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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Comments on the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Note by the Secretary-General

1. The General Assembly, in its resolutions 53/212 and 53/213 of 18 December 1998, requested the Secretary-General, with a view to evaluating the effective operation and functioning of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, with the objective of ensuring the efficient use of the resources of the Tribunals, to conduct a review in full cooperation with the Presidents of the Tribunals, as recommended by the Advisory Committee on Administrative and Budgetary Questions in its reports, and in the statement made by the Chairman of the Advisory Committee before the Fifth Committee at its 37th meeting, without prejudice to the provisions of the statutes of the Tribunals and their independent character, and to report thereon to the relevant organs of the United Nations.

2. Pursuant to those requests, the Secretary-General constituted a group of five independent experts, acting in their individual capacities, to conduct a review of the effective operation and functioning of the International Tribunal for the Former Yugoslavia

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(ICTY) and of the International Criminal Tribunal for Rwanda (ICTR). The report of the Expert Group was submitted to the Secretary-General on 11 November 1999.

3. The General Assembly, in its resolutions 54/239 and 54/240 of 23 December 1999, requested the Secretary-General to obtain comments and observations from the two Tribunals on the report of the Expert Group, and to submit them, through the Advisory Committee on Administrative and Budgetary Questions, to the General Assembly for consideration at its resumed fifty-fourth session. The report of the Expert Group was issued as a document of the General Assembly (A/54/634) in January 2000 and was immediately transmitted to the two Tribunals for their comments thereon.

4. While the present report, together with the report of the Expert Group, is being considered during the resumed session of the Fifth Committee under agenda items 142 and 143 on the financing of the respective Tribunals, it is expected that the plenary of the General Assembly would consider those reports at its fifty-fifth session, under the relevant agenda items on the reports of the Tribunals. With regard to matters under the purview of the Security Council, particularly those regarding possible modification to the statutes of the Tribunals, arrangements will be made to ensure that the Security Council has for its consideration the report of the Expert Group and the present report.

5. So as to facilitate the deliberations of the Fifth Committee, the comments of both Tribunals have been presented under each of the 46 recommendations (see annex I); the paragraph numbers shown in parentheses at the end of each recommendation refer to the paragraphs in the report of the Expert Group. With respect to the response from ICTY, its comments represent a unified response of the Chambers, the Office of the Prosecutor and the Registry; in cases where there is not a unanimous opinion, the separate views of one or more of the organs are so indicated. In addition, the Prosecutor has provided more detailed observations, which cover both ICTY and ICTR, on a number of the recommendations, and these have also been included; the general observations of the Prosecutor appear in annex II. With respect to ICTR, unless otherwise indicated as comments provided by the Registry, the comments have been provided by the Chambers; the general comments of the Registrar of ICTR appear in annex III.

6. Of the 46 recommendations made by the Expert Group, 16 have already been put into practice by the Tribunals (recommendations 1, 2, 6, 13, 14, 17, 18, 22 to 27, 31, 36 and 38). Eleven of the recommendations (4, 6, 7 to 12, 16, 17 and 31) have been expressly indicated as subject to further review by the plenary sessions of the Chambers of one or both Tribunals. A number of recommendations are in different stages of review for acceptance or otherwise.

7. Bearing in mind the agenda items under which the present report is being submitted, the comments of the Secretary-General have also been included where relevant and are focused on those recommendations that have implications for the administrative and financial functioning of the two Tribunals. These concern recommendations 15, 19 to 21, 29, 34, 40 to 41 and 43 to 45. Two recommendations of the Expert Group are of particular importance in terms of the Secretary-General's overall authority; they concern the possible realignment of the control of administrative functions (recommendations 43 and 45). The Expert Group has expressed the view that, although dividing the Registry into two separate administrative structures with one integrated into the Office of the Prosecutor and the other servicing the Chambers may have budgetary implications, it should be seriously considered (A/54/634, para. 250).

8. The Secretary-General has considered the recommendations and is of the view that the continuing delineation of his overall responsibility for the functioning of the respective Registries does not preclude the fact that efforts would continue to be made to improve the quality of support given to the other two organs. To maintain a clear line of accountability, the Secretary-General has delegated authority under the United Nations Financial Regulations and Rules and Staff Regulations and Rules to the Registrars and other officers under their authority. Should the Security Council decide to revise the administrative elements in the respective statutes, such revision would need to be subject to a full understanding between the General Assembly and the Security Council as regards their respective authorities before any changes can be effected with respect to delegation of authority.

9. The General Assembly may wish to take note of the report of the Expert Group and indicate those specific recommendations which it accepts either as currently formulated or in modified form. In this regard, the General Assembly may wish to provide particular guidance to the Secretary-General in his formulation of proposals for the budgets for the Tribunals for the year 2001.

Annex I

Comments of the International Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, observations of the Prosecutor and comments of the Secretary-General, where relevant

Recommendation 1

In order to reduce delays caused by preliminary motions filed when an amended indictment includes new charges, the periods of time given under rule 50 for filing such motions should be considered as a maximum, which could be shortened at the discretion of the Trial Chamber if it believes the circumstances so permit or require (para. 37).

Comments of ICTY

1. This practice will be followed. Other related matters, such as how to proceed expeditiously with interlocutory appeals, will be discussed during a plenary session that will be dedicated to discussing rule modifications.

Comments of ICTR

2. This recommendation has been met in part by the adoption at the seventh plenary, on 21 February 2000, of an amendment to rule 50 whereby the time period has been reduced from 60 to 30 days, in conformity with rule 72.

Recommendation 2

In order to eliminate the difficulties that result from disqualification from trials of judges of Trial Chambers who confirm indictments, further consideration should be given to the view that confirmation of an indictment automatically results in disqualification of the confirming judge (para. 45).

Comments of ICTY

3. The recommended measure was adopted during the last plenary session, in November 1999. Rule 15, "Disqualification of judges", was modified accordingly.

Comments of ICTR

4. Rule 15(c), which provided for the disqualification of confirming judges, was deleted at the seventh plenary.

Recommendation 3

In order to reduce unduly long pre-trial detentions, the Tribunal might wish to consider whether the right of an accused who had voluntarily surrendered to be tried in person is waivable by the accused following his initial appearance and, if so, consider a consequent rule that would provide for provisional release if the Trial Chamber were satisfied that:

(a) The accused had freely and knowingly consented to trial in absentia;

(b) The personal circumstances of the accused, including character and integrity, as well as State guarantees for his appearance and other appropriate conditions were such that the likelihood of his not appearing for trial were minimal; and

(c) Defence counsel gave a solemn commitment binding themselves to participate in a trial in absentia, should one occur (para. 54 and footnote 14).

Comments of ICTY

5. Rule 65 (B) "Provisional release", was modified during the last plenary session in November 1999 in order to make the provisional release of accused possible in other than exceptional circumstances. Nonetheless, in those cases in which no guarantee is given by the relevant State, a release will not be granted.

6. For the time being, the remainder of the recommendation relating to trials in which provisionally released accused have waived their rights

to be present by not appearing for trial, will be discussed further.

7. However, the concept of granting provisional release under such circumstances is strongly objected to by the Prosecutor because the presence of an accused at large in the former Yugoslavia may impact on the Prosecutor's ability to maintain witness cooperation. In terms of the recommendation that defence counsel give a solemn commitment to participate in such a trial in absentia, the Prosecutor notes that the accused would have to be able to instruct his counsel at all times and that this would probably require elaborate and costly videoconference links. It is the view of the Prosecutor that a more effective and secure method of reducing the lengthy pre-trial custody of the accused is to concentrate efforts on reducing pre-trial delays and expediting trials.

Comments of ICTR

8. All of the ICTR accused have been arrested, except for a single individual who surrendered and whose prosecution was subsequently withdrawn. Hence, the recommendation is not relevant to ICTR. It would be a matter for judicial decision by a Trial Chamber should an occasion arise where the accused has voluntarily surrendered and waives his right to trial in person.

Observations of the Prosecutor

9. It is understandable that the Expert Group should have considered drastic options such as this, and it is possible in theory to imagine a case in which the circumstances might permit an accused to stand trial while at liberty. In practice the situation is likely to be very different. The accused would have to be able to instruct his counsel at any and all times during the trial, perhaps involving elaborate and costly videoconference links. There can be no effective or practicable control measures on the accused who is at liberty. His return in the event of conviction would have to be guaranteed by more than empty expressions of goodwill on the part of the political authorities in the former Yugoslavia. But over and above any technical and diplomatic obstacles to such a situation, there are enormous disadvantages to take into consideration, not least of which is the likely effect on prosecution witnesses of the knowledge that the accused is again at large. Witness cooperation is often fragile: victims often agree to testify reluctantly and only after protection measures have been ordered by the Trial Chamber. Moreover, the witness community can be close-knit, and the fears of one individual can readily be transmitted to others. The effect of the pre-trial release of an accused on the Prosecutor's ability to maintain witness cooperation and to lead important evidence at trials simply cannot be overestimated.

