

June 1998

**FORMER
YUGOSLAVIA**

**War Crimes Tribunal's
Workload Exceeds
Capacity**



**National Security and
International Affairs Division**

B-279546

June 2, 1998

The Honorable Jesse Helms
Chairman, Committee on Foreign Relations
United States Senate

Dear Mr. Chairman:

The wars that followed the breakup of Yugoslavia in 1991 resulted in an estimated 250,000 deaths, many of them civilians, and 2 million displaced persons. According to the United Nations Commission of Experts, the wars also involved atrocities, genocide, and other crimes against humanity. In 1993 the U.N. Security Council created the International Criminal Tribunal for the former Yugoslavia to investigate and prosecute individuals responsible for these crimes. As requested, this report (1) reviews the startup challenges the Tribunal faced and (2) assesses the Tribunal's capacity to carry out its mandate; that is, whether the Tribunal has sufficient staff, facilities, and equipment needed to investigate and prosecute individuals indicted in accordance with its statute and rules of procedure and evidence. This report includes information as of May 14, 1998.

As discussed with your staff, we did not assess whether the Tribunal had efficiently and effectively allocated and used its resources because to have done so would have required access to internal documents of the Tribunal that the United Nations did not provide to us. In addition, the United Nations did not provide us access to certain internal budgetary and planning information that we specifically requested. Consequently, we cannot comment on the overall adequacy of the financial support the Tribunal has received to carry out its mandate. Our scope and methodology are discussed in appendix I.

Background

The series of wars that occurred in connection with the breakup of the former Yugoslavia (see fig. 1) devastated many areas within the region and was marked by extreme violations of international humanitarian law, including forced population movements; forcible surrenders of property; military targeting of civilian populations; and systematic rapes, tortures, and mass murders. Civilians often were the primary targets of military actions, or used as human shields, resulting in thousands of deaths. Many were driven from their homes in campaigns of terror known as "ethnic cleansing."

Figure 1: Map of the Former Yugoslavia



Note: Serbia and Montenegro have asserted the formation of a joint entity known as the Federal Republic of Yugoslavia. The United States does not recognize this entity.

On May 25, 1993, the Security Council unanimously adopted resolution 827, which established the Tribunal under chapter VII of the U.N. charter (see app. II for a list of Security Council resolutions concerning the establishment of the Tribunal).¹ This resolution set forth the Tribunal's mandate to prosecute individuals responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since January 1, 1991.² Fighting in Croatia had ended in November 1995 after the Croatian government and local Serb authorities signed an agreement on the region of Eastern Slavonia. In Bosnia hostilities were put on hold with a cease-fire among the three warring factions in October 1995. In December 1995 parties to the Bosnia conflict, including Croatia and Serbia, signed the Dayton Agreement.³ New incidents of violence occurred in early 1998 in Kosovo, a southern region of Serbia, that may place further demands on the Tribunal. Many international officials and observers believe that the success of the Tribunal is critically important to the overall international effort to bring peace and stability to the region.

The Tribunal for the former Yugoslavia was the first criminal tribunal established as a subsidiary U.N. organization and had to rely on the international community to help it investigate and prosecute accused war criminals. The Tribunal lacks the capability to capture those it has indicted as possible war criminals and must rely on others to execute its orders and warrants, including their arrest and delivery to The Hague, the Netherlands.⁴ To carry out its mandate, the Tribunal also had to develop an operating structure and create a legal and judicial process that could be viewed by the international community as fair and credible.

¹Chapter VII authorizes the Security Council to take measures necessary to maintain or restore international peace and security.

²The area of the former Yugoslavia now comprises the countries of Slovenia, Croatia, Bosnia, the Former Yugoslav Republic of Macedonia, Serbia, and Montenegro. Serbia and Montenegro have asserted the formation of a joint independent state known as the Federal Republic of Yugoslavia. The United States does not recognize this entity.

³Representatives from Croatia, Serbia, and Bosnia's three major ethnic groups signed the Dayton Agreement on December 14, 1995. The agreement declared Bosnia a single, multi-ethnic state and established a multinational peace operation to help implement the agreement's goals. A list of other GAO products pertaining to Bosnia is provided at the end of the report.

⁴Under its rules of procedure and evidence, if states refuse to comply, the Tribunal can only report their refusal back to the Security Council. In contrast, the Nuremberg International Military Tribunal was established in 1945 by an agreement between the victorious Allied powers. Because of the unconditional surrender of Germany, it had the ability to gain access to any part of Germany, obtain any witness, and make arrests. The Nuremberg Tribunal could also draw upon massive armed forces for the trials, investigations, and other activities necessary to bring war criminals to justice.

The Tribunal's statute established three bodies: the judicial chambers, an Office of the Prosecutor, and a Registry for common administrative support. The statute also directed these bodies to conduct investigations, issue indictments and arrest warrants, prosecute and arrange for the defense of the accused before a three-judge panel, sentence convicted persons, and hear appeals.⁵ To carry out these tasks, the Tribunal needed judges, a prosecutor, investigators, lawyers, and administrative support plus a building to work in, facilities to detain suspects, and a courtroom for proceedings before investigations could begin and individuals be arrested and prosecuted. (See app. III for more information on the Tribunal's jurisdiction, organization, and process.)

To ensure its decisions are viewed as credible and withstand international scrutiny, the Tribunal's rules of procedure and evidence require that the Prosecutor present enough evidence to prove guilt beyond a reasonable doubt to obtain a conviction. This may require investigators to collect thousands of pages of information, analyze the military and civilian command structures of the various factions to establish command responsibility, obtain physical evidence from mass graves, and locate and interview potential eyewitnesses who are scattered throughout Europe and the rest of the world. Under its statute and rules of procedure and evidence, the Tribunal must protect the rights of the accused, including the right to counsel and to be informed of any information known to the Prosecutor that may suggest their innocence or mitigate their guilt. The Tribunal also must try the accused "without undue delay." The maximum penalty that the Tribunal can impose is life imprisonment.

Results in Brief

The Tribunal met its early organizational challenges and has established the organizational structure and legal processes and procedures to investigate and prosecute war crimes committed in the former Yugoslavia. There are no precise measurement standards on the personnel levels or the amount of equipment and facilities the Tribunal needs to meet its workload, and the rate of surrender or apprehension is uncertain. Nonetheless, based on our analysis of the Tribunal's primary functions, the Tribunal has insufficient investigators, judges, courtrooms, and information processors to carry out its existing workload while ensuring that it complies with its mandate, statute, and rules of procedure and

⁵The International Criminal Tribunal for the former Yugoslavia and the Rwanda Tribunal have some joint elements. They share the Prosecutor and the appeals chamber judges of the Tribunal. The Security Council established the Rwanda Tribunal in November 1994 to investigate and prosecute persons responsible for genocide and other crimes against humanity in Rwanda and neighboring territories.

evidence. As a result, the Tribunal has suspended six investigations it planned for 1998, has a growing backlog of unread documentary evidence, and may be unable to try some accused in custody without undue delay. In addition, on May 8, 1998, the Office of the Prosecutor announced the withdrawal of charges against 14 indicted individuals because, facing a much larger than anticipated workload, the Tribunal wanted to focus its available resources on persons holding higher levels of responsibility.⁶

According to the President of the Tribunal and other experts, what constitutes undue delay is not specifically defined, but they believe the Tribunal's credibility and legitimacy may be jeopardized if it cannot bring accused in custody to trial within at least 2 years, although this time period may vary depending on the circumstances of each case. The existing caseload exceeds the 18 persons in custody and 5 trials the Tribunal originally projected in its 1998 budget request, and our analysis shows the Tribunal will need 3 years or more to try all accused currently in custody. If more indictees are arrested or additional requirements arise, such as investigating recent incidents in Kosovo, the Tribunal's already overburdened capacity in key areas will be further strained.

Our analysis of the Tribunal's plans and available resources indicates that it does not have the capacity to handle its current workload, and the problem is likely to get worse. Moreover, there are significant barriers that could inhibit efforts to quickly increase the Tribunal's capacity, such as the United Nations' lengthy recruitment process and its practice of assessing a surcharge for voluntary contributions.

Tribunal Overcame Startup Challenges

The Tribunal started its mission with few resources and staff. The U.N. General Assembly elected the 11 judges in 4 months, but more than a year was required to develop judicial rules and procedures, select a Prosecutor, acquire facilities, hire investigators, obtain a formal funding mechanism, and secure other critical resources and staff needed to conduct its work. The Tribunal encountered numerous startup problems and, as reported by the United Nations' Office of Internal Oversight Services (OIOS), inefficiently used some of its resources. For example, in 1996 OIOS reported that up to 15 guards were hired more than 6 months before the first detainee arrived and before the construction of the detention facility was

⁶The Prosecutor reserved the right to pursue the same or other charges against the 14 accused at a later date if circumstances changed. The Prosecutor's decision to withdraw the charges does not affect our conclusions regarding the Tribunal's capacity to handle its workload because the individuals named in the motion were not in custody and therefore not part of the Tribunal's existing workload that formed the basis of our analysis.

completed. Also, in March 1997, OIOS reported that the Tribunal could achieve greater efficiencies by looking into outsourcing, cost sharing, and pooling administrative functions.⁷ Nonetheless, the Tribunal has grown into a fully functioning organization. From 1993 to 1998, the Tribunal has grown from an organization with 11 judges and an approved budget of \$500,000 to an approved staff level of 571 with a budget of almost \$70 million.⁸

Tribunal Efforts to Become Fully Functional

The Tribunal needed rules of procedure and evidence, a Prosecutor, judges, investigators, lawyers, administrative support, and facilities to become a functioning international judicial body. It took 18 months after the Security Council first authorized the creation of the Tribunal before all the main elements necessary to carry out its mandate were in place (see table 1).

Table 1: Dates of Key Events in Creation of the Tribunal

Event	Date
Security Council authorizes creation of Tribunal and requests Secretary General report on implementation proposals and options	February 1993
Security Council approves the Secretary General's report and establishes Tribunal	May 1993
General Assembly elects 11 judges	September 1993
Judges adopt rules of procedure and evidence	February 1994
Tribunal hires first investigator and legal officer	June 1994
First field investigation begins	July 1994
First Prosecutor takes office	August 1994
First indictment issued	November 1994
First indictee taken into custody	April 1995
First trial begins	May 1996

Source: U.N. Security Council resolutions and Tribunal annual reports.

The Tribunal initially used offices provided by the International Court of Justice in The Hague to conduct its work. In mid-1994, the Netherlands, the host government for the Tribunal's activities, provided the Tribunal's premises and a courtroom and arranged the construction of a detention facility to house those in custody. The Netherlands continues to provide

⁷In its comments on a draft of this report, the Tribunal said that guards were not contracted before construction of the detention facility was complete and noted that the Tribunal had entered into a number of arrangements with other organizations involving common support functions.

⁸Since 1996 the Tribunal has had a 1-year, or annual, budget cycle, unlike other U.N. activities that have 2-year, or biennial, budget cycles.

security for the Tribunal's facilities, judges, senior officials, accused in custody, and witnesses.

The Tribunal also received other in-kind contributions, including equipment such as computers, vehicles, video-delay equipment, and personnel loaned by member states and nongovernmental organizations.⁹ In 1994, the United States loaned 22 personnel to the Office of the Prosecutor—about 20 percent of the Tribunal's staff at the time—to help the Tribunal get started. The number of loaned staff from member states has remained relatively constant at around 50 since 1995.

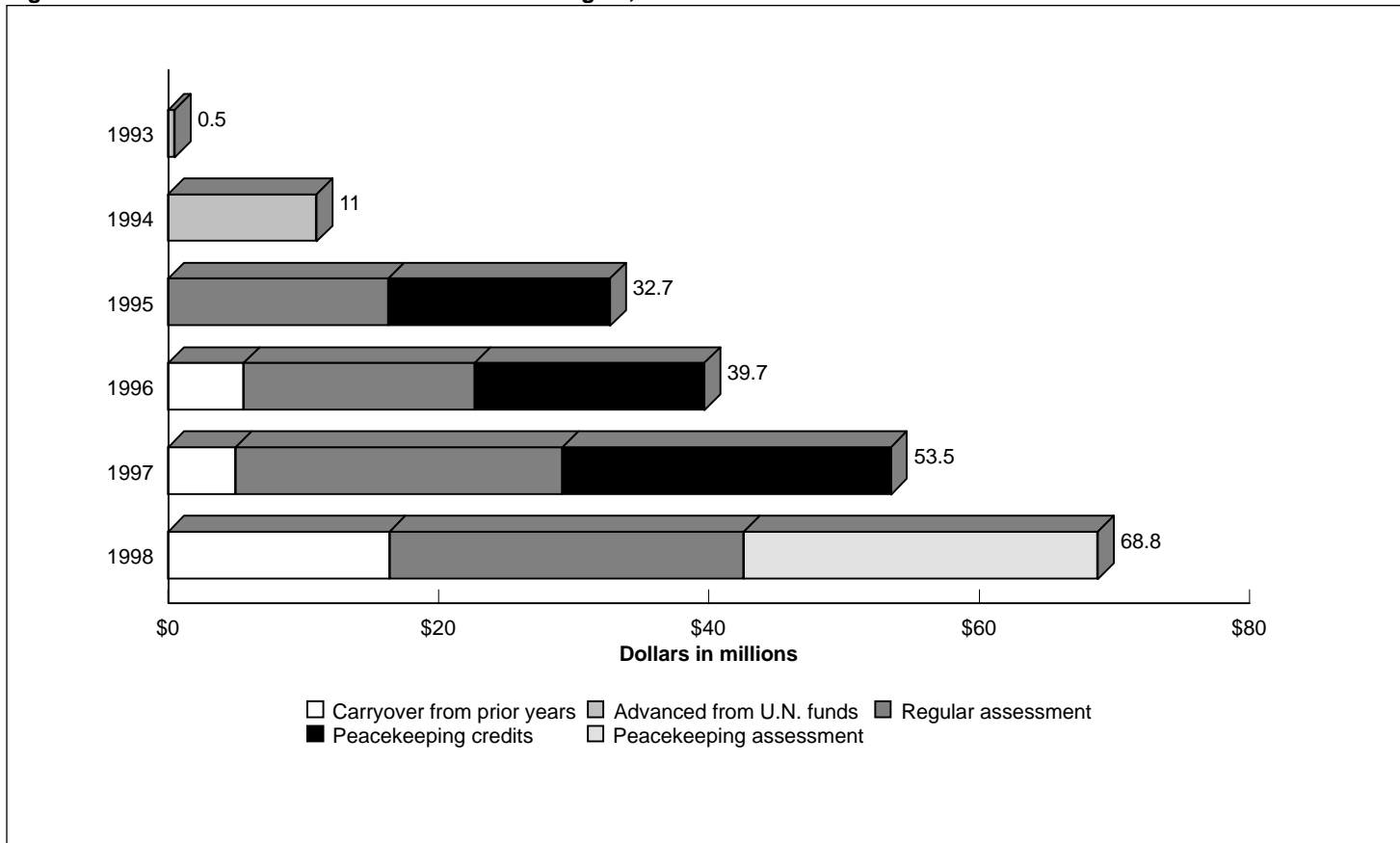
During the Tribunal's first 2 years, it did not have a formal U.N. budget but instead operated with funds advanced by the Secretary General from the U.N. regular general budget with only a 6-month commitment authority. Under this condition, the Tribunal could not enter into any long-term commitments extending beyond its temporary budget authority. This also meant that since the Tribunal had no permanent funding, a formal lease for premises could not be concluded until 1994, and the Tribunal could not recruit experienced staff and personnel other than on short-term contracts. Further, it could not purchase and install the technical equipment necessary to start investigations.

