

## 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 15<sup>th</sup> completion strategy report pursuant to Security Council resolution 1534 (2004).

2. Serbia’s search for the two remaining ICTY fugitives (Ratko Mladić and Goran Hadžić) was a major focus of attention for the Office of the Prosecutor (OTP) in this reporting period. The OTP remains deeply concerned about Serbia’s continuing failure to locate and arrest the ICTY’s two remaining fugitives. While the international community has underscored its commitment to ensuring that these men are tried regardless of when they are arrested, it is in the interests of the victims of the relevant crimes and of justice more generally for the fugitives to face trial expeditiously. In the present reporting period, the OTP used every effort to encourage Serbia to fulfill its obligation to arrest the fugitives and the fugitives will continue to be a priority in the coming weeks and months.

3. Another feature of this reporting period is the completion of a significant amount of the OTP’s trial work and the increasing reorientation of the OTP’s case-load towards the appeal phase of proceedings. At this juncture, only one trial is in the pre-trial phase (the *Haradinaj et al.* re-trial). In two trials, the prosecution is presenting its case-in-chief (*Karadžić* and *Tolimir*), and in the remaining three cases, the trials are in the defence phase (*Šešelj*, (Jovica) *Stanišić and Simatović* and (Mićo) *Stanišić and Župljanin*). Two trials have concluded and are awaiting judgement (*Prlić et al.* and *Perišić*). Five cases are either on appeal or in the notice of appeal phase (*Šainović et al.*, *Lukić and Lukić*, *Popović et al.*, *Dorđević* and *Gotovina*).

4. The OTP has continued to manage its resources effectively in the present period, finding creative solutions to staffing issues. As the number of trials decreases and the corresponding trial team posts are downsized, the Appeals Division has begun absorbing more general functions for the OTP as a whole. So far, the OTP has met all of its case-work obligations. However, flexibility is decreasing as core staff members leave and finding suitable candidates to fill vacancies becomes more difficult. These difficulties will likely escalate given the absence of incentives for staff to remain.

5. The OTP also continues to facilitate national war crimes prosecutions. Capacity building in the region of the former Yugoslavia is an important aspect of the ICTY’s legacy. The OTP is also fully supporting the preparations for the International Residual Mechanism for Criminal Tribunals that will take over from the ICTY and the ICTR in accordance with Security Council resolution 1966 of 22 December 2010.

## **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 the measures for expediting trials outlined in the Prosecutor's last report, without adversely affecting the overall interests of justice. These measures focus on narrowing the issues in dispute with defence teams as much as possible and presenting evidence in written form. The Prosecution continues to identify new ways to reduce the time taken to present evidence in court.

### **B. Effective management of resources**

7. As the process of reducing staff numbers in the Trial Division of the OTP continues following the completion of trials, the Appeals Division has increasingly been assigned responsibility for essential general functions for the OTP as a whole. For example, staff members in the Appeals Division have now assumed responsibility for: maintaining a digest of the ICTY's substantive and procedural case-law and ensuring its dissemination throughout the Office; assisting with the development of a new OTP webpage to facilitate the collection and development of legal resources of general interest throughout the Office; overseeing the selection, assignment, training and management of interns for the Office; and organising periodic Legal Advisors meetings to promote information sharing and the continuing legal development of staff within the Office.

8. Particularly in periods when appeals case-work activity is low, Appeals staff members have been assigned to assist with a wide variety of other tasks throughout the Office. The Appeals Division provides substantial support to trial teams with briefing complex legal issues at trial and during interlocutory appeals. Assistance is also provided on the legal submissions in final trial briefs and closing arguments. Appeals staff members have assisted trial teams with time-limited issues, such as disclosure. They also support the Immediate Office of the Prosecutor on Residual Mechanism issues and Transition Team matters. Finally, as referred to below, the Appeals Division is presently absorbing the work arising out of the *Haradinaj et al.* retrial and the *Rašić* contempt trial.

9. Through effective planning and resource management, the OTP is also taking active steps to maintain a knowledgeable appeals team for future appeals cases, notwithstanding the loss of institutional knowledge about completed trials as staff from the Trial Division are downsized. For example, in recruiting Appeals staff, priority was given to candidates with the language skills and knowledge of relevant aspects of the conflict to effectively deal with future appeal cases.

