

# INTERNATIONAL CRIMINAL TRIBUNALS

## Handbook for government cooperation

### INTRODUCTION

*“There is growing evidence that war crimes have been committed. Further investigation is needed to determine the extent of such acts and the identity of those responsible, with a view to their prosecution by an international tribunal, if appropriate.”*

**United Nations Special Rapporteur on the situation of human rights in the former Yugoslavia, Report of the Special Rapporteur, UN Doc. A/47/666-S/24809 (1992), para. 140, 17 November 1992**

*“Pending the establishment of a permanent international criminal court, the United Nations should establish an ad hoc international criminal tribunal. . . .”*

**United Nations Special Rapporteur on the situation of human rights in Rwanda, Report on the situation of human rights in Rwanda, UN Doc. E/CN.4/1995/7 (1994), para. 75, 28 June 1994**

This handbook is intended to assist governments to fulfill their obligations under international law to cooperate with the international criminal tribunals for the former Yugoslavia and Rwanda. These tribunals were established by the Security Council to have jurisdiction over the worst crimes in the world: genocide, other crimes against humanity and serious violations of humanitarian law. All 185 Member States of the United Nations (UN) are required under Chapter VII of the UN Charter to cooperate with the two tribunals in the gathering of evidence, to arrest and surrender or transfer persons to the tribunals and, if necessary, to enact legislation permitting its authorities to cooperate in this way. Unfortunately, as of 15 August 1996, more than three years after it was established, only 20 states were known to have enacted legislation permitting cooperation with the International Criminal Tribunal for the former Yugoslavia (Yugoslavia Tribunal).<sup>1</sup> Nearly two years after the establishment of the International Criminal Tribunal for Rwanda (Rwanda Tribunal),<sup>2</sup> only 11 states were known to have enacted such legislation for that tribunal. Four states have informed the tribunal that no legislation was needed for their authorities to cooperate fully with the tribunals.

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<sup>1</sup> The full name of the Yugoslavia Tribunal is: International Tribunal for the Prosecution of Persons Responsible for Serious violations of Humanitarian Law in the former Yugoslavia.

<sup>2</sup> The full name of the Rwanda Tribunal is: International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994.

Officials in some states have encountered difficulties in providing the necessary practical cooperation to an international criminal tribunal and officials in many states have claimed that there were difficult, if not insurmountable, problems preventing them from enacting such legislation or requiring lengthy study. Therefore, Amnesty International decided to publish in an easily accessible format basic information about cooperation with the tribunals to assist government officials, including judges and ministers of foreign affairs, justice, interior and defence, in providing such cooperation and members of parliament in drafting and enacting legislation (where it is required) at the earliest possible date.

The handbook describes the legal obligations of states to cooperate with the two tribunals. It briefly explains the practical cooperation which states must provide for the tribunals to be effective, such as assisting the tribunals to gather evidence, arresting suspects and accused and surrendering or transferring witnesses, suspects and accused to the tribunals.<sup>3</sup> In many cases, no new legislation will be necessary to provide such cooperation, and the paper describes the extent of cooperation provided so far, some of the problems encountered and how those problems have been resolved. The physical requirements of the tribunals, such as the need for qualified personnel, appropriate equipment, defence counsel and facilities, pre-trial detention and prison facilities and funding, are identified and assistance provided by states so far described.<sup>4</sup>

To assist those states which may require legislation to permit their authorities to provide full cooperation with the tribunals, the handbook contains the very simple legislation guidelines of the Yugoslavia Tribunal (separate guidelines for the Rwanda Tribunal have not yet been issued, but the requirements for effective cooperation are essentially the same) and, in separately printed supplements, the texts of all legislation which has been provided to the two tribunals as of 15 August 1996 in English

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<sup>3</sup> Although these terms are not always used consistently, there is a clear distinction between surrender and transfer:

“The term ‘surrender’ refers to the situation in which a person is already in custody pursuant to action taken by the national authorities under national law. Thus, there is no need to request the national authorities to arrest and detain the accused but rather to surrender the person in the custody of the national authorities to the custody of the International Tribunal. The term ‘transfer’ refers to situations in which a person is taken into custody pursuant to an indictment and order of the International Tribunal and, therefore, is in the constructive custody of the International Tribunal as of the time of arrest. Nonetheless the person must still be transferred to the International Tribunal before it will have actual custody of the accused whose physical presence is required for trial.”

Virginia Morris and Michael P. Scharf, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia* (1995) at 207, n. 555.

<sup>4</sup> This handbook does not describe the extensive practical cooperation provided to the two tribunals by non-governmental organizations. See, for example, Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, UN Doc. A/50/365; S/1995/728, paras 152-161 (1995).

or French and, where available, in Spanish.<sup>5</sup> Texts of executive agreements, including the headquarters agreements for the two tribunals, are also included in the supplements since these agreements will have a bearing on practical cooperation and commitments to provide pre-trial detention facilities or prison facilities for convicted defendants. The handbook describes some of the strengths and weaknesses of existing legislation so that other states enacting their own legislation will ensure that it fully satisfies international requirements and so that existing legislation can be improved.

Amnesty International hopes that this handbook will assist all states which have not yet done so to fulfill their obligations under international law as soon as possible. The handbook is being used at workshops organized by Parliamentarians for Global Action for members of parliament and ministry of justice officials. The first such conference took place at the Parliamentary Assembly of the Council of Europe in Strasbourg, France from 27 to 28 June 1996 (using an earlier version of the handbook), and the second conference is likely to take place in South Africa in January 1997. Advance copies of the handbook (the current version of the handbook incorporates minor changes and corrections) were given to over 60 government delegations participating in the second session of the UN Preparatory Committee on the Establishment of an International Criminal Court (12 to 30 August 1996) held at UN Headquarters in New York.

## I. THE OBLIGATION UNDER INTERNATIONAL LAW TO COOPERATE

*“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”*

**United Nations Charter, Article 25**

The legal obligation of states to cooperate with the two tribunals stems from their being member states of the UN. All Members of the UN are bound by the Principles of the UN Charter and required to “give the United Nations every assistance in any action it takes in accordance with” the Charter (Article 2 (5)). In addition, under Article 25, as well as Chapter VII of the UN Charter, Members agree to accept and carry out the decisions of the Security Council. Chapter VII provides that the Security Council has the power to determine whether a situation constitutes a threat to or breach of international peace and security. After the Security Council has determined that there has been threat to or breach of the peace, it will make recommendations or decide what measures are to be taken “to maintain or restore international peace and security” (Article 39). Once it decides what measures not involving the use of armed force are to be employed, the Security Council “may call upon Members of the United Nations to

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<sup>5</sup> No English translations of the **French** legislation concerning cooperation with the Rwanda Tribunal (also amending the legislation on cooperation with the Yugoslavia Tribunal) or of the **Belgian** and **Swiss** legislation on cooperation with both tribunals are yet available. A copy of the original French text is included in each case. A copy of the original Spanish text of the **Spanish** law on cooperation with the Yugoslavia Tribunal is included with an English translation.

apply such measures” (Article 41). Article 48 (1) of the UN Charter provides that “[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine” and Article 48 (2) provides that “[s]uch decisions shall be carried out by the Members of the United Nations directly . . . .” Under Article 49, Members are required to “join in affording mutual assistance in carrying out the measures decided upon by the Security Council”.

The Security Council has determined that the circumstances in both former Yugoslavia and Rwanda amounted to threats to international peace and security and decided to establish the two *ad hoc* tribunals.<sup>6</sup>

**Former Yugoslavia.** On 25 May 1993, the Security Council, acting under Chapter VII of the UN Charter in Resolution 827 concluded that “in the particular circumstances of the former Yugoslavia the establishment as an *ad hoc* measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law” would put an end to such crimes and “contribute to the restoration and maintenance of peace” and established Yugoslavia Tribunal. In that resolution, it decided that

“all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligations of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute [specifying orders which trial chambers may issue]”.

The report of the UN Secretary-General annexed to Resolution 827, states that the establishment of the tribunal under Chapter VII “creates a binding obligation on all States to take whatever steps are required to implement the decision”. UN Doc. S/25704, para. 125. The Security Council reaffirmed Resolution 827 on 15 December 1995 in Resolution 1031.

The Yugoslavia Tribunal has jurisdiction over the following crimes committed in the former Yugoslavia since 1991: grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war and genocide and other crimes against humanity.<sup>7</sup>

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<sup>6</sup> SC Res. 808 (1993) and SC Res. 827 (former Yugoslavia); SC Res. 955 (1994) (Rwanda).

<sup>7</sup> Statute of the Yugoslavia Tribunal (Yugoslavia Statute), Arts 2 to 5, Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), UN Doc. S/25704 (annexed to this paper in Supplement One).

**Rwanda.** On 8 November 1994, the Security Council, acting pursuant to Chapter VII of the UN Charter, established the Rwanda Tribunal in Resolution 955. In that resolution, the Security Council decided that

“all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measure necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute [specifying orders which the Trial Chambers may issue]”.

On 27 February 1995, the Security Council in Resolution 978 emphasized the need for states “to take as soon as possible any measure necessary under their domestic law” to implement Resolution 955 and urged states

“to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda”.

On 17 October 1995, the President of the Security Council, on behalf of the Council, called upon Member States “to comply with their obligations with regard to cooperation with the Tribunal in accordance with resolution 955 (1994)”. UN Doc. S/PRST/1995/53. In Resolution 1029, adopted on 12 December 1995, the Security Council called upon states to fulfil their earlier commitments to give assistance for rehabilitation of Rwanda “and in particular to support the early and effective functioning of the International Tribunal”.

The jurisdiction of the Rwanda Tribunal extends to the following crimes committed in the territory of Rwanda or committed by Rwanda citizens in the territory of neighbouring states, between 1 January and 31 December 1994: genocide, other crimes against humanity and violations of common Article 3 of the Geneva Conventions of 1949 and of Additional Protocol II.<sup>8</sup>

The scope of the practical cooperation and legislation required is described in subsequent sections.

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<sup>8</sup> Statute of the International Tribunal for Rwanda (Rwanda Statute), Arts 2 to 4, annexed to Security Council Resolution 955, UN Doc. S/RES/955 (1994) (annexed to this paper in Supplement One).

## II. PRACTICAL COOPERATION WHICH STATES MUST PROVIDE

*“The General Assembly. . . Reminds all States of their obligation under Security Council resolution 827 (1993) to cooperate with the [Yugoslavia] Tribunal, including through compliance with requests for assistance and orders issued by a trial chamber of the Tribunal. . . .”*

**United Nations General Assembly Resolution 50/193, 22 December 1995, para. 10**

*“ The General Assembly. . . . Recognizes that effective action must be taken by all States concerned to ensure that perpetrators of genocide and crimes against humanity are promptly brought to justice, and urges all States concerned to cooperate fully with the International Criminal Tribunal for [Rwanda], taking into account the obligations contained in Security Council resolutions 955 (1994) of 8 November 1994 and 978 (1995), and to intensify efforts for the effective functioning of the Tribunal without delay [.]”*

**United Nations General Assembly Resolution 50/200 of 22 December 1995, para. 8**

All states must assist tribunal investigations, so that investigators may interview witnesses and obtain documentary and other types of evidence effectively. States must also assist the tribunals by provisionally arresting suspects or arresting persons indicted by the tribunals (accused) on request of the tribunals. They must transfer witnesses, suspects and accused persons to the tribunals on request and comply with other orders of the tribunals. As discussed below, a significant number of states have provided such assistance without the need for additional legislation. If, however, existing legislation does not permit the authorities to provide such assistance, states may have to amend existing legislation or enact new legislation. The requirements of such legislation, and how states have satisfied those requirements, are set forth in Section IV below.

### *A. The obligation to assist in gathering evidence and to arrest and transfer persons to the tribunals*

#### **1. Yugoslavia Tribunal**

The Security Council decided in Resolution 827 that all states should cooperate with the Yugoslavia Tribunal and “take any measures necessary under their domestic law” to implement the resolution, “including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute”. Article 29 (1) of the Yugoslavia Statute provides that states “shall cooperate” with the Yugoslavia Tribunal investigations and

prosecutions. Article 29 (2) provides that states “shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber”. The report of the Secretary-General accompanying Security Council Resolution 827 explains that all states are under an obligation to cooperate with the tribunal and

“to assist it in all stages of the proceedings to ensure compliance with requests for assistance in the gathering of evidence, hearing of witnesses, suspects and experts, identification and location of persons and the service of documents. Effect shall also be given to orders issued by the Trial Chambers, such as warrants of arrest, search warrants, warrants for surrender or transfer of persons, and any other orders necessary for conduct of the trial.” UN Doc. S/25704, para. 125 (1993).

The report of the Secretary-General also explains that an order for the surrender or transfer of persons to the custody of the tribunal “shall be considered to be the application of an enforcement measure under Chapter VII of the Charter of the United Nations”. *Id.*, para. 126 (1993). Upon receipt of a request, the state concerned “shall comply forthwith, in accordance with Article 29”.

Rule 40 of the Rules of Procedure and Evidence, IT/32/Rev.9 (1996), provides that in case of urgency, the Prosecutor may request any state to arrest a suspect provisionally, seize physical evidence and take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness or the destruction of evidence. Rule 40 *bis* of those rules provides for the transfer of suspects to the tribunal whom, as a matter of urgency, the Prosecutor had earlier requested the state concerned to arrest provisionally pursuant to Rule 40. In addition, under Rule 90 *bis* states must transfer on receipt of a request by the tribunal witnesses who had been detained in a state at the time of the request.<sup>9</sup> Assistance could include providing adequate security for suspected grave sites to prevent the destruction of evidence. As part of this cooperation, states must also defer any criminal proceedings which they have instituted if the Yugoslavia Tribunal decides to exercise its concurrent jurisdiction in a particular case.<sup>10</sup> Rule 58 of the Rules of Procedure and Evidence, IT/32/Rev. 9 (1996), which applies *mutatis mutandis* to Rule 40 *bis*, provides that “[t]he obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the

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<sup>9</sup> It is also necessary for the effective operation of the tribunal for states to assist the tribunal to transfer other categories of witnesses, including expert witnesses and witnesses who need protection, to the tribunal. It is expected that states, as part of their obligation to cooperate with the tribunal, will cooperate in the transfer of these other categories of witnesses upon request.

<sup>10</sup> Yugoslavia Statute, Art. 9 (2) (“The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.”); Rwanda Statute, Art. 8 (2) (almost identically worded).

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surrender or transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned.”

States have clear duties under Security Council resolutions, the Dayton peace agreement and international treaties to search for, arrest and bring to justice persons who have committed crimes within the jurisdiction of the tribunal. **Security Council Resolution 827**, which established the Yugoslavia Tribunal, requires all states “to cooperate fully with the International Tribunal” and to “take any measures necessary” to implement the resolution, including compliance with tribunal orders or requests for assistance. The Security Council in Resolution 1031 of 15 December 1995 and in its Presidential Statements in April and May 1996 reaffirmed that all states must cooperate fully with the Tribunal in accordance with Resolution 827.<sup>11</sup> Thus, all states should take steps to locate, arrest and transfer to the tribunal anyone it has indicted.

In Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), the obligation under Security Council Resolution 827 to cooperate with the tribunal is reinforced by the **Dayton peace agreement**.<sup>12</sup> Annex 1-A of the Dayton peace agreement requires the parties to “provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate”.<sup>13</sup> It also requires the parties “to cooperate fully with any international personnel, including investigators” of the tribunal.<sup>14</sup> The multinational military Implementation Force (IFOR), which operates throughout Bosnia and Herzegovina, is authorized under the Dayton peace agreement “to take such actions as required” to ensure compliance with Annex 1-A of that agreement.<sup>15</sup> On 24

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<sup>11</sup> UN Doc. S/PRST/1996/15; S/PRST/1996/23.

<sup>12</sup> The Dayton peace agreement, initialled in Dayton, Ohio in the United States of America on 21 November 1995 and signed on 14 December 1995 in Paris, consists of a General Framework Agreement, 11 annexes and various related documents. The parties to the General Framework Agreement include the three states which were parties to the conflict in the former Yugoslavia, Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), and the two entities of the state of Bosnia and Herzegovina: the Federation of Bosnia and Herzegovina (an alliance of Bosnian Croats and Muslims), as well as the Republika Srpska (Bosnian Serb authorities). The Federal Republic of Yugoslavia (Serbia and Montenegro) signed the General Framework Agreement on behalf of the Republika Srpska by virtue of an agreement between them on 29 August 1995; the Republika Srpska signed the annexes on its own behalf. In addition, the General Framework Agreement was initialled and later signed by the European Union and the Contact Group countries (France, Germany, the Russian Federation, the United Kingdom and the United States of America).

<sup>13</sup> General Framework Agreement, Annex 1-A, Art. II (3).

<sup>14</sup> *Id.*, Annex 1-A, Art. II (4).

<sup>15</sup> General Framework Agreement, Annex 1-A, Art. I (2) (a).

November 1995, Tribunal President Cassese and Prosecutor Goldstone stated that they “trust the Agreement will be fully and rigorously implemented by all the Parties concerned” and that “NATO forces, as well as the competent authorities, will render appropriate assistance to the Tribunal's officials to enable them to carry out their mission”. The members of the Security Council understood when adopting Resolution 1031 on 15 December 1996 establishing IFOR that the resolution and the Dayton peace agreement gave IFOR the authority to detain and transfer persons indicted by the tribunal.<sup>16</sup>

Moreover, all states have an obligation under the **Geneva Conventions of 12 August 1949** to search for, arrest and bring to justice those responsible for grave breaches of those conventions (almost every indictment issued so far alleges grave breaches). Each party to the Geneva Convention is obliged “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”, the courts of another state or an international criminal court.<sup>17</sup> This obligation applies in all cases, not just when the tribunal or a national court has indicted an accused or asked for a suspect to be provisionally arrested. The Geneva Conventions expressly provide that states parties to the Geneva Conventions may not absolve themselves of any liability which they or other states parties have incurred in respect of grave breaches.<sup>18</sup> The official commentary by the International Committee of the Red Cross (ICRC) makes clear that this common provision removes any doubt that the duty to prosecute and punish the authors of grave breaches is “absolute”.<sup>19</sup>

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<sup>16</sup> See, e.g., statements of the Ambassadors of the United States, UN Doc. S/PV.3607, at 20, and the United Kingdom, UN Doc. S/PV.3607, at 8.

<sup>17</sup> Geneva Convention No. I, Art. 49; Geneva Convention No. II, Art. 50; Geneva Convention No. III, Art. 129; Geneva Convention No. IV, Art. 146. The official commentary makes clear that the drafters of the Geneva Conventions envisaged that states could satisfy their duty to bring to justice those responsible for grave breaches by transferring suspects to an international criminal tribunal:

“[T]here is nothing in the paragraph [Geneva Convention No. I, Art. 49, para. 2] to exclude the handing over of the accused to an international penal tribunal, the competence of which is recognized by the Contracting Parties. On this point the Diplomatic Conference declined expressly to take any decision which might hamper future developments of international law.”