After a lengthy debate, in July 1995 U.N. member states reached a compromise agreement to create a special account to finance the Tribunal. The compromise called for half of the Tribunal's budget to be funded using the U.N. regular assessment scale and half using the peacekeeping assessment scale.¹⁰ Figure 2 shows the amount and source of funds for the Tribunal's budget.

⁹Staff loaned from U.N. member states to the United Nations are also known as "seconded" or "gratis" personnel.

¹⁰Developing countries argued that they should pay a lesser scale and that permanent members of the Security Council should pay at the higher peacekeeping assessment scale. The United States and some other countries argued that the Tribunal should be funded like the International Court of Justice, using the U.N. regular budget assessment scale.

Figure 2: Sources and Amount of the Tribunal's Budgets, 1993-98



Sources: Compiled by GAO from U.N. financial documents.

Voluntary Contributions Fill Critical Resource Needs

In addition to in-kind contributions, loaned personnel, and regular budget assessments, in September 1993 the General Assembly asked member states and other interested parties to make voluntary cash contributions to the Tribunal's trust fund.¹¹ As shown in table 2, since the Tribunal was established and through March 1998, the cumulative voluntary cash contributions and pledges have been about \$14 million from 28 countries and organizations.

¹¹U.N. General Assembly resolution 47/235 (1993).

Table 2: Voluntary Cash Contributions to the Tribunal as of March 31, 1998

Dollars in thousands	
Country	Amount
Malaysia	\$2,500.0
United Kingdom	2,485.1
Netherlands	2,247.7
Italy	2,030.0
United States	1,190.0
Pakistan	1,000.0
Canada	988.2
European Commission	342.6
Saudi Arabia	300.0
Switzerland	230.2
Denmark	213.7
Norway	191.3
Ireland	121.8
Austria	100.0
Luxembourg	100.0
Other countries	108.6
Total	\$14,149.2

Note: Cash contributions do not include the value of in-kind donations.

Source: U.N. financial documents.

According to State and Tribunal officials, the Tribunal has used voluntary contributions to finance critical resource needs. For example, in January 1998, the Netherlands contributed \$1.7 million in in-kind contributions and the United States \$1 million in in-kind contributions to construct a second, fully equipped courtroom for the Tribunal. Previously, the United Kingdom had contributed about \$500,000 for the construction of another courtroom. The United States also contributed \$1.1 million in March 1998 to support the Tribunal's investigation of the Serbian attack on ethnic Albanians in Kosovo and other investigative priorities.¹²

Tribunal's Current and Future Workloads Exceed Capacity

Our analysis of the Tribunal's plans and available resources indicates that it does not have the capacity to handle its current workload, and the problem is likely to get worse. The Tribunal will be unable to conduct the number of investigations it planned for 1998, may be unable to begin trials

¹²While most of the U.S. contribution was in-kind, \$400,000 of the total amount was a cash contribution to the trust fund. Table 2 does not include this recent cash contribution.

without undue delay, and will continue to have a growing backlog of unread documentary evidence. Moreover, as more indictees are arrested during the year, the Tribunal's ability to continue ongoing investigations and ensure indictees are brought to trial without undue delay will be further eroded. There are major obstacles to quickly expanding the Tribunal's capabilities, including the U.N. system's complex recruitment process and a surcharge assessed to donors who make voluntary contributions.

Although the Tribunal has no specific guidelines for determining the exact length of time after which detention is no longer lawful, the Tribunal statute requires the Tribunal to try the accused without undue delay. According to the Tribunal President and State Department officials, pretrial detention longer than 2 years could be considered undue delay, although this may vary depending on the circumstances of each case. The ability to start trials soon after indictees are brought into custody can have important political implications. For example, one of the important conditions of the U.S.-negotiated surrender of 10 Bosnian Croats in October 1997 was the U.S. commitment to support the Prosecutor's pledge to be ready to try some of the 10 accused within 3 to 5 months of their surrender (as of May 1998, trials for the 10 who surrendered had not begun). According to State Department officials, indictees are less likely to surrender if they face the prospect of months or years in custody before their trials begin.

Current Workload Exceeds Capacity

Our analysis shows that, based on its current workload and capacity, the Tribunal will be unable to undertake the number of investigations it planned for 1998 and will take at least 3 years to complete the trials and appeals of the accused currently in custody. The Tribunal has the capacity to handle the workload that existed in the fall of 1997 when it submitted its resource request for the year. As of May 14, 1998, however, 10 more indictees had been arrested or surrendered and investigations in Kosovo had been added—already exceeding the workload the Tribunal had expected for the entire year (see table 3).¹³ Moreover, only three-quarters of the new hires planned for 1998 will be in place by August 1998. As a result, the Tribunal currently does not have sufficient capacity in a number of key areas to handle its present workload.

¹³The Tribunal's 1998 budget request was based on conservative assumptions about the number of accused who would be arrested during 1998 because, according to Tribunal officials, the United Nations had denied previous requests for budget increases based on expected increases in the number of accused in custody.

Table 3: Planned and Actual Tribunal Workload as of May 14, 1998

Workload indicator	Planned workload for 1998	Existing workload as of May 14, 1998
Number of indicted in custody	18	26 ^a
Number of indicted waiting to go to trial	2-8	18
Number of trials underway	5	4
Number of trials in preparation	4	8
Number of investigations	12 ^b	10 ^c

^aAn additional indictee was granted provisional release for health reasons and will have to return to the Tribunal when his trial begins.

^bIn its 1998 budget request, the Office of the Prosecutor planned to conduct 12 fully active investigations during 1998.

^cAccording to the Office of the Prosecutor, none of these investigations is being carried out by a full complement of investigators, although each is fully active to the extent that resources permit. Six investigations have been suspended, and an unspecified number of additional investigations have been unable to start due to lack of investigators.

Source: Tribunal 1998 budget request (U.N. General Assembly document A/C.5/52, dated Oct. 19, 1997).

Investigators

Although no standards exist on the appropriate number of investigators for an international criminal tribunal, the Tribunal does not have sufficient investigators to carry out its existing investigatory workload. At the time of our visit in November 1997, the Tribunal had 41 investigators, including loaned personnel,¹⁴ to investigate potentially thousands of serious violations of international humanitarian law, including nearly 1,000 prison camps and other places of detention, over 10,000 cases of rape and sexual assault, and 187 mass grave sites identified by the U.N. Commission of Experts.

The Deputy Prosecutor told us that the 1998 budget would provide the Office of the Prosecutor sufficient investigators and other resources to adequately carry out its mandate for the first time, based on its planned 1998 workload. The 1998 budget authorized 72 investigators to conduct 12 fully active investigations and support 9 ongoing or pending trials. To meet these goals, the Office of the Prosecutor expected to supplement its 72 U.N.-hired investigators with up to 30 loaned staff from member states.

However, since the budget was approved, investigators have had to support 12 ongoing or pending trials. Further, they have had to suspend

¹⁴The Tribunal's 1997 budget authorized 36 investigator positions. At the time of our visit, 30 of these slots were filled. Another 11 investigators were loaned from U.N. member states.

six investigations and have been unable to begin an unspecified number of additional investigations (see table 4). As of April 1998, the Tribunal had 39 U.N.-hired and 13 loaned investigators from member states. None of its 10 active investigations were being carried out by a full complement of investigators, although each investigation is fully active to the extent that resources permit. In addition, it will be several months before the new U.N. staff approved in the 1998 budget will be on board, and the Tribunal's ability to use any loaned staff beyond June 1998—and thus accomplish the goals it set out in the 1998 budget—remains uncertain in light of the U.N. General Assembly's September 1997 resolution to largely eliminate the use of loaned staff at the United Nations. The resolution stated that loaned staff should not be used as a substitute for U.N.-hired staff necessary for the implementation of mandated programs and activities.¹⁵ However, the U.N. Secretary General could accept loaned personnel for (1) very specialized functions for a short period of time or (2) in cases of urgent need or expanded mandate.¹⁶

Table 4: Planned and Existing Workload for Tribunal Investigators

	Planned workload	Investigators required (as per 1998 budget)	Existing workload as of May 14, 1998	Number of investigators on staff as of April 16, 1998
Criminal investigations	12 ^a	102 (72 U.N.-hired and 30 loaned from member states)	10 ^b (6 suspended)	52 (39 U.N.-hired and 13 loaned from member states)
Ongoing trials and trial preparation	9		12	

^aThe Tribunal planned for these investigations to be fully active.

^bAccording to the Office of the Prosecutor, it can no longer make a distinction between fully and partially active investigations. None of these investigations has the full complement of investigators but investigations are considered fully active to the extent that resources permit.

Source: Tribunal.

Several current Office of the Prosecutor staff, former Office of the Prosecutor staff now at the Justice and Defense Departments, and State Department officials told us the number of investigators in the 1998 budget was still far short of the total necessary to handle the scope of the Office

¹⁵U.N. General Assembly resolution 51/243 (1997).

¹⁶State Department officials told us that the U.N. Secretary General had agreed to allow the continued use of loaned personnel throughout 1998. See pp. 22-24 for additional discussion and pp. 51-52 for the State Department's comments on this issue.

of the Prosecutor's work. They said that to adequately carry out its mandate, the Office of the Prosecutor would require at least twice as many investigators as requested in the 1998 budget. Several noted that a single Tribunal investigation was comparable in complexity and scope to a large criminal case in the United States, even though the entire investigative resources for the Tribunal were significantly smaller than what would be applied to such a case in the United States.¹⁷ One Office of the Prosecutor official told us he had only 6 people on his investigative team, when 35 were required to cover the scope of its work effectively. Other Office of the Prosecutor officials told us of alleged atrocities involving hundreds of deaths that could not be investigated due to lack of investigators. In its 1998 budget request, the Office of the Prosecutor reported that as of October 1997, almost 60 percent of its investigative resources were assigned to trial teams, causing the suspension of some ongoing investigations.

The Tribunal's investigative capacity is strained by the need to prepare cases for trial when indictees are brought into custody. For an indictment to be confirmed, the Office of the Prosecutor need only satisfy a judge that there is a prima facie case for believing that a suspect has committed a crime. However, to obtain a conviction under the Tribunal's rules of procedure and evidence, prosecutors need to prove guilt beyond reasonable doubt. Consequently, after an indictee is detained and brought to The Hague, investigators need to conduct additional work to prepare the case for trial. The amount of additional work required to prepare for trial depends, in part, upon the extent of the evidence collected before the indictment¹⁸ and the amount of time that has elapsed since the indictment. Investigators may need to locate original witnesses and ensure their testimony is consistent with their original statements and investigate potential defense theories.¹⁹

In general, however, the Tribunal estimates that a seven-person prosecution team needs to be established for each pending trial, including

¹⁷According to one expert's analysis, the cost of a recent investigation and prosecution of one Mafia leader was greater than the Tribunal's entire budget for 1998.

¹⁸According to the Office of the Prosecutor, indictments issued in 1995 and 1996 were based on sufficient evidence to establish a prima facie case against the accused as provided in the rules of procedure and evidence. Those issued after 1996 were prepared to meet a higher, trial-ready standard of sufficient evidence to establish the guilt of the accused beyond a reasonable doubt.

¹⁹In commenting on this report, the Office of the Legal Counselor at the U.S. embassy in The Hague said that the additional investigative work associated with the passage of time was the more important workload factor. This suggests a possible "feedback loop" where delays in bringing a case to trial creates additional investigative workload, which in turn, because of limited investigative capacity, creates additional delays.

at least two investigators who have to be pulled off ongoing investigations. Using this estimate, the Office of the Prosecutor will need 16 investigators, or 22 percent of its U.N.-hired investigators, to handle its current pending trial load, plus additional investigators to support ongoing trials. As more indictees are brought into custody, more investigators will be assigned to trial preparation, which will steadily degrade the Office of the Prosecutor's ability to carry out ongoing investigations. According to Tribunal and State Department officials, the resources required for trial preparation can be much greater for higher profile indictees. For example, these officials told us that the Office of the Prosecutor moved over half of its investigative staff from investigations to trial preparation when a Bosnian Croat general surrendered to the Tribunal in April 1996.

The recent violent incidents and killings in Kosovo have also strained the Tribunal's investigators and highlighted the Office of the Prosecutor's limited ability to quickly respond to new situations that were not foreseen in the 1998 budget. According to a senior State Department official, the Office of the Prosecutor could not provide investigators to conduct work in Kosovo without seriously hampering ongoing investigations and trial preparations. As a result, the United States contributed over \$1 million, loaned a prosecutor and an investigator to the Tribunal, and sought additional voluntary contributions and personnel from other nations.

Courtrooms

As of March 1998, the Tribunal had only one courtroom to conduct its current caseload—4 ongoing trials, 1 appeal, and various procedural and pretrial motions associated with 8 pending trials involving 18 defendants.²⁰ To handle this caseload, the Tribunal has to rotate the use of the single courtroom between pretrial motions, ongoing trials, administrative functions of the court, and appeals. The need to handle the Tribunal's entire caseload in one courtroom is inefficient and delays the entire judicial process. For example, ongoing trials are frequently delayed by the need to hear procedural or pretrial motions associated with other cases. Such motions took up over 25 percent of available court time during 1997. The need to rotate court time between ongoing trials, motions, and appeals greatly increases the amount of time necessary to complete each ongoing trial and requires those in custody for other cases to wait for months before their trials can even begin.

²⁰The number of pending trials is subject to change. Indictments with multiple defendants can be tried as a single case, provided everyone listed on the indictment is in custody and the judicial chamber hearing the case agrees. However, there is the possibility that multiple defendants on a single indictment could receive separate trials.

To address the need for additional courtrooms, the U.S., Dutch, British, and Canadian governments have voluntarily provided \$3.3 million to finance the construction of two additional courtrooms—one fully equipped to handle trials with multiple defendants, the other capable of handling pretrial motions and appeals or trials with up to two defendants.²¹ The Tribunal expects to have all three courtrooms in use by the end of June 1998;²² nonetheless, we estimated that it will still take over 2.6 years to finish the trials and appeals of all persons currently on trial or awaiting trial. This estimate assumes that (1) both new courtrooms will be completed on time; (2) court will be in session 240 days a year in each courtroom; and (3) there will be a sufficient number of judges, prosecutors, and support elements to fully staff all three on a full-time basis.²³ As of May 1998, the Tribunal had prepared, but not submitted, a request to the United Nations to hire additional support staff to run each courtroom.