10. The prosecution, which has always been opposed in principle to the idea that an absent accused can be represented before the Tribunal, therefore regards this proposal as a last resort, tantamount to an admission of defeat by the Tribunal as a judicial institution. Trials without the accused present are inherently unsatisfactory. They represent a "second-best" system of justice that would diminish the standing of the ICTY and would downgrade the seriousness of the crimes, and substantially lessen the impact of international criminal justice. It is far better, especially now that more trials are being held simultaneously, to concentrate efforts on reducing pre-trial delays and improving the throughput of court business in other ways. If an accused who has voluntarily surrendered does qualify for provisional release, he will not spend a lengthy period in custody pre-trial. In that situation there is no need to consider allowing him to remain absent during the trial itself. He should be required to return for the trial. If he does not meet the criteria for pre-trial release, the necessary preconditions for a trial in his absence will exist. In addition, guarantees given before trial may be withdrawn if the outcome of a trial in absence is detrimental to the accused, or if there is a change of government in the meantime.

11. As a matter of broader principle, the Prosecutor does not favour the introduction in any form of trials in absentia, which she regards as being appropriate only in national systems, where the full resources of the State provide a much greater degree of control over the arrest of the accused, with the result that trials in absence are truly exceptional. By contrast, the International Tribunals, lacking their own police force, have little or no control over arrests and do not have sufficient resources to re-hear trials if that proves to be necessary.

Recommendation 4(a)

In order to facilitate a subsequent trial, the rule 61 proceeding might be amended to permit evidence produced at such a proceeding by the

prosecution to be utilized at a subsequent trial following the arrest of the accused if at the time of that trial the witness has died, could not be found, was incapable of giving evidence or could not be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable; moreover, to protect the interest of the accused, counsel could be assigned to represent the accused during the rule 61 proceeding (footnote 16).

Comments of ICTY

12. This recommendation will be examined during a plenary session.

13. It should be noted that the Prosecutor has requested the judges to consider utilizing testimonies produced during rule 61 proceedings in another case as evidence. This is in accordance with the view of the Prosecutor that there may be some scope for using the recommended practice to avoid witnesses being recalled to give evidence. Nonetheless, the Prosecutor points out that rule 61 transcripts from public hearings are likely to be of limited impact since minimal recourse is now had to rule 61 hearings.

Comments of ICTR

14. ICTR has not held rule 61 proceedings for the reason that unlike ICTY, we have not experienced failures to execute warrants. Hence the recommended change to rule 61 is not pertinent to ICTR. The preliminary view of the judges is that matters relating to the admission of prior testimony and the assessment of evidence, especially when not subject to cross-examination, are best left to Trial Chambers.

Observations of the Prosecutor

15. This is an interesting proposal that fits well into the broader consideration being given to ways in which economy can be achieved in the leading of evidence. The whole question of using written evidence in lieu of oral testimony causes fierce debate among practitioners from different backgrounds, as does the possibility of using evidence given in the trial of A during the subsequent trial of B. There may be some scope for using this proposal to avoid witnesses being recalled to give evidence, but rule 61 transcripts from public hearings are likely to be of limited impact now that the practice of sealed indictments has been almost universally adopted. The fact is that little recourse is now had to rule 61 hearings. Moreover, rule 61 hearings have not been held in ICTR because of the success in arresting the accused.

Recommendation 4(b)

Alternatively, in order to avoid the disqualification of the entire rule 61 Chamber and to shorten the proceedings, the rule 61 proceedings could be amended to vest in the confirming judge alone the power, upon application by the Prosecutor and on satisfaction of the judge, to issue an international arrest warrant and order the freezing of the assets of the accused (footnote 17).

Comments of ICTY

16. A proposal for a rule modification will be submitted to a plenary session. In addition, Chambers suggests that the President should be allowed to appoint another judge if the confirming judge is not available, assuming that the Prosecutor wishes to proceed with such proceedings.

Comments of ICTR

17. A single judge could well be empowered to hold rule 61 proceedings. Such a change may receive the consideration of the ICTR judges, should the need arise.

Recommendation 5

In order to reduce the potential for obstructive and dilatory tactics by assigned defence counsel, the amount of legal fees allowed might properly take into account delays in pre-trial and trial proceedings deemed to have clearly been caused by such tactics; though this is not to recommend that the Chambers become enmeshed in all the details of remuneration of assigned counsel, but rather that they simply exercise an oversight function (footnote 23).

Comments of ICTY

18. The practice recommended here is rejected by Chambers and Registry and, in addition, by representatives of defence counsel.

19. Firstly, rule 45(f) of the Rules of Procedure and Evidence stipulates that: "The Registrar shall, in consultation with the judges, establish the criteria for the payment of fees to assigned Counsel." Rule 45(f) clearly vests the Registrar with the authority to determine the rate of defence counsel fees and to resolve any dispute in relation to the payment of fees. It would therefore be unwarranted to "enmesh" Chambers with an oversight function in relation to invoices when that function is properly vested with the Registrar.

20. Secondly, the Expert Group's comments are written in the context of expediting trials; however, this recommendation is based on the assumption that defence counsel have the power to arbitrarily delay trials. All adjournments in a trial are ruled upon by Chambers, which are certainly aware of the possible misuse of adjournments by defence counsel. Hence, Chambers already have the power to regulate the dilatory tactics of defence counsel. Furthermore, any investigation carried out in accordance with such an oversight function would be highly embarrassing for the judges, as it would be necessary to enter matters within lawyer-client privilege.

21. Thirdly, it is recognized in jurisdictions, at least in civil law countries, that the accused in criminal proceedings has the right to exhaust all possible legal remedies irrespective of the financial consequences. Any measures to prevent counsel from appealing decisions may constitute a violation of the accused's rights to a fair trial.

22. The Prosecutor would welcome the practice recommended here and notes in addition that costs or curtailment of fees can be an effective measure in some national systems.

Comments of ICTR

23. The Chambers have exercised an oversight function over frivolous motions. For instance, Trial Chamber I ruled in one case that two motions were "not reasonable or necessary", as required by the Directive on the Assignment of Defence Counsel, and therefore did not warrant legal fees.

24. In addition, a new sub-rule 73 (E) was adopted at the seventh plenary explicitly providing for sanctions which may include "non-payment in whole or in part of fees associated with the motion" which is found to be frivolous or an abuse of process.

Observations of the Prosecutor

25. The Prosecutor welcomes this recommendation, and notes that costs or curtailment of fees can be an effective measure in some national systems. Financial limitations can also take a more positive form; for example, special judicial approval can be required before additional amounts are paid to cover proceedings involving matters of exceptional length or complexity.

Recommendation 6

In order to curtail excessive motions, the Chambers might:

- **Consider a rule requiring that, before any motion is presented, it first be discussed between the prosecution and the defence, between themselves, with a view to resolving the matter by agreement (para. 71);**
- **Consider the so-called "rocket docket" techniques utilized by the United States District Court for the Eastern District of Virginia to move cases expeditiously (para. 71);**
- **Consider adapting for use by ICTY and ICTR the "omnibus hearing" process for managing motions before trial (paras. 72-73);**
- **Consider requiring that, unless otherwise ordered by the Trial Chamber, motions be made and responded to orally (para. 74).**

Comments of ICTY

26. The practice of requesting parties to first discuss a question in dispute before filing a motion has been followed in the past, and will continue to be implemented by judges. Decisions are given orally by judges when the legal issue is not complicated, and Chambers will endeavour to ensure that this practice is followed uniformly.

27. It is the view of the Prosecutor that before the trial has started, it is at the discretion of the Trial Chamber as to whether motions should be written or presented orally. However, once the trial has started, she concurs with the practice recommended above, that motions should be presented orally to the Chamber, and should be ruled upon by the bench. Thereafter, the

Prosecutor suggests that any further consideration of the issues should be reserved for the appeal stage, without further delaying the trial proceedings.

28. These recommendations [the last suggestions of the recommendation] are under consideration and will be reviewed by the Rules Committee.

29. Although the Prosecutor favours rule changes to curtail excessive motions, she would not advocate incorporating very specific national solutions, such as the so-called "rocket docket", into the practice of the Tribunal.

Comments of ICTR

30. The four suggestions, proposed as means of curtailing excessive motions, will be tabled for discussion by the judges at the next plenary. The concepts of "rocket docket" techniques or "omnibus hearing" process referred to by the Expert Group appear to be peculiar to one national system. More information about these processes and how they function in practice is required to enable the judges to form an opinion on their efficacy.

31. It is noted that the ICTR judges have sought measures to curb excessive motions, namely:

– New rule 73 (E) provides for sanctions;

– New rule 73 (C) places a 10-day time limit for filing additional motions;

– New rule 72 (G) confines objections to the form of the indictment to one motion only;

– New rule 72 (H) stipulates that "objections based on lack of jurisdiction" relate exclusively to the four categories named in the Statute, i.e., persons, territories, period and violations.

32. In addition, following the adoption of an amendment to rule 73 (A) at the sixth plenary in June 1999, the judges have put in practice the disposal of motions on briefs, thereby reducing the need for oral hearings.