ICRC, *I Commentary on the Geneva Conventions of 12 August 1949*, 366 (1952).

<sup>18</sup> Geneva Convention No. I, Art. 51; Geneva Convention No. II, Art. 52; Geneva Convention No. III, Art. 131; Geneva Convention No. IV, Art. 148.

<sup>19</sup> ICRC, *I Commentary on the Geneva Conventions of 12 August 1949*, 373 (1952).

As Amnesty International has explained more fully elsewhere, these legal obligations apply with equal force to IFOR and to states contributing personnel to IFOR.<sup>20</sup> Peace-keeping forces, including multinational forces like IFOR performing peace-keeping functions, must comply with international humanitarian law.<sup>21</sup> The Geneva Conventions are now generally accepted as reflecting customary international law binding upon all states, and, therefore, binding upon intergovernmental organizations, which are established by and composed of states. Moreover, the states parties to the Geneva Conventions have made clear that peace-keeping forces must comply with humanitarian law. The International Conference for the Protection of War Victims (a meeting of states parties to the Geneva Conventions held in September 1993) declared that “peace-keeping forces are bound to act in accordance with international humanitarian law”.<sup>22</sup> The ICRC, which is considered as the guardian of humanitarian law, has consistently declared that peace-keeping forces must comply with humanitarian law.<sup>23</sup> The ICRC “has systematically spoken up for the applicability of international humanitarian law whenever United Nations forces had to resort to force” and it is the position of the ICRC that, as outsiders to an internal armed conflict, forces serving in a UN peace-keeping operation are subject to the rules of international humanitarian law applicable in international armed conflicts.<sup>24</sup>

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<sup>20</sup> *Bosnia-Herzegovina: The international community's responsibility to ensure human rights* (AI Index: EUR 63/14/96); *Bosnia-Herzegovina: Amnesty International renews calls for IFOR to comply with international law* (AI Index: EUR 63/11/96); *Bosnia-Herzegovina: An open letter from Amnesty International to IFOR commanders and contributing governments* (AI Index: EUR 63/08/96).

<sup>21</sup> “Although there was originally some doubt about the applicability of international humanitarian law to UN forces, it is now generally accepted that such forces are subject to humanitarian law, whether they were established as peace-keeping forces or for the purpose of engaging in enforcement action. Thus, the *Institut de droit international* has confirmed that ‘the humanitarian rules of the law of armed conflict apply to the United Nations as of right and they must be complied with in every circumstance by United Nations forces which are engaged in hostilities’. A second *Institut de droit international* resolution maintains that this obligation also extends to those rules of the law of armed conflict which are not of a specifically humanitarian character. Given that this is the case when the UN establishes a force of its own, it is clear that the rules of humanitarian law are applicable to a force under national control which operates with the authority of the Security Council, as in the Gulf conflict.” Christopher Greenwood, “Scope of Application of Humanitarian Law”, in *The Handbook of Humanitarian Law in Armed Conflicts* (Dieter Fleck ed. 1995), at 46 (footnotes omitted).

<sup>22</sup> Final Declaration, para. 1.7.

<sup>23</sup> Umesh Palwankaar, “Applicability of international humanitarian law to United Nations peace-keeping forces”, *International Review of the Red Cross*, No. 294, 227, 230 (May-June 1993). Amnesty International has stated: “All international peace-keeping forces must abide by the highest standards of international humanitarian and human rights law, especially where they have enforcement authority.” *Peace-keeping and human rights* (AI Index: IOR 40/01/94), at 28.

<sup>24</sup> Antoine Bouvier, “‘Convention on the Safety of United Nations and Associated Personnel’: Presentation and analysis”, *International Review of the Red Cross*, No. 309 at 638, 651-652 (November-December 1995). See, for example, the statements by the ICRC to the Fourth Committee of the UN General Assembly: 13 November 1992; 29 November 1993; 18 November 1994; 16 November 1995 (“The ICRC has

Moreover, since 1992, the UN has consistently included provisions in its status of forces agreements with host states governing its peace-keeping operations which state that the UN shall ensure that the peace-keeping operation shall conduct the operation with full respect for the principles and spirit of the Geneva Conventions and their Additional Protocols and that members of their respective military personnel are fully acquainted with the principles and spirit of these instruments.

Other types of practical cooperation with the tribunal's investigations and prosecutions which states must provide if the tribunal is to be effective include informing the Prosecutor of the arrest of a suspect or an accused, informing the Registrar promptly of an arrest or the inability to execute an arrest warrant, informing the accused at the time of his or her arrest of his or her rights and the charges against the accused in a language the accused understands, surrendering or transferring suspects or accused persons to the tribunal without using extradition proceedings or traditional bars to extradition, providing security for witnesses, providing data from police files, guaranteeing immunity of persons in transit to the tribunal, seizing evidence and returning property and proceeds of crime. Section IV discusses how these and other forms of practical assistance should be spelled out in legislation when legislation is necessary to ensure that authorities cooperate.

## **2. Rwanda Tribunal**

The Security Council in Resolution 955 decided that all states should "cooperate fully" with the Rwanda Tribunal and "take any measures necessary" to implement the resolution and statute, "including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute". States were requested to keep the Secretary-General informed of such measures. In Resolution 978 the Security Council urged states

"to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda".

States were also urged to inform the Secretary-General and Prosecutor of "the identity of the persons detained, the nature of the crimes believed to have been committed, the evidence providing probable cause for the detentions, the date when the persons were detained and the place of detention", as well as to permit unimpeded access to detainees by the ICRC and tribunal investigators.

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always taken the view that all the provisions of humanitarian law are applicable when United Nations contingents resort to force . . .").

Article 28 (1) of the Rwanda Statute provides that states “shall cooperate” with the Rwanda Tribunal investigations and prosecutions. Article 28 (2) provides that states “shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber”. Such orders may include such matters as identifying and locating persons, taking testimony, production of evidence, service of documents and the surrender or transfer of an accused. Rule 40 of the Rules of Procedure and Evidence, ICTR/TCIR/2/L.2 (1996), provides that in urgent situations, the Prosecutor may request any state to arrest a suspect provisionally, seize physical evidence and take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness or the destruction of evidence. The state concerned “shall comply forthwith, in accordance with Article 28”. Rule 58 of the Rules of Procedure and Evidence, ICTR/TCIR/2/L.2 (1996), provides that “[t]he obligations laid down in Article 28 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused to the Tribunal which may exist under the national law or extradition treaties of the State concerned.”

Other types of practical cooperation with the tribunal’s investigations and prosecutions which states must provide if the tribunal is to be effective include informing the Prosecutor of the arrest of a suspect or an accused, informing the Registrar promptly of an arrest or inability to execute an arrest warrant, informing the accused at the time of his or her arrest of his or her rights and the charges against the accused in a language the accused understands, surrendering or transferring accused persons to the tribunal without using extradition proceedings or traditional bars to extradition, providing security for witnesses, providing data from police files, guaranteeing immunity of persons in transit to the tribunal, seizing evidence and returning property and proceeds of crime. Section IV discusses how these and other forms of practical assistance should be spelled out in legislation when legislation is necessary to ensure that authorities cooperate.

### *B. State assistance in gathering evidence and arrests and transfers by states to the tribunals so far*

#### **1. Yugoslavia Tribunal**

**Gathering documentary and other physical evidence.** States have assisted the tribunal in gathering documentary and other physical evidence in a number of ways. The **United States** has provided intelligence information, including overhead photos of suspected grave sites, to the tribunal. Rule 70 of the Rules of Procedure and Evidence, UN Doc. IT/32/Rev.9 (1996), permits states to submit confidential information to the Prosecutor on a confidential basis, such as intelligence information, to be used solely for the purpose of generating new evidence. The origin of the information will not be disclosed without the consent of the provider of the information.

**Forensic assistance and exhumations.** States have provided forensic experts or helped non-governmental organizations conducting forensic examinations, including excavations

of grave sites. IFOR has provided logistical assistance to tribunal investigators excavating suspected grave sites in Bosnia and Herzegovina and security for some grave sites during excavations.

The UN Expert on the special process dealing with missing persons in the former Yugoslavia (Expert on missing persons) has warned that “[w]ith the strong media interest and alleged attempts of disturbance of mass graves [in the former Yugoslavia], the unrestricted access to these sites may result in tainting evidence and therefore hampering the efforts of the war crimes investigators’ efforts as well as the efforts of those searching for missing persons. Consequently, mass graves have to be located, guarded and excavated without delay, in a professional, impartial and well-coordinated way.”<sup>25</sup> In Bosnia and Herzegovina, states have not been providing adequate security for suspected grave sites. IFOR has stated that it does not have adequate resources to provide the necessary security for all grave sites. IFOR has stated that it does not have the resources to guard all 3,000 grave sites, but it would entertain requests to guard particular sites if the local commanders decide that “such support can be given when balanced against other mission requirements”.<sup>26</sup>

IFOR is now providing logistical support and security for Yugoslavia Tribunal investigators to visit grave sites and other locations, as well as aerial surveillance of grave sites,<sup>27</sup> but so far it has not agreed to provide round-the-clock security for all grave sites or even a substantial number of grave sites. It has not announced a policy applicable to all IFOR commanders or proposed alternative plans of action which would provide security for grave sites, for example, by dividing responsibility between IFOR and local police forces, accompanied by members of the UN International Police Task Force (IPTF), so that the international community could allocate appropriate resources to IFOR and others to ensure adequate security.

An officer commanding American soldiers in IFOR who were providing security for tribunal investigators has reportedly stated that the investigators believed that grave sites where civilians killed after the capture of Srebrenica are suspected of being buried were disturbed. This statement and other reports of partial destruction of similar grave sites indicate that such aerial surveillance and limited ground security for grave sites where investigators are operating may not adequately protect grave sites. As of the beginning of August 1996, the Office of the

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<sup>25</sup> Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to paragraph 4 of Commission resolution 1995/35, 4 March 1996, UN Doc. E/CN.4/1996/36, para. 1. Although the mandate of the Expert on missing persons is broader than that of the tribunal investigators, the concerns he articulated apply to both mandates.

<sup>26</sup> Letter to Amnesty International, dated 12 March 1996, from the Legal Advisor to Supreme Allied Command in Europe (SACEUR), on behalf of IFOR .

<sup>27</sup> Letter dated 22 May 1996 from the Secretary-General of the North Atlantic Treaty Organization addressed to the Secretary-General, UN Doc. S/1996/375, at para. 9.

Prosecutor was reportedly satisfied with the level of protection provided at grave sites where tribunal investigators were conducting exhumations.

**Providing security for witnesses.** Several states have assisted witnesses required to give testimony before the tribunal or have promised to do so, provided for payment of witness expenses in their legislation (including **Finland, Spain and Sweden**) (see Section IV.B.1 below), or acted promptly to assist and protect witnesses and potential witnesses at the request of the tribunal. The **Netherlands**, as host state, has provided the Yugoslavia Tribunal with extensive assistance in providing security for witnesses, including safe houses. Nevertheless, very few countries have responded to the appeal, first made by the Prosecutor in 1994 and subsequently repeated by the Registrar in late 1995, to accept in their country, possibly under a new identity, witnesses considered to be at grave risk as a result of their decision to testify before the tribunal. The Victims and Witnesses Unit works impartially to care for and support all witnesses appearing before the tribunal, regardless whether they appear for the prosecution or the defence. The Unit seeks to ensure that they do so in circumstances of safety and security. Contributions for victims and witnesses to the voluntary fund for the tribunal would assist the Unit's efforts to provide care, support and protection for witnesses. States interested in assisting witnesses and victims should contact the Unit directly (see Annex I for the address, telephone number and fax number).

**Permitting tribunal investigators to conduct investigations freely and effectively.** Most states have permitted Yugoslavia Tribunal investigators to conduct on-site investigations when requested to do so, provided requested assistance and permitted investigators to conduct investigations in the most efficient manner. Nevertheless, at the beginning, many states - including those in some civil law jurisdictions where prosecutors have different roles in the investigation of cases - found it difficult under their legal systems to authorize an international prosecutor to conduct investigations in the most effective way. For example, in some states, investigators have been unable to interview witnesses, such as victims of rape, witnesses who had received death threats and refugees whose asylum claims were pending, without doing so formally before a court or state executive authorities. Such witnesses often were reluctant to testify under such circumstances. In at least one state, it was impossible for an investigator to speak to a soldier about reports of serious violations of humanitarian law unless the commanding officer, who might have been implicated in such crimes, granted permission. Although many of these problems have been resolved in practice or, in some cases, by legislation, they continue to present major obstacles to investigations in some states.

**Cooperation with tribunal investigations.** Many states have provided assistance to tribunal investigations. For example, to cite just one, **Germany** has provided assistance to the Yugoslavia Tribunal in more than 100 cases, primarily by arranging and permitting interviews of witnesses and locating and identifying individuals.

Cooperation with the Yugoslavia Tribunal investigators by parties to the Dayton peace agreement, however, has been mixed. **Bosnia and Herzegovina** has signed a Memorandum

of Understanding with the Office of the Prosecutor on 3 December 1994 concerning cooperation, enacted legislation which went in to effect on 10 April 1995 permitting its authorities to cooperate with the tribunal,<sup>28</sup> permitted tribunal investigators to operate freely and cooperated with investigators with regard to exhumations. Nevertheless, the Prosecutor has encountered difficulties in obtaining information concerning Muslim suspects, including delays in providing information, not receiving requested information or receiving incomplete information.

The tribunal's relations with the **Federation of Bosnia and Herzegovina** entity authorities are conducted through the Government of Bosnia and Herzegovina, but evidence indicates that Bosnian Croat authorities in the Federation have refused to cooperate with requests for assistance by the tribunal.

The Bosnian Serb authorities in the **Republika Srpska** entity have recently permitted investigators to operate in territory under their control. The two leaders of the Republika Srpska, the President, Radovan Karadžić, and the commander of Bosnian Serb forces, General Ratko Mladić, both of whom have been indicted by the Tribunal, however, remain in effective control, despite the peace agreement and the recent agreement by Radovan Karadžić to step down from his official and party positions, which necessarily limits the extent of the cooperation by Bosnian Serb authorities with tribunal investigators.

**Croatia** has permitted Yugoslavia Tribunal investigators to operate on its territory since 1994 and to open an office in Zagreb. It enacted legislation permitting its authorities to cooperate with the tribunal in April 1996.<sup>29</sup> Despite repeated requests, however, the Croatian authorities have not yet provided all the information the Prosecutor has demanded concerning crimes allegedly committed by Croatians.

Although the **Federal Republic of Yugoslavia (Serbia and Montenegro)** has undertaken to permit the tribunal to open an office, arrangements have not yet been completed to open the office. It has not yet permitted tribunal investigators to operate freely in its territory. On 12 March 1996, it permitted the tribunal Deputy Prosecutor and investigators to interview two witnesses to the Srebrenica massacre who were in detention and later authorized the transfer of these witnesses to the tribunal.

**Deferral of proceedings, arrests and surrenders or transfers by national authorities.** Some states have **transferred witnesses** to the tribunal. **Bosnia and Herzegovina** transferred two witnesses to the tribunal, one of whom was later indicted. The **Federal Republic of Yugoslavia (Serbia and Montenegro)** also transferred two witnesses

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<sup>28</sup> The legislation falls short of the tribunal guidelines. For a discussion of this and other national legislation, see Section IV below.

<sup>29</sup> A review of that legislation, however, indicates that it does not fully satisfy tribunal guidelines. For a discussion of this and other national legislation, see Section IV below.

to the tribunal, one of whom was later indicted. Several states have **deferred investigations or proceedings** in their courts against persons suspected of having committed crimes within the jurisdiction of the Yugoslavia Tribunal at its request who were later indicted by the tribunal. **Germany** deferred proceedings in November 1994 at the request of the tribunal in a prosecution in its own courts against one defendant by transferring all the documents relating to the case to the tribunal. He was later indicted by the tribunal and surrendered to the tribunal, where he is now on trial. **Bosnia and Herzegovina** has deferred its investigation into the killings committed in the Lasva River Valley in the central part of that country pursuant to an order issued by the tribunal on 11 May 1995. Three indictments concerning these crimes were confirmed on 10 November 1995, although some of these indictments were not made public until 27 June 1996. None of these persons are known to have been arrested, although one of those indicted who was living in Croatia voluntarily surrendered to the tribunal on 1 April 1996.

Several states have **provisionally arrested suspects** at the request of the Yugoslavia Tribunal, some of whom were subsequently indicted by the tribunal and transferred to the tribunal. On 18 March 1996, **Austria** arrested a suspect, a national of Bosnia and Herzegovina, who was indicted by the tribunal on 21 March 1996. Although Austria has not yet enacted legislation authorizing a transfer to the tribunal, its legislation permitted extradition to the state of the accused's nationality or another state if that state was unwilling to accept the accused. Bosnia and Herzegovina agreed to waive extradition and permitted Austria to extradite the accused to the Netherlands, the seat of the tribunal, which then transferred him to the tribunal. On 18 March 1996, **Germany** provisionally arrested a suspect who was indicted on 21 March 1996 and later transferred to the tribunal. **Bosnia and Herzegovina** detained two persons in January 1996 who were suspected of committing serious violations of humanitarian law and later provisionally arrested them pursuant to a request by the Prosecutor under Rule 40 of the Rules of Procedure and Evidence, permitted investigators from the tribunal to interview them and transferred them to the tribunal in accordance with a request by the Prosecutor.<sup>30</sup>

Several states have **arrested accused persons and transferred them** to the tribunal. On 2 May 1996, a spokesperson for the Tribunal announced that **Bosnia and Herzegovina** had arrested two Bosnian Muslims who had been indicted by the Tribunal on 22 March 1996 for crimes allegedly committed against Bosnian Serbs at the „elebifi prison camp at Konjic in central Bosnia and Herzegovina in 1992 and that it would surrender the accused shortly. Thus, it became the first party to the peace agreement to have executed an arrest warrant issued by the tribunal. On 15 May 1996, the Supreme Court of Sarajevo granted permission for the accused to be transferred to the tribunal and they arrived in The Hague on 13 June 1996. **Germany** arrested a person on 18 March 1996 who was believed to be a person accused by the

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<sup>30</sup> In 1995 the **Netherlands** provisionally arrested a suspect at the request of the tribunal, but this person was reportedly released after the 20-day maximum provisional arrest period under Dutch law ended because the **Federal Republic of Yugoslavia (Serbia and Montenegro)** refused to provide evidence which would have enabled the tribunal to decide whether the suspect should be indicted.

tribunal and transferred this person to the tribunal, but this person was later released when it was discovered that it was a case of mistaken identity.