Judges

The Tribunal's ability to try its growing caseload in a timely manner is limited by the lack of judges. The Tribunal's statute sets the total number of judges for the Tribunal at 11. The rules of procedure and evidence require that a panel of three judges hear each case, except that a judge who confirms an indictment cannot later sit on the panel that tries the accused. In addition, the five members of the appeals chamber cannot include a judge who confirmed an indictment or sat on a trial involving the indictee who brings the appeal.²⁴ If every convicted indictee appeals his conviction and sentence, which has been the case thus far, each indictee will require nine different judges. This did not pose a problem when the Tribunal only had one trial going at a time. Now, with four trials and one appeal underway and eight more trials pending, the Tribunal's ability to assign judges to cover the growing caseload has been strained to capacity. For example, as of March 1998, one judge was assigned six different cases, creating serious scheduling problems.

²¹The courtroom for trials uses highly technical equipment to allow the display of evidence and to shield the identity of witnesses who prefer to testify confidentially. Pretrial motions and appeals do not necessarily require such elaborate equipment.

²²On May 5, 1998, the Tribunal inaugurated the first of the new courtrooms.

²³It will take the Tribunal about 3.7 years if court is in session for the same number of days (166) as it was in 1997.

²⁴In commenting on a draft of this report, the Tribunal noted that it is "an essential element of a fair process . . . that Judges . . . not sit in more than one of [these] three capacities [so they] cannot be in a position to review their own decisions. . . ."

No matter how many courtrooms, investigators, attorneys, and translators or how much support it has, under the Tribunal's current judicial rules and procedures it can conduct no more than 3 trials at the same time with 11 judges. However, this would mean the appeals chamber could not be constituted at the same time. Our analysis of this best-case scenario showed that the chambers could complete five trials a year, assuming court is in session 240 days a year, and each trial takes 130 court days²⁵ (including pretrial motions and appeals). However, the Tribunal will have only two trial chambers. This will enable the Tribunal to conduct no more than two simultaneous trials without hindering appeals proceedings. Therefore, under the same assumptions, it will only be able to complete three trials per year. At that rate, it will take more than 3 years to clear the current caseload.

To handle its planned caseload for 1998, the Tribunal assumed its 11 judges would have dramatically increased workloads. For 1998, it assumed the chambers would handle more than twice as many trials; issue twice as many motions, orders, and warrants; and keep court in session 240 days—a 41-percent increase over 1997. However, as of March 1998, the number of pending trials already exceeds what was planned for the year. The President of the Tribunal told us she was concerned about the judges' ability to handle their growing workload, noting the draining nature of the subject, the unprecedented nature of the legal issues involved, and the requirement to create and revise the rules of procedure and evidence. In her view, the Tribunal needs at least a reserve of judges who can cover trials if the need arises. Since the number of judges for the Tribunal was established by the U.N. Security Council,²⁶ the Security Council would have to approve an increase in the number of judges.

In light of these concerns, in February 1998 the President of the Tribunal asked the Security Council to authorize four more judges. This would allow the creation of a third trial chamber and provide greater flexibility to assign judges to trial and appeal chambers as needed. On May 13, 1998, the Security Council passed a resolution authorizing three additional judges for the Tribunal.

²⁵These figures are based on the Tribunal's estimate of the length of pretrial, trial, and appellate proceedings.

²⁶Article 12 of the Tribunal Statute sets the number of judges at 11. U.N. Security Council resolution 827 (1993) approved the Secretary General's report on the Tribunal, which included the Statute as an annex.

In addition, the appeals chamber also hears and decides appeals that come from the International Criminal Tribunal for Rwanda. A State Department official told us that five judges will have to travel to Africa to hear and decide on two pending appeals sometime later in 1998. This has the potential to further disrupt the Tribunal's ability to handle its current caseload, although we were unable to quantify the impact of this requirement.

Information Backlog

The Tribunal has collected an immense amount of evidence and information on war crimes in the former Yugoslavia. By the end of 1997, the Tribunal's documents showed it had obtained nearly 1.5 million pages of documents, 12,000 photographs, 1,500 videos, and 47 cubic yards of physical evidence. However, the Tribunal has been unable to translate, process, analyze, and use this information throughout the organization. By the end of 1997, less than half of this information had been indexed, summarized, and entered into Tribunal computer information systems—leaving an information backlog of over 800,000 pages of documents, about 9,000 photographs, and so much unviewed videotape we estimated it would take one person over 2 years to watch.

Sustaining such a huge information backlog means the Tribunal is unaware of all the evidence it has obtained. Evidence vital to ongoing or planned investigations may be sitting in boxes, unread or unviewed. Not only may the Prosecutor's ability to construct a case be limited, but also evidence of potential benefit to the defense may not be known at the time of a trial. Under Tribunal rules of procedure and evidence, the Prosecutor is required to disclose to the defense any evidence it is aware of that may suggest the innocence or mitigate the guilt of an accused or affect the credibility of prosecution evidence. Although Tribunal officials told us that the most important evidence and information already had been processed into the system, some staff were concerned that exculpatory evidence might not be discovered until after a trial was completed.

The Tribunal has a computer database with summary information on all documents obtained to date, which investigators and attorneys use to get a general idea of the information on hand. Defense teams use information extracted from this database in preparing cases for their clients. In early 1997, the Tribunal estimated it had about 560,000 pages of documents collected by its investigators waiting to be indexed, summarized, and entered into this system. To help clear this backlog, the Dutch government provided \$2 million to fund a team of 20 staff to index and summarize these documents. The Tribunal anticipates that the Dutch-funded project

will have entered summaries of all this information into the Tribunal's computer system by June 1998.

While this project has been addressing the backlog that existed in early 1997, the Tribunal receives new information at the rate of 20,000 pages of documents a month, which it has been unable to process. The Office of the Prosecutor refers to this additional information backlog as its "frontlog." We estimate that, as of April 1998, it amounted to about 260,000 pages of documents. The Office of the Prosecutor expects that the additional resources provided in the 1998 budget will allow it to eliminate this new backlog at a rate of between 14,000 to 18,000 pages per month. However, with these new resources devoted to eliminating this new backlog, it is unclear how the Office of the Prosecutor will be able to process the additional 20,000 pages of documents obtained each month. In addition, over 600,000 pages of archived and other documents obtained from other organizations have never been processed into the system. The Office of the Prosecutor also has no capability to process nearly 500,000 pages of documents it expects to receive during 1998 from the archives of the U.N. Peace Forces. In January 1998, the Deputy Prosecutor concluded that the Office of the Prosecutor's inability to process these collections will create additional backlogs.

After being summarized, selected documents critical to ongoing investigations or trials are fully translated, scanned, and entered into a more complex database that shows links between documents, persons, and organizations. These links are critical for developing chain of command and command authority portions of indictments. As of January 1998, about 60,000 pages of documents were waiting to be entered into this system. According to the Office of the Prosecutor, a project funded by the International Committee of the Red Cross will help eliminate half of this backlog by the end of June 1998 and could entirely eliminate the backlog by the end of October 1998 if additional funding is secured. The Office of the Prosecutor also estimates that when 1998 approved staff levels are reached, the Tribunal believes it will have enough resources on hand to keep up with the 1,500 pages of new information coming in from investigators every month for entry into the more complex database. However, the Office of the Prosecutor will not have enough staff to be able to enter new information obtained from other sources.

In commenting on a draft of this report, the Prosecutor said that our report could raise concerns that the information backlog may cause a miscarriage of justice. While deploring the lack of available resources for backlog

processing, the Prosecutor said that she and her staff take all possible initiatives to ensure that the Tribunal's ability to deliver justice is not harmed and does not believe that the backlog has tainted the Tribunal's process. In addition, the Prosecutor noted that the Tribunal's rules of procedure and evidence allow for the review of judgments in the event new information is discovered after trials are completed.

Additional Arrests Could Overwhelm the Tribunal

With the Tribunal's May 8, 1998, announcement that it was withdrawing indictments for 14 individuals, there are currently 32 known indicted persons still at large and an unknown number of persons whose indictments are under seal (see app. IV for the status of publicly indicted individuals). A series of recent events has made it more likely that there will be significant increases in the Tribunal's future workload before the end of 1998. First, international military forces in the region have begun detaining individuals indicted by the Tribunal, including those listed in public and sealed indictments. Since June 1997, international military forces in Bosnia and Croatia have detained seven indictees and killed another who resisted apprehension. North Atlantic Treaty Organization officials have said that Stabilization Force (SFOR) troops in Bosnia will continue to detain individuals indicted by the Tribunal that they encounter during the course of their normal duties if the tactical situation permits.²⁷ Second, in January 1998, the National Assembly of Republika Srpska elected a new, moderate Prime Minister, Milorad Dodik, who announced that his government would strictly implement the Dayton Agreement, including cooperating with the Tribunal to the extent permitted by the Republika Srpska constitution.²⁸

Our analysis suggests that an increase in the number of indictees in custody during the year will overwhelm the Tribunal's ability to conduct ongoing investigations and handle trial preparations with its 1998 resource level. If arrests and surrenders continue throughout 1998, the Tribunal would likely have to close down ongoing investigations, transfer investigators to trial preparation, and seek significant additional donor

²⁷See *Bosnia Peace Operation: Pace of Implementing the Dayton Agreement Accelerated in Mid-1997* (GAO/NSIAD-98-138, June 2, 1998) for further details about the status of arrests and surrenders of indicted war crimes suspects.

²⁸While Dodik has stated that his government will encourage individuals indicted by the Tribunal to voluntarily surrender, his ability to carry out his pledges is hindered by his lack of control over police and military in some parts of Republika Srpska. Dodik has also said his government will not arrest and extradite individuals indicted by the Tribunal because the Republika Srpska constitution does not permit such action.

support—particularly if high-profile indictees such as Radovan Karadzic or a large number of lesser indictees are taken into custody.

An increase in the number of indictees in custody will create other problems for the Tribunal. It will have to find additional space and guards to keep them in custody. In April 1998, the number of indictees in custody (26) exceeded the capacity of the Tribunal's detention facility (24). In response, the Dutch government agreed to provide the Tribunal additional detention capacity. As required by the statute, indigent indictees also have the right to free defense counsel. According to a senior State Department official, an increase in the number of those in custody would seriously strain the existing capabilities of the two-person staff in the defense counsel unit, which arranges for and provides support to defense attorneys, and the Tribunal could require additional funding to expand this unit. An increase in the number of indictees preparing for trial also would place a heavy burden on the Office of the Prosecutor's computer support staff. Under Tribunal rules, the prosecutor must provide defense counsel access to all information relevant to the indictees. For example, Tribunal figures showed that discovery searches for the first three trials took between 117 and 200 days. Officials in the information and evidence section told us that these searches placed such a great strain on the computer system that other users were unable to print documents without a 30- to 40-minute delay.

The impact of an increase in the number of indictees in custody on the prosecution would depend on the number of indictments (and thus roughly the number of pending trials) in which the indictees were included. In the Tribunal's 1998 budget request, the Office of the Prosecutor said it required two attorneys, one legal officer, and one case manager for each pending trial. However, the Tribunal's 1998 budget request only provides for two trial preparation teams.²⁹ The Office of the Prosecutor also told us that on average it had to transfer two investigators from ongoing investigations to assist in trial preparations per indictment.³⁰ Tribunal and State Department officials said that, depending on the number of additional pending trials, the need to transfer additional investigators to trial preparation would significantly disrupt ongoing

²⁹The budget for 1998 also provides for four trial teams. Trial preparation teams will become trial teams once preparatory work is completed and trial activities commence.

³⁰Since an average of four persons is listed per indictment, an arrest or surrender strategy designed to minimize the number of trials could lessen the workload impact on the Tribunal.

investigations.³¹ Without additional staff, courtrooms, and judges, the indictees would have to wait for the Tribunal to dispose of its current trial caseload—a likely 3-year project with current resources—before their trials begin. Finally, U.S. officials said that, if more investigators and attorneys were added to deal with the influx, the Tribunal also would require greater overall administrative help in such critical areas as translation and victim and witness support.

Challenges to Increasing Capacity

We noted that there are several administrative barriers that could inhibit efforts to quickly increase the Tribunal's capacity. For example, the Tribunal must comply with U.N. rules for recruitment. According to State, U.N., and Tribunal officials, the complex U.N. process for locating, selecting, and placing new staff in The Hague can take many months. Recruitment for U.N. positions must include global notification, screening for necessary skills, and compliance with geographic and gender diversity requirements. In an effort to speed this process, the U.N. Secretariat has granted the Tribunal nearly complete control over recruitment. Nonetheless, the Registry, which provides administrative support for the Tribunal, told us it expected it would take about 3 months from the time a position vacancy is posted before new staff are actually in place at The Hague. However, State and Tribunal officials who have had experience with this process told us that it actually takes 6 to 12 months to identify candidates and bring him or her on board.

Surcharge

Another barrier is the United Nations' surcharge on voluntary contributions. Voluntary contributions to U.N. programs administered and managed by the U.N. Secretariat, such as the Tribunal, are charged a 13-percent overhead surcharge for cash and in-kind contributions, such as loaned personnel.³² According to the U.N. Under-Secretary-General for Management, a 1980 U.N. General Assembly resolution does not allow the United Nations to use funds from its regular budget to support the costs incurred by voluntary contributions from member states.³³ U.N. officials told us that the surcharge is necessary to recoup the administrative costs involved in supporting the equipment and staff contributed by member states, although in commenting on this report, the United Nations said that

³¹In January 1998, the Deputy Prosecutor wrote that the transfer of resources (investigators) from investigations to trial preparation during the course of 1997 had "... progressively eroded" the "... investigative aspect of the [Tribunal's] mandate. . . ."

³²Cash contributions funds are maintained in a special U.N. trust fund account and are available to the Tribunal when it asks U.N. headquarters to release the money for specific activities.

³³U.N. General Assembly resolution 35/217 (1980).

the surcharge can be waived if a contribution does not involve additional costs to the United Nations.

