Temporary Courts, Permanent Records

By

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Abstract

Temporary international criminal courts create voluminous records of lasting importance. This study examines the records of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Special Panels and Serious Crimes Unit in East Timor, and the internationalized courts and prosecutors in Kosovo. A survey of the five courts reveals substantial differences among them because of the varied roles played by the United Nations in their establishment and operations, which in turn leads to differences in the potential disposition of their records. The study argues that the pending closure of these courts makes a decision on the disposition of their records urgent. Basic access procedures need to be established, active preservation measures need to be undertaken, description and duplication of the records should begin, and the United Nations should explore constructing and staffing an international judicial archives for court records.

Biography

Trudy Huskamp Peterson is a certified archivist and the past president of the Society of American Archivists and the International Conference of the Round Table on Archives. Currently a consultant on archives, she served as acting archivist of the United States from 1993 to 1995, the founding executive director of the Open Society Archives, and the director of the archives and records program of the United Nations High Commissioner for Refugees. Her book *Final Acts: A Guide to Preserving the Records of Truth Commission,* co-published by the Woodrow Wilson International Center for Scholars and The Johns Hopkins University Press, is online at http://www.wilsoncenter.org/press/peterson_finalacts.pdf.

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Preface

The United States Institute of Peace (USIP), through a grant to the National Peace Foundation, funded this study. The research was carried out in the first half of 2005, and a summary of findings was published by USIP in August 2006 as Special Report 170 (http://www.usip.org/pubs/specialreports/sr170.pdf). The manuscript was edited for publication in early 2007, but due to changes in USIP's publishing program in the summer of 2007, the study was not published. Subsequently the Woodrow Wilson International Center for Scholars, through the good offices of Christian Ostermann and Joe Brinley, agreed to published the edited manuscript on the website of the Cold War International History Project. I am enormously grateful to the Wilson Center.

Because of the time lag between researching, editing, and web publishing, some of the factual material, especially the statistics of holdings and the descriptions of the organization of the courts in Chapter 2, is out of date. The statistics, in particular, should be read as relative numbers, showing how many records of what type existed rather than as specific quantities currently in hand. And although units within the courts have shifted or closed, all these units created records that need appraisal and archival management. Persons seeking up to date information on the structure of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, or the Special Court for Sierra Leone should look on the websites of those courts, respectively http://www.un.org/icty/index.html, http://69.94.11.53/, and http://www.sc-sl.org/.

Two major developments occurred since the manuscript was edited. First, both the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon are now operating and creating records. The basic analysis presented in this study of users and the records that need to be preserved for them can also be applied to the records of these two new courts. Second, in the autumn of 2007 the Yugoslav and Rwanda tribunals created a joint committee to consider how "best to ensure future accessibility of the archives" and to "review different locations that may be appropriate for housing the materials." Headed by former ICTY and ICTR prosecutor Richard Goldstone, the committee's report is expected in the latter part of 2008. The recommendations of the Goldstone committee will be an important step towards resolving the preservation and access issues surrounding the records of these important courts.

Trudy Huskamp Peterson
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and encouraged me as a husband to finish the manuscript. Needless to say, the mistakes I have made are my own.

Chapter 1: Introduction

In the shade of some scraggly trees, a man was zipping guns into body bags. Each of the weapons, which the prosecutor of the Serious Crimes Unit in East Timor had seized, was tagged and each tag had been recorded in a database. Looking up from his packing, the man remarked, "People worry about *these* but," and he nodded his head to a room across the yard, "the *really* dangerous stuff is over there." "Over there" was the room storing evidence collected by the prosecutor's staff, including statements, photographs, audio recordings of interviews with witnesses, and collections of documents. The man working under the tree was right: in May 2006 the attorney general's office storing the records was looted, the databases were stolen, and other prosecutors' records were stolen or strewn about.

A few months later and half a world away, Muhinda John was walking home down a street in Kabunga Town, Rwanda. Suddenly he was hit on the head with a metal bar and died. The dead man was widely known for testifying openly before the International Criminal Tribunal for Rwanda. At his funeral, mourners were told that "onlookers shouted joyfully" as Muhinda was killed. The assumption is that he was killed because of his testimony. The records of his testimony, which the tribunal holds, now speak for him. Dangerous records, too.

This study looks at the records created by five temporary international criminal courts: the International Criminal Tribunals for Yugoslavia and Rwanda (ICTY and ICTR), the Special Court for Sierra Leone (SCSL), and the "hybrid" courts of Kosovo and East Timor. The word "court" to describe these diverse bodies is misleading. They do include courts, in the traditional sense, that hear and adjudicate cases and appeals, but they encompass far more than that. These courts include the offices of the prosecutor, which in turn includes staffs of investigators. The prosecutor may also have field offices. The court may have associated offices of public defenders. The registrar, in addition to the duties of court operation, may run a detention center or a center for victims. Most of the courts have public outreach arms, some with sophisticated broadcast operations; these outreach offices may be located in the city with the court or may be in the locations where the events that occasioned the tribunal took place. To use a U.S. analogy, a temporary international criminal court includes the Federal District Court and the Supreme Court, the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, the Federal Witness Protection Service, the Bureau of Prisons, and perhaps the office of a public defender.

The temporary courts utilize a blend of common law and civil law approaches that is unique, differing both from each other and from the laws of the nation-states. The Kosovo court, for example, operated until 2004 under the general civil law process that has the prosecutor submit virtually all the records of the case to the court for inclusion into its records. The Special Panels in East Timor, on the other hand, had much less of the prosecutor's records submitted to them, leaving a relatively thin court record. This means that the nature of the courtroom records and the prosecutor's records varies by the rules of procedure and practice adopted in the jurisdiction.

The temporary courts also differ from national courts in the frequency with which the court proceedings are closed to the public, whether for closed hearings or motions or other business. This reflects the "dangerousness" of the records, as the man stowing guns so memorably said. The records of most court proceedings in nation-states have relatively few access problems, and the access issues arise in fairly specific types of cases such as those involving minors or sexual crimes. The court records of the tribunals, however, may have significant access problems, even for the records of the proceedings. The ICTY staff estimates, for example, that 30% of the records in the judicial database that serves the court are restricted in some way. These records must be retained, but access to them must be carefully controlled.

This report provides a conceptual framework and practical recommendations for deciding what records of the

tribunals to retain when these temporary bodies close their doors. The closures are at hand: the East Timor bodies closed in May 2005; the status talks on Kosovo are at a crucial point in the winter of 2007; the final case in the Sierra Leone court, that of Charles Taylor, is to begin June 4, 2007; and the ICTY and ICTR are to complete all proceedings by 2010. While each of the bodies are unique and their records could be evaluated separately, the temporary tribunals need to be understood as part of a broader historical picture that illuminates both the development of international criminal law and the new role of the United Nations as an instrumentality for international justice. Looking at the records of all the tribunals at once helps identify similarities in their context and content and clarifies the issues that will face the archivist who takes custody of the records.

I believe that the United Nations must accept its responsibility to administer an international judicial archives for the permanently valuable records of the temporary tribunals. I urge that the publicly available records be copied and the copies donated to institutions in the countries affected or in regional institutions that the countries might designate. I also recommend that the objects and artifacts maintained by a tribunal, if not returned to a family, be available for loan to institutions for educational exhibition purposes. But I urge that the original records, including the audio and video recordings, the electronic databases, the paper files, and the objects, should all be located in one international judicial archives under the direction of the United Nations Archives and Records Management Section.

The report consists of five sections. It begins by reviewing the administrative history of the establishment of each of the courts and the nature of the records made and received by the court. Next the report looks at some "best practices" from national projects for appraising the records of prosecutors and courts; it also reviews the disposition of the records that were created during the international war crimes prosecutions at the end of World War II. The third section discusses the users and uses of court records. The fourth section provides a basic appraisal for records common to all tribunals and then makes specific recommendations for additional records in each of them. In a fifth section the report considers first the issues in developing access policies and procedures for the records of the courts after they close; then it discusses the options for archival storage of the records and makes recommendations. Finally, appendices provide information on the general records destruction practices of the United Nations, guidelines for distinguishing between records and personal papers, an excerpt from international principles on access to records, physical storage criteria, a staffing pattern for a judicial archives, and an outline of building costs and requirements.

Records are saved for use. Making the decisions of what to save and where to save it are fundamental questions. The challenge is to plan the permanent archival program for the records, preserving them and making them available for users to explore the history of the courts and the tragic events they adjudicated.

A Note on Language

There is no simple word or phrase that describes the temporary international courts and prosecutors and defenders. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are called tribunals. The Sierra Leone court is a Special Court. The part of the East Timor court system that is reviewed here was called "Special Panels," and the prosecutor was a "Serious Crimes Unit." The Kosovo courts have had international judges inserted for certain cases, which are then colloquially called "panels." Sometimes the latter three are called "hybrid courts" or "internationalized courts." None of these locutions works very well.

In this report I use the word "court" in the broadest sense to refer to all parts of the judicial process handled by the international body. I reserve the word "tribunals" for the Yugoslavia and Rwanda bodies.

"Chambers" is another slippery word. Sometimes it is used to mean the courtroom (for example, the Rwanda Tribunal's Trial Chamber I); other times it is used to mean the private office of a judge. In this report I use "chambers" for the courtroom when that is the term used by the body itself; otherwise, I use courtroom. I use "office" to mean the judge's own office.

Trudy Huskamp Peterson
2007 February 4

Chapter 2: The Courts and Their Records

International criminal courts and tribunals are a distinctive and unprecedented development of the 1990s. At the start of that decade, no international criminal law courts existed. Today three independent international bodies adjudicate international criminal law: the International Criminal Tribunal for the Former Yugoslavia (ICTY) established in 1993; the International Criminal Tribunal for Rwanda (ICTR) established in 1994; and the International Criminal Court (ICC) created by a treaty concluded in 1998. But that is only the beginning. "Internationalized" or "hybrid" criminal courts and tribunals also exist, employing both national and international personnel. Hybrid war crimes courts currently operate in UN-administered Kosovo, Sierra Leone (the Special Court for Sierra Leone, 2001), and Bosnia (the War Crimes Chamber, 2004), and operated between 2000 and 2005 in East Timor (the Special Panel for Serious Crimes of the Dili District Court and the deputy prosecutor for serious crimes). A hybrid court is being established in Cambodia (the Extraordinary Chambers in the Courts of Cambodia) and may be established in Lebanon, Burundi and Afghanistan.[1] With the exception of the ICC, these bodies were intended at their creation to have limited life spans.

Like all organizations, these courts make and receive records daily. Permanent courts, whether national or international, must develop a program for selecting the records with long-term value, protecting and preserving them, and ensuring that they are available for use after they are no longer needed for court purposes. Temporary courts have an additional task. Not only must they select the records to be preserved, but these courts must also address the problem of long-term placement of the records after the temporary body goes out of existence. If the temporary court is part of the United Nations system, the United Nations archival service will take responsibility for the records but where the records will be located will have to be determined. But if they are the records of temporary courts with a mixed or "internationalized" character, how this decision will be made and by whom is not clear. Are the records those of the country or of the United Nations? Where should they be deposited and under whose control? And, for all the courts, who should have access to the non-current records (i.e., the archives)?

Court records have three characteristics. First, the records are created in the course of the business activity of the court and can be identified by the office and function in which they were generated. Second, they may be in any physical format. Third, they may be duplicated in other offices or in other formats. As a court decides what records to retain, all three of these characteristics must be considered.

Function. The international tribunals typically have three parts: the court per se, the prosecution and the investigators, the registry. Some courts also have a public defender's office. In addition, courts may have formal coordinating bodies that include persons from the three principal arms of the tribunal; some judiciaries also have coordinating bodies for themselves.

Each of the three principal units sets policy in some areas of its work, conducts its core business (its program), and handles administrative tasks. For example, the judges set policy by adopting the rules of procedure, while the prosecutor establishes the policy on matters such as handling evidence and the registrar creates the policy framework for administration. Generally one arm has the primary responsibility for a function with the other two arms following the policy guidelines that it has established. For example, the registry handles most of a tribunal's administrative operation, but a judge's office also orders supplies and a prosecutor files a travel claim in accordance with the policies and procedures established by the registry.

In addition to policy, programmatic, and administrative work, a tribunal has a number of professional support programs. Both the registry and the office of the prosecutor may have public information offices or spokesmen;

both may also have library or research support programs. The registry usually directs the outreach program to communities, manages support programs for witnesses and victims, and operates the detention facilities.

Because records are the byproducts of functional activities, the body of records created by and maintained in a tribunal reflects all the policy-setting, operational, administrative, and professional support programs. In addition, judges, prosecutors, investigators, and other staff members create some documents that are personal, although they are kept within the offices of the court. All these materials must be evaluated to determine which should be retained as the historical legacy of the court.

Physical format. Tribunals rely on both paper and electronic records to do their business. The degree of reliance varies greatly, however. The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), for example, utilize enormous electronic systems that contain desktop documents (such as word processing and spreadsheets), email, scanned items, and databases of various sorts. Both of them, as well as the Special Court for Sierra Leone, maintain websites for the public. At the other end of the spectrum, the Special Panel of the Dili District Court had access to email, but operated primarily on paper. Court sessions have both audio recordings and video recordings in the ICTY, the ICTR and the Sierra Leone courts, but the court in East Timor had video recordings only and the courts in Kosovo have neither. Finally, although not technically records, physical objects obtained as evidence or used in trials for explanatory purposes (such as scale models) are also held by the courts. The ICTY has an enormous quantity of objects—approximately 13,000 in the custody of the prosecutor. The court in Rwanda reports relatively few objects introduced into evidence and held by the court, although it is not clear what quantity is in the custody of the prosecution. The Special Panels in East Timor disposed of all the objects before they closed but the deputy prosecutor for serious crimes had a substantial quantity of objects.

Duplication. Duplication is another characteristic of complex bodies of records. Three types of duplication are typical: duplication across offices (the prosecutor has a copy of an item and so does the investigator who uncovered it, for instance; an item introduced in court is in the official record of the proceedings, in the records of the prosecutor, and in the records of the defense); duplication hierarchically (a report sent from a team member to the team leader to the prosecutor, with copies retained in each person's files) and duplication from one physical type to another (a paper item that is also electronic because it was scanned, for instance). The tribunals have all three types of duplication.

The records of policy-making in a core function normally have the highest priority for archival preservation. Conversely, records of an administrative function that are not policy-making but result from the routine application of an established process (such as a purchase order for a book or a personal request for holiday leave) and are duplicated elsewhere have low priority for archival preservation. The majority of records, however, fall between these two extremes.

In the sections that follow, the background to each court is outlined, its current organization is described, and the types of records its holds are summarized. This overview will permit us to examine the similarities and differences among the records of the courts, will allow us to identify records created by the courts that are similar to those created by a national government or a predecessor tribunal, and will provide the background necessary for us to evaluate the importance of the records for future users.

International Criminal Tribunal for the Former Yugoslavia

Background

On February 22, 1993, the United Nations Security Council adopted Resolution 808, requesting the secretary-general to make "specific proposals" for an international criminal tribunal for the former Yugoslavia. Three months later, on May 25, 1993, the Security Council approved the secretary-general's report and adopted the Statute of the International Tribunal that he had submitted. The council acted by the power given it under Chapter VII of the United Nations Charter, "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression."[2]

The International Criminal Tribunal for the Former Yugoslavia (ICTY) is a temporary subsidiary organ of the Security Council in terms of Article 29 of the Charter.[3] Evolving over a dozen years, it is now a very complex institution. Within its three arms (court, prosecutor, and registrar) it has three trial courts, an appellate court, and the office of the president of the court; the offices of the prosecutor and the deputy prosecutor with four support units, two divisions (each with multiple subordinate sections and units), an evidence section, investigation teams, and field offices; and a registry with twenty-one principal subordinate offices and sub-offices beyond them. The tribunal is geographically dispersed, administering court facilities in The Hague as well as a detention unit in neighboring Scheveningen and field offices in Banja Luka, Belgrade, Pristina, Sarajevo, and Zagreb.[4] The tribunal provides interpretation services and transcripts of all courtroom proceedings in English and French, and it regularly interprets or translates material into the languages spoken in the former Yugoslavia or in Albania. The tribunal uses paper—but relies heavily on electronic systems— audiotapes, and videotapes, and handles evidence ranging from letters and photographs to scale models to clothes and firearms. In addition to records created and received by the tribunal, including substantial quantities of records obtained from foreign governments during investigations, the ICTY has the records of the Commission of Experts that preceded the tribunal.

A special consideration when reviewing the records of the ICTY is the tribunal's relationship to the International Criminal Tribunal for Rwanda (ICTR), to the internationalized courts in Kosovo, to the War Crimes Chamber and specialized war crimes prosecutor in Bosnia, and to the Croatian courts. The relationship between the tribunal for the former Yugoslavia and the tribunal for Rwanda is exceptionally important and complex, involving all three arms of the ICTY. In the judicial arm, the appeals court seated in The Hague serves both ICTY and ICTR and consists of five judges from the permanent judges of the ICTY and two from the permanent judges of the ICTR. The appeals normally are argued in The Hague for ICTY and in Arusha, Tanzania, for ICTR. In the prosecution arm, the relationship between the two courts has changed over time. Until the passage of Security Council Resolution 1503 on August 28, 2003, the same prosecutor served both tribunals, but with separate deputy prosecutors and with the prosecutor's records regarding Rwanda maintained separately in the Prosecutor's principal office in The Hague. Resolution 1503 severed the ICTY and ICTR prosecutions, and separate prosecutors now serve each tribunal and maintain separate records systems. Even the registry at ICTY has links to the registry in Rwanda. For example, recently ICTR transferred a Rwandan to the detention facility managed by the ICTY registrar in an effort to ensure the person's safety.[5] In short, records at ICTY include information about events in Rwanda and about ICTR litigation.

The relationship between the ICTY and the internationalized courts in Kosovo moves on two separate tracks. On the first track, ICTY has jurisdiction to prosecute persons for crimes in Kosovo, thereby removing these cases from the jurisdiction of the Kosovo court system. ICTY had a office (now closed) in Pristina to investigate and support its prosecutions. On the second track, the ICTY cooperates with the international prosecutors trying cases before the internationalized panels of the Kosovo courts and provides certain information and support to them. The records at ICTY reflect both these tracks and contain important information about the history of events in late 1990s Kosovo.

Finally, there is a special relationship with the courts in Bosnia and Croatia. In an effort to bring both the ICTY and the ICTR to a close, the Security Council in 2003 and 2004 passed resolutions urging that "cases involving intermediate and lower rank accused" be transferred to "competent national jurisdictions."[6] With those transfers from the ICTY to the prosecutors in the Balkans will go duplicate copies of the records related to the cases. The office of the prosecutor has also been returning electronic files of cases originated by the local prosecutor that the tribunal's prosecutor has reviewed.[7] By late summer 2005 ICTY had referred cases to courts in both Bosnia and Croatia.

In 2001 the tribunal "embarked upon the considerations of its completion strategy." The tribunal's president and the prosecutor told the UN Security Council in November of that year that ICTY hoped to complete the investigations in 2004, all initial trials by 2008 and all appeals by 2010.[8] The first of those dates—filing all indictments by the end of 2004—was met. However, by the summer of 2005 the president reported to the Security Council, "What is clear at the time of writing this report is that trial activities will have to continue into 2009."[9] Nevertheless, the end is in sight.

As we look across the three parts of the tribunal—the court, the prosecutor, and the registrar—we will find records in all the varieties of physical types, from dispersed geographic locations, and duplicated between offices within one arm of the tribunal and between the arms. And we will see that the unique principal functions of each of the three arms produce records that are related to other records in complex ways, both within the creating office in the tribunal and across its entirety.

Records of the Trial and Appeals Chambers

As in most court systems, the ICTY registrar manages the records of both the court and the administration but not the records of the prosecutor. The records described here are those of the activities of the court. The records of the registrar in his administrative capacity are described below.

Proceedings. The most important records of the tribunal are the records of the proceedings in the court. The Court Management Services Section, a part of the registry, manages these records. Trial and appellate cases are filed separately, each filed by case number.

All proceedings are recorded in both audio and video formats. Former ICTY judge Gabrielle Kirk McDonald remembers, "The judges initially decided that an audiovisual record of the proceedings would be kept in 'the archive' and would not be available to the public at large. ... The view was modified, of course, and the Tribunal's first full trial was broadcast on Court TV, a U.S.-based broadcasting station."[10] An audiovisual record, the judges decided as early as 1994, would have three purposes: to make sure that justice would be seen to be done, to dispel any misunderstanding that might arise as to the role and nature of the proceedings, and to educate the public. A 1998 study reviewed the impact the cameras were having on the proceedings. The researchers found that court participants were not affected by the presence of cameras in the courtroom, that the three primary purposes were achieved, and that the cameras provided a full and accurate court record that could be "archived."[11] This commitment to complete audiovisual coverage of every trial has resulted in an unprecedented volume of court records.

There are a number of ways to look at the records of the proceedings. One can look at what records are created at each stage of a proceeding, for example, or one can look at them by the creator of the document in question (prosecution, defense, judges, person or organization providing the exhibit). However, the extraordinary quantity of audiotape and videotape for each trial, when linked with the very substantial amount of information duplicated

in two or more physical types of records, makes it useful to look at the records of the proceedings by physical type. Viewed this way, the records of the proceedings in each case may include:

Paper
- Pleadings
- Exhibits admitted
- Transcript of session, verbatim, English
- Transcript of session, verbatim, French
- Orders and judgments

Electronic
- Pleadings submitted electronically (after October 2002)
- Pleadings scanned (prior to October 2002)
- Scanned paper records admitted as exhibits
- Exhibits tendered only in electronic form (after January 2005)
- Electronic versions of transcripts, English and French, verbatim
- Digitized versions of audiotapes, stored on CDs
- Electronic versions of orders and judgments
- Tracking and logging systems

Audio recordings
- Exhibits admitted
- Court proceedings, English
- Court proceedings, French

Court proceedings, Bosnian/Croatian/Serbian (BCS)
Court proceedings, Albanian
Court proceedings, Macedonian
Court proceedings, "Floor"[12]

Videotapes
- Exhibits admitted
- Individual camera tapes
- Videotape edit of the trial
- Videotape edit backup of the trial, redacted for public use

Artifacts entered as exhibits

Paper. At present the paper version of a document is the official version, although an electronic version of virtually every record in a case exists. A complete set of paper records of officially filed court documents is kept in a vault; a separate set of "public only" documents is kept separately in cabinets outside the vault. In addition to the official court file on each case, a corresponding file is maintained of correspondence between the registry and the defense or the prosecution or both. At present, this correspondence file is maintained only in paper.[13]

Each judge decides whether original paper must be submitted as an exhibit or whether a print of a scanned item is acceptable. The ICTY is piloting an "e-court" in which all evidence is submitted electronically and projected for use in the courtroom.

Transcripts in English are made by the court reporters sitting in the courtroom; those electronic transcripts are then formatted by the court staff. The preparation of the French transcript is outsourced and an electronic transcript of the French interpretation of the proceedings is delivered. Printed copies of both English and French transcripts are distributed to the judges and the parties. No transcript is officially made in Bosnian-Croatian-Serbian, Albanian, or Macedonian. The transcripts identify whether the proceeding is an open or closed session.

ICTY has an agreement with a publisher to publish all decisions in paper, and the tribunal also makes them available electronically. As of winter 2007, the publication had summaries of case law through August 2004.[14]

It is difficult to estimate the volume of paper records of proceedings, but an example may help. The transcript of the status conference on August 25, 2005, in the case of Milutinovic et al., includes these remarks by Defense Counsel Ackerman, who had received more than 200 CD-ROMS with video evidence as well as "electronic disclosure materials":

> The prosecution cannot tell me how many pages of material are there [for this case]. The estimates that I have heard range between 250,000 pages and one million pages. . . . We throw these numbers around in this tribunal to the point where they have I think lost meaning in terms of the number of pages of this covering. 250,000 in material is an overwhelming amount of material, Your Honor. If you put it in binders at 500 pages per binder, you've got 500 binders of material. It's 500 500-page books. I told you reading at 2 minutes per page in a forty-hour week it would take 208 weeks just to read it, just to read it.[15]

And this is only one defendant in one trial. It is important to notice that the disclosure of documents referred to here is entirely by electronic means, both of videotape evidence that the defense counsel says includes "one-hour or two-hour broadcasts, news programs from Belgrade television during the war in Kosovo" and of the evidence that was originally on paper. In other words, everything is duplicated in electronic format.

Electronic records. The electronic records of cases are stored in the ICTY Judicial Database (JDB).[16] The design for the JDB began in 2000 and the system went into use in 2002; by 2006 it was in use for all trials. The JDB was designed and built by ICTY staff and is now estimated to hold 220 gigabytes; by 2010 when the court closes the staff estimates it will total 8 terabytes of which 6 terabytes are assumed to be video inputs. Once the system went into operation the staff entered the backlog of documents from all previous cases (except for a few exhibits). Electronic versions of early decisions did not exist, and they were scanned from paper.

The JDB is much more than a simple document management system, because it incorporates extensive linked databases, case tracking, and full text search capabilities as well as meta-search and content search and highlighting. Individual documents can be controlled at the page level; i.e., below the document level. Items that are handwritten, maps, still photographs, and items in Cyrillic cannot be searched for content but can be retrieved by the indexing system. The staff hopes to link audio and video data in the future; as of spring 2005 they were indexed but not linked. Exhibits other than paper, photos, maps, and drawings (all of which are scanned) are listed but images of them are not yet linked. The JDB uses three languages: English, French, and BCS.

A key function of the JDB is its security administration. The system has both public and confidential sections, and approximately 30% of all the documents in the system are marked "confidential." It uses "extensive" permissions at the operating system level, the database level, and the individual item level. A separate information technology network for defense counsel allows them to have access to the JDB, and a detainee also can have a specially configured ICTY-owned computer in his cell.

Audio recordings. The audio recordings contain the entirety of the courtroom sessions, including closed sessions, private sessions, and ex-parte hearings. From the beginning of the tribunal until 2000, all court sessions had four audio recordings: English, French, BCS, and the "floor" (whatever is actually spoken) languages. From 2000 until 2002 the technicians also recorded on videotape the same four language channels. Starting in 2002, multi-channel audio CDs record the floor and the other interpretation channels, with BCS also recorded on audio cassettes until mid-2004 and Albanian still recorded on audiotape. Voice distortion is applied to the oral testimony of protected witnesses. The court has audiocassettes in 60 minute, 90 minute, and 120 minute versions. The staff notes that every separate proceeding is on a separate tape; consequently, if a 120 minute tape was used for a hearing that ended quickly, much of the tape will be blank but they do not know how many minutes are actually recorded on each tape. As of 15 May 2005, the court had 21,814 audio cassettes and 7437 multi-channel CDs.[17]

Video recordings. At present four to six cameras ("isolated cameras" that produce "isolated tapes" or "ISO tapes") record the proceedings in each courtroom. Face distortion is applied for protected witnesses. From 1994 until 2000 analog SVHS tapes were used; from 2000 until 2002 D9 digital tapes were used; and from 2002 until the present DVCAM digital tapes are used. The court staff estimates that the videotapes in a trial courtroom are produced at the rate of "usually about 6 [tapes] per trial per day."

Public use audiovisual recordings. One of the purposes of making the audiovisual record of the trials is to provide public access to the proceedings in the courtroom. However, because the court frequently has confidential proceedings, the stream of audio and video is automatically edited before it is released to the broadcast media. By utilizing a delay system of 30 minutes prior to the video stream being released to the public, the court can authorize the redaction of any information that may compromise a witness. This is the way the public use version is created: first a video editor, operating in real time, combines footage from all the "ISO" feeds into one "director's cut" or "Video Edit" (VE). Two copies of the VE are automatically made; the second is known as the Video Edit Backup (VEB). During private or closed sessions the VEB is blocked from receiving the signal (private sessions, closed session, and ex-parte hearings are by definition not released to the public). The VEB tape, including all accompanying audio interpretation, is further edited if necessary to exclude other confidential material as directed by the court and is released for public use 30 minutes after it was first recorded.

Between 1994 and 2000, both the unedited and the public version were recorded on videotape with only the floor language and, in some cases, the English interpretation. Audiocassettes of the other languages were not redacted of confidential information and were not released to the public. Since 2000, however, with the advent of four language video recording, all languages on the VEB tape have been edited and distributed. The audio CD remains unedited and is never distributed to the public. If the languages used in the courtroom are English, French, and BCS, the VE and the public use (VEB) copy will contain the "floor" language plus the three languages that are interpreted for the court. If there is an Albanian interpretation, the "floor" language is dropped and Albanian is substituted on the VE and the public use copies.

As of May 15, 2005, the court staff had 28,073 ISO tapes, 9992 VE tapes, and 8552 VEB public use tapes.[18] A summary look at the copies of the proceedings, in all media, is found in Box 1. A summary of the varieties and quantities of audio and video recordings of the proceedings is found in Box 2.

Box 1. Transcripts and recordings per hour of ICTY court proceedings

1 paper transcript, English
1 paper transcript, French
1 electronic transcript, English
1 electronic transcript, French
1 audio recording, "Floor"
1 audio recording, English
1 audio recording, French
1 audio recording, Bosnian/Croatian/Serbian
1 audio recording, Albanian*
1 audio recording, Macedonian*
4-6 isolated camera videotapes
1 edited videotape with four sound tracks
1 public use videotape with four sound tracks

*If Albanian or Macedonian is used in the courtroom

Box 2. Varieties and quantities of ICTY audiovisual records of proceedings, May 2005

CD-ROM with audio	7,437
Audio cassettes, 60 minutes	794
Audio cassettes, 90 minutes	20,452
Audio cassettes, 120 minutes	568
Videotapes, isolated camera	28,073
Videotapes, edited	9992
Videotapes, public use version	8552

Exhibits. Exhibits are usually paper documents: "99% of the time," estimated one legal officer.[19] The next most common exhibit types are maps and photos. Among the large items are three large-scale models of the Keratim, Celebici, and Omarska camps. One of the scale models was used in court as an exhibit, while the others were used as "aide-memoires" in court.[20]

The "normal case" could have as many as 2000 exhibits, the legal officer said. Judges will accept copies in place of originals; if originals have been introduced, judges may decide that a copy can be substituted in the case file and the original returned to the evidence control office.

Procedural Records of the Court Not Related to a Specific Case. Judges meet in plenary or other sessions to consider the internal functioning of the chambers and the Tribunal. A former ICTY records manager argues that the records of the plenaries "are fundamental to an understanding of the diverse perspectives brought to bear on this unprecedented situation by judges from countries as different as China, France, Colombia and the United States."[21] According to an assistant legal officer in one of the trial chambers, the paper records of the plenaries, including papers and reports circulated in advance, agendas, and minutes, are part of the records of the Office of the President.[22] Duplicates are probably found in the records of individual judges.

Records of the Bureau. The bureau[23] is composed of the President and Vice President of the court and the presiding judges of the three trial chambers. It oversees the internal functioning of the tribunal. Under the bureau is the Coordination Council, made up of representatives of the three arms of the tribunal (court, prosecutor, and registry). The council meets at least once a month. Also under the bureau is the Management Committee, composed of the president, the vice president, a judge elected by the other judges, the registrar and deputy registrar and the chief of administration. The Management Committee meets at least twice a month, and it oversees administrative and judicial support provided to the chambers and to the judges.

The records of the coordinating bodies presumably include the usual meeting files: agendas, documents for consideration, and minutes of each meeting. The Office of the President keeps the records of the bureau;[24] the registry may have a set as well.

Records of the Offices of the President and Vice President. The records of the offices of the president and vice president include official correspondence of the court relating to procedure and scheduling (among the court and between the court and the prosecution and defense counsels), correspondence on a particular matter or person (such as one of the accused), and records of speeches, public appearances, and writings. They are probably both in paper and electronic word processing files; some speech and appearance files may include still photographs, videotapes or audiotapes. A former ICTY records manager calls the records of the presidents "particularly interesting."[25] While some of the records of the offices of the president and vice president are part of the files maintained by the registry, it is likely that there are also records within their personal offices.

Records of the Office of the Prosecutor

The Office of the Prosecutor (OTP) is a large and complex office. In the autumn of 2003 it included the immediate office of the prosecutor and deputy prosecutor, the ICTR support unit (now closed), the financial tracing unit (now closed), and the appeals unit. Reporting to the prosecutor and deputy prosecutor were three large entities: the investigation division, the prosecution division, and the evidence and information support section.[26] While the composition of the OTP has changed during the past years, the following list provides a good overview of the range of functions performed by the office of the prosecutor and the records that should be in its files (that is, records created during the execution of a function should exist even if the function is not currently performed).[27]

Box 3. Organization of the ICTY Office of the Prosecutor, Fall 2003

Immediate office of the prosecutor and deputy prosecutor
- Secretariat

ICTR (Rwanda) support unit (closed as of spring 2005)
- Financial tracing unit
- Appeal unit

Prosecution division
- Trial section
- Trial support unit
- Co-counsel and team legal advisers section
- Legal advisory section

Investigation division
- 10 investigative teams (down to 4 as of spring 2005)
- Assessment team (closed as of spring 2005)
- Transition team

Administrative and linguistic support
- Forensic unit (closed as of spring 2005)
- Military analysis team
- Tracking, intelligence, and fugitive unit
- Leadership research team
- Map library and photo unit (under administrative support as of spring 2005)
- Field offices in Belgrade, Banja Luka, Pristina (closed as of spring 2005), Sarajevo, Skopje (closed as of spring 2005) and Zagreb

Evidence and information support section
- Evidence unit
- Document and video indexing unit
- Information support unit
- Systems development unit

The OTP is responsible for the management of its records, both administrative and evidential, and they are massive. There are electronic indexes and tracking systems, desktop electronic applications, databases, and paper correspondence files, including significant speech and public appearance files and other outreach materials. The records of the commission of Experts that preceded the tribunal are also part of the materials controlled by the OTP.[28]

The most significant body of materials held by the Prosecutor's office is the evidence and the electronic records that control the evidence. As of October 2004, the evidence unit held:

Paper, maps, still photographs, and photographic slides: 5,807,761 items
Electronic scanned copies of the 5,807,761 items
Audiotapes: 2800 (some of 60 minutes, others of 90 or 120 minutes)
Videotapes: 5500 (some of 30 minutes, others of 60, 120 or 240 minutes)

CDs: 1500 (some 650 megabytes, others 700 megabytes)
Artifacts: 13,200[29]

Documents obtained voluntarily or by seizure from parties to the war form the bulk of the paper evidence. Everything seized has been digitized. The majority of the seized material, however, has never been used as evidence.

Every suspect interview is video or audio taped; every interview with an accused individual is videotaped. The interviews are transcribed, may be translated, and are usually printed to paper for use. In other words, a single interview may be in paper, electronic, video and audio formats.

The evidence also includes videos from the media, such as ITV footage for Prijedor, and from various institutions in the Balkans. All video and audio has been digitized.

Artifacts are another major part of the OTP evidence holdings. As of spring 2005, very few new items were arriving to add to the more than 13,000 items already in custody. The majority of the artifacts are bullets or fragments of ammunition, but the evidence vault also holds objects ranging from clothing to items found during exhumations to seized and subpoenaed documents to a couple of computer hard drives. Some weapons are included in the holdings. One item has been withdrawn and sent to the court in Bosnia for use in a prosecution there, and sometimes a judge will order that an item be destroyed. Most of the items are small enough to fit on records storage shelves.

The Office of the Prosecutor uses major electronic systems to manage the evidence and to provide copies of it for routine use. Evidence of any physical type is controlled through the "MIF database."[30] The database indicates the form of the evidence (for example, photographs, maps, artifacts) and generates a control number for each item. If the evidence is a document, every page of the document is automatically numbered when the document is scanned into the evidence database.[31] Each map (there are about 2000 maps) is also numbered. Photographs are sent to a vendor to be put on a CD-ROM with a number displayed on each image. If the photo is a strip of negatives, the main number is the strip and each frame is given a linked sub-number. When the CD-ROM is returned from the vendor, it is duplicated, its contents are added to the database and verified, and the original photos and both copies of the CD are stored. The OTP MIF database was 1.3 gigabytes in May 2005 and is expected to grow to 2.0 gigabytes.

The OTP "digital archives of audiovisual records" was 3.2 terabytes in May 2005 and is projected to grow to 6 terabytes by 2010. The OTP evidence collection of documents, which exists as separate files in the file system, is half a terabyte at present and may double by 2010.[32] The OTP maintains a separate electronic index for witness statements and an index for documents obtained under Rule 70.[33] The registrar, with the Office of the Prosecutor, is creating another electronic disclosure system, primarily for use of defense counsel. It will include full texts of documents, but will not have witness statements or Rule 70 items.

Several special issues arise with the records in the Office of the Prosecutor. First, the staff believes that a substantial amount of the records produced by the investigation teams are duplicated in evidence files, in the records of the witnesses and victims section, and sometimes in the records of the trial teams and in the court case files. Given the volume of records, particularly of the media items that are expensive to preserve, this is no small consideration. Second, the records of the prosecutor's field offices may contain mostly duplicates of the records in the headquarters of the prosecutor, but may also have unique information. As with the potentially duplicate materials in the records of the investigation teams in The Hague, the records of the field offices will have to be reviewed for

duplication; furthermore, a decision will have to be made whether the duplicate is significant in both locations and therefore both copies should be saved. Third, the investigations unit holds large quantities of records obtained from governments, particularly those in the Balkans. Some are copies; some are originals.[34] Their ultimate disposition is not yet determined. Fourth, records provided under Rule 70 contain important information but must be handled with great care because of the nondisclosure agreements. Finally, the records of the immediate Office of the Prosecutor and the records of the ICTR support unit contain substantive information relating to the tribunal in Rwanda.

Records of the Registry

The registry is another very large organization. As of October 2004 it encompassed the immediate office of the registrar and deputy registrar with a registrar's assistants section (including personal assistants and legal officers), a public information section with an outreach program component and field offices, a legal advisory section, a judicial support division headed by the deputy registrar, and a division of administration.[35] The registrar is also responsible for the medical office and the staff welfare office, maintains the court website, provides records storage services, and serves as the official liaison with the staff union.

Box 4. Organization of the ICTY Registry, October 2003

Office of the Registrar
- Personal assistants
- Legal officer

Legal advisory section

Public information section

Office of the Deputy Registrar and judicial support division
- Court management and support section
- Victims and witnesses section (3 subordinate units and a field unit)
- Chambers legal support section
- Office of the President support section
- Office of legal aid and detention matters (2 subordinate units)
- Detention unit
- Library and reference unit
- Conference and language services
- Office of documentation management

Division of administration
- Chief administrative officer
- General services (4 subordinate units)
- Procurement
- Human resources (with 3 subordinate units)
- Finance
- Information technology
- Security and safety
- Staff welfare office
- Staff union

Most of the central administrative records of the tribunal are in the registry, particularly in the division of administration. These can be managed and destroyed under the general records schedules adopted by the United Nations in New York, which apply to the Security council and, because ICTY is subordinate to the council, to the tribunal.[36] The records of the registrar's immediate offices and the records of the judicial support section are quite different, however, and must be evaluated carefully.

Registrar's immediate office. Mary Neazor, the head of the records management unit at ICTY in 2002, described the records in the registrar's immediate office.[37] The registrar's files, she wrote, contain records as varied as agreements with nation states, international bodies, and NGOs; petitions and letters from public letter-writing campaigns; speeches and fund-raising letters; and correspondence with judges, prosecutors, and the defense counsels. Former prosecutor Richard J. Goldstone has written pointedly about the sometimes tense relationships between members of the registrar's staff and members of the prosecutor's staff.[38] The records of those exchanges are surely found in records of the immediate offices of both officials.

Legal advisory section. The legal advisory section plays a key role in researching and advising the registrar on the many unprecedented legal issues that face the court administration. Neazor reports, for example, that the section's records include "extensive correspondence" between the registry and the nations agreeing to have persons convicted by the trial chambers serve their terms of imprisonment in national penal facilities and document "the research carried out" by section staff members to help resolve the questions raised by the bilateral agreements. While the agreements themselves are already public, the research files contain investigations on questions such as "if one convicted individual is sent to Norway and another to Germany, will they be subject to different national standards regarding such matters as early release?"[39]

Victims and witnesses section. The victims and witnesses section creates extremely sensitive and important records that must be given special protection.[40] A records schedule has already been completed by ICTY for these records, with such records as policies, procedures, and guidelines and training and presentation materials designated for permanent retention. The files of the program for protected, relocated witnesses need to go to a follow-up office for continued support after the tribunal closes. The witness case files, including the witness files from the section's Sarajevo field office, are files of personal information, as well as records of everything from hotel bookings to travel authorizations. A form on each witness is completed by the person who interviews her or him, and this form and related records are filed together in the file on the case in which the person is to be a witness. The electronic data derived from the form is entered into the Victims and Witnesses Section database, which is a standalone system that uses TRIM for its document management. Data in the database begins consistently in 1998 and can be output as statistical graphs. The section also maintains a "hotline" logbook of messages left on the tribunal's telephone hotline. The records of the section's Sarajevo field office, which had three staff members as of mid-April 2005, document the ICTY's efforts to establish networks of social service providers and also contain reports to donors and general correspondence.

Detention facility. The detention facility of the ICTY is the first detention unit ever built and administered by the United Nations. According to Neazor, the

> rules of detention were fixed by the judges in plenary session as early as May 1994, and recorded in the minutes of that meeting. These rules were issued as an official Tribunal document, and another such document set out the rules of the Unit to be followed by detainees. Following this, the Unit itself was constructed within an existing Dutch prison, by The Netherlands, but was staffed by UN guards. Co-operation between the Dutch government and the Tribunal was regulated by what is known as the Host Country Agreement and, as with other such arrangements, was monitored by the Legal Affairs Section

through correspondence with the Dutch Ministry of Foreign Affairs. It was also agreed that the Red Cross could inspect the premises and the condition of the detainees, which was done. This in turn entailed correspondence with the President and Registrar.[41]

The records of the detention facility are unlike any other records at ICTY. Classic prison records, they include personnel and medical records of the prisoners, visitor records, disciplinary records, change of custody records, facility records, security records, and general administrative items. Most of the detention unit records are said to be paper files, with some duplicated on electronic systems. There are electronic statistical systems, tracking and logging systems, and probably desktop word processing files.