Cooperation by parties to the peace agreement other than Bosnia and Herzegovina with regard to deferrals, arrests and surrenders or transfers of accused persons to the Yugoslavia Tribunal has been extremely limited. On 9 June 1996, the Ministry of Foreign Affairs announced that **Croatia** had arrested one of the people indicted by the tribunal, but it is not clear if he will be transferred to the tribunal. Although one Croatian surrendered himself voluntarily to the tribunal, no other Croatian who has been indicted has been surrendered to the tribunal. None of the Bosnian Croats in the **Federation of Bosnia and Herzegovina** entity who have been indicted by the tribunal have been arrested or transferred to the tribunal. The High Representative, Carl Bildt, has stated that “[o]n the territory of the Federation, in the parts controlled by the HVO [the area controlled by the Herceg-Bosnia entity, which was required to be dissolved under agreements reached at Dayton, but has not yet been dissolved] indicted persons are living freely and without fear”.<sup>31</sup>

The two leaders of the **Republika Srpska** entity, the President, Radovan Karadžić, and the commander of Bosnian Serb forces, General Ratko Mladić, both of whom have been indicted by the tribunal, remain in power, despite the Dayton peace agreement and the authorities have refused to surrender any of the Bosnian Serbs in the Republika Srpska who have been indicted by the tribunal. The High Representative has stated that, “in the case of the Republika Srpska, overall co-operation is still grossly deficient”.<sup>32</sup>

As of 24 April 1996, the **Federal Republic of Yugoslavia (Serbia and Montenegro)** had “not executed a single arrest warrant issued to it”.<sup>33</sup> As a result of its failure to execute arrest warrants against three persons who had been charged with the murder of 260 civilians and unarmed men following the fall of the city of Vukovar in eastern Croatia in November 1991, even after a public hearing pursuant to Rule 61 to reconfirm the indictment,<sup>34</sup> the President of

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<sup>31</sup> Report by the High Representative, Mr. Carl Bildt to the Florence Mid-Year Review Conference, 12 June 1996, at 5.

<sup>32</sup> *Id.*

<sup>33</sup> Letter dated 24 April 1996 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 addressed to the President of the Security Council, UN Doc. S/1996/319. The account of cooperation by the parties in this paragraph is based largely on *Quatre mois après Dayton, Rapport du Président du Tribunal Pénal International pour l'ex-Yugoslavie (TPI) sur la coopération des parties avec TPI au regard de l'accord de Dayton (14 décembre - 19 avril 1996)*, La Haye, 19 avril 1996.

<sup>34</sup> Rule 61 of the Rules of Procedure and Evidence, IT/32/Rev.9, permits the Judge who confirmed an indictment to request the Prosecutor to report on measures taken if a warrant of arrest has not been executed within a reasonable time. If the Judge is satisfied that the Prosecutor has taken all reasonable

the Tribunal, Antonio Cassese, brought this non-compliance with the Tribunal by the Federal Republic of Yugoslavia (Serbia and Montenegro) to the attention of the Security Council so that it could “decide upon the appropriate response”. On 8 May 1996, the President of the Security Council issued a statement on behalf of the Council declaring that it “deplores the failure to date of the Federal Republic of Yugoslavia to execute the arrest warrants issued by the Tribunal against the three individuals referred to in the letter of 24 April 1996, and calls for the execution of those arrest warrants without delay”.<sup>35</sup>

The commander of Bosnian Serb forces, General Ratko Mladif, and Bosnian Serb Colonel Veselin Šljivan..anin, both of whom have been indicted by the Tribunal, attended a public funeral in Belgrade on 21 May 1996, but were not arrested by the authorities.<sup>36</sup> On 22 May 1996, President Cassese wrote to the President of the Security Council, stating that the fact that General Mladif had “not been arrested by the authorities of the Federal Republic of Yugoslavia is further evidence of the blatant failure of that State to comply with its clear and overriding legal obligation to execute orders of this Tribunal”.<sup>37</sup> On 28 May 1996, in a statement to the press, the President of the Security Council said that the Council “deeply deplore[s] the continued failure of the government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal”, that “[t]his failure cannot be justified” and that “compliance with the requests of the Tribunal constitutes an essential aspect of implementing the peace agreement”.<sup>38</sup> The Security Council did not end the suspension of sanctions against that state, however.

**Cooperation concerning trial observations in national courts.** Several states, including **Austria** and **Denmark**, have informed the tribunal that they were conducting investigations or trials of persons suspected of committing crimes within the jurisdiction of the

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steps to effect personal service, including recourse to the authorities of the state in which the accused is believed to be, the Judge can order submission of the indictment and evidence supporting it to a Trial Chamber to conduct a hearing to determine whether there are reasonable grounds to believe that the accused has committed the crimes charged in the indictment. If it decides to reconfirm the indictment, the Trial Chamber shall issue an international arrest warrant which shall be sent to all states and it may order states to take provisional measures, including the freezing of assets. If the Trial Chamber determines that the failure to affect personal service was due in whole or in part to a failure or refusal of a state to cooperate with the tribunal as required by Article 29 of the Yugoslavia Statute, it shall so certify and the President, after consulting the Presiding Judges of the Chambers “shall notify the Security Council thereof in such manner as he thinks fit”.

<sup>35</sup> UN Doc. S/PRST/1996/23.

<sup>36</sup> Indictments against both individuals have been reconfirmed after hearings pursuant to Rule 61, IT/32/Rev.9.

<sup>37</sup> President Cassese reports to the Security Council on the continuing violation by the FRY of its obligation to cooperate with the ICTY, 23 May 1996, CC/PIO/075-E. UN Doc. S/1996/364.

<sup>38</sup> “UN Security Council “deplores” Belgrade’s lack of cooperation”, AFP 290017, 28 May 1996.

tribunal and have permitted observers from non-governmental organizations acting in cooperation with the tribunal to attend trials in their courts of persons charged with crimes committed in the former Yugoslavia.<sup>39</sup> Such prior notice and cooperation enables the tribunal to determine whether it should assert its jurisdiction over the case.<sup>40</sup> The extent of current cooperation with the tribunal and non-governmental organizations operating in consultation with the tribunals concerning trials in Croatia, Bosnia and Herzegovina and Federal Republic of Yugoslavia (Serbia and Montenegro) is not known.

**IFOR's role in searching for and arresting suspects and accused.** One of the most disappointing aspects of state cooperation in the former Yugoslavia is the failure of states contributing forces to IFOR to carry out their obligations under international law to search for, arrest and bring to justice persons suspected of committing genocide, crimes against humanity and serious violations of humanitarian law, including grave breaches of the Geneva Conventions.

Since the first IFOR troops arrived in Bosnia and Herzegovina last year, spokespersons for IFOR and troop-contributing states have repeatedly stated that they would not search for persons indicted by the Yugoslavia Tribunal, but would detain suspects only if they encountered

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<sup>39</sup> After suspension of the first trial in 1994 of a Bosnian Serb, reportedly on charges of genocide, in an Austrian trial court in Salzburg, he was acquitted before a second court in 1995. In November 1994, a Danish court convicted a Bosnian Muslim for torturing a prisoner to death. The Yugoslavia Tribunal did not seek to defer proceedings in either case.

<sup>40</sup> Article 9 (1) of the Yugoslavia Statute provides that the tribunal has concurrent jurisdiction with national courts over genocide, other crimes against humanity and serious violations of humanitarian law committed in the former Yugoslavia since 1 January 1991. Article 9 (2) provides that the tribunal

“shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.”

Rule 9 of the Rules of Procedure and Evidence provides that the Prosecutor may request the Trial Chamber to make a formal request to a state to defer investigations or criminal proceedings whenever it appears to the Prosecutor that:

- (i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;
- (ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or
- (iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal”[.]

them.<sup>41</sup> According to numerous reports, troops have frequently encountered persons who have been indicted by the Yugoslavia Tribunal, but failed to arrest them. IFOR has informed some of its personnel of the identities of persons who have been indicted by the Yugoslavia Tribunal by providing them with photographs of some of the accused and instructing them to detain any accused they happen to encounter, if feasible. The North Atlantic Treaty Organization (NATO) has agreed a Memorandum of Understanding governing its relations with the Yugoslavia Tribunal covering the technical and legal aspects of detaining persons indicted by the tribunal, but it has not been published.<sup>42</sup>

IFOR has an authorized strength of 60,000 and has extensive intelligence gathering capabilities, including monitoring of radio communications and access to satellite and aerial reconnaissance data. It operates at will throughout the country. Under the peace agreement, "IFOR shall have complete and unimpeded freedom of movement by ground, air, and water throughout Bosnia and Herzegovina".<sup>43</sup> IFOR has virtually plenary authority to do whatever it sees fit to implement the peace agreement anywhere in Bosnia and Herzegovina. The IFOR Commander

"shall have the authority, without interference or permission of any Party, to do all that the Commander judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the responsibilities listed above in paragraphs 2, 3 and

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<sup>41</sup> The North Atlantic Council, the political decision-making body of the North Atlantic Treaty Organization (NATO), issued a Decision Sheet on 16 December 1995 stating that, on the basis of Security Council Resolution 1033, it was:

"Agreed that, having regard to UNSCR 827, UNSCR 1033, and Annex 1-A of the General Framework Agreement of Peace in Bosnia and Herzegovina, IFOR should detain any persons indicted by the International Criminal Tribunal who come into contact with IFOR in its execution of assigned tasks in order to assure the transfer of these persons to the International Tribunal."

IFOR usually states that it will "detain" individuals and facilitate the transfer of detained persons to the tribunal, leaving it to the tribunal to make the actual "arrest". Apparently, this is intended to distinguish between placing someone in custody and the formal act of taking jurisdiction by the tribunal. In this paper the term arrest is used, except when referring to a statement by IFOR about its actions, as in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, to mean "the act of apprehending a person for the alleged commission of an offence or by the action of an authority".

<sup>42</sup> On 25 April 1996, the Parliamentary Assembly of the Council of Europe invited the Russian Federation, "as the only non-NATO country contributing to IFOR which has not yet done so, to adhere to the 'memorandum of understanding' on relations with th[e] tribunal". Parl. Ass. Rec. 1297, 25 April 1996.

<sup>43</sup> General Framework Agreement, Annex 1-A, Art. VI (9) (a). Moreover, the parties have agreed that "IFOR shall have the right to deploy on either side of the Inter-Entity Boundary line and throughout Bosnia and Herzegovina". *Id.*, Annex 1-A, Art. VI (1).

4 [of Article VI of Annex 1-A], and they shall comply in all respects with the IFOR requirements”.<sup>44</sup>

This authority is further reinforced by the agreement of the parties that

“the IFOR Commander shall have the unimpeded right to observe, monitor, and inspect any Forces, facility or activity in Bosnia and Herzegovina that the IFOR believes may have military capability. The refusal, interference, or denial by any Party of this right to observe, monitor, and inspect by the IFOR shall constitute a breach of this Annex and the violating Party shall be subject to military action by the IFOR, including the use of necessary force to ensure compliance with this Annex”.<sup>45</sup>

Moreover, if these powers were to prove to be insufficient, the parties have agreed that the North Atlantic Council (NATO’s political decision-making body) “may establish additional duties and responsibilities for the IFOR in implementing this Annex”.<sup>46</sup> IFOR officials have repeatedly stated that IFOR operates “at will” throughout the country and on 22 May 1996, US State Department spokesperson Nicholas Burns stated that IFOR troops are “everywhere” in the country.<sup>47</sup>

Nevertheless, despite these virtually unlimited powers, as 4 August 1996, IFOR was continuing to refuse to search for persons suspected of grave breaches of the Geneva Conventions of 1949. The US Secretary of State, Warren Christopher, declared following a meeting on 2 June 1996 in Geneva that IFOR would expand its patrols in Bosnia and Herzegovina:

“IFOR is now in a position to expand its presence throughout all of Bosnia to establish a safe and secure environment for civilian implementation. Our troops will conduct more visible and more proactive patrols throughout the country. This will improve conditions for freedom of movement and put war criminals at greater risk of apprehension.”<sup>48</sup>

It is not clear to what extent IFOR’s policy has changed. Lieut. Co. Rick Scott, a US Defense Department spokesperson said on 2 June 1996, “I do not know of any fundamental

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<sup>44</sup> *Id.*, Annex 1-A, Art. VI (5).

<sup>45</sup> *Id.*, Annex 1-A, Art. VI (6).

<sup>46</sup> *Id.*, Annex 1-A, Art. VI (4).

<sup>47</sup> Carol Giacomo, “U.S. not pressing early sanctions on Serbia”, Reuter, Rtw 05/22 1916, 22 May 1996, reprinted by Tribunal Watch.

<sup>48</sup> Press Statement of Secretary of State Warren Christopher, USIS Geneva Daily Bulletin, 3 June 1996, at 4.

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changes in the mission.”<sup>49</sup> Shortly thereafter, according to the US State Department, General George Joulwan, the NATO commander, ordered IFOR to carry out more aggressive patrols, including the city of Pale in the Republika Srpska for the first time.<sup>50</sup> As of 15 June 1996, the day after the conclusion of the Florence Mid-Term Review Conference, however, IFOR had not arrested a single person indicted by the tribunal. In July 1996, Col. John Batiste, Commander of the US Army Second Brigade, First Armored, is reported to have stated on Radio Vlasenica: “IFOR’s policy has not changed. The 2nd Brigade will not conduct a manhunt for indicted war criminals. An indicted war criminal would literally have to stumble into one of my checkpoints . . .”<sup>51</sup>

On 10 August 1996, a small IFOR inspection unit visited the bunker of General Ratko Mladif, one of nearly 80 persons indicted by the tribunal, to inspect it. General Joulwan, Supreme Allied Commander, Europe stated several days later that “[i]f, in the course of that operation, they would have come in contact with General Mladif, they would have detained him and turned him over to proper authorities”.<sup>52</sup> Whether this visit reflects a change in policy from waiting for chance encounters to searching for persons indicted by the tribunal is unclear since the inspection visit came after five weeks of negotiation.

States wishing further information on how they can assist the Yugoslavia Tribunal in gathering evidence or arresting and transferring suspects and accused should contact the Prosecutor (see Annex I for address, telephone number and fax number).

## 2. Rwanda Tribunal

Some states are cooperating with the Rwanda Tribunal by arresting persons suspected or accused of crimes within the jurisdiction of the tribunal. As of 18 July 1996, the tribunal had indicted 19 individuals since 28 November 1995.<sup>53</sup> For example, **Zambia** provisionally arrested three Rwandese suspects whom it had detained on immigration grounds and, at the request of the tribunal, kept them in custody until the tribunal’s own detention unit at its headquarters in Arusha was completed. These three suspects have been indicted and Zambia has transferred them to the tribunal. It continues to detain several other Rwandese persons pending the outcome of investigations by the tribunal. On 7 June 1996, the Registrar on behalf of the tribunal

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<sup>49</sup> Philip Shenon, “From the U.S., Mixed Signals on Bosnia War Crime Issue”, New York Times, 3 June 1996, at A1.

<sup>50</sup> Reuter, “Nato patrols to cover Pale”, The Times, 5 June 1996, at 15.

<sup>51</sup> Christine Spolar, “U.S. Colonel Fields Radio Call-Ins”, Washington Post, 30 July 1996, at A10, reprinted on TWATCH-L@UBVM.CC.BUFFALO.EDU, 2 August 1996.

<sup>52</sup> Remarks by General George Joulwan, Supreme Allied Commander, Europe, Geneva, Switzerland, 14 August 1996, US Department of State, Office of the Spokesman, at 5.

<sup>53</sup> Press release, UN Doc. ICTR/INFO-9-2-013, 18 July 1996.

expressed his “sincere gratitude to the Government of Zambia for the exemplary co-operation it has given to the Tribunal in connection with the arrest, provisional detention and transfer of the accused to the Tribunal’s custody”.<sup>54</sup>

**Belgium** and **Switzerland** have cooperated in several cases where the Rwanda Tribunal has made formal requests for deferral of investigations and legal proceedings. The tribunal has formally requested that **Belgium** defer proceedings against three of four persons it had detained on suspicion of having committed crimes within the jurisdiction of the tribunal, one of whom has since been indicted, as well as in an investigation which Belgium was conducting of incitement to genocide. The Belgian Cour de Cassation deferred proceedings against three persons who are in detention in Belgium. In one of these cases the Cour de Cassation applied Article 8 of the Belgian cooperation legislation (see Supplement One) because the Rwanda Tribunal did not confirm the indictment. The Cour de Cassation will have to decide upon another request for deferral of proceedings in the so-called Radio Mille Collines case. The tribunal has formally requested **Switzerland** to defer its investigation against a person it had detained and to keep that person in detention pending the issuance by the tribunal of an arrest warrant and Switzerland has agreed to do so. This person has been indicted<sup>55</sup> and deferral has been granted by the Supreme Military Court. A formal request for deferral is now expected from the tribunal.

On 17 May 1996, the tribunal requested **Belgium** to defer national investigations and extradition proceedings against four Rwandese persons who are among 12 suspects in custody in **Cameroon** (which does not have legislation expressly permitting its authorities to transfer accused persons to the tribunal).<sup>56</sup> The Belgian Cour de Cassation has deferred proceedings against at least one of these four persons and is expected to defer proceedings, including extradition proceedings, against the others. **Rwanda** has also sought the extradition of these individuals. On 31 May 1996, a court in Cameroon held that the tribunal had precedence over claims of jurisdiction by national courts and that all 12 suspects in custody should be transferred to the tribunal on receipt of a formal request. On 24 June 1996, the tribunal reminded the Government of Cameroon of its obligation to transfer the four persons to the tribunal.<sup>57</sup> Two of these individuals were indicted on 15 July 1996.<sup>58</sup>

On 18 July 1996, in reviewing the cooperation of **Belgium**, **Cameroon** and **Switzerland** as of that date, the tribunal declared that it was “pleased to note the spirit of co-

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<sup>54</sup> Press statement, UN Doc. ICTR/INFO-9-5-076, 7 June 1996.

<sup>55</sup> Press release, UN Doc. ICTR/INFO-9-2-013, 18 July 1996.

<sup>56</sup> Press release, UN Doc. ICTR/INFO-9-2-07, 17 May 1996.

<sup>57</sup> Press release, UN Doc. ICTR/INFO-9-2-011, 24 June 1996.

<sup>58</sup> Press release, UN Doc. ICTR/INFO-9-2-013, 18 July 1996.

operation shown by the various governments concerned and their recognition of the primacy of its jurisdiction in the matter".<sup>59</sup> As of 1 August 1996, however, the President of Cameroon, who must approve any transfer to the tribunal, had not reached a decision.

Rule 34 of the Rules of Procedure and Evidence provides for the setting up of a Victims and Witnesses Protection Unit under the authority of the Registrar to recommend protective measures for victims and witnesses in accordance with Article 21 of the Rwanda Statute and to provide counselling and support for them, particularly in cases of rape and sexual assault. The Office of the Registrar, in cooperation with the Prosecutor, is developing plans to establish the unit.

States wishing further information on how they can assist the Rwanda Tribunal in gathering evidence or arresting and transferring suspects and accused should contact the Prosecutor (see Annex I for address, telephone number and fax number). Pending establishment of the Victims and Witnesses Protection Unit, states wishing to assist in the support and protection of witnesses should contact either the Prosecutor or the Registrar.