The surcharge can deter potential donors. For example, because of the surcharge, the United States significantly reduced the number of U.S. loaned staff from 22 in 1994 to 7 in March 1998. The Defense Department has never agreed to pay the surcharge and, as a result, in December 1996, removed the staff it had loaned to the Tribunal. Defense Department officials likened the surcharge to paying tax on a gift, and the Department will not loan staff to the Tribunal unless the United Nations drops the fee or the State Department pays the 13-percent U.N. surcharge. The Federal Bureau of Investigation also refused a December 1997 Tribunal request to loan investigators to the Tribunal until the State Department agreed to pay the surcharge or the United Nations agreed not to impose it. These interagency negotiations delayed the delivery of U.S.-loaned staff to the Tribunal by several months. According to a senior State Department official, in March 1998 the U.N. Secretary General and the Secretary of State discussed this issue. The official said that the Secretary General indicated his agreement with the U.S. position and would address the issue. The State Department took this to mean that the United States would no longer be billed for the voluntary contribution surcharge. In commenting on this report, the U.N. Under-Secretary-General for Management clarified the Secretary General's comments during the meeting, and said that the Secretary General did not announce a change in the United Nations' policy on the surcharge, but only indicated that adjustments might be possible.³⁴

Loaned Staff

The use of loaned staff at the United Nations has also been a controversial issue for a number of years. In September 1997, the General Assembly passed a resolution calling on the Secretary General to phase out at the earliest possible date the use of most loaned personnel at the United Nations.³⁵ U.N. documents show that developing countries in particular dislike the practice because, in part, they see it as damaging potential employment opportunities for their nationals. They also see the practice as

³⁴In March 1998, after meeting with the Secretary of State, the Secretary General reported on the U.N. method for applying administrative costs to loaned personnel and cited two conditions under which there would be no surcharge. First, assessed budgets could include a limited number of posts for very specialized functions for which gratis personnel might be needed. If the budget were approved, these personnel would be considered U.N. staff and not subject to a surcharge. Second, if temporary and urgent assistance were needed for new or expanded mandates, gratis personnel would be required for short durations and not be subject to a surcharge.

³⁵U.N. General Assembly resolution 51/243 (1997).

a means for the wealthy countries to influence the United Nations unfairly, according to these documents and a former U.S. official.

As of February 1998, 9 governments and 3 nongovernmental organizations had loaned about 50 personnel to the Tribunal, including 5 from the United States, primarily prosecutors from the Department of Justice. The Tribunal is expected to gain additional loaned personnel from U.N. member states for the first 6 months of 1998 to help the Tribunal handle its increasing workload, until new staff hired with funds from the 1998 budget are brought on board. Although there are provisions for continued use of a limited number of specialized positions that cannot be filled through the U.N. recruitment system, the Tribunal's 1998 budget assumed that its entire complement of loaned staff would be gone by the end of the year. In commenting on this report, the Registrar said that, in accordance with the instructions of the General Assembly and the Secretary General, the Tribunal is taking steps to phase out virtually all of its loaned personnel by the end of June 1998.³⁶ However, according to State Department officials, the Secretary General told the Secretary of State in a March 1998 meeting that he would find a way to address the issue of restrictions on the continued use of staff loaned to the Tribunal. State Department officials told us that as of May 4, 1998, the United States had sent two additional loaned personnel to the Tribunal and plans to send at least eight more.

If the use of loaned staff is discontinued, the Tribunal would lose vital expertise in areas such as investigations and forensics that are needed to conduct the Tribunal's work, according to Tribunal and U.S. officials. Discontinuing the use of loaned personnel also would remove an important tool the Tribunal has used in the past to obtain skilled personnel for key positions quickly. U.S. officials told us that loaned staff are the best way for the Tribunal to quickly obtain the highly skilled personnel necessary to handle its complex investigations and prosecutions. For example, the Tribunal's ability to rapidly send investigators to Kosovo will rely on loaned staff from the United States and other countries. In addition, three out of four of the attorneys that prosecuted the first trial at the Tribunal were loaned staff. According to U.S. officials, as a result of the Secretary of State's discussions with the U.N. Secretary General, the Tribunal would be allowed to continue to use loaned personnel. According to State Department officials, the General Assembly resolution that calls for the discontinuation of loaned personnel contains exceptions that appear to fit the circumstances of the Tribunal.

³⁶Exceptions to this general policy will be made for loaned personnel who (1) had agreements in place before the General Assembly decision was made in October 1997 or (2) have expertise vital to the Tribunal's work.

Conclusions

After overcoming significant startup challenges, the Tribunal has begun to successfully investigate and prosecute war criminals. However, the Tribunal has insufficient investigators, judges, courtrooms, and information processors to carry out its existing workload because the recent increase in the number of detainees exceeds what the Tribunal planned for in its 1998 budget request. The Tribunal's capacity to carry out its primary functions will become more strained as more indicted are brought into custody. As a result, with its current capacity, the Tribunal will be unable to perform all of the investigations it planned for the year or ensure that trials begin without undue delay. If arrests and surrenders continue throughout 1998, the international community will likely have to provide additional support to the Tribunal to ensure it can maintain its legitimacy.

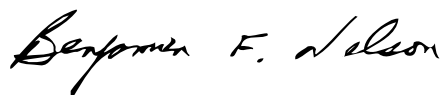
Agency Comments and Our Evaluation

The Departments of State and Defense, the Tribunal, and the U.N. Under-Secretary-General for Management provided written comments on a draft of this report. State and Defense generally concurred with the report. State, the Tribunal, and the U.N. Under-Secretary-General for Management described their views on the merits of the United Nations' policy on imposing a surcharge on cash and in-kind voluntary contributions and its application to contributions to the Tribunal. In some cases, these views differ and we added information to the report to reflect their respective positions. We did not assess the merits of the surcharge policy, but rather focused on its impact on efforts to increase the Tribunal's capacity. The Tribunal and the U.N. Under-Secretary-General for Management also provided comments which we have incorporated in the report as appropriate. The comments of the Departments of State and Defense, the Tribunal, and the U.N. Under-Secretary-General for Management along with our evaluation of them are reprinted in their entirety in appendixes V through VIII, respectively.

We are sending copies of this report to other appropriate congressional committees, the Secretaries of State and Defense, the U.N. Secretary General, and the President of the Tribunal. Copies will also be made available to other interested parties upon request.

Please contact me at (202) 512-4128 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix IX.

Sincerely yours,

A handwritten signature in cursive script that reads "Benjamin F. Nelson".

Benjamin F. Nelson
Director, International Relations
and Trade Issues

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Abbreviations

OIOS	Office of Internal Oversight Services
OTP	Office of the Prosecutor
SFOR	Stabilization Force

Objectives, Scope, and Methodology

This report (1) reviews the startup challenges the Tribunal faced and (2) assesses the Tribunal's capacity to carry out its mandate; that is, whether the Tribunal has sufficient staff, facilities, and equipment needed to investigate and prosecute individuals indicted in accordance with its statute and rules of procedure. We included information as of May 14, 1998.

To review the startup challenges of the International Criminal Tribunal for the former Yugoslavia, we consulted Tribunal annual reports and press releases, budget resolutions from the United Nations' Fifth Committee and Advisory Committee on Administrative and Budgetary Questions, and budget documents from the U.N. Secretariat. We also met with State Department, U.N., and Tribunal officials to discuss how the Tribunal was created and how its current structure and operations evolved over time.

To assess the Tribunal's capacity to carry out its mandate, we measured its capacity in four areas—investigators, courtrooms, judges, and information processing—that (1) were central to the Tribunal's ability to perform its mission and (2) we were best able to assess from the available documentation. The Tribunal's annual reports and 1998 budget request contain detailed information on these four areas that we supplemented in follow-up discussions with Tribunal officials. We did not assess the Tribunal's administrative functions.

To obtain the information necessary to assess the Tribunal's capacity, we met with Tribunal officials at The Hague, the Netherlands, including the President of the Tribunal, the Registrar, and the Deputy Prosecutor; and with officials from the U.S. embassy in The Hague; the U.N. Secretariat; the U.N. Office of Internal Oversight Services (OIOS); the Department of State in Washington, D.C.; and the U.S. Mission to the United Nations in New York City. We also spoke with a number of officials from the U.S. Departments of Justice and Defense who had worked at the Tribunal on loan from the United States. We obtained documents and reports from the Departments of State, Justice, and Defense that pertained to the Tribunal. We also obtained and reviewed a number of U.N. and Tribunal documents, including the Tribunal's annual reports and press releases, budget resolutions from the United Nations' Fifth Committee and Advisory Committee on Administrative and Budgetary Questions, budget documents from the U.N. Secretariat, and OIOS reports about the Tribunal.

Because we are an agency of the U.S. government, we do not have audit authority to review the operations of the United Nations and the Tribunal.

Although Tribunal officials consented to our study and were helpful and forthcoming in our discussions, the United Nations and the Tribunal did not provide us with the internal documents that would have enabled us to assess how effectively or efficiently the Tribunal has used its available financial resources. Reports from the OIGs indicate that this may have been a problem. Without such access, we were unable to review the overall adequacy of the Tribunal's financial resources nor could we determine whether the Tribunal could have more efficiently and effectively allocated them. For example, we did not have access to internal Tribunal documents that detailed the assumptions and rationales behind its 1998 budget request, nor could we review Tribunal financial records to determine whether allocated funds were being fully or effectively used in all areas of the operation.

Nonetheless, we were able to compare the Tribunal's current and future workload with its capacity in its key investigative, prosecutorial, and judicial functions. As part of its 1998 budget request, the Tribunal developed 113 indicators such as number of ongoing trials and number of courtrooms to measure its workload, establish goals, and judge performance. We used some of these indicators to measure the Tribunal's current and future workload. Table I.1 shows some additional examples of these indicators.

**Appendix I
Objectives, Scope, and Methodology**

Table I.1: Examples of Tribunal Workload Indicators

Indicator	Level in 1996	Level in 1997	Projected for 1998
Ongoing trials	1	2	5
Pretrial motions, orders, and applications	152	100	200
Number and status of investigations	28 (9 active; 10 partially active; 3 suspended; 6 completed)	10 (3 active; 7 partially active)	12 (12 fully active)
Witnesses interviewed	1,693	2,300	4,600
Number of documents in OTP evidence collection	68,000	113,000	161,000
Detainees (average)	4	20	18
Pages translated per year	27,300	29,500	40,000
Court sessions supported	131	183	309

Legend
OTP = Office of the Prosecutor.

Source: Tribunal's 1998 budget request.

Since the Tribunal is an unprecedented body with a unique mandate, there are few recognized standards or criteria for critical aspects of its operations, such as how many investigators are required per investigation, how many attorneys are necessary for preparing an indictment, how many people the Tribunal needs to indict, and how long it should remain in operation. However, the Security Council resolutions that established the Tribunal, its statute, and its rules of procedure and evidence provide a series of requirements for the Tribunal and its judicial process. For example, each trial must be heard by three judges and the accused have the right to be informed of any evidence known to the Prosecutor that may suggest their innocence or mitigate their guilt and to be tried without undue delay. We performed our assessment by determining whether the Tribunal had sufficient capacity in key areas to be able to comply with these criteria.

The ability to ensure that trials begin without undue delay is particularly important. However, the Tribunal has no specific guideline for determining the exact length of time which constitutes undue delay. In a

September 1996 decision, a Tribunal trial chamber found that applying the “without undue delay” standard depends on individual circumstances and cited seven factors enumerated by the European Commission of Human Rights that should be considered when making that determination.¹ These factors include the seriousness of the offense, the difficulties in conducting the investigation, and the impact of detention on the indictee. In that decision, the Tribunal ruled that a detainee’s 4-month detention before the start of his trial could not, in the circumstances of that case, be considered undue delay. The Tribunal President and State Department officials generally considered that pretrial detention longer than 2 years could be considered undue delay, although this may vary depending on the circumstances of the case.

To examine the relationship between capacity and workload, we used estimates the Tribunal had developed on the number of people or amount of time necessary to carry out key tasks based on its past experience. For example, the Tribunal assumed each trial would require 100 court days and that one person could index between 14,000 to 18,000 pages of information per month (see table I.2). The Tribunal used these estimates to justify its request for funds. As such, the Tribunal’s 1998 budget request represents its best judgment on what it needed to accomplish its performance goals for the year. We used these estimates to calculate the number of staff or length of time necessary to handle the Tribunal’s current and potential workload.

Table I.2: Tribunal’s Estimates of Necessary Capacity for Certain Tasks

Task	Necessary capacity
Trial	100 courtroom days
Pretrial motions	20 courtroom days
Investigation team	1 team leader, 7 investigators, 1 analyst
Trial team	3 attorneys, 2 investigators, 1 legal officer, 1 case manager, 1 trial support assistant
Summarize documents	14,000 to 18,000 pages per month, per person

Source: Tribunal 1998 budget request.

In assessing the number of investigators, we used the Tribunal’s estimates of the number of investigations it planned to undertake as the criteria for measuring whether it had enough investigators. Our ability to analyze the number of investigators was further limited because we did not have

¹Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalic, Case No. IT-96-21-T (Sept. 25, 1996).

access to specific information on the relationship between the number of investigations and the number of investigators. Nonetheless, we contrasted the number of investigators the Tribunal has with the number it thought necessary to carry out the 12 investigations it planned for 1998. We also calculated the number of investigators that would have to be pulled off investigations to assist in trial preparation based on information we received from the Office of the Prosecutor.

To calculate how long it would take the Tribunal to complete its current caseload based on the number of courtrooms, we applied the Tribunal's standard estimates of 20 days necessary for pretrial motions, 100 days for the trial, and 10 days for the appeals to determine the total number of trial days. We assumed that all verdicts would be appealed.² We also used the Tribunal's 1998 budget estimates of the number of days (1) court was in session during 1997 and (2) the Tribunal plans to have court in session in 1998. This allowed us to estimate the total number of courtroom days per year and the total length of time necessary to complete the current caseload.

The courtroom analysis assumed that there will be enough judges and other staff to allow the operation of three courtrooms. With its current 11 judges, the Tribunal can have no more than three trials going at the same time, due to the requirement in the Tribunal's statute that three judges need to hear each trial. However, in practice, the Tribunal can only hear two trials at the same time without jeopardizing its ability to constitute an appeals chamber, since it has only two trial chambers. Using the Tribunal's estimate of being in session 240 days a year, we assumed that the court could handle 480 trial days a year. If each trial takes 130 days, the Tribunal could complete about 3.7 trials per year.

Our analysis of the size of the Tribunal's information backlog and its ability to eliminate it was based on the 1998 budget request and supplementary information we obtained from the Office of the Prosecutor. Based on this information, we calculated that the Tribunal has nearly 1.5 million pages of information. We then estimated the size of the Tribunal's backlog based on its estimates of how quickly staff could summarize and index documents, enter documents into the detailed database, and scan photos into the document database. We also calculated the number of hours of unviewed videotape based on estimates we obtained from the Tribunal. Finally, based on figures in the 1998 budget

²Every verdict issued to date has been appealed. The statute allows the Prosecutor or the defense to appeal a verdict.

Appendix I
Objectives, Scope, and Methodology

request, we estimated how long it would take the Tribunal to clear its backlog of information and whether the Tribunal would be able to keep up with the inflow of new information during the year.

We conducted our work from September 1997 to May 1998 in accordance with generally accepted government auditing standards.