### **C. The impact of staff attrition**

10. The increasing rate of OTP staff departures before the completion of cases makes it more difficult for the Prosecution to meet its case-work obligations. Staff members are increasingly leaving the OTP to secure longer-term employment, with the result that remaining staff members must shoulder unrealistically heavy burdens.

Recruiting to fill vacancies has become more difficult due to the limited duration contracts that can be offered. The situation is particularly severe for small trial teams. For example, in the *Perišić* case, one of two Senior Trial Attorney's leading the case and an investigator left after the Prosecution's case was completed and could not be replaced.

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

##### 1. Karadžić

11. The Prosecution is now presenting the third component of its case-in-chief, dealing with genocide, persecution and other crimes committed in municipalities throughout Bosnia and Herzegovina. Based on the current progress of the trial, the Prosecution anticipates that it will complete its case by late spring/early summer 2012. As of April 2011, the Prosecution had used 122 of the 300 hours the Trial Chamber allocated for the presentation of its evidence. Karadžić's cross-examination of Prosecution witnesses continues to occupy the largest percentage of court time. Between 13 April 2010 and 21 March 2011, Karadžić used 69.6 percent of court time. By contrast, the Prosecution used 23.7 percent and the Chamber 6.7 percent.

12. In this reporting period, starting in March 2011, there has been a two-month disclosure-related interruption to the trial schedule. The Trial will resume on 31 May 2011. The Prosecution makes every effort to ensure timely disclosure and to minimize delays to the trial schedule resulting from Karadžić's disclosure-related complaints.

13. The magnitude of the documents disclosed in the *Karadžić* case reflects a number of factors including: the size of the OTP's evidence collection which comprises some 9,000,000 pages; Karadžić's high profile and senior position during the four year conflict, resulting in enormous quantities of documents that are potentially relevant to his acts and conduct; the breadth of the Prosecution's disclosure obligations under Rule 66 and 68 requiring disclosure of materials on peripheral issues and issues about which there is no dispute; the fact that Karadžić has requested, pursuant to Rule 66 (B), material falling under more than 170 different topics; and Karadžić's many potential exculpatory claims that are peripheral to the main issues of the case, but nevertheless require OTP disclosure searches and reviews.

14. The Prosecution has taken all available steps to put in place efficient disclosure systems. For example, the Prosecution has: facilitated Karadžić's immediate access to materials as much as possible *via* the electronic disclosure suite as well as by disclosing materials to him and his defence team on CDs; reallocated all available resources to focus on disclosure reviews; within existing budgetary limits, hired temporary staff to work exclusively on disclosure reviews; and facilitated Karadžić's disclosure reviews as much as possible by fully reviewing and organizing the materials for him prior to handing them over. At the Trial Chamber's direction, marking a departure from the practice in previous cases, the Prosecution has provided Karadžić with its witness-related disclosures for the entire case, rather than providing disclosure on a rolling basis according to the witness schedule. The Prosecution has also implemented measures to process and disclose new materials expeditiously.

15. No delays have resulted from the Prosecution tendering Mladić's notebooks and related materials, which have been admitted into evidence in their entirety. The

Prosecution facilitated this outcome by rearranging its witness list to delay calling witnesses dealing with the Mladić materials.

2. Perišić

16. This case has been completed and the Trial Chamber is preparing its Judgement. According to the latest trial schedule, the Judgement in this case is projected for August 2011. The parties filed their final briefs on 4 March 2011 and they made their closing submissions between 28 and 31 March 2011.

3. Prlić et al.

17. This case has been completed and the Trial Chamber is preparing its Judgement. According to the current trial schedule, the Judgement is projected for June 2012. The parties filed their final briefs on 7 January 2011 and they made their closing submissions between 7 February 2011 and 2 March 2011.

18. As detailed in the Prosecutor's last report, the Trial Chamber permitted the Prosecution to tender six short excerpts from Mladić's notebooks as well as two related written witness statements. In late November 2010, the Trial Chamber partially granted Defence requests to tender a small amount of Mladić materials in response, but rejected a request by the accused Praljak to give testimony regarding the materials. Overall, a limited amount of the Mladić materials was admitted and caused no delay.