### III. STAFF, EQUIPMENT AND FUNDING NEEDS OF THE TRIBUNALS

#### A. *The need for qualified personnel*

The seconding of staff to the tribunals has been important to the work of the tribunals because it has allowed it to recruit highly talented and experienced staff from many countries more rapidly than through normal UN recruitment procedures. These procedures have led to delays of up to six months in the recruitment of essential staff and even the speedier UN secondment procedures are subject to significant delays. There are now staff from nearly 40 countries working for the two tribunals, but the tribunals urgently need to recruit more staff, particularly lawyers skilled in international and criminal law, investigators, security experts, translators and interpreters. Under UN contribution policy, the tribunals have not been allowed to accept contributions, such as personnel, which would lead to any additional financial liability for the UN. Contributing states are required to cover fully any costs required to support their contributions. Such costs may include, for example, relocation expenses for a seconded employee. Seconded staff can be deployed more rapidly than regularly recruited staff.

**Yugoslavia Tribunal.** Security Council Resolution 827 urges "States and intergovernmental entities and non-governmental organizations to contribute . . . services to the International Tribunal, including the offer of expert personnel". The General Assembly in Resolution 50/193, adopted on 22 December 1995, has requested states "as a matter of urgency, to continue to make available to the Tribunal expert personnel . . . to aid in the investigation and prosecution of persons accused of having committed serious violations of international humanitarian law". A substantial number of states have seconded staff to the Yugoslavia

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<sup>59</sup> *Id.*

Tribunal, but more such staff are needed. A brief summary of the personnel seconded since the tribunal was established as of 27 March 1996 is set forth below. This list does not reflect the wide range of nationalities of regularly recruited staff.

The list does not include pledges to second staff. For example, the **French** Foreign Ministry has pledged to second at least five magistrates for a six-month period to help the Office of the Prosecutor screen material.<sup>60</sup> The **Italian** Minister of Justice pledged on 13 March 1996 to second to the Office of the Prosecutor four senior prosecutors for periods ranging from six months to two years and the Minister of Defence stated that he was prepared to second several military prosecutors to work in this office.<sup>61</sup> The Minister of Justice of the **Russian Federation** pledged on 18 March 1996 to second several lawyers in the near future.<sup>62</sup>

<b>Personnel seconded to the Yugoslavia Tribunal as of 27 March 1996 (excluding the UN Detention Unit)</b>	
<b>State</b>	<b>Personnel provided</b>
Canada	8 investigators (June to August 1993)
Denmark	2 investigators
Finland	1 deputy chief inspector
Netherlands	3 investigators and 1 junior legal officer
Norway	2 investigators
Sweden	2 investigators
United Kingdom	1 army legal officer and 3 police officers
United States of America	21 officials, including investigators, prosecutors, political and intelligence analysts and a logistical management expert

States interested in seconding staff to the Yugoslavia Tribunal should contact the Registrar (see Annex I for the address, telephone and fax number).

<sup>60</sup> Press release, CC/PIO/036-E, 23 February 1996.

<sup>61</sup> Press release, CC/PIO/043-E, 14 March 1996.

<sup>62</sup> Press release, CC/PIO/046-E, 20 March 1996.

**Rwanda Tribunal.** The Security Council in Resolution 955 urges “States and intergovernmental and non-governmental organizations to contribute . . . services to the International Tribunal, including the offer of expert personnel”. A substantial number of states have seconded staff to the Rwanda Tribunal, but far more is urgently needed. In particular, the Rwanda Tribunal needs professionally qualified personnel to be employed as investigators, security experts, translators, interpreters and legal advisers.

A brief summary of the staff seconded since the tribunal was established as of 15 May 1996 is set forth below. This list does not reflect the wide range of nationalities of regularly recruited staff.

<b>Personnel seconded to the Rwanda Tribunal as of 15 May 1996</b>	
<b>State</b>	<b>Personnel contributed</b>
Canada	4 investigators
Netherlands	18 investigators
Norway	3 investigators
Switzerland	2 investigators; 1 information officer
United Kingdom	2 investigators
United States of America	2 prosecutors, 6 investigators and 9 information management specialists

States interested in seconding staff to the Rwanda Tribunal should contact the Registrar (see Annex I for the address, telephone and fax number).

### ***B. The need for appropriate equipment***

Both tribunals need a wide range of equipment, including library equipment and supplies, case management systems and equipment to protect witnesses, such as video conferencing equipment.

#### **1. Yugoslavia Tribunal**

The Security Council in Resolution 827 urges “States and intergovernmental entities and non-governmental organizations to contribute . . . equipment . . . to the International Tribunal. . .”.

The General Assembly in Resolution 50/193, adopted on 22 December 1996, requested all states, “as a matter of urgency, to continue to make available to the Tribunal . . . adequate resources and services to aid in the investigation and prosecution of persons accused of having committed serious violations of international humanitarian law”. The list below does not include

pledges of equipment which may not yet have been received. For example, the **French** Foreign Ministry has pledged to donate to the Office of the Prosecutor vehicles valued at one million francs (approximately \$197,000) for the transportation of investigators on mission, the Department of Humanitarian Action has announced the financing of audio-visual equipment to upgrade the existing equipment in the courtroom and the participation of French forensic experts in the exhumation of graves.<sup>63</sup>

<b>Equipment contributed to the Yugoslavia Tribunal as of 15 August 1996</b>	
<b>State</b>	<b>Equipment</b>
France	Donations of vehicles to the Office of the Prosecutor and video-relay equipment for court room
United Kingdom	\$30,000 worth of computer equipment; donation of vehicles to the Office of the Prosecutor
United States	\$2,300,000 worth of computer and other equipment, including three vehicles to the Office of the Prosecutor

States interested in providing equipment to the tribunal should contact the Registrar (see Annex I for the address, telephone number and fax number).

## **2. Rwanda Tribunal**

The Security Council in Resolution 955 urges “States and intergovernmental and non-governmental organizations to contribute . . . equipment . . . to the International Tribunal. . .”. The tribunal has pressing needs for office equipment and furniture. It has not been possible to obtain up-to-date and comprehensive information concerning the amounts and value of equipment provided to the Rwanda Tribunal. It is known, however, that the **United States** has provided several million dollars worth of computer and other equipment to the tribunal, including desks, beds, chairs, bookshelves and courtroom furniture.

<sup>63</sup> Press release, CC/PIO/036-E, 23 February 1996.

States interested in providing equipment to the tribunal should contact the Registrar (see Annex I for the address, telephone number and fax number).

### *C. Assisting the defence*

***“How can we secure full respect for the principle of fair trial if indigent accused cannot be provided with adequately funded lawyers and the means to provide a full and fair defence?”***

**Address of Antonio Cassese, President of the Yugoslavia Tribunal, to the UN General Assembly, 7 November 1995**

#### **1. Yugoslavia Tribunal**

Articles 18 (3) and 21 (4) of the Yugoslavia Statute provide that suspects or accused are entitled to legal assistance of their own choice or, if unable to pay for such assistance, to free legal aid. This right is implemented in Rules 42 to 46 of the Rules of Procedure and Evidence, IT/32/Rev.9 (1996). The Registrar has established a list of more than 40 lawyers from more than 11 countries who have agreed to represent suspects or accused unable to pay for legal assistance. The Registrar has issued a Directive on Assignment of Defence Counsel, IT/73/Rev.2 (1995), which governs the status and conduct of such counsel, defines the method for the tribunal to calculate and pay fees and costs and provides for the establishment of an advisory panel. The Registry has also prepared a Manual for Practitioners with practical information for defence counsel. The cost of the legal aid program, if it is to assure a fair trial, will be substantial. In addition to legal fees, it will have to cover travel to former Yugoslavia to interview witnesses and gather evidence as well as translation and interpretation. In the view of the Registrar, current funding appears to have been sufficient to meet the requests for assistance so far by defence lawyers. The Registrar has stated that the rights of the accused will not be compromised by a lack of adequate legal representation in the event of funding difficulties. Whether the defence will continue to have adequate resources both to pay lawyers and to conduct its own investigations so that equality of arms between the prosecution and defence can be assured remains to be seen.

States wishing to assist the tribunal in assuring that defence facilities are adequate should contact the Registrar (see Annex I for the address, telephone number and fax number).

#### **2. Rwanda Tribunal**

Articles 17 (3) and 20 (4) of the Rwanda Statute provide that suspects or accused are entitled to legal assistance of their own choice or, if unable to pay for such assistance, to free legal aid. This right is implemented in Rules 42 to 46 of the Rules of Procedure and Evidence. ICTR/TCIR/2/L.2 (1996). Pursuant to Article 20 (4) (d) of the Rwanda Statute, the Registrar has issued a Directive on the Assignment of Defence Counsel (Directive) specifying the

conditions and arrangements for the assignment of defence counsel to indigent suspects and accused which was approved by the tribunal at its second plenary session on 9 January 1996.

Defence counsel need to have office furniture and equipment comparable to that of the Office of the Prosecutor. Donations are urgently needed to help cover defence legal fees (see Section III.E below).

States wishing to assist the tribunal in assuring that defence facilities are adequate should contact the Registrar (see Annex I for address, telephone number and fax number).

#### ***D. Providing pre-trial detention and prison facilities***

##### **1. Pre-trial detention facilities**

Any state where a suspect or an accused person is found will have to provide pre-trial detention facilities, either during a period of provisional arrest, pending a decision whether to issue an indictment, or after an indictment, pending surrender or transfer to the tribunals. Such pre-trial detention facilities will, of course, have to be in accordance with international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

**Yugoslavia Tribunal.** The tribunal adopted comprehensive rules of detention governing the administration of the UN detention unit in The Hague on 5 May 1994 which prohibit discrimination, guarantee freedom of religion and provide for regular and unannounced visits by judges of the tribunal to the Tribunal detention unit.<sup>64</sup> These rules are based in part on UN standards and on the European Prison Rules. As a further safeguard for the rights of pre-trial detainees, the International Committee of the Red Cross (ICRC) has been appointed inspecting authority for the UN detention unit, as well as for the detention facilities within the tribunal building. The Rules of Detention provide that inspectors may make regular unannounced visits to the detention unit to examine the manner in which detainees are treated. The UN detention unit built by the Netherlands has pre-trial detention facilities for 24 persons. It is located within the premises of a Dutch prison at The Hague. This unit is rented by the Yugoslavia Tribunal and staffed by personnel on a reimbursable loan basis from the Dutch Government. The Yugoslavia Tribunal has requested that states contribute qualified personnel to the detention unit. Some countries have already indicated their willingness to do so, as shown below:

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<sup>64</sup> Basic Principles, Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev.3 (Yugoslavia Rules of Detention).

<b>States which have offered staff to the UN detention unit at The Hague as of 15 August 1996</b>	
<b>State</b>	<b>Number of staff offered</b>
Italy	not indicated
Malaysia	4
Mauritius	4
Sri Lanka	5

States interested in providing staff for the pre-trial detention facility to the Yugoslavia Tribunal should contact the Registrar (see Annex I for address, telephone number and fax number).

**Rwanda Tribunal.** The tribunal adopted comprehensive Provisional Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal on 9 January 1996, ICTR/2/L.3 (1996), which govern the administration of the Detention Unit. The tribunal has also approved Regulations to Govern the Supervision of Visits to, and Communications with, the Detainees and Regulations for the Establishment of a Disciplinary Procedure for Detainees.<sup>65</sup> Tanzania has offered to build pre-trial detention facilities for up to 40 persons. Six cells were completed in May 1996 and the rest are to be completed by the end of the year. Once completed, the Detention Unit will be subject to inspection by the ICRC. The role of the ICRC will be to inspect and report upon all aspects of conditions of detention including the treatment of persons held in the Detention Unit or in holding cells located at the premises of the tribunal, to ensure their compliance with international standards.

The tribunal urgently needs to obtain pre-trial detention facilities in countries other than Rwanda and Tanzania for the hundreds of accused persons likely to be tried in the next few years. Other states in Africa outside Rwanda, which as of 1 August 1996 had approximately 75,000 persons in detention suspected of genocide, other crimes against humanity or serious violations of humanitarian law (many of whom have not been charged), have been asked to provide such facilities. As of 1 August 1996, no state other than Tanzania is known to have agreed to do so. Such facilities will, of course, have to satisfy the requirements of the tribunal and international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and permit visits by international observers such as the ICRC.

<sup>65</sup> Press release, UN Doc. ICTR/INFO-9-2-012, 9 July 1996.

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States interested in providing pre-trial detention facilities to the Rwanda Tribunal should contact the Registrar (see Annex I for address, telephone number and fax number).

## 2. Prison facilities.

The international community's obligation to cooperate with the tribunal in every respect includes the obligation to provide prison facilities for persons who might be convicted by the tribunals.<sup>66</sup>

Such prison facilities will, of course, have to be in accordance with international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. As of 15 August 1996, only a limited number of states had offered to provide facilities for the Yugoslavia Tribunal and only one had offered to provide such facilities for the Rwanda Tribunal.

**Yugoslavia Tribunal.** Article 27 of the Yugoslavia Statute provides that states should inform the Security Council if they are willing to accept persons convicted by that tribunal.<sup>67</sup> Guidelines for legislation concerning such detention are described below in Section IV.A.1.

The Secretary-General wrote to all Members of the UN and Switzerland on 4 October 1994 asking them to indicate whether they would be prepared to enforce prison sentences pursuant to Article 27 of the Yugoslavia Statute and the President of the Yugoslavia Tribunal wrote to states on 7 December 1994 and 3 February 1995 to make a similar inquiry. Most states did not respond to the letters of the Secretary-General or the President, many said that they were not yet in a position to respond and others indicated a willingness to provide facilities only if their own nationals or residents were convicted. As of 1 August 1996, **Bosnia and Herzegovina**, the **Islamic Republic of Iran** and **Pakistan** were known or reported to have offered to provide prison facilities without any reservations.

Some states have indicated their willingness to provide prison facilities with certain reservations. For example, Article 19 (1) of the **Austrian** law provides that, after consulting the Minister of Justice, the Minister of Foreign Affairs may indicate Austria's willingness to accept persons convicted by the tribunal by a declaration, which "may contain a deadline for the period of acceptance with regard to the execution of a sentence and may include restrictions on the number and type of persons to be accepted". Although Article 14 of the **Belgian** legislation does not contain any restrictions on the offer, it is understood that the Ministry of Justice is discussing

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<sup>66</sup> Moreover, neither the **Netherlands**, host state for the Yugoslavia Tribunal, nor **Tanzania**, host state for the Rwanda Tribunal, have the resources to provide prison facilities for all persons who might be convicted by the tribunals, and it would not be fair for the international community to let this burden fall upon the host states, which have already committed extensive resources to cooperation with the tribunals.

<sup>67</sup> Article 26 of the Yugoslavia Statute provides: "Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons."

the offer of prison facilities to the tribunals subject to certain conditions. Article 28 of the **Croatian** legislation apparently has makes the enforcement of prison sentences subject to a discretionary decision by the government, although this may be the result of some ambiguity in the English translation. **Denmark** indicated in a letter to the Registrar on 28 March 1995 its willingness to provide prison facilities subject to certain conditions. **Finland**, in letter to the Registrar dated 29 March 1995, informed the tribunal that it was willing to enforce sentences of the tribunal “unless the enforcement in Finland of the sentence cannot be administered in an appropriate way having regard to the resources available, the requirements imposed by international human rights instruments, in particular those relating to the administration of justice and the treatment of prisoners, and taking into account all relevant circumstances in each relevant case”. **Germany** has indicated its willingness to provide such facilities depending on “coordination” in each individual case. **Italy** has provided in its legislation that it would not enforce sentences of the Yugoslavia Tribunal if the act for which the person was convicted was not a crime under its law or if the sentences exceeded 30 years. It is left to the Italian court’s discretion whether to authorize the enforcement of sentences. On 13 March 1996, the Italian Minister of Justice informed the President of the Yugoslavia Tribunal that he would propose by 22 March 1996 to the Council of Ministers that Italy commit itself to receiving a maximum of ten convicted persons.<sup>68</sup>

The **Netherlands** has enacted legislation permitting the enforcement of sentences imposed by the tribunal, unless the District Court in The Hague, “having weighed up all the interests involved” decides that “a decision to allow enforcement in the Netherlands cannot reasonably be taken”. The legislature has reportedly stated to the tribunal that the Netherlands should not be the first candidate to execute sentences since the Yugoslavia Tribunal has its seat in The Hague and suspects will be on remand in the Netherlands. **Norway** has indicated its willingness to accept a limited number of prisoners, depending on “individual assessment in each particular case”. **Spain** provides in its implementing legislation for the “possibility” that Spain may accept persons convicted by the Yugoslavia Tribunal. The legislation also provides that Spain would follow its own sentencing enforcement procedure and that sentences passed by the Yugoslavia Tribunal may not exceed the maximum permitted in Spain for penalties involving the deprivation of liberty. The maximum sentence which may be imposed in Spain is 30 years, while the maximum sentence which may be imposed by the Yugoslavia Tribunal is life imprisonment. In a letter dated 28 March 1995, Spain informed the tribunal that it was not in a position to accept convicted persons as of the date of the letter, although the letter did not appear to preclude a change of position in the future. **Sweden** has enacted a law which provides that may accept convicted persons if they are Swedish citizens, resident aliens or person having strong ties with Sweden in some other way. **Switzerland** has enacted legislation providing for enforcement of sentences of Swiss residents, but only if the acts for which they were convicted violated Swiss law.

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<sup>68</sup> Press release, CC/PIO/043-E, 14 March 1996.

The offers by these states to provide prison facilities are to be welcomed, but it is hoped that the restrictions on these offers will be eliminated. The following chart indicates the offers to provide prison facilities to the Yugoslavia Tribunal as of 15 August 1996.

<b>States which have provisions in their legislation concerning prison facilities for persons convicted by the Yugoslavia Tribunal or are reported to have offered to provide such facilities as of 15 August 1996</b>		
<b>State</b>	<b>Legislation</b>	<b>Nature of offer</b>
Austria	Art. 19 (1)	Subject to conditions determined by Minister of Foreign Affairs
Belgium	Art. 14	Reportedly subject to negotiations
Bosnia and Herzegovina	No	Reportedly has made unrestricted offer
Croatia	Arts 28-30	Apparently discretionary
Denmark	Art. 4	Decision of the Minister of Justice
Finland	Sec. 11	Based on resources and other factors
Germany	Para. 5	Discretionary
Iran	No	Unrestricted
Italy	Arts 7-8	Only if act was offence under Italian law and sentence no more than 30 years; up to discretion of the court
The Netherlands	Sec. 11-13	Not to be first choice
Norway	Sec. 6	Discretionary
Pakistan	No	Unrestricted
Spain	Art. 8	Possible; only if sentences 30 years or less
Sweden	Section 12a (7 December 1995 Act)	Only Swedish citizens, alien residents or persons having strong ties with Sweden in some other way
Switzerland	Arts 29-33	Only Swiss residents and if act violated Swiss law

**Rwanda Tribunal.** Article 26 of the Rwanda Statute provides that states should inform the Security Council if they are willing to accept persons convicted by that tribunal.<sup>69</sup> Guidelines for legislation concerning such detention are described below in Section IV.A.1.