U.N. Security Council Resolutions Pertaining to the Establishment of the Tribunal

Resolution number	Date	Purpose
764	July 13, 1992	Reaffirms that all parties to the conflict are bound to comply with their obligations under international humanitarian law.
771	August 13, 1992	Condemned any violations of international humanitarian law and required that all parties cease and desist from breaches of the law. Called on U.N. member states to report violations.
780	October 6, 1992	Established an impartial Commission of Experts to investigate "grave breaches of the Geneva Conventions and other violations of international humanitarian law. . . ."
787	November 16, 1992	Reinforced request in resolution 780 for Commission to continue its investigative efforts. Reaffirmed the United Nations' condemnation of violations of humanitarian law. Emphasized persons would be held individually responsible.
808	February 22, 1993	Authorized the establishment of the International Criminal Tribunal and requested the U.N. Secretary General report on the statute of the Tribunal within 60 days.
827	May 25, 1993	Established the Tribunal and approved the Secretary General's draft of the statute.
857	August 20, 1993	Established list of 23 potential judges from which the General Assembly was to select 11.
877	October 21, 1993	First selection of Tribunal Prosecutor. ^a
936	July 8, 1994	Appointment of second Tribunal Prosecutor. ^b

^aThe first person selected as Prosecutor declined the position in early 1994 without ever taking office.

^bThe second person selected as Prosecutor was the first to actually take office.

Source: United Nations.

The Tribunal's Jurisdiction, Organization, and Process

Tribunal's Jurisdiction

The Tribunal's jurisdiction stems from its U.N. Security Council mandate to prosecute individuals responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since January 1, 1991. To implement its mandate, the Tribunal functions in accordance with the provisions of the Security Council-approved 1993 statute and its set of rules of procedure and evidence. The statute authorizes the Tribunal to prosecute persons for grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, crimes against humanity, and the commission of genocide. The Tribunal and national courts in Bosnia, Croatia, and other member states have concurrent jurisdiction; however, the statute recognizes the Tribunal as having primacy over those courts. Thus, the Tribunal can formally request national courts to defer to the Tribunal at any stage in their own investigation or prosecution of alleged war crimes.

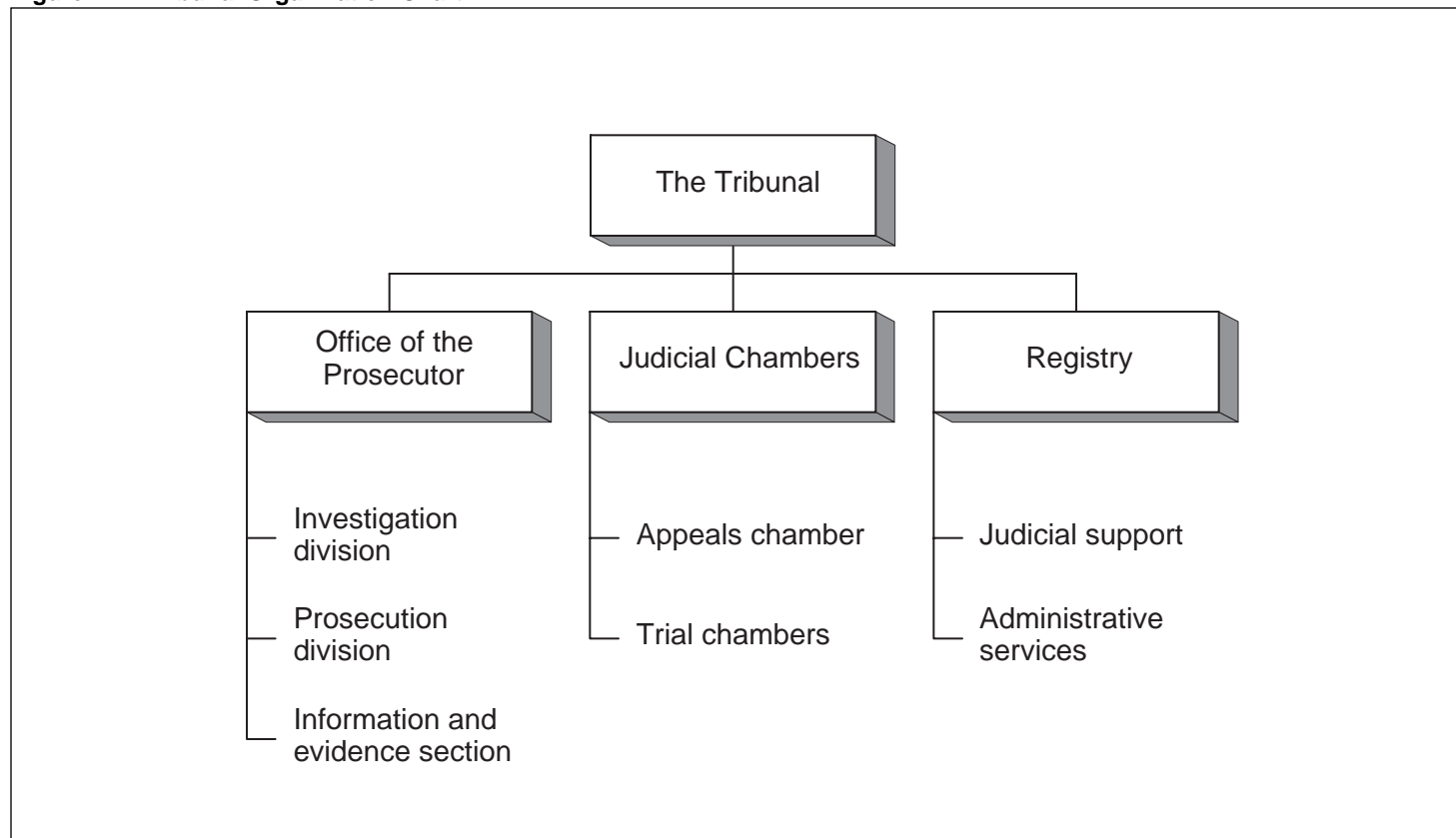
The statute requires all U.N. member states to cooperate with the Tribunal in the investigation and prosecution of accused war criminals. States are required to comply without undue delay with any Tribunal request for assistance or order issued by a trial chamber. This includes the identification and location of persons; the production of evidence; the service of documents; and the arrest, detention, and transfer of the accused to Tribunal headquarters in The Hague, the Netherlands. However, the Tribunal has no direct enforcement power if a state fails to comply. It can only report lack of compliance to the Security Council. For example, in July 1997, three judges from the Tribunal ruled that Croatia and its Minister of Defense are required to comply with subpoenas requiring them to produce documents relevant to an ongoing trial. However, in October 1997, the appeals chamber of the Tribunal ruled that although the Tribunal can order the production of information by states, it has no authority to enforce those orders and must rely on the Security Council to take action against the uncooperative state.¹ The signatories of the 1995 Dayton Agreement, some of whom are not members of the United Nations, also pledged to fully cooperate with the Tribunal, although the Bosnian entity Republica Srpska, and Serbia and Montenegro have not lived up to their pledge. The statute also provides a role for the U.N. General Assembly in electing the judges of the Tribunal, approving the budget, and reviewing the Tribunal's annual reports.

¹The Tribunal's 1997 annual report noted that it "must turn to States for the execution of its orders and warrants. If States are ready and willing to cooperate, the Tribunal is in a position to fulfill its mission. If States instead refuse to implement those orders or to execute warrants, the Tribunal will turn out to be utterly impotent."

Tribunal's Organization

As shown in figure III.1, the Tribunal is organized into three bodies: an Office of the Prosecutor, the judicial chambers, and a Registry for common administrative support. In total, these bodies constitute an entire criminal justice system. The Tribunal shares the Prosecutor and the five members of its judicial appeals chamber with the International Criminal Tribunal for Rwanda.

Figure III.1: Tribunal Organization Chart



Source: Tribunal 1998 budget request.

The Office of the Prosecutor is required to both investigate and prosecute persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991. The Prosecutor, who heads the Office of the Prosecutor, is nominated by the U.N.

Secretary General and appointed by the U.N. Security Council, serves a 4-year term, and is eligible for reappointment. The first acting Prosecutor took office in July 1994, and the current Prosecutor began serving her term on October 1, 1996. The Prosecutor selects the appropriate cases to investigate, identifies and locates relevant potential witnesses, gathers evidence to corroborate that criminal acts have occurred, and establishes that those acts were crimes within its jurisdiction. The Office of the Prosecutor operates independently of the judges of the Tribunal. The investigation division of the Office of the Prosecutor is responsible for conducting investigations of suspected war criminals. The prosecution division conducts the trial proceedings before the Chambers and provides legal advice to assist ongoing investigations. The information and evidence section is responsible for the retention, storage, security, and retrieval of information and physical evidence and provides computer services support. The Office of the Prosecutor also has three small offices in Sarajevo, Zagreb, and Belgrade to support and assist investigators working in the field. The government of Republika Srpska has also offered to allow the Office of the Prosecutor to open a fourth office in Banja Luka.

The Judicial Chambers holds the trials and makes the ultimate determination of guilt or innocence of the indictees. The chambers is composed of 11 judges from 11 different countries who rotate between 2 trial chambers of 3 judges and an appeals chamber of 5 judges. The judges are elected by the General Assembly from a list of nominees submitted by the Security Council for a term of 4 years and are eligible for reelection. The President of the Tribunal, who is also a member of the appeals chamber, is elected by the judges and assigns the judges to both chambers, presides over the plenary meetings of the chambers, and supervises the performance of the Registry functions. The President is also responsible for preparing and submitting the Tribunal's annual reports to the United Nations and reporting instances of noncompliance by states.

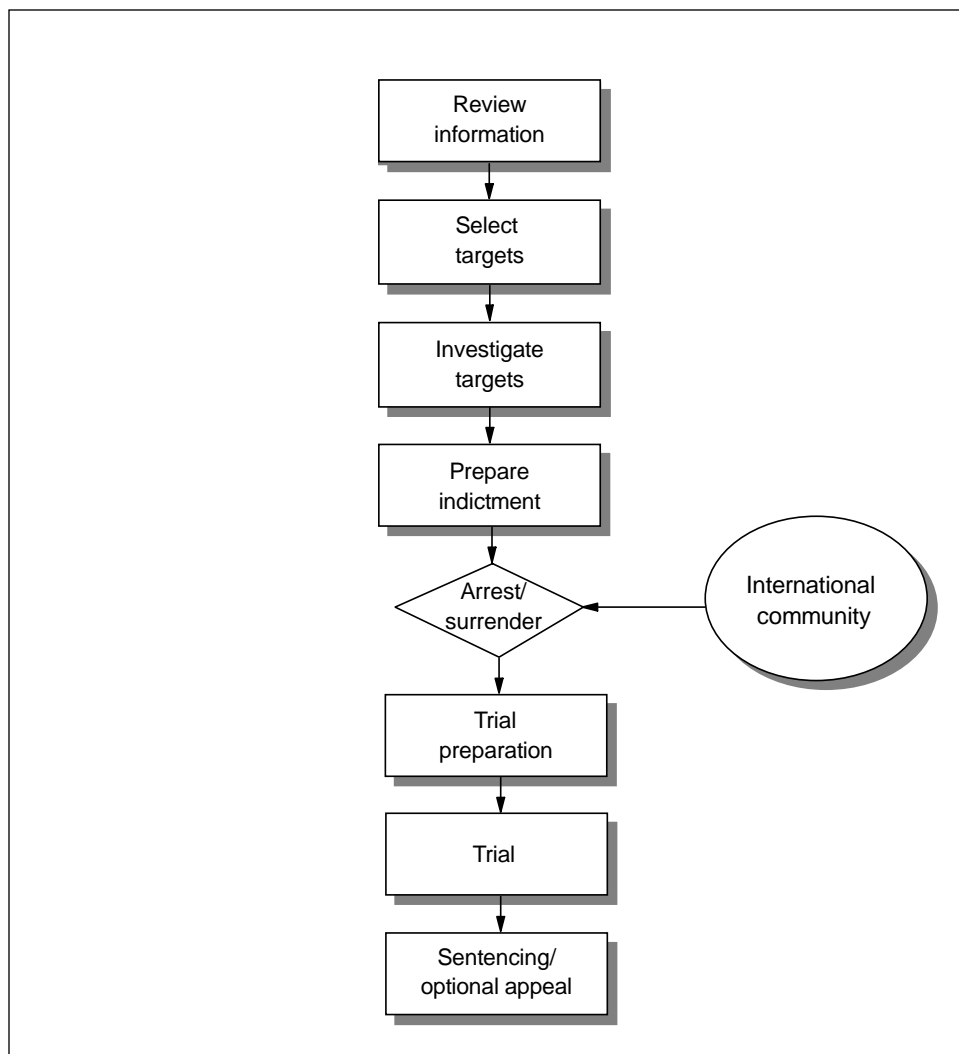
The Registry provides support to the Tribunal. Its judicial responsibilities include managing courtroom operations, providing legal support to judges, assigning defense counsel to indigent indictees, supervising the detention unit, protecting and supporting victims and witnesses, and recommending protective measures and maintaining contacts with U.N. member states. The Registry's administrative responsibilities involve financial administration and resource planning, human resource management, language services, meetings and documentation services, electronic and communications support, and building management. The Registry is also responsible for security at the Tribunal, handling relations with the press,

and providing information to the public on the Tribunal's activities. The Registry is headed by the Registrar, who is appointed by the U.N. Secretary General.

Tribunal's Process

The Tribunal's overall process for carrying out its mandate is divided into a number of steps, as shown in figure III.2. Each step is a link in the functions of the overall criminal-judicial process. The international community, and not the Tribunal, is responsible for the arrest or surrender of indictees.

Figure III.2: Tribunal's Process



Source: GAO analysis of Tribunal documents.

The process begins when the Office of the Prosecutor collects, translates, and organizes evidence of violations of international humanitarian law. This information comes from individuals, member states, or nongovernmental organizations or is collected by investigators from the Office of the Prosecutor. The Prosecutor may summon and question suspects, victims, and witnesses; obtain their statements; collect evidence; and conduct site investigations and other matters necessary for

completing the investigation and preparing the case for trial. After reviewing information collected during the investigation, the Prosecutor prepares an indictment if there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal. If a reviewing judge agrees that the evidence establishes a prima facie case, the indictment is confirmed and an arrest warrant issued. The indictee must then be located, arrested, and transferred to The Hague by authorities other than the Tribunal.

Upon arrival in The Hague, the indictee is placed in detention, enters a plea, and receives a trial date set by a judge. The Tribunal's statute requires that the trial chambers try the accused without undue delay, in a fair and expeditious manner. During the trial, the Prosecutor and defense present their cases to a panel of three judges; there is no jury. After the presentation of evidence and cross-examination, the trial chamber announces its decisions. Either the Prosecutor or defense can appeal the decision within 15 days. If the five-member Appeals Chamber upholds a conviction, the guilty party is transported from The Hague to serve his sentence in a country designated by the President of the Tribunal. Italy, Finland, and Norway have signed formal agreements with the Tribunal to allow persons convicted by the Tribunal to serve sentences in their national prisons.