4. Šešelj

19. This trial is currently in the defence phase of the case. Šešelj requested a judgement of acquittal pursuant to Rule 98bis on 7 March 2011. On 4 and 5 May 2011, the Trial Chamber, by majority, rejected Šešelj's submission. The Trial Chamber ordered Šešelj to submit his witness and exhibit lists and related materials by 17 June 2011.

20. No evidence was heard during this reporting period. In December 2010, the Trial Chamber rendered decisions on 14 evidence-related motions that had been pending from as early as April 2009. The Trial Chamber rendered a further two decisions on evidence-related motions on 7 March 2011. Four evidence-related motions filed by the Prosecution are still pending. To expedite the proceedings, the Prosecution proceeded to the Rule 98bis phase of the case, notwithstanding that these motions remain undecided.

21. On 7 March 2011, the Trial Chamber admitted 13 excerpts from Mladić's notebooks and supporting materials, following receipt and review of a 15 January 2011 handwriting analysis ordered by the Trial Chamber.

5. (Jovica) Stanišić and Simatović

22. The Prosecution has completed its case and the defence phase of the case will begin on 15 June 2011. The Prosecution called its final witness on 9 February 2011 and closed its case on 5 April 2011. The Prosecution adduced the evidence of 97 witnesses and tendered almost 3,000 exhibits in 90 hours of court hearing time. The

time used is one half of the Prosecution's original estimate and 30% less than the time allotted by the Trial Chamber.

23. On 5 May 2011, the Trial Chamber issued a decision rejecting Simatović's motion under Rule 98*bis* seeking a judgment of acquittal after the Prosecution case. Jovica Stanišić did not file a Rule 98*bis* motion. Both defence teams have yet to disclose the witnesses and exhibits to be presented during the defence phase of the case.

6. (Mičo) Stanišić and Župljanin

24. The defence phase of this case began on 11 April 2011. Mičo Stanišić is presenting his evidence and he has indicated that he will call nine *viva voce* witnesses and submit two witness statements under Rule 92*quarter*. Stanišić has asked for 102 hours to complete the direct examination of his witnesses. Župljanin has listed 25 witnesses and he has estimated that he will require 70 hours for the direct examination of his witnesses. Based on current estimates, the defence phase could be completed by around September 2011.

25. The case is presently proceeding without major delays. The timely translation of documents presents some challenges due to the heavy workload of the remaining language staff at the ICTY. One factor that may have an impact on the future pace of the trial is that the three judges composing the Trial Chamber are also assigned to other cases. Presiding Judge Hall and Judge Delvoie are assigned to the *Haradinaj et al.* re-trial and they have indicated that it is unlikely that the *Stanišić and Župljanin* Trial Chamber will continue to sit five days per week for the duration of the trial. Judge Harhoff is assigned to the *Šešelj* case.

26. The introduction of material from Mladić's notebooks caused a minimal one week delay.

7. Tolimir

27. The Prosecution continues to present its case-in-chief and is proceeding ahead of schedule. Based on current estimates, the Prosecution's case should be completed by August 2011. To date, the Prosecution has used 36.9 percent of court time, the defence 46 percent, with questions from the Judges and procedural matters accounting for the remainder of the time. The Prosecution is continuously re-evaluating the remaining evidence and reducing the number of witnesses and the length of time taken to present their evidence wherever possible.

28. The Prosecution has tendered several of Mladić's notebooks. The Trial Chamber accommodated Tolimir's request for time to review the materials by extending the winter court recess by three weeks. This short adjournment has not delayed the progress of the trial.

29. The fact that Tolimir, who is self-represented, uses documents in the Bosnian/Croatian/Serbian language without providing translations to the OTP, puts significant pressure on the reduced numbers of language staff working within OTP teams.

8. Haradinaj et al. (retrial)

30. This case remains in the pre-trial phase. The Prosecution filed its pre-trial brief and witness and exhibit lists on 3 December 2010. No date for the trial to commence has been scheduled. Appeals from the three accused on the scope of the retrial are pending. The defence teams are yet to file their pre-trial materials.

31. The low numbers of Albanian language staff available to the OTP may be an issue as the case proceeds.

32. The Prosecution continues to staff the *Haradinaj et al.* re-trial with resources from the Appeals Division, given that the re-trial was not ordered until after the present budget for the ICTY had been adopted.