The Rwanda Tribunal is encouraging states which have not yet done so to enact legislation permitting acceptance of convicted persons pursuant to Article 26 of the Rwanda Statute. As of 15 July 1996, **Austria, Belgium, Denmark, Norway, Sweden and Switzerland** were known to have enacted such legislation (see discussion above of legislation on offers to provide prison facilities to the Yugoslavia Tribunal, which also applies to the Rwanda Tribunal). States reported to have informed the Rwanda Tribunal as of 15 May 1996 that they would draft such legislation include **Australia, Canada, France, Luxembourg, New Zealand, Poland, Tanzania, Uganda, the United Kingdom and the United States**, although the status of most of these reported commitments could not be determined as of the date of this paper.

<b>States which have provisions in their legislation concerning prison facilities for persons convicted by the Rwanda Tribunal or were reported to have made formal offers to provide such facilities as of 15 July 1996 (excluding states reported to be considering drafting legislation)</b>		
<b>State</b>	<b>Legislation</b>	<b>Nature of offer</b>
Austria	Art. 19 (1)	Subject to conditions to be determined by Minister of Foreign Affairs
Belgium	Art. 14	Reportedly subject to negotiations
Denmark	Art. 4	Decision of the Minister of Justice
Norway	Sec. 6	Discretionary
Sweden	Section 12a (7 December 1995 Act)	Only Swedish citizens, alien residents and persons having strong ties to Sweden in some other way
Switzerland	Art. 10 (2), 29-33	Only Swiss residents and if act violated Swiss law

<sup>69</sup> Article 26 of the Rwanda Statute provides: "Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Criminal Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda."

Any state wishing to provide prison facilities to the tribunal or requiring assistance in the drafting of appropriate legislation should contact the Registrar (see Annex I for address, telephone number and fax number).

### *E. Providing necessary funding for the tribunals*

*“All of these undertakings are costly, of that there is no doubt. But if the United Nations want to hear the voice of justice speak loudly and clearly then the Member States must be willing to pay the price.”*

**Address of Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia to the General Assembly of the United Nations, 7 November 1995**

Actually, the cost of the two tribunals is small in contrast to the cost of a UN peace-keeping operation, but they both need substantial amounts of money for investigations, pre-trial detention, security for witnesses, prosecutions and legal aid for the defence and trials. The cases are more complex and demanding than major drug or political corruption cases. In light of pressing needs for funding, a number of states have contributed to voluntary funds established by the tribunals. Nevertheless, these funds are no substitute for long-term, secure funding by the UN, whether through the UN peace-keeping budget or regular budget. Moreover, in light of some of the administrative requirements concerning the receipt of donations by voluntary funds, states may prefer to make donations in kind (see Section III.B. above).

#### **1. Regular budget**

**Yugoslavia Tribunal.** The tribunal has been plagued since its inception in 1993 by inadequate and short-term funding. On 22 December 1995, the General Assembly in Resolution 50/193 urged that the tribunal “be given the resources that it needs”. The General Assembly on 11 April 1996 in Resolution 50/212B approved a three-month interim funding from 1 April to 30 June 1996 of \$8.6 million gross (\$7.6 million net) for the Tribunal, slightly more than was requested, but, the amount approved only represented an interim short-term solution. The UN Controller, Yukio Takasu, has said that it was significantly short of what would be needed to maintain the Tribunal. The Secretary-General stated in his report on financing the Tribunal that it would need \$40.8 million for 1996 (including the funding for the first three months of 1996).<sup>70</sup> The Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended that the General Assembly appropriate \$32.9 million net, in addition to the \$7.6 net interim funding already approved, for 1996 or slightly less than the Secretary-General had recommended. On 3 June 1996, the Fifth Committee of the General Assembly approved a draft

<sup>70</sup> UN. Doc. A/C.5/50/41.

resolution for adoption by the General Assembly appropriating \$31,070,572 gross (\$27,793,122 net) for the period from April to December 1996, or significantly less than recommended by the ACABQ.<sup>71</sup> The General Assembly in Resolution 50/212C adopted on 15 July 1996 appropriated \$35,430,622, or significantly less than the ACABQ and Secretary-General had recommended.

<b>Amounts recommended and appropriated for the Yugoslavia Tribunal for all of 1996 in US dollars</b>		
<b>UN action</b>	<b>gross</b>	<b>net</b>
Secretary-General recommendation	–	40,779,300
ACABQ recommendation	–	40,545,622
General Assembly appropriation	39,690,072	35,430,622

On 25 April 1996, the Parliamentary Assembly of the Council of Europe urged “all governments to honour their pledges within the United Nations for adequate financing of the International Criminal Tribunal for the Former Yugoslavia, so as to guarantee the effectiveness of its work”.<sup>72</sup> Not all states, however, have paid their assessments for the tribunal (see Annex III listing payment of assessments as of 31 May 1996).

**Rwanda Tribunal.** Inadequate and short-term funding for the tribunal has been a serious problem since it was established in 1994. Indeed, the tribunal had to operate under interim budgets for the first seven months of 1996 until the 1996 budget was approved. On 23 December 1995, the General Assembly decided in Resolution 50/213A to appropriate to the Rwanda Tribunal the amount of \$7,609,900 gross (\$7,090,600 net) for the first three months of 1996, without prejudice to any recommendations by the ACABQ following its review of the budget for the entire year. The Secretary-General estimated the amount needed by the tribunal for all of 1996 to be \$38,770,900 net.

On 9 April 1996, the ACABQ recommended that \$32,552,000 gross (\$29,404,100 net) be appropriated for the Rwanda Tribunal for last nine months of 1996, in addition to the amount of \$7,609,900 gross (\$7,090,600 net) previously appropriated for the first three months of 1996. Thus, the total recommended by the ACABQ for all of 1996, \$40,161,900 gross (\$36,494,700

<sup>71</sup> “Fifth Committee recommends appropriation of \$63.6 million for criminal tribunals, \$1.4 billion for peace-keeping”, 3 June 1996, UN Doc. GA/AB/3081; Draft resolution submitted by the Chairman following informal consultations, 29 May 1996, UN Doc. A/C.5/50/L.62.

<sup>72</sup> Parl. Ass. Rec. 1297 (1996).

net), was significantly less than the amount recommended by the Secretary-General. On 11 April 1996, the General Assembly in Resolution 50/213B appropriated interim funding for three further months (1 April to 30 June 1996) of \$7,609,900 gross (\$7,090,600 net) pending a detailed report from the ACABQ. On 15 July 1996, the General Assembly in Resolution 50/213 decided to appropriate \$32,552,000 gross (\$29,404,100 net) for the tribunal for the period 1 April to 31 December 1996 in addition to the amount of \$7,609,900 gross (\$7,090,600 net) previously appropriated for the first three months of 1996. Thus, the total budget appropriated for all of 1996, \$40,161,900 gross (36,494,700 net), was considerably less than the amount recommended by the Secretary-General in his 24 May 1996 report. As an exceptional and *ad hoc* arrangement, the General Assembly decided to transfer \$6,904,818 gross (\$5,800,769 net) in credits remaining in budgets for the United Nations Mission for Rwanda (UNAMIR). The 1996 budget lasts only to 31 December 1996; the proposed budget for 1997 is to be submitted by 1 November 1996. It is hoped that the General Assembly will promptly thereafter put the tribunal on a more secure financial footing by approving a budget for all of 1997.

<b>Total amounts recommended and appropriated for the Rwanda Tribunal for all of 1996 in US dollars</b>		
<b>UN action</b>	<b>gross</b>	<b>net</b>
Secretary-General recommendation	–	38,770,900
ACABQ recommendation	40,161,900	36,494,700
General Assembly appropriation	40,161,900	36,494,700

Not all states, however, have paid their assessments for the tribunal (see Annex III listing payment of assessments as of 31 May 1996).

## **2. Voluntary funds**

Voluntary funds may be used to permit certain UN bodies, such as the tribunals, to receive donations from states for certain expenses not covered by the ordinary budget.

**Voluntary Fund to Support the Activities of the International Tribunal.** Security Council Resolution 827 urges “States and intergovernmental and non-governmental organizations to contribute funds . . . to the International Tribunal”. The following states are known to have contributed or pledged the amounts indicated (valued in US dollars as of 11 June 1996) to the Yugoslavia Tribunal, totalling \$6,696,611.04. The UN Commission on Human Rights in Resolution 1996/71, adopted on 19 April 1996 requested states, “as a matter of urgency, to continue to make available to the Tribunal adequate resources to aid in the fulfilment of its mandate”.

<b>State contributions to the Voluntary Fund to Support the Activities of the International Tribunal voluntary fund valued as of 11 June 1996</b>	
<b>State</b>	<b>Amount contributed (US dollars)</b>
Cambodia	5,000.00
Canada	706,297.83
Chile	5,000.00
Denmark	183,368.48
Hungary	2,000.00
Ireland	21,767.56
Israel	7,500.00
Italy	1,898,049.43
Liechtenstein	2,985.00
Malaysia	2,000,000.00
Namibia	500.00
New Zealand	14,660.00
Norway	50,000.00 (first installment of 180,000.00 pledged)
Pakistan	1,000,000.00
Slovenia	10,000.00
Spain	13,725.16
Switzerland	75,757.58
United States of America	700,000.00
<b>Total</b>	<b>6,696,611.04</b>

States wishing further information on how they can assist the tribunal should contact the Registrar (see Annex I for the address, telephone and fax number)

Voluntary Fund to Support the Activities of the International Criminal Tribunal for Rwanda. Security Council Resolution 955 urges "States and intergovernmental and non-governmental organizations to contribute funds . . . to the International Tribunal". In January 1995, it was

agreed at the Round Table Conference to establish a voluntary fund to receive donations for the Rwanda Tribunal. As of 26 March 1996, the following states contributed the amounts indicated (in US dollars) to the Rwanda Voluntary Fund, totalling \$5,174,846.80:

<b>State contributions to the Voluntary Fund to Support the Activities of the International Criminal Tribunal for Rwanda as of 15 May 1996</b>	
<b>State</b>	<b>Amount contributed (US dollars)</b>
Belgium	1,115,949.43
Canada	367,450.00
Chile	1,000.00
Denmark	43,451.81
Egypt	1,000.00
Greece	20,000.00
Holy See	3,000.00
Ireland	237,703.60
Israel	7,500.00
Lebanon	3,000.00
New Zealand	34,792.00
Netherlands	2,995,530.86
Norway	49,983.00
Spain	150,000.00
Sweden	68,728.52
Switzerland	75,757.58
<b>Total</b>	<b>5,174,846.80</b>

States wishing further information on how they can assist the tribunal should contact the Registrar (see Annex I for the address, telephone number and fax number).

#### IV. DRAFTING LEGISLATION

*“. . . the decisions, orders and requests of the International Tribunal can only be enforced by others, namely national authorities. Unlike domestic criminal courts, the Tribunal has no enforcement agencies at its disposal: without the intermediary of national authorities, it cannot execute arrest warrants; it cannot seize evidentiary material, it cannot compel witnesses to give testimony, it cannot search the scenes where crimes have been allegedly committed. For all these purposes, it must turn to State authorities and request them to take action. Our Tribunal is like a giant who has no arms and no legs. To walk and work, he needs artificial limbs. These artificial limbs are the State authorities; without their help the Tribunal cannot operate.”*

**Address of Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia to the General Assembly of the United Nations, 7 November 1995**

As of 15 August 1996, more than three years after the Yugoslavia Tribunal was established, only 20 states were known to have enacted legislation permitting cooperation with that tribunal.<sup>73</sup> Nearly two years after it was established, only 11 states had enacted legislation authorizing cooperation with the Rwanda Tribunal.<sup>74</sup> Four states have informed the tribunals that no legislation was needed to cooperate with them.<sup>75</sup> Several states have informed the tribunals that they are preparing legislation permitting cooperation with the

<sup>73</sup> **Australia, Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States.** The date of entry into force of the **Austrian** legislation in the annex should read 1 June 1996.

<sup>74</sup> **Australia, Austria, Belgium, Denmark, France, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and the United States.** The date of entry into force of the **Austrian** legislation in the annex should read 1 June 1996.

<sup>75</sup> **Republic of Korea, Russian Federation, Singapore and Venezuela.** On 18 March 1996, the Minister of Justice of the **Russian Federation**, V. Kovalev, stated in a meeting with the President of the Yugoslavia Tribunal, Antonio Cassese, that it was the view of the Russian authorities that no implementing legislation was needed because under the Russian Federation Constitution international treaties and obligations take priority over national legislation. Press Release, 20 March 1996, CC/PIO/046-E. Although the text of the **Singapore** letter to the Yugoslavia Tribunal is not free from ambiguity, the tribunal has stated that Singapore is one of the states which had declared by the end of 1994 “that they did not need to enact legislation in order to implement the Tribunal’s Statute”. International Criminal Tribunal for the former Yugoslavia, *Yearbook 1994*, at 153.

tribunals or are believed to be doing so.<sup>76</sup> This information may be incomplete because states have not always informed the Registrars of the two tribunals that they have enacted legislation. Informing the Registrars not only increases the effectiveness of the tribunals, but also sends an important message to the international community of the state's commitment to ending impunity for the worst crimes known to humanity and to suspects and accused that they can find no haven in that state.

States should ensure that legislation fully satisfies the requirements of Security Council resolutions and the statutes and rules of the tribunals to ensure that cooperation is effective. To assist states in complying with these requirements, the Registrar of the Yugoslavia Tribunal drafted Tentative Guidelines for National Implementing Legislation of United Nations Security Council Resolution 827 of 25 May 1993 (Guidelines) (annexed to this paper as Annex V in Supplement One), based on the first two years of experience of the Yugoslavia Tribunal in state cooperation, which were annexed to the letters of President Cassese sent to states on 15 February 1995 as Annex 3. In that letter, President Cassese explained that the Guidelines

“are a tentative guide intended to assist those States that still need to adopt legislation, by indicating *the areas of law that may need to be revised*. Of course, it will be for each State, in enacting domestic legislation, to take account of the particular requirements of its national legal system.” (emphasis in original)<sup>77</sup>

The Rwanda Tribunal has not yet issued such guidelines, but the requirements for effective cooperation are essentially the same for both tribunals. The Registrar of the Rwanda Tribunal is preparing similar guidelines and these will be available upon request.

States may wish to draft legislation which is consistent with their own legal systems, but in some cases constitutions and national legislation will need to be amended to conform with

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<sup>76</sup> The following states are believed to have informed the Registrars that they are preparing legislation applicable to both tribunals, unless otherwise indicated, or are believed to be preparing such legislation: **Albani a, Bulgaria, Canada, Czech Republic, Germany** (Rwanda), **Luxembourg**, the **Former Yugoslav Republic of Macedonia**, the **Netherlands** (Rwanda), **Poland, Romania, Slovak Republic, Slovenia, Sri Lanka, Tanzania, Thailand, Turkey** and **Uganda**. The current status of the reported commitments to the Registrars is not known in all cases.

<sup>77</sup> On 28 June 1996, the Parliamentary Assembly of the Council of Europe urged member states with respect to the Yugoslavia Tribunal, “to cooperate fully with the International War Crimes Tribunal and, where necessary, to adopt legislation which is consistent with the guidelines of the Tribunal”. Parl. Ass. Rec. 1301, 28 June 1996. The first nine states to enact cooperation legislation with the Yugoslavia Tribunal (**Denmark, Finland, France, Iceland, Italy, Netherlands, Norway, Spain** and **Sweden**) did not have the benefit of the Guidelines before their legislation entered into force, although four of these states subsequently extended the scope of their legislation to include the Rwanda Tribunal (**Denmark, France, Norway** and **Sweden**). These nine states presumably will take the Guidelines into account in amending their legislation or in changing their practice or clarifying the extent of their cooperation with the two tribunals.

international law. Solutions will vary, but states with civil law and common law legal systems, as well as states with unitary and federal governments, have resolved these problems in varying ways. Most legislation is only a few pages long, although in a few cases the legislation and implementing regulations are relatively lengthy. As the legislation in the separately printed supplement demonstrates, however, the problems usually are no greater than involved in the drafting of other criminal justice legislation. Indeed, legislation which satisfies the Guidelines for the surrender and transfer of suspects and accused to international tribunals is much more simple than the complex requirements for extradition from one state to another.<sup>78</sup>

### ***A. Guidelines for drafting legislation***

The essential requirements of legislation to ensure effective cooperation by national authorities with the international tribunals are relatively simple:

#### **1. Consistency with international standards**

Although this requirement is not expressly mentioned in the Guidelines, it goes without saying that the legislation should be consistent with international standards regarding the rights of detainees and the right to fair trial.<sup>79</sup>

#### **2. Duty to cooperate**

It must provide that the relevant authorities of the state shall fully cooperate with the tribunals in accordance with the provisions of Security Council resolutions and the statutes and rules of the tribunals (Guidelines, Article 2).

It should designate one ministry - preferably the ministry of justice - to be the central authority responsible for receiving communications and requests from the tribunals. This

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<sup>78</sup> For an insight into how one state is addressing some of the problems in drafting legislation, see Pavel Dolenc, "A Slovenian Perspective on the Statute and Rules of the International Tribunal for the Former Yugoslavia", 5 *Criminal Law Forum* (1994), pp. 451-470. Slovenia is expected to enact legislation in the near future. See also the discussion of certain aspects of United States cooperation legislation in Robert Kushen & Kenneth J. Harris, "Surrender of Fugitives by the United States to the War Crimes Tribunals for Yugoslavia and Rwanda", 90 *Am. J. Int'l L.* 510 (1996).

<sup>79</sup> These include standards adopted by or approved by the UN General Assembly: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Declaration on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors, the UN Basic Principles on the Role of Lawyers. They also include standards adopted by regional intergovernmental organizations and humanitarian law standards, such as those found in the Geneva Conventions and its two Additional Protocols.

authority should verify that a communication or request is in proper form and transmit it to the competent authorities for compliance (Guidelines, Article 3).

### **3. Primacy of the tribunals**

It must provide that whenever criminal proceedings within the jurisdiction of the tribunals are pending before a state judicial or investigating authority, this authority shall defer to the competence of the tribunal if so requested (Yugoslavia Statute, Article 9 (2); Rules of Procedure and Evidence, UN Doc. IT/32/Rev.9 (1996), Rules 9 to 11; Rwanda Statute, Article 8 (2); Guidelines, Article 4; Rules of Procedure and Evidence, UN Doc. ICTR/TCIR/2/L.2 (1996), Rules 9 to 11).

### **4. Arrest and detention of suspects and accused**

The legislation should provide that the appropriate state authority to whom an arrest warrant issued by a judge of the tribunal is addressed will verify that the original documents are in proper form and transmit a copy of the warrant for execution to the relevant prosecutor of the state (Guidelines, Article 5 (1)).