The Tribunal's statute and rules of evidence and procedure spell out a series of procedural requirements and standards that the Tribunal must comply with as it carries out each step of this process. For example, only the Prosecutor can determine who will be investigated. Indictments must have sufficient evidence to provide reasonable grounds for believing a suspect has committed a crime—but the Prosecutor must eventually collect enough information to prove guilt beyond a reasonable doubt. Indictees are presumed innocent until proven guilty and have a number of rights, including the right to counsel and the ability to avoid self-incrimination, to be tried without undue delay, and to be informed of any information known to the Prosecutor that may suggest their innocence or mitigate their guilt. The rules of procedure and evidence also require newly arrested indictees to appear without delay before a trial chamber to enter a plea, which may delay ongoing trials. Ongoing trials will not be delayed by pleas once the new courtroom room for limited trial proceedings is completed in the spring of 1998.

Status of Publicly Indicted Individuals as of May 14, 1998

As of May 14, 1998, the Tribunal has made public 20 indictments against 79 individuals. With the Tribunal's May 8, 1998, announcement that it was withdrawing indictments for 14 individuals,¹ there are currently 32 known indicted persons still at large,² 26 are in custody, 3 were released after detention for lack of evidence, 3 are dead, and 1 was granted provisional release for health reasons on the understanding that he will return to The Hague when his trial begins. Of those in custody or on provisional release, 18 are waiting for their trials to start, 7 are currently on trial, 1 pled guilty and has been sentenced, and another has been convicted and is waiting for a decision on his appeal. The pace of surrenders and arrests has dramatically increased in recent months. Twenty-two indictees—including three later released for lack of evidence—were arrested or surrendered to the Tribunal in the past 12 months, including eight since the beginning of 1998. Because of the reluctance of some states to hand over indicted persons to the Tribunal, the Prosecutor has also obtained approval from confirming judges to seal an unknown number of indictments and issue sealed arrest warrants to other states or international military forces willing or able to carry them out. The total number of persons listed in these sealed indictments is unknown.

This appendix provides information on the 20 indictments made public by the Tribunal (see table IV.1) and the status of the 79 persons named in those indictments (see table IV.2) as of May 14, 1998. Some indictments are named for the location of where the alleged atrocities took place and others for the person named in the indictment.

Table IV.1: Tribunal Indictments Made Public as of May 14, 1998

Indictment	Charges
Bosanski Samac	Slobodan Miljkovic and five others planned and carried out deportations, killings, beatings, sexual assaults, and torture against the non-Serb population of Bosanski Samac in northeastern Bosnia.
Brcko	Goran Jelusic and one other systematically killed, tortured, sexually assaulted, and beat Bosniak ^a and Bosnian Croat detainees in Brcko and the nearby Luka Camp in northeastern Bosnia.
Celebici	Zejnir Delalic and three others murdered, tortured, raped, and beat Bosnian Serb prisoners at the Celebici Camp in central Bosnia from late spring to fall of 1992.

(continued)

¹The Tribunal dropped the charges due to a larger than anticipated number of trials and a prosecutorial strategy of focusing on persons holding higher levels of responsibility. The Prosecutor stated that she reserves the right to pursue charges against the 14 accused at a later date if the circumstances change.

²Thirty of those still at large are Serbs.

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Indictment	Charges
Drlijaca and Kovacevic	Simo Drlijaca and Milan Kovacevic committed genocide in the Prijedor municipality of northwestern Bosnia between April 1992 and January 1993 by planning, organizing, and implementing the establishment of detention camps for the Bosniak and Bosnian Croat population.
Erdemovic	Drazen Erdemovic participated in the summary execution of hundreds of Bosniaks following the Bosnian Serb takeover of Srebrenica in July 1995.
Foca	Dragan Gagovic and seven others subjected Bosniak women, some as young as 12 years of age, to gang rape, systematic rape, sexual assaults, torture, and enslavement.
Furundzija	Anto Furundzija did nothing to stop the torture and rape of prisoners near Vitez in May 1993.
Karadzic and Mladic	Radovan Karadzic and Ratko Mladic are responsible for genocide in the unlawful confinement, murder, rape, torture, beating, robbery, and inhumane treatment of the non-Serb civilian population of Bosnia. Karadzic and Mladic are also responsible for the sniping campaign against civilians in Sarajevo and for taking U.N. peacekeepers hostage and using them as human shields.
Keraterm Camp	Dusko Sikirica and 12 others killed, sexually assaulted, tortured, and beat Bosniak and Bosnian Croat detainees at the Keraterm Camp near Prijedor in northwestern Bosnia.
Kordic and others	Dario Kordic and five others carried out the "ethnic cleansing" of the Lasva Valley in central Bosnia including the murder, wounding, detention, and use of the Bosniak civilian population as hostages, forced labor, and/or human shields.
Kupreskic and others	Zoran Kupreskic and seven others carried out systematic attacks in April 1993 against the town of Vitez, the village of Ahmici, and eight other Bosniak villages in the Lasva Valley of central Bosnia, leading to the murder or illegal detention of many of their civilian inhabitants.
Marinic	Zoran Marinic murdered four of his Bosniak neighbors and wounded a fifth in the Bosnian Croat-controlled village of Busovaca in central Bosnia in April 1993.
Omarska Camp	Zeljko Meakic and 18 others killed, sexually assaulted, tortured, and beat Bosniak and Bosnian Croat detainees at the Omarska camp near Prijedor in northwestern Bosnia.
Sarajevo	Djordje Djukic planned, prepared, or otherwise aided in the shelling of civilian targets in Sarajevo, Bosnia, from May 1992 to December 1995.
Srebrenica	Radovan Karadzic and Ratko Mladic planned, instigated, ordered, or otherwise aided in the mass killing of thousands of Bosniaks following the takeover of Srebrenica in eastern Bosnia in July 1995.

(continued)

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Indictment	Charges
Stupni Do	Ivica Rajic commanded the unlawful attack by the Bosnian Croat military against the Bosniak village of Stupni Do in October 1993, killing at least 16 civilians and almost totally destroying the village.
Susica Camp	Dragan Nikolic killed, tortured, and treated detainees inhumanely at the Susica camp in eastern Bosnia in the summer of 1992.
Tadic and other	Dusko Tadic and Goran Borovnica persecuted the Bosniak and Bosnian Croat population of the Prijedor area; deported civilians to prison camps; and killed, beat, and raped civilians within and outside the Omarska Camp in northwestern Bosnia.
Vukovar Hospital	Mile Mrksic and three others were responsible for the killing of about 260 non-Serb men after their forcible removal from the hospital in Vukovar, Croatia, in November 1991.
Zagreb	Milan Martic ordered the firing of cluster bombs into the central part of Zagreb, Croatia, in May 1995.

^aThis report defines "Bosniak" as "Bosnian Muslims," the definition used in State Department human rights reports.

Source: Tribunal publicly released indictments.

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Table IV.2: Status of Persons Whose Indictments Were Made Public as of May 14, 1998

Name	Ethnicity	Indictment(s)	Status as of May 14, 1998
Zlatko Aleksovski	Bosnian Croat	Kordic and others	Arrested by Croatian authorities on June 8, 1996, and delivered to the Tribunal on April 28, 1997. Currently in custody and on trial at the Tribunal.
Stipo Alilovic	Bosnian Croat	Kupreskic and others	Tribunal confirmed dead on December 18, 1997.
Mirko Babic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Nenad Banovic	Bosnian Serb	Keraterm	At large
Predrag Banovic	Bosnian Serb	Keraterm	At large
Tihomir Blaskic	Bosnian Croat	Kordic and others	Surrendered to the Tribunal in April 1996. Currently in custody and on trial at the Tribunal.
Goran Borovnica	Bosnian Serb	Tadic and other	At large
Mario Cerkez	Bosnian Croat	Kordic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Ranko Cesic	Bosnian Serb	Brcko	At large
Zejnii Delalic	Bosniak	Celebici	Arrested by German authorities on March 18, 1996, and delivered to the Tribunal on May 8, 1996. Currently in custody and on trial at the Tribunal.
Hazim Delic	Bosniak	Celebici	Arrested by Bosnian authorities on May 2, 1996, and delivered to the Tribunal on June 13, 1996. Currently in custody and on trial at the Tribunal.
Djordje Djukic	Bosnian Serb	Sarajevo	Arrested by Bosnian authorities on January 30, 1996, and delivered to the Tribunal. Released from Tribunal for health reasons in April 1996 and died of cancer on May 18, 1996.
Slavko Dokmanovic	Croatian Serb	Vukovar	Arrested by UNTAES forces and Tribunal authorities in Croatia on June 27, 1997, at which time his sealed indictment was made public. Currently in custody and on trial at the Tribunal.
Damir Dosen	Bosnian Serb	Keraterm	At large
Simo Drljaca	Bosnian Serb	Drljaca and Kovacevic	Killed by SFOR forces on July 10, 1997, while resisting detainment, at which time his sealed indictment was made public.

(continued)

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Name	Ethnicity	Indictment(s)	Status as of May 14, 1998
Drazen Erdemovic	Bosnian Croat	Erdemovic	Arrested by Serbian authorities on March 2, 1996; sent to the Tribunal on March 30, 1996, as a witness; and indicted on May 29, 1996. Pled guilty on May 31, 1996, and sentenced to 10 years on November 29, 1996. Sentence reduced to 5 years on March 5, 1998, after successful appeal. Currently in custody at the Tribunal, awaiting a decision on where he will serve his sentence.
Anto Furundzija	Bosnian Croat	Furundzija	Detained by SFOR forces on December 18, 1997, at which time his sealed indictment was made public. Currently in custody at the Tribunal, awaiting the start of his trial.
Dragan Fustar	Bosnian Serb	Keraterm	At large
Dragan Gagovic	Bosnian Serb	Foca	At large
Zdravko Govedarica	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Goran Gruban	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Momcilo Gruban	Bosnian Serb	Omarska	At large
Janko Janjic	Bosnian Serb	Foca	At large
Nikica Janjic	Bosnian Serb	Omarska, Keraterm	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Gojko Jankovic	Bosnian Serb	Foca	At large
Goran Jelusic	Bosnian Serb	Brcko	Detained by SFOR forces on January 22, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.
Drago Josipovic	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Radovan Karadzic	Bosnian Serb	Karadzic and Mladic, Srebrenica	At large
Marinko Katava	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997, and released in December 1997 for lack of evidence.
Dusan Knezevic	Bosnian Serb	Omarska, Keraterm	At large
Dragan Kondic	Bosnian Serb	Keraterm	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Dario Kordic	Bosnian Croat	Kordic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Milojica Kos	Bosnian Serb	Omarska	At large

(continued)

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Name	Ethnicity	Indictment(s)	Status as of May 14, 1998
Predrag Kostic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Radomir Kovac	Bosnian Serb	Foca	At large
Milan Kovacevic	Bosnian Serb	Drljaca and Kovacevic	Detained by SFOR forces on July 10, 1997, at which time his sealed indictment was made public. Currently in custody at the Tribunal, awaiting the start of his trial.
Dragan Kulundzija	Bosnian Serb	Keraterm	At large
Dragoljub Kunarac	Bosnian Serb	Foca	Surrendered to the Tribunal on March 4, 1998. Currently in custody at the Tribunal, awaiting start of his trial.
Mirjan Kupreskic	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Vlatko Kupreskic	Bosnian Croat	Kupreskic and others	Shot and wounded by SFOR forces while resisting detention on December 18, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Zoran Kupreskic	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Miroslav Kvocka	Bosnian Serb	Omarska	Detained by SFOR forces on April 8, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.
Goran Lajic	Bosnian Serb	Keraterm	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Esad Landzo	Bosniak	Celebici	Arrested by Bosnian authorities on May 2, 1996, and delivered to the Tribunal on June 13, 1996. Currently in custody and on trial at the Tribunal.
Zoran Marinic	Bosnian Croat	Marinic	At large
Milan Martic	Bosnian Serb	Zagreb	At large
Zeljko Meakic	Bosnian Serb	Omarska	At large
Slobodan Miljkovic	Bosnian Serb	Bosanski Samac	At large
Ratko Mladic	Bosnian Serb	Karadzic and Mladic, Srebrenica	At large
Mile Mrksic	Serb	Vukovar	At large
Zdravko Mucic	Bosnian Croat	Celebici	Arrested by Austrian authorities on March 18, 1996, and delivered to the Tribunal on April 9, 1996. Currently in custody and on trial at the Tribunal.
Dragan Nikolic	Bosnian Serb	Susica	At large

(continued)

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Name	Ethnicity	Indictment(s)	Status as of May 14, 1998
Dragan Papic	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Nedjeljko Paspalj	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Milan Pavlic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Milutin Popovic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Dragoljub Prcac	Bosnian Serb	Omarska	At large
Drazenko Predojevic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Miroslav Radic	Serb	Vukovar	At large
Mladen Radic	Bosnian Serb	Omarska	Detained by SFOR forces on April 8, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.
Ivica Rajic	Bosnian Croat	Stupni Do	At large
Ivan Santic	Bosnian Croat	Kordic and others	Surrendered to the Tribunal on October 6, 1997, and released in December 1997 for lack of evidence.
Vladimir Santic	Bosnian Croat	Kupreskic and others	Surrendered to the Tribunal on October 6, 1997. Currently in custody at the Tribunal, awaiting the start of his trial.
Dragomir Saponja	Bosnian Serb	Omarska, Keraterm	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Zeljko Savic	Bosnian Serb	Omarska	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Dusko Sikirica	Bosnian Serb	Keraterm	At large
Blagoje Simic	Bosnian Serb	Bosanski Samac	At large
Milan Simic	Bosnian Serb	Bosanski Samac	Surrendered to the Tribunal on February 14, 1998. Granted provisional release from the Tribunal custody for health reasons on March 26, 1998. Currently in Bosanski Samac, but will return to the Tribunal when his trial begins.
Pero Skopljak	Bosnian Croat	Kordic and others	Surrendered to the Tribunal on October 6, 1997, and released in December 1997 for lack of evidence.
Veselin Sljivancanin	Serb	Vukovar	At large
Radovan Stankovic	Bosnian Serb	Foca	At large

(continued)

**Appendix IV
Status of Publicly Indicted Individuals as of
May 14, 1998**

Name	Ethnicity	Indictment(s)	Status as of May 14, 1998
Dusko Tadic	Bosnian Serb	Tadic and other	Arrested by German authorities in February 1994 and turned over to the Tribunal in April 1995. Convicted by the Tribunal of crimes against humanity and violations of the laws or customs of war in May 1997 and sentenced to 20 years. Tadic remains in custody at the Tribunal, awaiting the outcome of pending prosecution and defense appeals of his sentence.
Miroslav Tadic	Bosnian Serb	Bosanski Samac	Surrendered to the Tribunal on February 14, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.
Nedjeljko Timarac	Bosnian Serb	Keraterm	The Tribunal dropped the charges against him in May 1998, although it reserved the right to reinstate charges at a later date.
Stevan Todorovic	Bosnian Serb	Bosanski Samac	At large
Zoran Vukovic	Bosnian Serb	Foca	At large
Simo Zaric	Bosnian Serb	Bosanski Samac	Surrendered to the Tribunal on February 24, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.
Dragan Zelenovic	Bosnian Serb	Foca	At large
Zoran Zigic	Bosnian Serb	Omarska, Keraterm	Surrendered to the Tribunal on April 16, 1998. Currently in custody at the Tribunal, awaiting the start of his trial.