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

33. During the reporting period, no Appeal Judgements were issued while one Review Judgement was issued. On 8 December 2010, the Appeals Chamber rendered its Review Judgement in the *Šljivančanin case*. The Appeals Chamber reversed *Šljivančanin's* conviction for aiding and abetting murder that had been entered by the Appeals Chamber in the Appeal Judgement and restored the acquittal originally entered by the Trial Chamber. *Šljivančanin's* conviction for aiding and abetting torture, entered by the Trial Chamber, was indirectly affected by the Review Judgement. To correct a sentencing error made by the Trial Chamber in connection with this conviction, the Appeals Chamber in its Review Judgement increased *Šljivančanin's* sentence from five to ten years of imprisonment.

34. During the reporting period, no appeals hearings were held. Two appeals are fully briefed and awaiting hearing. The briefing in the *Šainović et al.* case was completed in November 2009 and current projections from the Appeals Chamber indicate that the hearing will take place in February 2012 at the earliest. The briefing in the *Milan Lukić and Sredoje Lukić case* was completed in February 2010 and a hearing has been scheduled for July. In addition, the briefing in the *Popović et al.* case is now substantially complete and the Appeals Chamber projects the hearing in July 2013 at the earliest.

35. In this reporting period, two Trial Judgements were rendered and the appeal process is now under way in these cases. The *Dorđević* Trial Judgement was issued on 23 February 2011 and the *Gotovina et al.* Trial Judgement was issued on 15 April 2011. The parties in the *Dorđević* case are presently reviewing the Judgement to determine whether to file notices of appeal, which would be due on 24 May 2011. Notices of appeal in the *Gotovina et al.* case were filed on 16 May 2011. The Prosecution has not filed an appeal against the Trial Judgement.

**F. Contempt cases**

1. Rašić

36. This contempt case continues in the pre-trial phase. The Prosecution filed its pre-trial brief on 2 May 2011 and the next status conference in the case is scheduled for 27 May 2011. In an effort to expedite the trial, the Prosecution proposed over 80

facts for agreement between the Prosecution and defence and is in cooperative dialogue with the defence to identify issues not in dispute between the parties.

37. The Prosecution continues to staff this non-budgeted contempt trial using resources from the Appeals Division.

2. Šešelj

38. The multiple contempt proceedings arising out of the *Šešelj* case continue to generate significant additional work for the OTP. A second contempt trial has commenced against Šešelj for publishing confidential information in violation of a court order. An *Amicus* Prosecutor has also been investigating Šešelj's contempt allegations against OTP staff. Although these contempt matters are the responsibility of appointed *Amici*, the Prosecution has devoted substantial resources to analysing the evidence required by the *Amici*, compiling and providing documents and preparing responses to requests by the *Amici*.

39. Securing Šešelj's compliance with orders concerning his contemptuous conduct remains a major issue confronting the ICTY. Šešelj has failed to remove protected material from his website in violation of Court orders. Šešelj's lack of compliance with court orders requires continuous monitoring to ensure the protection of witnesses, constitutes a drain on the ICTY's resources and, ultimately, presents a challenge for the ICTY's effective functioning.

**G. Access orders**

40. 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 all of the confidential materials on the trial record to identify the materials to be provided or withheld. Often, it is necessary to request the consent of 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. As of 16 May, there were also more than 20 orders granting access to confidential materials in on-going trials on a continuing basis. These access orders require the OTP 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**

41. Cooperation from the States of the former Yugoslavia remains crucial, particularly when it comes to: locating, arresting and transferring the two remaining fugitives; providing access to archives, documents and witnesses; and protecting witnesses.

42. To promote and assess cooperation during the reporting period, the OTP maintained a direct dialogue and met with government and judicial authorities from



Serbia, Croatia and Bosnia and Herzegovina, including officials in national prosecution offices.

1. Cooperation of Serbia

43. The OTP requires cooperation from Serbia in two principal areas. The first area is the implementation of Serbia's obligation to arrest 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 as well as for transferred cases

(a) Arrest of the fugitives

44. Responsibility for locating and arresting Ratko Mladić and Goran Hadžić rests with the Serbian authorities. Their capture is Serbia's most critical outstanding obligation. To date, Serbia's efforts to apprehend the fugitives have not been sufficient.