The appropriate prosecutor of the state “shall use his best endeavours to ensure the prompt arrest of any person within the State against whom an arrest warrant has been issued and inform the accused at the time of arrest of his or her rights and the charges against him or her in a language he or she understands” (Guidelines, Article 5 (2)).

Before executing the warrant of arrest, the appropriate prosecutor “where he is able to do so, must inform the Prosecutor of the International Tribunal so that he may be present as from the time of arrest” (Guidelines, Article 5 (3)).

Upon arrest of the accused, the appropriate prosecutor of the state “shall promptly notify the Registrar of the International Tribunal” (Guidelines, Article 5 (4)).

If the appropriate prosecutor of the state “is unable to execute the arrest warrant, he shall report this fact forthwith to the Registrar of the International Tribunal” (Guidelines, Article 5 (5)).

### **5. Surrender of suspects and accused persons**

The legislation should provide that the relevant state court “after verifying that the requisite formal conditions are fulfilled, shall approve the transfer of an arrested accused to the custody of the International Tribunal without resort to extradition proceedings. The accused shall be surrendered to the International Tribunal immediately thereafter.” (Guidelines, Article 6). During their tenth plenary session, on 22 and 23 April 1996, the Judges of the Yugoslavia Tribunal adopted a new Rule 40 *bis*, IT/32/Rev.9, providing for provisional arrest of suspects

whom, as a matter of urgency, the Prosecutor had earlier requested the state concerned to arrest provisionally pursuant to Rule 40, and their transfer to the tribunal and legislation should cover provisional arrests and surrenders or transfers of suspects. It is expected that the Rwanda Tribunal will adopt a similar rule.

States should, therefore, include provisions in their legislation to cover transfer of suspects provisionally arrested pursuant to Rule 40 (bis) of the Rules of Procedure and Evidence of the Yugoslavia Tribunal and a possibly amended Rule 40 of the Rules of Procedure and Evidence of the Rwanda Tribunal.

### **6. Provisional arrest of suspects**

The legislation should provide for the provisional arrest of suspects found in the state if requested to make such an arrest by the Prosecutor of one of the tribunals and should require the relevant state prosecutor to issue orders for such provisional arrests (Guidelines, Article 7).

### **7. Other forms of assistance**

The legislation should provide that requests for assistance addressed to the police or any judicial bodies shall be implemented. Such assistance includes, but is not limited to: (a) the identification and location of persons, (b) the taking of testimony and the production of evidence and (c) the service of documents (Guidelines, Article 8).

### **8. Witnesses and experts**

The legislation should provide that courts or other competent authorities will provide all necessary assistance at the request of the tribunals for the identification, location and interviewing of witnesses in the state (Guidelines, Article 9 (1)). It should also provide that the Prosecutor and defence counsel may interview witnesses and experts in the territory after notice to the competent state authorities (Guidelines, Article 9 (2)). Anyone who is summoned by a Judge or Trial Chamber of a tribunal to appear as a witness or expert shall comply with the summons (Guidelines, Article 9 (3)). Witnesses and experts who attend a trial in one of the tribunals should not lose any status they had before departure upon return (Guidelines, Article 9 (4)).

### **9. Data from police files**

The legislation should provide that relevant data from police files concerning crimes within the jurisdiction of the tribunals shall be supplied to the tribunals in accordance with instructions by the relevant state authority (Guidelines, Article 10).

### **10. Immunity and free transit**

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The legislation should guarantee immunity of persons in transit for the purpose of appearing before the tribunals (Guidelines, Article 11).

### **11. Seizure**

The legislation should provide that, at the request of a tribunal, the competent judicial authority shall order the seizure of evidence, including all objects which are necessary for the investigation of a crime and deliver them to the tribunal (Guidelines, Article 12).

### **12. Return of property and proceeds of crime**

The legislation should provide for the enforcement of orders by the tribunals requiring forfeiture or return of any property or proceeds of crime (Guidelines, Article 13).

### **13. Enforcement of sentences**

If a state has indicated its willingness to enforce sentences of a tribunal, the legislation should provide that such sentences shall be enforced in the state at the request of the tribunal (Guidelines, Article 14 (1)). It should also provide that if a convicted person serving a sentence of the tribunal in the state is eligible for pardon or commutation under the law of the state, the appropriate official shall notify the tribunal, but not take any decision on the matter until the President of the tribunal has ruled on the matter (Guidelines, Article 14).

### ***B. Strengths and weaknesses of existing legislation***

The annexed legislation of 20 states illustrates the range of ways states with differing legal systems have attempted to implement their legal obligations under Security Council resolutions to cooperate with the two tribunals. In some cases, the legislation contains innovative and useful features to facilitate such cooperation which other states could include in their laws or practice. In some cases, the legislation on its face appears to fall short of the requirements in the Security Council resolutions, statutes and rules of the tribunals and the Guidelines.

No attempt has been made here to do a thorough analysis of the legislation of all 20 states, which would require an in-depth knowledge of how the legal system operates in practice in each state. Much of the legislation on cooperation supplied to the tribunals incorporates by reference other national legislation, some of which may contain adequate provisions concerning cooperation and guarantees for the rights of suspects and accused. In addition, in many cases, although the legislation fails expressly to contain all the provisions called for in the Guidelines, in practice the authorities may have provided the tribunals with full cooperation in gathering evidence, interviewing and protecting witnesses and arresting suspects or accused and transferring them to the tribunals. It would be helpful to the tribunals and other states using legislation as models for their own laws, however, if states made it clear how gaps on the face of their cooperation legislation have been addressed in other legislation or in practice by drafting

explanatory memoranda to accompany the legislation. Some states, including **Australia**, **Austria**, **Germany**, **Spain**, **Sweden** and the **United Kingdom** have published explanatory memoranda which provide some assistance to the tribunals in understanding the scope of cooperation authorized by the states concerned. Nevertheless, the following brief discussion of examples of some of the strengths and weaknesses in current legislation may be of assistance to states as they draft new legislation or amend existing legislation.

### 1. Innovative and useful features of legislation.

A number of the laws which have been enacted have innovative and useful features which go beyond the express requirements of the Guidelines, but which could be included in the legislation, regulations or practice of other states.

*Expressly providing that international standards apply.* **Belgium** expressly provides in Article 13 of its law on cooperation with both tribunals that transfers of an arrested person are to be consistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), although it does not expressly state that the European Convention governs other aspects of cooperation or that other international standards apply.

*Making the statute directly enforceable in national courts.* The Statement of Reasons accompanying the **Spanish** law states that most of the Yugoslavia Statute is self-executing and, therefore, the law "makes provision for its implementation only in respect of those matters which our Constitution stipulates must be the subject of Organization Acts". Thus, Spanish courts and authorities are required to comply with requests of the Yugoslavia Tribunal even where the legislation is silent. States which provide that Security Council resolutions, treaties or other international instruments are directly enforceable in national courts could adopt a similar approach.

*Special role for non-governmental organizations.* Article 14 (2) of the **Italian** law provides that non-governmental organizations during the preliminary phase of criminal proceedings in Italian courts "may submit statements and indicate proofs or sources of proof".

*Duty to inform tribunals of possible crimes and pending national proceedings.* Article 6 of the **Italian** law and Article 8 of the **Swiss** legislation require national courts to provide the tribunals with information of any crimes within their jurisdiction which they come across in their proceedings. Article 2 of the **French** law on cooperation with the Yugoslavia Tribunal requires that it be informed of all pending proceedings relating to acts which may fall within the tribunal's jurisdiction. These provisions ensure that the national authorities take the initiative in keeping the tribunals informed of matters which otherwise might not come to their attention.

**Assignment and payment of counsel.** Sections 14 and 15 of the **Swedish** law provide for the assignment of public defence counsel to suspects and, in certain cases, to victims. Section 14 of the **Icelandic** law provides for the assignment of counsel to accused persons.

**Payment for witnesses or other expenses.** Travel to the tribunals for many witnesses may be a significant financial burden, as well as a risk to their safety. Section 11 (2) of the **Austrian** law provides that the Austrian court may, upon request by a tribunal, provide witnesses and experts with travel advances. Section 9 of the **Finnish** legislation provides for advance payment of costs incurred before travelling to the Yugoslavia Tribunal. Article 4 of the **Hungarian** law provides that “[t]he expenses incurred in Hungary concerning the application of this Act shall be born by the State”, but it is not clear if it would cover the expenses of witnesses. Article 7 (2) of the **Spanish** law provides for payment of expenses of witnesses and experts. Section 15 of the **Swedish** legislation provides for payment of witnesses, victims and expert witnesses for an appearance before the Yugoslavia Tribunal. Article 5 of the agreements between the **United States** and the two tribunals provides that the United States shall pay all costs associated with a surrender proceeding except for the translation of documents and the transportation of the person surrendered, but it permits the United States and the tribunals to agree otherwise.

**Punishment for perjury before tribunals.** Section 8 (3) of the **Finnish** legislation provides for the punishment of any witness or expert for perjury who “while being heard before the Yugoslavia Tribunal, wilfully and contrary to his knowledge, gives a false statement or unlawfully conceals something that he knew had been material in the issue”. Section 7 of the **Norwegian** law provides for criminal liability for false testimony before the tribunals. Article 7 (3) of the **Spanish** law provides for the punishment of perjury before the Yugoslavia Tribunal.

**Preservation of the rights of victims to compensation.** Article 6 of the **French** law provides that transfer of an accused to the tribunals will not prejudice the rights of victims to indemnification under national law. Article 7 of the **Belgian** law contains a similar provision.

**Express provisions concerning arrangements for the tribunal to sit in the state.** Articles 41 to 43 of the **Australian** law provide for tribunals to sit in Australia and Articles 36 to 40 of the **New Zealand** legislation provide for the tribunals to sit in that state.

**Provision for the legislation to apply to other international tribunals.** Several states, including **Denmark**, **New Zealand** and **Switzerland**, have provided that the legislation may apply to other international tribunals by executive decision. Under Article 5 of the **Danish** law concerning cooperation with the Yugoslavia Tribunal, the Minister of Justice may decide that the law “*mutatis mutandis*, shall apply to other international prosecution of war crimes”. Danish legislation has been extended to apply to the Rwanda Tribunal. Article 61 of the **New Zealand** legislation provides that the Governor-General may declare that a tribunal created by the Security Council under Chapter VII be considered a tribunal for the purposes of the

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legislation. Under Article 1 (2) of the **Swiss** law, the Federal Council can extend the scope of the legislation to new tribunals established by the Security Council, but not to an international court established by a treaty such as the proposed international criminal court.<sup>80</sup>

## 2. Problems with existing legislation.

The following discussion illustrates some of the problems with existing legislation. It is not a complete review of all aspects of the legislation of 20 states, and some gaps may not have been identified. Moreover, as indicated above, some gaps identified below which appear on the face of the legislation with respect to the Guidelines may have been adequately addressed by broad cooperation language in the cooperation legislation, in other legislation or in practice. States should consider reviewing their legislation to correct any deficiencies either by amendment or special agreements with the tribunals. In some cases, the problems identified below may have been resolved in practice through effective cooperation with the tribunals. The provisions which are of most concern are those identified below which contain grounds for national courts or executive officials to reject requests in certain matters for cooperation in the form of international assistance or in the surrender or transfer of persons which are not found in the Security Council resolutions, the statutes and rules of the tribunals or in the Guidelines. In some cases, the state officials may refuse if they determine that the tribunals lacked jurisdiction or had insufficient evidence. In a few cases, national officials have absolute discretion to refuse to cooperate, without any grounds being specified in the legislation.

***Failure to include all crimes within the jurisdiction of the tribunals.*** Article 1 of the **French** legislation concerning the Yugoslavia Tribunal of 2 January 1995 originally stated that it applied “to any person who is charged with crimes or offences defined as such by French law” and constituting crimes under Articles 2 to 5 of the Yugoslavia Statute. Articles 212-1 and 212-2 of the Code Pénal (1994) of France define crimes against humanity more restrictively than in either Article 3 of the Rwanda Statute or Article 5 of the Yugoslavia Statute. For example, the definition of crimes against humanity in these provisions excluded crimes committed before 1 March 1994. As a result of criticism of this restrictive definition,<sup>81</sup> when the French law was amended on 15 May 1996 to include cooperation with the Rwanda tribunal, the definitions of crimes were limited to the definitions provided in the statutes of the two tribunals.

***Failure to require that all authorities shall fully cooperate with the tribunals.*** Several states have failed to provide expressly in their legislation that all authorities shall fully

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<sup>80</sup> See Amnesty International, *Establishing a just, fair and effective international criminal court* (AI Index: IOR 40/05/94); Report of the International Law Commission on the work of its forty-sixth session 2 May-22 July 1994, 49 UN GAOR Supp. (No. 10) (1994).

<sup>81</sup> See *Rapport par M. Robert Badinter, No. 297, Sénat, session ordinaire de 1995-1996, annexe au procès-verbal de la séance du 27 mars 1996*, at 35-37; *Rapport par M. Daniel Picotín, No. 2761, Assemblée nationale, dixième législature, enregistré à la Présidence de l'Assemblée nationale le 9 mai 1996*, at 15-19.

cooperate with the tribunals (including **Croatia, Bosnia and Herzegovina, Denmark, Iceland, Norway** and the **United States**), as required in Article 2 of the Guidelines, although in practice some of these states are known to be cooperating with the tribunals. For example, **Bosnia and Herzegovina** signed a Memorandum of Understanding with the Prosecutor concerning cooperation with the Yugoslavia Tribunal. Article 2 (1) of the **Hungarian** law stating that “[t]he requests of the International Tribunals are received and carried out by the Attorney General”, appears to require full cooperation by this official, but whether it applies to courts and other officials is not clear.

In some cases, legislation permits states to deny requests by the international criminal tribunals for assistance on national security grounds (**Australia** and **New Zealand**). Section 26 (3) of the **Australian** legislation provides that the Attorney-General may decline to provide certain types of assistance to the tribunals if, in the opinion of the Attorney-General, compliance with the request “would prejudice Australia’s sovereignty, security or national interest”. Article 57 of the **New Zealand** legislation permits the Attorney-General to decline to comply with a request for certain types of assistance to the tribunals on similar grounds. Legitimate national security concerns are adequately addressed in Rule 70 of the Rules of Procedure and Evidence of the Yugoslavia Tribunal, IT/32/Rev.9 (1996), and Rule 70 of the Rules of Procedure and Evidence of the Rwanda Tribunal, ICTR/TCIR/2/L.2 (1996), which permit states to provide information to the Prosecutor with adequate guarantees for its confidentiality. Decisions on whether there are special circumstances justifying non-compliance with the tribunals established by the Security Council acting under Chapter VII should be decided by the international tribunals, not the national authorities.

In some states, the legislation appears to permit national courts or officials to refuse a request for assistance by the international tribunals if, in their view, the tribunals lacked jurisdiction or if other specified criteria are not satisfied. For example, Article 11 of the **Italian** law permits the Court of Appeal to decline to surrender an accused to the Yugoslavia Tribunal if

“c) the fact for which the surrender is requested does not fall within the temporal and territorial jurisdiction of the International Tribunal; c-bis) The fact for which the surrender is requested is not covered as a criminal offence by the Italian law; c-ter) A final judgement was pronounced in the Italian State for the same fact and against the same person”.

Several provisions in the **United Kingdom** legislation appear to authorize the court or authority to decline to cooperate if it appears to the satisfaction of the court or authority that the request by the tribunal concerns an offence which was not a crime within its jurisdiction (see,

for example, Article 6 (5) (c) of the Yugoslavia order; Article 6 (5) (c) of the Rwanda order).<sup>82</sup> Article 18 (2) of the orders, provide that “[i]f the Secretary of State or, if the evidence is to be obtained in Scotland, the Lord Advocate, is satisfied - (a) that an International Tribunal crime has been committed . . .” he or she may take steps to obtain the evidence. It is also a matter of concern that this legislation appears to permit a United Kingdom court to refuse to issue an order to deliver to the tribunals a person arrested under a tribunal warrant “if it is shown to the satisfaction of the competent court - . . . notwithstanding that the offence is an International Tribunal crime, that the person would if he were charged with it in the United Kingdom be entitled to be discharged under any rule of law relating to previous acquittal or conviction” (Article 6 (5) (d) of the Yugoslavia order; Article 6 (5) (d) of the Rwanda order).

In some states, courts or officials have broad discretion to decline to cooperate with the tribunals on unspecified grounds. Section 26 (3) of the **Australian** legislation provides that the Attorney-General may decline to provide certain types of assistance to the tribunals if, in the opinion of the Attorney-General, “there are special circumstances justifying non-compliance”. Article 57 of the **New Zealand** law permits the Attorney-General to decline to comply with a request for assistance to the tribunals on the same grounds. As two officials in the United States State Department who were involved in the drafting of the agreements between the **United States** and the tribunals have noted, the Secretary of State retains the discretion under United States extradition law to decline to surrender a person to the tribunals even after a court has certified that surrender is appropriate. They argue, however, that the exercise of such discretion “no doubt will be weighed carefully, given the considerable international legal and foreign policy consequences that would attend a denial of surrender by the Secretary on that basis” and the United States scheme

“seeks to minimize the chances of a clash between domestic and international legal obligations by considerably streamlining the surrender process and by imposing an evidentiary threshold lower than the *prima facie* standard that the Tribunals must satisfy under their own Statutes in order to charge an individual with an offense prior to seeking his surrender”.<sup>83</sup>

The provisions in national legislation permitting the courts and other officials to decline to cooperate with the international tribunals when in their view the tribunals lacked jurisdiction, the acts were not prohibited under national criminal law or a state court had already issued a judgment in the case are inconsistent with the obligations of states under international law. The

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<sup>82</sup> The explanatory memorandum accompanying the Yugoslavia order states that “[t]he Order contains provisions enabling the United Kingdom to comply with its international obligations, subject to necessary safeguards.” Joint Committee on Statutory Instruments, The United Nations (International Tribunal) (Former Yugoslavia) Order 1996 (S.I. 1996/716, Memorandum by the Foreign and Commonwealth Office, at 1.

<sup>83</sup> Robert Kushen & Kenneth J. Harris, “Surrender of Fugitives by the United States to the War Crimes Tribunals for Yugoslavia and Rwanda”, 90 Am. J. Int’l L. 510, 518 (1996).

decision whether the tribunals have jurisdiction to act in a particular case is a decision solely for the Trial Chamber of each tribunal to decide, subject to interlocutory appeal to the Appellate Chamber.<sup>84</sup> The failure of a state to make acts which constitute genocide, other crimes against humanity or serious violations of humanitarian law crimes is not a ground for the tribunals to decline to exercise their concurrent jurisdiction. Moreover, both tribunals may exercise their concurrent jurisdiction over a case even if a national court has rendered a judgment in that case if (1) the act for which the person was tried was characterized as an ordinary crime, (2) the national proceedings were not impartial or independent or were designed to shield the accused from international responsibility or the case was not diligently prosecuted or (3) what is at issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions for the tribunals.<sup>85</sup>

In some states (such as **Australia** and **New Zealand**), the legislation simply *authorizes* the authorities to cooperate, but does not *require* such cooperation. In many states, including Australia and New Zealand, this has not proved to be a problem in practice because the authorities are fully cooperating with the tribunals, but in others, as explained above, the cooperation of the authorities has been limited.