Outreach program. The outreach program in the field offices was a late and very important initiative of ICTY. Former judge Gabrielle Kirk McDonald writes that when she was elected president of the tribunal in 1997, she found that it was "the subject of wide-spread misrepresentation" and she set out to do something about it. Out of this concern came the tribunal's Outreach Programme, established in 1999 to "provide a comprehensive proactive information campaign stressing the [Tribunal's] impartiality and independence, as well as countering the endemic misconceptions that had prompted widespread disillusionment with the Tribunal in the former Yugoslavia." The program opened regional offices in Zagreb, Sarajevo, Pristina, and Belgrade. It created and maintains a website in Bosnian/Croatian/Serbian; produced a video introduction to the tribunal called "Justice at Work"; provides support to national media in the former Yugoslavia; organizes training conferences and roundtable discussions; and interacts with victims' groups.[42]

The records of the program include fundraising documents, reports to donors, conference reports, publications including audiovisual and website productions, and extensive correspondence with NGOs and external observers. While many of the records in the outreach field offices may be duplicates of those in headquarters, they may also contain additional unique information.[43]

Defense counsel relations. The registrar has special responsibility for maintaining a list of counsel that may be assigned to suspects or accused, establishing (in consultation with the permanent judges) the criteria for payment of fees to counsel, and in cases of misconduct of defense counsel, overseeing the implementation of the Code of Professional Conduct. Relations with defense counsels have at various times been extremely controversial at ICTY. The records of the relations with the defense counsel are located in both the records of the immediate office of the registrar and of the office of legal aid.

Records management. Beyond the records of the registry per se, the registrar also manages the records of the court and provides storage for records from the Office of the Prosecutor, as requested.[44] Currently about 150 linear meters of paper records, from all offices throughout the Tribunal, are turned over for records storage each year; in April 2005 about 700 linear meters were in storage. Of these, about 70 linear meters are records from the offices of the prosecutor, deputy prosecutor, registrar, and deputy registrar and other executive offices that the tribunal's records officer believes are permanently valuable. About 50 linear meters are staff personnel files and related medical files that must be held for at least the life of the individuals who are the subjects of the files. An estimated 110 linear meters will be eligible for destruction before 2010 (when the tribunal is to close) under the terms of the UN Archives general records schedules, with another 20 to 30 linear meters eligible for destruction sometime shortly thereafter. That leaves about 440 linear meters of records whose disposition is not yet decided.

Box 5. Paper records in ICTY registry storage, excluding records of proceedings, April 2005

Description	Linear meters
Records of prosecutor, deputy prosecutor, registrar, deputy registrar, etc.	70
Personnel and staff medical files	50
Administrative scheduled for destruction before 2010	110
Administrative scheduled for destruction after 2010	30
Other records	440

The paper records are controlled through the TRIM electronic documents management system, which is used both for tracking paper files and managing electronic ones. It held 45 gigabytes of records in May 2005. The Registrar's staff has a project to "scan all the existing pages of permanent records and staff records which have 40 years retention" into TRIM, which should bring the electronic storage to about half a terabyte by the time the Tribunal closes.

Records in Judges' Offices

Records in judges' chambers may be mostly copies of key documents and decisions. According to a legal officer, each legal officer working in a judge's chamber organizes the records differently.[45] Judge's notes on a case are not saved in any consistent way: some judges save and some shred. Judges may or may not share with each other the research done in their chambers. Some judges destroy their copies of motions, decisions, transcripts and other case-related material at the end of the case; others destroy these items when they leave the court; still others take them with them. Judges may have documents from the judicial conferences; they probably have speech files, notes on cases, and photographs of public events of the courts. In the officer's experience, early drafts of judgments are not saved, and although the chambers use the Judicial Database, there is no organized way to save memos, research memos and supporting work. Legal officers, like departing judges, delete electronic documents as they see fit and leave behind the rest for their successors.

Conclusion

As the discussion above demonstrates, the records of ICTY are voluminous, of various physical types, and geographically dispersed. They are interwoven, the records of one arm with another. To take an example, the records of the policy decisions surrounding the broadcasts of the court proceedings are found in the files of the president, the prosecutor, the registrar, the court management section, and the registrar's legal advisory section, "supplemented by the work done by the administration section in drawing up plans of the courtrooms and devising the practical means of implementation." Further, the "records of the Information Technology and Procurement sections contain extensive documentation on the procedures involved in not only setting up but maintaining such a technologically sophisticated environment, where the media on which information is records and the means whereby it can be read often change literally from one year to the next."[46] And, of course, the result is the broadcast tapes themselves and the uses of them made by the outreach program. Appraising the ICTY records requires both the knowledge of the records of the three arms and the wisdom to see the connections among them, one body supplementing the next to make an intelligible whole.

International Criminal Tribunal for Rwanda

Background

"We request the international community," wrote the ambassador from Rwanda, "to reinforce government efforts" and set up "as soon as possible an international tribunal to try the criminals."[47] This extraordinary invitation, following a number of United Nations-sponsored reports on violations of international humanitarian law in Rwanda, led to the creation of the UN's second temporary international criminal tribunal.

On November 8, 1994, the United Nations Security Council adopted Resolution 955, establishing an international criminal tribunal for Rwanda to prosecute "persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between January 1, 1994, and December 31, 1994," as well as to prosecute "Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighboring States during the same period." The prosecutor of the Yugoslav court was designated to serve simultaneously as the prosecutor for the Rwanda Tribunal, with a deputy prosecutor added to the prosecutor's office to concentrate on Rwandese cases. The appeals chamber of ICTY was to serve as the appellate court for the ICTR. In a subsequent resolution the Security Council decided to seat the tribunal in Arusha, Tanzania.[48]

Having one prosecutor serve both tribunals with separate deputy prosecutors for each was not a happy experiment. Consequently, in August 2003 the Security Council severed that relationship and separate prosecutors now serve each tribunal.[49] The appeals court seated in The Hague continues to serves both, with two judges from the Rwanda court now sitting with five judges from the Yugoslavia court to form the appellate panel.

The International Criminal Tribunal for Rwanda, like its ICTY sibling, is a temporary subsidiary organ of the Security Council in terms of Article 29 of the charter.[50] Within its three arms (court, prosecutor, and registrar) it has four trial courts, an appellate court, and the offices of the elected president and vice president of the court; the office of the prosecutor with an investigation section, a prosecution section, and an information and evidence unit; and the registry with two principal divisions (judicial and legal services and administration), plus the press office, the law library, and legal services for defense counsel.

The ICTR is geographically dispersed. The courts and registry are in Arusha. The office of the prosecutor was in The Hague but is now in Arusha; however, the offices of most of the investigators and prosecutors are in Kigali, Rwanda. The registrar administers the court facilities and a detention unit in Arusha and an information center and a medical support center for victims and witnesses in Kigali.

English and French are the working languages of the court. An "accused or suspect" and any person appearing before the tribunal "who does not have sufficient knowledge of either of the two working language" may use his own language.[51] The court provides transcripts of all courtroom proceedings in English and French and regularly translates material into Kinyarwanda.

The tribunal uses paper for its official records, but relies heavily on electronic systems, utilizes audiotapes and videotapes, and handles evidence ranging from letters and photographs to artifacts.

The United Nations Security Council's resolutions urging the tribunals to enter into strategies for closure affected ICTR equally with ICTY. Some cases are being transferred to courts in Rwanda, along with dossiers of both suspects still at large and suspects that are in detention in Arusha.[52]

According to the archivist of ICTR, "There is little common ground between recordkeeping practices of the ICTR and ICTY."[53] Nevertheless, like ICTY, the records of the ICTR are destined for the United Nations Archives and the ICTR administrative records fall within the disposal authorities of the general records schedules issued by the UN Archives in New York. And like ICTY, ICTR must consider the functions performed by the component parts of the court, the physical formats used, and the duplication between bodies of records as it evaluates its records for long term retention.

Records of the Chambers

The ICTR adopted detailed rules of procedure with explicit instructions on creating and managing the records of the court. The rules are supplemented by a "Directive for the Registry." Taken together the rules and the directive provide a comprehensive framework for the Tribunal's recordkeeping system.

The directive defines the official documents of the tribunal as the originals and certified true copies of:

(i) "Original documents issued by the Chambers bearing the signature of a Judge or Judges, and the Seal of the Tribunal, e.g. Decisions, Orders and Judgements [sic];
(ii) "Original documents issued by the Office of the Prosecutor bearing the signature of the Prosecutor, or his delegate, and the stamp of the Office of the Prosecutor;
(iii) "Original documents issued by the Court Management Section bearing the signature of the registrar, or his delegate, and the stamp of the Tribunal;
(iv) "All documents concerning cases before the Tribunal which are sent to the tribunal by the Parties or by an amicus curiae and filed with the Court Management Section and
(v) "Translation of the original documents duly certified by the Language and Conference Services Section of the Tribunal."[54]

As at ICTY, the registrar keeps the records of both the court and the administration but not the records of the prosecutor. The records described here are those of the activities of the court. The records of the registrar in his administrative capacity are described below.

Proceedings. The rules require the registrar to "cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the trial chamber, video recordings."[55] The registrar is also to "retain and preserve all physical evidence offered during the proceedings"[56] and to keep a Record Book that lists "all the particulars of each case brought before the Tribunal" and make it public, unless a judge orders that the information not be disclosed.[57] The record book is to be kept in "diary format, with one page for each day," and alongside it the registrar is to maintain a "Summary Sheet" which contains the essential information organized by case.[58]

The registry's Court Management Section, Judicial Records and Archives Unit, holds the records of the proceedings. Case files, defined as "all documents pertaining to each case brought before a Judge or Chamber," are filed by case number. Each document is to be numbered, indexed, and an electronic copy of the document is to be "filed simultaneously with the filing of the [paper] document."[59] Documents in a case file that are confidential in whole or in part are to be placed "in a sealed envelope or distinct folder that is inaccessible to the public" and a "certificate and/or an expurgated version" is made public.[60] The records officer characterizes case files as including the "case file, correspondence file, transcript file, record book, exhibits, audio recordings, and video recordings."[61]

Paper is the official record format. All paper records, as well as photographs, maps, and drawings, are scanned into the document management software used by the court. Unlike ICTY, which built its own electronic systems, ICTR chose to use commercial records management software called TRIM.

All documents that come to the registry's pre-trial and motions office are sent to the court records section to be scanned and entered into TRIM. Electronic tracking and logging systems control the items admitted into evidence. A version of the TRIM database, eliminating confidential records, is made available to the public. In addition, ICTR has an agreement with a publisher to print an official report of "orders, decisions and judgements."[62]

Like ICTY, ICTR adopted the practice of audiotaping and videotaping courtroom sessions. And, not surprisingly, this has produced a very large quantity of session records since each proceeding is recorded using paper, electronic, audio and video technologies from which both full and redacted versions of the session are produced.

When the court began, court reporters in the chamber produced written transcripts. The electronic versions of the transcripts (original language, translation, and redactions) were stored on diskettes. At the end of 2001 the use of diskettes to store electronic versions of the transcripts was discontinued and the transcripts were saved directly onto the electronic records network. Whether the earlier diskettes have subsequently been transferred to the main electronic system is not known.

In 1996 audio recordings of the floor proceedings and of the translations were introduced; in 1999 video recording was added. The sound tracks on the video recordings are duplicates of the audio. Similar to the process in ICTY, a courtroom has four or five cameras in operation, sending feeds to an operator who mixes them into a master tape. It is not clear whether each of the individual camera feeds are retained, but a "VHS copy is recorded live" from the floor and is retained along with the master. A consultant studied the audiovisual records in March 2002. He projected the size of the audiovisual holdings in December 2008 (the anticipated date for trial completion) as over 38,000 audio recordings and nearly 13,000 videotapes.[63]

Given this technological panoply, at present each case file potentially includes:

Paper
- Pleadings
- Transcript of session, verbatim, English
- Transcript of session, verbatim, French
- Transcript of session, verbatim, Kinyarwanda
- Transcript of session, redacted, English
- Transcript of session, redacted, French
- Transcript of session, redacted, Kinyarwanda
- Evidence admitted

Electronic
- Scanned paper records admitted

Electronic versions of transcripts, English, French, and Kinyarwanda, verbatim and redacted, original electronic or scanned
- Tracking and logging information

Audiotapes
- Evidence

Court proceedings, English, master and redacted versions
Court proceedings, French, master and redacted versions
Court proceedings, Kinyarwanda, master and redacted versions

Videotapes
Evidence
Videotape of the trial, unredacted
Videotape of trial, redacted
Artifacts

Box 6. Quantity of ICTR records of proceedings by physical type other than paper, July 2001[1]

Physical type	Quantity
Audiotapes of sessions	16,000
Audio exhibits	75
Videotapes of sessions, VHS and DVCAM	2,000
Video exhibits	150
35 mm slide photographs	710
Still photographs	1,300
Maps	65
Charts/sketches	86
1.44 MB floppy diskettes	3,500
Artifacts* as exhibits	8

*Mallets, hammers, piece of iron roofing, etc

1"Summary of ICTR audiovisual collection management isuse [sic] as at 10th July 2001." N.D. 01-02-01-F079, ARMS records.

Procedural Records of the Court Not Related to a Case. The judges of the tribunal meet in plenary sessions to handle the internal business of the chambers and to adopt and amend the rules of procedure and evidence, among other functions.[64] The registrar is required to take minutes of all plenary meetings of the tribunal "other than private deliberations" unless a full record is made by audio or video recording.[65] The records of the plenary and other meetings presumably include the usual meeting files: agendas, documents for consideration, and minutes of each meeting. The registry keeps these as a separate body of records; duplicates are probably found in at least the records of the office of the president and perhaps in the records of individual judges. They probably exist both in paper and electronic word processing files.

Records of the Bureau and Related Bodies. The bureau is a body comprised of president and vice president of the court and the presiding judges of the three trial chambers. It oversees the internal functioning of the Tribunal (Rule 23). Under the bureau is Coordination Council, made up of the president, the prosecutor, and the registrar. The council meets at least once a month. Also under the bureau is the Management Committee, composed of the president, the vice-president, a judge elected by the other judges, the registrar and deputy registrar and the chief of administration. The Management Committee also meets at least once a month, and it oversees "administrative and judicial support provided to the Chambers and to the Judges."[66]

The records of the coordinating bodies presumably include the usual meeting files: agendas, documents for consideration, and minutes of each meeting. The registry probably keeps these as a separate body of records; duplicates are probably found in the records of the office of the prosecutor and perhaps in the records of the president and the individual judges who serve on the bodies. They probably exist both in paper and electronic word processing files.

Records of the Office of the President. While some of the records of the office of the president are part of the files maintained by the registry, it is likely that there are also records within the president's office. These probably include official correspondence of the court relating to procedure and scheduling (among the court and between the court and the prosecution and defense counsels), correspondence on a particular matter or person (such as one of the accused), and records of speeches, public appearances, and writings. They are probably in both paper and electronic word processing files; some speech and appearance files may include still photographs, videotapes, or audiotapes.

Records of the Office of the Prosecutor

The office of the prosecutor includes the immediate office of the prosecutor and deputy prosecutor (in Arusha) and two sections: investigation and prosecution. The investigation section is divided into investigative teams, most of which are located in Kigali. The prosecution section is composed of trial attorneys for each case, most of whom are in Kigali, and legal advisers for both the investigations and prosecutions sections. An information and evidence unit reports directly to the deputy prosecutor.[67] In January 2004 an appeals section was established in the prosecutor's office; prior to that time ICTR and ICTY shared a common appeals section under the single prosecutor.[68]

The records in the custody of the office of the prosecutor are not controlled through the registry. Under the rules of ICTR, the prosecutor is "responsible for the preservation, storage and security of information and physical evidence obtained in the course of his investigations." The Prosecutor is also required to create and maintain "an inventory of all materials seized from the accused."[69] When the prosecutor questions a suspect "the questioning shall be audio-recorded" and the "content of the recording shall then be transcribed." After copying the tape for use, the original recorded tape "shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect."[70] Depositions, which can be taken in person or "by means of a video-conference," must be recorded (the form of recording is not specified) and the record of the deposition is to be sent to the trial chamber concerned, as well as copies to both prosecution and defense.[71]

The quantity of records in the custody of the prosecutor is unknown, but must include electronic indexes and tracking systems, desktop electronic applications, probably some databases, and paper correspondence files, including significant speech and public appearance files and other outreach materials. In early 2005 the prosecutor was considering adopting the TRIM electronic document management system already in use in the registry.

In August 2002 the evidence unit reported from Arusha that it had 27,755 microfilm images on diazo microfilm cassettes.[72] The quantity of additional evidence in all media must be significant. Whether the ICTR prosecutor has the vast quantity of evidence that the ICTY prosecutor has is not known.

In accordance with Article 10 of the ICTY "Directive of the Registry," the "Judicial Archives shall not include correspondence directly addressed ... to the Prosecutor of the Tribunal" unless he or she sends the correspondence to the Court Management Section.[73] Consequently, the records of the prosecutor are likely to include significant correspondence containing information that is available nowhere else.

Records of the Registry

The registry is a large organization. It has the immediate office of the registrar and deputy registrar, the external relations and strategic planning section, a gender advisory unit that was established in 2003, a law library and reference section, and two large divisions headed by the deputy registrar: judicial and legal services and administrative support services.[74] According to the ICTR telephone directory of June 1998, the following subdivisions existed within the two major divisions:[75]

The judicial and legal services division
- Court management section
- Witnesses and victims support section (with one subordinate unit for the prosecution witnesses and one for defense witnesses)
- Defense counsel and detention management section
- General legal services and chamber support section

The division of administration
- Chief administrative officer
- Communications section
- Finance and budget section
- General services section
- Language/conference services
- Personnel and training section
- Procurement section
- Transport section
- Safety and security section
- Electronic data processing section

The registrar is responsible for maintaining the official records of the court (but not of the office of the prosecutor) and the website that provides court information.

While most of the administrative records of the tribunal, particularly those held by the administrative division, can be managed under the general records schedules adopted by the United Nations in New York, that is not true of the rest of the records of the registry.

First, the records of the detention facility are unlike any other records at ICTR. Classic prison records, they include personnel and medical records of the prisoners, visitor records, disciplinary records, change of custody records, facility records, security records, and general administrative items. Most of the detention unit records are said to be paper files, with some duplicated on electronic systems. There are electronic statistical systems, tracking and logging systems, and probably desktop word processing files.

Second, the witnesses and victims support section has extremely sensitive and important records that must be retained with special protection. The section provides post-trial monitoring for witnesses in the host countries in which the witnesses reside, with the records of those confidential activities sent back to the registry. Similarly the records of the gender advisory unit and the related medical unit in Kigali are important, sensitive records.

Third, the record of ICTR relations with defense counsel are probably found both in the records of the registrar's

immediate office as well as in the records of the defense counsel and detention management section. The registrar has the special responsibility for maintaining a list of counsel that may be assigned to suspects or accused, establishing (in consultation with the permanent judges) the criteria for payment of fees to counsel, and in cases of misconduct of defense counsel, overseeing the implementation of the Code of Professional Conduct. These are extremely sensitive records.

Finally, the outreach program of ICTR creates records that are very significant. The importance of radio and the oral word in the outreach program make it quite different from that of the outreach program in the former Yugoslavia.

Records in Judges' Offices

Records in judges' chambers may be mostly copies of key documents and decisions. They may have documents from the judicial conferences; the original of a decision in judicial conference would be in the general court record if the decision was issued in court. In addition, judges probably have speech files, notes on cases, and a variety of photographs of public events of the courts. In accordance with Article 10 of the ICTY "Directive of the Registry," the "Judicial Archives shall not include correspondence directly addressed to a Judge" unless he or she sends the correspondence to the Court Management Section.[76] Assuming that not all judges sent all correspondence to the Judicial Archives, the records in the judges' offices contain information found nowhere else.

Conclusion

The records of ICTR are both similar to and different from those of ICTY. The same connections between the records in the three arms of the court exist; the links to ICTY through the former joint prosecutor are reflected in the records system; and the reliance on audiovisual documentation of the proceedings is similar. Yet the electronic systems are different and the records keeping cultures developed in relative isolation from each other. In 2002 Tom Adami, the archivist of ICTR, reflected on the "common ground" between ICTR and ICTY. "It is not feasible technically, operationally or financially to now say we have to converge our systems," he wrote.[77] That red flag should alert archivists to the significant differences that must be considered when determining the final disposition of the records of the two tribunals.

Special Court for Sierra Leone

Background

On June 12, 2000, the president of Sierra Leone asked the United Nations Security Council to help his country establish a "strong and credible court that will meet the objective of bringing justice and ensuring lasting peace" in Sierra Leone and the West African region. Two months later the Security Council passed resolution 1315, requesting the secretary-general to "negotiate an agreement with the Government of Sierra Leone to create an independent special court." The government and the United Nations signed the Special Court Agreement in January 2002, it was ratified by the parliament of Sierra Leone in March, and the court began operations in July. The Special Court is, therefore, a treaty-based institution and not a subsidiary organ of the United Nations Security Council as are the tribunals for Yugoslavia and Rwanda.[78]

The organization of the court is the familiar three-part structure of courts, prosecutor, and registry. English is

the official language of the court, but the court provides an interpreter for any suspect or witness who cannot speak or understand the language. The court regularly provides public service announcements in Krio, the most common language in Sierra Leone.

Although the Special Court for Sierra Leone (SCSL) was created by drawing on the models of ICTY and ICTR, it has a number of very special features. First, as the court's website notes, the Sierra Leone court "faces unique difficulties in being the first tribunal for the prosecution of violations of international human rights law to be set up in the theatre where the conflict occurred." The location in the country has required the allocation of significant funds to security-related matters. Second, the court blended Sierra Leone's national law with international law for its base of jurisprudence, not using the mix of international practice that characterizes ICTY and ICTR. Third, because the court was not set up under the Security Council's Chapter VII powers, the court has no legal basis to ask other states to enforce its indictments and arrest warrants. Fourth, a national truth commission was operating at the same time as the court was undertaking prosecutions, and both bodies were taking statements, holding hearings, and conducting public information campaigns. To try to reduce the public's confusion about the respective roles of the court and the commission, the court has actively produced public service and educational audio and video productions as well as video and audio summaries of trial proceedings. Fifth, because no suitable building for a court existed, the registrar constructed the court offices and the detention facility. And finally, because of the extreme difficulty of obtaining adequate defense counsels for the accused, the court established an "Office of the Principal Defender," operating within the structure of the court itself. All of these are situations that the two earlier tribunals did not confront.

As of July 2005, thirteen people had been indicted, of whom two are dead and one is at large. Nine of the persons indicted and in custody are being tried in three groups of three, while Charles Taylor is being tried separately in The Hague. One trial began in June 2004, the second began in July 2004, and the third began in March 2005. The Special Court believes that all trials and appeals, except that of Taylor, will be completed by "early to mid-2007," unless the remaining accused at large is brought before the Court for trial. The Taylor trial will be held on the premises of the International Criminal Court and is expected to last 12 to 18 months from its commencement in early June 2007.[79]

Records of the Chambers

The Special Court has two trial chambers and one appeals chamber. Each trial chamber consists of three judges, one appointed by the government of Sierra Leone and two appointed by the United Nations secretary general. The appeals chamber consists of five judges, two appointed by the government of Sierra Leone and three appointed by the secretary general. The Special Court Statute, appended to the agreement between the parties, specified that the rules of procedure and evidence in use at the International Criminal Tribunal for Rwanda would form the foundation for the conduct of the legal proceedings before the Special Court. The judges, acting as a whole, can amend the rules and adopt additional rules.[80]

The Rules of Procedure and Evidence adopted by the Special Court provide some specific instructions for the creation and maintenance of records. Rule 35 specifies that the registrar is to "take minutes of the Plenary Meetings of the Special Court and of the sittings of the Chambers or a Judge, other than private deliberations." The registrar is also to keep, according to Rule 36, a "Cause Book which shall list . . . all the particulars of each case including the index of the contents of the case file." Under Rule 81, the registrar is to make and preserve "a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings." In addition, by the same rule, the registrar is to preserve all physical evidence offered during the proceedings.[81]

The registrar issued rules on filing documents, first in February 2003 and then as amended in June 2004 and June 2005. According to Article 3 of the filing rules, a new case file is opened when an indictment is submitted by the prosecutor, when a request for transfer and provisional detention is made, or when the Prosecutor asks that a case in national court be deferred pending Special Court review. The folders within a case file are numbered sequentially.[82]

The official records are paper, with the exception of admitted evidence in other formats. Documents entered as exhibits must be originals. Motions cannot be filed electronically. The court management system uses an SCSL-designed electronic court records database. Email, if printed, is to be filed in paper files. There is no electronic filing of email for long-term retention. Incoming paper can be scanned and distributed electronically through the email system, but the official copy is the paper.

Three separate files may exist relating to a single accused person: the trial court case file, an appeal file, and a correspondence file containing other communications between the court (typically the registrar) and the defense counsel. The court management section within the registry is responsible for managing the records of the proceedings.

Proceedings. The paper files are arranged by case, with the items in each case filed chronologically. As of December 13, 2004, two ongoing cases had more than 10,000 pages filed, and a case in the pre-trial stage was at nearly 6000 pages.[83] When a document relating to a case is received, it is logged by a "listing officer" who checks it against the filing rules, stamps it as received, passes it to an assistant to paginate and index, sends it to be digitized for distribution, and files the original. The court management section attempts to get signed copies of opening and other major statements from the counsels to file in the case files.[84]

As is true with the ICTY and the ICTR, the records of the proceedings in the courtroom are complex. An access database lists all documents in a case, including document title, type, pagination, and so forth, and a separate electronic log lists admitted evidence. Proceedings are in English with sequential, not simultaneous, translation if necessary.

Two audiotapes are made of each trial session: an original master and an editing master. Court transcribers work from a CD-ROM that is made from the editing master. When a court reporter produces the verbatim transcript of a session, a paper copy is printed, checked, and stamped for authenticity. The electronic copy of the transcript is stored on a CD-ROM and in an electronic folder that can be read by both the witness protection program and the court management section. Transcripts of public sessions may be redacted if, for example, someone says a protected person's name or provides some unique identifying information; in those cases the court's witness protection program does the redaction. Both a paper and an electronic copy of the redacted version are stored in the court system. In addition, if the transcript is redacted, the editing master is also redacted before release to the outreach and public affairs sections for use on radio broadcasts. As of December 15, 2004, there were 96 audiotapes and 134 audio CDs containing the proceedings.

Court sessions are videotaped with a DVCAM. Two copies, an original and a duplicate, are made by the communications section and are given immediately to the court management section. As of 15 December 2004 there were 327 DVCAMs tapes of 120 minutes and 163 Mini-DVCAMs of 60 minutes of proceedings. Videotapes are redacted if the audiotapes and transcripts are.

In addition, the proceedings include various physical types of materials entered as exhibits, such as maps, charts,

photographs, and objects.

Box 7. Quantity of SCSL records of proceedings, by physical type other than paper, December 2004

Physical type	Quantity
Audiotapes of sessions	96
Audio CDs of sessions	134
Videotapes of sessions, DVCAM 120 minutes	327
Videotapes of sessions, DVCAM 60 minutes	163
CD-ROMs of transcripts	unknown
Maps, charts, photographs, artifacts	unknown

Procedural Records of The Court Not Related to a Case, Records of The Council of Judges, Other Coordinating Bodies, and The Office of The President. The Special Court Statute specified that the judges of each chamber would elect a presiding judge for that chamber, and the presiding judge of the appeals chamber is the president of the Special Court. Ultimately, a vice-presidency was also established, in order of precedence amongst the other members of the appeals chamber. The president, vice-president and the presiding judge of the trial chamber make up the council of judges who oversee "all major questions or matters relating to the functioning of the Special Court," according to Rule 23 of the Rules of Procedure and Evidence. The judicial services coordinating committee includes representatives of prosecution, defense, the judges, and witness and victims support, and other coordinating bodies may exist across two or three arms of the court.

Because the SCSL bases its practices on ICTR, it is reasonable to assume that the same types of records in the same formats are found in SCSL as in ICTR for the procedural functions, internal court management, and activities of the president of the court. According to a former registry staff member, policy matters decided in plenary session should be filed in the official records system of the court.[85]

Records of the Office of the Prosecutor

The agreement between the United Nations and the Government of Sierra Leone specified that the secretary-general, after consultation with the government, would appoint a prosecutor for a three-year term, while the deputy prosecutor would be appointed by the government after consultation with the United Nations.

According to the Special Court's rules of procedure and evidence, the prosecutor "shall be responsible for the preservation, storage and security of information and physical evidence obtained in the course of his investigations" and he "shall draw up an inventory of all materials seized from the accused."[86] All questioning of suspects is to be audio-recorded or video-recorded and a transcription made. The "original recorded tape or one of the original tapes shall be sealed in the presence of the suspect."[87]

The office of the prosecutor maintains a records system separate from that of the court and the registrar. It contains significant quantities of investigative records. Assuming it is like the records of the prosecution at ICTY, the SCSL prosecutor has paper, electronic word processing and email files, audiotapes and perhaps videotapes of depositions and interviews, and evidence ranging from paper to still photographs and maps and drawings to objects. The files cover investigations, prosecutions and appeals, speeches and public appearances, and

correspondence with diplomatic communities, NGOs and the general public. Tracking and indexing systems, particularly for evidence, probably exist.

Records of the Office of the Principal Defender

Although not specifically authorized by the 2002 Agreement between the United Nations and the Government of Sierra Leone, the court adopted Rule 45 that required the registrar to "establish, maintain and develop a Defence Office" headed by a Special Court principal defender. It became "effectively functional" in February 2003 when the first attorneys took office, and the first principal defender was appointed in March 2004. While the office of the principal defender is located administratively within the office of the registrar, it acts independently.

The principal defender is required to maintain a list of persons who might serve as assigned counsels. Probable additional files are correspondence with defense teams, research files on legal issues, the defense's set of filings in each case, speech and public appearance files, applications to be considered for assignment as counsel and personal history forms, and correspondence with diplomatic communities, NGOS, and the public. The files are assumed to be paper, electronic word processing and email, electronic tracking systems, and a database of potential counsels.

Records of the Registry

The agreement between the United Nations and the government of Sierra Leone specified that the secretary-general, in consultation with the president of the Special Court, would appoint a registrar. The registrar is to be a staff member of the United Nations. The registrar's responsibilities are to "assist the Chambers, the Plenary Meetings of the Special Court, the Council of Judges, the Judges and the Prosecutor, the Principal Defender and the Defence in the performance of their functions." Further, the registrar is "responsible for the administration and servicing of the Special Court and shall serve as its channel of communication."[88]

Like its counterparts at ICTY and ICTR, the registry includes both programmatic and administrative offices.[89]

Box 8. Organization of the SCSL Registry, September 2005

Immediate office of the registrar
Defence office
Outreach office
Public affairs office
Victim and witness support unit
Detention facility

Court management section
- Court records, archives and library unit
- Court support unit
- Language unit

Court reporters unit

Administration section
- Finance
- Personnel
- General services
- Facilities management
- Procurement
- Communications and information technology
- Security

Within the immediate office of the registrar, the records surely include correspondence with the United Nations, donors, interested NGOs and national and international media. The registrar is responsible for negotiating agreements with states and other organizations, and the official agreements should be filed here. He is to keep a list of "approved experts" who can perform medical, psychiatric or psychological examinations of the accused,[90] and he should have the records of the "solemn declaration" of each interpreter or translator that binds them to interpret or transcribe faithfully and keep the information confidential.[91] Like the ICTY and the ICTR, the SCSL registrar should have extensive records of outreach and public activities; in particular, the records of the audio and video productions should be here.

Because the registry was responsible for constructing the court's office and the detention facility, the records of the construction should be in the registrar's files, including architectural and engineering drawings, photographs taken during the course of construction, and perhaps videotapes of the construction and dedication events.

Detention facility. The registry should have the prison management records. Unlike the ICTY and the ICTR whose detention facilities are temporary residences for persons whose sentences are served in other national prisons, the detention facility built for and operated by the tribunal is the permanent prison for the nation. The probable files include records of intake and release, prisoner movement, health and welfare, security arrangements, and facilities operations (for example, food service or janitorial).

Victims and witness support unit. The Statute for the Special Court specified that the registrar "shall set up" a Victims and Witnesses Unit within the registry. The unit provides a variety of services, including protective measures, security, counseling, and "other appropriate assistance for witnesses, victims who appear before the

Court and others who are at risk on account of testimony given by such witnesses." The personnel of the unit "shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children."[92]

It is not clear whether the functions of the unit differ from those of the ICTY unit for victims and witnesses. If they are similar, then the records are very sensitive but not voluminous. Alternatively, however, the unit could have such significant files as correspondence with persons seeking protection, case files on protected persons, and witness statements. Because this unit is responsible for redacted official transcripts, there should be electronic and paper versions of verbatim transcripts of proceedings and the redacted electronic and paper versions of the transcript if required. And there should be the routine logistics files on the appearances of protected witnesses before the court.

Outreach unit. Some of the important records that may be found here are records of meetings with groups of citizens around the country, speeches, copies of edited versions of audiotapes and perhaps videotapes for use in outreach activities, and correspondence with diplomatic communities, NGOs, public.

Press and public affairs unit. This unit should have the usual public relations records of a court, such as press releases, still photographs taken by court staff members or contractors, still photographs taken by external photographers and given to the court, correspondence with journalists, publications of the court (Basic Facts pamphlet, handbook for journalists), speech files, special event files (for example, fundraisers), and files on the website and its use. In addition, and most important for this court, are the audiotapes of public radio announcements, edited audio tapes of court proceedings and Krio language versions (public service announcements), videotapes of court proceedings for public use, videotapes made by the court for public information purposes (for example, a production titled "What is Justice?"), and copies of videotapes of interviews with judges and other programs on the court produced by external sources and given to the court.

Administrative units. Each of the administrative units generates significant volumes of records, both paper and electronic. Most of the records are of types covered by general records schedules, such as the schedules of the United Nations Archives and Records Management Service, and are typically not permanently valuable. Nevertheless, some of these records need to be retained for periods of time to permit adequate accounting to be completed. Records of personnel also need long-term retention (see Chapter 5 below). In addition, it is possible that the records of the construction of the court facility are in these records, and those materials are important both to ensure that the building can be maintained but also as the records of the construction of an historically significant building in the nation's capital.

Records in Judges' Offices

Records in judges' chambers may be mostly copies of key documents and decisions. They may include documents from the judicial conferences; the original of a decision in a judicial conference would be in the general court records if the decision was issued in court. In addition, judges probably have speech files, notes on cases, and a variety of photographs of public events of the courts.

East Timor

Background

In response to reports that "systematic, widespread and flagrant violations of international humanitarian and human rights law" were occurring in East Timor, on October 25, 1999, the United Nations Security Council, acting under the authority of Chapter VII of the UN Charter, established a United Nations Transitional Administration in East Timor. UNTAET, as it was called, was "endowed with overall responsibility of the administration of East Timor" and "empowered to exercise all legislative and executive authority, including the administration of justice." The UN, through UNTAET, was "to support capacity-building for self-government." [93]

With UN oversight, elections were held on August 30, 2001, for a constituent assembly and on April 14, 2002, for the president. With these basic political institutions in place, East Timor became an independent state on May 20, 2002. On that date UNTAET was replaced by the United Nations Mission in Support of East Timor (UNMISET), still acting under Chapter VII powers.[94] UNMISET continued until May 20, 2005, when the Security Council replaced it with a "follow-on special political mission" called the United Nations Office in Timor-Leste (UNOTIL), which would not operate under Chapter VII.[95] Each of these three phases—the UNTAET phase, the UNMISET phase, and the UNOTIL phase—directly affected the operation of judicial institutions and the type of records that they created.

Records of the Special Panels for Serious Crimes

In its resolution establishing UNTAET, the Security Council used surprisingly strong language on the need for international justice in East Timor. The council, said the resolution, "condemns all violence and acts in support of violence," "calls for their immediate end," and "demands that those responsible for such violence be brought to justice."[96] Accordingly, on March 6, 2000 UNTAET promulgated Regulation 2000/11 on the organization of courts in East Timor. In section 10 of that regulation, the UN Transitional Administrator of East Timor was authorized to establish special panels to exercise exclusive jurisdiction over serious criminal offences.[97] Three months later he did so.[98]

The special panels were established within the district court in Dili, the capitol city of East Timor, with "exclusive jurisdiction to deal with serious criminal offences." "Serious criminal offences" were defined as genocide, war crimes, crimes against humanity, murder, sexual offences, and torture (the latter three under the panels' jurisdiction only if committed between January 1 and October 25, 1999). In addition to initial jurisdiction over the serious criminal offences, the regulation allowed any other Timorese judicial body to refer a case to the special panels. The panels were composed of two international judges and one East Timorese judge; in cases of "special importance" the panel could be composed of three international and two East Timorese judges. The UN transitional administrator was empowered to select and appoint the panels. Appeals were to be made to specially established panels within the Court of Appeals.

The regulation that organized the courts also regulated the creation and disclosure of information by the courts, which included the Special Panels:

- Section 25, on hearings, specifies that hearings are to be public "unless otherwise determined by the present regulation or by law." It prohibits radio and television broadcasting within the courtroom, but the court presidency, after consultation with the presiding judge, can authorize the broadcast of a final judgment. The section requires that the deliberations of the panel of judges "shall remain confidential."

- Section 26 requires a transcript of proceedings to be made at each hearing held before a panel of judges and the transcripts are to be made available to all parties to the proceedings. If the hearing is before a single judge, that judge "shall take, as appropriate, notes of the proceedings and submit them to the files."

Further, a transcript "shall be available to the public" unless the hearing itself was not public.

- Finally, in section 30, disclosure of information, judges are instructed not to "disclosure any information or personal data related to or obtained in the discharge of their functions, except where authorized by the court president for public information or research purposes."

The regulation establishing the special panels is silent on the disposition of their records. However, the UNTAET regulation that organized the courts in East Timor specified that every court should have a registry. The registry is responsible for the receipt, organization and security of "court documents,"[99] and the registrar works under the direction of the court presidency, composed of the court president and two presiding judges, all of whom are "elected by a majority vote of all judges of the respective court."[100] Since the special panels were established within the district court of Dili, the records of the special panels are under the control of the registrar of that court; i.e., the records of the special panels are no different from any court records in the Timorese court system.

When East Timor became independent in May 2002, the courts moved from a status of bodies of the UN transitional administration to bodies of the new government. No real change in the operations of the special panels occurred, however. Then in 2004, the security council decided that the Serious Crimes Unit of the prosecutor's office (see below) should complete its investigations by November 2004 and "should conclude trials" not later than May 20, 2005. Because all the cases heard by the Special Panels were brought by the Serious Crimes Unit prosecutors, the closure of one meant the closure of the other. As Judge Phillip Rapoza, who served as the chief judge of the special panels, remarked, not only was the serious crime process in East Timor "the first of its kind in the world to open, but also it is the first of its kind to close." The special panels tried 101individuals, with the cases of 87 completed to a verdict, 13 withdrawn or dismissed, and 1 found not mentally competent to stand trial. In addition, the panels issued 270 arrest warrants, many for persons outside the country.[101]

Records and formats. The courts of East Timor use a filing system derived from Portuguese practice.[102] The official record is paper. At the end of the work of the special panels, the staff created a "case information form" for each case, giving the name and number of the case, the texts of the indictment, interlocutory decisions, final decision, appeal, brief description of the case, and the legal issues involved. The case information form was inserted at the beginning of the case file and was scanned. Pleadings and other case materials are filed in case files numbered by year and therein by case; if a second folder for the same case is required, the folders are tied together with string. The files of the special panels amount to approximately 36 feet (12 meters).

Although the official languages of Timor-Leste are Portuguese and Tetum and many other languages are spoken, the judges on the special panels worked primarily in English and Portuguese (English was authorized for use as a working language during the UNTAET period, and it persisted in the special panels). UNTAET regulations required the courts to provide translation and interpretation services, both of written submissions and for oral proceedings. A study by two NGOs reported, "The court, which operates in four languages—Tetum, Bahasa Indonesia, Portuguese, and English—has had too few qualified translators, such that translation has often had to be done by judges and/or through a sequence of steps: from Tetum to Portuguese to English, for example. Until recently, the court lacked the audio equipment needed for simultaneous translation."[103]

During the first months of operation of the special panels, the trials took place without a court reporter; thereafter stenographers made transcripts of court sessions.[104] Some transcripts were corrected and some were not. Transcripts were filed in the case files only if approved by the presiding judge of the panel in the particular case; if a case is appealed the transcript goes to the appellate panel.

In 2001 the Dili District Court began using videotape to record court sessions. Thereafter the Special Panels used videotape continuously. At the closure of the special panels all the videotapes were handed over to the registrar of the Dili District Court.[105]

The judges sitting on the special panels used both email and word processing. According to Judge Philip Rapoza, "Emails were often used by judges to communicate with litigants and they were sometimes printed and inserted in case files. Not all judges did the latter, although it was my personal practice and that of some of my colleagues." For example, wrote Rapoza, judges "sometimes prepared memoranda or orders following court events and they were often communicated to the attorneys both by email and by formal service through the registry. The latter would always be recorded in the court file and sometimes the former as well." Emails between judges, he emphasized, were not printed and inserted. Some judges copied their notes taken during the proceedings of a case and gave them to the clerk to file in the case file; others did not.[106]

Each special panel decided on the admissibility of evidence and some differences among panels did occur. Objects admitted as evidence were photographed and the photograph inserted in the case file. The physical evidence was then returned to the parties.[107]

The judges of the special panels had no authority for rulemaking, so there were no substantive court conferences. Records of court conferences among special panels judges dealt with matters such as scheduling recesses. Administrative records are a part of the records of the Dili district court registry.

When the special panels closed, the court clerk boxed the records and gave them to the designated custodian within the court system.[108]

Records of the Serious Crimes Unit

On the same day UNTAET organized the special panels, it organized the public prosecution service in East Timor.[109] The office of the general prosecutor had its seat in Dili and was headed by a general prosecutor. Within the office were two departments, one for serious crimes and one for ordinary crimes, each headed by a deputy general prosecutor. The UN transitional administrator appointed the public prosecutors. Serious crimes were defined as offences against the laws of East Timor as stated in the regulation establishing the Special Panels for Serious Crimes, and the department headed by the deputy prosecutor for serious crimes was known as the Serious Crimes Unit (SCU).