45. During the reporting period, the Serbian authorities regularly apprised the OTP of their efforts to apprehend the fugitives, including investigative steps taken and avenues pursued. The OTP maintained professional relationships with government officials at the highest levels as well as those leading operational services. During this reporting period, the Prosecutor travelled twice to Belgrade to meet with Serbia's authorities.

46. During his last meeting in Belgrade, the Prosecutor was informed about reforms to the Police War Crimes Investigations office, including increasing staff numbers and giving the police a more active role in the search operations. The Prosecutor was also informed about decisions by the War Crimes Department of Belgrade's High Court on 10 May 2011, accepting guilty pleas from six people who helped Župljanin when he was a fugitive from the ICTY.

47. In the Prosecutor's June 2010 Completion Strategy Report, Serbia was strongly encouraged to adopt a more rigorous approach to arresting the fugitives. An in-depth strategy review was recommended and ways of improving the Serbian authorities' operational approach, analysis and methodologies were identified. In the Prosecutor's December 2010 Completion Strategy Report, faced with the absence of tangible results, the OTP urged the Serbian authorities to intensify their efforts in implementing the recommendations made. They were asked to explore fresh leads more expeditiously and to cover all avenues in the search of the fugitives. Overall, they were asked to adopt a more pro-active approach.

48. Serbia continues to conduct operational activities, under the leadership of the National Security Council. However, no concrete results have been achieved and the Prosecutor's criticisms and recommendations expressed last December remain partially unaddressed. In particular, the authorities remain focused on a limited number of leads and have failed to implement the agreement to widen the scope of the investigations. A number of operational deadlines and targets agreed upon with the OTP in February 2011 have also not been met.

49. The current Serbian strategy for apprehending the fugitives is comprehensively failing. Serbia must critically re-evaluate all steps undertaken so far, re-assess its strategy and working methods and immediately address all operational shortcomings. A new, significantly more rigorous approach is urgently needed to widen the scope of the investigation and to effectively use all tools, assets and means available.

50. Throughout this reporting period, the OTP has persistently asked Serbia to examine the role played by networks of people supporting the fugitives to evade justice. Aside from the example mentioned above concerning the network supporting Župljanin, action taken against individuals accused of helping fugitives have yielded few results. Continuing efforts are needed to address this issue comprehensively and the Serbian authorities must demonstrate more determination in targeting and publicly denouncing networks.

51. The OTP once more urges the Serbian authorities to step up efforts to apprehend the fugitives. Without a notable improvement in the level of cooperation, the fugitives will not be arrested. The Serbian government must translate its expressed commitment to arrest the fugitives into concrete action and visible results.

(b) Support to ongoing trials and appeals

52. In this reporting period, the Serbian authorities have maintained the level of cooperation concerning ongoing trials and appeals from the previous reporting period. Serbia's National Council for Cooperation with the Tribunal (NCC) was a key factor in achieving this outcome and it continues to work on improving cooperation among different government bodies handling OTP requests. Serbia's responses to the OTP's requests for access to documents and archives have been timely and adequate, with no requests presently unanswered.

53. The NCC, in response to the OTP's persistent efforts, has not objected to Supreme Defence Council (SDC) documents in the *Perišić* case being reclassified as public documents. As a result, in March 2011, the Prosecutor informed the *Perišić* Trial Chamber that the SDC documents could be made public. The OTP welcomes this important development.

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

55. The OTP encourages the Serbian authorities to continue responding effectively to its requests for assistance, which will be crucial to the successful completion of the ICTY's remaining trials and appeals.

2. Cooperation of Croatia

56. In general, Croatia continues to respond in a timely and adequate manner to the OTP's requests for assistance and provides access to witnesses and evidence as required.

57. During the reporting period, the inter-agency Task Force established in October 2009 to locate or account for the missing military documents concerning Operation Storm requested for the *Gotovina et al.* case, continued its administrative investigation. Since December 2010, the Task Force submitted three reports (dated 18 January 2011, 4 February 2011, and 28 February 2011 respectively) and a separate report on 14 April 2011 summarising all of its activities and findings to date. A number of inconsistencies and questions raised in connection with the Task Force's findings, as mentioned in the Prosecutor's last Completion Strategy Report, remain unresolved. The missing documents are unaccounted for.