Observations of the Prosecutor

33. The Prosecutor would favour rule changes to curtail excessive motions. In the Rwanda context she welcomes new sub-rules 73 (C), (E), (G) and (H) adopted at the seventh plenary session, and designed to curtail excessive motions. More generally, practice currently varies between Trial Chambers. Some judges may prefer written motions, while others regard oral applications as more efficient. There is no clear consensus on best practice in this area, and it may be that no single approach fits all circumstances. In the early stages of the development of the Tribunal's jurisprudence there was some advantage in reducing all novel issues to writing. There should now be greater scope for dealing with familiar legal issues without the need for extensive fresh legal argument and research on every point raised. It is certainly true that heavy demands can be placed (or tactically imposed) upon the prosecution in the pre-trial stage by the need to prepare detailed responses to motions, and the combination of a heavy motion practice and interlocutory appeals can result in delay. The Prosecutor is very open to suggestions as to how the burden of excessive motions can legitimately be reduced. She believes that before the trial has started, motions can be written or oral at the discretion of the Trial Chamber. Once that trial has started, however, she considers that motions should be presented orally to the Chamber, and should be ruled on from the bench. Thereafter, any further consideration of the issues raised should be reserved for the appeal stage, without further delaying the trial proceedings. The two guiding principles of orality and immediacy should be paramount in trials.

34. The Prosecutor would not, however, wish to see a very specific national solution, such as the so-called "rocket docket", adopted wholesale into the Tribunal's practice, but agrees that steps should be taken to ensure that genuine preliminary challenges to proceedings be brought promptly and that they either be disposed of at an early stage or immediately identified as suitable for resolution during the trial itself.

Recommendation 7

In order to expedite trials, the Trial Chamber might accelerate and make general the practice of forcefully utilizing existing rules dealing with the presentation of evidence or promulgate and implement further rules to assert greater control over the proceedings, including adjournments, while protecting the legitimate interests of the accused (paras. 76-78).

Comments of ICTY: See consolidated comments on recommendations 7, 9 and 10 in paragraphs 37 to 39 below.

Observations of the Prosecutor: See observations on recommendations 7 to 10 in paragraphs 40 to 44 below.

Comments of ICTR: See consolidated comments on recommendations 7 to 12 in paragraphs 57 to 61 below.

Recommendation 8

In connection with the objective noted in recommendation 7 above, in attempting to control the presentation of witness testimony, the Trial Chambers might consider, to the extent not currently the practice, permitting offers of proof to protect the rights of a party whose evidence is excluded (footnote 25).

Comments of ICTY

35. Judges do ensure that parties are treated equally, and further, the judges permit offers of proof to protect the rights of the party whose evidence is excluded in accordance with rule 73 *bis* (D) and rule 75 *ter*.

36. The Prosecutor would like to consider proposals that go even further than the recommended practice in controlling the presentation of witness testimony.

Observations of the Prosecutor: See observations on recommendations 7 to 10 in paragraphs 40 to 44 below.

Comments of ICTR: See consolidated comments on recommendations 7 to 12 in paragraphs 57 to 61 below.

Recommendation 9

In order to further expedite trials, the functions currently assigned to the pre-trial judge to try to reach agreement between the parties on the conduct of the trial might be expanded into a more interventionist role, *inter alia*, including authority to act for the Trial Chamber under ICTY rule 65 *ter* (D) and making a pre-trial report to the other judges with recommendations for a pre-trial order establishing a reasonable format in which the case is to proceed (para. 83).

Comments of ICTY: See consolidated comments on recommendations 7, 9 and 10 in paragraphs 37 to 39 below.

Observations of the Prosecutor: See observations on recommendations 7 to 10 in paragraphs 40 to 44 below.

Comments of ICTR: See consolidated comments on recommendations 7 to 12 in paragraphs 57 to 61 below.

Recommendation 10

To help in eliminating the need for the introduction of potentially massive amounts of evidence, judges might require that, when there is no apparent dispute as to certain facts, the party declining to so stipulate, explain why (para. 84).

Comments of ICTY on recommendations 7, 9 and 10

37. These issues were discussed during the July 1999 plenary session, resulting in the adoption of rule 65 *ter*, "Pre-trial Judge" at the last plenary session, in November 1999.

38. The Prosecutor supports the practices recommended here, subject to the following caveats. First, it is the view of the Prosecutor that Chambers should not exercise control over proceedings to such an extent that they may appear to have predetermined the matter before hearing all relevant evidence. Secondly, if the methods used to expedite trials result in a requirement for elaborate written pleadings or documentary evidence, then it is possible that the delays are not eliminated, but simply transferred to the pre-trial stage.

39. The Prosecutor considers that the key to reducing the length of trials is that the judge should be fully informed in advance about the case. In order to manage the proceedings efficiently judges should have the benefit of a complete dossier of evidence. On this basis, in agreement with the parties, the judges are then well placed to decide which witnesses need to be heard and which evidence can be admitted in writing or agreed by other means.

Comments of ICTR: See consolidated comments on recommendations 7 to 12 in paragraphs 57 to 61 below.

Observations of the Prosecutor on recommendations 7 to 10

40. The Prosecutor welcomes these recommendations. This is a crucial subject, central to the functioning of the Tribunal. The model of prosecution provided in the Tribunals' statutes is taken largely from the Anglo-Saxon, common law tradition

in which the trial itself is the principal fact-finding process. There are no investigating judges who prepare "dossiers" of judicially established facts. In the prosecution of those massive crimes that fall within the Tribunals' jurisdiction, the fundamental issue comes to this: what form of control is appropriate over adversarial-style proceedings in which the Prosecutor has the onus of proving the charges against the accused, and in which the defence has a great deal of scope to challenge the proof offered? Put another way, in these circumstances, how can trials of such potentially endless complexity be reduced to manageable proportions for a criminal court? No issue taxes the Tribunals as this one does.

41. Even although she regards her function in a criminal prosecution as being considerably more than that of a mere "party" promoting the narrow interests of an individual litigant, the Prosecutor accepts the need for control from the bench. It is most desirable to have disciplined proceedings, but as with so many of these issues, there are limitations to what can be achieved. A Chamber, for example, must not exercise control at the expense of the impartiality of its judges, who cannot be seen to have made up their minds before hearing all the evidence. Nor can the court go too far in seeking to compel the accused to cooperate with the prosecution. Whether sanctions can be imposed on an accused who insists, even unreasonably, on disputing every possible issue is a question that has long exercised busy national jurisdictions.

42. That said, there is nothing inherently unfair about a system that focuses the real areas in dispute. Provided relevant evidence against the accused can be properly laid before the court, and provided legitimate defences can be pursued to their fullest extent, there is every reason to accelerate the process by finding ways of shortening trials. But the Prosecutor wishes to express an important caveat: shortening the trials themselves is no solution if delays are simply transferred to the pre-trial stage. Cutting down the number of witnesses may save court time, but if the result is to create a requirement for elaborate written pleadings or documentary evidence, there may be no net savings of time or resources. Solving one problem simply creates another, and there is a risk that the once visible public workload of the Chambers is simply transformed into an invisible overloading of the amount of preparation that goes on behind the scenes.

43. Nevertheless, a great deal is being done to address speedy trial issues, and the Prosecutor will continue to support the many innovations being made, particularly in the pre-trial stage of proceedings. The Prosecutor will be a willing actor in such initiatives and will pay close attention to the need for adjournments and will do everything possible to see that delays are not occasioned by the actions of the prosecution; that her trial teams meet all deadlines; and that they actively cooperate with the judges and the defence in the conduct of prosecutions. It may be that the Prosecutor can formulate proposals that go beyond the Expert Group's recommendation in this area, for example, by seeking rulings during trials on matters of fact proved to the satisfaction of the Chambers, or in relation to using the record of prior testimony to create rebuttable presumptions of fact that shift the evidential burden in the course of a trial.

44. The Prosecutor considers that the key to reducing the length of trials lies in the judges being fully informed in advance about the case. In order to manage the proceedings efficiently they should have the benefit of a complete dossier of evidence. On this basis, in agreement with the parties, the judges then are well placed to decide which witnesses need to be heard and which evidence can be admitted in writing or agreed by other means. These are all complex issues and the Expert Group is right to highlight them in the report.

Recommendation 11

Further consideration should be given to greater use of judicial notice in a manner that fairly protects the rights of the accused and at the same time reduces or eliminates the need for identical repetitive testimony and exhibits in successive cases (para. 85).

Comments of ICTY

45. As more appeal judgements are issued, greater use of judicial notice is made possible. According to rule 94, judges may decide *proprio motu*, or at the request of parties, to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings. A Chamber can reserve its legal findings of the adjudicated historical, geographical, administrative and military context until the end of the

trial. This practice has been successful thus far in producing concrete results.

46. The Tribunal and representatives of defence counsel agree that the use of judicial notice should be increased, but that the accused's right to a fair trial must be preserved.

47. The Prosecutor would like to emphasize that it is important to find ways of determining those facts which are not required to be proved by leading evidence before the trial has commenced. It is relatively futile to leave the determination of what is within judicial notice until after the witnesses have been brought to the court or the evidence has been led.