When East Timor became independent in May 2002, the general prosecutor became the prosecutor-general of the Democratic Republic of East Timor with both deputy prosecutors subordinate to him. The prosecutor-general, by the Timor-Leste constitution, is appointed by and directly accountable to the President.[110] On July 7, 2003, for the first time after independence, the prosecutor-general instead of the UN transitional administrator swore in three international prosecutors, thereby allowing them to prosecute cases before the Special Panels for Serious Crimes.[111]

As of August 2003, the SCU was divided into four prosecution teams, which covered all thirteen districts of East Timor. District investigation offices operated in Dili, Bobonaro, Viqueque, Aileu, Oecussi and Covalima districts. At that time the SCU had 111 staff members, including 41 UN international staff (of which 6 were prosecutors), 19 UN police investigators, 35 UN national staff, 10 Timorese trainee staff and 6 Timorese police investigators.[112]

When the security council in November 2004 extended the mandate of UNMISET for a final six months to

May 20, 2005, it commended "the Serious Crimes Unit for the efforts it has undertaken in order to complete its investigations by November 2004, and any further trials and other activities no later than 20 May 2005" and noted "with concern that it may not be possible for the Serious Crimes Unit to fully respond to the desire for justice of those affected by the violence in 1999 bearing in mind the limited time and resources that remain available." The council requested UNMISET to "ensure increasing involvement and ownership of the Timorese in the mission's three programme areas [Stability, Democracy and Justice; Public Security and Law Enforcement; External Security and Border Control], so that, when it departs Timor-Leste, its responsibilities can be taken over by the Timorese, with the continued assistance of the UN system and bilateral and multilateral partners."[113]

The prospect that the United Nations would leave East Timor with investigations incomplete, trials unfinished, and appeals unheard brought widespread protests from the human rights community. An influential report by the two NGOs, released in November 2004, argued that it was crucial that before the SCU closed,

> all of the evidence they have collected be transferred to UN authorities outside East Timor, as well as perhaps two secure locations, one within the country and one to a third country. Although this process is underway, remaining issues to be worked out include whether originals (which carry more evidentiary weight in many judicial systems than photocopies) can be transferred, as well as what should be done with documentary and physical evidence. If East Timor pursues prosecutions in the future, UN authorities could be counted on to return evidence, whereas if the UN or a foreign government pursues a future prosecution, East Timor's government may be placed in a politically awkward position if it is forced to respond to requests for evidence. For this reason, the best approach now is to carefully organize and transfer as much evidence as possible into UN safekeeping before the SCU is terminated, in order to facilitate ready access should international or domestic trials become possible.[114]

Concerns escalated in December 2004 when the governments of Indonesia and Timor-Leste announced that they would establish a joint Commission of Truth and Friendship to look at the crimes committed in Timor in 1999, the same period that formed the focus of the investigations of the SCU. Responding to alarms from both governments and human rights advocates, the UN secretary-general wrote to the Indonesian and Timor-Leste governments in December, telling them that he planned to establish a commission of experts to review the status of the prosecution of human rights violations. In January he informed the Security Council president that he was appointing a three-member commission to report in May, and he announced it publicly in February.[115]

On the same day that the commission was announced, the secretary-general gave a progress report to the Security Council. He warned, "The serious crimes process may not be able to fully respond to the desire for justice of those affected by the violence of 1999 within the limited time and resources that remain available." He recommended "maintaining a United Nations mission with a scaled-down structure for a period of up to 12 months, until 20 May 2006." Among the personnel he thought essential for the reconfigured mission were advisers to "continue to perform line functions to support critical state institutions, particularly in the justice sector where their Timorese counterparts are undergoing legal training."[116] The security council responded in April by establishing UNOTIL and "reaffirm[ed] the need for credible accountability for the serious human rights violations committed in East Timor in 1999, and, in this regard, underlines the need for the United Nations Secretariat, in agreement with Timor-Leste authorities, to preserve a complete copy of all the records compiled by the Serious Crimes Unit." The commission of experts then wrote to the secretary general, requesting that the liquidation of the Serious Crimes Unit be suspended until the commission reported and the Security Council could consider its recommendations. In response, the secretary general announced that he would keep ten staff members of the Serious Crimes Unit on staff for a month after the May 20 closing of UNMISET to ensure that a "complete copy of all the records compiled" by the SCU was made and safeguarded.[117]

A complication in the handover process was translation. The government required that all key SCU documents, including case summaries and witness statements, be translated into one of the official languages if they had not been created in either Portuguese or Tetum. The hastily prepared translations were filed with the paper case files and also stored on the SCU's electronic system.

The commission submitted its report on May 26, 2005. The commission made recommendations for carrying on the work of the Serious Crimes Unit, the Special Panels, and the Defence Lawyers Unit and for prosecuting individuals in both East Timor and in Indonesia. The commission recommended that if the two governments do not comply and prosecute the accused, an ad hoc international criminal tribunal should be established and located in the "third State" or, alternatively, the investigations and prosecutions could be referred to the International Criminal Court. In any of these options, the records of the SCU would be needed.[118]

Finally, like the Special Court for Sierra Leone, the Serious Crimes Unit operated at the same time that a truth commission was functioning. The Commission for Reception, Truth, and Reconciliation, known as CAVR, its acronym in Portuguese, was established in 2001, after the Timorese courts and prosecutors were in place. In an effort to harmonize the potentially difficult relationship between the judicial and truth commission processes, CAVR was required to refer cases involving serious crimes to the office of the prosecutor. Unlike the situation in Sierra Leone, however, where the truth commission reported before the prosecutions were completed, in East Timor the prosecutions terminated before CAVR issued its final report. Any prosecutions recommended by the CAVR will have to be handled by the general state prosecutor without the benefit of the specialized expertise of the Serious Crimes Unit.[119]

Records and formats. In May, a mission from the United Nations Archives visited UNMISET to make recommendations on the disposition of its records. As a part of that mission, the archivists briefly visited the Special Crimes Unit.[120] Physically isolated from both UNMISET and from the prosecutor-general's offices, the SCU created a distinct body of records, including paper, electronic, still photographs, and audio and videotapes. In addition, the office managed a substantial quantity of objects. According to a report in June 2005, the SCU throughout its existence was "impeded by the lack of uniform document management practices across the unit. Consequently, an enormous effort had to be undertaken in the final phase of its operations to organize, review, and archive all case files."[121]

The SCU used email and word processing, but the official record was paper, at least in part because the courts required paper. The total quantity of case-related paper-based materials, including still photographs, is approximately 485 linear feet. This includes investigative files, prosecution case files, evidence, and witness statements. It does not include the records in the deputy prosecutor's office that probably include files of speeches and public appearances, public relations activities and the maintenance of the SCU's website, correspondence with UN bodies, diplomatic communities and NGOs, and routine administrative records. All documents (excluding administrative records) have a serial number; some documents are classified secret or confidential while others have restricted access.

Four databases exist: (1) an evidence database that provides control information (type of evidence, case number, language, dates, and so forth) and also tracks the chain of custody as evidence is received from and released to staff members; (2) a cases database that controls case information (for completed cases, indicted but uncompleted cases, and unindicted cases) and documents information; (3) a central archives database that controls information on records at the document level; and (4) a mortuary database including information on remains that may be evidence.

Audiotapes and videotapes exist, although it is not clear what is recorded or the quantity of the entire body of audiovisual materials. It is likely that at least some if not all witness and suspect interviews were taped.

Records of the Defence Lawyers Unit

The Legal Aid Service was formally created by UNTAET in September 2001 to provide defense counsel to those accused of committing both serious criminal offenses and ordinary crimes.[122] This body was not able to handle the needs to represent indigent defendants, so the Defence Lawyers Unit (DLU) was established by UNMISET in 2002.[123] Judge Phillip Rapoza noted that the DLU provided "legal representation for virtually every defendant who comes before the Court, because almost every such person is without the financial means to hire his own lawyer."[124] By May 2005, when the DLU closed along with the SCU, it had seven lawyers and three legal researchers. The Security Council requirement that a complete copy of the SCU records be made did not include a requirement to copy the records of the Defence Lawyers Unit.

The records the DLU held, the formats of those records, and the location of them are unknown. It is reasonable to suppose that they include case files, research files on legal issues, speeches and public appearance files, and correspondence with diplomatic communities and NGOs. The unit probably used email, word processing, and electronic tracking and logging systems.

Records in Judges' Offices

Records in judges' chambers may have been mostly copies of key documents and decisions. In addition, judges probably had files on the speeches they made to various groups, notes on cases, and photographs of public events of the courts. According to Judge Rapoza, each judge of the special panels took away with him what he considered his personal office papers.[125]

Kosovo

Background, Courts, and Prosecutors

On June 10, 1999, the United Nations Security Council adopted Resolution 1244, authorizing the secretary-general "to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo."[126] The main tasks of this "international civil presence" included "maintaining civil law and order." While not explicitly ordering the establishment of courts, the council did charge the secretary general with establishing a basic institutional framework for "autonomous self-government" to be transferred in the future "to institutions established under a political settlement." [127] It also demanded the "full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia."[128] Two days later NATO invaded; shortly thereafter the United Nations was the de facto government of Kosovo.

Reporting back to the Security Council on 12 July 12, 1999, the secretary-general outlined the organization of the United Nations Interim Administration Mission in Kosovo (UNMIK). The four main components of the mission would be humanitarian (led by the United Nations High Commissioner for Refugees), civil administration (led by the UN), institution-building (led by the Organization for Security and Cooperation in Europe) and reconstruction (led by the European Union). Part of the civil administration structure would be a judicial affairs office with four major areas of responsibility: "The administration of courts, prosecution services

and prisons; the development of legal policies; the review and drafting of legislation, as necessary, for the goals and purposes of UNMIK; and the assessment of the quality of justice in Kosovo, including training requirements."[129] For "an interim period," the secretary general said, "the judges and prosecutors appointed by the emergency judicial panel will hold office." The secretary-general also promised that UNMIK would establish a technical advisory commission on the structure and administration of the judiciary and the prosecution service[130] and would re-establish a general prosecutor's office and the Supreme Court of Kosovo, both of which had been abolished by the government of Yugoslavia in 1991.[131]

UNMIK Regulation 24 of December 12, 1999, established the applicable law in Kosovo as the UNMIK Regulations and the applicable law in force in Kosovo on March 22, 1989, in so far as the latter was not in conflict with international human rights standards.[132] By the end of December 1999, the Special Representative of the Secretary General (SRSG), the head of UNMIK, had appointed more than 300 local judges and prosecutors.[133]

In February 2000 a United Nations High Commissioner for Refugees bus carrying Serbs was attacked. Rioting followed in the city of Mitrovica. Several suspects in the bus attacks were arrested, but later released by a local judge. The SRSG then issued UNMIK Regulation 2000/6, appointing international judges to the courts in the territory of Mitrovica and international prosecutors within the "corresponding jurisdiction." By May 2000 UNMIK was appointing international judges and prosecutors in all courts in Kosovo. For the first time the United Nations inserted international judges and prosecutors into a criminal justice system to work alongside sitting jurists.[134]

The law in force in Kosovo when UNMIK took over specified that criminal cases were to be heard by a panel of two professional and three lay judges. Even if both the professional judges were international professionals appointed by UNMIK, they could still be outvoted by the three lay judges; in other words, there was no possibility that international judges alone could obtain a majority to rule on a case. Consequently, UNMIK issued Regulation 64 in December 2000, by which, in any criminal case, a prosecutor, the accused, the defense counsel, or the UNMIK department of judicial affairs could request the SRSG either to change the venue of the trial or to assign international judges or prosecutors to it. If the SRSG approved, the department of judicial affairs would then designate an international prosecutor and either a single international investigating judge or a panel composed of only three judges, including at least two international judges, one of whom was to be the presiding judge. If the trial had already begun, at either the lower or appellate level, a new venue or panel could not be designated until the trial was completed. These special panels could be established at either trial or appellate level.[135] The panels set up under this authority came to be known as "64" panels, named for Regulation 64 that established them. A subsequent regulation, 2001/2, allowed international prosecutors to "resurrect" cases that had been dropped by local prosecutors.[136]

The UNMIK leaders insisted that the international judges and prosecutors were fully integrated into the Kosovan legal system. The June 2004 UNMIK report on the Police and Justice "Pillar" said unequivocally, "The international judges and prosecutors do not form a separate system; they are fully integrated into the Kosovo judiciary along with their local colleagues." As of 14 June 2004, there were 12 international judges (down from 17 in 2001) and 12 international prosecutors, as well as 311 Kosovan judges and 84 Kosovan prosecutors. The international judges were involved in 92 cases, while the international prosecutors had "logged 305 Case Initiation Reports ranging from pre-judicial investigation stage through to final verdict" between March 2003 and June 2004. UNMIK reported that the local judiciary was handling about 97% of the criminal cases in Kosovo.[137]

An example of the relationship between cases handled locally and cases handled by the international prosecutors

is the treatment of the cases brought in the wake of the riots in Kosovo in March 2004. International prosecutors handled 52 of the most serious cases, while the local judiciary handled approximately 200. All nineteen cases involving deaths were handled by the international prosecutors, as well as cases involving the burning of Serb houses, churches and monasteries, cases against the suspected organizers or leaders of the riots, cases of "aggravated inter-ethnic violence" and cases involving "significant violence against police."[138]

One special court was established by UNMIK. In June 2002, UNMIK created both a Kosovo Trust Agency to administer, liquidate, and privatize "Publicly-owned and Socially-owned Enterprises" and a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters. This chamber has primary jurisdiction over claims and challenges to the decisions of the Kosovo Trust Agency. The special chamber has three international and two local judges and by June 2004 had a caseload of 250 claims.[139]

As part of the continuing devolution of power from UNMIK to local authorities, the administration of the local judiciary and the prosecutorial system was transferred to the ministry of public services in June 2004 and the management of detention centers was transferred to local officials in February 2005.[140] International prosecutors and judges remain active. The final status talks on Kosovo will determine when the court system will revert to wholly local judges and prosecutors.

UNMIK Judicial Offices

Initially, UNMIK's Department of Judicial Affairs was organized in two sections: Prosecution Services and Courts Administration (PSCA) and Penal Management (PM). The rapid expansion of UNMIK's role in criminal cases and the appointment of international judges and prosecutors led to change and growth.[141] The International Judicial Support Section (IJSS) was established to employ and support the international judges and international prosecutors; it "soon became the largest section within the Department." Later it was split into one unit for the judges and one for the prosecutors; still later those two units reunited.[142] The Department, renamed the Department of Justice, expanded from Kosovo's capitol, Pristina, to administer a series of support and liaison office in other towns. As Kosovo moves toward status determination talks, the organization of UNMIK's Department of Justice is shown in Box 9 below.

Box 9. Organization of UNMIK Department of Justice, February 2005

Judicial Development Division
- Professional Development Section
- Judicial Integration Section
- Judicial Inspection Unit
- Victim Assistance and Advocacy Unit

International Judicial Support Division
- International judges and prosecutors
- Legal support unit
- Regional legal officers
- Regional support staff
- Registry*
- Sensitive information and operations unit*

Penal Management Division

Office for Missing Persons and Forensics

*May be merged

The Judicial Development Division within the UNMIK Department of Justice carries out a number of functions that would usually be within the administration of a judicial system, including professional selection, education and discipline; court monitoring; and victim assistance.

*The Professional Development Section helped establish the system for the selection of judges and prosecutors, "assisted" in the development of a public examination for judges and prosecutors, and developed a "special school for candidates." The division's records should include the files on the development of the system for selection of judges and prosecutors and the development of a public examination.

*The Judicial Integration Section is charged with "increasing minority participation in the judiciary and prosecution service, ensuring access to justice for minorities and tracking the treatment of minorities by the justice system." As part of its work, the Section established court liaison offices in Novoberde, Gorazdevac, and the Serbian enclave of Gracanica to accompany minorities to the courts, file documents on behalf of minorities, and provide general information about the court. The section is establishing a system for monitoring the Kosovo judiciary "for Human Rights Standards in general and Minority Rights in particular."[143] The key records probably are case files on members of minority communities seeking to use the courts.

*UNMIK appointed the Kosovo Judicial and Prosecutorial Council (KJPC), "an independent body responsible for recommending the appointment and removal of judges and prosecutors to the SRSG and, upon request, advising the SRSG on matters affecting the justice system." The Judicial Development Division provides support to the Council and is responsible for conducting investigations of misconduct of judges and prosecutors. If evidence of misconduct is found, the investigation report is submitted to the KJPC for a disciplinary hearing. At the hearing the Division's Judicial Inspection Unit presents the case.[144]

These disciplinary responsibilities are roughly similar to those given to the registrars in ICTY and ICTR in their roles as overseers of the implementation of the Code of Professional Conduct.

Although the Council is an independent body, its administrative support services come from UNMIK and the records of the Council are probably in the Judicial Development Division's files. The records presumably are organized by case, with an indexing system. In addition, there are probably records of procedural decisions that apply to all cases; there may be minutes of the meeting of the Council; there are probably purely logistical and administrative records.

*The Victim Assistance and Advocacy Unit provides legal services, emergency, interim, and long-term shelter services, psychosocial assistance, medical assistance, and financial compensation to victims of crime. The Unit also provides policy and legislative advice and advocacy, victim advocacy and training, and referral and resource development services. It operates an Interim Secure Facility in Pristina that provides shelter and support services for up to thirty persons at a time.[145] These responsibilities are analogous to those of the victims and witnesses support units in ICTY, ICTR, and the Special Court for Sierra Leone. The records of the unit probably include both individual case files and the records of the administration of the Interim Secure Facility.

All of these bodies hold records that are sensitive and are quite unlike the usual administrative records in a United Nations field mission. As Kosovo moves through the final status determination process, records such as these must be carefully evaluated to make sure that the needs of the United Nations for documentation of its activities are met and that the interests of the government of Kosovo to have the records of its history are respected.

Records Relating to International Judges

Proceedings. Because the international judges were integrated into an existing judicial system, the records of the proceedings in the courtrooms should be found within the regular Kosovo court records system. This should be true at both the trial and appellate levels, as well as the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.

During the first three years of the courts under UNMIK there were no court reporters. The courts do not use audio or videotape to create a record of the proceedings. Not all cases have full written opinions; some are conclusory opinions only, including some that involved international judges. Kosovo has no system of publishing opinions. Some war crimes cases had objects as exhibits, but in general cases did not have a huge quantity of objects. [146]

Records of support services. The records of the International Judicial Support Division (IJSD) should include records on the appointment, activities, and support for the judges. The division supported the entire police and justice activity of UNMIK and managed at least two central registries. One registry controlled police records, while the other registry served the general department of justice; the latter holds at least some records relating to criminal and war crimes cases. The registries probably handle primarily paper, with any email or word processing documents that are to be retained printed for filing. The tracking systems are likely to be electronic.

Records in international judges' offices. Records in judges' chambers may be mostly copies of key documents and decisions. Judges may have speech files, notes on cases, and a variety of photographs of public events of the courts.

Records Relating to International Prosecutors

As described above, the UNMIK support service for the international prosecutors was initially with, then apart from, and again with the support for the international judges. The first UNMIK international prosecutor believed that a separate unit for prosecutors was necessary so the director of the department of justice "could supervise the case selection, initiation of investigation, drafting and filing of indictments, and other actions of the international prosecutors."[147] This suggests strongly that the records of the international prosecutors are in the UNMIK offices. The pleadings would be found in the court records, with a copy in the prosecutors' records as well. But all the investigations, the witness statements, transcripts of interviews with suspects, perhaps evidence that was not admitted but not returned to a person, speeches, correspondence, and so forth should be in the prosecutor's records. These records may be even fuller since the reform of the criminal legislation in 2004 that enhanced the role of the public prosecutor, who took over many of the former responsibilities of the investigating judge.

The records are almost surely of varied physical types: mostly paper, but also email, word processing, tracking and logging data, perhaps audiotapes (both of interviews and of evidence), probably evidential photographs, perhaps videotapes and artifacts. In addition, the Kosovo prosecutors were able to work out an arrangement to get copies of some documents from the ICTY, and these are probably in the offices of the international prosecutors.[148]

Records of the OSCE Programs

The Organization for Security and Cooperation is responsible for monitoring the functioning of the Kosovo judicial system and establishing training programs for judicial system personnel. After OSCE issued public criticisms of the criminal justice system that was emerging, the UN and the OSCE formed a joint working group to try to respond to the issues raised and to share information. OSCE, like the UN, had offices around the country, usually one in each of the five judicial districts with one or two people in each office. The OSCE's Kosovo Judicial Training Institute is in Pristina.[149]

The OSCE records are stored in Pristina and in the monitoring offices. The monitoring program produces both public reports and confidential assessments and its records may include court monitor notes, memos with the UN, and internal correspondence on cases. The training program probably produces records of planning, conducting and assessing the training offered. The OSCE staff uses email extensively, and the paper files may contain printouts.

A former OSCE staff member reports that OSCE headquarters in Vienna has not provided records guidance, either for filing in OSCE files in Kosovo or on what to ship to Vienna. She thought it unlikely that international staff members took case materials when they left Kosovo, leaving OSCE with a substantial body of records from its UNMIK participation, but she thought staff members would take their handwritten notes with them.[150]

Summary

Our survey of the five courts reveals quite substantial differences among them. ICTY, ICTR, and SCSL all have the usual three arms of a court; East Timor had special panels and a separate prosecution unit but no special registry; Kosovo has a mix of administrative services, including court monitoring, but none of the functions of a court, save perhaps a partial registry. Three (ICTY, ICTR, and SCSL) run detention facilities, while East Timor had no subsidiary facilities and Kosovo has a facility for victims. ICTY, ICTR, and Kosovo have records created and maintained in locations outside the headquarters; East Timor and Sierra Leone had offsite units but apparently all records storage was in the headquarters. All the courts use paper for the official court record, although ICTY

is experimenting with an e-court all electronic system. ICTY, ICTR, SCSL and East Timor all use audiovisual recording in the courtrooms; Kosovo does not. ICTY, ICTR, and SCSL use electronic document management systems; East Timor and Kosovo do not. ICTY and ICTR have arrangements for the publication of decisions; the others do not. All of these differences are reflected in the records.

Box 10. Comparative scope of court functions

Functions	ICTY	ICTR	SCSL	East Timor	Kosovo
Courts	x	x	x	panels	judges*
Prosecutor	x	x	x	x	prosecutors*
Investigators	x	x	x	x	
Registrar	x	x	x	**	
Victims and witness support	x	x	x		
Detention facility	x	x	x		
Victims facility					x
Outreach program	x	x	x		
Public information	x	x	x	x	
Liaison to defense counsel	x	x			
Defense counsel office		x	x		
Court monitoring					x
Administration	x	x	x	prosecutor	

*Individual judges and prosecutors inserted into Kosovo courts.
**Where not marked, some functions (such as investigations and detention) are carried out solely by local authorities.

Another way to look at the records held by the courts is to look at them by physical types.

Box 11. Comparative physical types of records

Type	ICTY	ICTR	SCSL	East Timor	Kosovo
Paper	x	x	x	x	x
Electronic tracking systems	x	x	x	prosecutor	
Electronic doc. mgt systems	x	x	x		
Websites	x	x	x	prosecutor	
Audio of court sessions	x	x	x		
Video of court sessions	x	x	x	x	
Audiovisual evidence	x	x	x	x	
Objects as evidence	x	x	x	x	
Architectural records	x	x	x		

Finally, we can look at the courts by a series of factors that surrounded the establishment of the courts and their composition.

Box 12. Courts and their composition

	ICTY	ICTR	SCSL	East Timor	Kosovo
Est. Security Council	x	x			
Est. by treaty			x		
Est. by UN admin.				x	x
Court in country			x	x	x
Court outside	x	x			
External judges/pros.	x	x			
Ext. & internal judges/pros			x	x	x
Truth commission			x	x	
No truth commission	x	x			x

With these similarities and differences in mind, we can now turn to the question of how nations have handled similar records of their courts, prosecutors, investigators and prisons, and the papers of their judges and attorneys.

Endnotes

1 UN press release, "Security Council backs special tribunal for Lebanon to deal with Hariri assassination," 21 November 2006, http://www.un.org/apps/news; UN press release, "Burundi: Security Council asks Annan to begin talks on truth commission, special court," 20 June 2005, ibid.; "Afghanistan considers creating commission," 18 July 2005, The Associated Press, http://www.boston/com/nes/world/asia/articles/2005/07/18/afghanistan_considers_creating_commission.

2 S/REC/808 (1993), 22 February 1993; S/RES/827 (1993), 25 May 1993.

3 Article 29 reads, "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."

4 Some field offices have now closed.

5 Agence France-Presse, "UN genocide court transfers ex-Rwandan tea chief to The Hague for safety," 2005-08-19.

6 Security Council Resolution 1503 (2003), 28 August 2003; Security Council Resolution 1534 (2004), 26 March 2004.

7 Interview with Deputy Prosecutor David Tolbert, 2005-04-19. On 14 September the Referral Bench granted the Chief Prosecutor's application to refer the trial for crimes in the Medak pocket to the Croatian courts. The press noted that with the transfer of the case, the prosecutor will "hand over all the evidence and material supporting the indictment to the Croatian Public Prosecutor's Office within 30 days." "Ademi and Norac to be tried in Croatia," Sense News Agency, 2005-09-14, http://www.sense-agency.com/portal/english/index.php?sta=3&pid=6949.

8 Ninth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committee in the Territory of the Former Yugoslavia since 1991, 2002-08-04, http://www.un.org/icty/rappannu-e/2002/index.htm.

9 Letter from the President of the International Tribunal for the Prosecution of Persons Responsible for

Serious Violations of International Humanitarian Law Committee in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council, 25 May 2005, S/2005/343.

10 Gabrielle Kirk McDonald, "Assessing the impact of the International Criminal Tribunal for the former Yugoslavia," in Steven R. Ratner and James L. Bischoff, eds., International war crimes trials: Making a difference? Austin, Texas: The University of Texas at Austin School of Law, 2004, pp. 20.

11 Press release, ICTY, "A report on the audiovisual coverage of the ICTY's proceedings finds that cameras contribute to a proper administration of justice." CC/P.I.S./493-E, 2000-04-19, http://www.un.org/icty/pressreal/p493-e.htm.

12 "Floor" for audiotapes means the sound recording of the actual speech within the courtroom, not the words of a translator.

13 The following paragraphs draw heavily on interviews with ICTY registry staff members from the Court Management Service Section, April 18, 2005.

14 http://www.un.org/icty/publications-e/index.htm

15 Rough translation by Frank Tiggelaar of status conference, August 25, 2005, and sent to JUSTWATCH-L@LISTSERV.BUFFALO.EDU, 2005-08-26.

16 The information on JDB draws heavily on an interview with and system demonstration by staff of the development unit of the ICTY information services section, 2005-04-18. See also the annual report of the ICTY to the UN General Assembly, A/61/271-S/2006/666.

17 Memorandum, Legal coordinator, Court Management Services Section, to the Registrar, 15 May 2004. Copy in author's possession.

18 Ibid.; email, Chief, Court Management Services Section, to UN Archives, "Tapes: Figures," 2003-09-30, 11-01-F069, UN Archives files.

19 Interview with associate legal officer, trial chamber 2, 2005-04-18.

20 The defense in one current case also has a scale model of the topography of an area in central Bosnia.

21 Mary Neazor, "The International Criminal Tribunal for the former Yugoslavia viewed through its administrative records." Paper prepared for the conference of the Society of American Archivists, 24 August 2002, copy in author's possession.

22 Ibid. Plenary meetings are held in accordance with Rule 24, Rules of Procedure and Evidence, Revision 33. Under Rule 18, the President of the Tribunal is elected by the permanent judges and serves for two years. The President may be reelected once. Rule 20 establishes the post of Vice President. http://www.un.org/icty/basic/rpe/IT32_rev.33.htm, accessed 2005-02-23.

23 Rule 23 specifies the composition and functions of the Bureau, Coordination Council, and the Management Committee.

24 Interview with associate legal officer, trial chamber 2, 2005-04-18

25 Neazor, op. cit.

26 ARMS, "Recordkeeping Assessment Visit to the ICTY," October 2003, 11-01-F069, UN Archives files.

27 The following discussion draws largely on interviews with ICTY Deputy Prosecutor David Tolbert and staff members of the investigation division, 2005-04-18 and 2005-04-19.

28 By resolution 780 of 6 October 1992, the Security Council requested the Secretary-General to establish a Commission of Experts "to examine and analyse information gathered with a view to providing the Secretary-General with its conclusion on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia." The investigatory files and the database "designed to provide a comprehensive record of all reported grave breaches" formed the initial basis for the work of the ICTY. Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council, S/1994/674, 27 May 1994. The records of the Commission of Experts, according to Tribunal staff, are in the custody of the evidence unit and remain "readily identifiable."

29 ARMS report, October 2004, 11-01-F074, ARMS files, UN Archives.
30 Information in the following paragraph is derived from an interview and system demonstration by ICTY evidence unit staff, 2005-04-20.
31 In the early years of the ICTY, when a box of paper evidence arrived the entire box was given a number as a single artifact and each document within the box was given a sub-number. Sometimes the original container was later destroyed and the documents put in other containers. The result is that in some cases there is no item with the principal number, only documents (items) with sub-numbers. In 2001 many materials that were scanned in the early years of the ICTY's operation were rescanned to improve image quality.
32 Email, Tribunal records officer to author, 2005-06-06.
33 Rule 70 of the ICTY Rules of Procedure and Evidence covers "Matters not Subject to Disclosure." Rule 70 information is provided to the Tribunal on a confidential basis and may not be disclosed without the consent of the person or entity providing the information.
34 The Registrar recently contracted for a study that included a review of the question of what should happen to the foreign government records after the termination of the Tribunal, see Eric Ketelaar, "The Legacy of The United Nations International Criminal Tribunal for the Former Yugoslavia: Justice, Reconciliation, and Memory," draft 2005-07-26, copy in possession of the author.
35 ARMS report, October 2003, 11-01-F074, ARMS files, UN Archives.
36 General records schedules are written instructions governing specified series of records common to several or all administrative units of an agency, organization, or corporate body, establishing a timetable for their management and providing authorization for their disposition (either retention or destruction). A list of the United Nations general records schedules is found in Annex 1. See also discussion in Section IV, B.
37 Neazor, op. cit.
38 Richard J. Goldstone, For humanity: Reflections of a war crimes investigator, chapter 4. New Haven, Conn.: Yale University Press, 2000.
39 Neazor, op. cit.
40 The following information is drawn from interviews with staff members of the Victims and Witnesses Section and from the records schedule for the records of the Section.
41 Neazor, op. cit.
42 Gabrielle Kirk McDonald, "Assessing the impact of the International Criminal Tribunal for the former Yugoslavia," in Steven R. Ratner and James L. Bischoff, eds., International war crimes trials: Making a difference? Austin, Texas: The University of Texas at Austin School of Law, 2004, pp. 18-19.
43 The outreach field offices are not the same as the field offices of the Office of the Prosecutor, although in some cases they are located in the same city.
44 The following information is drawn primarily from information provided by the Tribunal's records officer.
45 Interview with assistant legal officer, trial chamber 2, 2005-04-18.
46 Neazor, op. cit.
47 Letter from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, 29 September 1994, S/1994/115.
48 S/RES/955 (1994), 8 November 1994; S/RES/977 (1995), 22 February 1995.
49 S/RES/ 1503 (2003), 28 August 2003.
50 Article 29 reads, "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."
51 Rule 3, Rules of Procedure and Evidence.
52 The prosecutor "handed over fifteen files to the Rwandan judiciary, some belonging to suspects that are still at large. Of the 25 dossiers that have already been transferred, some are of suspects currently locked up at the UN Arusha-based tribunal." "Prison for ICTR Inmates Ready," AFNWS – The New Times/All Africa Global

Media, 2005-08-03.
53 Tom Adami, "International Criminal Justice vs. the Record Continuum," Paper delivered at the Society of American Archivists, August 2002, copy in author's possession.
54 Article 12, Official Documents of the Tribunal, "Directive for the Registry of the International Criminal Tribunal for Rwanda."
55 Rule 81, Records of Proceedings and Preservation of Evidence, Rules of Procedure and Evidence.
56 Ibid.
57 Rule 36, Record Book, ibid.
58 Article 18, Record Book, and Article 19, Summary Sheet, "Directive for the Registry of the International Criminal Tribunal for Rwanda."
59 Article 13, Case Files, ibid.
60 Article 14, Principles Governing Management of Confidential Documents, ibid.
61 Draft ICTR Records Retention/Disposal Schedule ICTR001 – Judicial Records of the ICTR, 2001-07-13. Copy in author's possession.
62 Ninth annual report of the International Tribunal for [Rwanda] to the Secretary General and Security Council, 2004-07-24, A/59/183-S/2004/601.
63 Mark Nizette, "International Criminal Tribunal for Rwanda: Strategic Management of AudioVisual Records," March 2002, copy in author's possession.
64 Rule 24, Plenary Meetings of the Tribunal. Rules of Procedure and Evidence.
65 Rule 35, Minutes, ibid.
66 Rule 23, The Bureau, ibid.
67 "General Information," website of the International Criminal Tribunal for Rwanda, http://www.ictr.org/ENGLISH/geninfo/index.htm, accessed 2005-02-25.
68 Ninth annual report of the International Criminal Tribunal for [Rwanda] to the Secretary General and the Security Council, 2004-07-27, A/59/183-S/2004/601.
69 Rule 41 Preservation of Information, Rules of Evidence and Procedure.
70 Rule 42 Recording Questioning of Suspects, ibid.
71 Rule 71, Depositions, ibid.
72 Email, Anthony Keating, Information and Evidence Support Section, to Bridget Sisk, 2002-08-28, 12-04-F117, ARMS files.
73 Article 10, Judicial Archives, "Directive for the Registry of the International Criminal Tribunal for Rwanda."
74 "General Information," website of the International Criminal Tribunal for Rwanda, http://www.ictr.org/ENGLISH/geninfo/index.htm, accessed 2005-02-25; Ninth annual report of the International Criminal Tribunal for [Rwanda] to the Secretary General and the Security Council, 2004-07-27, A/59/183-S/2004/601.
75 ICTR Telephone Directory, 2 June 1998, 12-04-F112, ARMS files
76 Article 10, Judicial Archives, "Directive for the Registry of the International Criminal Tribunal for Rwanda."
77 Tom Adami, "International criminal justice vs. the records continuum," paper presented at the Society of American Archivists, August 2002, copy in author's possession.
78 S/2000/786 annex, 2000-08-10, letter dated 12 June 2000 from the President of the Republic of Sierra Leone to the President of the Security Council of the United Nations; S/RES/1315 (2000), 2000-08-14; Statue of the Special Court for Sierra Leone, http://www.sc-sl.org/scsl-statute.html, accessed 2005-02-10; Geoffrey Robertson, "Powerful Enough to Bring Justice: Setting Up the Special Court for Sierra Leone," UN Chronicle No. 4, 2003, pp.74-75
79 Letter from the Secretary General to the President of the General Assembly and the President of the Security Council, forwarding a completion strategy from the Special Court for Sierra Leone, 2005-05-27,

A/59/816-S/2005/350; "Trial of former Liberian President Charles Taylor to start in June – UN prosecutor," UN News Center press release, 2007-01-31, http://www.un.org/apps/news.

80 Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002; Statue; ibid.

81 Rules of Procedure and Evidence, Special Court for Sierra Leone, as amended on 29 May 2004. http://www.sc-sl.org/scsl-procedure.html

82 "Practice Direction on Filing Documents before the Special Court for Sierra Leone," Adopted on 27 February 2003 and amended on 1 June 2004.

83 Email, Hellen Nyabera, former staff member of SCSL registry, to Bridget Sisk, Chief, UN Archives and Records Management Section, 2004-12-14, and forwarded to author on 2004-12-15.

84 Interview with Hellen Nyabera, 2004-12-13.

85 Interview with Hellen Nyabera, 2004-12-13.

86 Rule 41, Preservation of Information, Rules of Procedure and Evidence.

87 Rule 43, Recording Questioning of Suspects, ibid.

88 Rule 33, Functions of the Registrar (amended 29 May 2004), Rules of Procedure and Evidence.

89 "The Registry," official website of the Special Court for Sierra Leone, http://www.sc-sl.org/registry.html, accessed 2005-09-18.

90 Rule 74bis, Medical examination of the accused, Rules of Procedure and Evidence.

91 Rule 76, Solemn declaration by interpreters and translators, ibid.

92 Article 16, The Registry, Statute of the Special Court for Sierra Leone.

93 S/RES/1272 (1999), 25 October 1999.

94 S/REC/1410 (2002), 17 May 2002.

95 S/RES/1599 (2005), 28 April 2005. Once the peacekeeping mission withdrew, a new political mission, the United Nations Office in Timor-Leste (UNOTIL) functioned until August 2006. Then, because of the renewed violence in Timor-Leste and following a request from its President to the Secretary-General, a new United Nations Integrated Mission in Timor-Leste (UNMIT) was established for an initial period of six months. "Timor Leste – UNMIT – Background," http:www.un.org/Depts/dpko/missions/unmit/background.html, accessed 2007-02-04.

96 S/RES/1272, ibid.

97 Section 10, Exclusive Jurisdiction for Serious Crimes, UNTAET/REG/2000/11 On the Organization of Courts in Eat Timor, 6 March 2000.

98 UNTAET/REG/2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, 6 June 2000.

99 Section 21 Court Registration, UNTAET/REF/2000/11.

100 Section 16 Court Presidency, ibid.

101 Phillip Rapoza, "The Serious Crimes Process in Timor-Leste: Accomplishments, Challenges and Lessons Learned," paper at symposium in Dili, Timor-Leste, 28 April 2005, copy in author's possession.

102 The information on the court records practice is derived from an interview with Judge Phillip Rapoza, 2005-05-05.

103 Open Society Justice Initiative and Coalition for International Justice, "Unfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor," November 2004, p. 43.

104 Nehal Bhuta, an attorney who went to East Timor for Oxfam International as a consultant on international criminal justice, later wrote of the early period of the Special Panels, "Interpretation was extremely poor, particularly in light of the fact that hearings had to be conducted often in six languages: Portuguese, Bahasa, English, and then one of any of 22 domestic Timorese languages. There were no transcription services of any kind whatsoever, with the result that the only record was one that a judge rapporteur would type as the hearing was progressing. In other words, one judge would have a computer in front of him on the bench and would take

notes, and that was the only record upon which judges could rely when writing a judgment. This also obviously makes the problem of appeals very difficult." Nehal Bhuta, remarks, in Steven R. Ratner and James L. Bischoff, eds., International War Crimes Trials: Making a Difference? Austin: University of Texas at Austin School of Law, 2004, p. 128.

105 Email, Judge Phillip Rapoza, 2005-09-25. Megan Hirst and Howard Varney for the International Center for Transitional Justice, "Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor," June 2005.

106 Email, Judge Phillip Rapoza, 2005-09-25.

107 On the day of the interview with Judge Rapoza, one spear was still left in the custody of the clerk of the special panels, and she planned to dispose of it before the panels closed.

108 Presumably the records are now in the hands of the registrar.

109 UNTAET/REG/2000/16, On the Organization of the Public Prosecution Service in East Timor, 6 June 2000.

110 Constitution of Democratic Republic of East Timor, Section 133 Office of the Prosecutor-General.

111 Office of the Deputy General Prosecutor for Serious Crimes Timor Leste, "Three international prosecutors for serious crimes inaugurated to appear at the special panels," 7 July 2003. Http://www.jjsmp.minihub.org/News/17-7-03.htm. Accessed 2005-02-02.

112 Office of the Deputy General Prosecutor for Serious Crimes Timor Leste, "Serious Crimes Unit Update VII/03," 5 August 2003. Http://www.jjsmp.minihub.org/News/17-7-03.htm. Accessed 2005-02-02.

113 S/RES/1573 (2004), 2004-11-16.

114 OSIJ and CIJ, "Unfilled Promises," op. cit.

115 See, for example, Sian Powell, "Time runs out for Timor Justice," quoting US ambassador to the UN John Danforth, 2004-11-22, The Australian, posted on JUSTWATCH-L@LISTSERV.BUFFALO.EDU, 2004-11-23; Open Society Justice Initiative and the Coalition for International Justice, "Unfilled Promises: Achieving Justice for Crimes against Humanity in East Timor," November 2004; "Timor Bishop opposes war crimes deal," Agence France-Press, 2005-02-07, JUSTWATCH; Press release, "Statement attributable to the Spokesman for the Secretary-General on the appointment of a Commission of Experts (Indonesia & Timor-Leste), 2005-02-18, http://www.un.org/apps/sg. Accessed 2005-02-28.

116 S/2005/99, "Progress report of the Secretary-General on the United Nations Mission of Support in East Timor (for the period from 10 November 2004 to 16 February 2005), 2005-02-18.

117 S/2005/99, ibid.; S/RES/1599 (2005), 2005-04-28; S/2005/310, End of mandate report of the Secretary-General on the United Nations Mission of Support in East Timor (for the period from 17 February to 11 May 2005), 2005-05-12.

118 Executive Summary and Conclusion, "Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999," 26 May 2005, http://www.etan.org/news/2005/06exec.htm. Accessed 2005-06-28. The Judicial Systems Monitoring Project echoed the recommendation for an international tribunal, pointing out that both an international commission of inquiry and a group of three Special Rapporteurs had recommended this in 1999 and 2000. Tiago A. Sarmento, "The Future of Serious Crimes," speech at Victoria University, Melbourne, Australia, 16 June 2005, copy in author's possession.

119 Megan Hirst and Howard Varney, "Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor," International Center for Transitional Justice, June 2005.