58. On 15 April 2011, the Trial Chamber rendered its judgement in the *Gotovina et al.* trial. During his visit to Croatia on 4 May 2011, the Prosecutor was informed by the Croatian authorities that the Task Force will continue its administrative investigation into the missing documents originally requested by the OTP as well as for other documents required in national proceedings.

### 3. Cooperation of Bosnia and Herzegovina (BiH)

59. Cooperation with BiH is focused primarily on three areas. The OTP requires BiH to: provide assistance with ongoing trials and appeals; assist in arresting the fugitives and the individuals in their support networks; and cooperate in relation to transferred cases.

#### (a) Support to ongoing trials and appeals

60. During this reporting period, the authorities of BiH, at both the State and entity levels, responded promptly and adequately to requests for documents and for access to Government archives. The authorities also continued to assist by facilitating the appearance of witnesses before the ICTY.

61. The authorities satisfactorily handled a number of urgent requests from the OTP. The authorities have also assisted with witness protection matters. The OTP appreciates the continued assistance of the authorities on these matters.

#### (b) Fugitive networks

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

#### (c) Transferred cases and investigation files

63. The OTP supports the work of the State Prosecutor and the Special Department for War Crimes in processing cases and investigation files transferred by the ICTY. All cases transferred pursuant to Rule 11*bis* have been completed.

64. As the ICTY's work nears completion, the OTP will continue to assist national prosecutions, including the cases and files transferred by the ICTY. Due to internal structural difficulties, national war crimes prosecutions continue to face challenges. A large backlog of cases is yet to be prosecuted, overall progress is slow and the National War Crimes Strategy is not yet fully implemented. The OTP encourages BiH

to address these issues and calls for greater cooperation between State and entity-level jurisdictions, which is crucial for effectively implementing the National War Crimes Strategy.

4. Cooperation between States of the former Yugoslavia in judicial matters

65. Cooperation in judicial matters between the States of the former Yugoslavia remains critical to completing the ICTY's mandate.

66. Judicial institutions in the former Yugoslavia still face challenges in coordinating their activities. Recent developments have shown that the failure to adequately address judicial cooperation threatens the rule of law needed to ensure stability and reconciliation in the region.

67. Recently concluded bilateral judicial cooperation agreements between prosecutors of BiH, Croatia and Serbia have improved information and evidence sharing in war crimes investigations. The OTP welcomes these initiatives to address past deficiencies. However, legal barriers to the extradition of suspects and the transfer of evidence across State borders continue to obstruct effective investigation. In addition, Prosecutors from different States conduct parallel war crimes investigations. This practice threatens the successful investigation and prosecution of war crimes cases and exacerbates the problem of impunity. While regional prosecutors express a commitment to addressing the problem of parallel investigations, urgent action is needed at the political and operational level.

**B. Cooperation from other States and organizations**

68. The OTP relies upon States outside of the former Yugoslavia, as well as international organizations, to provide documents, information and witnesses for trials and appeals. The successful completion of the ICTY's work also depends on the international community's assistance. Witness protection and, when necessary, witness relocation, are still critical and dependant on cooperation from states.

69. The OTP appreciates the support of States as well as international and regional organizations, such as the European Union, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and non-governmental organizations, including those active in the former Yugoslavia. This support is essential as the ICTY completes its work.

**IV. THE TRANSITION TO DOMESTIC PROSECUTION**

70. During the reporting period, the OTP continued to support national prosecutions by facilitating access to investigative material and evidence from ICTY case records and the OTP's database in The Hague.

71. Working relationships with the State Prosecutor's Offices in BiH and Croatia, and the War Crimes Prosecutor's Office in Serbia have been strengthened. An integral part of further developing positive relationships with the OTP's counter-parts in the region has been the continued presence of liaison prosecutors in the OTP in The Hague. These liaison prosecutors are participating in the "Joint European Union and

ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia” (EU/ICTY Project). There are three prosecutors participating in this Project: 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.

**A. Rule 11bis cases**

72. All cases transferred from the ICTY to BiH and Croatia pursuant to Rule 11bis have been finalised. The judgement in the last of these cases—the case against *Milorad Trbić* who was convicted of genocide and sentenced to 30 years of imprisonment—was confirmed on appeal on 14 January 2011.