Legend
 SFOR = Stabilization Force
 UNTAES = U.N. Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium

Sources: Compiled by GAO from Tribunal annual reports, press releases, and a report by the Commission on Security and Cooperation in Europe.

Comments From the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

May 8, 1998

Dear Mr. Hinton:

We appreciate the opportunity to provide Department of State comments on your draft report, "FORMER YUGOSLAVIA: War Crimes Tribunal's Work Load Exceeds Capacity," GAO/NSIAD-98-134, GAO Job Code 711300.

The Department generally concurs with the report but takes issue with comments made by the International Criminal Tribunal for the Former Yugoslavia's Registrar that have been incorporated into the text of this report. A discussion of the gratis personnel and 13% overhead charge is enclosed.

If you have any questions concerning this response, please call Ms. Sheila Berry, Office of War Crimes Issues (S/WCI) at (202) 647-5201.

Sincerely,


Kathleen J. Charles, Acting

Enclosure:
As stated.

cc:
GAO - Mr. Miyabara
STATE/S/WCI - Amb. Scheffer

Mr. Henry L. Hinton, Jr,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office.

Appendix V
Comments From the Department of State

Department of State Comments
on the GAO Draft Report
"FORMER YUGOSLAVIA: War Crimes Tribunal's Work Load Exceeds Capacity,"
GAO/NSIAD-98-134, GAO Job Code 711300

The issue of gratis personnel and the UN's 13% charge to defray the overhead expenses of gratis personnel have been issues of discussion between the UN Secretariat and the U.S. Government since the Tribunal's establishment. The U.S. Government loaned staff - prosecutors, investigators, and analysts - to help the Tribunal start up in 1994. At the time the Tribunal had no formally approved budget and only a seriously inadequate ability to hire necessary staff. This institutional inadequacy, understandable in a start-up organization for which there was no UN precedent, prompted the Tribunal, particularly the Office of the Prosecutor, to appeal to the United States for immediate assistance in the form of personnel, equipment and a donation to the Tribunal's trust fund. These requests were met as have been many subsequent requests made by the Tribunal since 1994 and continuing to the present.

It is clear that there are instances when donations to the UN could incur unwelcome and unfunded obligations for the UN. In the case of the Tribunal, however, we have argued strongly and, largely, successfully that in instances where the Tribunal itself requests assistance and when that assistance is to address a need or an increased workload not anticipated in the Tribunal's budget, payment of the overhead charge is not appropriate. In March, Secretary Albright and UN Secretary General Kofi Annan discussed this issue. At that time, the Secretary General agreed with our position and stated his intention to address this issue. The Secretary General then issued a report (A/52/823) on gratis personnel and the overhead charge.

Policy on this issue is set by the Secretariat in New York. It appears from the Tribunal Registrar's comments that she may be unaware of recent developments on this issue in New York. We are confident, however, that this issue has been resolved in such a way that the U.S. and other governments can continue to address the Tribunal's acute needs in order to ensure that the Tribunal can fulfill its critical mandate.

Comments From the Department of Defense



POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000



47 MAY 1998

Mr. Benjamin F. Nelson
Director, International Relations and
Trade Issues
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Nelson:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "FORMER YUGOSLAVIA: War Crimes Tribunal's Work Load Exceeds Capacity," dated April 20, 1998 (GAO Code 711300/OSD Case 1591).

The Department of Defense has reviewed the report and generally concurs with the report. The Department appreciates the opportunity to comment on the draft report.

Sincerely,

Bernd McConnell
Director, Bosnia Task Force



Comments From the International Criminal Tribunal for the Former Yugoslavia

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

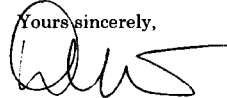


5 May 1998

Dear Mr. Murphy,

President McDonald has requested me to coordinate and prepare on her behalf the observations of the International Criminal Tribunal for the former Yugoslavia on the draft report of the United States General Accounting Office (version of 20 April 1998). The Prosecutor has submitted written comments which I include separately. I would be grateful if you could forward our comments as appropriate.

While we have addressed all of the main points which we felt were of concern, our comments are not exhaustive. Moreover, we have formulated these observations with the intention of providing our views on the matters raised in the report, rather than of reviewing and "clearing" the document. As you will therefore appreciate, our observations cannot and should not be seen as an endorsement or approval of the report.

Yours sincerely,


Dorothee de Sampayo Garrido-Nijgh
Registrar

Mr. Sean Murphy
Legal Counsel
Embassy of the United States of America
THE HAGUE

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Tribunal International pour la Poursuite des Personnes Responsables des Violations Graves du Droit International Humanitaire Complies dans le Territoire de l'ex-Yougoslavie depuis 1991

Churchillplein 1, 2517 JW The Hague, P.O. Box 13888, 2501 EW The Hague, Netherlands
Churchillplein 1, 2517 JW La Haye, B.P. 13888, 2501 EW La Haye, Pays-Bas
Tel: 31 70 416-5000, Fax: 31 70 416-5345

**Appendix VII
Comments From the International Criminal
Tribunal for the Former Yugoslavia**

**Comments of the President and the Registry to the draft report of the United States
General Accounting Office (version of 20 April 1998)**

Now on p. 5.
See comment 1.

- **Page 4 (lines 6 through 8)**

At the time of hiring the prison guards in 1995, reports had been received that a suspect would be surrendered to the Tribunal within the near future. While guards were hired to staff the detention unit at a minimum level, the transfer was eventually postponed for some time as the Member State in question had to implement appropriate national legislation in order to allow extradition to the Tribunal. Nevertheless, it is not correct that prison guards were contracted before the construction of the detention facilities of the Tribunal was completed.

- **Page 5 / 12**

While a period of pre-trial detention of more than 2 years would be considered as excessively long, it should be noted that the notion of "undue delay" is a strictly legal concept which has not yet been addressed by the Trial Chambers of this Tribunal through its case law. Moreover, the point at which the detention period will be considered as undue delay will vary with the circumstances of each case. This is reflected on page 12, but is not apparent from the first observation on this matter on page 5.

Now on p. 5.
See comment 1.

- **Page 7 (line 9)**

The Tribunal has entered into a number of arrangements with other UN or intergovernmental organizations involving common support functions. Among others, mutual cooperation is provided between this Tribunal and the International Tribunal for Rwanda, office space is sublet to the Organization for the Prohibition of Chemical Weapons in The Hague and premises and other operational support requirements are provided to the field offices by UN missions in the territory of the former Yugoslavia.

Document translation is incidentally outsourced by the Tribunal, but is generally limited due to confidentiality of the information and time-limits within which translation is needed. These restrictions also apply to many other services which could otherwise have been outsourced to external entities.

Now on p. 6.
See comment 1.

- **Page 8 (lines 10 and 11)**

Contrary to what is stated in the report, a formal lease for the office premises of the Tribunal was concluded in 1994 for the period from 1 July 1994 through 30 June 1998, with provisions for extension.

Even now, staff are still recruited at the Tribunal on short-term contracts for a maximum period of one year. This is due to the fact that the Tribunal is, after all, an *ad hoc* operation. Under contracts at the Tribunal, service is limited to the Tribunal. Since there is no expectancy of continuation of employment at other UN offices, contracts cannot be for an indefinite period of time.

Now on p. 7.
See comment 1.

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Now on p. 9.
See comment 1.

- **Page 11 (lines 2 and following)**

In connection with the examples mentioned, the Tribunal would also like to recall the contribution of approximately \$ 500,000 donated by the Government of the United Kingdom for the construction of a second courtroom ("courtroom II").

Now on p. 10.
See comment 1.

- **Page 12 (line 5 and 6)**

The 13% charge for programme support costs applied to voluntary contributions does not affect the process of recruitment of regular staff.

Now on p. 11.
See comment 2.

- **Page 15 (lines 1 and 2)**

Mention is made of 30 staff loaned by Member States as a supplement to 72 UN hired investigators. This should be seen in the context of resolution 51/243 of the General Assembly on the acceptance of gratis personnel, which requires UN offices to phase out all its existing gratis personnel and which restricts the acceptance of new gratis staff to highly exceptional circumstances.

Now on p. 12.
See comment 1.

- **Page 15 (line 11).**

The decision to limit the immediate recruitment of gratis staff at the United Nations - by barring gratis personnel from applying for UN posts for a period of six months - was taken by the General Assembly, not the Secretary-General (resolution 51/226 of 25 April 1997).

Now on p. 13.
See comment 1.

- **Page 16 (line 1 and following)**

Comments of "Tribunal staff" on the insufficiency of the number of investigators in the 1998 budget were made by members of the Office of the Prosecutor.

Now on p. 15.
See comment 1.

- **Page 19 (second paragraph)**

The capacity of courtroom II - that is, the courtroom constructed with funds donated by the UK Government - is not correctly represented in the text. It will indeed be smaller and more sparsely equipped than the existing and third courtroom. Courtroom II, however, will be provided with adequate technical support and similar facilities for witness protection, including video-delay apparatus. Moreover, this courtroom will be capable of handling up to two defendants. Consequently, its use will not be limited to pre-trial hearings.

Now on p. 15.
See comment 1.

- **Page 20 (line 4)**

The language concerning additional support staff is somewhat misleading: it is more accurate to say that as of March 1998, the Tribunal was preparing a proposal for the UN to obtain additional support staff to operate the additional courtrooms. At the time of reporting, therefore, this request had not yet been submitted.

Now on p. 15.
See comment 3.

- **Page 21 (lines 1 through 3)**

The determination of the work load capacity of each Judge, and consequently, that of the whole Tribunal, involves complex calculations. The premise that the Tribunal cannot conduct more than three trials at the same time with 11 judges does not take into account the fact that five judges are required to sit on the Appeals Chambers. A total of three simultaneous trials

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Now on p. 16.
See comment 1.

is not feasible if each Judge is only assigned to one trial. Put differently, a total of 9 judges is required for each single case: 1 judge to confirm the indictment against the accused, 3 for the Trial Chamber, and 5 for the Appeals Chamber. None of these functions can be combined: an essential element of a fair process stipulates that Judges may not sit in more than one of the three capacities above (i.e. cannot be in a position to review their own decisions).

- **Page 22 (lines 4 and 5)**

In February 1998, the President of the Tribunal asked the Security Council for four more judges. As of 1 May 1998, this issue is still under consideration by the Security Council, as was a similar proposal from the Rwanda Tribunal.

Now on p. 17.
See comment 4.

- **Page 22 (line 16)**

The Registry is not in a position to confirm the figure of 800,000 pages of documentation still awaiting processing.

Now on p. 17.
See comment 1.

- **Page 23 (line 16)**

The Dutch Government did not provide the data entry staff directly (as gratis personnel), but provided funds in the context of a project, thereby enabling their recruitment by the Tribunal.

Now on p. 20.

- **Page 26 (lines 9 and 10)**

Detainees will not be detained by the Dutch Government itself; rather, arrangements are being made with the Dutch Government to provide additional detention capacity to the Tribunal.

See comment 1.

See comment 1.

Defence counsel are only provided free of charge to those indictees who are proven to be indigent.

Now on p. 20.
See comment 1.

- **Page 27 (lines 2 through 4)**

The Tribunal's budget for 1998 provides for the restructuring of the Prosecution Division which - when fully staffed - will consist of four trial teams and two trial preparation teams. Teams are not static but shift from preparation to actual trial mode once preparatory work has been completed and trial activities commence.

Now on p. 21.
See comment 1.

- **Page 28 (lines 5 and 6)**

The Registry would like to reconfirm that a period of approximately 3 months is involved between the placement of a vacancy announcement and the time new staff are taken on board. Claims that the procedure takes 6 to 12 months are not accurate and cannot be substantiated.

As of 30 April 1998, approximately 70 positions of the 204 new posts approved under the 1998 budget have been filled. The budget for 1998 provides for the progressive recruitment of personnel for new post throughout the year.

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Now on p. 21.
See comment 1.

Now on p. 22.
See comment 5.

Now on p. 22.
See comment 1.

Now on p. 23.

See comment 1.

- **Page 28 (line 12)**

The United Nations does not have discretion on when to charge the 13% administrative support costs. The 13% charge is based on General Assembly resolution 35/217 of 17 December 1980 and is ultimately derived from the Financial Regulations and Rules of the United Nations, which do not allow the Organization to spend additional resources (i.e. from the regular budget) in order to utilize a donation. As a rule, therefore, support costs are charged to all voluntary contributions. Only when the acceptance of a contribution does not involve additional costs to the Organization can the overhead charge be waived.

- **Page 28 (line 14 and following)**

The US Government is the only donor of gratis personnel who, up to September 1997, has not been willing to pay the administrative costs, all other donors having accepted this standard requirement by the end of 1996/ early 1997, some of them even with retroactive effect for past loans. The position of the US Government has resulted in a considerable burden on the Tribunal itself: since overhead expenses were incurred without additional funding from the US Government, funds have been taken from the only other possible (extra-budgetary) source, namely the Tribunal's Trust Fund. Thus, for the US gratis personnel loaned in the period from 1994 up to September 1997, a total of approximately \$ 500,000 has been or will be deducted from the Trust Fund to cover related administrative expenses.

- **Page 29 (lines 5 and following)**

It is relevant to see the decision of the Secretary-General to discontinue the application of the 13 % charge in conjunction with the two restricted situations in which gratis personnel can still be accepted (see comments further below to page 30). Thus, it is not accurate to state that gratis personnel currently loaned to the Tribunal under existing arrangements will henceforth not be subject to the charge. Nor is the Tribunal aware of discussions which would lead to such a result. Rather, as is reflected in footnote 22, donors of personnel which are to be accepted on the basis of the two sole exceptions sanctioned by the General Assembly will not be subjected to the support costs charge.

- **Page 30 (first paragraph)**

The Tribunal considers that the situation concerning its gratis personnel component can be more aptly described as follows:

In accordance with the instructions of the General Assembly and the Secretary-General of the United Nations, the Tribunal is taking steps to "phase out" virtually all gratis personnel by the end of June 1998. Exceptions to this final date will be made for gratis personnel for which the underlying agreement with the donors was legitimately extended beyond 30 June 1998 before the relevant decision of the General Assembly was taken (October 1997). This will affect personnel provided by a total of four donors.

In addition, the Tribunal was previously instructed not to increase its number of gratis personnel relative to its gratis component as at 3 April 1997 (General Assembly decision 51/446 of 3 April 1997). However, pending the recruitment of additional staff under the budget for 1998, and in view of its increased workload, the Tribunal was authorized by the Secretariat to accept additional gratis personnel ("surge" personnel) up to 30 June 1998. The estimate of 50 of such additional personnel for the first six months for 1998 is considered

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too high: a total of 16 surge personnel have been taken on board as at 1 May 1998. This number may increase somewhat in the next two months.