120 The author was a consultant on the visiting team.

121 Hirst and Varney, op.cit.

122 UNTAET/REG/2001/24 On the Establishment of a Legal Aid Service in East Timor, 5 September 2001.

123 Executive Summary and Conclusion, "Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999," 26 May 2005, http://www.etan.org/news/2005/06exec.htm. Accessed 2005-06-28. See also discussion of the DLU in Hirst and Varney, "Justice Abandoned?" op.cit.
124 Phillip Rapoza, "The Serious Crimes Process in Timor-Leste: Accomplishments, Challenges and Lessons Learned," paper at symposium in Dili, Timor-Leste, 28 April 2005, copy in author's possession.
125 Interview with Judge Phillip Rapoza, 2005-05-05.
126 UN Security Council resolution 1244, S/RES/1244 (1999), 10 June 1999, paragraph 10
127 Ibid, paragraph 11
128 Ibid, paragraph 14
129 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, paragraph 67
130 Ibid, paragraph 70.
131 Ibid, paragraph 71
132 Ibid, paragraph 2.1. This mix of local law and UNMIK regulation continued until 6 April 2004, when a new Provisional Criminal Code and Provisional Criminal Procedure Code came into effect.
133 UNMIK Pillar I Police and Justice Presentation paper, June 2004, paragraph 2.2
134 Michael E. Hartman, "International Judges and Prosecutors in Kosovo: A New Model for Post-Conflict Peacekeeping," United States Institute of Peace Special Report 112, October 2003, p. 2.
135 UNMIK Regulation No. 2000/64, 15 December 2000.
136 Hartman, op. cit.
137 UNMIK Pillar I Police and Justice Presentation paper, June 2004, paragraph 2.6
138 UNMIK Pillar I Police and Justice Presentation paper, June 2004, Section VI.
139 UNMIK/REG/2002/12 and UNMIK/REG/2002/13, both 13 June 2002; UNMIK Pillar I Police and Justice presentation paper, June 2004.
140 UNMIK Pillar I paper, op. cit., paragraph 2.3; UNMIK press release UNMIK/PR/1238, 6 October 2004
141 The United Nations High Commissioner for Refugees was UNMIK's original "Pillar 1." In June 2000 UNHCR declared its work completed and ceased its participation in UNMIK. By May 2001the work of the police and justice administration, originally in Pillar 2, had become so large that it was separated from the rest of the UN's civil administration offices and became a new Pillar 1, under the direction of a deputy SRSG. See "UNMIK at 18 Months" and "UNMIK at Two," http://www.unmikonline.org/justic/jdd.htm, accessed 21 February 2005.
142 UNMIK Pillar I Police and Justice Presentation paper, June 2004, paragraphs 2.2-2.3
143 Ibid. UNMIK Pillar I Police and Justice Presentation paper, June 2004, paragraph 2.7
144 http://www.unmikonline.org/justic/jdd.htm, Judicial Development Division, accessed 21 February 2005
145 http://www.unmikonline.org/justic/jdd.htm, Judicial Development Division, accessed 21 February 2005
146 OSCE, "Kosovo: Review of the Criminal Justice system (April 2003-October 2004), Crime, Detention, and Punishment," copy in author's possession; interview, Colette Rausch, 2005-05-26.
147 Michael E. Hartman, "International Judges and Prosecutors in Kosovo: A New Model for Post-Conflict Peacekeeping," United States Institute of Peace Special Report 112, October 2003.
148 Interview, Colette Rausch, 2005-05-26; interview, staff members of the ICTY investigation section, 2005-04-18.
149 Mark Baskin, "Lessons Learned on UNMIK Judiciary." The Pearson Papers, vol. 8, Clementsport, Nova Scotia: Canadian Peacekeeping Press, 2002, p. 31; Interview, Colette Rausch, 2005-05-26.
150 Interview, Colette Rausch, 2005-05-26.

Chapter 3: National and International Perspectives

Although the records of the international criminal tribunals and hybrid courts are unique, the records of courts, prosecutors, investigators, and prisons, are standard records of national governments. Government archivists have long dealt with such records, and a review of their decisions on retention and destruction may help us evaluate the records of the tribunals.

This chapter examines national practices in the retention of records of courts, prosecutors, investigators, and detention facilities. Next it considers the disposition of the office records of judges and defense attorneys. Finally it looks at the special cases of the post-World War II military tribunals and what records of their work have been retained.

No international standard exists for what to save and what to destroy of records in a judicial system. Furthermore, no general study of the retention and disposal practices for judicial records around the world exists. Consequently, this chapter draws principally on United States practices, supplemented with the experiences of Canada and some countries in Europe.

National Experiences: Court Records

Court records are extremely voluminous. Courts may or may not come under a government's general records laws; if they do, the administrative records of the courts may be retained and destroyed under general government records schedules. The dockets and case files of the courts, however, would not be covered by general records schedules and would be reviewed and appraised separately. Countries choose whether to save some records of criminal court cases and destroy others or to save all criminal cases. In general, it appears that international practice is to save all appellate court and supreme court criminal cases, but to save some and destroy others in local or other lower courts.

In the United States, all federal district court criminal case files are retained, as are all records of the federal appeals courts and Supreme Court. The judges in the Federal District Courts decide whether to retain the exhibits submitted in a case; the exhibits are more frequently retained in criminal cases than in civil cases.[1] A variety of electronic means are used to produce trial transcripts, but trials in the federal courts are not videotaped. Court dockets are electronic, and the electronic dockets are retained permanently as are a variety of other electronic records produced by court administration.[2] The Supreme Court has audio taped the oral arguments before the Court since 1955, and all the tapes are preserved in the U.S. National Archives. Turning from the federal courts to a state court, the State of Massachusetts undertook a study of its court records in 1980. The study recommended and the state adopted a plan to save only a part of the criminal case files of the courts of the state. The state retains all the docket books and registers, and in the lower courts saves a sample of case files based on a numeric system. In addition, a case that is appealed to the state supreme court or that is particularly important or "fat" is saved.[3]

In France, all records of the Criminal Chamber of the High Court of Appeals (Cour de Cassation) are retained. Records of trials in lower courts are retained (1) if they are selected as important by the court or (2) if they are part of a systematic sample made by the Archives departmentales. In France judges make the decision whether or not to videotape a trial with the approval of the defendants' lawyers. The written transcript remains the official record whether or not the trial is taped. In the cases of Maurice Papon, Paul Trouvier, and Klaus Barbie, all tried for crimes relating to World War II, the trials were taped and the Ministry of Justice archives has retained the full videotapes of them all; these tapes have been deposited in the Institut national de l'Audiovisuel and are accessible through an "ordonnance" of the president of the Paris "tribunal de grande instance." The Cour de Cassation has

not yet had a request to tape a case before it.[4]

The public records of the British Crown Courts (national) dealing with criminal cases "are not preserved in their entirety, although most historically significant papers are preserved at present," according to the National Archives of the UK. In the near future, the archivists plan to review the criteria for selection of case files to be retained. Separate provisions cover the disposal of the records of magistrate's courts (local).[5]

The textual records of all cases before the Supreme Court of Canada are retained in the National Archives of Canada.[6] Criminal cases arise from the system of provincial courts, with each province responsible for determining which of its court records to preserve. In 1989 the province of Quebec decided that it would retain the records of some criminal cases and destroy others. Cases that go to the Quebec Court of Appeals are retained, plus a systematic sample of all cases. The policy also permits any member of the public to suggest additional cases to be retained; however, according to the archivist responsible for the judicial archives in Quebec, the archives has "not yet received a single additional selection in any transfer for eight different judicial districts during the last ten years . . . the provision for additional selection is in fact a dead-letter provision." The Quebec policy also retains a small sample of audio recordings of court proceedings; objects that were used as exhibits are generally not retained unless they have "good potential for exhibitions." Trials in Quebec are not videotaped.[7]

The German court system, like that of Canada, places the main responsibility for criminal tribunals with the state (lander) governments. The state court files "are administered by the prosecutors (Staatsanwalte) and, if no longer needed for legal or other administrative purposes, transferred to the state archives." The federal archives is responsible for the records of the supreme court, but the records of appeals to the supreme court, once the appeal is completed, are returned to the state prosecutors and not retained at the Federal level. The cases handled by the supreme court that are not appeals (in other words, cases of original jurisdiction in the federal system) may be transferred to the federal archives, but the archives is not required to retain them all and may make a selection of case files if it chooses to do so. The records of the courts from the GDR (German Democratic Republic, commonly known as East Germany, which existed from 1949 to 1990) are a special case. These records are in the custody of the federal commissioner for the Stasi files and are administered under the special constraints of the 1991 Stasi Records Act that governs that body.[8]

In 2003, the Council of Europe issued a policy on archival retention of electronic documents in the "legal sector." It recommends that member states "ensure that the legal norms regulating archiving are applied also to electronic documents."[9] This suggests that, as courts in Europe increasingly adopt electronic systems, the electronic court records will be retained using the same archival retention criteria that are currently used for paper systems.

National Experiences: Prosecutors' Records

The second part of a nation's machinery of justice is the office of the state prosecutor. Like the records of the courts, the records of state prosecutors' offices are very large in quantity. In civil law states, the records of the prosecutors are very substantially duplicated in the records of the court to which the prosecutor submits the case. In common law countries the prosecutor's records contain a large quantity of unique material that is not found in the court records, including correspondence within the government and with outside individuals and organizations, depositions, administrative forms, drafts of prosecution and appellate memoranda, reports, technical and scientific analyses, newspaper clippings, maps, photographs, and all varieties of audiovisual items. Electronic databases have been used for years in managing the case files, and large and sophisticated document management systems designed especially for litigation practices have been marketed for several decades.

A government's general records law typically covers the records of the government prosecutors. This means that general records disposal principles are likely to apply to the offices of the prosecutors, leading to the regular and routine destruction of "housekeeping" records such as records of travel and transportation, procurement of goods and services, financial management, personnel administration, and similar files common to all governmental offices. It also means that the archives of the prosecutors' offices are usually transmitted to the national archives service; a recent review of 25 European countries in the European Union showed that only Greece does not transfer the records of the Ministry of Justice to the national archives.[10]

National prosecutors handle both civil and criminal cases and may also handle other legal matters such as constitutional cases. The criminal cases vary greatly in subject or content. Only the most serious and exceptional cases handled by a general state prosecutor approach the complexity of the usual case at an international criminal court.

Nevertheless, there are some national practices that may be useful in considering the disposition of the records of the prosecutors' offices within the international criminal courts. The most famous special prosecution in the United States was that of the Watergate Special Prosecution Force, which investigated corruption in the administration of President Richard M. Nixon. The records of that prosecution, and those of a number of special prosecutors that followed in the last quarter of the 20th century, were transferred to the national archives as soon as the prosecution was completed. The retained records of the special prosecutors comprise virtually all the records of the prosecutors, even some "housekeeping" records, and include paper, electronic, photographic, and sound recording formats.[11]

In the early 1980s the U.S. National Archives studied the U.S. Department of Justice litigation case files. The Archives decided to retain "virtually all civil rights case files" as well as those "relating to various forms of discrimination." A "substantial portion" of the case files relating to national security matters, including files on treason and espionage, are preserved as well as all "major cases relating to prosecution of public officials for misconduct in, or misuse of, office."[12] All physical types of materials within these cases are preserved. In other words, the records of the types of cases prosecuted in the international tribunals would be saved under this plan.

The National Archives of the United Kingdom reports that the records of the crown prosecutors are not usually preserved in their entirety. "Only records that were presented to the court are likely to be preserved at present," wrote a government records manager. "Evidence that was collected by the prosecution but not presented to the court will not ordinarily be preserved."[13] In France, if a case file in the court is saved, the corresponding prosecution file is saved.[14] In Germany, as the prosecutors choose the court files for retention they also save the analogous prosecution records for the state archives.[15]

National Experiences: Investigators' Records

Like the records of the prosecutors, the records of investigations are massive, including extremely heterogeneous materials that are swept up by the investigators in their efforts to obtain evidence for the prosecutors. Sometimes the investigators obtain business records, personal papers, photographs, and a variety of other documentary materials from non-government sources. Investigators may also amass quantities of physical objects that may or may not become part of the evidence entered into court. Extensive electronic tracking systems, case management systems, document management systems, and scanning systems can be found in investigating agencies.

Also like the records of the prosecutors, the records of state investigative bodies usually are covered by governmental records act and are likely to end up in the national archives. In the same European survey mentioned

above, only Poland does not deposit the records of the Ministry of the Interior (a usual place for the investigating body to be found) in the national archives.

The most expensive review and appraisal in U.S. archival history was the appraisal of the records of the Federal Bureau of Investigation in 1981. Conducted under court order, the review resulted in two large volumes of findings and disposition rules for every classification category of investigative records that had been established through 1980.[16] A sample of case files within each category were reviewed for their value as sources of information about the internal operations of the FBI and as sources of information about prominent or notorious individuals, major organizations, important events, or social and economic conditions. The archives decided to retain a sample of case files from each category and rules were written for retaining the records in each category. In addition to the sample of case files, the archives decided that all exceptional case files should be retained, an exceptional case defined as one "of such substantive richness and detail that it stands alone as a primary historical source."

National Experiences: Detention Records

Prison records are also common to national records systems. They are voluminous, but tend to be more homogenous than either prosecutorial records or investigative records, reflecting the regimented operations of penal institutions. Archives tend to save fewer prison records at national levels than either investigation records or prosecution records.

The records of the U.S. federal prison system that are retained by the national archives include case files of "notorious offenders" as selected by the Bureau of Prisons for transfer to the archives. The archives also maintains an index of released inmates, as well as records documenting the administration of the federal prison system and the architecture of prisons. The only extensive sets of records for individual prisons are those of the U.S. penitentiary in the state of Washington, which includes, among other records, seventy years of prisoner commitment logs and five years of a visitor register.[17]

The United Kingdom retains both administrative records of the management of the prison systems and some records of individual prisoners. The archival records of the Prison Commission and Home Office Prison Department contain registers of prisoners and habitual criminals, photograph albums, minute books, visitors' books, and similar records from various prisons through 1950, sample files of prisoners convicted of capital offences between 1936 and 1984, and headquarters material on the management and treatment of prisoners between 1901 and 1973.[18]

Canada appears to save more prison records from the Correction Service of Canada than either the U.S. or the U.K. do from their prison systems. Records for many correctional institutions appear in the list of holdings of the National Archives, including "administrative and operational records relating to inmate management welfare, parole service, special projects, documentation about committees, conferences, general operations logbook and claims against the crown, inmate grievances and complaints, programs about parole discipline, security, equipment and inquiries, transfers, visits and correspondence, health care, operational security log books, duty rosters and keeper reports." Canada also retains records of many district parole offices. Like the U.S., Canada retains selected individual case files on famous prisoners. These files "generally include correspondence, reports, a brief description of the crime committed and the sentence imposed, documents relating to the granting of parole and other official penitentiary material relating to a prisoner's conduct during his term of incarceration."[19]

National Experiences: Files of Judges

Every government must decide what it considers its official property. National archival laws typically define what are considered government records; documents that fall outside those definitions may be considered non-record as well as, potentially, documents that a person can take away when he or she leaves government employment. The legal definition of a government record, as noted above, usually covers the offices of prosecutors, investigators, and prison officials, among others. It may or may not cover the records of the court and, therefore, may or may not cover judges.

In the United States, justices of the Supreme Court traditionally take their office files with them when they leave the bench. The handling of the papers thereafter varies but most are now preserved. Thirty-eight justices have deposited their papers with the U.S. Library of Congress's Manuscript Division. Justice Harry Blackmun's papers were opened for research in the spring of 2004, five years after he died. The Blackmun files, 600 feet (185 meters) in length, include, according to his biographer,

not only detailed records of the business the court conducted during the 24 years he served there, but also memos and annotations that reveal Blackmun's own efforts to grapple with the issues presented by the thousands of cases he encountered. The record of his personal responses to the briefs and arguments in many of the cases indicates a kind of interior monologue that ranged across the court's docket. His papers tell an intensely personal story even as they open a window on a period of Supreme Court history that is in many ways as pertinent today as it was when he and his fellow justices were trying to understand and respond to a changing world.[20]

The length of time a justice thinks is appropriate for closure varies greatly from justice to justice. For example, Justice Thurgood Marshall's papers were opened immediately after his death in 1993, while the papers of Justice Byron White, who died in 2002, are closed for 10 years after his death. Chief Justice Warren Burger's papers were donated to the College of William and Mary in Virginia and are closed for 31 years after his death in 1995. Justice Sandra Day O'Connor, who has just retired from the court, is leaving her papers to the Library of Congress and making some of them available with her permission. After she dies the files on an individual case will remain closed so long as any justice who participated in the case is still on the court.[21]

The papers of the judges of lower U.S. federal courts are not consistently retained. A few find their way into the holdings of the national archives mixed in with court records, while others are given to manuscript repositories or simply destroyed. The director of a history project in a court of appeals found that of 25 judges who had retired, the papers of only eight could be located, of which five were in archives or manuscript collections. He noted, "A judge is appointed for life; and what all too often happens, the judge dies while in office, sometimes quite suddenly, and the papers are boxed immediately, taken to the family, and quite often, the widow is moving from a large house to a small apartment, and the papers are destroyed."[22]

The pattern of disposition of judges' papers is slightly different in Canada, with a bias toward destruction at all judicial levels. According to the archivist in charge of judicial archives in the Centre d'archives de Montreal, the documents in judges' chambers

but not forming a part of the case files or judgment books . . are considered private papers rather than public ones. Judges are therefore free to dispose of them as they prefer and most judges tend to destroy them, in order to preserve professional discretion . . . A very few judges have voluntarily donated their private working papers to us or, in the case of the Supreme Court justices, to the Library and Archives of Canada.[23]

National Experiences: Records of Defense Counsels

The records of defense counsels are not records of the court or government, as are the records of the prosecutors, although as we have seen in Section 1, in some international criminal tribunals the registrar's office supports the defense counsels. Assuming that the defense counsels will take their records with them when their service as counsels before the tribunal is over, it may be helpful to look at the practices of disposition of lawyers' files in general. It is very difficult to determine how many such bodies of records are saved in national systems, because nongovernmental defense lawyers can donate their records literally anywhere.

The notion of donating the papers of a defense counsel to an archives or manuscript repository for retention runs up against the traditional question of lawyer-client privilege. Yet some defense lawyers do donate their records, as famous U.S. criminal defense attorney Alan Dershowitz has just done, giving 800 boxes of records to the Brooklyn College archives.[24]

Legal historians and lawyers with an historical interest have become concerned that the files of lawyers, including defense counsels, are not retained. In 1991 the Organization of American Historians formed an ad hoc committee to work with the American Bar Association to formulate guidelines governing future policy on retention of and access to lawyers' files. The committee pointed out that the records in a case file are both the property of the client and the general work product of the attorney and "provide an important window to our past." The committee urged that American Bar Association's Code of Professional Responsibility be interpreted to permit responsible deposit of attorney records.[25] After a decade of discussion, the American Law Institute revised its authoritative "Restatement of the Law Governing Lawyers" to say:

> A lawyer may cooperate with reasonable efforts to obtain information about clients and law practice for public purposes, such as historical research, when no material risk to a client is entailed, such as financial or reputational harm. A lawyer thereby cooperates in furthering public understanding of the law and law practice.[26]

International Experiences: International Military Tribunal - Germany

The international military tribunals held at the end of World War II are usually cited as precedents for the tribunals that have been formed since 1990. The earlier tribunals were, however, significantly different in composition and, therefore, in the disposition of the records. Nevertheless, it is worth a brief review of the disposition of the records of the prosecutions in both Europe and in Japan.

In the autumn of 1943 the Allies of World War II established the United Nations War Crimes Commission. The commission sat in London, with a branch in Chungking, China. On August 8, 1945, representatives of the United States, the United Kingdom, France, and the USSR signed the London Agreement establishing the International Military Tribunal (IMT). The agreement specified that the IMT would consist of one judge and one alternate judge from each of the four nations, the first trial would take place in Nuremberg, Germany, and each of the four countries would appoint a chief prosecutor. Prosecution staffs for each chief prosecutor gathered evidence (often seized German government records) and conducted interrogations.[27]

At the conclusion of the IMT, the official records of the trial were placed in the custody of the International Court of Justice in The Hague, Netherlands.[28] These records consist of 35 linear meters of paper records and 1942 metal discs representing about 775 hours of recorded sound (presumably the court proceedings).[29] Each of

the national prosecutors took his records to his country; in at least the United States and the United Kingdom, these records are now in the respective national archives.[30] The records of the national prosecutors include textual records, photographs, sound recordings, and motion pictures; originally they also included captured German records, now returned to Germany and microfilm copies substituted. Some objects that were used as exhibits were retained, such as a canister of Zyklon B now in the U.S. National Archives. The U.S. prosecutor's records for the IMT trial amount to 429 linear feet (132 linear meters), 77 rolls of microfilm, 2560 photographs, 58 reels of motion pictures, and 2024 sound recordings.[31]

In addition to the IMT trials, the Allies agreed that each of the four occupying authorities in Germany could establish tribunals in its own jurisdiction for the trial of accused war criminals. The records of the U.S. tribunals and prosecutors for the trials between 1946 and 1949, amount to 1263 linear feet of records, 312 rolls of microfilm, more than 2000 photographs and 6000 sound recordings of the trial proceedings. The records include those of the administration of the tribunals, the evidence control unit, the interrogation unit, the apprehension and location unit, trial teams, and records of the Berlin branch office. Another 9 linear feet of textual records exist from the Advisory Board on Clemency for War Criminals, including case files and working files on the cases heard by the board.[32]

International Experiences: International Military Tribunal – Far East

The International Military Tribunal for the Far East (IMTFE), established by a proclamation on behalf of the United Kingdom, the United States, and the USSR, operated from 1946 to 1948. The records of the proceedings in the U.S. National Archives consist of 74 linear feet of paper records, 61 rolls of microfilm, 756 photographs, and 12 reels of motion pictures. The records include minutes, transcripts of proceedings, indexes, exhibits (both entered and rejected), "documents compiled by the defense but not offered in evidence," transcripts of conferences between judges and attorneys ("proceedings in chambers"), journals, dockets, papers, pleadings, and the official trial records.[33]

The prosecutor's records are more than seven times as large as the records of the proceedings, amounting to 538 linear feet and 170 rolls of microfilm plus one motion picture and 44 photographs. Some of these records are clearly duplicates of the court records, but the unique records are the correspondence of the chief prosecutor and the office records of the staff attorneys, case files, indexes, records relating to witnesses, evidence (both prosecution and defense), and reference files.[34]

Summary

This brief review of national practices provides some helpful benchmarks to use when we appraise the value of the records of the temporary courts. First of all, the nature of the case is key to deciding whether to save the court file. In the nations surveyed, the type of case handled by the temporary tribunals would be saved. Second, the retention of the records of prosecutors and investigators often parallels the retention of the court files: if the records of the case are saved in the court, the prosecutor's files on the same case are also saved. The administrative records of the prosecutor's offices and the investigator's office, however, are usually destroyed under the government's general records policies. Third, fewer prison records are saved than those of courts, prosecutors, or investigators. At minimum, however, records of especially important individual prisoners are retained, along with records relating to the policy of prison administration and "inmate management welfare." Fourth, the papers of judges and defense attorneys, considered their personal property, are recognized as important for the public's understanding of the law and law practice. Fifth, the records of the two International Military Tribunals, saved in

various locations around the world, are voluminous: even some housekeeping records are retained. Finally, if an archives decides to save a case or a series of files, all physical types are retained: paper, audiovisual, and electronic.

Having now reviewed what records exist in the temporary courts (Chapter 1 above) and what archives generally are saving of comparable national records (this chapter), we can turn to the question of who are the potential users of tribunal records and what records they want to use.

Endnotes

1 For example, in the federal district court case against the men who broke into the Democratic National Committee offices in the Watergate in 1972, beginning a series of events that led to the resignation of President Richard M. Nixon, the objects entered into evidence were transferred to the National Archives along with the records of the case.

2 Email, Thomas Brown, archivist, Center for Electronic Records, National Archives and Records Administration, 2005-07-15.

3 Michael Hindus, Theodore M. Hammett and Barbara M. Holson, The Files of the Massachusetts Superior Court, 1859-1959: An Analysis and a Plan for Action. Boston: G.K. Hall and Company, 1980.

4 Email, Henri Zuber, Chief of the Archives Service, Ministry of Justice of France, 2005-07-19.

5 Email, Rod Ward-Horner, Records Management Department, National Archives of the UK, 2005-07-25.

6 Supreme Court of Canada Fonds R927-0-X-E. http://data4.collectionscanada.ca/netacgi/, accessed 2005-07-14.

7 Email, Evelyn Kolish, archivist supervisor of judicial archives, Centre d'archives de Montreal, 2005-01-17, 2005-07-18, 2005-07-19; Evelyn Kolish, "The appraisal and sampling of court records in Quebec: Taking stock after ten years of experience," paper at Congresso internacional de excelencia judiciaria, 2004-011-16, copy in author's possession; Report of the Interministerial Committee on Court Records, Montreal, 1989; English edition (abridged) translated by Jessica Pottier and revised by Evelyn Kolish, 1991.

8 Email, Klaus Oldenhage, Bundesarchiv, 2005-07-15; Johannes Legner, "The Federal Commissioner for the Records of the Ministry for State Security of the Former German Democratic Republic," Key Institutions of German Democracy, American Institute for Contemporary German Studies, 2003 (7).

9 " Recommendation Rec(2003)15 of the Committee of Ministers to member states on archiving of electronic documents in the legal sector," adopted 9 September 2003.

10 Survey summary results provided to author by Victoras Domarkus, national archivist of Lithuania.

11 Guide to Federal Records in the National Archives of the United States. Washington: National Archives and Records Administration, 1995, Record Group 447, Records of Independent Counsels, and Record Group 460, Records of the Watergate Special Prosecution Force.

12 Appraisal of Department of Justice Litigation case Files: Final Report. Washington: National Archives and Records Administration, 1985, p. 29.

13 Email, Rod Ward-Horner, Records Management Department, National Archives of the UK, 2005-07-25.

14 Interview, Henri Zuber, Archivist of the Ministry of Justice of France, 2005-04-12.

15 Email, Klaus Oldenhage, Bundesarchiv, 2005-07-15.

16 "Appraisal of the Records of the Federal Bureau of Investigation: A Report to Hon. Harold H. Greene, United Sates District Court for the District of Columbia, Submitted by the National Archives and Records service and the Federal Bureau of Investigation," November 9, 1981, amended January 8, 1982. 2 volumes. A classification category in the FBI file system would be, for example, involuntary servitude and slavery (class 50), foreign counterintelligence – Russia (class 105) or crime aboard aircraft (class 164).

17 Guide to Federal Records in the National Archives of the United States, op. cit., Record Group 129, Re-

cords of the Bureau of Prisons.

18 Records of the National Archives, Home Office HO336, Prison Commission PCOM 2, 7, 8, 9.

19 Library and Archives Canada, Correctional Service of Canada fonds R942-0-X-E.

20 Linda Greenhouse, "The Evolution of a Justice," New York Times Magazine, April 10, 2005, p. 30

21 "Handling of Papers Varies," New York Times, 2004-03-04, p. A17.

22 Testimony received from Rayman Solomon, Director, History Project, U.S. Court of Appeals, Seventh Circuit. Public Hearings, Chicago, in Anna Kasten Nelson, ed., The Records of Federal Officials: A Selection of Materials from the National Study Commission on Records and Documents of Federal Officials. New York: Garland, 1978, p. 174.

23 Email, Evelyn Kolish, responsible des archives judiciaries, Centre d'archives de Montreal, to author, 2005-01-17.

24 "Dershowitz's Clutter is Brooklyn College's Treasure," New York Times, June 22, 2005, p. A20.

25 Report of the Ad Hoc Committee on Access to Lawyers' Files, Organization of American Historians, "Historians and Access to the Files of Lawyers," March 7, 1994, http://www.h-net.msu.edu/~law/access.htm, accessed 2004-02-25. The recommended language by the Committee made specific reference to depositing the papers in an archives or institution, but this was not adopted by the American Law Institute.

26 American Law Institute, Restatement of the Law Third: The Law Governing Lawyers (St. Paul, Minnesota: American Law Institute Publishers, 2000), Section 60, A Lawyer's Duty to Safeguard Confidential Client Information, Comment H, p. 467. The Reporter notes on Comment H, "No authority specifically on point has been found" and recommends notice of intent to disclose be given to the client or to the executor if the client is dead.

27 U.S. National Archives, Record Group 238.3, Records of the Office of the U.S. Chief of Counsel for the Prosecution of Axis Criminality (OUSCCPAC)

28 International Court of Justice, Rules of Court, Article 26 Registrar, The Registrar shall " (n) have custody of . . such other archives as may be entrusted to the Court [The Registrar also keeps . . the Archives of the Trial of the Major War Criminals before the International Military Tribunal at Nuremburg (1945-1946), entrusted to the Court by decision of that Tribunal of 1 October 1946; the Court authorized the Registrar to accept the latter Archives by decision of 19 November 1949]."

29 Th.A.G. Steemers, Preservation Consultant, National Archives of the Netherlands, "Damage survey on the condition of paper documents in the Nuremberg Archives," 3 April 2003; Karin Westerink, Dutch Institute for Images and Sound, to International Court of Justice, 24 February 2003; copies in possession of the author.

30 For the United Kingdom, see National Archives series WO311, Judge Advocate General's Office, Military Deputy's Department, and War Office, Directorates of Army Legal services and Personal Services: War Crimes Files 1940-1953. 681 files.

31 U.S. National Archives, Record group 238.3, Records of the Office of the U.S. Chief of Counsel for the Prosecution of Axis Criminality (OUSCCPAC).

32 U.S. National Archives, Record group 238.4, Records of the Office of the Chief of Counsel for War Crimes (OCCWC); 238.5 Records of the Secretariat for U.S. Military Tribunals, and 238.6 Records of the Advisory Board on Clemency for War Criminals, Office of the U.S. High Commissioner for Germany (OUSHCG)

33 U.S. National Archives, Record group 238.7, Records of the International Military Tribunal for the Far East (IMTFE)

34 U.S. National Archives, Record group 331.40, Records of the SCAP International Prosecution Section

Chapter 4: Users and Records of the Tribunals

Who Are the Future Users of Tribunal Records?

"I'm writing a biography of Charles Lindbergh," the researcher tells the archivist, "and I want to see the FBI file on the Lindbergh baby kidnapping." This is a perfectly reasonable research request for use of the records, but one that was never anticipated by the harried investigators who compiled the evidence the file contains: they were looking for a kidnapper, not a biographer. The request shows what happens to records over time: they move from active records created and received by a working office to carry out its activities to inactive records in an archives that are used by researchers in inventive ways to find information for research topics. Research uses change over the years, as new topics and different research strategies allow researchers to formulate new questions to be researched in old records.

Archivists say that records have primary value for the creating institution (in the example above, the FBI to investigate the kidnapping) and secondary value for everyone else (the biographer). All records have primary value—that is, the value that records possess, by virtue of their contents, for the transaction of the business that gave rise to their creation. Not all records have any appreciable secondary value for persons other than the original user, however. A travel voucher, for example, is valuable during the period of travel and while the expenses incurred during the trip are being paid and the audits of the trip are being completed. The likelihood that anyone else would want to see the travel voucher years later, although theoretically possible, is in reality remote.

Primary values can be of short or long duration. While the travel voucher is a record with a primary value of very short duration, the investigative records backing a prosecution may have very long primary values. As several staff members of the International Criminal Tribunal for the Former Yugoslavia point out, the records assembled by the ICTY's office of the prosecutor potentially could be used in prosecutions in the Balkans for thirty more years. World War II prosecutions, using records from the 1930s and 1940s, were still going on in 2005, they noted.

If a researcher does not want a record for its primary purpose, why would he want to use it? Usually for one of two reasons: to find evidence of what the organization that created the records did or to use information about persons, places, things, or phenomena that has been accumulated by the creating entity. The first, the evidential value of the records, focuses on how the organization worked: for example, how did the investigators find that piece of evidence? How did the prosecutors decide on one charge instead of another? What was the process by which the court entered into witness protection arrangements? The second, the informational value, includes everything else that might be learned from the records.

Users and Primary Values. Identifying the potential users of the records for their primary values is relatively easy: the current actors and their successors in function. The successors of the current tribunals—judges, prosecutors, and registrars—will need the records in various circumstances. First, persons who have been indicted but not apprehended by the time the tribunal closes may subsequently be arrested. At the ICTY either Ratko Mladic or Radovan Karadzic or both may not be tried by the completion date. When these persons are apprehended, someone will need to prosecute and judge them, and the records that led to the indictment will have to be available. The international community already faces this situation with persons who were indicted by the Serious Crimes Unit in East Timor and have been taken into custody since the Special Crimes Unit and the Special Panels closed. Second, there are continuing legal matters that affect the persons who have been convicted. As a person appeals for a review of sentence, petitions to be allowed to return home to die, or seeks a rehearing, the records will need to be available for review and use. As David Crane, former prosecutor in Sierra Leone, points out, the "youth of the defendants" means that they will be seeking legal recourse for decades and the prosecutors will need to have

access to the "untainted" records of the cases.[1] Third, further evidence may surface that, when added to the evidence already in the prosecutor's files, would support an indictment. Again, the successor prosecutors will need to have access to the original evidence to make this judgment. Fourth, witness protection must be managed over time. If a witness, whether a protected witness or person who testified without formal protection, is intimidated, is put in jeopardy, or in other ways needs the protection of the successor to the registrar's victims and witness unit, the case file on that individual and the records of the protections promised must continue to be available.

Just as the prosecutors, judges, and registrars need the records for continuing functions, so too do the defense lawyers. Several practitioners, seeing the possibility of continued litigation in future tribunals or in national courts, noted the need to use the tribunal records to defend clients in future litigation. Whether a defense counsel is defending an accused while the tribunal is sitting or whether he is petitioning a successor court or defending another client in a national court, the defense will need access to the tribunal records to the same extent that the defense had access while the tribunal existed.

Finally, although most administrative records have relatively short primary uses, personnel records continue to have value so long as the persons who are the subjects of the records are due benefits. Proof of employment, retirement credits, pension payments, and insurance coverage are all documented through personnel records, which must be maintained for the lifetime of the person covered.

Users and Secondary Values. Identifying the potential users of the records for their secondary values is more complex. Through interviews with potential users and by drawing on the experience of archivists with other judicial records, it is possible to predict the future research use of tribunal records. At least six groups of users have specific and distinct research interests. First, are the persons who are interested in establishing a similar tribunal and who want to learn from the records of previous courts; this is often referred to as a "lessons learned" use. These may be employees of the United Nations, itself, representatives of governments, activists from universities or NGOs, or aggrieved parties. Second are the victims and their surrogates and heirs, who want to use the records to learn what the prosecutors knew about their fates or the fates of their loved ones. Third, and closely related to the use of records by victims, are the persons who are interested in using the records to memorialize an event, create educational materials, and engage in civic discussions. Fourth are the lawyers, law professors, and law students who are interested in the history of jurisprudence, the development of international criminal law, and the history of particular litigation. Fifth are the journalists and documentary filmmakers who are researching current stories that have roots in the past or producing perspective pieces. Sixth are the academics, such as historians, political scientists, and sociologists, who are interested in the history of a trial, a community, a conflict, or of the United Nations. Not all of these groups will be interested in all of the records of a tribunal, but each of them will find something of value to use, as indicated below.

Future tribunals and courts. Even though the International Criminal Court is now operating, interest in the particularized international courts does not seem to be lessening. Independent tribunals or hybrid courts are currently under development or in discussion in Burundi (a special chamber and a truth commission), Cambodia and Lebanon (tribunals), Afghanistan (court and truth commission) and even again in East Timor (tribunal). The United Nations mission to Burundi that recommended establishing a truth commission and a "Special Chamber within the Burundi court system" explicitly recognized the important links between current courts and future courts, saying, "the experience gained in establishing parallel judicial and non-judicial accountability mechanisms in Sierra Leone and East Timor would be helpful in determining the relationship between the Truth Commission and the proposed judicial accountability mechanism."[2] Michael Hartmann, formerly an international prosecutor with the Kosovo courts, agrees, writing that there is value in examining the Kosovo experience of the international judges and prosecutors "primarily to see the possible disadvantages and potential pitfalls such a comprehen-

sive intervention can hold, as well as the 'blind alleys' explored."[3] ICTY deputy prosecutor David Tolbert says the historical value of the tribunal "is not just what happened in the region but how to run an international tribunal. The historical record is one of our biggest assets."[4]

Some observers believe the International Criminal Court may also benefit from the work of the temporary courts. Judge Geoffrey Robertson of the Special Court for Sierra Leone thinks the Sierra Leone records would be important to the work of the ICC, particularly the precedent-setting decisions of the appellate court.[5] Tom Moran, an attorney who worked at both ICTY and ICTR, wrote that administrative memos, proposals for internal procedures and similar records should be kept "so that they can be used for a lessons learned study. There should be no reason for the ICC or any other body to re-invent the wheel if the ICTY/ICTR already has looked at the problems."[6] Tolbert, too, thinks the way the ICTY handled evidence will be "very interesting" to the ICC.[7] Ewen Allison, an attorney based in Washington, DC, who has worked as a legal researcher for the War Crimes Research Office at American University, says there is "a point which I don't think ... can be emphasized enough":

The Special Panels [in East Timor] applied rules adapted straight from the Rome statute for the International Criminal Court, its rules, and the Elements of Crimes document. Also, Special Panel judgments look at the drafting history of that Statue for guidance. Thus, anything that happens at the Special Panels will be persuasive authority when the gavel hits the block in The Hague. (Not controlling authority, true, but nothing to sneeze at, either!)[8]

Michael Scharf, a law professor and co-founder of the Public International Law and Policy Group, an NGO that provides pro bono legal assistance to states in transition and war crimes tribunals, makes a further point. He says that "all tribunals like to apply a consistent body of law," and in order of priority look to Nuremberg, ICTY lower, ICTY appellate, ICTR, Sierra Leone Special Court, and the tribunals of East Timor. Their decisions, he says, "become persuasive precedents to other courts."[9]

Individuals affected. Individuals who were affected by the events investigated by a tribunal will use its records for three general reasons: to find out what happened to family and friends, to explain to others (such as grandchildren) what happened to the family, and to determine what recompense may be owed. Some victims hope that they find a small clue, something the investigators did not understand or that the prosecutors chose not to use, that will help them determine the fate of a loved one. Unfortunately, the records of the international tribunals are not likely to yield much for this type of inquiry. As Aloys Habimana, who works for the major Rwandan rights organization, rightly says, "Trial proceedings taking place at the international level will never tell individual survivors where the remains of their relatives were buried. Trials will also not tell them why the world, with full knowledge of the extermination plans, left them alone to be butchered."[10] And yet the right to search the records and make that determination for oneself is crucial to closure for some individuals, as Holocaust research has repeatedly shown.

Using the records to find information about what happened to yourself, in order to validate your experience and share it with others, usually will only take place when years have passed and a new generation without direct experience of the events is growing up. Grandchildren often are interested in knowing what happened to a grandparent, for example, and are distant enough from the event—in a way their parents were not—that research and confirmation becomes emotionally possible. Lepa Mladjenovic, a counselor who works with women victims of war violence in Belgrade, says, "Confirmation of the facts by the ICTY is therefore one of its major functions—providing the conditions for the feeling of being validated."[11] That validation continues through the use of the records of the tribunals.

Finally comes the question of reparation, restitution, and recompense. Paul Shapiro, director of the Center for Advanced Holocaust Studies at the U.S. Holocaust Museum, says, "There is a tension between saving documentation for scholarship and saving documentation for personal history." He makes the useful point that there may be monetary reasons for saving court records because that "documentation may be important for [future] compensation, as it has been for Holocaust cases." The Museum is now looking at records from the Berlin prosecutor's office, some 170,000 case files, and they are interested in the files whether or not the prosecutor took the case to court. "In Holocaust cases," he says, "court records have become the greatest repository of information."[12]

Local communities. Just as individuals seek to integrate the events of their traumatic pasts into their lives, so, too, do communities need to understand the events that changed community life. They do this by commemoration, memorialization, and ceremony such as the marking of the tenth anniversary of the slaughter at Srebrenica. Records provide the raw material for the work of the memorializers; as Mladjenovic argues, "The legal and historical narrative of events established by the ICTY becomes the narrative of the victims' community."[13] But records also provide the raw material for sometimes uncomfortable looks into the events that occurred. Historian Jan Gross, for example, used trial records and transcripts of investigations for his book on a massacre during World War II in a small town in Poland, a publication that caused great pain among members of the community even though decades had passed.[14]

Natasha Kandic, the formidable woman who directs the Humanitarian Law Center in Belgrade, asked rhetorically, "What will happen with the documentation, what will happen with the information on the perpetrators after the tribunal closes?" She answered that it must be "used for the process of justice" in the region and must be used to transfer knowledge of the "hard truths" of the past.[15] Echoing Kandic's emphasis, Nina Bang-Jensen of the Coalition for International Justice, a now-closed NGO that supporting the international war crimes tribunals for Rwanda and the former Yugoslavia and the justice initiatives in East Timor, Sierra Leone, and Cambodia, says that deciding the disposition of the records of the tribunals provides "an opportunity for the UN to correct its biggest mistake concerning the tribunals—the failure to fully appreciate that the first and most important audience for the tribunals' work should always be the people of the local communities and regions where these crimes occurred."[16]

Scholars of law. David Scheffer, a former U.S. Assistant Secretary of State for War Crimes and currently a law professor, reports "overwhelming" student interest in the tribunals.[17] The liveliness of the publications, the number of conferences and special projects carried out by law schools, and the welter of websites that have sprung up on all aspects of war crimes and international criminal law serve to confirm his viewpoint. Scheffer thinks that this is not a fad, that the academic interest in the jurisprudence of the international criminal courts will go on "forever." Law professor Diane Orentlicher agrees, noting that tenure is being granted in some university law programs on the basis of work in tribunal jurisprudence. Scheffer further notes that, because prosecutors make an "intellectual construct" of the investigative materials provided by the investigators, understanding prosecutorial strategies will require research into both investigative and prosecutorial records, and understanding prosecutorial strategies is a key interest to scholars of law.

Journalists. Although journalists usually work with current events, certain documentary filmmakers and commentators, both print and broadcast, use records in their work. Visual materials are especially important to these users. Some journalists want only the moving image because they want to provide oral commentary over it. Others will use snippets of sound, either with the associated image from videotape or with an entirely different image, or with the words being spoken simultaneously shown in writing on the screen.

Historians. Many observers, including a striking number of lawyers who have worked for one or more interna-

tional tribunals, argue that a principal purpose of the tribunals is to establish an historical record. This tendency goes back to the Nuremberg trials, which Robert Kempner, one of the U.S. war crimes prosecutors, described as "the greatest history seminar ever held."[18] Attorney Michael Scharf says that one of the primary reasons for a war crimes trial is the "objective of creating an historical record" that will discredit old versions of history.[19] Mark Osiel, who has served as a consultant to the prosecutors of General Augusto Pinochet and at ICTR, says flatly, "Clarifying the historical record is one purpose of such prosecutions."[20] At the ceremony swearing in the first international prosecutors for independent Timor Leste, the Prosecutor General said that "the prosecution of further trials at the Special Panels will be important to Timor Leste as the trials represent an historical record of what actually occurred in Timor Leste in 1999."[21] Lawyers are clear that they are not historians, and some argue that the courtroom record distorts as much as it clarifies. But they insist that the records of the tribunals are a legacy for future historians.

Michael Hindus, who conducted a seminal study of a state level court in the United States, writes, "It is nearly impossible to separate the social and political history of the state from its legal history."[22] The study of the court records of Quebec echoes that idea, saying, "The memory built up over the years by Quebec courts is, by virtue of the quantity and quality of the information in it, an important source of knowledge and understanding of the nature and workings of not only the justice system, but also of the social, economic, political and cultural history of Quebecers. Starting out as a memory of the courts, the body of documents gradually became a societal memory, and with time, assumed the form of a legacy, a common heritage, whose use for scientific purposes can give us greater knowledge and a better understanding of human beings and our society today."[23]

The types of historians that might use the tribunal records are almost limitless: biographers, local and national historians, political and legal historians, historians of international affairs. Jerry Fowler, the director of the Committee on Conscience at the U.S. Holocaust Museum, thinks the basic historical question that records of the courts could help answer is, "What could outside actors have done?"[24] In the emerging field of history of international intergovernmental organizations, the records will provide important evidence of how the United Nations carried out its mandates.