73. The *Kovačević* case, which was transferred to Serbia, remains suspended due to the ill-health of the accused. It remains unclear when, or if, the accused will be fit to stand trial. The OTP has requested that the Serbian authorities monitor the situation and provide the OTP with regular updates about the status of the case. There is an ongoing civil procedure to determine whether Kovačević should be institutionalized due to the state of his health.

74. As mentioned in previous reports, the failure to re-arrest Radovan Stanković is an ongoing concern. Stanković, a Rule 11bis transferee, escaped from prison in Foča where he was serving a prison sentence imposed by the BiH court. Stanković is still at large, most likely in BiH or in Serbia, nearly four years after his escape. Both Serbia and BiH are responsible for taking action to apprehend Stanković. Although BiH has set up a task force, it has not been effective. The OTP urges BiH to increase efforts to apprehend Stanković and to take all necessary measures against those who have assisted Stanković’s escape. Similarly, despite numerous requests, Serbia has taken no steps to assist in locating and apprehending Stanković. The OTP urges Serbia to address the situation.

**B. Disclosure of material relating to crimes that were not prosecuted in ICTY cases**

75. On occasion, crimes documented in ICTY cases were not the subject of charges in those cases. Sometimes, this was because the Prosecution was unable to amend indictments to include the charges. In other cases, the Prosecution did not prosecute the crimes, but evidence of the crimes emerged during the trial. The OTP is taking steps to transfer this information to the relevant national authorities for follow-up. In one case, the information transferred to the national authorities led to an investigation and the OTP is providing follow-up information in response to requests for assistance.

**C. Requests for Assistance from national judicial authorities**

76. Between 1 December 2010 and 16 May 2011 the OTP received a total of 123 new incoming requests for assistance from states. Of these, 86 were submitted by national judicial authorities in the former Yugoslavia and the remaining 37 requests were submitted by prosecutor's offices and law enforcement agencies in other States. The majority of the requests from states in the former Yugoslavia came from BiH (55), with 17 from Croatia and 14 from Serbia.

77. In the same period the OTP responded to a total of 93 requests for assistance. Sixty-nine of those responses concerned requests from judicial authorities in the former Yugoslavia. The majority of responses were sent to BiH (46), 11 were sent to Croatia and 12 to Serbia. A number of the requests were extensive, and hundreds of pages of material were disclosed in response. Some requests were closely linked to ICTY cases and liaison prosecutors working in the OTP played a key role in processing the requests. Twenty-four responses were sent to the judicial authorities and law enforcement agencies in other States.

**D. Proceedings under Rule 75(G) and Rule 75(H)**

78. The OTP facilitates the transfer of ICTY material for domestic proceedings under the provisions of Rule 75(G) and Rule 75(H) of the ICTY's Rules of Procedure and Evidence. Rule 75(G) allows the Prosecution to seek the variation of protective measures governing materials in ICTY cases to enable the transfer of relevant materials to regional authorities. Rule 75(H) allows parties to the proceedings in national prosecutions to directly seek variation of protective measures governing materials from ICTY cases to which they seek access. In the reporting period, the Prosecution responded to five Rule 75(H) applications from judicial authorities in the States of the former Yugoslavia and filed six applications pursuant to Rule 75(G).

**E. Capacity-building efforts and inter-State regional cooperation**

79. Successful domestic prosecutions for crimes committed during the conflict in the former Yugoslavia requires national criminal justice systems with the capacity to deal effectively with these complex cases. The OTP is working to strengthen the capacity of national systems to handle these cases through effective partnerships with prosecutors and courts in the region. In addition, personnel from the ICTY's Chambers and Registry have worked in association with the OTP in training initiatives.

80. The liaison prosecutor component of the EU/ICTY Project forms the cornerstone of the OTP's capacity building efforts. The three liaison prosecutors, in close cooperation with staff in the OTP Transition Team, search and review non-confidential materials for the purposes of local war crimes investigations and cases. The liaison prosecutors are taught the same search methodologies used by OTP criminal analysts. They actively consult with in-house experts and other personnel on relevant cases and general issues. Moreover, the liaison prosecutors play an important role as contact points within the OTP for war crimes prosecutors throughout the region. At the same time the liaison prosecutors help process OTP requests for assistance in current cases.

