnia and Herzegovina, Croatia, Montenegro and Serbia have worked in The Hague with the OTP on ICTY cases. This initiative strengthens the capacity of the countries in the former Yugoslavia to effectively deal with complex war crimes cases in the future.

91. As part of the OTP's strategy for capacity building regarding national war crimes prosecutions, OTP staff regularly participate in training programs for local Prosecutors in the former Yugoslavia and regional conferences. For example, the OTP participated in the ODHIR/OSCE "War Crimes Justice Project" held in Neum, Bosnia and Herzegovina in October 2010. Another priority for the OTP is sharing information, expertise and best practices with national and international Prosecution offices.

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

92. During the reporting period the OTP received 100 incoming requests for assistance from national judicial authorities. Of these, 64 were submitted by national judicial authorities in the former Yugoslavia. The majority of requests came from Bosnia and Herzegovina (41), with 12 from Croatia and 11 from Serbia. A number of these requests were voluminous and hundreds of pages of material were provided in response. Liaison Prosecutors working in the OTP played a key role in facilitating responses to these requests. In addition, 36 requests for assistance were received from Prosecutor's offices and law enforcement agencies in other States investigating war crimes in the former Yugoslavia.

93. The OTP responded to a total of 107 requests for assistance during the reporting period (some related to requests received in the previous reporting period). Of these responses, 74 concerned requests from the judicial authorities in the former Yugoslavia. The majority of responses (57) were sent to Bosnia and Herzegovina, six were sent to Croatia and 11 to Serbia. The remaining 33 responses were sent to the judicial authorities and law enforcement agencies in other States.

### **C. Rule 11bis cases and related matters**

94. As reported previously, the transfer of cases under Rule 11bis is complete. Final Judgements have now been rendered in five of the six cases transferred to Bosnia and Herzegovina. The case against Milorad Trbić, who was convicted of genocide and sentenced to 30 years imprisonment, is pending on appeal. The OSCE continues to monitor the *Trbić* case on behalf of the OTP and sends regular reports. The Prosecutor, in turn, submits quarterly progress reports to the ICTY's Referral Bench.

95. The *Kovačević* case transferred to Serbia remains suspended due to the ill-health of the Accused and it remains unclear if and when the trial will resume. The OTP receives regular status updates on the trial from the Serbian authorities.

96. Work is currently under way on preparing materials to be transmitted to domestic courts concerning perpetrators of crimes that have been identified in the course of ICTY cases involving other perpetrators.

## **V. DOWNSIZING AND PREPARING FOR THE FUTURE**

### **A. Downsizing**

97. The OTP is downsizing in accordance with completion of trial activities. When trials finish, the posts for the corresponding trial team are abolished. During the reporting period, the OTP downsized, 30 professional posts (including the D1 Chief of Prosecutions post) and 12 general service posts. The OTP will continue downsizing posts in accordance with the completion of trials in the next reporting period.

### **B. Residual Mechanism and Legacy issues**

98. The OTP 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.

99. The OTP recognizes the importance of preserving the OTP's institutional knowledge and lessons learned as part of the ICTY's legacy. As the OTP moves further into the process of downsizing with an increasingly rapid rate of staff departures, the need to record valuable institutional knowledge before it is lost becomes more urgent. To the maximum extent possible within the limits of its existing resources, the OTP is supporting relevant legacy projects. The OTP also has its own initiatives aimed at documenting lessons learned in key areas such as prosecuting sexual violence crimes.

100. The OTP recognizes that the ICTY's work and ultimate legacy are of enormous importance to victims. Throughout the reporting period, the Prosecutor and other OTP staff met with representatives of victim groups to ensure that the OTP's approach to legacy matters is informed by victim concerns.



## **VI. CONCLUSION**

101. The OTP remains committed to finalising its work in accordance with the Security Council's completion strategy. The Office is working at full capacity to ensure that trials and appeals proceed as expeditiously as possible and that the OTP meets its obligations. The arrest of the two remaining fugitives is critical for the successful conclusion of our mandate, reconciliation in the region of the former Yugoslavia and the credibility of the international legal system as a whole.

102. In the final stages of the OTP's work, our partnerships with our counterparts in the region of the former Yugoslavia are a central focus. We are mindful of the need to support and encourage the work of the local judiciaries as they carry on the important assignment of establishing accountability for crimes committed during the conflict.

103. The International Community has strongly supported the Tribunal since its creation and this support, including provision of the necessary financial support for the OTP's work, remains crucial to the successful completion of the OTP's mandate.