The American Historical Association, at its 2004 convention, held a session on war crimes trials as sources for writing history. Historians of Romania, Hungary, Czechoslovakia, Poland, and Germany who had used trial records and records of police and prosecutors in their research participated. They were well aware of the limitations of the records, particularly those of the trial proceedings. Benjamin Frommer bluntly said that the evidence in the documentary records from trials is "polluted" in two ways: politically, as political actors have a clear aim to use a trial as a history lesson, and juridically because of the constraints both of proving guilt and innocence and of the limitations inherent in following the rules of the courts, such as the paragraphs under which the individual can be charged and the rules of evidence. Still, Frommer said, the records of the police and the prosecutors, the evidence and the trials, are the "best evidence for what happened in the dark period of Czech history." His colleagues agreed.[25]

If these are the major categories of future users of tribunal records, then what records do these users want? And is it possible to extrapolate from today's articulated needs to the as-yet-unstated needs of future users?

What Records Will Future Users Want?

Records are retained to be used. If a record is unlikely to be used, either in the near term or in the foreseeable future, the justification for saving it is low. Some interest in the records is immediate, while other interests develop slowly and appear only years after the records have been created. Ken Cmiel, a recently deceased history

professor and director of the University of Iowa Center for Human Rights, said, "Use will occur in phases. In the short term the users will be people personally affected, lawyers doing research, and social scientists. In the longer-term the users will be historians."[26] In other words, the use of the tribunal records for their primary values—the use by the courts and their successors—ends when all the affected persons die. Thereafter it is the secondary users who prevail.

The records that are needed for continuing use by successor bodies are principally those of the office of the prosecutor (particularly the evidence and the work product relating to best evidence), the records of the proceedings, the records of witness and victims' protection, and the personnel records of tribunal staff. These correspond to the continuing functions of future prosecutions, management of incarceration, witness protection, and personnel administration.

Records with secondary value for other users are somewhat different from those needed by the successors to the tribunals. These researchers, for example, have little interest in the personnel records or in the details of witness protection arrangements. The interests of the general researchers are shaped in several ways. First of all, interest in particular bodies of records depends upon the researchers knowing that the records exist and are preserved in archival custody. Second, interest in records is affected by the access policy adopted for the archives; researchers are more likely to use records where there is a clearly defined access policy, with either the possibility of immediate access to the records or access following a review process. Finally, researchers who know the records exist and know what access policy controls them will judge whether the content of the records is pertinent or crucial to their research interests. The first two of these factors are within the control of the archives, but the third is wholly a decision by the researcher.

It is possible to get an early sense of the general research interest in the records of the tribunals by asking potential users what records they would want to use and by looking at past patterns of research in similar records in national archives. As the previous section discussed, many national archives provide access to judicial, prosecutorial, investigative, and penal records. In the report on the litigation files of the U.S. Department of Justice, the authors write that experience in providing reference service on litigation case files "shows that nearly every use of the records involves individual files relating to a specific incident, person, or case."[27] That almost surely is true of the use of the records of the national courts as well and perhaps is true of the use of most records of prisoners. However, research into the war crimes trials of the post-World War II period appears to use all extant records. Although many studies focus on the person or a particular trial, a large number try to evaluate the work of the postwar courts as institutions and assess the impact of their jurisprudence.

Potential users interviewed confirm the interest in and importance of the records of the court in the largest sense. When asked what records should be saved, the first reaction of many people is, "Keep them all." After a bit of discussion, most people—but not everyone—say that "housekeeping records" can be destroyed. Researchers assume that the official records of the formal proceedings in the courtroom, in whatever is the official format and including exhibits, should and will be retained. Beyond that, consensus on keeping or destroying any kind of record is hard to find.

But will researchers use records in all formats: paper, electronic, audiovisual? Practicing attorneys in particular are interested in using electronic records that could be delivered to their office computers and were much less interested in using paper or any format that would require them to go to the records rather than have the records come to them. Christopher Keith Hall of Amnesty International writes, "All records should be scanned and put into a searchable format."[28] David Scheffer, speaking for legal scholars, says, "There is enough on the web right now to keep everyone busy, but the question is when the original records become available for research use."

He, however, believes that all types of records—audio, video, electronic, and paper—are "vital" for scholarship.[29] Cmiel noted that for historians "paper and online records will be used more than anything else; tape (audio or video) far less. If the records are online, users will use them that way." [30]

The following is a summary of responses to the question of what tribunal records ought to be saved, including comments on physical format, obtained through interviews and email correspondence. Taken as a whole, the reactions show the breadth of interest in tribunal records. And they show how difficult it will be to make appraisal judgments that will satisfy all potential users.

Records of Proceedings

Law professor Michael Scharf is interested mostly in the pleadings and the records of proceedings in the chambers and less in the records of the prosecutors and investigators that are not used in court. Scharf thinks the courts should "get rid of the housekeeping records and save the rest."[31] Likewise, historian Ken Cmiel, agreeing with Scharf that housekeeping records could be destroyed, thought that the paper records of proceedings should be saved. He also argued that it is "especially vital to have elaborate finding aids online."[32] Paul Shapiro of the U.S. Holocaust Museum is not so sure of the value of all the proceedings. "The only two trial proceedings that have been of great interest to scholars were the IMT and Eichmann trials," he says. "Court proceedings per se are less used than the evidence presented to the court."[33]

Audio and Video of Proceedings. The potential research use of audio and video records is controversial. Scheffer, as noted above, wants them saved, as does Ewen Allison.[34] Allison argues:

The tapes are valuable as a cross-check against transcripts, but more importantly, audio conveys voice inflection the way nothing else can. . . . I'd retain tapes in all languages. There is no telling which translation had an actual impact on a given actor. Linguists would probably appreciate preserving the opportunity to compare translations, too. I'd retain all versions, redacted and verbatim. There may be times when a particular redaction is at issue. Also, it would be useful for anyone who wants to study the pattern of redactions, such as if there is a question about excessive secrecy. Perhaps after several years, when threat of retribution seems unlikely, it would be enough to keep just the verbatim records.

Michael Scharf, asked about the potential use of the audio and video tapes of the trials, said that he and his students would "only use records that are available online." Ken Cmiel thought it would be "ideal" to keep all the tape of the court sessions, but, he says, "Documentary filmmakers and journalists will use tapes; tape is too clumsy for use by historians."[35] Paul Shapiro argues that the tapes that have been redacted for "public consumption" are not needed, but "scholars need the full records in all languages."[36]

Three research centers in the Balkans, the Sarajevo-based Centre for Research and Documentation, the Zagreb-based Dokumenta, and the Belgrade Humanitarian Law Centre, believe that the video record of the proceedings is vital. They have joined forces and resources and are having a copy made for each of them of the public use version of the courtroom proceedings of all trials at the ICTY. That action, which the centers see as securing "the important documentation of historic importance," demonstrates as no other action has the centrality of the audio-visual record to the communities affected.[37]

Evidence Introduced in Proceedings. Matcheld Boot-Matthijssen, who was a member of a defense team at ICTY, remarked, "As a researcher or defense counsel, I want to look at both the evidence [from a completed trial] entered and the evidence excluded. If you consider it very strange that a piece was excluded, you want to know

why."[38] As noted above, Shapiro of the U.S. Holocaust Museum agrees, saying, "Court proceedings per se are less used than the evidence presented to the court." He goes on to urge that evidence be saved because "people use the evidence to establish who knew and did what when." [39] Historian Benjamin Frommer notes there is a difference between evidence collected for trials and the transcript of the trial itself and both are important for understanding.[40] And artifacts introduced as evidence have potential for use in commemorative and educational exhibitions.

Records of Nonjudicial Proceedings

Speaking from the point of view of a participant, Judge Geoffrey Robertson said that the records of the plenary conferences of the Special Court for Sierra Leone, especially the early ones, were very important to retain because at those meetings the basic policies and procedures were developed. Later conferences, he said, were "more mundane."[41] These records would be useful to both the legal scholar and the practitioner looking at lessons learned.

Records in Judges' Offices

Attorney Tom Moran is interested in retaining "intra-Chambers memos and drafts of opinions." He recognizes that, for example, the Supreme Court of the United States does not keep this kind of document but many justices do and "often they publish after their deaths. This is a value judgment in which someone has to balance the historical value of the documents versus the need for open communications among judges."[42] Ewen Allison wrote, "Practitioners would value insights into the thinking of various judges. As we know from what happened when Thurgood Marshall's papers were made available through the [U.S.] Library of Congress, lawyers can make good use of knowing what a person on the bench is concerned about. Arguments can then be couched in the terms that would most appeal to him."[43] Boot-Matthijssen agrees.[44]

Records of Prosecutors and Investigators

Ewen Allison says that "from a jurisprudence point of view, perhaps the most valuable documents would be those that reflect the thinking of judges and attorneys . . . when the legal arguments are compared, we develop the complex and nuanced view of the law and related controversies that even a well-crafted judgment might fall short of." He emphasizes, "The informal things such as brief letters and emails, marginalia in drafts, meeting notes, and whatnot will reveal more of the thought of the players than the legal memoranda would."[45] Boot-Matthijssen also thinks the notes of investigators, judges, and prosecutors should be saved because "scholars will need those notes, both historians and journalists, to complete the historical record," although they are "not needed for legal analysis."[46] Historian Cmiel was especially concerned that prosecution and investigation records are saved, calling them simply "profound records." "It would be very disappointing," he said, "if we were left without the records of the decision-making and politics that go into the trials."[47] Jan Gross, the historian of Poland, thinks the transcripts of investigations "usually" are more interesting than court transcripts.[48]

Artifacts Not Introduced in Proceedings but in Custody of Prosecutor. Lawyers disagree on whether the objects not used in court as evidence should be retained. Artifacts, Scheffer says, are not needed for his scholarly research, but "it would be necessary to have a good photo record of each of the objects and then a record of where the object now is in the world."[49] Allison notes that objects that "weren't used in evidence at trial might still be so used in purely national trials" and suggests that prosecutors, investigators, and defense attorneys decide which are worth retaining. Boot-Matthijssen emphatically believes the objects should be retained: "Objects not used in trials can clarify that something terrible happened. They shouldn't just be thrown away. Objects have been very useful in helping remember the World War II camps. Scale models should be saved for public information purposes."[50]

From an historian's perspective Ken Cmiel wrestled with the idea of keeping artifacts:

You don't have to keep all of these but make selective decisions. I like the idea of a digital photographic record. I am not sure about the necessity to keep scale models: there is a practical tradeoff. I absolutely think much of the stuff would have museum and educational value. I don't like the idea of adding to the archivist's burden, however. Maybe items could be given to museums in the countries of origin if you had a comfort level about the museum and the people running it and the political regime. The most important interest will be in the local site. The archives should keep the minimal amount of items that have explanatory power.[51]

The U.S. Holocaust Museum has struggled with the question of how many artifacts of what kind are enough. Paul Shapiro says the Museum tries for "comprehensive representation." For example, it saves every variant of a yellow star but not every yellow star. The Museum collection is a combination of truly unique items and representational items.[52]

Records of Defense Lawyers

If there are any available records of defense attorneys, Ewen Allison believes "they should be preserved as well."[53] Kelly Askin of the Open Society Justice Institute says simply, "Without them we have only half the story."[54] The question of how to control access to the defense materials was recognized as a problem by a number of respondents, but there is general agreement that the preservation of the records would be desirable.

Records of the Registry

Allison also thinks that records that show the relationships between local and international actors are important, as well as the records showing how a court was set up and run. In the area of outreach, he would keep records "relating to the providing an outward face of a tribunal," along with both the formal position papers and the "casual e-mails." Attorney Tom Moran pointed out that "outreach office materials could be useful in the future when it comes time to bring witnesses from another country or to convince national officials to cooperate."[55] Allison would retain some of the housekeeping records, noting, "Records on personnel decisions will doubtlessly provide insights into the dynamics of making a court work." He thinks that records of "major capital investments," such as the investment in information technology, should also be retained.[56]

Records of Detention Facilities. Historian Cmiel argued in favor of keeping detention facility records, pointing out that "historians learned a lot about Nuremberg people from the prisoners' interaction and the records of that."[57] Shapiro of the U.S. Holocaust Museum also is interested in the retention of some records relating to punishment and incarceration: "What happens to perpetrators after the fact is the subject of great public interest in Holocaust studies."[58]

Summary

The broad interest in preserving the records of the tribunals and hybrid courts is undeniable. Using the records that the tribunals already make publicly available can satisfy the research needs of some users, but other users will need access to the original records and working files. As a very rough outline, we might say the following:

*Future tribunals will find much of the information they require on the websites of the courts or in published materials.

*Individuals affected will need access to the records of the prosecutor and the investigators to determine the fates of loved ones and to seek recompense; they may be able to use the public proceedings for inter-generational validation.

*Communities affected will want the information that is already on the websites and publicly available, such as the public versions of audio and video recordings of the proceedings, and memorials and museums will likely want to use artifacts, whether or not entered as evidence.

*Legal scholars will want the records of the prosecutor and perhaps the investigators as well as the proceedings in whole.

*Journalists are likely to be interested primarily in proceedings and audiovisual evidence; some journalists will, of course, be interested in a variety of records from all parts of the court.

*Historians and other academic users will want correspondence and investigatory materials from all parts of the tribunal; they are less likely to want the audiovisual materials (unless they are studying very particular issues of nonverbal communication or translation, for example) and the artifacts.

From this review of researchers and their interests, whatever records are retained and whenever the records will be made available, a research public is waiting to use them.
That leads us to both the question of what records should be saved and the question of what access should be provided to the saved records. These are the subjects of the next two chapters.

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Chapter 5: Appraising Records of the Tribunals

Previous chapters have identified the records that are known or believed to be in the custody of each of the five courts, some international practices in retention of similar records in national governments, and a review of the interests of researchers in the records. Before an appraisal of the records can begin, one more element of information is required: who is the legal owner of the records; that is, who can decide what to do with them. In this chapter, the legal status of the records of each court is considered. Then a general appraisal of records that are common to all courts will be discussed, followed by a discussion of special appraisal issues in each of the five courts and recommendations for specific actions. Finally, a number of general recommendations for administrative processes related to records are outlined.

Legal Status

ICTY and ICTR

As we have seen, the Security Council under its Chapter VII powers created both of these tribunals. The records of the tribunals are records of the United Nations and fall under the records control of the United Nations Secretariat, as do all records of the Security Council and its subsidiary bodies.

The staff members of the United Nations, both in the secretariat and in the tribunals, have been clear and consistent in their interpretation of the rules governing the future disposition of the records of the tribunals. The archives of the tribunals are archives of the United Nations, they confirm, and when the tribunals close the records will become the responsibility of, and be transferred to, the United Nations Archives and Records Management Section. Any alternative arrangement would require a decision by the Security Council, because the tribunals' records are records of a security council-created body.

When records come into the custody of the UN Archives, their preservation and management are governed by a 1984 UN administrative instruction and a 1991 secretary-general's bulletin on the United Nations Archives.[1] Alternatively, the secretary-general can issue a "special instruction" at variance from the 1984 and 1991 instructions to cover the transfer of a specific body of records, as was done for the deposit of the records of the UN's Guatemalan Commission for Historical Clarification. Because these administrative issuances are so crucial for the future management of the tribunal records, it is worth examining them in some detail.

UN administrative instructions on archives. The 1984 administrative instruction, ST/AI/326, provides basic definitions and authorities. Records are "all documentary materials, regardless of physical type, received or originated by the United Nations or by members of its staff, excluding United Nations documents."[2] Archives are "those records to be permanently preserved for their administrative, legal, historical or informational value." The legal title to the records rests with the United Nations: "All records, regardless of physical form, created or received by a member of the secretariat in connection with or as a result of the official work of the United Nations are the property of the United Nations." Transfer of records from secretariat units to the archives is "mandatory" and the units "shall not dispose of records in their possession without the written authorization of the Chief of the Archives Section." For units away from headquarters, "in the event of the closure of such office, its archives and records shall be transferred to the United Nations Archives Section." The UN Archives "shall maintain, preserve and repair" the archives and "shall arrange and describe" and "prepare finding aids to make them available for use."

An important authority given to the archives in the 1984 instruction is the right to dispose of records transferred

to the archives "with the agreement of the Secretariat unit concerned." This permits the archives to reexamine the records they took in and, with the passage of time, if the archives believes that the records "have no further administrative, legal, historical or other informational value" they can be destroyed.

The conditions of access to records in the custody of the UN Archives are outlined in the 1984 instruction. After noting that UN personnel can have access to the records in the course of their official business "except to those subject to restrictions imposed by the Secretary-General," it provides guidelines for public access:

Members of the public may have access to (i) archives and records that were accessible at the time of their creation, (ii) those which are more than 20 years old and not subject to restrictions imposed by the Secretary-General, and (iii) those which are less than 20 years old and not subject to restrictions imposed by the Secretary–General, on condition that the originating office has given written consent for access.

For the records that are restricted, the administrative instruction provides a procedure for release. It says, first, that the secretary-general "or his authorized representatives" may at any time open the records they have restricted. However, all restricted records are either "automatically" declassified when 20 years old (if they are classified as "confidential" or "secret"; that is, lower level classifications) or are reviewed for declassification when 20 years old (if they are "strictly confidential" or "top secret"). If the records are not approved for declassification when 20 years old, they are to "be reviewed by the Archives for possible declassification every 5 years thereafter."

The 1991 bulletin "restates" several specific powers of the chief archivist of the United Nations. First, United Nations records "may not be removed from any United Nations premises or destroyed without specific written authorization from the Chief, Archives and Records Management Section." Second, the chief "shall determine which records have sufficient historical or other value to warrant their continued preservation as the archives of the United Nations." Third, the "Organization shall promote scholarly research concerning the United Nations and, to that end, make available to the public the archival material of the Organization, in accordance with prescribed conditions of access" as outlined in the 1984 instruction.

Special regime for records of the Commission for Historical Clarification. When the Commission for Historical Clarification in Guatemala was closing in June 1999, the secretary-general issued a bulletin setting out "a special regime for the management, utilization, preservation and disposition of the documents, records and other materials of the Commission for Historical Clarification" in the archives of the United Nations in New York.[3] The bulletin was the result of consultations between the UN staff members and the members of the commission. All transferred materials are sealed, except any records "specifically designated in writing by the Coordinator of the Commission as being for the public domain;" no such designation appears to have been made. Written authorization of the secretary–general "signed by the Secretary-General in person" is required to open a sealed container prior to January 1, 2050, "or until such date thereafter as the Secretary-General may specify." The decision to open the records to use requires the secretary-general to consider the stipulation in an earlier agreement that "[t]he Commission's proceedings shall be confidential so as to guarantee the secrecy of the sources and the safety of witnesses and informants."[4]

The Commission's records are in New York.[5] According to the Commission's chair, Professor Christian Tomuschat, "All the pieces of our archives that needed confidentiality were shipped to New York."[6] All records transferred to the archives are sealed, and no use—including no preservation activity—has been made of them. The UN Archives interprets the agreement to mean that they are not permitted to do archival work of any kind on the materials. Unless this interpretation is revised or the bulletin is amended, this complete seal will result in the destruction of records through neglect of preservation.

UN archives and tribunal records. During the past decade, staff members from the UN Archives have visited both tribunals and issued reports on their records systems, and staff members from the tribunals have come to New York to discuss records issues. The UN Archives has authorized destruction of records at the tribunals under the general records schedules, and it has approved some schedules developed in the tribunals for specific bodies of records. The working assumption has been that the records of both tribunals would be shipped to the UN archives in New York when the tribunals close.

In January 2003, the archives chief at ICTR assured the UN Archives and Records Management Section that the tribunal understood its obligation to deposit its original judicial records with the UN Archives, but he reported that the tribunal was exploring a plan to deposit "with 3rd party archives copies of public records only" and asked the archives to confirm with the UN lawyers "the legitimacy of deposition outside UN custody."[7] Subsequently, at the African Union summit in July 2004, the press reported that the ICTR prosecutor was "talking to the AU about setting up what he calls a legacy program that would involve the creation of tribunal archives to be made available to the public for educational purposes."[8] Subsequently, a draft memorandum of understanding between the ICTR and the African Union Commission proposed that ICTR begin a "phased transfer of ICTR's documentary archives to the African Union headquarters . . in June 2005," the records to include "digitized and other forms (information and documents recorded in written and electronic media—video cassettes, CD-Rom, etc.)." The draft memorandum states that "[d]epositing the archives at the headquarters of the African Union will spare African researchers the trouble of traveling all the way to the United Nations headquarters in New York to conduct their research." The memorandum is to "remain in force throughout ICTR's mandate which ends in December 2010;" it is not clear what the parties mean to have happen thereafter. The draft appears to encompass all ICTR records, but it had not been acted upon by early June 2005.[9]

Sierra Leone

The agreement between the United Nations and the government of Sierra Leone specified that the "archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable." It did not, however, specify the permanent custodian of the court's archives. In February 2005, Judge Geoffrey Robertson said the disposition of the records would be an issue that he supposed the judges of the court would decide in a plenary conference.[10] Since that time, representatives of the United Nations and the special court have had some discussions of the disposition of the court's archives. At least some United Nations staff members agree with Judge Robertson's belief that the Special Court will make the decision, reasoning that the treaty created the court as a new legal person and a legal person can decide what to do with its records.[11] How the views of the court's two founders, the United Nations and the government of Sierra Leone, will influence that decision remains to be seen.

East Timor

As discussed above, all the judicial institutions of East Timor were established by the United Nations and were transferred to the new government in May 2002. Although there is a theoretical argument that the records of those institutions during the UNTAET period are the records of the United Nations administration, that argument apparently was never made. Both the special panels and the Serious Crimes Unit created and maintained their files in the same way and in the same place, both before and after independence. It was only when the Security Council clearly announced the end of the UN support for the two institutions did the issue of the status of the records become clear.

The United Nations took the position that the records of the work of UN staff members with and for local authorities were the records of the local authorities, irrespective of whether the records were created during the period of UN government of East Timor or after independence. The judges of the special panels, concerned that the basic records of the cases should survive and be public, initiated a program to scan the key documents in each case file, copy them onto CD-ROMs, and provide copies of the CDs to the War Crimes Research Office at the law school at American University, the War Crimes Studies Center at the University of California, Berkeley, the Judicial Systems Monitoring Programme NGO, and to the United Nations. For each case, the scanned documents include a case information form, the final amended indictment or the original indictment plus a court order to show how the indictment was amended, significant interlocutory decisions, and the final decision. One case involving a minor had its documents anonymized, so that all the documents on the CD can be made available to the public in their entirety.[12] The result is that the United Nations has a copy of some of the records of the work of the UN-funded Special Panels, while the full original records are in the hands of the government of East Timor.

The records of the Serious Crimes Unit did not lend themselves to the relatively easy scanning solution that the judges found. First of all, the records of the SCU were much more voluminous than those of the special panels and most of them could not be made public, making anonymizing and copying almost prohibitively expensive. Second, the security council, acting at the urging of governments and NGOs who were worried about the long-term preservation of the SCU records, required the United Nations "in agreement with Timor-Leste authorities, to preserve a complete copy of all the records compiled by the Serious Crimes Unit."[13] Exactly what the Security Council meant by that statement was unclear. Did it mean every scrap of paper, the audio and videotapes, the correspondence between the prosecutor general and the deputy who headed the SCU, the administrative records and the physical objects? Or did it mean the evidence only or the litigation case files only? What did "in agreement with Timor-Leste authorities" mean? And who, in the end, would make the decisions on access to whatever copy the United Nations might hold, wherever it may hold it?

With its UN mandate near termination, the SCU decided to scan all the paper-based evidence it had collected and create a database containing the basic information about each scanned item. Color photographs in the evidence were copied onto separate CD-ROMs, databases of both evidence and case information were to be duplicated, and paper copies were made of the approximately 500 binders of litigation case files.

The original SCU records related to cases, including all original evidence, are in the custody of the government of East Timor. The United Nations took custody of the administrative records of the SCU, considering them a part of the records of the UN mission. Finally, the SCU prior to closure gave its website to the U.C. Berkeley War Crimes Studies Center (where the copy of the special panels CD-ROM also resides). According to the Berkeley announcement, the center agreed to "take over and maintain" the website, which "includes a database compiled by the SCU staff that provides information on all of the cases prosecuted in the Serious Crimes Unit."[14]

The agreement between the government of Timor Leste and the United Nations governing the preservation of and access to the SCU copies destined for the United Nations was signed in spring 2006, nearly a year after the copies were made. The agreement and its implementing instructions to the UN staff have not been made public, but it apparently specifies that the Timor Leste government will control access to the copies in UN custody. The UN staff views the UN copy as simply a backup copy for preservation purposes only, with the ultimate control over the documents residing in the hands of the Timor government.[15] The UN copy, held by the UN in Timor while the negotiations over the agreement dragged on, suddenly became dramatically important when the attorney general's office was looted in late May 2006 during riots in the capital, Dili, and the original SCU databases and some files were taken. Without the copy in the hands of the United Nations (now safely in New York), cru-

cial evidence would be irretrievably lost.

Kosovo

In June 2003, the United Nations Archives received an inquiry from the UN's records officer in Kosovo about the disposition of the UNMIK records. Responsibilities for certain civil administration functions were being handed to local counterparts, said the officer, and she wanted to know what to do. The archives, after seeking the advice of the UN Office of Legal Affairs, advised UNMIK that the basic principle for "ownership of the records is that records created in connection with the government of Kosovo (even those created by United Nations staff) would become property of local authorities. Those records created by staff who may have dual responsibility for UNMIK work and work with local authorities would need to be separated, with the UNMIK records returning to New York."[16] The problem is that the records were probably not filed in a way that makes such a separation easy.
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As discussed in Chapter 1, UNMIK includes UN staff as well as staff members from the European Union and from the Organization for Security and Cooperation in Europe. Inquiries to the latter two organizations about their plans for the Kosovo records were not answered, but a former staff member of the OSCE court monitoring project in Kosovo recalled, "OSCE in Kosovo did not see its records as part of the records of UNMIK. They were viewed as OSCE records and will be taken to OSCE at some point. EU records will probably go to the EU."[17]

It seems likely, then, that UNMIK records ultimately will be divided three ways—UN, OSCE, and EU. The UN records will be divided once again as the records of "work with local authorities" are given to the government in Kosovo. The UN mission records fall under the general authority of the United Nations Archives, as discussed under ICTY and ICTR above, and will be shipped to New York. The general records schedules and the special records schedule for field operations will be applied to the records at the time of shipment.

Appraisal and Recommendations, Records Common to Tribunals

Archivists use several approaches to describe what records to save and what records to throw away. One method lists every series of records in the institution and states whether to save it or to throw it away and, for those records to be thrown away, the date when they can be destroyed. Another method lists only those records to be saved (called a retention schedule), with any records not listed assumed to be thrown away. A third method lists those records to be thrown away with the assumption that all those not listed are retained or at least examined further. Each of these three approaches depends on good prior identification of all the records within the institution, which in general we do not have for the tribunals and hybrid courts.

Consequently, the approach that follows is a hybrid. First, the records that should be retained in all cases are listed. This does not, however, imply that the records not listed should be destroyed. Second, the records that can be destroyed are discussed. Then an approach to working through the rest of the records is recommended, and particular bodies of records from each court are considered and recommendations made. A master list of all recommendations is found following Chapter 6.

General Retention

Several types of records, common to most tribunals and hybrid courts, are always considered to be permanent. These include:

*All records of the official proceedings of all cases in both lower and appellate courts, including the pleadings, the evidence, and the official copies of the transcripts, rulings, and judgments. These records should be preserved in the format that the court deems to be official; at present, that format is usually paper. Evidence presented in formats other than the official format, such as audiotapes, videotapes, and objects, is permanent in that format. All tracking systems used to manage the proceedings are also permanent.

*One copy of published decisions.

*Records of the meetings of plenary bodies of judges, of judges and prosecutors, and of judges, prosecutors, and registrar.

*Records of the president and the vice president of the court.

*Records of the prosecutor and the deputy prosecutor.

*Records of the chief and deputy chief of investigations.

*Records of the chief and deputy chief of the office of the defense counsel.

*Records of the registrar and deputy registrar.

*Master set of policy and procedures manuals.

General Destruction

The records that are the principal candidates for large-scale destruction at international courts are the administrative records. When all primary use of the administrative records ceases and all audits and other internal controls are completed, what use could be made of these records by researchers? In the chapter on the ICTY in his book *For Humanity: Reflections of a War Crimes Investigator,* Richard J. Goldstone writes about the serious administrative obstacles he confronted when serving as prosecutor: travel issues, finance issues, procurement issues, hiring issues.[18] These conflicts and their resolutions will be interesting to historians. The former records manager of the ICTY makes an argument that the administrative records of the procedures for setting up the extensive court technology and maintaining it provide important information on the efforts required for a court to sustain a "technologically sophisticated environment."[19] And as we have seen in Chapter 4 above, at least one potential user advocated saving records relating to the "major capital investment" in technology.

The general problems of policy and procedures will surely be documented in the records of the registrar's office as well as the records of the various management committees and the court presidency, all of which would be preserved under the general retention recommendation above. There is no research need to save the detailed administrative records to preserve this history. On the matter of electronic systems, the details of setting up and maintaining systems quickly become outdated and are not useful for future courts. And there is no foreseeable research use for detailed administrative records of requisition, equipment management, and servicing.

Archivists usually manage the disposition of administrative records through a general records schedule. The United Nations general records schedules apply to the records of the ICTY and ICTR, while the UN mission records retention schedules (based on the UN general records schedules) apply to the administrative records of the East

Timor Special Crimes Unit and to the UN sections of UNMIK. A list of the 18 current general records schedule items is found in Annex 1.

The question is whether, given the very special nature of the international criminal courts and their records, there is any reason *not* to destroy the records authorized for destruction under the existing general records schedule authorities. In some cases there is.

Some parts of the United Nations general records schedule work well when applied to the courts. For example, the first six general records schedule items cover the basic administrative functions of finance, personnel, and procurement and are directly applicable to tribunal records. The next general records schedule item, number 7, covers records relating to "request for, allocation and maintenance of, space and facilities and security measures." This should be read to refer to changes within existing buildings, not to either the records of construction or the records of security policy, and it should not be applied to the records of detention centers. With that narrow reading, the destruction of requests to change a lock, move an office, or reconfigure workspace should not affect the permanent understanding of the physical settings in which the courts worked and records schedule item 7 can be applied. Finally, records schedule item 13, which authorizes the destruction of duplicate copies of UN official documents that are saved elsewhere in the UN system, is standard archival practice and appropriate for application to the courts.

The principal problem in the general schedules arises when the schedules cover types of records rather than functions. Schedule items number 8 through 11 cover working files, chronological files, reading files, and daily activities records. These may (or may not) be precisely where the basic information about a particular activity is found. While these records will be saved when created by persons holding the positions listed in the chapter above, all such records from other offices and staff members should be retained for evaluation by the archivists before making a final decision as to whether to retain or destroy.

The final five schedule items cover documents in electronic systems.[20] Three of them (numbers 15, 16, and 17) refer to electronic versions of records that can be destroyed under other general schedule items. These should be applied only to the items in records schedule items 1-7 and 13, as discussed above. They should not be applied to any other electronic documents. Records schedule items 14 and 18, which relate respectively to the electronic source for hard copies and the hard copy source for scanned items, should not be applied. The relationship between electronic and hard copies in the tribunals is much too complex to be handled in a simple instruction.

Examination, Selection, and Disposal of Other Records

Beyond the general approach detailed above and the court-specific recommendations below, many detailed and difficult decisions remain to be made. It is clear that the interest in the disposition of these records is intense. The tribunals and hybrid courts must be cautious about destroying too many records; it is wiser to retain a record that may or may not have future use than to destroy something and later explain endlessly why that was done.

Archivists who must appraise records located at a distance from the archives usually want to make the appraisal onsite to avoid incurring shipping charges for disposable records. In the case of the tribunals, however, the need for care in the analysis of the records suggests that a rapid, on-site appraisal will not be adequate. Instead, records that are not clearly disposable should be shipped to the archival storage facility for temporary storage. There the archivists can identify the series of records, examine the content of them and their relationship to other records in custody, and determine which records have sufficient legal or research value to warrant their continued preservation.

Because of the public interest in these records, it is important to make any future disposal of records as transparent as possible. Concerned parties should have an opportunity to voice their concerns about proposed destruction of specific records. One way to do this is to have the archives publish a notice of intent to dispose and give the public time to respond to the proposal. This procedure has two important benefits: first, it requires the archivists to be clear about what they are doing and why; second, it allows the public to express its views, thereby becoming a part of the process. After giving due weight to any comments received, the archives makes the final decision and publishes a notice of it.

Unlike national governments, the UN does not have an obvious place to publish such notices. The UN website or a part of it devoted to the archives of the tribunals and courts is one choice; another is to create a separate website for the international judicial archives or for the UN archives as a whole; a third is to create an electronic mailing list to which all proposals for destruction could be sent. A combination of website and list serves would also work, as would a combination of paper or FAX notices with an electronic notification system. In any event, the principle of notification is the important part, not the means by which it is achieved.

The ICTY, ICTR, and SCSL all have electronic document management systems maintained by the staff of the registry. As the years pass and certain records are eligible for destruction, whether in paper or electronic format, the question will be whether it is necessary to save the electronic metadata about the records after the records themselves are destroyed. One approach would be to delete all traces of the electronic records from the system, both the tracking information and the documents themselves, when the documents reach the scheduled date for disposal. For example, when a set of procurement records can be destroyed, the archives would destroy any paper records, the electronic documents, and the electronic tracking system for both electronic and paper documents. This means the information in the electronic document management system would track only the retained electronic documents and existing paper files. This reflects the usual practice in archives that when a series of records is destroyed, the finding aids to that series are also destroyed.

A final issue is the retention of the personnel records of the staff of the ICTY and ICTR and, if requested by the Special Court for Sierra Leone, its staff. The United Nations general records schedules relating to personnel matters assume that United Nations human resources department holds the official personnel records. The tribunals, however, have managed their own personnel records, and maintaining the evidence of employment is critical to everyone who has been an employee. Rather than maintain this body of records with the judicial archives, it is better to transfer them to another UN organization that will maintain them for personnel purposes. This could be the personnel office in New York or one of the UN organizations in Europe.

Nothing in either the general or the specific recommendations precludes the deposit of duplicate copies of publicly available (i.e., unrestricted) materials in archives and research institutions other than the archives holding the original records. Nor does it preclude the temporary loan of original materials for legal or educational purposes, the title of the loaned materials remaining with the archives.

International Criminal Tribunal for the Former Yugoslavia

The staff members of the United Nations' Archives and Records Management Section (ARMS) and the ICTY registrar's office cooperate closely on the management of tribunal records. ARMS staff members have prepared records disposal and retention findings and approved draft summary records schedules proposed by ICTY. Even so, a number of difficult, potentially controversial decisions on records retention have yet to be made. The recom-

mendations in this chapter focus on these open questions.

Judicial Records of the ICTY

Transcripts of Proceedings. Official transcripts are made only in English and French. There is no official transcript of the proceedings in the mix of languages spoken on the floor of the courtroom: although the proceedings are multilingual, the transcript is in a single language. For example, if a prosecutor asks a question in English and the witness answers in Albanian, the transcript will reproduce the prosecutor's spoken English of the question and the translator's spoken English of the reply but not the spoken Albanian of the witness. While it seems unusual to have official transcripts that do not reflect the speech of the courtroom participants, it is important to remember that the participants in a multilingual courtroom hear the proceedings through the voice of the translator. The transcripts, therefore, do reflect what the English and French speakers actually heard. They do not, of course, reflect what most of the witnesses and defendants heard.

Some transcripts are redacted for public disclosure. The paper transcript of the court session is the official record; an electronic version also exists. One complete copy of the transcripts in English and in French, in paper and electronic format, both complete and redacted, should be retained permanently. Duplicate copies of the official transcripts are found throughout the court, in the offices of judges, prosecutors, defense counsels, and the registrar's offices that serve the court. Some of these may be annotated as officials work with them. Any copy of the paper transcript in English or French that has been annotated should be retained permanently within the files of the office that made the annotations. All other copies of the transcripts in English or French, in judges' offices, prosecutor's office, or registry, can be destroyed when no longer needed for reference.

Videotapes of Courtroom Proceedings. Proceedings are recorded by "ISO" tapes ("isolated" tapes or direct feeds from the floor), which are combined in a master video edit and then redacted to produce a video edit backup for public use. The video edit includes private sessions, closed sessions, and ex-parte hearings that do not appear on the public use version. As of May 2005, more than 28,000 ISO tapes exist, plus nearly 10,000 video edits and over 8500 video edit backups, each of the latter in three different formats.

The use of videotape by the ICTY has had a significant impact on the international courts that followed. Its broadcasts are the single most important outreach instrument that the court has embraced. The video edits are important and should be retained as a record of the whole of the proceedings in the court and because it is the source for public use copy. The video edit backups (the public use copy) should be retained for public reference purposes until the public can use the full video edit.

That leaves the ISO tapes. These tapes provide views of the defendant, witness, prosecutor, defense attorney, and judges during every moment of the proceedings. Is it necessary to have a picture of the bench for every minute of every trial? Every prosecutor and defense attorney? Every witness? Every defendant?

The first case tried by ICTY, Prosecutor v. Tadic (Case No. IT-94—1-T) is important because it shows the initial working out of the courtroom practices and procedures. These are significant as documentation of the establishment of the court and international jurisprudence. At least equally significant, the first videotaped court session documents the shift in thinking: from the concept of the court as a place removed from the view of the general public to the belief that one of the most important means of establishing the legitimacy of the court's actions is to broadcast the proceedings. The tapes show the judges and attorneys, defendants, and witnesses coming to terms with the camera in their midst.[21] The ISO tapes for this trial should be retained.

For the subsequent trials, even the most avid trial historian is unlikely to watch hours of video isolated on either the bench or the attorneys. If we assume the ISO feeds from those two cameras can be eliminated, that leaves the question of whether to retain all the isolated camera feeds of the defendants and witnesses. The video edit should have the video of whoever is speaking in the courtroom; what it will not necessarily have is the demeanor of the defendant and the witness as they confront each other or the reactions of the defendant to statements by attorneys or judges. In the Slobodan Milosevic trial, for example, the intimidation of the witnesses by the defendant has become an issue. The former ICTY records officer noted, "[S]everal witnesses during the ongoing trial of Slobodan Milosevic, although sitting only a few metres from him in the courtroom, have literally turned their backs on him—something not necessarily reflected in the transcript."[22] Law professor Lawrence Douglas observes,

It is the most memorable aspects of a trial—those that live most vividly in collective memory—are the most juridically unusable or unstable. They are the moments when a witness suddenly collapses on the stand; when a documentary film startles a bored courtroom, when a prosecutor falters, overcome with emotion: moments that are memorable because spontaneous, startling, moving. They are juridically unstable because they disrupt and even challenge the legally scripted progression of the trial.[23]

Those "memorable aspects" may not be adequately documented by retaining only the video edit version, particularly for exceptionally important and contentious trials.

While every trial before ICTY is a major case, certainly Slobodan Milosevic is historically the central defendant that the ICTY has tried. If Radovan Karadzic and Ratko Mladic are tried, these might be cases of similar impact. In these cases, retaining the ISO tapes of the defendant and the witness would provide the evidence for the courtroom atmospherics that shaped the progress of the trial and its outcome.

The tribunal should retain as permanent records the video edit videotape of all proceedings, including private sessions, closed sessions, and ex-parte hearings, and the video edit backup (public use version) of all proceedings. In addition, all the ISO tapes of the first trial (Dusan Tadic) should be retained, and the ISO tapes of the defendant and witnesses in the trial of Slobodan Milosevic and, if they occur, the trials of Radovan Karadzic and Ratko Mladic should be retained. If it is not possible to identify easily the ISO tapes that focused on the defendant and the witness for these trials, then all the ISO tapes for those cases should be retained. All other copies can be destroyed when they are no longer needed for reference.

Audio Recordings of Courtroom Proceedings. As of May 2005, the audio recordings consisted of nearly 22,000 cassettes and 7500 FTR CDs. Recording on cassette was discontinued by mid-2004; currently two FTR CDs are used to record the floor and interpretation channels.

Audio exists of the floor language and of each of the languages of translation: English, French, Bosnian-Croatian-Serbian, Albanian, Macedonian. Given the practice of producing transcripts in only one language, the only record of the speech heard on the floor of the courtroom is the "floor" recording, either on cassette, CD, or videotape. The participants in a multilingual courtroom hear the proceedings in their tongue from a participant using that language and from the voice of the translator. It is reasonable to conclude that the most important information from a speaker—witness, defendant, attorney, judge—is found in the statement in the indigenous language in which it was originally made. That suggests that the "floor" recording is the most important future evidence for research use. The question is whether the recordings in every language for every minute of every trial need to be preserved for historical purposes.

How much of the sound recordings to preserve depends to some extent on what sound is retained on the video-

tapes and how good that sound quality is. Between 1994 and 2000, both the unedited and the public use version of the videotape carried only the sound of the floor language, and, in some cases, the English interpretation. This means that prior to 2001, the audiotapes are the only source for the interpreted language. Since 2000 four languages are on the video edit tape and all are edited and distributed with the video edit backup. Because the video has only four sound tracks, if the court is operating in four languages the "floor" language is not recorded in favor of picking up the fourth translation. That leaves the CD recording of the floor language as the only record of the actual speech; however, the audio CDs are never edited because the videotape carrying the language is the version used for the public release. Consequently, any time a researcher requests an audio recording it will have to be compared to the public use video tape to see whether the audio can be released. It is worth remembering that all the floor sound does exist on the videotapes, albeit on different tracks. Finally, the separate audio recording may be of higher or equal or lower quality to the sound on the videotape.

In some trials, controversies occurred over the translation of parts of the testimony; the only way to examine this would be to be able to compare the participant's spoken word with the translator's spoken word. Once these controversies have been resolved, however, is it necessary to keep each translation? Using the "floor" feed and the transcripts it would be possible to follow any oral proceeding in the original and in translated English and French.

As a lawyer remarked, "Audio conveys voice inflection the way nothing else can."[24] And while that is true, audio recordings are usually the least used format in an archives: the transcript of an audio recording will almost always be used in preference to the audio, and mixed audio and video is usually preferred to audio alone. Finally, the costs of managing and preserving audio recordings, whether in analog or digital form, are substantial.