Observations of the Prosecutor

48. The Prosecutor fully supports the suggestion of expanding the use of judicial notice. Consideration should be given to greater use of facts (including their legal categorization) proved before earlier Trial Chambers. What matters can be found to be known by the judges of a specialist ad hoc international tribunal, especially as it discharges its mandate over time, is an interesting question of law, and active steps are already being taken in current cases to explore the limitations of this useful concept. The Prosecutor wishes to stress that it is important to find ways of determining before the trial those facts which are not required to be proved by leading evidence. Little is to be gained by leaving the determination of what is within judicial notice until after witnesses have been brought to court or the evidence has been led.

Comments of ICTR: See consolidated comments on recommendations 7 to 12 in paragraphs 57 to 61 below.

Recommendation 12

In order to reduce the length of trials, Trial Chambers might consider:

- **The use of prepared testimony, i.e., written testimony submitted in advance in question-and-answer form, with an opportunity given to the other party later to object to questions, and the witness being later made available for cross-examination; and/or**
- **The preparation of a dossier by the prosecution containing witness statements, with comments by the defence, to enable the Trial Chamber to select relevant witnesses for oral testimony and to admit certain witness statements as documentary evidence (para. 88).**

Comments of ICTY

49. In principle, all parties agree with the underlying rationale of utilizing prepared testimony. This practice is being implemented already in several cases. Parties highlight parts of a witness statement that is in dispute in order to cross-examine the witness on this particular point.

50. This recommendation would also lessen the workload and costs of the Victims and Witnesses Section.

51. However, the second part of this recommendation is partly rejected. According to rule 73 *bis*, "Pre-trial conference", the Chamber receives the file from the pre-trial judge. If the Chamber considers that an excessive number of witnesses are being called to prove the same facts, the judges may then call upon the Prosecutor or the defence counsel to shorten the estimated length of the examination-in-chief for particular witnesses, or to reduce the number of witnesses. Furthermore, after consultation with the parties, Chambers may accept depositions of witnesses taken by a presiding officer in accordance with rule 71, "Depositions".

52. The Tribunal agrees that only parties should decide which witnesses are to be called, and is of the opinion that the use of the word "select" (12 (b)) is perhaps inappropriate (with the exception of instances where rule 98 is applied). Judges may request the Office of the Prosecutor and the defence to submit a list of their most relevant witnesses for approval. It is nonetheless the prerogative of the defence and the prosecution to bring their "best" witnesses from this list.

53. The Prosecutor would like to attach to her support of the practice of utilizing prepared testimony the same caveats stated in relation to recommendations 7, 9 and 10 above. In addition, the Prosecutor notes that there is an inherent conflict between initiatives designed to limit the number of witnesses appearing before Chambers and the desire to allow the victim's voice to be heard in the proceedings.

Observations of the Prosecutor

54. The Prosecutor agrees broadly with this recommendation. In her effort to speed up the proceedings, she has instructed the trial teams to present a dossier to the Trial Chamber and the defence immediately after the initial appearance of the accused. See in this context the comments made in relation to recommendations 7 to 10 above and the caveat already expressed there. What is important is the length of the pre-trial and trial proceedings as a whole. The extent of the additional workload involved in preparing written testimony will be very considerable indeed and would impact, for example, on the already strained translation services. In some circumstances, having witnesses give evidence orally can be the most efficient course of action. Moreover, the production of large quantities of written evidence can render trials sterile, reduce the impact of prosecution evidence, and may make the criminal process very difficult for the public to follow. The credibility of the Tribunals among the international community and the victims partly depends upon whether their proceedings are seen to have a powerful impact in bringing home the responsibility of individuals for horrendous crimes. Their proceedings should not be seen as dull and boring. Further, there is an inherent potential conflict between initiatives designed to limit the number of witnesses appearing before the Chambers and the desire to allow the victims' voices to be heard in the proceedings. There is no *partie civile* in the Tribunals' procedure and no direct way in which victims can participate in the trials. The only existing possibility would be to allow a victim to appear as an amicus curiae; however, to date victims have not requested that they be heard in this fashion. The Prosecutor has strongly encouraged survivors associations in Rwanda to seek leave to appear as amicus curiae. (The Prosecutor would also favour the introduction of the *partie civile* procedure in the rules themselves, especially in cases where financial assets may be available for restitution and compensation to victims.) Giving evidence in person may therefore assume a particular importance for some witnesses, who may not feel that the submission of written statements is entirely satisfactory.

55. Nevertheless, the Prosecutor agrees that there is an important role to be played by preparing a dossier of evidence, even though a dossier produced by the prosecution can not in the Tribunal's legal framework fulfil the same function as the dossier compiled by an investigating magistrate in the civil law system. One advantage of this approach would be to require a party insisting that a particular witness be called to justify that step.

56. Prosecution teams will therefore continue to be creative in their approach to the presentation of evidence. More evidence may have to be presented in written form, but the Prosecutor does share the reservation expressed by the other organs about the use of the word "select" in relation to indications by the judges that only certain witnesses may be required to be called. Where a fact can be proved in different ways, if there is to be a choice made, that choice should lie with the party presenting the chapter of evidence in question.

Comments of ICTR on recommendations 7 to 12

57. The judges take note of the proposals to expedite and reduce the length of trials and for judges to play more of an interventionist role in securing agreements between Prosecution and defence counsel.

58. ICTY rule 65 *ter* (D) provides for a pre-trial judge to hear motions. ICTR does not require a similar rule, as mechanisms have been put in place, as provided in rule 73 *bis* and rule 73 *ter*, for the designation of a single judge by a Chamber. The designated judge hears motions, conducts pre-trial and status conferences, obtains lists of witnesses and summaries of testimonies, and oversees disclosure of documents and admissions of facts.

59. The judges believe that pre-trial matters are best handled by judges who will sit on the trial of the case concerned, as they may be closely linked to issues relating to the conduct of the trial itself. For this reason, they do not favour the adoption of a rule 65 *ter* "pre-trial judge".

60. The recommendations relating to prepared testimony and voluntary statements warrant further and closer examination. Some aspects of these recommendations may possibly contribute to the expeditious completion of trials. On the other hand, delays may result from the preparation and the translation of such testimony. Rules 84 *bis* and 94 *bis* of the ICTY Rules therefore need to be considered.

61. The judges favour the greater use of judicial notice to reduce identical, repetitive testimony and

exhibits. The use of rule 94 (judicial notice) will be facilitated considerably when the Appeals Chamber makes determinations of fact (e.g., that "genocide" was committed in Rwanda) and final interpretations of the law and the charging practice (e.g., concurrent charges; relation between genocide and complicity and/or conspiracy to commit genocide).

Recommendation 13

In order to expedite the trial and enable the Trial Chamber to focus on the real issues, it might:

- **Require Counsel for the accused, following disclosure by the prosecution of its case to the defence, to describe in general terms the nature of the defence, indicating the matters on which she/he takes issue with the prosecution and stating the reasons in relation to each. This course would also simplify the prosecution's duty to make disclosure, which at present calls for prosecution guesswork and can thereby cause trial delay as well as the incurrence of unnecessary prosecution time and expenditure (para. 89);**
- **Require counsel for the accused, when cross-examining witnesses able to give evidence relevant to the defence, to inform them of the nature of the defence if it is in contradiction of their evidence (para. 90).**

Comments of ICTY

62. The proposed practice was accepted by the last plenary session, held in November 1999, and is now incorporated within rule 65 *ter* and rule 90 H (ii) of the Rules of Evidence and Procedure (Rev. 17).

Comments of ICTR

63. The Expert Group recommendation is that rule 67 be amended, whereby defence counsel would be required to describe in general terms the nature of the defence and to indicate the matters in issue with the prosecution, and stating the reason for each issue. Rule 73 *ter* on pre-defence conferences, to a large extent, provides for this procedure. The suggestion of the Expert Group has practical advantages, but there is potential for conflict with the principle that the burden lies with the prosecution to prove its case.

Recommendation 14

As is the consensus among ICTY and ICTR judges, the major objectives of the Security Council would be fulfilled and the resolve of the international community demonstrated if civilian, military and paramilitary leaders were brought to trial rather than minor perpetrators (para. 96).

Comments of ICTY

64. All entities that operate within ICTY are in agreement with the principle that the interests of justice and the effective fulfilment of the mandate of ICTY demand that civilian, military and paramilitary leaders are tried before the Tribunal in preference to minor perpetrators. All efforts are being made to bring the indictees in the higher echelons of responsibility before the Tribunal, and resources are being allocated accordingly to achieve this. The success of the Tribunal in this regard is, of course, dependent on the cooperation of States and international organizations.

65. The Prosecutor comments in addition that the prosecution has always set its sights as high as the available evidence allowed, as demonstrated by the indictments and current trials of high-ranking military and political figures which now speak for themselves. The Prosecutor is content to leave the prosecution of lesser figures to the national courts, and actively performs a role under the Rome Agreement (the "Rules of the Road" scheme) to assist in that process.

Comments of ICTR

66. This re-statement of the obvious objective of the Security Council is of relevance to the proceedings before ICTY and not ICTR, as the detainees in Arusha are alleged to be civilian and military leaders.