Requests for exceptions to the requirement to phase out all gratis personnel by 30 June 1998 have been or will be submitted for allowing extensions in individual cases where retaining a person's expertise is vital to the Tribunal's work. In other particular cases, waivers have been requested from the rule which bars (former) gratis personnel from applying to regular posts for a period of six months.

The Tribunal is not aware of any discussions with the Secretary-General concerning a blanket approval for the continued use of gratis personnel in general - as is suggested in the report - other than in the exceptional and limited situations outlined above.

It should further be noted that the decision of the General Assembly to phase out gratis personnel provides for their future acceptance in two types of situations only (also reflected in footnote 22 of the draft GAO report). No gratis personnel have yet been accepted on the basis of these provisions.

- **Page 31/34**

As a general comment to the conclusions, it is noted that, as indicated on page 34, the officials involved in preparing the GAO report did not assess the administrative functions of the Tribunal. Consequently, the impact of both the existing workload and of possible further increases in staff and activities of the Office of the Prosecutor on the requirements of the Registry has not been analyzed. The Tribunal believes that it is important to bear in mind that in general, resource requirements of the Registry will necessarily increase commensurate with the capacity of Chambers and the Office of the Prosecutor.

- **Page 35 (lines 4 and 5)**

To a large extent, use of resources by the Tribunal can be ascertained from its annual performance reports, submitted as a (public) document to the General Assembly. The Tribunal's performance report over 1997 is due to be issued in the course of May 1998.

- **Page 48 (lines 18 and 19)**

The Registrar is appointed by the Secretary-General, rather than selected.

- **Page 51 (line 2)**

On 24 April 1998, Norway became the third Member State to sign an agreement for the enforcement of sentences of the Tribunal.

Now on p. 24.
See comment 6.

Now on p. 31.
See comment 7.

Now on p. 40.
See comment 1.

Now on p. 42.
See comment 1.

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United Nations
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International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yugoslavie

INTERNAL MEMORANDUM - MEMORANDUM INTERIEUR

Date: 1 May 1998

To: Ms. Gabrielle Kirk McDonald
A: President

From: Graham T. Blewitt
De: Deputy Prosecutor

Subject: Comments by the Prosecutor on the Draft GAO Report
Objet:

The Prosecutor is satisfied that the finding of the Report that the Tribunal is under-resourced to carry out its primary functions is an accurate assessment. Noting, however, the limited scope of the review, which did not assess whether the Tribunal had efficiently and effectively allocated and used its resources, the Prosecutor is nevertheless confident that the Tribunal would have stood up well to any such scrutiny.

It is worth making the observation in relation to the Tribunal's current and future trial work load, that 20 public indictments have been confirmed; 3 of those have already been dealt with (Dukic, Erdemovic and Tadic - although the latter is under appeal), 4 others are currently undergoing trial (Blaskic, Celibici, Aleksovski and Dokmanovic), another is due to start in early May, and 6 others are awaiting trial with accused either already in detention or on provisional release. In relation to the remaining 6 indictments where there has been no arrest, the accused in two of them are common and if they are arrested or if they should surrender voluntarily, the Prosecutor would seek to try the two indictments together, so effectively there could potentially be only 5 additional trials in relation to those outstanding public indictments. Further in relation to those 5 additional trials, some of them would be relatively short and one would be lengthy.

It is important to make the additional observation that although the accused who are currently in detention may have to wait some months before their trials commence, in relation to the majority of the remaining accused who have not yet been arrested or who have not yet surrendered voluntarily, it is still possible for them to obtain an earlier trial date if they surrender voluntarily at this stage, thereby being joined with their other co-accused who are already facing a trial following their own arrest or voluntary surrender. The more accused who are joined in the initial trial of any indictment will lessen the ultimate trial work load of the Tribunal, so that additional arrests and voluntary surrenders at this stage will save the Tribunal's resources in the longer term.

It is obvious therefore that further arrests and voluntary surrenders are to be encouraged at this point in time. If those accused who have not yet been arrested, or who have not yet surrendered voluntarily, are subsequently arrested, and if the trial of their co-accused has either started or has been completed, so that it is not possible to have a joint trial, and as a consequence they have to wait a longer period in pre-trial detention, they would have, in the Prosecutor's view, weaker grounds to complain about not receiving a speedier trial.

In relation to the observation which appears on page 23 of the Draft Report, namely:

"Sustaining such a huge backlog of information means the Tribunal literally is not aware of all the material it has obtained. Information vital to ongoing or planned investigations may be sitting in boxes, unread or unviewed. Not only may the prosecution's ability to construct a case be limited, but also information of potential benefit to the defense may not

See comment 8.

See comment 9.

Now on p. 17.

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be known at the time of a trial. The Tribunal is required to share with the defense any information it has that may suggest the innocence or mitigate the guilt of an indictee or affect the credibility of prosecution evidence. Although Tribunal officials told us that the bulk of the most important information has already been entered into the system, some staff were concerned that exculpatory information may not be found until after trial."

See comment 1.

the Prosecutor notes that such comments could translate into concerns that, for the reasons eluded to, a miscarriage of justice may occur. It is important to make the point that the Prosecutor and her staff take all possible initiatives to ensure no miscarriages of justice occur. The Prosecutor also deplors the lack of resources for backlog processing but does not, to date, fear that it could taint the reliability of the Court's process. Further, in relation to potential miscarriages of justice, the Prosecutor wishes to emphasise that such contingencies are recognised in Part Eight of the Tribunal's Rules of Procedure and Evidence, which provides for Review Proceedings in such circumstances.

Apart from these matters of substance, there are a number of editing matters which the Prosecutor would wish to raise:

See comment 1.

- In footnote "15" on page 19 of the Draft Report it is noted that "*.....to shield the identity of witnesses who prefer to testify anonymously.....*". It is suggested that a more accurate statement would be: "*.....witnesses who prefer to testify confidentially.....*"
- On page 26 of the Draft Report, line 4 of the second paragraph, it is suggested should read: "*...by the statute, indigent indictees also have the right to free defense counsel....*"
- On page 46 of the Draft Report, Figure III.1 - Tribunal Organization Chart and the reference to the Office of the Prosecutor: for some time now the "*Investigation Section*" and the "*Prosecution Section*" have been described as the "*Investigation Division*" and the "*Prosecution Division*" respectively. The description of the "Information and Evidence Section" is the correct title.
- In light of the previous comment, consequential amendments are necessary to the text on page 47 of the Draft Report, to reflect the "Investigations Division" and the "Prosecution Division".
- Figure III.2 on page 49 of the Draft Report omits, in the description of the Tribunal's Process, the "Investigation of Targets". It is suggested this critically important step should appear between "Select Targets" and "Prepare Indictment".
- On page 50 of the Draft Report, line 4, it is suggested the text should read: "*..The Prosecutor may summon and question suspects.....*"
- On page 52 of the Draft Report, line 11, it is suggested that the text should read: "*.....approval from confirming Judges to seal an unknown number.....*"
- On page 55 of the Draft Report, the correct spelling of one of the listed accused is "Predrag Banovic"

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- Similarly, on page 58 of the Draft Report, the correct spelling of the first listed accused is "Predrag Kostic"

Finally, on page 60 of the Draft Report dealing with the Status of the accused Dusko Tadic (column 4) it is more accurate to say: "*Arrested by Germany in February 1994 and turned over to the Tribunal in April 1995....."*

The following are GAO's comments on the International Criminal Tribunal for the former Yugoslavia's letter dated May 5, 1998.

GAO Comments

1. We modified the text to incorporate these comments.
2. We specifically explain the limitations on the use of loaned personnel.
3. It is possible for the Tribunal to hold three trials at the same time, although this would mean the appeals chamber could not be simultaneously constituted. We modified the text to clarify this point. As such, our analysis used the best-case scenario of holding three trials at a time; an approach we believe to be conservative.
4. We calculated the figure of 800,000 pages in the document backlog from information obtained from the Office of the Prosecutor.
5. We acknowledge the Tribunal's comment, however, our report does not express an opinion on the United States' position regarding the surcharge.
6. As explained in our Objectives, Scope, and Methodology (app. I), we did not assess the Tribunal's administrative functions, or the efficiency and effectiveness with which it used its resources because to have done so would have required complete access to U.N. internal documents on these matters. The United Nations does not make such documents available to us.
7. We reviewed past performance reports for the Tribunal and found that they did not provide the level of detail necessary to perform a review of the Tribunal's capacity.
8. As we noted in our Objectives, Scope, and Methodology, there are uncertainties in attempting to estimate the potential future trial workload for the Tribunal. The number of future trials is a function of when accused are arrested or surrender, the extent to which they are tried in groups, and the uncertainties involved in estimating how long pretrial motions, trials, and appeals will take. To estimate workload, our analysis used the Tribunal's historic trends and track record on these factors.
9. We agree that in this instance the accused would not face any additional delay. Although our analysis indicates that the Tribunal may be unable to

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begin trials without undue delay, this does not mean that accused war criminals should avoid surrendering.

Comments From the U.N. Under-Secretary-General for Management

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

Now on p. 1.

See comment 1.

Now on pp. 21-23.

See comment 2.

See comment 3.

UNITED NATIONS  NATIONS UNIES

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CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

7 May 1998

REFERENCE:

Dear Mr. Nelson,

Thank you for sharing with us the draft report entitled "Former Yugoslavia, War Crimes Tribunal's Work Load Exceeds Capacity".

Upon careful review of the draft there are two main comments I would like to offer.

Page 2. Second paragraph, second sentence:

You state that "In addition, the United Nations did not provide us access to certain internal budgetary and planning information." - we are not aware of any outstanding requests for provision of information and would be grateful if you could specify the basis of this comment.

Chapter on "Challenges to Increasing Capacity" - pages 27 through 19:

The Chapter contains a number of inaccuracies. In particular, the second paragraph on page 28 is misleading. The General Assembly has insisted that the acceptance of voluntary contributions should never result in burdening assessed budgets by subsidizing extra-budgetary activities. It is for this reason that the Organization has persistently required the remittance of an administrative overhead charge which has been fixed at 13 per cent, and despite the fact that 13% is a level much below the actual average costs incurred in supporting extra-budgetary activities carried out by the Organization. At times, after careful review, it has been determined that the administrative overhead for implementing such functions, in certain instances, amounted to less than 13 per cent, some adjustments have been granted on an exceptional basis.

There have been exceptions to this policy regarding gratis military personnel. Also there have been instances, when one Member State has contributed support costs regarding gratis personnel provided by other Governments.

For an account on how the issue of administrative overhead charges, especially as they applied to gratis personnel, were handled in the case of the International Tribunals, I would like to refer you to the relevant parts of the Secretary-General's report on gratis personnel (attached for easy reference).

Mr. Benjamin F. Nelson
Director, International Relations & Trade Issues
United States General Accounting Office
441-G NW, Room 4964
Washington, DC 20548

**Appendix VIII
Comments From the U.N.
Under-Secretary-General for Management**

See comment 4.

See comment 5.

Now on p. 9.

See comment 6.

Now on p. 11.

See comment 7.

Now on p. 15.

See comment 6.

Now on p. 17.

See comment 8.

In this context I would also like to draw your attention to your statement contained in the second to last sentence of page 20 which reads "According to State Department officials, in March 1998 the United Nations Secretary General told the Secretary of State that the United Nations would stop charging the 13 per cent fee on loaned personnel. Based on the recollection of United Nations officials attending the meetings there seems to be a misreading of what the Secretary-General said. In line with the policy adhered to by the Secretariat in the application of the 13 per cent administrative overhead costs, the Secretary-General did not announce a change in policy, but indicated that adjustments might be possible. It should also be pointed out that the assertion in the first sentence of the third paragraph on page 28 "The surcharge can deter potential donors." has not been proven true by actual experience.

In light of the above I would think that your reference to a "surcharge" (page 12, last sentence of first paragraph) would also merit revision.

A few other minor suggested changes to remedy a number of factual errors are as follows:

Page 10 and 11, Table 2:

Include the Netherlands on the table with a contribution of \$2,247.7K and change the cumulative total to \$14,149.1K;

Page 13, Table 3:

The workload indicator of 2-8 referring to the "Number of indicted waiting to go to trial" was not in the original 1998 budget proposal. Consequently, we cannot verify this figure;

Page 20, last sentence of first paragraph:

The request to hire additional support staff could not be approved since no request has been received yet.

Page 22, paragraph 3:

Currently, no formal full appeal has been made in the Rwanda Tribunal. As this was a part of the functions for the appeals chamber, it is rather an issue of scheduling than disruption of the current workload.

I hope the above comments are helpful and will be taken into account in the finalization of your report.

Sincerely yours,



Joseph E. Connor
Under-Secretary-General for Management

The following are GAO's comments on the U.N. Under-Secretary-General for Management's letter dated May 7, 1998.

GAO Comments

1. The United Nations and the Tribunal did not provide us access to budget requests and justifications from component units of the Tribunal that were used to support the budget request; Tribunal budget requests as submitted to U.N. headquarters; and memorandums detailing operational implications of resource shortfalls, how assumptions behind budget requests were developed, and rationales for estimates of future workload.
2. The issues of loaned personnel and the 13-percent surcharge are matters of disagreement between the United States and the United Nations. We have presented the factual basis for our comments as contained in the available documentary evidence, including cables and memos from the Departments of State, Defense, and Justice; General Assembly resolutions; and reports from the Secretary General. We modified our report to better reflect the information contained in these documents, specifically that the mandate from the United Nations to discontinue the use of loaned staff came from a General Assembly resolution.
3. We did not reprint this attachment to the Under-Secretary's comments. The attachment is available as U.N. document A/51/688.
4. The issue of what was discussed and agreed to at the meeting between the Secretary of State and the Secretary General is a matter for the State Department and the United Nations to resolve. Since we did not attend the meeting, and written documentation of the meeting was not available, information in our report is based on the recollection of State Department officials who attended the meeting. We also discussed this matter with a U.N. official who attended the meeting and attempted to clarify the report to reflect the United Nations' view.
5. Evidence we obtained, as discussed in the report, shows that potential donors have been deterred from loaning personnel to the Tribunal because of the surcharge. For example, officials from the Departments of Defense and Justice specifically told us that they would only loan personnel if the surcharge is not applied.
6. We have modified the text to incorporate this comment.
7. This indicator appears in paragraph 25 of the Tribunal's budget request.

8. Our analysis assumed that all 11 judges would remain in The Hague. Having to relocate five judges to Rwanda to hear appeals will decrease the number of judges available to hear trials in The Hague, and thus potentially increase the amount of time necessary to handle the caseload. We did not quantify this effect.

Major Contributors to This Report

**National Security and
International Affairs
Division, Washington,
D.C.**

Harold J. Johnson
Tetsuo Miyabara
David Maurer
Zina Merritt
Rona Mendelsohn

**Office of the General
Counsel, Washington,
D.C.**

Mark Speight

Denver Field Office

Maria Durant

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Peace Operations: Update on the Situation in the Former Yugoslavia ([GAO/NSIAD-95-148BR](#), May 8, 1995).

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