As with the videotapes, the first trial and those of Milosevic, Karadzic and Mladic are the most historically important. If any audio with translation will be used for purposes of historical documentation, these cases would be the most likely. All audio ("floor," English, French, BCS, Albanian, Macedonian) of the first (Tadic) trial, the trial of Slobodan Milosevic and, if they occur, the trials of Radovan Karadzic and Ratko Mladic should be retained permanently. The "floor" audio recordings of all proceedings, 1994-2000, should also be retained.

ICTY should seek the advice of an audio specialist to determine whether the quality of the sound from the "floor" on the videotape is equal to the quality of the sound on the audio recordings. If the sound quality is better on the audio recordings from 2001 to the present, then the tribunal should retain permanently the "floor" audio recording of all proceedings, including private sessions, closed sessions, and ex-parte hearings. However, if the sound quality is the same on the audio recording and the videotape of the "floor" from 2001 to the present, then the "floor" audio recording of all proceedings, including private sessions, closed sessions, and ex-parte hearings should be permanently retained only if a videotape of the session does not exist, is defective, or does not carry the floor "language." All other sound recordings can be destroyed when they are no longer needed for reference.

ICTY Judicial Database (JDB). This database is a central resource for any research into the ICTY. It must be retained permanently. The tribunal demonstrated that the document storage in the JDB could be downloaded to and managed by the document management system (TRIM) used in UN New York, but in so doing major functionalities of the JDB would be lost. In the words of the deputy prosecutor, "It would be a shame to lose the front end of the judicial database."[25]

The major problem in preserving the JDB is that it was built within the ICTY; consequently, the long-term maintenance, migration, and preservation of the system could be costly. A serious problem in using the contents of the database is that a third of it is currently restricted; that means that the archives will have to manage the "extensive" permissions for access and, further, will have to manage the slow process of reviewing the closed material

to determine when the passage of time is such that the items can be released for research use. The ICTY should contract with an electronic archives specialist to do a complete review of the preservation options for the system.

Records of the ICTY Office of the Prosecutor

Electronic records systems. These include both tracking systems and databases of documentary evidence. All electronic records systems that are proprietary to the Office of the Prosecutor are permanent; the following are included as an example but are probably not exhaustive of the number of permanently valuable electronic filing systems that exist in OTP:

- *MIF database of evidence
- *Document evidence collection
- *Digital archives of audiovisual records
- *Index of witness statements
- *Index of documents obtained under Rule 70

Evidence Other than Artifacts. This evidence has been scanned and will be preserved electronically. Nevertheless, for evidentiary purposes, including possible future use in a court, the original materials must be retained even if the items have been scanned.

Two separate issues are the original documents obtained from governments in the region and items obtained under the confidentiality provisions of Rule 70. After all trials are completed, one option would be to send the originals back to the government of origin and substitute an official copy in the records. The confidentiality provisions of Rule 70 are more complex, but the records in question are probably copies not originals and the agreements with originating institutions control any further dissemination. The archives should retain the copies.

Evidence: Artifacts and Scale Models. As noted in Chapter II above, archives sometimes retain the objects (including scale models) used as exhibits in important cases, especially if the objects have value for educational and exhibit purposes. Scale models, for instance, are particularly good tools for explaining what happened at a site. Some of the objects in ICTY's custody have undeniable emotive power; some do not; some duplicate each other. All have electronic inventory control; they could be photographed and the photograph linked to the inventory.

The UN Archives has neither an exhibition area nor an educational program associated with it. A display area could be developed, of course, but even so it would be a very long distance from the Balkans where the impact would be most important. Donating the artifacts to any single institution would be controversial, and the United Nations could find itself in an uncomfortable situation if donated items were exhibited and interpreted in ways offensive to a particular group.

A safer course is to have the United Nations retain custody of the artifacts. Heirs could request that any artifact specifically linked to an individual be given to them and a judge could order the donation. The photograph in the evidence database would document the item and the database would be annotated to show the donation. All remaining artifacts would be available for loan to institutions for exhibitions over extended periods consistent with preservation of the item, with UN control over the interpretation of the item within the exhibition. Artifacts would also be available for use in any future trials.

Audio and Video Recordings of Interviews of Witnesses, Suspects, and Accused. These are primary evidence and source material for future histories. Even though the interviews have been transcribed and both paper and

electronic copies of the transcripts exist, the recordings have intrinsic value for research and should be retained permanently.

Records of the Commission of Experts. These records are essential evidence—the information base—upon which the United Nations Security Council decided to establish a tribunal. They must be retained permanently.

Records of Investigative Field Offices. The records may be largely administrative. The UN Archives staff should review them and apply the UN general records schedule, with the reservations as described in the General destruction section above. Any reports from field offices to the office of the prosecutor, information on the progress of investigations, and records pertaining to investigatory or local liaison activities are historically significant and should be retained permanently.

Records of the ICTR Support Unit. These records provide the evidence of the link between the deputy prosecutor in Rwanda and the office of the prosecutor in The Hague. Because this was an arrangement that did not succeed, the records may provide important information for a "lessons learned" study and should be retained permanently.

All Other Records of the Office of the Prosecutor. Two issues are important here: duplication between electronic and paper records and duplication between offices. Staff members of the prosecutor's office say that "almost everything" is electronic and "almost everything" is retained. Paper files do exist, and the question is whether all the documents that reflect the decision-making process in an investigation or a prosecution are indeed captured in the electronic system. It seems likely that at least some paper files have additional information, such as marginalia and notes. A prosecutor or an investigator may arrange his working file on a case or issue in a manner that provides insight into the way the case was developed and managed and how the litigating strategy evolved as the case progressed. Electronic storage, even within electronic file folders, retains the electronic documents and categorizes them, but it does not reveal the mentalities of the prosecutors and investigators as clearly as do the files kept personally by the individuals.

Duplication of records between offices is probably substantial. Yet a single document duplicated in two case files is part of two different contexts; if the case files are permanently valuable, so are both copies of the document. The more serious duplication is retention of duplicate copies of entire sets of items: complete sets of transcripts of witness interviews, for example, or complete sets of expert reports. If there are no annotations on these sets of items and if they are stored in the electronic system, then it is useful to retain one set of paper copies for convenience of reference and destroy the remainder of the duplicates.

Records of the ICTY Registry

The work of the ICTY registry is bifurcated. The administrative services division provides the tribunal with property management, security, personnel, procurement, and financial services, to name the most prominent functions. Many of the records created during the execution of these functions are covered by the dispositions established in the UN general records schedules. The second part of the Registrar's office, however, includes judicial and legal services and the records of these functions need to be considered separately. The following discussion concentrates on the issues surrounding the disposition of the latter records. Records of particular interest in the registrar's office include those of the victims and witness support services, press and outreach activities, the official tribunal website, the detention facility, and the management of the defense bar.

Records of the Victims and Witnesses Section. Witness protection and victim support functions are crucial for a

tribunal, and the records produced are sensitive, repetitive, and administrative. When the tribunal closes, the files on relocated witnesses need to be transferred to an office that can handle follow-up to the case if needed; the agreements with governments to accept relocated witnesses are permanent (they may be within the records of the registrar's immediate office rather than in the records of the section).

The records officer at ICTY has developed a records schedule for the records of this section. The general records of the section, both in The Hague and in the field office in Sarajevo, including statistical profiles, reports to funding bodies, policy and procedure documents, and public information files should be retained. In addition, the Sarajevo field office records documenting its work in establishing a network of social service providers and maintaining liaison with local groups and organizations are a resource for future tribunals to learn lessons of community relationships and should also be kept. The statistical database should also be retained.

Two bodies of records in this section are difficult to appraise: the individual case files and the "hotline" logs. Individual case files need to be maintained for the life of the individual to ensure that if the person is subjected to harassment or is the victim of a crime there is a record of the person available to the investigators. In other words, the records have very long value for primary use. Researchers cannot gain access to the case files while the victim or witness is still living, but the records would provide valuable evidence for future historians. For example, the files would help historians evaluate the performance of the witness in the courtroom by providing insight into the pressures brought to bear on him or her. Similar files have been used by historians examining controversial cases, such as the files on witnesses in the investigation into the assassination of U.S. President John F. Kennedy. The individual case protection assessment files should be retained.

Hotline logbooks are usually appraised based on the quality of the contents of entries and the usefulness of the entries as related to permanent files of the prosecutor or of the victims and witnesses protection office. Some hotline logs provide an overview of the kinds of issues, tips, complaints, and concerns that victims and witnesses, actual and potential, had; others record information that is too brief to be meaningful. The ICTY hotline logbook should be retained, even if it has terse entries, in order to obviate the suspicion that a record with potentially significant clues was destroyed.

All other records of the Victims and Witnesses Section can be destroyed at close of ICTY.

Records of Public Information and Outreach. Public information records are always a useful place for researchers to begin when exploring the records of an institution. Controversy has surrounded the ICTY outreach and public information program, with the ICTY criticized for taking too long to begin its outreach activities and investing too little energy in them. The records of these programs will provide the resources for a "lessons learned" study of the role of outreach programs in an international tribunal. Copies of media coverage of the court (print press, television, and radio), records of conferences and similar meetings, and reports to donors are all valuable for research on the programs of the court. The records of the field offices as well as the headquarters are useful.

Tribunal Website. All documents on the ICTY website should be found within the permanent records, making the website a duplicate source of information. "Snapshots" of the website taken throughout its life would show what members of the public saw when they logged on to it, but the importance of the ICTY website has not been its design or functionality but its content. The precise look and contents of the website as it existed when the tribunal closes can and should be documented by retaining screen shots of the layout and the site map. There is no reason to freeze the entire site as an electronic artifact.

The public will, however, expect the archives to maintain at least as much information on line as was available to

them at the time the tribunal closed. The archives might choose to use the ICTY website as the foundation for the archival delivery of services to the public; alternatively, it might import the information from the ICTY site to an archival website. In either case, information of only temporary value, such as job announcements, can be eliminated.

Records of the Detention Unit. Prison records are typically process records of penitentiary functions: ensuring security, admitting and releasing detainees, transporting, feeding, housing, providing recreation, admitting visitors, monitoring conversations. As such, they have little long-term research potential. The ICTY detention center retains the monitoring records of telephone calls for only 24 hours, so the type of research that has been done using the British tapes of conversations among detainees after World War II is not possible.

What is valuable here are the policy records of the management of the detention center, principally for the use of any future tribunal but also for historians investigating prisoner allegations of mistreatment during detention. While the records of the formation of detention policy are probably found within the permanent records of the registrar's immediate office, the records of the policy in operation should be in the files of the chief of the detention unit; the records of the office of the chief should be retained. Also, the basic records in the case file of each detainee, containing information on arrival and departure, correspondence, reports, and official documents relating to a prisoner's conduct and health during his term of detention, are the historical evidence of the detention of the significant individuals held in this facility and are permanently valuable. Finally, the records of construction and adaptation of the facility, if not found within the records of the Registrar's office, are important documentation, both as evidence of the evolving architecture of the detention facilities and the general conditions that existed for the incarcerated persons.

All other records of the Detention Unit should be reviewed for destruction when no longer needed for current operations or when the detention facility closes, whichever is earlier.

Records Relating to the Management of the Defense Bar. The relationship between the tribunal and the defense bar is sensitive and has been subject to public criticism, including by the bar. The appointment and release of defense attorneys, their fees, and the general liaison framework are important sources of evidence for the quality of representation afforded to the accused. Just as it is important to save the records of the prosecutors, it is important to save records of the defense.

The registrar may have the records of the liaison with the defense bar in his immediate office where they are already designated as permanent. If, however, they are held in any other office within the registry they must be saved irrespective of the disposition of other records of that office.

International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda benefits from the sustained work of its chief archivist and records staff in Arusha and from several support missions from the United Nations Archives in New York. The following recommendations for disposition, like those for the ICTY in the preceding section, are not meant to be comprehensive. Rather, the purpose is to highlight the difficult choices that need to be made on specific bodies of records. The United Nations' general records schedules that authorize destruction of records common to all units apply to the records of the ICTR, with the reservations as described in the General destruction section above.

Judicial Records of the ICTR

The archivist of ICTR concentrated on the appraisal of the key judicial records of ICTR. The July 2002 "Implementation Guide to ICTR Retention Schedule" provides the following principles to guide the preservation of the tribunal's records:

> "*Duplication of records is to be avoided at all costs.
> "*The CASE FILE of each accused [individual or joinder] in its entirety is to be retained permanently. The case file, correspondence file, decision file, appeal file, record book, exhibits, and transcript file are to be considered as the 'case file.'
> "*Only one set of the original and unredacted paper versions of the trial transcripts will be retained.
> "*Audio recording will NOT be retained or transferred to archival custody. . .
> "*Video recordings of the trial proceedings are to be transferred to UN HQ Archives ..
> "*Exhibits of each case are to be retained permanently."[26]

Transcripts. The basic decision to save only one set of the trial transcripts in each of the official languages is correct, but if a prosecutor or other staff member of the court has annotated a paper copy of the transcript, it should be retained within the files of the office that made the annotations. In other words, the ICTR should retain one complete copy of the transcripts in both English and French, and Kinyarwanda if the transcript has been made, in both paper and electronic format, in both complete and redacted versions. Any paper transcript that has been annotated should be retained within the files of the office that made the annotations. All other copies of the transcripts in English, French or Kinyarwanda, in judges' offices, prosecutor's office, or registry can be destroyed when no longer needed for reference.

Video Recordings. Video recordings exist both as unredacted and public use versions. A 2002 study of the ICTR audiovisual records projected that 12,790 videotapes would exist by December 2008, in two different formats.[27] Three soundtracks are provided on each DVCAM and the "floor" language is captured on a VHS recording. The tribunal is transferring its audiovisual recordings to digital format.

The archives should keep a permanent copy of the video recordings of all proceedings, including private sessions, closed sessions, and ex-parte hearings, both the complete and the redacted (public use) versions. The public use version is the reference copy for the foreseeable future and the archives needs to be able to provide it upon request.

Audio Recordings. Audio recordings exist both as unredacted and public use versions. By December 2008 they are expected to amount to 38,360 recordings. The 2002 study of audiovisual records cited above reported, "The video recording uses the same soundtrack feed that is laid down onto the audiocassettes; the soundtracks on the audio and the videotapes are therefore identical."[28] This appears to say that there is no difference in sound quality, making the retention of the audio unnecessary.

Although the general principles of the "Implementation Guide" quoted at the beginning of this section say that all audio is to be destroyed, that statement is amended in the body of text to say that for the period 1996-1999 before video recordings were made, the audio recordings are the only oral record of the court proceedings. In cases where no video recordings exist, the audio files WILL be kept; in 2002 the ICTR staff planned to transfer the audio from tapes to CD-ROM, a process that is underway as of autumn 2006.

The UN archives should retain permanently a copy of both complete and redacted versions of the pre-2000 audio recordings of all proceedings, including private sessions, closed sessions, and ex-parte hearings. The public

use version is the reference copy for the foreseeable future and the archives needs to be able to provide it upon request. Audio recordings that date from the period during which the video recordings were made can be destroyed when no longer needed for reference.

ICTR TRIM Electronic Database. Unlike ICTY, which built its own document management system, ICTR chose to use the same commercial package that is used by the UN Archives. The database of judicial records should be retained permanently.

Records of the ICTR Office of the Prosecutor

Relatively little has been made public about the nature and extent of the records of the ICTR Office of the Prosecutor. That is at least in part because most prosecutors work in Kigali, not in Arusha where the ICTR archivist is based, but it also probably reflects the natural desire of the prosecutor to strictly control his records. Consequently, the following recommendations are based on the types of records found in the ICTY prosecutor's offices; because these two offices once operated under the same prosecutor, the file types they create may be similar.

Electronic Records Systems. The prosecutor uses a commercial product, Zylab, for its evidence management system.[29] Whether this is only a tracking system or whether it is used for both tracking and managing scanned images of evidence is not known. The office of the prosecutor in Kigali may use TRIM for its document management system. Other separate electronic tracking systems may also exist, such as an index of witness statements. ALL electronic records systems that are proprietary to the office of the prosecutor are significant potential sources for research and should be retained permanently.

Evidence. The quantity and formats of the evidence collection in the custody of the prosecutor are unknown. All items must be retained in their original formats.

Audio and Video Recordings of Interviews of Witnesses, Suspects, and Accused. These are primary evidence and source material for future histories. Even if the interviews have been transcribed and both paper and electronic copies of the transcripts exist, the recordings have intrinsic value for research and should be retained permanently.

All Other Records of the Office of the Prosecutor. Two issues are important here: duplication between electronic and paper records and duplication between offices. Paper files surely exist, and the question is whether all the documents that reflect the decision-making process in an investigation or a prosecution are indeed captured in the electronic system. It seems likely that at least some paper files have additional information, such as marginalia and notes. Also, the manner in which a prosecutor or an investigator arranges his working file on a case or issue provides insight into the way the case was developed and managed and how the litigating strategy evolved as the case progressed. Electronic storage, even within electronic file folders, retains the electronic documents and categorizes them, but it does not reveal the mentalities of the prosecutors and investigators as clearly as do the files kept personally by the individuals.

Duplication of records between offices is probably substantial. Yet a single document duplicated in two case files is part of two different contexts; if the case files are permanently valuable, so are both copies of the document. The more serious duplication is retention of duplicate copies of entire sets of items: complete sets of transcripts of witness interviews, for example, or complete sets of expert reports. If there are no annotations on the items and if they are stored in the electronic system, then it is useful to retain one set of paper copies for convenience of reference and destroy the remainder of the duplicates.

Records of the ICTR Registry

As discussed in Chapter 2, the work of the ICTR registry is bifurcated. The administrative services division provides the tribunal with property management, security, personnel, procurement, and financial services, to name the most prominent. The records created during the execution of these functions are covered by the dispositions established in the UN general records schedules. The second part of the registrar's office is the judicial and legal services division, and the records of its unique functions need to be considered separately. The ICTR archives unit has determined that a "master set of all official Court Management Section correspondence including any external correspondence received for action" is permanent.

The following discussion focuses on records of particular interest in the registrar's office, including the records of the witness and victims support services, press and outreach activities, the official tribunal website, the detention facility, and the management of the defense bar.

Records of the Witness and Victims Support and Gender Issues. Within the office of the registrar, ICTR has both a witness and victims support section and an adviser on gender issues and assistance. Witness protection and victim support functions are crucial for a tribunal, and the records produced are sensitive, repetitive, and administrative. Records relating to gender issues are filed in class 15 of the ICTR administrative file plan and files on protection of victims and witnesses are under class 11; the witness and victims support has a separate TRIM database to manage its records.[30] The individual case protection files and the records relating to gender issues should be retained permanently.

When the tribunal closes, the files on relocated witnesses need to be transferred to an office that can handle follow-up to the case if needed; the agreements with governments to accept relocated witnesses are permanent (these records may be within the records of the Registrar's immediate office, not in the section records). The general records of the section, including policy and procedure documents and public information files should be retained. If, as ICTY does, the section operates a hotline, that should also be retained. All other records can be destroyed at close of ICTR.

Records of Public Information and Outreach. ICTR determined that outreach program records and "a set of press releases and statements and press clippings for research and reference purposes" are permanent. In addition, the tribunal should retain copies of radio and television coverage of the court and records of conferences and similar meetings.

Tribunal Website. All documents on the ICTR website should be found within the permanent records, making the website a duplicate source of information. "Snapshots" of the website taken throughout its life would show what members of the public saw when they logged on to it, but the importance of the ICTR website has not been its design or functionality but its content. The precise look and contents of the website as it existed when the tribunal closes can be documented by retaining screen shots of the layout and the site map. There is no reason to freeze the entire site as an electronic artifact.

The public will, however, expect the archives to maintain at least as much information on line as was available to them at the time the tribunal closed. The archives might choose to use the ICTR website as the foundation for the archival delivery of services to the public; alternatively, it might import the information from the ICTR site to an archival website. In either case, information of only temporary value, such as job announcements, can be eliminated.

Records of the Detention Unit. Prison records are typically process records of penitentiary functions: ensuring security, admitting and releasing detainees, transporting, feeding, housing, providing recreation, admitting visitors, monitoring conversations. As such they have little long-term research potential. What is valuable here are the policy records of the management of the detention center, principally for the use of any future tribunal but also for historians investigating prisoner allegations of mistreatment during detention. While the records of the formation of detention policy are probably found within the permanent records of the registrar's immediate office, the records of the policy in operation should be in the files of the chief of the detention center. The records of the chief of the detention unit, including all policy records relating to detention facility operation and inmate management should be retained permanently.

The basic records in the case file of each detainee, containing information on arrival and departure, correspondence, reports, and official documents relating to a prisoner's conduct and health during his term of detention, are the historical evidence of the detention of the significant individuals held in this facility. These prisoner case files should be retained permanently. Finally, the records of construction and adaptation of the facility, if not found within the records of the registrar's office, are important documentation, both as evidence of the evolving architecture of the detention facilities and the general conditions that existed for the incarcerated persons. The records of construction and major facilities renovation should be retained permanently.

All other records can be destroyed when they are no longer needed for current operations or when the detention facility closes, whichever is earlier.

Records Relating to Management of the Defense Bar. The relationship between the tribunal and the defense bar is sensitive and has been subject to public criticism, including by the bar. The appointment and release of defense attorneys, their fees, and the general liaison framework are important sources of evidence for the quality of representation afforded to the accused. Just as it is important to save the records of the prosecutors, it is important to save records of the defense.

The registrar's immediate office may have the records of the ICTR liaison with the defense bar; alternatively they may be among the records of the lawyers' management section. In either case, they need to be retained permanently.

Special Court for Sierra Leone

The Special Court for Sierra Leone adopted its basic administrative procedures from the ICTR. It should be possible to use the appraisal of the records of the ICTR as a general guide to the appraisal of the records of the SCSL. The major difference, however, is the size of the court and its records. Unlike the ICTY with 161 persons indicted or ICTR with 59 persons in detention as of October 2006, the Special Court has four cases with ten accused. That means that the quantity of records is correspondingly smaller; it does not mean, however, that the records are less important or that appraisal is not required. It simply changes the scale.

Because the SCSL is a treaty body and not a part of the United Nations system, the UN general records schedules, which set out standards for the disposition of common records types, do not apply. Nevertheless, the Special Court should consider adopting the United Nations general records schedules, as amended in the General destruction section above, as a convenient working set of instructions. Unless that is done, the administrative records within the SCSL will all have to be considered separately for disposition. The following discussion of special records types within the Special Court assumes the adoption of the general records schedules or something similar to them and omits any consideration of administrative records.

Judicial Records of the SCSL

Transcripts of Proceedings. The paper transcript of the court session in English is the official record; an electronic version also exists. A redacted version of both the paper and the electronic transcript may also exist. For some sessions, a translation into Krio of the redacted version (only) exists.

The court's copy of the transcripts in English, paper and electronic format, complete and redacted, and one copy of the redacted transcripts translated into Krio, in both paper and electronic format should be retained permanently. Also, any copy of the paper transcript in English or Krio that has been annotated should be retained permanently within the files of the office that made the annotations. All other copies of the transcripts in English or Krio, in the judge's chambers, the prosecutor's office, or the registry can be destroyed when no longer needed for reference.

Video Recordings. Video recordings exist only as unredacted sessions. They should be retained permanently.

Audio Recordings. Audio recordings exist both as unredacted and public use versions. The redacted audio is the version that the court outreach and public affairs sections use for radio broadcasts and from which the Krio translation is made. The archives should keep a copy of both versions; the public use version is the reference copy for the foreseeable future and the archives needs to be able to provide it upon request.

Records of the SCSL Office of the Prosecutor

The following recommendations are based on the types of records found in the ICTY and ICTR prosecutor's offices.

Electronic Records Systems. All electronic records systems that are proprietary to the office of the prosecutor are significant for further research. They should be retained permanently.

Evidence. The quantity and formats of the evidence collection in the custody of the prosecutor is unknown. The original items should be retained in their original formats.

Audio and Video Recordings of Interviews of Witnesses, Suspects, and Accused. These are primary evidence and source material for future histories. Even if the interviews have been transcribed and both paper and electronic copies of the transcripts exist, the recordings have intrinsic value for research. They should be retained permanently.

All Other Records of the Office of the Prosecutor. Paper files surely exist, and electronic files may exist as well. It seems likely that at least some paper files have information, such as marginalia and notes, not captured in any electronic system. These records, in any format, are permanent.

Records of the Office of the Principal Defender

While the office of the principal defender is located administratively within the office of the registrar, it operates with total independence. Just as all the records of the prosecutor (except the "housekeeping" administrative files) should be retained permanently, the records of the principal defender are equally important and need to be retained. The defender may have duplicate copies of the audio and visual recordings of the prosecutor's interviews

with witnesses, suspects and the accused. If so, these duplicate copies can be destroyed.

Records of the Office of the Principal Defender. Paper files surely exist, and electronic files may exist as well. It seems likely that at least some paper files have information, such as marginalia and notes, not captured in any electronic system. These records, in any format, are permanent.

Duplicate Copies of the Audio and Video Recordings of the Prosecutor's Interviews of Witnesses, Suspects, and Accused. These copies can be destroyed when they are no longer needed for reference.

Records of the SCSL Registry

As with the registries in ICTY and ICTR, the work of the SCSL registry encompasses both administrative and court support functions. The administrative services division provides the court with property management, security, personnel, procurement, and financial services, to name the most prominent. The judicial and legal services division, and its unique functions, need to be considered separately. The following discussion concentrates on the issues surrounding their disposition.

Records of particular interest in the registrar's office include those of the witness and victims support services, press and outreach activities, the official tribunal website, the detention facility, and management of the defense bar.

Records of the Witness and Victims Support. The SCSL witness and victims support unit provides a variety of services that appear to be more extensive than those of the similarly named unit at the ICTY. The unit is responsible for managing the individual cases, but it also is the unit that redacts the transcripts of court proceedings to protect witnesses and victims.

When the tribunal closes, the files on relocated witnesses need to be transferred to an office that can handle follow-up to the case if needed; the agreements with governments to accept relocated witnesses are permanent (these records may be within the records of the registrar's immediate office, not in the section records). The individual case protection files and the records relating to gender issues should be retained permanently. The general records of the section, including policy and procedure documents and public information files should be retained. If, as ICTY does, the section operates a hotline, that should also be retained.

All other records can be destroyed at close of the SCSL.

Records of Public Information and Outreach. The SCSL has made a significant effort to reach the citizens of Sierra Leone through its information and public outreach program. In addition to the usual press releases, newsletters, and photo sessions, the SCSL has produced extensive public service radio announcements and video productions. Copies of all of these plus the media coverage of the court (print press, radio, television) should also be found in the records of the public information unit. The outreach unit held meetings and public events through out the country to raise awareness of the court and its procedures. These are extremely important records, both for future tribunals to use for the "lessons learned" and by historians who will need the records to measure the efforts made against the public opinion outcomes. They should be retained permanently.

Tribunal Website. All documents on the SCSL website should be found within the permanent records, making the website a duplicate source of information. "Snapshots" of the website taken throughout its life would show what members of the public saw when they logged on to it, but the importance of the SCSL website has not

been its design or functionality but its content. The precise look and contents of the website as it existed when the tribunal closes can be documented by retaining screen shots of the layout and the site map. There is no reason to freeze the entire site as an electronic artifact.

The public will, however, expect the archives to maintain at least as much information on line as was available to them at the time the tribunal closed. The archives might choose to use the SCSL website as the foundation for the archival delivery of services to the public; alternatively, it might import the information from the SCSL site to an archival website. In either case, information of only temporary value, such as job announcements, can be eliminated.

Records Relating to the Construction of the Court Building and the Detention Facility. Architectural and engineering records of the construction have value for the continued operation of the buildings. Correspondence, contracts, specifications, and reports need to be preserved in case any liability issues and disputes over the construction arise.

In addition to the practical, continuing need for some records of the construction, the records of the buildings document the construction of architecturally and politically significant structures, important to both the city and the nation. Sketches and preliminary drawings, initial statements of concept, development drawings that show significant changes in the design, and the final principal construction scale drawings should be retained for historical purposes. If the SCSL asked the architect to produce a final corrected version of the construction drawings, known as "as-built" drawings, these should be retained because they are extremely important evidence for any future study of the building. The correspondence relating to the construction of the building should be retained permanently. The construction contract files need to be retained for life of the building and then destroyed.

Because this building is part of the government property inventory, all engineering drawings of systems (such as electricity, plumbing, security) and architectural records of built interiors need to be transferred to successor government custodian of the building when the SCSL closes.

Records of the Detention Unit. Prison records are typically process records of penitentiary functions: ensuring security, admitting and releasing detainees, transporting, feeding, housing, providing recreation, admitting visitors, monitoring conversations. As such they have little long-term research potential. What is valuable here are the policy records of the management of the detention center, principally for the use of any future tribunal but also for historians investigating prisoner allegations of mistreatment during detention. While the records of the formation of detention policy are probably found within the permanent records of the registrar's immediate office, the records of the policy in operation should be in the files of the chief of the detention center. The records of the chief of the detention unit, including all policy records relating to detention facility operation and inmate management should be retained permanently.

The basic records in the case file of each detainee, containing information on arrival and departure, correspondence, reports, and official documents relating to a prisoner's conduct during his term of detention, are the historical evidence of the detention of the significant individuals held in this facility. The detention facility, built to be the prison for the nation, will be turned over to the government to administer when the SCSL closes. Because the detention facility will continue to house the prisoners convicted by the SCSL, the government will need to have the basic prisoner case files turned over to it. All other records of daily operation should also be transferred to the successor custodian of the detention facility.

East Timor

As the people of East Timor voted for a president on the weekend of April 14, 2002, CNN interviewed Sergio Vieira de Mello, the UN administrator of East Timor. Vieira de Mello explained how difficult it had been to start a new government, remarking that when the UN arrived, they found there were "no records, no archives." Nothing. The troops wanted to deprive the Timorese of their history, Vieira de Mello said. Today the Timorese have records: ones they created since independence, ones they recovered from the period of Indonesian rule, and ones turned over to them by UN bodies that operate in the country. The challenge now is to preserve that history. The international community, particularly the United Nations, must help the new Timorese government do that by establishing and maintaining effective records management and archives programs.

Records in the Custody of the Government

The records of the Special Panels, the Serious Crimes Unit, and the Defence Lawyers' Unit are the foundation documents of the new judicial system in East Timor. As such, they have signal importance for the history of the nation, the history of the courts as institutions, and the history of jurisprudence.

The question of disposition is settled. Now attention must be paid to physical preservation, security, and access policy. As outlined above, the records are of all physical types: paper, electronic, audiovisual, and physical objects. Each of these requires a separate preservation program, appropriate to its physical characteristics. Preservation is a permanent responsibility for the custodian of the records, and Dili's climate means that it must start immediately. The building where the records are housed must be secure from unwanted intrusion by people or by forces of nature. The custodians of the records must have a clear access policy for use by prosecutors, defense counsels, victims and their families, and academic researchers.

Preservation, security and access are complex problems for any government records program, but they are especially difficult for a government in a new democracy. It is important for new governments to focus efforts, not dissipate resources, to achieve satisfactory results.

Placing all permanently valuable government records in a national archives has three important benefits. First, it helps ensure consistency in applying restrictions and access rules to archival records. Democracy is best served by a public, clear, consistent application of access policy. Second, by placing sensitive bodies of records in the national archives, over time the national archives builds a body of precedent in the handling of these records. Such capacity building in the national archives staff enables them to gain confidence in their ability to handle difficult access problems, and as each succeeding body of records is deposited, the staff's expertise increases. This is to the benefit of both the current and future governments. Finally, it is less expensive to manage a single national archives with appropriate security and preservation conditions than to operate multiple archival institutions. In countries where little money is available for archival institutions this must be a paramount consideration.

East Timor has a national archives, and the government of East Timor could place the records of the special panels there immediately. The placement of the records of the Special Crimes Unit is more complicated, because the records could be used for future prosecutions and would, therefore, be needed for active use in prosecutorial offices. If prosecutions are not immediately forthcoming, however, it is best to place the SCU records in the security of the national archives as well. This placement would have a second benefit: it could provide a location for secure access to SCU records by members of the truth commission established jointly by Indonesia and East Timor, who are authorized to have access to bodies of records from any source that are in the custody of the government of East Timor. As archival holdings the SCU records would not be eligible for physical removal from the archives for joint commission use; copies could be made for the joint commission if necessary. In addition to the records

of the special panels and the SCU, UN records were turned over to East Timorese officials by the UN at various times, and these should be held in the national archives. For example, at the request of the president's office, UNMISET gave Timor's President the UNTAET records of the reconciliation program by which refugees and displaced persons, following a reconciliation process, were allowed to return to their homes. UNMISET stripped the files of internal UN documents and information, then handed them over.

The national archives is housed in a former barracks, with additional storage in other locations. According to the national archivist, the archives needs more space and he wants to build an addition behind the current building. Paper records need conservation, particularly those that were burned in 1999 and "were subject to rain and other natural disasters."[31] Specialized storage is required for audiovisual materials, such as the original tape recordings of SCU interviews with witnesses, victims, and perpetrators. All the basic archival systems need to be put in place, from records management policies and records schedules for government agencies to basic arrangement and description of records in archival custody. No one on the staff is a trained professional—all have learned by doing. Brazil, Australia, New Zealand, Portugal, and Malaysia have provided some archival assistance, but coherent plans are cruelly lacking for building professional capacities, developing comprehensive records and archives management programs for the government, and constructing appropriate storage facilities.

International donors should support of the archives of East Timor through a series of related steps, both to build intellectual capacity and to create minimum physical conditions for storage of records. Initially the donors should convene a conference in Dili, with international experts, to discuss models for handling the records of courts and prosecutors, including requirements of security, access, and archival deposit. Such a conference should include staff members of the courts, the prosecutor, the Ministry of Justice, the defense bar, and the national archives. The donors should work with the government of East Timor to provide initial capacity-building training for the staff members in the national archives. And they should assist the government in establishing a program of continuing professional archival and records management training and development within East Timor. Records management training should include staff members from all government agencies that are responsible for the management of current records.

International donors should fund the design and construction of a national archives building for East Timor. The building should include storage areas for all physical types of records held or likely to be held by the government and conservation facilities for the records. Creating the basic standards for storage, as identified in the ISO standard for archives facilities (see Annex 4), should be the goal.

Records in the Custody of the United Nations

The United Nations has significant responsibilities for the preservation of the copies of records it holds from the Special Panels and, particularly, the Serious Crimes Unit. Electronic records cannot simply be stored, whether on or off line, and endure. Electronic records must be migrated to new systems, refreshed and reviewed, and the storage media continually upgraded. The United Nations Archives does not have a position dedicated to electronic records, either for the purposes of the description and reference on these materials or for preservation. This must be changed immediately. The electronic records of the United Nations system, not only those of the international tribunals, are at risk.

In addition to preservation, some access to the SCU records will probably be authorized in accordance with the agreement between the United Nations and the government of East Timor. Effective access requires that records be described so that the requested items can be located. At the same time, the administrative records of the Serious Crimes Unit that are within the UNMISET records transferred to the UN archives should be described. The

administrative records of the prosecutor's offices may contain important clues that will be useful for research in the evidence and the case files.

The United Nations Archives staff must be augmented by at least one professional archivist specializing in the preservation of electronic records. And the Archives staff must prepare archival descriptions and finding aids for the copies of the records of the Serious Crimes Unit to enable research to be undertaken in the records if authorized by the government of East Timor.

Kosovo

As in East Timor, in Kosovo both the government and the United Nations have responsibilities for the preservation of and access to the records of the internationalized courts and prosecutors.

Records in the Custody of the Government

The records of the courts, including the records of the hybrid panels in the five district courts and the supreme court of Kosovo where international judges and prosecutors serve, are records of the government in Kosovo. The records management system in the courts is troubled and court records storage facilities suffered during the 1999 events. A former UN deputy regional administrator of the Prizren region, who had first-hand acquaintance with the development of the judicial system after the NATO invasion, reports, "In a complete breakdown of existing institutions, the majority of Yugoslav police and judiciary quickly departed Kosovo towards the end of the NATO campaign—and left the system of court records in great disarray."[32] Add to that the damage to court buildings: for example, an archival survey in December 1999, sponsored by UNESCO, reported that the record storage area of the Municipal Court of Pristina "is partly underwater."[33] It is no surprise that international judges encountered "instances of lost files" as they tried to work through cases, the "absence of detention record books to control the cases" and "the absence of systematic record keeping."[34]

The traditional practice in the Yugoslav archives system is to retain the court records in the custody of the courts while they are active, then transfer the closed cases to a national, regional or municipal archives. This is likely to be the system adopted by a Kosovan national archives as well. The records of the Kosovo prosecutors also will probably be retired to the national archives when the records are no longer needed for current business. Both types of records will bring problems of preservation, security, and access to the national archives system.

International donors should support of the archives of East Timor through a series of related steps, both to build intellectual capacity and to create minimum physical conditions for storage of records. The OSCE Kosovo Judicial Training Institute and the United Nations should hold a conference to discuss models for handling the records of courts and prosecutors, including requirements of security, access, and archival deposit. Such a conference should include staff members of the courts, the prosecutor, the Ministry of Justice, the defense bar, and the national archives.

The international community needs to assist the Kosovars to build capacity to maintain court records, both in court storage and in archival custody. The international community should fund an inventory of court records and a survey of needs, using as a baseline the data in the 1986 "Guide to the Fonds held in Kosovan Archives" and the 1999 UNESCO report.

The international community should underwrite a program to make a security copy of all court records of the cases adjudicated by the "64 panels" throughout Kosovo. Pleadings, case docket sheets, opinions, transcripts, and

evidence should all be included; objects retained as evidence should be photographed and the photograph copied. The copying program should begin immediately and should include all cases from the beginning of the "64 panels" to the close of the international participation. The United Nations archives should hold one copy. If a United Nations international judicial archives center is established, the UN should transfer its copy to that center.

Records that are Responsibility of the United Nations

If any or all of the court records of the cases handled by international judges were maintained in UNMIK for security and confidentiality, UNMIK should work with the Kosovo courts to establish a secure place for the records to be housed and should then turn them over to the court records system. Representatives of UNMIK and the provisional government should determine which of the records of the international judges (other than the case files discussed above) and of the international prosecutors are required for future administration of the Kosovo judicial system. These records should be separated from any other office records of the judges and prosecutors and turned over to the court records system.

In the future, UNMIK should require international judges and prosecutors to maintain two separate sets of files, one for the records of their "work with local authorities" that will become property of the government in Kosovo and one for the records of any work that they may undertake for UNMIK that will stay with UNMIK. This will greatly facilitate the final disposition of the records when the mission closes.

Representatives of the United Nations, OSCE, and the European Union should meet to discuss the future disposition of the records of their activities as UNMIK in Kosovo. If the three cannot agree to deposit their records in a single location, they should agree to create a unified inventory of the records and make that inventory public.

Most records destined for the archives of the United Nations can be handled under regular UN processes for field mission records. However, a few bodies of records from UNMIK's Judicial Development Division are unique to the Kosovo situation and therefore not covered by standard procedures. These include the records of the Professional Development Section, the Judicial Integration Section, the Judicial Inspection Unit, and the Victim Assistance and Advocacy Unit.

The Professional Development Section of the Division provides administrative support to the Kosovo Judicial and Prosecutorial Council (KJPC), the body that makes recommendations to the Special Representative of the secretary-general on candidates for appointment to the judicial and prosecutorial services and for removal of judges and prosecutors for misconduct. The records of cases before the KJPC are important to the future Kosovan administration of the judicial system, and the records should be transferred to Kosovan custody. However, the United Nations should retain permanently a copy of the Council minutes as evidence of the decisions made under its supervision.

The Professional Development Section also is responsible for the developing the system for selection of judges and prosecutors. The records of this function provide important historical evidence of the work the UN must do in re-establishing the rule of law and are files that may be used in the future by other UN missions as background for judicial system development. They are permanent records of the United Nations to be transferred to the UN archives. When UNMIK closes, the UN should ask the Kosovar administrator of the selection system whether, for historical purposes, they want copies of any of the records relating to the development of the selection system. If they do, UNMIK should screen the records, identify any items that contain sensitive internal UN information that cannot be disclosed to the government in Kosovo, copy the rest and give the copy to the Kosovo government.

Developing a public examination for judges and prosecutors is another part of the work of the Section. Administering the exam is a continuing function for the Kosovan judiciary, and the records of its development as well as the records of the operation of the training courses, such as the schedules and course outlines, are probably useful to the judges. From the point of view of UNMIK, the records provide evidence of an important role that the United Nations played in reestablishing the judiciary. Consequently, the United Nations should retain permanently one copy of the examination, any study and publicity materials developed for it, and an official copy of the results of the examinations. When UNMIK closes, the original records should be offered to the current administrator of the examination; if they are not wanted, they can be destroyed. All remaining records of the Professional Development Section can be offered to the government of Kosovo when UNMIK closes.

The difficult records of the Judicial Integration Section are those of the court liaison offices in the Novoberde, Gorazdevac, and the Serbian enclave of Gracanica that provide services for minorities seeking to use the courts. The fact that the United Nations provided this service is important, as is the pattern of need for assistance; both those can be documented through permanent retention of statistical and narrative reports of the office. The records of individual cases, once the case is resolved, have no further value for the operating office. The question is whether the case records have long-term value for the United Nations, the Kosovar judiciary, or the persons who sought assistance. Any future use would, of course, have to consider the privacy rights of the individuals involved. Given the limited amount of information that is available in a case, it is unlikely that the case file itself would have enough information to support historical research; but the pattern of cases may be significant. The records of monitoring, monitoring reports and related statistical analysis, the reports and correspondence of the court liaison offices, and the case files of the court liaison offices should all be retained permanently.

The Judicial Inspection Unit is responsible for conducting investigations of misconduct committed by sitting judges, prosecutors and lay judges and, if there is sufficient evidence of misconduct, presenting the case before a hearing of the Kosovo Judicial and Prosecutorial Council. In essence, these are prosecutor records. The records are probably organized by case file and surely contain sensitive information. Assuming that the Kosovar judiciary maintains the records of the cases before the council, the case files in this unit would be either duplicates, would include additional information that was not deemed useful to present at the hearing, or would be records of cases that were investigated but not brought before the council.

The persons who are targets of these investigations are exceptionally important to the system of justice. Although the staff of the unit made an initial determination, it is always possible that further information on a case may arise. Furthermore, the issue of corruption of public officials is so central a nation's concerns that, for example, all investigations by the Federal Bureau of Investigation in the United States under the Ethics in Government Act are retained, as are the Department of Justice litigation case files on major cases relating to the prosecution of public officials for misconduct in or misuse of office. These records should be retained permanently.