Observations of the Prosecutor

67. The Prosecutor agrees with the Expert Group and wishes only to comment that the prosecution has always set its sights as high as the available evidence will allow. The fact that "minor" perpetrators have been brought to trial in the international forum is a reflection of the first investigations conducted in the early stages of the Tribunal's work. The kind of evidence available then was typically that of refugees, victims and eyewitnesses to crimes, persons who could identify the actual perpetrators of the crimes. The

identification and incrimination of commanders and leaders has taken more time and has involved more sophisticated analysis and sources of evidence. It is true that some accused have been arrested long after their indictment, and the cases of some relatively low-ranking accused (but all involving extremely serious offences) are still before the Chambers, but other and more recent indictments clearly demonstrate that the Prosecutor's focus is on individuals much higher in the chain of command. The indictments and trials of high-ranking military and political figures now speak for themselves. In the ICTY context, the Prosecutor is content to leave the prosecution of lesser figures to the national courts, and actively performs a role under the Rome Agreement (the "Rules of the Road" scheme) to assist in that process. It would now be exceptional for a notorious, but low-ranking, individual to be brought to trial in his own right before the International Tribunal. In ICTR most of the detainees are high-ranking military officers and political leaders.

Recommendation 15

In order to increase awareness of the role of the Tribunals in protecting and enhancing humanitarian values, the Tribunals should continue their outreach programmes (paras. 97-98).

Comments of ICTY

68. The Tribunal recognizes the vital role that the Outreach Programme plays in disseminating information regarding the role of the Tribunal in establishing the rule of law and eradicating the pervasive atmosphere of impunity in the former Yugoslavia.

69. It should be noted that the Outreach Programme became operative in the fall of 1999, and it appears that the Tribunal has received sufficient funding from voluntary donations to continue until the end of 2000. Consideration may be given to including the Outreach Programme, as an essential activity, in the Tribunal's assessed budget.

70. The Prosecutor is of the view that it would be consistent with the ethos of the Outreach Programme to eventually conduct hearings or trials in the former Yugoslavia so that justice is seen to be done. This is, of course, provided that the relevant security concerns can be allayed. The judges will consider this issue during a plenary session.

Comments of ICTR

71. The judges are in favour of developing information programmes in Rwanda and, in particular, support the broadcast of court proceedings in Kinyarwanda, French and English on Radio Rwanda. Video recordings of trials are also important. Such broadcasts make the dispensation of justice visible to the people of Rwanda. The ICTY Outreach Programme has received financial support. There is need for similar support to be extended to the ICTR Outreach Programme.

Observations of the Prosecutor

72. In addition the Prosecutor would observe that one of the most effective forms of outreach would be the hearing of ICTY proceedings in the former Yugoslavia and the holding of ICTR hearings in Rwanda. The Prosecutor understands that each of the Tribunal Presidents would support this idea provided security concerns can be met.

Comments of the Secretary-General

73. Any specific proposals which the Tribunals may wish to make in this regard may be considered by the Secretary-General in the light of any intergovernmental guidance received and in the context of reviewing proposed budgets for 2001.

Recommendation 16

In order to enable ICTR to defer to the national courts of the State, it is recommended that ICTR consider including a rule on the lines of ICTY rule 11 *bis* in the ICTR Rules (para. 101).

Comments of ICTR

74. The judges support the principle of concurrent jurisdiction. It would obviously ease the workload of ICTR if national courts were to undertake prosecutions. Rule 11 *bis* of ICTY enables the re-transfer of indictees to countries for purposes of trial. Several judges support the recommendation that rule 11 *bis* be incorporated in the ICTR Rules. However, it must be noted that the rule was proposed but was not adopted at the sixth plenary. So far, a need for such a rule has not

been demonstrated for ICTR. The proposal will be discussed further.

Recommendation 17

(a) In order to eliminate baseless appeals and conserve time that would otherwise have to be devoted to them by the parties and the Chambers, the Chambers might establish a preliminary screening mechanism to verify that they satisfy the grounds for appeal specified in the Rules;

(b) Alternatively, either party might consider filing motions for summary dismissal in cases where it clearly appears that the appeal is frivolous, such motions to be considered expeditiously by the Appeals Chamber (para. 103).

Comments of ICTY

75. The Tribunal agrees with this recommendation, and the modus operandi of implementation will be discussed further during a plenary session.

Comments of ICTR

(a) Convictions and sentences are appealable as of right under the statute. With respect to interlocutory appeals, the recommendation has been implemented by the adoption at the seventh plenary of a new rule 72 (I), whereby a panel of three appeal judges verify that the grounds are those specified in new rule 72 (H).

(b) Motions for summary dismissals of appeals are not new. Parties have filed them. We support the expeditious hearing of interlocutory appeal motions by the Appeals Chamber so that trials are not delayed.

Recommendation 18

In order to ensure that appeals from ICTY and ICTR Trial Chambers are considered only by Appeals Chamber judges, to immunize Appeals Chamber judges from being disqualified from hearing appeals through becoming connected with trials and to prevent the loss of insulation owing to judges being intermingled between the Trial and Appeals Chambers, judges should be assigned exclusively to the Trial Chambers or the Appeals Chamber for their entire terms (paras. 105-106).

Comments of ICTY

76. The Tribunal agrees with this recommendation in principle. In the past, it was not possible to maintain a stable composition of the Appeals Chambers owing to the problem, *inter alia*, of contamination as a confirming judge. The modification of rule 15, "Disqualification of judges" (see recommendation 2 above) will to a large extent contribute to greater stability within the Appeals Chamber.

77. However, it will not be possible to re-schedule the trials and appeals to entirely effect this recommendation until such time that the Tribunal is allocated more judges.

Comments of ICTR

78. Ideally, judges should be assigned exclusively to the Trial Chambers or the Appeals Chamber and appeal judges should have had some prior service as trial judges in one of the Tribunals.

79. In addition to the reasons given in the report, the proposal for separate composition of the Appeals Chamber may promote greater consistency in the decision-making process and may facilitate efficient performance by the Chambers. The constant rotation of judges between the Trial Chambers and the Appeals Chamber may hinder the planning of work schedules on a long-term basis.

80. However, practical difficulties arise over the immediate implementation of the recommendation, as several appeals judges are participants in decisions subject to appeal.

Recommendation 19

In order to facilitate the work of the judges of the Trial and Appeals Chambers, legal staff assistance to the judges should be increased in terms of the budget proposals for the Tribunal for the year 2000 (para. 107).

Comments of ICTY

81. The relevant budget proposals to this effect have been approved and recruitment is currently being undertaken.

Comments of ICTR

82. The Expert Group supports the urgent need of the judges for increased staff assistance. We hope that the budget proposals will be approved in this regard.

Comments of the Secretary-General

83. Additional posts requested by ICTY and ICTR for 2000 were approved in full by the General Assembly in December 1999.

Recommendation 20

In order to increase the work capacity of the Appeals Chamber, two further judges and the associated additional staff that would be required should be added to that Chamber, although this proposal might not lead to as satisfactory a result as the permanent separation of the Appeals Chamber (paras. 106-107).

Comments of ICTY

84. The Tribunal would require a Security Council resolution to alter article 12 of the statute, which stipulates the number of judges and the composition of Chambers. In the event that this occurs, the Tribunal will endeavour to obtain the necessary funding for two further judges and their attendant staff from the General Assembly. In addition, Chambers notes that if the Tribunal is allocated two further judges, the current quorum of five judges for the Appeals Chamber should not be increased.

Comments of ICTR

85. The judges support the recommended expansion of the Appeals Chamber by the addition of two judges. The former presidents of ICTY and ICTR motivated this recommendation a year ago and further suggested that the two judges be assigned from the ICTR Trial Chambers and that their positions be filled by new appointments.

Comments of the Secretary-General

86. Should the Security Council decide on an additional two judges, the related full costs on a one-year basis would be approximately US$ 731,000. These would include salaries of the judges and provisions for support in terms of four Legal Officers at the P-2 level and two secretaries. Currently a total of 13 Legal Officers and nine secretaries provide support to the Appeals Chambers.

Recommendation 21

In order to meet the need for more judges to deal with the increased workload, the use of temporary ad hoc judges might be favourably considered if it remains the only practical solution for expediting completing of the Tribunals' missions (para. 108).

Comments of ICTY

87. If after exhausting the current resources the use of ad hoc, or rather, *ad litem* judges is considered to be the most practical solution for expediting the completion of trials, then the Tribunal would support this recommendation. It has been suggested that past judges of ICTY, who voluntarily retired, could be appropriate candidates. In addition, consideration may be given to creating a category of judges who will be seized of all pre-trial proceedings to enable the trial judges to concentrate on hearing the trials.

Comments of ICTR

88. The appointment of temporary ad hoc judges has not been necessary for ICTR to carry out its work effectively. The ICTR judges support the rotation of trial judges rather than the use of ad hoc judges for continuity. The appointment of ad hoc judges, which would require amendment of the statute and the rules defining assignment, status and competence, appears problematical.

Comments of the Secretary-General

89. Should the Security Council decide on the use of temporary ad hoc judges, the Secretary-General believes that an appropriate mechanism to temporarily finance such judges could be modelled on the mechanism used for the financing of ad hoc judges for the International Court of Justice (ICJ), namely the standard resolution on unforeseen and extraordinary expenses appropriately modified. Accordingly, no prospective budgetary provision would be required for the annual budgets of the Tribunals.