81. In addition to the liaison prosecutors, the EU/ICTY Project invests in the education and training of young legal professionals from the former Yugoslavia who have a special interest in war crimes cases. During this reporting period, nine young legal professionals from Bosnia-Herzegovina, Croatia, Serbia and Montenegro have worked as interns, assisting the OTP with work on evidentiary and legal matters. They assist with preparing examinations-in-chief and cross-examinations, drafting motions and briefs, conducting legal research, preparing memos, minutes and correspondence and reviewing and preparing evidence for trial. They are also invited to attend lectures and presentations on topics related to the work of the OTP and the ICTY in

general. This initiative directly contributes to the future capacity of the countries in the former Yugoslavia to effectively deal with complex war crimes cases.

82. The OTP supports training programs for local prosecutors in the former Yugoslavia and facilitates the involvement of its staff in these programs so that they can share their expertise. In the reporting period, OTP representatives participated in four regional conferences focusing on information sharing and the development of expertise and best practices. The multiple agencies involved in supporting regional training programs are encouraged to coordinate their programs and avoid duplication.

## **V. DOWNSIZING AND PREPARING FOR THE INTERNATIONAL RESIDUAL MECHANISM**

### **A. Downsizing**

83. The OTP continues to downsize staff with the completion of trial activities. When trials finish, posts for the corresponding trial team are abolished. During the reporting period, the OTP downsized 15 professional posts and 16 general service posts. In particular, the OTP downsized two professional posts in the Transition Team on 1 January 2011 and 13 professional posts related to the *Perisić* trial on 1 May 2011. The OTP also downsized six general service posts related to the *Perisić* trial on 1 May. The remainder of the downsized general services posts comprise one information support unit post on 1 January 2011, one cartographic clerk on 1 March 2011, four evidence unit staff (two on 1 January 2011 and two on 1 June 2011) and four document and video unit posts (two on 1 January 2011 and two on 1 June 2011). In the next reporting period, the OTP will downsize a further 26 posts (18 professional posts and eight general service posts).

84. The OTP is conscious that the downsizing process should be conducted fairly and transparently and that staff members should be given the maximum possible notice of contract termination. The OTP supports initiatives within the ICTY and the UN system to assist ICTY staff in finding future employment options.

### **B. Residual Mechanism**

85. Following Security Council resolution 1966 of 22 December 2010, the OTP has been supporting efforts to prepare for the commencement of the International Residual Mechanism for Criminal Tribunals (Residual Mechanism) that will take over the work of the ICTY and the ICTR. The OTP is represented on the ICTY's Residual Mechanism Steering Committee and is actively engaged with Registry officials in preparing budgets for the Residual Mechanism and the ICTY for the next biennium. The OTP has also analysed the predicted functions of the Prosecutor's Office of the ICTY Branch of the Residual Mechanism and identified possibilities for resource sharing and double-hatting between that Office in the Residual Mechanism and the ICTY. The OTP is in continuous dialogue with counter-parts in the ICTR Office of the Prosecutor to ensure a coordinated, consistent and efficient approach to Residual Mechanism matters.

## **VI. CONCLUSION**

86. In this reporting period, the OTP's efforts to streamline its procedures in combination with the commendable commitment of OTP staff members significantly facilitated the completion of the OTP's trial obligations. The OTP is increasingly shifting the focus of its attention and resources to the appeals phase of proceedings to ensure that it is effectively positioned to deal with the intense appellate caseload on the horizon. At the same time, the OTP is downsizing the Office upon the completion of trials as planned.

87. In these final stages of the OTP's work, partnerships with counterparts in the region of the former Yugoslavia remain a central focus. The OTP continues to take all available steps to support and encourage the work of the local judiciaries as they work towards establishing accountability for crimes committed during the conflict. The Joint European Union and ICTY Training Project for National Prosecutors and Young Professionals from the former Yugoslavia, which has facilitated the presence of liaison prosecutors and interns from the region, is a central component of the OTP's efforts in this regard.

88. The capture of the two remaining ICTY fugitives (Ratko Mladić and Goran Hadžić) remains the OTP's foremost concern. Serbia's failure to arrest these two men undermines its credibility and the strength of its stated commitment to fully cooperate with the ICTY. It also threatens to tarnish the successful completion of the ICTY's mandate and presents an obstacle to fulfilling the international community's commitment to international justice. Serbia must act urgently to ensure that the fugitives are brought to trial without further delay.