The records of the Victim Assistance and Advocacy Unit include individual case files on victims and the records of the administration of the Interim Secure Facility. In addition, there should be policy and planning records for the unit itself. Because of the continuing nature of trauma, the case files of victims need to be maintained by a successor unit in the Kosovar judicial system. Even closed case files may be reopened if circumstances warrant. Similarly, the records of the administration of a continuing facility are necessary to operate it. The United Nations should retain the policy and planning records, but the operations records—both case files and facility administration—should go to the Kosovo government.

General administrative processes

The ultimate archival retention of the records of the international judiciary would be easier if the courts and the United Nations initiate several programs now.

Issue guidelines on personal papers. The courts should adopt clear guidelines on what are records of the court as an institution and what are the personal papers that judges and staff members are permitted to take with them when they leave the employ of the court. Deciding what is and is not personal is a problem in all three branches of the courts, and either a single set of guidelines should cover all the court or each of the three branches should adopt its own set of rules. A draft guideline concerning records and personal property is found in Annex 2.

Some material determined to be personal, such as personal notes, may contain sensitive information about the court's work that should not be disclosed at this time. One option would be to identify the materials as personal, leave them in the custody of the judicial archives until such time as the information in them can be made public, and then return them to person or heirs. Another possibility is that the court agrees with the departing person on the future storage and controls over the materials that he or his heirs will assert. A third possibility is to have the person donate his materials to the court archives at the time he departs.

Authorize solicitation of donations. The judicial archives should systematically solicit the donation of the personal papers of the international judges, prosecutors, investigators, and staff that served the court. Some persons will find this a good solution to the problem of maintaining the necessary controls over sensitive items; others will want to deposit their papers in other repositories. At present the United Nations Archives does not have the authority to solicit materials from non-UN person or organizations; this authority should be added.

Monitor deposit of related materials. The judicial archives should maintain a database identifying the repositories where the papers of former judges, prosecutors, and principal staff members are deposited. Even if an individual does not want to leave his personal papers with the archives, it is useful to know where they are. This enables the archivists to direct researchers to sources and it permits the various archives holding related materials to cooperate in description and access review projects.

Publish opinions. An international system of publication of the opinions of the courts would ensure that the decisions are easily available to practitioners. The archives of the courts can safeguard the original opinions, but annotated, authoritative legal publication is beyond the scope of usual archival activity. As more courts operate, more rulings are made, and precise memory of a court's activity fades, it will become increasingly important to have a reliable, easily obtainable record of the opinions. It is not realistic to expect that archival reference service will continually search for, find and supply copies of opinions to practitioners, particularly if the practitioners are operating under tight court deadlines. Coordinated legal publication is right solution.

Endnotes

1 Administrative Instruction, Subject: The United Nations Archives, ST/AI/326, 28 December 1984; Secretary-General's Bulletin, Subject: United Nations Archives and Records Management, ST/SGB/242, 26 June 1991.

2 The phrase "excluding United Nations documents" refers to the formal numbered series of official documents that is deposited with the Dag Hammarskjold Library of the United Nations. The UN Archives can and does hold copies of such documents but the "record copy" is with the library.

3 The precise legal title to the Commission records is unclear. According to the coordinator of the Commission, the United Nations "took the view that the CEH, based on an agreement between the Government of

Guatemala and the guerrilla organization, was not a UN institution." The fact that the Commission was not a United Nations institution meant that the Convention on the Privileges and Immunities of the United Nations did not apply. This, in turn, meant that the archives held by the Commission could be vulnerable to interference by Guatemalan authorities; consequently, the United Nations in December 1997 exchanged formal notes with the Government of Guatemala, giving the "documents, records and materials" of the commission the protection of the Convention on the Privileges and Immunities of the United Nations. Christian Tomuschat, "Clarification Commission in Guatemala," Human Rights Quarterly 23.2 (2001, pp. 233-258; quote on p.248; Christian Tomuschat, "Between National and International Law: Guatemala's Historical Clarification Commission," in Volkmar Gotz, et al, Liber amicorum Gunther Jaenicke – Zum. 85 Beburtstag (Berlin: Springer, 1998), pp. 991-1011.

4 United Nations Secretary-General's Bulletin ST/SGB/1999/6, 8 June 1999.

5 Email, Bridget Sisk, 2004-02-17. Purely administrative records of the Commission were not transferred and sealed, apparently remaining with the records of the UN mission in Guatemala. The closing of that mission and the transfer of its records to the UN in New York should have brought the Commission's administrative records to New York as well, although records covered by a general records schedule were probably destroyed when the mission closed.

6 Email, Christian Tomuschat, 2004-02-04.

7 Email, Tom Adami, Chief, Judicial Records and Archives Unit, ICTR, to Tony Newton, ARMS, 2003-01-07, 11-01-F038-2, ARMS files.

8 Cathy Majtenyi, "Rwanda War Crimes Tribunal Seeks Help in Capturing Genocide Suspects," 2004-07-07, VOA News, http://www.voanews.com/.

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10 Notes of discussion with Geoffrey Robertson, 2005-02-25.

11 Notes of discussion with David Hutchinson, Office of Legal Affairs, and Bridget Sisk, Archives and Records Management Service, 2005-06-07.

12 Interview with Judge Phillip Rapoza, 2005-05-05; see the website at the U.C. Berkeley War Crimes Studies Center to view the documents http://ist-socrates.berkeley.edu/~warcrime/East_Timor.htm, accessed 2005-07-17.

13 S/RES/1599 (2005) 2005-04-28.

14 Website of the U.C. Berkeley War Crimes Studies Center, http://ist-socrates.berkeley.edu/~warcrime/East_Timor.htm, accessed 2005-07-17.

15 Remarks, Stadler Trengove and Bridget Sisk, consultation on archives of international and internationalized criminal courts, New York City, 2005-10-17.

16 Email, Bridget Sisk, ARMS, to Paige Rockwell, UNMIK, 2003-06-06, 11-01-F062, ARMS files.

17 Interview, Colette Rausch, 2005-05-26.

18 Richard J. Goldstone, For Humanity: Reflections of a War Crimes Investigator. New Haven, Conn.: Yale University Press, 200. See especially pp. 85-88 and 111.

19 Neazor, op. cit.

20 The schedule has no item 12.

21 At one point during his trial, an apparently bored Dusko Tadic removed the headphones bringing him a simultaneous Serbian translation of the proceedings. Richard Ashby Wilson, "Judging History: The Historical Records of the International Criminal Tribunal for the Former Yugoslavia, 27 Human Rights Quarterly 927 (2005).

22 Mary Neazor, "The International Criminal Tribunal for the former Yugoslavia viewed through its administrative records," paper presented to the Society of American Archivists, 24 August 2002, copy in author's possession.

23 Laurence Douglas, "The Holocaust, History and Legal Memory," in Steven R. Ratner and James L. Bischoff, eds., International War Crimes Trials: Making a Difference, Austin, Texas: University of Texas at Austin School of Law, 2004, pp. 115-116.
24 Email, Ewen Allison, 2005-03-30.
25 Interview, David Tolbert, 2005-04-19.
26 Court Management Section, Judicial Records and Archives Unit, "Implementation Guide to ICTR Retention Schedule," July 2002.
27 Mark Nizette, "International Criminal Tribunal for Rwanda: Strategic Management of AudioVisual Records," March 2002, copy in author's possession.
28 Ibid.
29 "Proposed ICTR Recordkeeping Framework," ICTR website, http://www.ictr.org, accessed 2005-07-21.
30 "File index for ICTR records," 1998 November 5, 12-04-F133, ARMS files; "Proposed ICTR recordkeeping framework," http://www.ictr.org, accessed 2005-07-21.
31 Conversation with Pedro Fernandes, national archivist of Timor-Leste, 2005-05-03.
32 Mark Baskin, "Lessons Learned on UNMIK Judiciary." The Pearson Papers, vol. 8, Clementsport, Nova Scotia: Canadian Peacekeeping Press, 2002, pp. 9, 21-22.
33 Bruce Jackson and Wladislaw Stepniak, "Report on Archives in Kosovo," Draft technical report to UNESCO, 1999-12-30, copy in possession of the author.
34 Mark Baskin, op. cit.

Chapter 6: Access and Placement

After the decision on what records to save and what to destroy is made, two major questions remain: Who will have access to what records under what conditions? Where will the records be located?

The first part of this chapter discusses the issues that should be considered in developing an access policy for the archives of the international criminal courts. The second part focuses on the administration of access as the archivists apply the policy to specific records. Finally we turn to the question of placement and to the need for duplication and description of records.

Planning an Access Policy

Many people, for different purposes and with different backgrounds, have an interest in gaining access to the records of the international criminal courts when their mandates end (see Chapter 4 above). Christopher Keith Hall of Amnesty International spoke for researchers:

The maximum amount of information should be made public immediately and there should be a process for make [sic] all other information publicly available within a reasonable time, subject to questions related to protection of victims and witnesses, confidential information provided by certain sources no stricter than the current statutory and regulatory provisions of the courts concerned and legitimate law enforcement needs. The criteria for keeping information confidential should be designed to permit the maximum amount of information to be made available as soon as possible. There should be no privileged access, apart from law enforcement officials.[1]

The distinguished legal scholar Louis Joinet, in his influential 1996 report to the United Nations Commission on Human Rights on the question of impunity of perpetrators of human rights violations, proposed five principles on the "preservation of and access to archives bearing witness to violations." The Joinet principles, as they are called, were revised by law professor Diane Orentlicher in February 2005.[2] The revised principles relating to archives (Principles 14-18) are reprinted in Annex 3. Principle 15 states:

> Access to archives shall be facilitated in order to enable victims and their relatives to claim their rights. Access shall be facilitated, as necessary, for persons implicated, who request it for their defence. Access to archives should also be facilitated in the interest of historical research, subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals. Formal requirements governing access may not be used for purposes of censorship.

Each of the three parts of Principle 15 focuses on a specific group of researchers: victims and their relatives, the accused, and the general public. We will look at all three of these types of researchers and their needs for access. In addition, we will look at the access required by prosecutors and defense attorneys, by governments, and by former staff members of the courts. Then we look at some categories of records that have special access issues, no matter what group seeks to use them: sealed records, security classified records, and records covered by formal nondisclosure agreements.

Access Issues by Category of Requester

Victims and Their Relatives. A victim or witness can see the file on himself or herself (victims and witnesses should be understood to include heirs and designees). While access advocates have differing opinions on whether evaluations of the person by court staff or medical staff should be released to him, on balance the person's right to

know what records exist on him or her should prevail. If the victim or witness requests access to information that he or she provided to the court or records of events in which he or she participated, such as a copy of a statement or a videotape of testimony, access is provided. A request by a victim or witness for any other records would be handled as if it was a request from a member of the general public.

Records regarding the protection of witnesses are another special category. Witness protection files are highly sensitive, technical files, explaining the steps that are taken to protect the person. Because of the continuing need to provide protection during the lifetime of the witness, the records need to remain with a body capable of giving that service. When a court with a witness protection program closes, it needs to notify all witnesses where it intends to transfer this series of witness protection program records. Because of the need to continue protection for the lifetime of the individual, these records are not technically closed and need to be transferred to the agency that will continue to provide the protection. The protected witness should be given an opportunity to raise any objections to the transfer of his or her file. If a witness objects, the file should be transferred to the archives and closed, except to the witness. The files should be opened at the death of the witness or, if the date of death is unknown, fifty years from the initiation of witness protection. Files in the custody of the protecting office should be transferred to the archives at the time of the death of the witness or in fifty years, whichever comes first.

Persons Convicted by the Court. At present there is no instance of a person convicted by an international court seeking copies of the records of his case, but such cases arise regularly in national jurisdictions. There is a presumption that the person can see the file on his or her own case, after the withdrawal of records that would interfere with current or future litigation or enforcement of judgments, might result in harm to the persons named in the file (such as witnesses), or would reveal information furnished under specific confidentiality agreements such as ICTY Rule 70. The person convicted would also be able to see his file in the records of the detention facility where he was held prior to and during his trial. The same principles would be applied if a person indicted but not convicted wanted to see the files associated with his case. A request by a convicted person for records other than his case file would be handled as if it was a request from a member of the general public.

A team of lawyers and archivists must establish the guidelines for the types of records to be withdrawn from the files of the prosecutor prior to release to a person convicted. After the guidelines are completed, archival staff can do the withholding and release.

Prosecutors or Defense Attorneys Requesting Access for Litigation Purposes. One prospective use of the records of the offices of the prosecutor would be to prosecute cases that were open when the court closes. If an indicted person is taken into custody, the successor prosecutor and the defense attorney will both want to see the records of the prosecutor's office that are relevant to the indictment. The new prosecutor may be either an appointed international prosecutor or a national prosecutor to whom the case has been passed. The new prosecutor will be given access to all the records on the indictment and its background investigation, while the defense will be given access according to the rules for access by a party in litigation in either the international tribunal or the national court to which the case is assigned. Neither the prosecutor nor the defense would be given access to any other records in the prosecutor's archives.

A second potential use by prosecutors and defense attorneys may arise after a case is completed but the persons involved in the case are still alive. During this period, for example, a person incarcerated can ask for review of the sentence or a witness who has been threatened can seek protection. A new prosecutor and defense counsel would be given access to all the records on the case that pertain to the sentencing or to the case file on the witness. Again, neither the prosecutor nor the defense would be given access to other records.

A third type of use for litigation purposes would be to prosecute related cases at a national level. These could be cases relating to persons that the international court chose not to indict, cases that were developed after the court ceased, or cases where the information gathered by the international court might shed light on actions of the accused. In each of these instances, the prosecution or defense would ask for access to particular records, based on finding aids made available to the prosecution by the archives. Blanket requests for access would not be accepted.

A fourth potential of use for litigation would be to prosecute related cases at an international level. These could be cases where the information gathered by the temporary international court might shed light on actions of the accused in a case under investigation by the International Criminal Court (such as litigation about actions in the Congo where investigative information in the Rwanda tribunal might be useful). In these instances, the ICC prosecutor would ask for access to particular records, based on finding aids made available to the ICC by the archives. If an indictment was handed down, defense counsels might also make requests for access.

Prior to its closure, the international court must designate a successor to the prosecutor for the purposes of determining whether access to files for national or international litigation purposes will be granted. This successor must be empowered to investigate the nature of the request; if the request is from the defense, the successor would determine whether the records are made available directly to the defense or to the defense only through the prosecution. In the event that the prosecutor or the defense counsel seeking access disagrees with the determination made by the successor to the prosecutor, an appeal process should be available, probably to the successor to the court that is empowered to act in the case of sealed records (see discussion in the section "Special Categories of Records with Access Problems" below).

Governments requesting access for official purposes. Several types of access requests from governments can be anticipated. Governments may ask the archives to confirm the identity of a person who has sought a benefit from the government, such as a permit to reside in the country. Governments may seek access to records if they have apprehended someone within the country for a crime entirely unrelated to the events that surrounded the person's appearance as defendant, victim, or witness before the international court. Governments considering establishing a temporary international tribunal may seek access to records (probably of both the prosecutor and the registrar) to review the issues that arose in bringing a previous tribunal to life.

When governments request information, the archives must confirm the identity of the person representing himself as a government official. Once that identity is confirmed, the archivists and lawyers must decide whether the information from the records can be made available on a confidential basis, whether from the records of the prosecutor or the records of the registrar (records relating to victims and witnesses, for example). The detention center file on a convicted individual is available to the government holding that person in the national prison system. Records relating to the establishment of the tribunal should be available to all researchers, including those from a government.

Former employees of the court. If a former employee of the court seeks access to records that he or she originated, reviewed, signed or received while an employee of the court, access is normally granted. The archives confirms the person's identity and confirms that the records requested are ones from the person's office or from the office of that person's subordinate. Because the person continues to be bound by the promise of confidentiality that he or she made at the time of employment, this is limited access without additional risk of disclosure.

A special issue for former employees of the court is the maintenance of the court's personnel records. Some staff members of an international court are on loan from governments; some staff members are on contract; all have personnel files in the court. Files on defense counsels contain personnel information. The registrar may also have

files of applicants who were not selected for positions with the court or files of persons who were not selected as defense counsels. Each of these individuals expects confidentiality for the information contained in these files; each of the persons actually employed will need to document their employment for future employers or for pension purposes. It is important that the records be retained and be accessible for such uses by the person himself; as recommended in Chapter 5 above, the personnel records should be transferred to the UN personnel records office for retention under their regulations. The records of those not selected for commission posts should be transferred to the archival custodian, should not be accessible, and should be reviewed for possible destruction.

General Public. Access by the public is another matter entirely. As the Joinet/Orentlicher Principle 17 states, "Access to the files of commissions of inquiry must be balanced against the legitimate expectations of confidentiality of victims and other witnesses testifying on their behalf." If the release of the records will not interfere with current or prospective litigation, the records can be reviewed for possible release to the public. The key issue to be considered here is whether the release is likely to cause harm to living persons: embarrassment, harassment, or even violent revenge. In 2005 a Rwandan genocide survivor was murdered "by people believed to be genocidaires" because the victim was "widely known for his openness while giving testimonies, mentioning names of people,"[3] horribly demonstrating the potential danger to persons that court records represent.

A review of records from any part of the court for release to the general public would begin by asking whether the release would interfere with ongoing or prospective litigation or enforcement proceedings. If so, the review ends there. This is a judgment that attorneys advising the archives will normally make. The next test is whether the release would potentially endanger a living person. Here again, it will take archivists and lawyers working together to make this determination. Finally, the review must ask whether the release of the information would invade the privacy of a person. Different standards of privacy pertain in different communities; for example, in some cultures a privacy interest is considered to die when the person dies; in others privacy is believed to continue for a period after death (thirty years, for example); and in others the privacy interest of the person is considered to continue for several generations. Before the court terminates, it should establish the privacy standard it wants the archives to use.

General public and access to victim and witness case files. The victims and witnesses should control public access to the files on themselves during their lifetimes. If the existence of a case file on a victim or witness has not been made public in court, the right to control extends to the fact of the existence of the file. In these cases, the archives will simply refuse to confirm or deny to the public whether a case file exists. A witness or victim can provide authorization for specific individuals, such as an attorney or a health worker, to see the file and can authorize the archives to open the file to the public. The successor office to the court's victims and witnesses unit will have access to the records to protect the individual or to provide services for official purposes to a successor court or prosecutor.

General public and access to detainee case files. General information on the detainees can be reviewed for public release. The exception is medical information on living individuals, if the release of such information would invade the privacy of the person. After the person detained is dead, the entire file is open to the public.

General public and access to incident and geographic investigation case files. Records of incident and geographic investigations are the easiest to open of all investigative files. The most important issue in reviewing these records for disclosure is to ensure that any information that might identify an individual who provided it under a promise of immunity is protected. This includes not only names and personal identifiers (social services numbers, for instance) but also descriptions that would lead the informed reader directly to the individual (for example, "the woman who did the laundry for the priest" or "the family who lived next to the church").

Special Categories of Records with Access Problems

Records under Seal, including Records of Closed Hearings. A central question to be resolved about access to court records is how sealed records of temporary international criminal courts can be unsealed after the court closes. Usual judicial practice permits a person who seeks access to a sealed record to petition the court that sealed the item (or, in exceptional cases, its successor court) for review. With the closure of the temporary international criminal courts, however, there is no opportunity to go back to the court that sealed the record and there is no clear successor court. The court must choose one of two options before it terminates: either a successor for the purposes of unsealing must be designated (for example, the International Court of Justice, the International Criminal Court, or a body of the Security Council) or a triggering event for opening the sealed records must be declared (a period of years or the death of the defendant or witness, for example).

If judges or prosecutors or staff members of the registrar have copies of sealed items in the records of their personal offices and these records are turned over to the archives, the copies of the sealed records also will be withheld from public review until such time as the official copy is opened.

Records Marked "Secret," "Confidential," or Similar Markings. The first classification question centers on records classified by staff of the courts. It is not known whether the staff members of the international courts used formal classification markings such as "secret" or "confidential" and, if so, whether they used them in a manner consistent with general United Nations or other guidelines. If staff members used such markings merely as a warning that the document contains sensitive information, then this may not be a formal classification. To resolve the question of whether or not court-marked documents are true security classified items, the court, before it goes out of existence, should declare that any court-created documents with security markings are to be considered unclassified for the purposes of access review. It is important to note that just because a document no longer carries a security classification marking it is not automatically released to the public; it still requires review for the considerations of privacy, jeopardy, possible interference with enforcement or litigation, and so on.

A second classification question arises if records subpoenaed or otherwise obtained from a government are marked with a security marking from that government. If the records have not already been disclosed by the court, then one possible procedure would be to provide notice to the government of the intent to release the document to the public and give the government the opportunity to comment. In the case of a dispute between the government and the archives over the release of a document, the successor court that handles the questions of unsealing (see above) might be asked to adjudicate.

Records Obtained under a Promise of Nondisclosure. In certain circumstances, a court may obtain documents from a source that demands complete nondisclosure of the documents. In these cases, the documents are probably marked on their face with the nondisclosure requirement (it is an explicit, not implicit, confidentiality). Prior to making such documents available to any outsider user, with the exception of a new prosecutor standing in the place of the court's prosecutor, the source of the documents must be contacted and approval sought for disclosure. If the source denies disclosure, the archives will deny.

It is important to understand that these documents covered by a nondisclosure agreement are different from the promises of confidentiality that are made to victims or witnesses. The passage of time will generally ease the need for confidentiality of witness statements, particularly after the witness dies. With institutions that provide information with a nondisclosure agreement, there is no waning of the need for confidentiality so long as the institu-

tion continues to exist. The passage of time may be such that the supplying institution can agree to the release of documents, but that must be the decision of the supplier not the archives.

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An access policy for the records of an international criminal court must define the balance between the public's right to know about activity by the court and the rights of individuals (including defendants, victims, witnesses, and personnel of the court) to protect information about themselves from potentially harmful public disclosure. It must state, for the information of the public and the use by the archivists, what information might be restricted in what circumstances.

The records of the three parts of a court have different access issues. The access issues in the records of the courts per se are principally about the sealed records of some proceedings; there may also be questions about access to records that were created and maintained in the judges' offices. The investigative and prosecutorial records from the office of the prosecutor have numerous, difficult access issues, including the concerns that release of records would interfere with current or future prosecutions, would invade the privacy of living individuals, might endanger the physical safety of persons, or might violate agreements with sources that provided information under a promise of confidentiality. The records of the office of the registrar have the issues of privacy for the management of victims, witnesses and, in the detention center records, of detainees. In addition, the registrar has the records of the personnel of the court, the defense counsel engaged, and any disciplinary actions taken.

If the records are not security classified and they were not obtained under a strict nondisclosure agreement, they are eligible for consideration for release for public use. As we have seen above, certain categories of records, such as witness protection files, are simply closed for lengthy periods. But the principal bodies of records, including the office files of judges and investigators and prosecutors and registrar staff, are all at least potential candidates for review for public release.

Administering an Access Policy

The intellectual problems of access are complex and challenging, but the day-to-day application of access policy is where the real work of access begins. Administration of an access policy has two fundamentals: established procedures and consistent application. Both are essential for a successful access program.

Stages. Administration of access proceeds in stages. First, a clear statement of the access policy must be adopted and made available to staff and prospective researchers. Archivists then prepare a procedures manual that elaborates the way the policy will be applied. Second, records requested must be screened and any items that must be closed withdrawn. Finally, periodic re-reviews of restricted materials are made to ensure that all materials for which the reason for the restriction has expired are released to the research public.

Principles. Several principles are particularly important to the administration of access. First, the public should both know of the existence of restrictions and know of the existence of records that are restricted. The existence of restrictions is most easily made known by publishing the access policy and distributing it widely. The existence of records is a two-fold matter. First, finding aids are prepared that explain what the archives holds. Second, on the level of specific files and items, any one of a variety of practices can be used to show that a record exists but cannot be made public. For example, the fact that an interview transcript exists might be made known, although the interview itself is not. Or, for example, the fact that witness files generally exist is made known, but whether or not there is a file on a particular person is not. If an entire file is made available but one or more items are

removed, the archivists will insert flags to make sure the user knows that one or more items are withheld.

Second, archives give equal access to records to all researchers of a specific category: all witnesses, all historians, all national prosecutors, for example. That does not mean that each member of the same category will get the same access to the same records, but it does mean their requests will all be handled by the same process. The archives needs to have clear definitions of the persons who fall within each access category, and the archives must make every effort to ensure that the staff members who screen research applicants apply the policy consistently.

Third, an item that is released to one member of the general public is open to all members of the general public. This enables the archives to screen the materials once, make any necessary withdrawals, and then open the records permanently. This is by far the most cost-effective way to manage screening.

Fourth, the passage of time obviates the need for access restrictions. All records of the court will, at some time in the future, be open for public inspection and research use. The length of time that records must be closed varies, both by nature of the records and by the nature of the requests for them. When the international courts close, litigation will cease, but some indictments may be open and those cases could be prosecuted in the future. In the instances of open indictments, all records relating to the case are closed to the public except as available through the litigating process or until the person under indictment dies. A second access phase occurs when the case is completed but the persons involved in the case are still alive; during this period, for example, a person incarcerated can ask for review of the sentence or a witness who has been threatened can seek protection. In this second stage the records relating to the completed case may be released in part. The third phase commences when the persons involved die. The remaining records can then be opened, unless a determination is made that information about a deceased individual will endanger a living person. The records that must be closed for the longest period are likely to be those that were made available to the court under specific nondisclosure agreements. Even these, however, can eventually be made available to the public when they will no longer jeopardize the work of the creating entities.

Review. Archivists, lawyers, and general staff members are all required for efficient review of records. All access staff members must be detail-oriented persons who understand general access rules and apply them to specific records. The review for public/nonpublic records can be done by general records staff under the guidance of professional archivists; this is usual work within an archives. Review under criteria (an instruction, for example, of the "if-then" variety: "if the record includes the name of a protected witness, then it must be withheld") is more complex; a common practice is to have the initial review done by a general staff member and a second review handled by an archivist. Lawyers on the staff should provide training on the review of victim records. Professional staff members usually handle review for release to victims, consulting with the archives' lawyers as necessary; final copying and deletion can be done by general staff members and reviewed by archivists. Staff lawyers usually handle the identification of records that can be provided to litigators under a confidentiality agreement.

Denials and appeals. If some or all of the records requested by a researcher are to be denied to him, the requester should be given information on where a review of that denial can obtained. No initial access review is perfect, and a review on appeal is often useful to clarify for the archives staff the appropriate standards of release and to determine whether the passage of time is such that additional records can be released.

Two possible appeal routes are to the successor court or to an ad hoc administrative body established for the purpose of reviewing appeals, such as one made up of the chief of the UN archives, an attorney from the UN Office of Legal Affairs, and a former staff member of one of the tribunals. The work of such an appeals body could largely be handled through electronic correspondence and conference calls, at least after the first appeal is handled

and the appeal procedures and principles are established.

A master list of all recommendations, including a summary of the recommendations on access, follows this chapter.

Placement

Now we turn to the final outstanding question: where should the archives for the temporary international criminal courts be located?

The overwhelming majority of the records of the temporary international tribunals and hybrid courts are records of the United Nations. The records of the ICTY and ICTR are records of the United Nations. The copies of the records from the East Timorese Special Panels and Serious Crimes Unit, although deposited under a separate authority, are also the United Nations' physical property, as are the administrative records of UNMISET that are related to these copies. The Kosovo records of UNMIK and its judicial activities are also UN records. The exceptions are the records of the Special Court for Sierra Leone, which are the joint property of the United Nations and the Government of Sierra Leone, and the records of judicial activities in Kosovo undertaken by the European Union and by the Organization of Security and Cooperation in Europe as part of UNMIK, which are the property of the respective parent institutions.

Records of all governments are inalienable; so, too, are the records of the United Nations. In accordance with the privileges and immunities enjoyed by the United Nations, the premises the United Nations occupies are inviolable. The archives of the United Nations, then, are safest when under United Nations control in United Nations premises. For UN records with the importance and sensitivity of the records of the temporary international criminal courts, the UN has a special responsibility to find a secure UN location for their preservation.

One Archives or Many?

Where should the original records be located? Should they be in one location, in several locations near the locus of the trials, or in multiple locations near the events that occasioned the tribunals? Amnesty International commented:

> [W]e would be concerned if the archives were to be placed in any intergovernmental organization or institution subject to political pressures or which did not have a long-established policy of open and free access to the general public. Our preference would be for the records to be maintained under the control or supervision of either the International Criminal Court, a network of universities and foundations or by an existing or new foundation based in The Hague, regardless where the physical copies of the records were kept. There is much to be said for leaving the physical records in place, generally accessible to the people concerned, even if the control or supervision were to be centrally located. In most cases, the costs to maintain the hard copies will be much cheaper if they are left where they are.[4]

Some knowledgeable individuals urge that at least copies of some of the records need to be in or near the countries affected by the conflicts. One lawyer optimistically says, "Keeping the records in country will contribute to a sense of ownership over that part of history, perhaps making it a point of national pride and all that that would mean in terms of committing to the rule of law."[5] However, putting them "in country" would require establishing a UN archives in at least two locations (somewhere in the Balkans and in Rwanda), three if Sierra Leone is included and, looking ahead, in Cambodia and perhaps Lebanon.

An archives should foster research, provide consistent service, and, to the extent possible, conserve the resources required to preserve the records and make them available. In considering where to place the archives of the courts, it is useful to review how each choice of location might support these goals.

Fostering Research. Potential users of the tribunal records urge officials to place the records where research into international jurisprudence will be fostered. Keeping the records of the courts in one place would do that, in their opinion. An historian spoke for many, saying, "One place for records facilitates research."[6] An international human rights activist agreed, saying, "Having everything in one place would be a big benefit for users."[7]

There are good reasons for placing the records of the Rwanda and Yugoslav tribunals in one location. Not only did they share a prosecutor for many years, but also the appellate court continues to serve them both. Their jurisprudence together forms the basis of the subsequent courts, just as the two tribunals looked back to the post-World War II courts. Their legal basis is identical, their records are in the same formats, and the records in one provide insight into the history and practices of the other.

If the original records of the Special Court in Sierra Leone are to be preserved by the United Nations, it makes sense to place them with the ICTR records because the Special Court modeled many of its practices on those of the ICTR. And if the records of the ICTY, the ICTR, and the special court are in one archives, it is reasonable to store the UN copies of records from East Timor's Special Panels and Serious Crimes Unit with them, allowing the judicial records specialists on the staff of the archives to handle access issues consistently from one body of records to another.[8]

Whether or not to also place the records from the justice "pillar" of UNMIK with these records is more difficult. Are there research benefits to locating the UNMIK records, in whole or in part, in the same archives as the records of ICTY? The ICTY has jurisdiction over certain crimes committed in Kosovo, and the connection between certain trials by ICTY and the historical events in Kosovo is strong. However, archivists generally resist dividing the records of a single office such as UNMIK between two repositories; in this case, the general policy would argue against locating UNMIK's justice "pillar" records with the other international courts and the rest of the UNMIK records in New York. Assuming then that all UNMIK records should be in one place, is the importance of the justice work such that co-locating the justice records with the other records of international courts should be controlling for all the UNMIK records? The answer is probably no. The justice component of UNMIK, as important as it is, is only one aspect of the broad work of UNMIK as a trusteeship government of Kosovo. The preponderance of the UNMIK records can be understood best in the context of the records of UN peacekeeping operations around the globe. All peacekeeping records are held in the United Nations Archives in New York, and the UNMIK records, including those of the justice component, should be there, too.

Providing Consistent Administration. One of the great difficulties in managing bodies of sensitive records is to provide consistent services. Every victim needs to have the same treatment and obtain the same services; each journalist must be given the same research choices. This is difficult enough to do with any body of records; trying to achieve consistency when managing records located in very different places is an added burden. The risk is that the standards will not be the same and that the users, in particular those who were victims of crimes, will have unequal treatment. Locating the records in one location, served by one staff of archivists with one set of lawyers advising them, minimizes the risk of unwarranted disclosures or of inconsistent reference service.

Conserving Resources. The appraisal of the records in Chapter 5 showed that some records of all physical types created or received by a court are permanent. The archives holding the records of the court will need specialized

electronic storage, as well as storage for paper, audio recordings, video recordings, photographs, and artifacts.

Each of these physical types of records needs special preservation conditions. Temperature and relative humidity need to be controlled in the storage areas, stable conditions (consistent electrical power, for example) are crucial for long-term preservation, and dust must be held to the absolute minimum around magnetic media such as audio, video, and data tapes. Major computer systems need specialized rooms. Annex 4 provides a table of the physical storage criteria in the ISO standard on storage requirements.

In addition to special preservation conditions, court records also require special security storage. A substantial proportion of the original records retained as archives will require high levels of security for decades. Using the ICTY figure for its judicial database, where an estimated 30% of the records have some type of restricted access, the electronic records will have serious security issues to be managed. Videotapes and audio recordings and transcripts of proceedings usually exist in both redacted and unredacted versions, and the unredacted version must be secured. Files of prosecutors and investigators and defense lawyers and registrars all have items that are potentially damaging if released prematurely. The archival facility that houses these materials will need to contain both physical and electronic security programs, including storage areas for records that are still restricted from public view as well as storage areas where public use materials are housed.[9]

Consistent electricity, temperature and humidity controls, and good security regimes are absolutely essential. If the United Nations houses tribunal records in two, three or more locations, the costs of providing these services will be doubled or tripled. Similarly, the reference service on the records requires the same staffing and the same reading rooms, the same computers and the same videotape players, no matter which records are in question. It is simply more cost effective to put the tribunal records in a single location rather than to operate archives in two or more locations.

Single Location Options

The New York Option. When the courts were established, the staff members of the United Nations assumed that the ICTY and ICTR records would be shipped to the United Nations archives in New York. The records of the Special Court in Sierra Leone could go to New York as well, if the two parties agree that the UN should be the custodian of the original records. The copies from East Timor are in New York, and the records of UNMISET and UNMIK are headed there.

Several problems arise with placing all court records in New York. First, the UN archives in New York is in poor quality archival space, in terms of both the size and the physical characteristics of its storage areas. The archives is in two buildings: a converted grocery store and a light industrial building that it shares with jewelry makers and parts of the garment industry. . Security would need to be increased in either location to handle the court records; additional storage areas would almost surely have to be acquired as the current storage rooms are nearing capacity. No preservation-quality space exists for the storage of the large quantities of audiovisual materials and objects from the courts.

Other people express different concerns about relocating the records of one or more of the courts to New York. Some simply see New York as too far both from the sites where the events on trial occurred and from the current sites of the courts. A prosecutor said flatly, "Boxing up and sending to New York won't help anyone."[10] Another person suggested that because terrorists have targeted New York, the records might be safer elsewhere.[11] Several people fear that records sent to New York will be "locked up," citing the precedent of the records of the Guatemala truth commission that are in New York and unavailable.

The Geneva Option. The United Nations has a second archives in Geneva, Switzerland, that reports to and is a branch of the New York United Nations Archives.[12] This branch archives, housed in the Palais built for the League of Nations, holds the records of the League and of smaller, Europe-based UN organizations such as UNCTAD. Like its parent archives in New York, it too is short of space and does not have specialized storage for the nonpaper records.

The Hague Option. The location for an archives of international judicial records that gains the most support from users is The Hague. "My intuition for a depository would be the home of the ICC,"[13] wrote a law professor, echoed by a colleague who said, "The jurisprudence of the tribunals is important to the ICC. Having an archives proximate to the ICC makes a lot of sense."[14] Another international law professor thoughtfully wrote to the list serve of the American Society of International Law, "Given the culture of international law that attaches to The Hague by virtue of the ICJ, the ICC and other tribunals that are or have been sited there, and given that archives exist primarily for the benefit of future researchers who must have convenient and assured access to them, it would be best for the records of the ICTY and ICTR to be deposited in The Hague."[15]

The Hague's interest in hosting an international judicial archives is evident. The city advertises itself as the "world capital of peace and justice," noting that it is the home of the Permanent Court of Arbitration, the International Court of Justice, and the Academy of International Law, the International Criminal Court, the Organisation for the Prohibition of Chemical Weapons, and Europol, as well as ICTY. The head of the international desk for the city has expressed interest in an archives project, and the city's mayor published a document on the roles of The Hague in international law in which the possibility of hosting a United Nations judicial archives service is mentioned.[16]

The Dutch Carnegie Foundation, which manages the Peace Palace in The Hague, is also interested in the possibility of an international judicial archives, perhaps in cooperation with the Palace. The Palace houses the archives of the International Court of Justice, its predecessor the Permanent Court of International Justice, and the records of the post-World War II International Military Tribunal. Short of space, it has had to place some of its records in courtesy storage in the National Archives of The Netherlands, and in 2005 the United Nations authorized funds to take preservation actions on the records of the International Military Tribunal. A modern, user-friendly international judicial archives could provide storage and preservation services for at least the IMT records, if not also the records of the ICJ.

The International Criminal Court in The Hague will also need judicial archives storage and services. The United Nations' Office of Legal Affairs has said that the records of ICTY, the sister tribunal in Rwanda, and the Special Court for Sierra Leone cannot be deposited with the International Criminal Court "because the crimes were committed before the establishment of the ICC."[17] While the legal framework of the ICC may preclude a single archives service that would manage the UN-related records as well as the ICC, it is advisable to consider the future storage and user services needs of the ICC in conjunction with any planning for an international judicial archives. Because the permanent facility for the ICC has not yet been constructed, it would be possible to harmonize the plans for an international judicial archives with those of the archives for the ICC.

In addition to the international judicial presence in the city, The Hague is a center for archival excellence. It is the home of two outstanding archival institutions, the national archives of The Netherlands and the city archives of The Hague. The Dutch archives school, located in Amsterdam, is one of the best in the world, ensuring that a judicial archives in The Hague will have a steady stream of qualified candidates for archival posts. And The Netherlands has a well-developed coterie of archival suppliers and contract services, enabling an archival institution to

easily obtain supplies and technical support.

In short, the international courts clustered in The Hague all need archival storage and services. The city is interested in hosting an international judicial archives. Retaining the ICTY records in The Hague would avoid the costly shipping of the ICTY records, the largest body of temporary court records. The archives could take over computer and other equipment from the ICTY, and the transition from court to successor archives could be handled without the break in service that would result from shipping the records elsewhere. Whether the records from ICTR are shipped to New York or The Hague is probably cost neutral, as it would be to ship from Sierra Leone to either city. The co-location of records of the international courts would greatly facilitate research in the development of international jurisprudence.

Many models exist for cooperative archival facilities, and the UN administration should explore these with Dutch officials and potential donors. For example, the facility could be built and managed by a government or an organization, as the Peace Palace is for ICJ, while the United Nations provides basic archival services. Non-UN institutions could provide exhibit and public programming. No matter which cooperative model is chosen, such core archival functions as appraisal and access regulation should remain with the United Nations.

Access through Copies and Description

If the archives of the courts are to be located away from the current sites of the tribunals and away from the sites of the crimes, copies of publicly available records should be made and deposited in multiple institutions in the countries involved. Making copies is not inexpensive, but it is a far less costly solution than operating permanent archives in multiple locations.

One important benefit to the institutions holding copies is that copies can be used without worrying about their preservation: if a copy item is damaged or destroyed, it can always be replaced from the originals preserved in the archives. Copies free the recipient institutions of the burden of preservation expenses that goes with holding originals. Copies of unrestricted records can be made freely available to all users without worrying about security concerns or needing to screen records before making them available. Liberally placing copies also avoids the problem of choosing which one of the countries in a region will house the archives.

It is useful to ask what researcher needs can be met from the records already in the public: those distributed through the court's websites, the released audios and videos of court proceedings, the published opinions. If placing one or more duplicate sets of the publicly available material in geographically dispersed institutions can support many uses, then a duplication and deposit strategy is especially useful.

Because the courts have made so many records available, many research needs can be met through them. Clearly the videotape-copying project for the three Balkan NGOs is predicated on the idea that local copies of publicly available material will be useful to the communities. Depositing copies of the videotapes and the website from the Rwanda tribunal and from the Special Court in Sierra Leone in one or more institutions in Africa, for example, would allow access to local users, including journalists, community groups, and scholars, providing communities with important research resources. Keeping the information that is now available on the websites of those three courts alive on some public electronic system will permit substantial quantities of information to be used in any part of the world, which will particularly benefit academic users. And if a legal publisher would systematically publish opinions from international tribunals and hybrid courts, that form of duplication would satisfy yet another group of users.

However, the deposit of duplicates will not satisfy people who need access to information that is currently closed, such as for claims or for further litigation, or scholars looking in depth at legal practices or historical developments. Those persons will still require access to the original records.

The delivery of original records to these users can take many forms. When a requester wishes to see a specific file, such as a person asking to see the file on himself, an archives will usually make a copy and send it to him. Copies can be made in paper and sent through any of the secure delivery services; alternatively, copies can be sent electronically, either to the individual or his designee or, if that is not a secure transmission, to a United Nations office in the country where the individual lives. Many options are possible that do not require a person to go to the archives to see a limited number of items from a specified body of records. However, researchers, particularly academic researchers, who want to do systematic research through a large body of records will still need to visit the archives. Some archives provide travel grants to help defray expenses for research visits. The archives for the international courts could explore with donors the possibility of establishing a travel grant competition program.

Describing the records is a fundamental part of the access process. The better the description the easier it is for users at a distance to specify what records they wish to see and to order copies. The archives for the temporary international criminal courts needs a solid description program that will make information about the records available to all.

In addition to facilitating research requests, Paul Shapiro of the US Holocaust Museum argues that there is a social benefit in describing records and making that description easily available:

There are options between everything in New York and everything in Kigali. Sometimes simple knowledge that materials are somewhere safe is enough. Having the full descriptions of all the records and making those easily available is important, because it provides assurance to people who need to know where the records are and it provides assurance to people that there is a place where the records will be saved for their kids and grandkids to learn and understand this history. It allows a greater set of choices for where to locate the records if you lay out what's available through description.[18]

A program to duplicate publicly available records and deposit those copies in institutions in the countries affected is an essential component of the creation of a single international judicial archives. It should be accompanied by a sustained description effort, making the information about the holdings available to all and enabling the public to order copies of records they wish to see.

Conclusion

The East Timor Special Panels and the Serious Crimes Unit have closed; the Special Court for Sierra Leone is to close in mid to late 2008; final status talks on Kosovo are ongoing; and ICTR and ICTY have fixed closures in 2010. Given how long it takes to prepare appropriate archival facilities for storing sensitive records, now is the time to determine what will happen to the records of these bodies.