90. Should recourse be made to the utilization of past judges who have retired from ICTY, ICTR or ICJ, the

General Assembly may wish to consider related remuneration arrangements.

Recommendation 22

On the long-term question of enforcement of sentences, in order to accommodate the potential number of convicts, it would be advisable for arrangements to be concluded with as many additional States as would be required to accommodate the total number of indictees, including individuals accused in sealed indictments (para. 110).

Comments of ICTY

91. The Tribunal has concluded Agreements on the Enforcement of Sentences with six States and is awaiting the signature of a further Agreement, which should be effected in the next several weeks. The Registry has always recognized the need to conclude as many Agreements as possible and is currently in the process of finalizing Agreements that are being negotiated with several other States.

92. In the past, on their diplomatic visits to States or during meetings with government representatives at the seat of the Tribunal, the President and the Prosecutor have endeavoured to raise the consciousness of those States as to the necessity for the conclusion of further Agreements on the Enforcement of Sentences. These endeavours will continue.

93. The Tribunal would also like to emphasize the complexity of these negotiations. It is not feasible to approach the entire international community, for example, for legal reasons relating to the operations of the prison systems of some States, and for humanitarian reasons such as the proximity of the convicts' families to the States where the sentences are served.

Comments of ICTR

94. The cooperation of Member States is urged in support of the recommendation for the imprisonment of convicted persons.

Recommendation 23

In view of the essentiality of the need for well-qualified lawyers in the ICTR Prosecution Section, the training programmes now being conducted should be continued (para. 121).

Comments of ICTR

95. The ICTR judges support the recommendation.

Observations of the Prosecutor

96. The Prosecutor strongly supports this recommendation. Training programmes for lawyers and investigators will continue to be held regularly for both Tribunals.

Recommendation 24

In order to avoid waste of resources and to maximize the impact of investigations, the policy of the Prosecutor should be continued to conduct investigations only where she has a high level of confidence that enough evidence will be available to support an indictment (para. 125).

Comments of ICTY

97. The Office of the Prosecutor completely concurs with this recommendation and will continue to conduct its investigations according to this policy. It is currently the practice of the Prosecutor to sign a document formally authorizing the commencement of a new investigation, and later to sign a further document formally authorizing the preparation of an indictment. This is to ensure the viability of an investigation before committing resources to it.

Comments of ICTR

98. The ICTR judges support the recommendation.

Observations of the Prosecutor

99. The Investigations Division of the Office of the Prosecutor has always taken into account the viability of an investigation before committing resources to it. On occasion, reasonable expectations can be proved wrong. Considerable monitoring of ongoing investigations is therefore carried out by the Chiefs of Investigations. Regular reviews are conducted and the

progress of investigations is reported directly at intervals to the Prosecutor and the Deputy Prosecutors. If sufficient progress cannot be made to collect the necessary evidence, the decision will be made to discontinue or suspend the particular investigation. In some cases reviewing the state of the available evidence after an indictment has been outstanding for some time has led to withdrawal of that indictment in order to allow resources to be concentrated in other more profitable areas. From now on it will be the practice of the Prosecutor personally to sign a document formally authorizing the commencement of a new investigation, and later to sign a further document formally authorizing the preparation of an indictment.

Recommendation 25

In view of the importance of securing qualified personnel in the ICTR Investigations Section, this issue should be carefully monitored on a continuing basis by the Deputy Prosecutor to ensure that applicable standards are complied with (para. 129).

Comments of ICTR

100. The ICTR judges support the recommendation.

Observations of the Prosecutor

101. The Prosecutor supports this recommendation.

Recommendation 26

In order to reduce post-indictment investigations, a case should be "trial-ready" at the stage that the indictment is confirmed and, absent exceptional circumstances, post-indictment investigations should be limited (para. 155).

Comments of ICTY

102. The Office of the Prosecutor agrees that a case should be "trial-ready" at the stage when the indictment is confirmed; they have operated and they continue to operate in accordance with this principle. The Prosecutor accepts that, at some point, the evidence-gathering exercise has to end to enable the accused to know the case that he is expected to meet. However, the recommendation is excessive in seeking to limit post-indictment investigations to "exceptional circumstances". It is neither practical nor in the interests of justice to cease investigations after the indictment has been confirmed, as the complexity of the cases necessitates the continuation of investigations and experience has shown that important information is often obtained in the latter stages of the investigation.

103. It is the view of Chambers that the phrase "trial-ready" should be construed to emphasize the readiness of the case itself to commence rather than the readiness of the individual parties.

Comments of ICTR

104. The ICTR judges support the recommendation.

Observations of the Prosecutor

105. The Prosecutor agrees that substantial last-minute changes to the nature of the prosecution case should be avoided, and that as far as possible cases should be trial-ready at the indictment stage. The practice of the Office of the Prosecutor has already moved firmly in this direction, and will not change. At an early stage in the Tribunal's development there was a considerable debate about the standard of proof required for the preparation of indictment, and early cases adopted a lower threshold than is now applied. Two factors should, however, be kept in mind. First, under the Tribunal's rules, the indictment is the only charging instrument available to the Prosecutor. It therefore serves both as the instrument of arrest and as the document upon which the trial proceeds. In some national systems different documents perform these roles, and the latter document is a much more finished product than the former. ICTY practice therefore has resulted in the amendment of the indictment in many cases as investigations (quite properly) have continued after the preparation of the first version. Secondly, it cannot be stressed too strongly that ICTY cases are not simple national prosecutions. They are enormously complex undertakings, and a great deal of work continues, and is necessary, in the lead-up to the trial itself to assemble the required proof. The Prosecutor accepts that at some point the evidence-gathering exercise has to end, the accused has to know the case he is expected to meet and the trial must proceed on the material available. Even so, experience has shown that important information is often obtained in the latter stages of the investigation. It is in the interests of justice that such material be included in the evidence presented to the Trial Chamber, even if that material comes late to the Office of the Prosecutor. The

recommendation highlights an important issue, but in the Prosecutor's view goes too far in seeking to limit post-indictment investigations to "exceptional circumstances". In the unique circumstances of the international prosecution of war crimes cases this does not strike the right balance. Attempting to "freeze" investigations too soon is not in the public interest, and is unrealistic. Often it is only during the trial that the defence case is revealed. Prompt investigation of matters arising then may avoid the need for a subsequent retrial. Normally, however, the Prosecutor will do everything possible to ensure that proceedings are not delayed by dramatic changes of direction on the part of the prosecution at the eleventh hour. The goal will continue to be to have cases trial-ready at the indictment stage, as the Expert Group recommends, and to avoid introducing fresh evidence after the arrest of the accused or at trial, unless such a course is fully justified by exceptional circumstances. But a regime that presumes a complete cessation of investigation after the indictment has been confirmed would be artificial and contrary to the interests of justice.

Recommendation 27

On the assumption that there will be no change in the Prosecutor's policy for ICTR to join indictments to the extent necessary and possible, the Expert Group trusts that maximum care will be taken to ensure that motions for amended indictments and for joinders are sought in a timely and complete manner (para. 165).

Comments of ICTR

106. The ICTR judges support the recommendation.

Observations of the Prosecutor

107. In ICTR, the Prosecutor has taken measures to avoid the late filing of motions to amend and join indictments. A number of existing motions have been reviewed and either amended or withdrawn.

Recommendation 28

ICTY should consider the appointment of a rule similar to ICTR rule 44 *bis* which creates a category of duty counsel having the qualifications needed to be appointed as assigned counsel and situated within reasonable proximity to the Detention Facility and the seat of the Tribunal (para. 184).

Comments of ICTY

108. The Registry can certainly submit a request to the Rules Committee to consider adopting such a provision. It should be noted, however, that in the experience of the Tribunal there have never been any difficulties in finding a counsel to represent an accused at short notice; the assigned defence counsel have always managed to appear in court, even on a day's notice. A number of initial appearances have been conducted in the holiday season or during religious festivals, and counsel have always been available to represent the accused. Therefore, such a provision would be redundant.

Comments of ICTR

109. The ICTR judges note the recommendation with approval.

Recommendation 29

Since it is essential that continuous contact be maintained in appeals cases between the Trial Chambers and the Office of the Prosecutor in Arusha and the Appeals Chamber in The Hague, the assignment of two staff members to track, verify and expedite appeals documentation, in coordination with staff assigned for the same purpose in The Hague, is strongly supported (para. 185).

Comments of ICTR

110. The ICTR judges note the recommendation with approval.

Comments of the Secretary-General

111. Since the time Expert Group formulated recommendation 29, the General Assembly in December 1999 approved one Professional and one General Service post for the purpose of documentation and registration of appeals documents. This brings the total number of staff providing support to the Appeals Chamber to 22 (13 Legal Officers and 9 secretaries).

Recommendation 30

In order to help the Witnesses and Victims Section in controlling witness expenditures to the extent possible:

- **The Registrar should be consulted regarding witness arrangements whenever trial adjournments or schedule changes are under consideration;**
- **The Registrar should receive as much advance notice as possible when the summoning of Court witnesses under rule 98 is under consideration (para. 191).**

Comments of ICTY

112. The Tribunal agrees that the Registrar should be consulted regarding the above witness arrangements. However, the Registry can not always be accurately informed of up-to-the-minute witness arrangements, as it is not always possible to foresee instances such as witnesses falling ill, or being required to provide lengthy testimony. As a result of this unpredictability, it is not feasible to expect the Registry to be able to prevent the delay ensuing from these instances.