***Failure to provide for full international (judicial) assistance.***<sup>86</sup> A number of states (including **Croatia, Bosnia and Herzegovina, Croatia, Denmark, France, Hungary,**<sup>87</sup> **Italy, the United Kingdom and the United States**) fail to include international assistance provisions expressly providing for *all* forms of assistance as required in Articles 8 and 9 of the Guidelines. **Danish** legislation is entirely silent on international assistance. **Swedish** legislation fails to provide that the defence counsel may interview witnesses and experts after notifying the

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<sup>84</sup> *Prosecutor v. Tadić*, Decision on the defence motion for interlocutory appeal on jurisdiction, Case No. IT-94-1-AR72, 2 October 1995.

<sup>85</sup> Yugoslavia Statute, Article 10 (2); Rules of Procedure and Evidence, UN Doc. IT/32/Rev.9 (1996), Rule 9; Rwanda Statute, Article 9 (2); Rules of Procedure and Evidence, UN Doc. ICTR/TCIR/2/L.2 (1996), Rule 9.

<sup>86</sup> The term “international assistance” is used for convenience in this handbook to cover all forms of assistance by the authorities to the tribunals and to distinguish it from traditional state to state cooperation. The assistance required by the tribunals is analogous in some respects to international judicial assistance or international legal assistance by states to other states in civil matters and to mutual assistance or mutual legal assistance by states to other states in criminal matters. Nevertheless, these forms of cooperation between sovereign states are of a different nature from cooperation by a state with an international tribunal and will often require different solutions.

<sup>87</sup> Although the Hungarian law fails to contain such a provision, Article 2 (1) providing that requests of the Yugoslavia Tribunal “are received and carried out by the Attorney General” and that in doing so, “the provisions of the Act on International Criminal Legal Assistance should be applied *mutatis mutandis* unless the Statute of the International Tribunal indicates otherwise”, suggests that full cooperation by this official was intended.

competent authorities, as required by Article 9 (2) of the Guidelines, although Section 11 of the law provides this right to the Prosecutor. Articles 7 and 8 of the **French** law on cooperation with the Yugoslavia Tribunal and Article 10 of the **Italian** law contain provisions for international assistance which are very general, which may in practice extend to all forms of international assistance required in the Guidelines. Although the **United Kingdom** legislation does not have provisions requiring full international assistance, each of the orders has an important provision stating that nothing in the order “shall be construed as preventing the provision of assistance to the International Tribunal otherwise than under this Order” (Article 3 (3) of the Yugoslavia order; Article 3 (3) of the Rwanda order), and in practice the authorities are reported to be providing extensive cooperation to the tribunals. The **United States** legislation incorporates other legislation which leaves international assistance to the discretion of United States federal courts, apparently failing to require cooperation by state authorities and military personnel overseas. Whenever possible, the legislation should expressly provide for all forms of international assistance required by the Guidelines or expressly refer to the appropriate provisions in other legislation. Several states have provided for wide cooperation on investigations, but have failed to include a provision committing the authorities to provide *all* forms of cooperation, such as **Croatia**.

In some cases, it is difficult to determine from the legislation whether the Prosecutor in practice will be able to carry out investigations in the most effective manner. For example, it is not clear whether Article 9 of the **Belgian** legislation requiring investigations to conform to Belgian procedure will permit the Prosecutor to interview witnesses and experts independently of state authorities should this be necessary.

***Failing to provide expressly that the Prosecutor may carry out investigations in the state.*** It is essential for the effective investigation and prosecution of cases for the Prosecutor and investigators to be able to carry out their activities within states. In many states which have enacted legislation on cooperation with the tribunals there are no express provisions permitting such activities. As explained above, the absence of such a provision has impeded the ability of the international tribunals to operate effectively in certain states, although in other states the absence of such a provision has not proved in practice to be a problem. Where necessary, states should consider including a provision in their legislation similar to Section 7 of the **Finnish** legislation, which expressly provides that “[t]he Tribunal may, in the territory of Finland, hear persons suspected of crime, witnesses and victims of crime, carry out investigations as well as obtain any necessary legal assistance from Finnish courts and other competent authorities as prescribed in Section 6 [concerning legal assistance]”.

***Failure to specify the Ministry of Justice as the liaison with the tribunals.*** Specifying the Minister of Justice, as provided in the Guidelines, or the Attorney-General or other official who normally deals with requests by other states for assistance or extradition will ensure that the official with appropriate experience handles the requests by the tribunals for assistance effectively. If requests are directed to other officials, such as the Minister of Foreign Affairs, action on the requests could be subject to delays or foreign policy considerations. It is

possible that the failure of **United States** legislation to specify that its Department of Justice be the central authority responsible for receiving communications and requests from the tribunals, as recommended by Article 3 of the Guidelines could have led to inefficiency in responding to requests, but in practice the Office of International Affairs in the Department of Justice, the body which normally deals with extradition requests, is the central authority for dealing with requests to surrender or transfer suspects or accused persons. Section 1342 (a) (2) provides that certification of a request for surrender under extradition legislation may be made by the principal consular or diplomatic officer resident where the tribunal normally sits and the agreement for surrender of persons between the United States and the Yugoslavia Tribunal states that requests for surrender of person should be addressed to the United States Embassy in the Netherlands or wherever the tribunal is sitting. Apparently, these offices simply transmit the request to the Department of Justice.

Foreign ministries have interests and experience which are different from those of ministries of justice and relaying requests through a ministry which will not play the main role in implementing tribunal orders could lead to delays and inefficiency. Indeed, Amnesty International has discovered that in many cases copies of the Guidelines sent by the President of the Yugoslavia Tribunal never reached the ministry of justice official responsible for drafting legislation.

***Failure to provide for seizure of evidence.*** The legislation of some states fails to require expressly the authorities to seize evidence (for example, **Denmark** and the **United States**), as required by Article 12 of the Guidelines.<sup>88</sup> **United States** legislation does not require United States federal courts or state courts to seize and deliver evidence at the request of the tribunals. Section 1782 (a) of Title 28 of the United States Code gives federal - not state - courts discretion to issue such orders.

***Failure to provide for data from police files.*** Some states have failed to provide expressly for the transfer of data in police files to the tribunal on request to the minister of justice or other appropriate official without the necessity of a court hearing and also do not have any other provisions which appear sufficiently broad to authorize such transfers in a simple procedure without judicial proceedings (including **Bosnia and Herzegovina, Denmark, Finland, France, Germany, Sweden** and **United States**). This may not be that significant in practice since states may be providing such information informally, as in the case of the **United States**. Some states which do not have such express provisions have broad cooperation provisions which may permit such assistance (such as **Australia** (Section 84), **Belgium, Hungary** (Article 2 (1)), **Iceland** (Section 8), **New Zealand** (Sections 4 and 21), **Norway** (Section 3), **Spain** (Preamble) and **United Kingdom** (Article 15)). Nevertheless, as a general

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<sup>88</sup> Some legislation which is silent on this point contains provisions which appear to require their authorities to fulfill requests for such international assistance, such as Article 2 (1) of the **Hungarian** law.

rule, to assist the tribunals, it would be better to include specific provisions in legislation, explanatory memoranda or formal arrangements.

*Failure to provide for immunity of persons in transit to the tribunals.* Several states have failed to provide expressly for immunity of persons in transit to the tribunals (**Belgium, Denmark, France, United Kingdom** and the **United States**), as required by Article 11 of the Guidelines. Several states provide for transit of witnesses and accused through their territories, but do not expressly provide for immunity (including **Australia, Bosnia and Herzegovina** and **Norway**). **Croatia** provides that it “shall allow transport of the accused, the witnesses and other persons through the territory of the Republic of Croatia” and that its authorities “shall undertake the measures necessary for the safe transport” of such persons (Article 26), but it is not clear whether this undertaking extends to immunity from judicial proceedings.<sup>89</sup>

*Failure to provide that national courts must defer to the tribunals.* A number of states (including **Australia, Iceland, New Zealand, Norway** and the **United States**) have failed to provide expressly that in all cases where the tribunals have requested the national authorities to defer their investigations or prosecutions against individuals that they must do so. It is a matter of concern that in a number of cases the legislation permits national courts to refuse requests to defer proceedings on grounds other than that the proceedings involve someone other than the person sought by the tribunals. Indeed, in many cases, the legislation appears to permit national courts to determine as a condition of deferral whether the tribunal has jurisdiction over the crimes mentioned in the warrant or indictment (for example, **France, Italy** (Article 3 (1), the **Netherlands** and the **United Kingdom** (Article 14 (3) of the Yugoslavia Order; Article 14 (3) of the Rwanda Order). As stated above, this issue is solely for international tribunals, not the national authorities, to decide.

*Failure to provide appropriate notice to the tribunals.* A number of states fail to provide expressly in their legislation for prior notice to the Prosecutor of the tribunals so that the Prosecutor can be present at the arrest of the suspect or accused (including **Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Hungary, New Zealand, Norway, Spain, Switzerland, United Kingdom** and the **United States**), as required by Article 5 (3) of the Guidelines.<sup>90</sup> **Austria** is one of the states which expressly provides that members and

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<sup>89</sup> Presumably, Article 2 (1) of the **Hungarian** law would enable the Attorney General to guarantee such immunity, but it is not clear whether this article applies to courts and other officials.

<sup>90</sup> Article 8 of the **French** law on cooperation with the Yugoslavia Tribunal provides that the Ministry of Justice shall send records prepared pursuant to a request for judicial assistance to the tribunal, but does not require prior notice to the Prosecutor of the arrest. It simply states that “[r]ecords prepared pursuant to these requests shall be sent to the International Tribunal by any appropriate means”. Article 2 of this law provides that the Yugoslavia Tribunal “shall be informed of all ongoing procedures relating to acts which may fall within its jurisdiction”. It is possible that these provisions will be interpreted in practice as requiring prior notice to the Prosecutor of the arrest, but Article 8 appears to leave it to the

investigating officers of the tribunals will be notified, upon request, of the time and place of acts of judicial assistance and that they may participate (Section 10 (3)). **Iceland** (Section 10) provides that the Prosecutor is entitled to be present during the police interrogation or the investigation, which would require prompt, but not necessarily prior, notice of the arrest.

Some fail to provide expressly for notice to the Registrar of the arrest (including **Croatia, Denmark, Finland, Iceland, Netherlands, New Zealand, Norway, Spain, Switzerland, United Kingdom** and the **United States**), as required by article 5 (4) of the Guidelines. Although **Italy** does not provide for such notice, it is one of the few states expressly to require notice to the Prosecutor of the Yugoslavia Tribunal of the date and place when requests are to be carried out when such notice has been requested, for the Prosecutor and the Judges that tribunal to be present and to suggest “modalities for execution” (Article 10 (5)). Thus, the Registrar is likely to receive adequate notice of the arrest or failure to carry out the arrest.

Some fail to provide expressly for notice to the Registrar of the inability to execute an arrest warrant (including **Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, Iceland, France, Netherlands, New Zealand, Norway, Spain, Switzerland, United Kingdom** and the **United States**), as required by Article 5 (5) of the Guidelines.<sup>91</sup> Such notice is essential to ensure that the tribunals can function effectively.

Article 8 of the **Croatian** legislation permits members of the tribunal to be present at the court hearing “in the proceedings pursuant to the crime from its jurisdiction”, but this does not appear to apply to the actual arrest; Article 25 permits representatives of the tribunal to be present at their request when investigative measures are carried out, to ask questions, make motions and, “if it does not hinder the carrying out of these measures, record them by audiovisual means”, but it does not provide for prior notice and, according to reports, there have been instances when the Croatian authorities have not provided prior notice.

***Failure to provide for provisional arrest of suspects.*** The importance of the obligation to provide for provisional arrest of suspects (Article 7 of the Guidelines) has been illustrated in the use of provisional arrest in **Belgium, Bosnia and Herzegovina, Cameroon, the Netherlands** and **Zambia**. A number of states (including **Australia, Denmark, Finland,**

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discretion of the national authorities whether the Prosecutor may be present at the time of the arrest. It states that requests for judicial assistance shall be executed either by the government procurator [*le procureur de la République*] or the examining magistrate of Paris [*le juge d'instruction de Paris*], “whose activities shall extend throughout the national territory in the presence, where appropriate [*le cas échéant*], of the Prosecutor”.

<sup>91</sup> The **Belgian** Ministry of Justice is understood to inform the Registrar of any inability to execute an arrest warrant. Article 2 of the **French** law on cooperation with the Yugoslavia Tribunal requiring that it be informed of all ongoing procedures relating to acts which may fall within its jurisdiction may be interpreted to require such notice.

**France, Hungary, New Zealand and Sweden**), however, have not expressly provided for provisional arrest of suspects at the request of the tribunals. It is not clear whether the provisions governing the arrest of accused persons and providing for other forms of judicial cooperation in the legislation of these states will be interpreted to include provisional arrest of suspects who have not yet been indicted.<sup>92</sup> All legislation should include such provisions, with adequate safeguards for the rights of detainees, or the state should issue a memorandum explaining how the Guidelines are satisfied. In addition, all legislation should be brought into conformity with Rule 40 *bis* of the Rules of Procedure and Evidence, UN Doc. IT/32/Rev.9 (1996), to permit the transfer or surrender of suspects to that tribunal. It is expected that the Rwanda Tribunal will amend its Rules in a similar fashion.

***Failure to provide notice of the charges and their rights to suspects and accused.***

Several states fail to require in their cooperation legislation the notice to suspects and accused at the time of their arrest of the charges and of their rights in a language they understand as required by Article 5 (2) of the Guidelines. Such notice is also required by international standards (see above). States which have failed to provide expressly for notice of the charges in a language the detainee understands in their cooperation legislation include **Austria, Australia** (notice of charges required, but no requirement that it be in a language which the person understands; notice is not required in situations where person “should, in the circumstances, know the substance of the offence”), **Bosnia and Herzegovina**, the **Netherlands, New Zealand** and the **United States**, although other legislation may provide for such notice.<sup>93</sup>

<sup>92</sup> For example, Sections 7, 9 and 10 of the **Australian** legislation apparently is broad enough to cover provisional arrest in some cases, but it may not include provisional arrest before indictment. Article 2 (1) of the **Hungarian** legislation providing that the Attorney General is to carry out requests of the Yugoslavia Tribunal may be broad enough to cover provisional arrests. Section 2 of the **Norwegian** legislation providing for the use of coercive measures in connection with extradition may permit provisional arrest. The **United States** cooperation legislation is silent on provisional arrest, but a provisional arrest procedure is included in agreements which the United States has made with the tribunals.

<sup>93</sup> All states which have enacted cooperation legislation are parties to the International Covenant on Civil and Political Rights, Article 9 (2) of which requires that “[a]nyone who has been arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Article 14 (3) (a) of that treaty provides that everyone charged with a criminal offence is entitled to “be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. This treaty does not expressly require, however, notice of one’s rights, other than the right to a lawyer (Art. 14 (3) (d)). All states which have enacted cooperation legislation are parties to the European Convention, except **Australia, Croatia, New Zealand** and the **United States**, and **Bosnia and Herzegovina**, which has agreed to be bound by that treaty. Article 5 (2) of the European Convention provides that “[e]veryone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.” Article 6 (3) (a) of that treaty provides that everyone charged with a criminal offence has the right “to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”. That treaty does not expressly require that the detainee be informed of his or her rights. As Article 5 (2)

States which have failed in their cooperation legislation to require notice to suspects and accused of all their rights at the time of arrest include: **Australia** (no requirement of notice of rights), **Bosnia and Herzegovina** (no express duty to inform suspects of rights; an accused must be informed at a deferral hearing of right to counsel), **Croatia, Denmark, Finland, France, Hungary, Iceland, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom** and the **United States**, although other legislation of these states may require such notice.<sup>94</sup>

*Failure to provide for extraterritorial execution of warrants.* The obligation to cooperate with the tribunal and to search for suspects necessarily extends to armed forces operating outside the territory of the state. The obligation to search for, arrest and bring to justice persons suspected of having committed or having ordered committed grave breaches of the Geneva Conventions and Additional Protocol I, as well as the obligation to implement warrants and requests by the tribunals for assistance under Security Council resolutions should be spelled out in legislation or other legally binding instruments or orders. It appears that only one of the state cooperation laws expressly requires the armed forces to implement warrants and requests for judicial assistance outside state territory and some (including **Belgium, Finland, France, Iceland** (Section 1), **Norway** (Section 2) and **Sweden**) expressly limit the scope of the cooperation legislation to the national territory. The **United Kingdom** limits its legislation to the United Kingdom, with one possibly important exception.<sup>95</sup> To some extent, the 32 states contributing personnel to IFOR may have committed themselves to fulfilling this obligation in the still confidential Memorandum of Understanding that IFOR agreed with the Yugoslavia Tribunal.

It is not always clear whether the legislation applies to all persons in the territory or whether it applies to overseas territories. **Spanish** legislation expressly applies only to residents, but presumably the courts will apply it to others in the state, since the Yugoslavia Statute is largely self-executing in Spanish law. It is not clear whether Spanish legislation applies to Melilla

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of the Guidelines and other international standards recognize, however, that detainees must be informed of their rights at the time of arrest if they are to be able to exercise them effectively. See, for example, Principle 13 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (duty to inform each detainee at the moment of arrest “with information on and an explanation of his rights and how to avail himself of such rights”); Principle 5 of the UN Basic Principles on the Role of Lawyers (duty to inform detainee immediately of the right to a lawyer).

<sup>94</sup> For example, Article 63-1 of the **French** Criminal Procedure Code requires the police officer to inform every person placed in *garde à vue* immediately of the right to inform the family of the detention and to contact a lawyer in a language the detainee understands.

<sup>95</sup> The **United Kingdom** legislation provides that to the extent that it applies to proceedings in a service court, the relevant provisions apply to any place at which those proceedings are held. United Nations (International Tribunal) (Former Yugoslavia) Order 1996, Art. 1 (3); United Nations (International Tribunal) (Rwanda) Order 1996, Art. 1 (3). A service court is a court martial court or a navy disciplinary court.

and Ceuta in Africa. **Danish** legislation does not apply to the Faroe Islands and Greenland, but Article 7 provides that it “may be given effect, in whole or in part, by Royal Decree, for these regions with such adaptations as warranted by the special conditions in the Faroe Islands and Greenland”. **Dutch** legislation does not state whether it applies in overseas territories. The **United Kingdom** orders in council concerning cooperation with the Yugoslavia and Rwanda Tribunals expressly apply only within the United Kingdom (except for service courts), but it is expected that the scope of this legislation will shortly be expanded to include the Isle of Man, the Channel Islands and overseas territories and dependencies.