The United Nations needs to embrace its responsibility for running an international judicial archives center. Neither of the current UN archives facilities in New York or Geneva has the space for these records. Neither has the staffing to handle them; neither has the funding for managing and preserving such large additional bodies of records.

A single, purpose built facility will allow a staff of lawyers and archivists to handle international judicial records

consistently, applying the same rules of access from one tribunal to another. Placing the records in one facility permits one research room, one arrangement and description program, one security system, and one computer support staff.

The United Nations should engage in discussions with the city of The Hague, the government of The Netherlands, and the Dutch Carnegie Foundation on the possibility of locating an international judicial archives there. The United Nations should also begin to canvas international donors, both governments and nongovernmental institutions, to evaluate the level of resources that might be available for construction and, critically, continued staffing and maintenance of the program.

Meanwhile, the United Nations should plan a copying and description program that will meet research needs in the countries affected. This program can begin immediately, and would be an opportunity for the UN to work cooperatively with institutions in the regions.

Operating a judicial archives is a serious business. It is the inevitable outcome of the historic establishment of United Nations' war crimes tribunals. As organizations operate, they create records. Historically important organizations create records of historic significance. The international community has no choice: the records of the temporary international criminal courts must be preserved and protected and made available. The point of saving the records is to permit them to be used--used today for their primary purposes, used tomorrow for a range of research that we cannot even imagine. The goal is clear. As former ICTY prosecutor Louise Arbour wrote, "If we exploit the full potential of criminal trials for war crimes, we should do so in part to punish, in part to deter, but, most importantly, to try to understand."[19] Archives—the permanently valuable records of the international judicial process—make that understanding possible.

Endnotes

1 Email, Christopher Keith Hall, Amnesty International, to Erin Hespe, United States Institute of Peace, 2005-10-15; copy with the author.

2 "The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119," United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1997/20/Rev.1, 1997-10-02; updated by E/CN.4/2005/102, 18 February 2005, and E/CN.4/2005/102/Add.1, 8 February 2005.

3 Kigali, The New Times/All Africa Global Media , 2005-11-06. In addition, by early 2007 over 20 genocide survivors who were witnesses in the traditional local court processes (gacaca) in Rwanda had been killed within two years. Human Rights Watch, "Killings in Eastern Rwanda," January 2007 http://www.hrw.org/backgrounder/africa/rwanda0107/ , accessed 2007-02-05.

4 Christopher Keith Hall to Erin Hespe, op. cit.

5 Email, Ewen Allison, 2005-03-28.

6 Interview, Ken Cmiel, 2005-04-07.

7 Interview, Jerry Fowler, 2005-03-11.

8 The government of East Timor might have to agree to place the copies in an international judicial center, particularly if East Timor's UN Ambassador in New York is to play a key role in determining access.

9 It is possible to store records with a mix of security requirements in one place, but because of the costs involved in managing security vaults, archives usually choose to segregate the two types of records.

10 Interview, David Tolbert, 2005-04-19.

11 Interview with David Scheffer, 2005-03-15.

12 Many UN organizations have independent archives, such as the International Labour Organization, the United Nations High Commissioner for Refugees, and UNESCO. These, however, are not directly subordinate branch archives of UN New York in the way that the archives in the Palais is affiliated to New York.

13 Email, Michael Churgin, 2005-03-30.

14 Interview with David Scheffer, 2005-03-15.

15 Email, Maivan Clech Lam, 2005-03-28.

16 Email, Bob Lagerwaard, 2005-07-05; "Werken ann de Wereld in Den Haag: Position Paper Den Haag, Internatnionale Stad van Recht en Destuur." Copy in author's possession.

17 Email, Bridget Sisk, 2004-12-01.

18 Interview, Paul Shapiro, 2005-03-11.

19 Louise Arbour, War Crimes and the Culture of Peace. Toronto: University of Toronto Press Incorporated, 2002, p. 47.

Summary List of Recommendations

Appraisal Recommendations – Chapter 5

General recommendation

All records proposed for destruction, other than those disposable under the general records schedules, as revised, should be generally described and the description and proposed disposal made public with a comment period. After receiving comments and when final determination is made, publish the final decision.

Records common to most tribunals and hybrid courts appraised as PERMANENT

1. All the records of the official proceedings of all cases in both lower and appellate courts, including the pleadings, the evidence, and the official copies of the transcripts, rulings, and judgments. The records should be preserved in the format that the court deems to be official; at present, that format is usually paper. Evidence presented in formats other than the official format, such as audiotapes, videotapes, and objects, is permanent in that format. All tracking systems used to manage the proceedings are also permanent.

2. If decisions are published, one copy of the publication.

3. Records of the meetings of plenary bodies of judges, of judges and prosecutors, and of judges, prosecutors, and registrar.

4. The records of the Office of the President and the Office of the Vice President of the court.

5. The records of the Prosecutor and the Deputy Prosecutor.

6. The records of the Chief of Investigations and Deputy Chief of Investigations.

7. Records of the Chief and Deputy Chief of the office of the Defense Counsel.

8. The records of the Registrar and Deputy Registrar.

9. A master set of policy and procedures manuals.

General records schedules authorizing destruction of records

1. Use UN general records schedule items 1-6, 13, 15-17.

2. Use UN general records schedule item 7, premises files, for records relating to routine requests for space allocation, facilities maintenance, and security measures. **Do not** use it for construction records, premises policy records, or records relating to detention facilities.

3. Do not use UN general records schedule items 8-11, 14, and 18.

Examination, selection and disposal of other records

1. Ship all records not disposable under the general records schedule to the archives for further appraisal.

2. Retain all electronic document managements systems maintained by the registry; when electronic documents in the system reach their disposal date, delete the documents and the metadata about them.

3. Transfer the personnel records of employment at ICTY and ICTR and, if requested, at SCSL, to a United Nations personnel office for management.

Appraisal of specific records of ICTY

General recommendations

1. Obtain the advice of an audio specialist to determine whether the quality of the sound from the "floor" on the videotape is equal to the quality of the sound on the audio recordings.

2. Contract with an electronic archives specialist to do a complete review of the preservation options for the ICTY Judicial Database (JDB) system.

Specific recommendations

Transcripts of proceedings

1. One complete copy of the transcripts in both English and French, paper and electronic format, complete and redacted: PERMANENT.

2. Any copy of the paper transcript in English or French that has been annotated: PERMANENT within the files of the office that made the annotations.

3. All other copies of the transcripts in English or French, in judges' offices, prosecutor's office, or registry: DESTROY when no longer needed for reference.

Videotape of proceedings

1. Video Edit videotape of all proceedings, including private sessions, closed sessions, and ex-parte hearings: PERMANENT.

2. Video Edit Backup (public use version) of all proceedings: PERMANENT.

3. ISO tapes of the first trial. PERMANENT.

4. ISO tapes of the defendant and witnesses in the trial of Slobodan Milosevic and, if they occur, the trials of Radovan Karadzic and Ratko Mladic. PERMANENT (Note: If it is not possible to identify easily the ISO tapes that focused on the defendant and the witness for these trials, then retain all the ISO tapes for those cases.)

5. All other copies: DESTROY when no longer needed for reference.

Audio recordings of proceedings.

1. All audio ("floor," English, French, BCS, Albanian, Macedonian) of the first (Tadic) trial, the trial of Slobodan Milosevic, and, if they occur, the trials of Radovan Karadzic and Ratko Mladic. PERMANENT.

2. "Floor" audio recordings of all proceedings, 1994-2000. PERMANENT.

3. For other audio recordings from 2001-, if the sound quality is better on the audio recording, then: "Floor" audio recording of all proceedings, including private sessions, closed sessions, and ex-parte hearings: PERMANENT.

4. For other audio recordings from 2001-, if the sound quality is the same on the audio recording and the videotape of the "floor," then: "Floor" audio recording of all proceedings, including private sessions, closed sessions, and ex-parte hearings: PERMANENT **only** if a videotape of the session does not exist, is defective, or does not carry the floor "language."

5. All other recordings: DESTROY when no longer needed for reference.

ICTY Judicial Database (JDB). PERMANENT.

Prosecutor's electronic records systems

1. MIF database of evidence: PERMANENT.

2. Document evidence collection: PERMANENT.

3. Digital archives of audiovisual records: PERMANENT.

4. Index of witness statements: PERMANENT.

5. Index of documents obtained under Rule 70: PERMANENT .

Prosecutor's evidence other than artifacts. PERMANENT.

Prosecutor's evidence: artifacts. PERMANENT, unless ordered by a judge to transfer item to heirs.

Prosecutor's audio and video recordings of interviews of witnesses, suspects, and accused. PERMANENT.

Records of the Commission of Experts. PERMANENT.

Records of Prosecutor's investigative field offices. PERMANENT.

Records of the Prosecutor's ICTR Support Unit. PERMANENT.

All other records of the Office of the Prosecutor. PERMANENT.

Records of the Registrar's Victims and Witnesses Section.

1. Protected witness relocation agreements. PERMANENT.

2. Relocated witnesses' dossiers. TRANSFER to successor office at close of ICTY.

3. Individual case protection assessment files. PERMANENT.

4. "Hotline" logbook. PERMANENT.

5. Records of policies, procedures, guidelines, public information. PERMANENT.

6. Records of the Sarajevo field office local network programs. PERMANENT.

7. Statistical database. PERMANENT.

8. All other records: DESTROY at close of ICTY.

Records of the Registrar's public information and outreach. PERMANENT.

Tribunal website. At the close of ICTY, document the look, layout, and contents of the website. Do not freeze it as an electronic artifact.

Records of the Registrar's Detention Unit.

1. Policy records relating to detention facility operation and inmate management. PERMANENT.

2. Records of the chief of the detention unit. PERMANENT.

3. Prisoner case files. PERMANENT.

4. Records of construction and major facilities renovation. PERMANENT.

5. All other records. REVIEW FOR DESTRUCTION when no longer needed for current operations or when the detention facility closes, whichever is earlier.

Records relating to the Registrar's management of the defence bar. PERMANENT

Appraisal of specific records of the ICTR

Transcripts of proceedings

1. One complete copy of the transcripts in both English and French, and Kinyarwanda if the transcript has been made, paper and electronic format, complete and redacted: PERMANENT.

2. Any copy of the paper transcript in English, French or Kinyarwanda that has been annotated: PERMANENT within the files of the office that made the annotations.

3. All other copies of the transcripts in English, French or Kinyarwanda, in judges' offices, prosecutor's office, or registry: DESTROY when no longer needed for reference.

Video recordings of proceedings

1. Video recordings of all proceedings, including private sessions, closed sessions, and ex-parte hearings: PERMANENT.

2. Redacted (public use) video recordings of all sessions: PERMANENT.

Audio recordings of proceedings

1. Pre-2000 audio recordings of all proceedings, including private sessions, closed sessions, and ex-parte hearings: PERMANENT.

2. Pre-2000 Redacted (public use) video recordings of all sessions: PERMANENT.

3. Audio recordings from 2000-. DESTROY when no longer needed for reference.

ICTR TRIM electronic database. PERMANENT.

Prosecutor's electronic records systems. PERMANENT.

Prosecutor's evidence. PERMANENT.

Prosecutor's audio and video recordings of interviews of witnesses, suspects, and accused. PERMANENT.

All other records of the Office of the Prosecutor. PERMANENT

Master set of all official Registrar's Court Management Section correspondence including any external correspondence received for action. PERMANENT.

Records of the Registrar's witness and victims support and gender issues

1. Protected witness relocation agreements. PERMANENT

2. Relocated witnesses' dossiers. TRANSFER to successor office at close of ICTR.

3. Individual case protection assessment files. PERMANENT.

4. ICTR hotline logbook. PERMANENT.

5. Records of policies, procedures, guidelines, publicity information. PERMANENT.

6. Records relating to gender issues. PERMANENT.

7. All other records: DESTROY at close of ICTR.

Records of the Registrar's public information and outreach program. PERMANENT

Tribunal website. At the close of ICTR, document the look, layout, and contents of the website. Do not freeze it as an electronic artifact.

Records of the Registrar's Detention Unit

1. Policy records relating to detention facility operation and inmate management. PERMANENT.

2. Records of the chief of the detention unit. PERMANENT.

3. Prisoner case files. PERMANENT.

4. Records of construction and major facilities renovation. PERMANENT.

5. All other records. DESTROY when no longer needed for current operations or when the detention facility closes, whichever is earlier.

Records relating to the Registrar's management of the defence bar. PERMANENT.

Appraisal of specific records of the Special Court for Sierra Leone

Transcripts of proceedings.

1. The court's copy of the transcripts in English, paper and electronic format, complete and redacted: PERMANENT.

2. One copy of the redacted transcripts translated into Krio, paper and electronic format: PERMANENT.

3. Any copy of the paper transcript in English or Krio that has been annotated: PERMANENT within the files of the office that made the annotations.

4. All other copies of the transcripts in English or Krio, in judge's chambers, prosecutor's office, or registry: DESTROY when no longer needed for reference.

Video recordings of proceedings. PERMANENT.

Audio recordings of proceedings. PERMANENT.

Prosecutor's electronic records systems. PERMANENT.

Prosecutor's evidence. PERMANENT.

Prosecutor's audio and video recordings of interviews of witnesses, suspects, and accused. PERMANENT.

All other records of the Office of the Prosecutor. PERMANENT.

Records of the Office of the Principal Defender. PERMANENT.

1. Principal Defender's duplicate copies of the audio and video recordings of the prosecutor's interviews of witnesses, suspects, and accused. DESTROY when no longer needed for reference.

Records of the Registrar's witness and victims support unit.

1. Protected witness relocation agreements. PERMANENT.

2. Relocated witnesses' dossiers. TRANSFER to successor office at close of SCSL.

3. Individual case protection assessment files. PERMANENT.

4. SCSL hotline logbook. PERMANENT.

5. Records of policies, procedures, guidelines, publicity information. PERMANENT.

6. All other records: DESTROY at close of SCSL.

Records of the Registrar's public information and outreach. PERMANENT.

Tribunal website. At the close of SCSL, document the look, layout, and contents of the website. Continue to use it as the site for the archives of the SCSL. Do not freeze it as an electronic artifact.

Records relating to the Registrar's construction of the court building and the detention facility.

1. Sketches and preliminary drawings, concept statements, "as-built" drawings: PERMANENT.

2. Correspondence relating to the construction of the building. PERMANENT.

3. Construction contract files: RETAIN for life of the building; then destroy.

4. Engineering drawings of systems, such as electricity, plumbing, security; architectural records of built interiors: TRANSFER to successor custodian of the building when the SCSL closes.

Records of the Registrar's Detention Unit

1. Policy records relating to detention facility operation and inmate management. PERMANENT.

2. Records of the chief of the detention unit. PERMANENT.

3. Prisoner case files. TRANSFER to the successor custodian of the prisoners in the detention facility.

4. All other records of daily operation. TRANSFER to the successor custodian of the detention facility.

Recommendations on the records of East Timor Special Panels and Serious Crimes Unit

1. International donors should convene a conference in Dili, with international experts, to discuss models for handling the records of courts and prosecutors, including requirements of security, access, and archival deposit. Such a conference should include staff members of the courts, the prosecutor, the Ministry of Justice, the defense bar, and the national archives.

2. International donors should work with the government of East Timor to provide initial capacity-building training for the staff members in the national archives.

3. International donors should work with the government of East Timor to establish a program for continuing professional archival and records management training and development within East Timor. Records management training should include staff members from all government agencies that are responsible for the management of current records.

4. International donors should fund the design and construction of a national archives building for East Timor that will include storage areas for all physical types of records held or likely to be held by the government and conservation facilities for the records.

5. The United Nations Archives staff must be augmented by at least one professional archivist specializing in the preservation of electronic records.

6. The United Nations Archives staff must prepare archival descriptions and finding aids for the copies of the records of the Serious Crimes Unit in its custody to enable research to be undertaken in the records if authorized by the government of East Timor.

Appraisal of specific records of UNMIK Justice Programs, Kosovo

General recommendations

1. The OSCE Kosovo Judicial Training Institute and the United Nations should hold a conference to discuss models for handling the records of courts and prosecutors, including requirements of security, access, and archival deposit. Such a conference should include staff members of the courts, the prosecutor, the Ministry of Justice, the defense bar, and the national archives.

2. The international community needs to assist the Kosovars to build capacity to maintain court records, both in court storage and in archival custody. The international community should fund an inventory of court records and a survey of needs, using as a baselines the data in the 1986 "Guide to the Fonds held in Kosovan Archives" and the 1999 UNESCO report.

3. The international community should underwrite a program to make a security copy of all the records of the cases adjudicated by the "64 panels" throughout Kosovo. Pleadings, case docket sheets, opinions, transcripts, and evidence should all be included; objects retained as evidence should be photographed and the photograph copied. The copying program should begin immediately and should include all cases from the beginning of the 64 panels to the close of the international participation. The United Nations archives should hold one copy. If a judicial archives center is established, the United Nations should transfer its copy to that center.

4. If any or all of the court records of the cases handled by international judges were maintained separately in UNMIK for security and confidentiality, UNMIK should work with the Kosovo courts to establish a secure place for the records to be housed and should then turn them over to the court records system.

5. Representatives of UNMIK and the provisional government should determine which of the records of the international judges (other than the case files discussed in G.2.1 above) and of the international prosecutors are required for future administration of the Kosovo judicial system. These records should be separated from any other office records of the judges and prosecutors and turned over to the court records system.

6. UNMIK should require future international judges and prosecutors to maintain two separate sets of files, one for the records of their "work with local authorities" that will become property of the government in Kosovo and one for the records of any work that they may undertake for UNMIK.

7. Representatives of the United Nations, OSCE, and the European Union should meet to discuss the future disposition of the records of their activities as UNMIK in Kosovo. If the three cannot agree to deposit their records in a single location, they should agree to create a unified inventory of the records and make that inventory public.

Specific recommendations

Records of the Judicial Development Division, Professional Development Section.

1. Minutes (copy) of the Kosovo Judicial and Prosecutorial Council. PERMANENT.

2. Records of selection of judges and prosecutors (offer screened copy to government of Kosovo). PERMANENT.

3. Records of the public examination for judges (one copy of the examination, any study and publicity materials, official copy of the results). PERMANENT.

4. All remaining records. Offer to the government of Kosovo.

Records of the Judicial Development Division, Judicial Integration Section.

1. Records of monitoring, reports, statistical analysis. PERMANENT.

2. Reports and correspondence of the court liaison offices. PERMANENT.

3. Case files of the court liaison offices. PERMANENT

Records of the Judicial Development Division, Judicial Inspection Unit. PERMANENT.

Records of the Judicial Development Division, Victim Assistance and Advocacy Unit.

1. Policy and planning records. PERMANENT.

2. All other records. Offer to the government of Kosovo.

Access Recommendations – Chapter 6

1. A victim or witness can see the file on himself or herself.

2. A protected witness should be informed of any proposed transfer of his or her case file to a new custodian and be given a chance to object.

3. A team of lawyers and archivists must establish guidelines for the type of records to be withdrawn prior to the release of records to a person convicted by the court.

4. Prior to closure, a court should designate a successor to the prosecutor who will determine whether requests by national or international prosecutors or defense attorneys for access to records will be granted.

5. If attorneys seeking access for purposes of litigation are denied access, an appeal process to the successor to the court should be available.

6. A former employee of the court has access to records that he or she originated, reviewed, signed or received while an employee of the court.

7. Personnel records should be transferred to the UN personnel records office for retention and access as

needed by former court employees.

8. Prior to closure, a court should establish the standard of privacy that the archives should use to review records for possible public release.

9. Prior to closure, a court must establish a process to follow to unseal records and a body to handle petitions for unsealing.

10. Prior to closure, a court should declare that any court-created documents with security markings are to be considered unclassified.

11. Governments whose classified documents are found in the records of a court will be notified of the archives' intent to release any of the documents and given opportunity to comment; if the government objects to the proposed release, the archives may take the dispute to the body that handles petitions for unsealing for review and final determination.

12. Institutions whose records were obtained under a non-disclosure agreement will be notified of intent to release and given opportunity to comment; if the institution objects, that objection will be final.

13. The archives must adopt an access policy and publish it.

14. An appeals route for the public to contest denials of access should be established.

Administrative Recommendations – Chapter 6

1. Issue guidelines on personal papers.

2. Authorize the UN Archives to solicit donations of papers and records from non-UN sources.

3. Monitor deposit in other archives of materials, including personal papers of former staff members, that are related to the courts.

4. Establish a regular, central system for publishing opinions of international judicial bodies.

Placement and Facilities Recommendations – Chapter 6

1. Custody of the records UN international judicial bodies should remain in the United Nations; the United Nations Archives and Records Management Section should manage the records.

2. Establish a single international judicial archives for the records of all UN judicial bodies.

3. Explore the possibility of establishing a single international judicial archives in The Hague.

4. Construct or adapt a single, purpose-built facility for the storage and use of the records.

5. Establish a program to duplicate publicly available records and deposit those copies in institutions in the countries affected.

6. Describe comprehensively the records held in the international judicial archives, making the information about the holdings available both electronically and in paper upon request.

7. Use electronic and postal delivery systems to provide copies of records to researchers who cannot come to the archives in person.

8. Adopt a staffing plan that includes both archivists and lawyers.

9. When the decision is made as to what records will be stored in the international judicial archives, the current custodians of those records should provide measurements of the extant records that are to be transferred to the archives and project that figure to the close of the court's work.

Annex 1: Retention Schedule for Administrative Records Common to most United Nations Offices[1]

Effective date: October 1995

RCUN001. Organization/Functions Unrelated to Work Programme. Destroy 3 years after Date Closed.
Copies of correspondence, memos, cables, faxes, E-mail and report in paper form (See also Notes). The records deal with the organization and functions of other offices, including officer-in-charge designation, appointment of key officials and staff assignments outside the office's work programme. Close 31 December every 2 or 4 years. Destroy in office 3 years after date closed.

RCUN002. Budget, Financial, & Statistical Files. Destroy 6 years after Date Closed.
Copies of correspondence, memos, cables, faxes, E-mail and reports in paper form. The records deal with planning the substantive and administrative activities of an office; proposing budgetary resources for those activities; budget preparation instructions; tracking allotments and expenditures; performance indicators; medium-term planning; accomplishment, activity and workload reports submitted to higher levels. The records are created and retained by an office as its records of requests for action submitted through departmental Executive Offices to OPPBA. The disposition instruction should not be applied by OPPBA on records submitted by other offices for action. Disposition of these records is dealt with in departmental retention schedules for substantive records. Close at end of biennium. Destroy in office 6 years after date closed.

RCUN003. Human Resources Administrative Files. Destroy 3 Years after Date Closed.
Copies of correspondence, memos, cables, faxes, E-mail and reports in paper form (See also Notes). The records deal with staff administration including recruitment, assignment, training, job description, post classification, performance appraisal, promotion, travel plans and requests, leave and attendance, separation, etc. The records are created and retained by an office as its record of requests for action submitted through departmental Executive Offices to OHRM. The disposal action should not be applied by OHRM on records submitted by other offices for action. Disposition of these records is dealt with in departmental retention schedules of substantive records. Close 31 December every 2 or 4 years. Destroy in office 3 years after date closed.

RCUN004. Unofficial Personnel Files. Destroy 1 Year after Date Closed.
Copies of correspondence, memos and other records dealing with the different aspects of a staff member's employment (See also Notes). The files are maintained by an office for convenience of reference to selected information about staff members under its supervision. The files should not include material as precluded in ST/IC/82/77 (3 December 1982), ST/IC/82/77/Rev.1 (11 January 1983) and ST/IC/88/19 (4 April 1988) which recognize the official status files in Personnel Records Unit, OHRM as the sole official files. Close after date separated. Destroy in office 1 year after date closed.

RCUN005. Requisition Files. Destroy 3 Years after Date Closed.
Copies of requisitions, purchase orders, invoices, correspondence, memos, faxes, E-mail and report in paper form (See also Notes). The records deal with requests for supplies and services. The records are created and retained by an office as its record of requests for action submitted to other offices such as Buildings

Management Service, Procurement and transportation Division, etc. The disposition instruction should not be applied by BMS, PTD, etc. on records received form other offices for action. Disposition of these records is dealt with in departmental retention schedules for substantive records. Close 31 December every 2 or 4 years. Destroy in office 3 years after date closed.

RCUN006. Equipment Files. Destroy 8 Years after Date Closed.

Copies of requisitions, purchase orders, invoices, correspondence, memos, faxes, E-mail and reports in paper form (See also Notes). The records deal with the acquisition, replacement and inventory of equipment. Close 31 December every 2 or 4 years. Destroy in office 8 years after date closed.

RCUN007. Premises Files. Destroy after Date closed.

Copies of correspondence, memos, cables, faxes, E-mail, reports, lease, floor plan, etc. (See also Notes). The records deal with requests for, allocation and maintenance of, space and facilities and security measures. Close at end of premises' occupancy. Destroy in office after date closed.

RCUN008. Working Files. Destroy 1 Year after Date Closed.

Drafts, rough notes, copies of correspondence, memos, cables, reports and annotated publications or documents assembled for reference purposes or for use in the analysis or preparation of other material (See also Notes). The files, which contain mostly duplicates of records in organized filing system, are created and used by a staff member to support work in progress. The final version of material produced should be included in the organized filing system. Close at end of reference use. Destroy in office 1 year after date closed.

RCUN009. Chronological File. Destroy 1 Year after Date Closed.

Copies of outgoing correspondence, memos, cables, faxes, etc., arranged chronologically for quick reference. Close 31 December yearly. Destroy in office 1 year after date closed.

RCUN010. Reading File. Destroy 1 Year after Date Closed.

Copies of selected incoming and outgoing correspondence, memos, cables, faxes, etc., arranged chronologically. The file is circulated to staff members concerned with providing the necessary action. Close 31 December yearly. Destroy in office 1 year after date closed.

RCUN011. Daily Activities Records. Destroy 1 Year after Date Closed.

Except for the Secretary-General's records, calendars, appointment books, schedules and logs, created and maintained in paper or electronic form (See also Notes). The records assist United Nations officials to organize and allocate their time to activities such as meetings, telephone calls, trips and visits. Disposition of the Secretary-general's records is dealt with in the departmental retention schedule. Close 31 December yearly. Destroy in office or delete 1 year after date closed.

RCUN013. United Nations Documents. Destroy after Date Closed.

Copies of administrative instructions, information circulars, Secretary-General's bulletins, documents of United nations principal organs, press releases and other United nations publications used only for information of staff. Close 31 December yearly. Destroy in office after date closed.

RCUN014. Temporary Electronic Administrative Documents. Destroy after Date Closed.

Word processing files and spreadsheets maintained electronically during the preparation of a document and used to produce hard copy for retention in organized filing system. (See also Notes). The documents,

which contain administrative information, include correspondence, memos, faxes, reports, handbooks, directives, manuals and tables. Disposition of documents which contain substantive information is dealt with in departmental retention schedules. Close after the final document is produced. Delete after date closed.

RCUN015. Electronic Administrative Documents. Destroy after Date Closed.
Word processing files and spreadsheets maintained electronically throughout its life cycle and take the place of the hard copy. (See also Notes in RCUN014). Close at end of retention period for the RCUN series (i.e. RCUN001-013) to which the record belong. Delete after date closed.

RCUN016. Electronic Mail Administrative Messages. Destroy after Date Closed.
Hard copy of messages and attachments maintained in organized filing system or messages archived in a local hard drive. The messages contain administrative information received and transmitted. (See also Notes). ST/IC/1994/28 dated 20 June 1994 contains information regarding automatic message deletion from electronic mail databases. The Electronic Service Division has issued also procedures for archiving messages in a local hard drive. This information is available form the cc:Mail Bulletin Boards. Disposition of messages which contain substantive information is dealt with in departmental retention schedules. Close at end of retention period for the RCUN series (i.e. RCUN001-013) to which the record belong. Destroy in office or delete after date closed.

RCUN017. Optical Disk Administrative Files. Destroy after Date Closed.
Administrative records stored in optical disks. (See also Notes). Disposition of records which contain substantive information is dealt with in departmental retention schedules. Close at end of retention period for the RCUN series (i.e. RCUN001-013) to which the record belong. Delete after date closed.

RCUN018. Optical Disk Administrative Files Source Documents. Destroy after Date Closed.
Hard copy of administrative records scanned for storage in optical disk (See also Notes in RCUN017). Close after electronic files are verified and indexed. Destroy in office after date closed.

Endnotes

1 The title is misleading. The records on the list are to be destroyed, not retained.

Annex 2: Guidelines Concerning Records and Personal Property

In 1984 the United Nations issues guidelines concerning the secretary-general's private papers. Since that time, a number of UN bodies have issued guidelines for their staff members to follow. The following draft is based on the UN High Commissioner for Refugees guidance of 2000, which in turn incorporated elements from the 1984 secretary-general's guidance and from other examples of archival best practices.

Guidelines concerning records and personal property

I. The purpose of this issuance is to provide guidelines for the separation of the personal papers of staff members from the official records of the [name of institution].

II. Records created or received by a staff member of [name of institution] in connection with, or as a result of, the official work of the [name of institution] are the property of the [name of institution]. These records can be in any physical format: paper, email, photographs, maps, and so forth.

III. When a staff member retires or resigns and moves to another employer, the staff member needs to make sure that all records of [name of institution] remain with the employing office. The staff member should remove all personal papers. In addition, with the approval of the employing office, copies of official records can be removed for personal use, on three conditions: (a) the original records are in the official files; (b) the cost of the copying is not excessive; (c) if the records are less than 20 years old or are otherwise restricted in accordance with the policies of the [name of institution], the staff member must appropriately safeguard the copies until they are either returned to the [name of institution] archives or destroyed.

IV. The following categories of documents are the personal property of the staff member:

1. Personal notes and diaries that are not used in the course of [name of institution] business.

2. Surplus copies of [name of institution] printed documents and publications.

3. Personal correspondence with no connection to the work of [name of institution], even though maintained in
the office, such as social invitations, holiday greeting card lists, and other purely social matters.

4. Personal copies of personnel matters relating to the staff member (the official copies are with the official personnel files of [name of institution]).

V. In order to help a staff member decide whether other documents in the office are personal property, the archives suggests that the staff member ask a series of questions:

1. Creation. Did the staff member create the document on [name of institution] time, with [name of institution] materials, at [name of institution] expense? (If not, then it very likely is not a [name of institution], on that basis alone.)

2. Content. Does the document contain "substantive" information? (If not, then it very likely is not a [name of institution] record.)

3. Purpose. Was the document created solely for a staff member's personal convenience? Alternatively, to what extent was it created to facilitate [name of institution] business? (Here, for example, is the distinction between the official appointment books or calendars that are used to plan the official schedules of staff members, which are official records, and the personal paper or electronic appointment books, which are not.)

4. Distribution. Was the document distributed to anyone else for any reason, for a business purpose? How wide was the circulation?

5. Use. To what extent did the document's author actually use it to conduct agency business? Did others use it, too?

6. Maintenance. Was the document kept in the author's possession or did another staff member maintain it on the author's behalf? (If another person maintained it, it would tend to be a record.)

7. Segregation. Does it contain personal as well as official business information? Is there any practical way to segregate out the personal information in the document from official business information?

8. Duplication. Is the document a duplicate of a document or clipping or similar item that the staff member kept for convenience of reference? If it is, that is a personal copy and may be disposed of as the staff member chooses, bearing in mind the [name of institution] general restrictions on access.

Annex 3: The Revised Joinet/Orentlicher Principles on Access to Archives

In his influential 1996 report to the United Nations Commission on Human Rights on the question of impunity of perpetrators of human rights violations, the distinguished legal scholar Louis Joinet proposed five principles on the "preservation of and access to archives bearing witness to violations." The Joinet principles were revised by Professor Diane Orentlicher in 2005. The revised principles relating to archives are:

PRINCIPLE 14. MEASURES FOR THE PRESERVATION OF ARCHIVES

The right to know implies that archives should be preserved. Technical measures and penalties shall be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law.

PRINCIPLE 15. MEASURES FOR FACILITATING ACCESS TO ARCHIVES

Access to archives shall be facilitated in order to enable victims and persons related to claim their rights.

Access should also be facilitated, as necessary, for persons implicated, who request it for their defence.

Access to archives should also be facilitated in the interest of historical research, subject to reasonable restrictions aimed at safeguarding the privacy and security of victims and other individuals. Formal requirements governing access may not be used for purposes of censorship.

PRINCIPLE 16. COOPERATION BETWEEN ARCHIVE DEPARTMENTS AND THE COURTS AND NON-JUDICIAL COMMISSIONS OF INQUIRY

The courts and non-judicial commissions of inquiry, as well as the investigators reporting to them, must have access to relevant archives. This principle must be implemented in a manner that respects applicable privacy concerns, including in particular assurances of confidentiality provided to victims and other witnesses as a precondition of their testimony. Access may not be denied on grounds of national security unless, in exceptional circumstances, the restriction has been prescribed by law; the Government has demonstrated that the restriction is necessary in a democratic society to protect a legitimate national security interest; and the denial is subject to independent judicial review.

PRINCIPLE 17. SPECIFIC MEASURES RELATING TO ARCHIVES CONTAINING NAMES

(a) For the purposes of this principle, archives containing names shall be understood to be those archives containing information that make it possible, directly or indirectly, to identify the individuals to whom they relate;

(b) All persons shall be entitled to know whether their name appears in State archives and, if it does, by virtue of their right of access, to challenge the validity of the information concerning them by exercising a right of reply. The challenged document should include a cross-reference to the document challenging its validity and both must be made available together whenever the former is requests. Access to the files of commissions of inquiry must be balanced against the legitimate expectations of confidentiality of victims and other witnesses testifying on their behalf in accordance with principles 8(f) and 10(d).

PRINCIPLE 18. SPECIFIC MEASURES RELATED TO THE RESTORATION OF OR TRANSITION TO DEMOCRACY AND/OR PEACE

(a) Measures should be taken to place each archive centre under the responsibility of a specifically designated office;

(b) When inventorying and assessing the reliability of stored archives, special attention shall be given to archives relating to places of detention and other sites of serious violations of human rights and/or humanitarian law such as torture, in particular when the existence of such places was not officially recognized;

(c) Third countries shall be expected to cooperate with a view to communicating or restituting archives for the purpose of establishing the truth.[1]

Endnotes

1 "The Administration of Justice and the Human Rights of Detainees: Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119," United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1997/20/Rev.1, 1997-10-02; rev. by Diane Orentlicher, E/CN.4/2005/102/Add.1, 8 February 2005.

Annex 4: Physical Storage Criteria

Excerpted from International Standard ISO 11799 of 2003, "Information and documentation—Document storage requirements for archive and library materials"

Climatic data

	Temperature min. C	Temperature Max. C	Temperature variation	RH* Min %	RH Max %	RH variation
Paper optimum	2	18	+/- 1	30	45	+/- 3
Paper in use	14	18	+/- 1	35	50	+/- 3
B&W** photo film, polyester base		21	+/- 2	20	50	+/-5
Color photo film, polyester base		Less than 2	+/- 2	20	30	+/-5
B&W photo prints		18	+/-2	30	50	+/-5
Color photo prints		2	+/-2	30	40	+/-5
B&W microfilm, polyester base		21	+/- 2	20	50	+/-5
Magnetic media (data, audio, video tape) polyester base	8	23	+/-2	15	20	+/-5

*Relative humidity
**Black and white

Maximum limits for air pollutants

	Parts/billion (by volume)
Sulphur dioxide (SO2)	5-10
Nitrogen oxides (NOx)	5-10
Ozone (O3)	5-10

Dust Particles, including mould spores. A limit of 50 microgram/cubic meters, presupposing a removal by the air filtration system of 60% to 80% of the dust particles with a diameter of more than 0.5 micron.

Annex 5: Sample Staffing Plan, International Judicial Archives

The records of the international courts are some of the most important records ever created by the United Nations. The archives that holds them will not be a usual administrative archives, and its users and their demands will be quite different from those using the United Nations archives today. Access problems for the records will be complex, requiring legal assistance and the development of specialized procedures. A United Nations branch archives that would hold all the records discussed above, plus records of any future tribunal or records from hybrid courts, would need special staffing.

The size and physical nature of the holdings and the kind of access to be provided to them greatly influence the staffing required. The following model is based on the assumption that the archives will contain all physical types of records (paper, electronic, audiovisual) and will hold at least the records of ICTY and ICTR and the copied materials from East Timor.

This pattern assumes that a contractor will provide building management services and security and that a contractor will also handle the physical preservation of the materials. It also assumes that the UN computer service can provide mirror site management but that local employees will perform basic computer operational tasks. If a secure contractor could be identified, a contractor could also handle the local computer administration.

- Chief, international judicial archives
- 2 Attorney advisers
- Administrative officer
- Receptionist/administrative assistant

- Supervisory archivist
- 3 processing archivists (appraise, arrange and describe records, provide reference service on paper materials and manage objects)
- 1 electronic records archivist (specialist in the contents and relationships of electronic records; provide reference services; manages preservation)
- 1 audiovisual records archivist (specialist in the contents and relationships of audiovisual records; provides reference services; manages preservation contracts)
- 5 archives technicians (assist in arrangement and reference service, do initial screening of requested records and redact when final decisions are made)

- Computer services coordinator
- Computer technician

Annex 6: Space Requirements for an International Judicial Archives

Sizing an archival facility requires knowing what will be stored in it. This means both that the bodies of records destined for the facility are known and that the appraisal of those records has been completed (in other words, you know what records will be thrown away before the records are transferred to the archives). When those two decisions are made, you can size the facility; if you believe that other bodies of records will be sent to the facility in the future, it is advisable to either build additional storage space during the initial construction or plan where the first addition will be made to the storage facility.

The United States National Archives recently constructed a regional archives in Atlanta, Georgia. Excluding the cost of the land and the architectural design, the construction cost $205 per square foot. This included site grading, utilities, building construction, wiring, and contract management services. While the prices would be different in other locations, this provides a working benchmark to estimate the costs of a building.

It is, of course, possible to retrofit an existing building to accommodate an archives. Post offices, bowling alleys, grocery stores, and many other kinds of buildings have been converted. The cost of converting existing space, however, may approach the cost of new construction.

Whether the building is built new or converted, four types of space will be required: storage areas, processing areas, reference service areas, and general administrative space. The following discussion assumes that contractors working in the contractor's space will do the preservation work on original archival materials. If that assumption is not true, then space for preservation laboratories for both paper and audiovisual materials would need to be added to the list below. Also, sometimes records coming to an archives need to be treated for pest control before being stored. This discussion assumes that a contractor does any such treatment; therefore fumigation or other treatment space is not included in the following discussion.

1. Storage areas

The size of storage space required also depends on the kind of shelving chosen. If mobile shelving is used with standard six-foot aisles and three and a half feet between open rows, about three cubic feet of records can be stored for every one square foot of floor space (aisles and corridors take up a significant quantity of floor space). If stationary shelving is used, the ratio drops to slightly above 1 to 1.

Floor load must also be considered when building storage areas. Records are heavy, especially when concentrated in mobile shelving. A standard load-bearing capacity of 350 pounds per square foot is used for the U.S. National Archives storage areas, for example. If all records are housed on a single floor, the footprint of the building is necessarily larger than if several floors are used; in the latter case, however, the floor load requirements of an upper floor must be considered. Because of the potential danger of flooding it is usually not advisable to store records below ground level.

Finally, temperature and humidity controls (adjusted for the different types of materials stored; see Annex 3), security systems, fire alarms and fire suppression systems are all part of the storage area design. Security can have various levels, depending upon the types of materials stored in the area. It is usually helpful to have one area with more sensitive materials and one with records that are open, thereby allowing staff members who have no need to be in the sensitive records to handle processing and reference on the less sensitive materials. For exceptionally sensitive materials, a vault could be placed within the security storage area, but this is not usually necessary if the

access to the security storage is appropriately controlled.

The following types of storage areas are required for an international judicial archives, the square footage to be determined following a survey of the records to be transferred:

Paper storage, unrestricted records
Paper storage, restricted records
Magnetic media (audio and video), unrestricted records
Magnetic media (audio and video), restricted records
Objects, oversize items in map cabinets

If some of the electronic records are maintained offline, a separate storage area for electronic records is required. Duplicate copies of electronic records should be stored either electronically at a mirror site or on a removable storage device at another UN location.

2. Records processing (work) space

Adjacent to the storage areas there must be open space in which the staff can spread out the records and work with them. Here is where records accessioning, appraisal, arrangement, description, simple preservation, and pre-release review takes place. It is advisable to keep the records processing space separate from office areas, in order to ensure that records that are still restricted can be handled in these areas without fear of accidental disclosure. The areas need to be equipped with large tables, computers and printers, open space to roll carts with records, an electrostatic coping machine, video and audio monitors for work with the audiovisual holdings, shelving for finding aids and reference books used by the staff, and storage space for archival supplies.

While it is possible to do all types of archival processing in one location, archives often find it preferable to have the audiovisual processing in a separate area when the sound can be played aloud if necessary and the constant movement of images on a video screen does not distract someone trying to review records for possible release to a researcher.

3. Research rooms

A research room needs a security control desk at the entry, tables with lights and computer outlets, computers that provide access to the finding aids developed by the archives, one or more audiovisual review stations (equipped to handle both audio and video), space to roll carts of records between the tables and stations, and a monitor's desk to watch and assist the researchers. A small amount of shelving should hold use copies of books and reference publications about the courts and hard copies of finding aids.

If the research public begins to include both researchers given special access to items that are generally restricted to the public (such as research by victims or attorneys) and persons doing public research, it may be necessary to partition the room with a glass barrier so the monitor can see what is happening in both rooms but the person doing special access research are separated and (if working in teams) can discuss the materials being used. Similarly, if research in audiovisual materials becomes a distraction to researchers uses online records, paper, or still photographs, it may be useful to provide a separate area for audiovisual reference service.

Adjacent to the research room should be a small locked holding area, where records used one day and awaiting the researcher's return in the near future can be held. Alternatively, if the research room is adjacent to the storage

area, a portion of the storage area can be used for holding records in use.

Outside the research room should be lockers for the researchers to use to stow their personal belongings prior to entering the research room.

4. General spaces

The archival facility needs many of the spaces of a typical office: a lobby/reception area, a small meeting room, a lunch/break area, space for office supply storage, restrooms, staff offices, computer room, security office, mechanical spaces, and a loading dock (especially important for receiving shipments of records).

Recommendation. When the decision is made as to what records will be stored in the international judicial archives, the current custodians of those records should provide measurements of the extant records that are to be transferred to the archives and project that figure to the close of the court's work.