113. The Prosecutor objects to the wording of the above recommendation; it is her view that it should refer to the Registrar being "informed" rather than "consulted" since the Registrar does not have any input into the decision as to whether and when particular witnesses are called.

114. The Tribunal also agrees that the Registry should be informed as to the summoning of court witnesses. It has been the experience of the Tribunal that the arrival of Chamber's witnesses has been facilitated by extensive discussions with the Registry regarding travel arrangements and accommodation, *inter alia*.

Comments of ICTR

115. The ICTR judges note the recommendation with approval.

Observations of the Prosecutor

116. The Prosecutor agrees that as much advance warning should be given by trial teams to the Registry staff about witnesses needed for court, and that will be done. The recommendation should, however, speak of the Registrar being "informed" rather than "consulted", since the Registrar has no input into the decision as to whether and when particular witnesses are to be summoned.

Recommendation 31

In order to enforce the observance of Detention Unit rules by defence counsel:

- **The Commander of the Detention Unit should report promptly to the President and the Registrar incidents of misconduct by defence counsel;**
- **Such reports, as well as alleged abuse of Registry personnel by defence counsel, should be promptly investigated by the Registrar, and, as appropriate, referred to the Tribunal or dealt with directly by the Registrar;**
- **Where misconduct is found, the President should report the matter to the appropriate national authority and order removal of the defence counsel from the list of approved defence counsel (para. 197).**

Comments of ICTY

117. If there is any misconduct in the Detention Unit, it is the usual practice that this is reported to the Registrar, who in turn reports it to the President if this misconduct is of a serious nature. It has always been the stance of the Registry that such misconduct should be investigated, and in practice, it is in fact investigated.

118. This recommendation will be discussed during a plenary session. A rule amendment proposal to allow the Registrar to enforce the Code of Conduct of the Tribunal was submitted to the Rules Committee. Under the current Rules, the Registrar does not have the power to deal *proprio motu* with the misconduct of counsel, or to impose disciplinary measures. The Registrar may, however, report the misconduct to the President and request the President to take action.

119. The President is currently vested with the discretion to grant approval to a judge or Chamber to report misconduct to the appropriate national authority, in accordance with rule 46 of the Rules of Procedure and Evidence. Furthermore, the Tribunal considers the recommendation that the President order the removal of the defence counsel from the list to be unwarranted,

since according to article 20(B) of the Directive on the Assignment of Defence Counsel, the Registrar is authorized to withdraw the assignment of counsel and to strike the counsel off the list of defence counsel, provided that there has first been a decision by a Chamber to refuse audience to assigned counsel for misconduct under rule 46 (A).

Comments of ICTR

120. The ICTR judges note the recommendation with approval.

Recommendation 32

In order to further the legitimate law-enforcement requirements of the Prosecutor, once she shows reasonable grounds under rule 66 of the Detention Rules for cooperative assistance, such assistance should be forthcoming from the Registrar without delay in accordance with the decision of the President referred to in paragraph 198, or the matter should immediately be referred to either the President or the Trial Chamber as provided in that decision (para. 200).

Comments of ICTY

121. The Registry's view is as follows: This recommendation is premised on the Expert Group's assumption that "the presumption of innocence does not conflict with the legitimate interests of law-enforcement authorities as they affect detainees" (para. 200). However, in the same paragraph, the Expert Group later concludes that in matters relating to rule 66 of the Rules of Detention, "the focus of the Detention Unit and the Registry should be on the legitimate law-enforcement requirements of the Prosecutor rather than on the presumption of innocence which can safely be confided to the protection of the court should the Prosecutor stray beyond proper bounds" (para. 200).

122. The above conclusion of the Expert Group seems to reverse the presumption of innocence by giving the Prosecutor carte blanche to investigate the accused within the Detention Unit unless the Court intervenes to protect the rights of the accused. However, the United Nations Detention Unit is a remand centre and, as such, the accused is at all times protected under the aegis of the judiciary. Furthermore, if the accused perceive the staff to be evidence-gathering agents of the Office of the Prosecutor, it would hinder the staff's ability to carry out their functions and might create aggression and resentment among the accused against the staff.

123. Paragraph 199 of the Expert Group's report refers to instances when the Detention Unit and the Registry were reluctant to cooperate "when the Prosecutor has sought the assistance of the Detention Unit with respect to electronic interception of [conduct that the Prosecutor has reason to believe could prejudice or affect ICTY proceedings or investigations] and which the Prosecutor had reason to believe was authorized by rule 66".

124. In response to this, the Registry refers to the purpose of rule 66 of the Rules of Detention, which is to prevent collusion between detainees, and to that extent, it authorizes the Registrar to prohibit, regulate or set conditions for contacts between detainees upon the request of the Prosecutor. The Rule does not infer that the staff of the Detention Unit should cooperate or assist the Office of the Prosecutor with its investigations. The interception and censuring of phone calls as well as the regulation of visits are carried out in conformity with specific grounds delineated in the Rules and Regulations, with the objective of facilitating the management of the detention facility (preamble to the Rules of Detention).

125. It is the opinion of the Registry that the reasonableness of the grounds under which the Prosecutor is seeking cooperation should be assessed by a Court, which is properly constituted to weigh up the interests of the Prosecutor against the interests of the detainee, not by the Prosecutor herself or the Registry.

126. The Prosecutor rejects any suggestion there may be that the Prosecutor's interest here is to gain a partisan and unfair advantage over the accused while in the Detention Unit.

Comments of ICTR

127. The ICTR judges note the recommendation with approval.

Observations of the Prosecutor

128. Although the issue is a minor one, the Prosecutor is disappointed to note that the Registrar of ICTY does not accept this recommendation, despite the lack of any

support for the Registry position. The Prosecutor also rejects any suggestion there may be that the Prosecutor's interest here is to gain a partisan and unfair advantage over the accused while in the Detention Unit.

Recommendation 33

Procedures should be studied for short-term provisional release of detainees to provide for emergencies such as funeral arrangements or the terminal illness of a close relative under conditions of adequate guarantees from the detainee's country governing removal and return to detention (para. 201).

Comments of ICTY

129. The Tribunal has devised draft rulings delineating a number of conditions for provisional release so that in an emergency situation the accused can be released within a day, provided, of course, that the relevant Member States are fully cooperating. The latest short-term provisional release of an accused was granted and carried out in accordance with this procedure.

Comments of ICTR

130. Provisional release of accused persons presents problems. The Trial Chambers will no doubt weigh all considerations with care when presented with motions for provisional release.

Recommendation 34

Because of the significant amounts paid to assigned counsel and their key role in the statutory scheme of both Tribunals, the issue whether remuneration levels are too high or too low deserves careful attention. Moreover, all possible methodologies for determining the amounts of payments to counsel should be considered (paras. 206-207).

Comments of ICTY

131. The Registry submits the following observations and considerations. The rates for defence counsel have been established on the basis of calculations as to what a United Nations staff member on a comparable level would cost the Organization. With respect to allegations that the rates are too low, it is not possible for the United Nations to cater to the typical rates per hour of every Member State. While some defence counsel may consider the rates to be too low, the same rate might be considered by other defence counsel to be quite substantial compared to their domestic rates. As such, the stipulated rates, which might deter top-ranking counsel of some States from applying for the list of assigned defence counsel, may at the same time attract top-ranking counsel from other States. Furthermore, there are other advantages to appearing before the Tribunal that to some extent may compensate the defence counsel for their salary.

132. With respect to allegations that the rates are too high, it is an intrinsic element of the principle of equality of arms that the defence counsel and the Office of the Prosecutor are treated the same to the extent that it is possible. If the rates of the defence counsel were lowered, it would create an unfair differentiation between the remuneration levels of the defence and that of the prosecution.

133. The Registry is currently in the process of reforming the remuneration system to, firstly, facilitate the associated administrative work, and secondly, recognize that the defence counsel are essentially independent contractors. All possible methodologies are being considered in consultation with the Advisory Panel, which is constituted by representatives from various international bar associations, *inter alia*.

134. The Expert Group's suggestion that the remuneration system should "include an arbitration feature under which the amount would be decided by a commission made up of lawyers and academics" (para. 207) appears superfluous; article 33 of the Directive on the Assignment of Defence Counsel already contains an arbitration clause under which the Registrar, in consultation with the President, is authorized to decide such disputes.

Comments of ICTR

135. The Registry has implemented various methods for determining payments to defence counsel. For instance, the Registry maintains a record of actual time spent by counsel in court and in the detention centre.

Comments of the Secretary-General

136. It is recalled that the Advisory Committee on Administrative and Budgetary Questions had also

expressed concerns about the increasing cost of the defence counsel activities, the fact that they were becoming very complex and that it was difficult to monitor and control their expenditure. The Advisory Committee had encouraged both Tribunals to consider new procedures. The 2000 provision for defence counsel amounts to approximately $13,205,000 for ICTY and approximately $5,981,000 for ICTR.