*Use of extradition proceedings instead of transfer proceedings.* The most serious problem of many of the laws which have been enacted is the failure to follow Article 6 of the Guidelines, which requires that the transfer of an accused to the custody of the tribunals be carried out “without resort to extradition proceedings”. The reason for this requirement is clear. Transfer of an accused to an international tribunal or court is not extradition and does not involve the same state concerns as extradition. Extradition involves the sending of an individual from one state (the requested state) to another (the requesting state). Such proceedings, whether in accordance with a treaty or other agreement between states, will take into account such factors as whether the crimes are analogous in each state, whether the crime falls within the political offence exception, whether proceedings in the requesting state are likely to assure a fair trial, whether the accused is a national of the requested state (since some states prohibit the extradition of their nationals), whether the requesting state may prosecute the extradited person for offences not included in the original request (rule of speciality) and a range of other concerns.<sup>96</sup> Extradition proceedings can be protracted and, in some cases, can last several years.

In contrast, almost none of these considerations apply to the transfer of an accused to an international tribunal.<sup>97</sup> The crucial question if a tribunal asks a state to defer proceedings

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<sup>96</sup> See the UN Model Treaty on Extradition (Annex), *adopted* by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 Aug. - 7 Sept. 1990, UN Doc. A/Conf.144/28/Rev.1, I.A.10, *welcomed in* GA Res. 45/116, 14 Dec. 1990, 45 UN GAOR Supp. (No. 49A) 211, UN Doc. A/RES/45/116.

<sup>97</sup> As two commentators with extensive experience in this field recently explained in an analysis of United States cooperation legislation,

“Many of the exceptions in traditional bilateral extradition practice are intended to address possible prejudices in the judicial systems of the requesting states, prejudices that are presumed to be absent from this type of international tribunal. The political offense exception, for example, is grounded in part in the notion of political asylum and the protection of offenders from politically motivated prosecutions. Likewise, dual criminality ensures that the activity the requesting state prescribes is activity that the requested state also believes to be deserving of censure. Here, the international community in creating the Tribunal has already made a judgment about the gravity of the offenses and the need for their prosecution and punishment. Indeed, the crimes within the jurisdiction of the Tribunals are so grave that a dual-criminality requirement

in its courts will not be whether the crimes are defined in the same way in the two jurisdictions, but whether the national court is able or willing to bring the suspect or accused to justice in a fair trial which is not a sham. The political offence exception has no bearing on genocide, other crimes against humanity or serious violations of humanitarian law and, as recognized in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, statutes of limitation do not apply to such crimes. There can be no question that the statute and rules of procedure and evidence of the two tribunals provide most of the essential guarantees of the right to fair trial. Whatever state interest there may be in refusing to extradite one of its nationals to another state for prosecution, that interest does not apply to a request by an international tribunal implementing a Security Council resolution under Chapter VII of the UN Charter. The rule of speciality is designed to protect the state interest in assuring that the accused is tried only for offences which are analogous to those in its own criminal justice system and, possibly, to give the accused adequate time to prepare a defence. Neither concern applies to transfer to an international tribunal.

Several states, including **Austria, Denmark, Finland, Iceland** (Sections 3 to 7), **Italy, Norway, Sweden, Switzerland** and the **United States**, have provided in their legislation for the transfer of accused persons to the tribunals through extradition or similar proceedings.<sup>98</sup> Although using such proceedings may minimize the work of drafting legislation in some countries, extradition proceedings could lead to lengthy delays in the transfer of an accused to the tribunals unless the legislation provides that certain extradition provisions, such as the bar on the extradition of nationals, do not apply.

There is some ambiguity concerning procedures in the legislation of **Bosnia and Herzegovina**. Generally the legislation uses the word “deferral”, but in Article 11 it states that “the accused shall be remanded into custody for extradition during the deferral procedure”. Article 2 of the **German** legislation provides for the transfer of criminal proceedings to the tribunal, but Article 3 declares applicable most provisions of the law on international judicial cooperation in criminal cases, except for the political offence exception and the rule of speciality. In practice, this procedure has not posed an obstacle to the transfer of non-nationals to the tribunal, but the German authorities have interpreted their Constitution as prohibiting the transfer of a national to a court sitting outside Germany.

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seems superfluous. Given the gravity of the offenses, the same should be said for a provision that would give the right to deny surrender if the request were not made within the statutory limitations period for the analogous U.S. offense. Moreover, the nonapplicability of such periods to these offenses is recognized as an emerging international norm.”

Robert Kushen & Kenneth J. Harris, “Surrender of Fugitives by the United States to the War Crimes Tribunals for Yugoslavia and Rwanda”, 90 Am. J. Int’l L. 510, 515 (1996).

<sup>98</sup> Section 4 of the **Finnish** legislation provides for “the surrender of offenders” to the Yugoslavia Tribunal, but it also states that the provisions of the Finnish Extradition Act “shall, *mutatis mutandis*, be applicable to the procedure to be followed in the surrender”.

Under Section 3 of the **Icelandic** law, the Minister of Justice “may turn down a request if the request or other evidence indicate that it is manifestly incorrect” when the request to transfer or surrender by the Yugoslavia Tribunal is received. If the Minister of Justice does not turn down the request immediately, it will be forwarded to the Director of Public Prosecution for investigation (Section 40) and after the investigation has been completed, “the Minister of Justice shall decide whether extradition to the International Tribunal shall be granted, and if so in what manner” (Section 7). Although the law does not specify any of the traditional exceptions to extradition, Section 7 permits a person to “request a district court resolution of whether the legal conditions for extradition are fulfilled”, which suggests that some of these exceptions may apply. In addition, that section would appear to permit the Minister of Justice wide discretion to refuse to transfer or surrender someone to the tribunal.

Although the **Italian** law provides for transfer rather than extradition proceedings, Article 11 (3) (c), (c-bis), (c-ter) of that law permits the Court of Appeal to refuse to surrender an accused in circumstances which are prohibited by the Yugoslavia Statute. Although **Norwegian** cooperation legislation specifies that requests for the surrender of a person to the tribunals shall be dealt with in accordance with provisions for extradition, in practice extradition procedures are relatively simple.<sup>99</sup> **Switzerland** has expressly provided throughout its law that the procedures ordinarily applicable to interstate cooperation in criminal matters have been modified to take into account the special requirements of the surrender and transfer of persons to the tribunals, but these modifications are insufficient to satisfy the Guidelines. For example, Article 10 (2) provides that Swiss citizens can be transferred to the tribunals if they are returned to Switzerland at the end of proceedings to serve their sentence in Switzerland. This limitation on the authority of the tribunals to determine where convicted persons should serve their sentences is inconsistent with Article 27 of the Yugoslavia Statute and Article 26 of the Rwanda Statute which provide that the tribunals are to designate the place of imprisonment (see discussion of Guidelines above).

Although the **United States** cooperation legislation provides for use of the extradition proceeding rather than establishing new transfer proceedings, the agreements it has reached with the two tribunals exclude most of the usual exceptions extradition requirements, which can

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<sup>99</sup> The only factors which a **Norwegian** court may consider are whether the request from a foreign court is valid and whether the person detained is the person sought. The Norwegian court is expected to consider the request speedily. It may not take into account traditional extradition exceptions such as the political offence exception and the nationality of the person sought, but it may take into account humanitarian factors such as whether the person is too ill to be moved. The latter factor, as recent events have demonstrated, is properly for the tribunals to consider rather than the national court.

lead to extremely lengthy proceedings in some cases.<sup>100</sup> Article 1 (2) of the Agreement between the United States and the International Tribunal for Yugoslavia provides:

“The requirements for finding that a person is subject to surrender to the Tribunal are solely those articulated in this Agreement. No additional conditions regarding or defenses to surrender may be asserted by the person sought as barring such person’s surrender to the Tribunal under this Agreement.”

Nevertheless, as pointed out above, the Secretary of State retains the discretion under extradition law to decline to surrender a person to the tribunals.

States should ensure that whatever proceedings are established provides safeguards for the rights of detainees under the statutes and rules of the tribunals and international standards are observed, that the warrant for the provisional arrest of a suspect or arrest of an accused has been issued by the tribunal and that the person detained is the person sought in the warrant. The other aspects of extradition proceedings should not apply.

***Failure to provide for return of property and proceeds of crime.*** Several states have failed expressly to provide in their legislation for the return of property to victims or of other proceeds of crime (including **Belgium, Denmark, France, Hungary, Iceland, Italy, Netherlands, Norway, Spain** and the **United States**), as specified by Article 13 of the Guidelines, although other provisions on judicial cooperation may be interpreted to permit or require the authorities to enforce tribunal orders to return property or the proceeds of crime. For example, Section 12 of the **Icelandic** law provides for the enforcement of judgments of the Yugoslavia Tribunal and Article 2 (1) of the **Hungarian** law provides that the Attorney General is to carry out requests of that tribunal.

***Failure to provide for enforcement of sentences.*** See Part III.D. above.

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<sup>100</sup> The **United States** cooperation legislation provides for the “surrender of persons” to the tribunals, but it also provides that it shall be in the same manner as in the extradition of persons from the United States to a foreign country, apart from certain formalities which are to be performed by diplomats or consular officers in the states where the tribunals are sitting, and that the agreements with the tribunals will govern the matter of expenses arising from surrender. It appears doubtful, however, that Congress intended by this wording to supplant the simple and speedy procedures for surrender in those agreements.

Articles 2 and 3 provide that the request by the tribunals for surrender must be accompanied by information concerning the identity of the person sought, the essential facts and procedural history of the case, the violations, the warrant of arrest and the indictment”, as well as “by information sufficient to establish there is a reasonable basis to believe that the person sought has committed the violation or violations for which surrender is requested”. The agreements do not include any of the traditional exemptions in extradition law such as dual criminality or the rule of speciality.

## **RECOMMENDATIONS**

**All states should fully cooperate with the two tribunals by ensuring that they are able to carry out effective investigations, by assisting them in gathering evidence and by surrendering or transferring persons to the tribunals on request.**

**All states should provide practical assistance to the tribunals, including seconding personnel, providing equipment and making donations to the voluntary funds.**

**When legislation is required to ensure that the authorities of a state cooperate fully with the tribunals, the state should enact such legislation which is consistent with the relevant Security Council resolution, statute, rules and guidelines. States should provide copies of the original text of the legislation and, where necessary, translations into at least one of the working languages of the tribunals (English and French).**

**When no legislation is required to ensure that the authorities of a state cooperate fully with the tribunals, the state should make a formal declaration to that effect and provide it to the Registrars of the tribunals.**

**All Members of the UN should ensure that the General Assembly appropriates adequate, long-term funding for the two tribunals.**

## **ANNEXES**

### **I. ADDRESSES, TELEPHONE NUMBERS AND FAX NUMBERS OF THE TRIBUNALS**

#### **Yugoslavia Tribunal**

Prosecutor  
Office of the Prosecutor  
International Criminal Tribunal for the former Yugoslavia  
Churchillplein 1, P.O. Box 13888  
2501 EW The Hague  
The Netherlands

Telephone: (31) 70-416-5000

Fax: (31) 70-416-5358

The Registrar  
International Criminal Tribunal for the former Yugoslavia  
Churchillplein 1, P.O. Box 13888  
2501 EW The Hague  
The Netherlands

Telephone: (31) 70-416-5320

Fax: (31) 70-416-5307

Victims and Witnesses Unit  
Judicial Department  
The Registry  
International Criminal Tribunal for the former Yugoslavia  
Churchillplein 1, P.O. Box 13888  
2517JW The Hague  
The Netherlands

Telephone: (31) 70-416-5347

Fax: (31) 70-416-5345

**Rwanda Tribunal**

The Prosecutor  
The Office of the Prosecutor  
International Criminal Tribunal for Rwanda  
Former UNAMIR Building  
P.O. Box 749  
Kigali  
Rwanda

Telephone: (via UN Headquarters in New York) (1) 212-963-9906/7, Extension  
11013  
Fax: (via UN Headquarters in New York) (1) 212-963-4001

Registrar  
International Criminal Tribunal for Rwanda  
Arusha International Conference Centre  
P.O. Box 6016  
Arusha  
Tanzania

Telephone: (255) 57-4207-11; (255) 57-4365-72  
(255) 57-4372  
(Via UN Headquarters in New York) (1) 212-963-2849/50  
Fax: (255) 57-4373  
(255) 57-4000  
(via UN Headquarters in New York) (1) 212-963-2848

## II. CHART INDICATING STATE COOPERATION\*

Key:

Arr	Arrest made of accused
Def	Deferral agreed
Def pend	Deferral request pending
DP	Deputy Prosecutor serving on tribunal
I/S	Investigator/other staff (seconded or pledged)
J	Judge serving on tribunal
Non	Non-cooperation
O	Observer
P	Prosecutor serving on tribunal (or appointed to do so)
Pledge	Pledged funds, but not yet received
Prov	Provisional arrest made of suspect
R	Cooperation with the Rwanda Tribunal
Reg.	Registrar serving on tribunal
Wit	Witness transferred
Y	Cooperation with the Yugoslavia Tribunal

\* Information concerning the Yugoslavia Tribunal is as of 15 August unless otherwise indicated. Information concerning donations of funds is as of 11 June 1996 for the Yugoslavia Tribunal. Information concerning staffing, donated equipment and donations to the voluntary fund with regard to the Rwanda Tribunal is generally as of 15 May 1996. Cooperation by non-state entities is not included. Entries concerning arrests are included only when the state was requested to make an arrest.

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Afghanistan						
Albania						
Algeria						
Andorra						
Angola						
Antigua & Barbuda						
Argentina						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Armenia						
Australia	J, DP (Y)				R, Y	
Austria					R, Y	Prov, Arr (Y)
Azerbaijan						
Bahamas						
Bahrain						
Bangladesh	J (R)					
Barbados						
Belarus						
Belgium				R	R, Y	Prov, Def (R)
Belize						
Benin						
Bhutan						
Bolivia						
Bosnia and Herzegovina					Y	Prov, Arr, Wit, Def (Y)
Botswana						
Brazil						
Brunei						
Bulgaria						
Burkina						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Burundi						
Cambodia				Y		
Cameroon						Def pend (R)
Canada	J (Y)	R(I); Y(I)		Y		
Cape Verde						
Central African Republic						
Chad						
Chile				R, Y		
China	J(Y)					
Colombia						
Comoros						
Congo						
Costa Rica	J(Y)					
Croatia					Y	
Cuba						
Cyprus						
Czech Republic						
Denmark		Y(I)		R, Y	R, Y	
Djibouti						
Dominica						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Dominican Republic						
Ecuador						
Egypt	J (Y)			R		
El Salvador						
Equatorial Guinea						
Eritrea						
Estonia						
Ethiopia						
Fiji						
Finland		Y(S)			Y	
France	J (Y)		Y	Y	R, Y	
Gabon						
Gambia						
Georgia						
Germany		R			Y	Prov, Arr, Def (Y)
Ghana						
Greece				R		
Grenada						
Guatemala						
Guinea						
Guinea-Bissau						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Guyana						
Haiti						
Holy See (O)				R		
Honduras						
Hungary				Y	Y	
Iceland					Y	
India						
Indonesia						
Iran						
Iraq						
Ireland				R, Y		
Israel				R (Pledge) Y		
Italy	J (Y)			Y	Y	
Ivory Coast						
Jamaica						
Japan						
Jordan						
Kazakhstan						
Kenya	Reg (R)					
Korea, Democratic Republic of						
Korea, Republic of					None needed	

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Kuwait						
Kyrgyzstan						
Laos						
Latvia						
Lebanon				R		
Lesotho						
Liberia						
Libyan Arab Jamahirya						
Liechtenstein				Y		
Lithuania						
Luxembourg						
Macedonia, former Yugoslav Republic of						
Madagascar	DP (R)					
Malawi						
Malaysia	J (Y)			Y		
Maldives						
Mali						
Malta						
Marshall Islands						
Mauritania						
Mauritius						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Mexico						
Micronesia						
Moldova						
Monaco						
Mongolia						
Morocco						
Mozambique						
Namibia				Y		
Nepal						
Netherlands	Reg (Y)	R (I), Y(I/S)		R, Y	Y	Prov (Y)
New Zealand				R, Y	R, Y	
Nicaragua						
Niger						
Nigeria	J (Y)					
Norway		R (I);Y(I)		R, Y	R, Y	
Oman						
Pakistan	J (Y)			Y		
Palau						
Panama						
Papua New Guinea						
Paraguay						
Peru						
Philippines						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
Poland						
Portugal						
Qatar						
Romania						
Russian Federation	J (R)					
Rwanda						
St.Kitts and Nevis						
St. Lucia						
St. Vincent and the Grenadines						
San Marino						
Sao Tome & Principe						
Saudi Arabia						
Senegal	J (R)					
Seychelles						
Sierra Leone						
Singapore					None needed	
Slovakia						
Slovenia						
Solomon Islands						
Somalia						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
South Africa	P (Y,R) J (R)					
Spain				R, Y	Y	
Sri Lanka						
Sudan						
Surinam						
Swaziland						
Sweden	J (R)	Y(I), R (I)		R	Y, R	
Switzerland (O)		R(I/S)		R, Y	R, Y	
Syria						
Tajikistan						
Tanzania, United Republic of	J (R)					
Thailand						
Togo						
Trinidad and Tobago						
Tunisia						
Turkey						
Turkmenistan						
Uganda						
Ukraine						
United Arab Emirates						

UN Member State or Observer	Judge or senior official	Seconded staff	Donated equipment	Donated funds	Enacted legislation	Made arrests
United Kingdom		R(I), Y(S)	Y	R (Pledge) Y	R, Y	
United States	J (Y)	R(I), Y(I/S)	R, Y	R, Y	R, Y	
Uruguay						
Uzbekistan						
Vanuatu						
Venezuela					None needed	
Vietnam						
Western Samoa						
Yemen						
Yugoslavia, Federal Republic of (Serbia and Montenegro)						Wit, Def, Non (Y)
Zaire						
Zambia						Zambia (R)
Zimbabwe						

### **III. STATUS OF CONTRIBUTIONS TO TRIBUNALS AS OF 31 MAY 1996**

Note: In the columns in the following tables concerning assessments and contributions for each of the two tribunals, the amounts listed as outstanding in some cases include money which a state has already earmarked for the tribunal, but not yet transmitted to the UN because of national budgetary cycles and requirements. Thus, for example, the **United States** has authorized the payment with Fiscal Year 1997 appropriations of the contributions which are listed as outstanding with respect to the two tribunals, but these funds will not be available to the UN until after 1 October 1996. Indeed, the United States has been one of the largest contributors to the two tribunals. The total voluntary and assessed contributions by the United States for the four fiscal years 1994 through 1997 amount to \$32,697,000 for the Yugoslavia Tribunal and \$20,201,000 for the Rwanda Tribunal.