Recommendation 35

In order to ensure that the qualifications required of counsel to be eligible to be assigned as defence counsel are appropriate, the ICTY standards for experience should be brought more in line with those of ICTR, and in both cases elevated to require at least five years of criminal trial experience (para. 210).

Comments of ICTY

137. The Registry has submitted a rule amendment to the Rules Committee to impose a further requirement that the defence counsel should have reasonable experience.

Comments of ICTR

138. The judges will need to discuss whether the requirement of five years' criminal trial experience should be added to the current qualification of 10 years' relevant experience. The Registry's questionnaire to counsel includes criminal trial experience.

Recommendation 36

In order to better ensure accuracy and care in the preparation of claims by defence counsel for defence costs, each assigned counsel might be required to certify to the relevant Chamber as to the accuracy of and their entitlement to the payments claimed (para. 213).

Comments of ICTY

139. The Tribunal submits that it is not necessary to implement this recommendation, since the Registry already requests detailed billing reports that are thoroughly scrutinized, and in some cases, the billing reports are negotiated and the payments claimed are accordingly reduced. Moreover, the Registry can verify these billing reports by checking the attendance of defence counsel at court sessions, and whether the counsel have submitted the documents, motions or briefs required by the relevant Chamber.

Comments of ICTR

140. In practice, the Registry requires that counsel certify the accuracy of fees and disbursements and investigators' charges.

Recommendation 37

In order to resolve the problems resulting from counsel appearing before the Tribunals who are unfamiliar with them and their procedures, with resulting delay and inefficiencies in Tribunal proceedings, training programmes should be developed dealing with the rudiments of Tribunal practice (paras. 214-215).

Comments of ICTY

141. This recommendation coincides with the training programme that the Tribunal is currently in the process of setting up with money received from a sponsor, which is scheduled to commence in the near future. The Tribunal conducted a similar training programme for defence counsel in 1995-1996, sponsored by a non-governmental organization, which was very successful.

142. The Tribunal is also contemplating giving assistance to the establishment of training programmes for jurists in the former Yugoslavia to instruct them on the proper application of international humanitarian law.

Comments of ICTR

143. Vigorous scrutiny of candidates will help determine their suitability and the need for such training programmes may fall away. Defence counsel are assisted by the Registry. Counsel are provided copies of the ICTR Statute, Rules, decisions and judgements, upon request. The organization and the implementation of advocacy programmes for defence counsel need further examination.

Recommendation 38

In order to reduce the costs and delay associated with changes of assigned counsel, the requirement that a change of counsel will be permitted only on a showing of exceptional circumstances should be adhered to, especially if there is any indication that a motion to change counsel is in any way related to efforts by the accused to improve on existing financial arrangements (paras. 218 and 234).

Comments of ICTY

144. This recommendation reflects the current practice of the Tribunal. The Registry has in the past adhered to the requirement that a change of counsel should only be permitted in exceptional circumstances, such as an irretrievable breakdown in the relationship between counsel and client, or where counsel have asked to be relieved of their duties for ethical reasons. Moreover, a change in counsel has resulted in delay in only one circumstance, to the knowledge of the Registrar. It has been the practice of the Tribunal to limit potential delay either by relying on co-counsel to take over the proceedings, or by retaining the current counsel to apprise the new counsel of all relevant matters until such time that the new counsel is sufficiently prepared.

Comments of ICTR

145. The Trial Chambers have permitted change of defence counsel only upon a showing of exceptional circumstance.

Recommendation 39

If in the future the Registrar, after consultation with the judges, considers it desirable to improve the geographical spread of counsel who can be assigned, this might be done by establishing nationality priorities for adding new names to the list of counsel who can be assigned, rather than by denying assignment of those already on the list (para. 234).

Comments of ICTY

146. Although paragraph 225 *et sequitur* are directed at ICTR, it is not clear whether this recommendation is intended for both ICTR and ICTY. The Registry therefore submits that it would be inappropriate for ICTY to establish a nationality priority list in this context.

Comments of ICTR (Judges)

147. This observation is noted.

Comments of ICTR (Registry)

148. While the ICTR Registry fully appreciates the difficulties created by the use of a temporary moratorium on the assignment of lawyers of over-represented nationalities as defence counsel as a means of implementing the “geographic balance criterion” laid down by ICTR judges for the assignment of counsel to indigent accused persons, it really doubts whether the above-cited recommendation of the Expert Group would solve the problem of respecting the choice of the accused while implementing the judicially established criterion. This is because:

(a) The problem in the case of ICTR lay not in any geographic imbalance in the list, but in an apparent collusion between the accused and a certain group of lawyers to select from the list only lawyers from, or recommended by, that particular group, ignoring all other names on the list;

(b) The criteria to be met by a lawyer wishing to be inscribed on the list are clearly specified in rules 44 and 45 of the Tribunal’s Rules of Procedure and Evidence, and do not include the geographical balance factor. Given the above, and the fact that the context in which the geographical balance criterion is mentioned in the judicial decisions is with respect to assignment of counsel, it will be legally difficult, in the opinion of the Registry, to refuse to inscribe someone who meets the criteria as set out in the Rules, based on geographical criteria, as suggested by the Expert Group;

(c) By contrast, a similar difficulty does not arise in strict legal terms with respect to application of the criteria in the actual assignment of counsel because under the provisions of the Statute and the Rules, the right to legal representation of an indigent accused person is to be assigned counsel. It follows that there is no right, as right, either of the accused to choose which counsel should be assigned to him or her, or of a counsel on the list of potential counsel to be assigned to any accused. Consequently, invocation of the geographical balance criteria at this juncture does not,

it is submitted, conflict, as a matter of law, with any right of any person, however difficult to accept some may find it;

(d) The list of would-be defence counsel is already in existence, having been established without reference to geographical balance.

149. Finally, it is important to note in this context that the first duty of the Registrar, in the sphere of judicial support functions, is to implement the provisions of the Statute and the Rules as construed by the judges. The criterion of geographical balance has been repeatedly affirmed by the ICTR judges as one of a number of criteria to be considered in the assignment of defence counsel, including, of course, the personal choice of the accused which, in practice, is in fact given the most weight.

Recommendation 40

In view of the extensive research needed by the judges, the prosecution and the defence for their work, the Library and Reference Units play a key role and should have the necessary resources (para. 235).

Comments of ICTY

150. The Tribunal fully concurs with this recommendation, and it will continue its endeavours to obtain further funding for the necessary resources of the Library and Reference Units.

Comments of ICTR

151. This observation is noted.

Comments of the Secretary-General

152. Since the time the Expert Group formulated recommendation 40, the General Assembly in December 1999 approved one additional post for ICTY and two posts for ICTR to strengthen the Library and Reference Units. With the approval of these posts, the current staff resources for the Library and Reference Units of the Tribunals include one P-3 and two General Service staff for ICTY, and one P-3, two P-2 (one of them in Kigali) and three General Service and Local Level staff (one of them in Kigali) for ICTR.

Recommendation 41

To ensure that the Language Services Sections of the Registries better contribute to the effective functioning of both the Chambers and the Office of the Prosecutor, it is essential that required resources be provided and that priorities be adhered to in the translation of documents (para. 236).

Comments of ICTY

153. The Tribunal agrees with this recommendation. The Translation Unit currently prioritizes its work according to the greatest needs and if it can not cope with the workload, arrangements are made to translate the documents externally. This of course depends on the nature of the documents, as confidential documents must be translated in-house.

154. The Tribunal also acknowledges that there is scope to formulate methods to utilize the resources of the Translation Unit more effectively. Therefore, the Working Group on Judicial Practices is addressing this issue.

155. The Prosecutor considers this to be a key recommendation and wishes to stress that far greater resources are required in this area.

Comments of ICTR

156. This observation is noted. A Translation Facilitation Committee has been set up at ICTR to identify priorities in the translation of documents.

Observations of the Prosecutor on recommendation 41

157. The Prosecutor considers this to be a key recommendation and urges the Registrar of ICTY to seek additional resources in this critical area. A huge bottleneck exists, the result of which is that at present some 53 per cent of documents collected by the Office of the Prosecutor are not fully processed and exploitable by investigators. Translation is a major issue also in ICTR. The Prosecutor wishes to stress that far greater resources are required in this area in both Tribunals.

Comments of the Secretary-General

158. As indicated by the Expert Group in paragraph 236 of its report, the Office of Internal Oversight

Services has studied this matter. No report has yet been issued, but when it is, it will be taken into account when formulating future budget proposals. At present, substantial resources are provided for Language Services in the two Registries. There are currently 110 posts (90 Professional and 20 General Service staff) in the Conference and Language Support Section in ICTY; approximately $1,070,000 for temporary assistance and $1,146,840 for contractual services (translation and verbatim reporting) have also been approved for that Section. For the Language and Conference Services of ICTR, there are currently 90 posts (71 Professional and 19 General Service and Local Level staff), approximately $1,500,000 for temporary assistance, including for language services, has also been approved for ICTR.

Recommendation 42

In order to better cope with priority translation needs, it is suggested that the Chambers, at the inception of a case, might require the parties to provide, on an ongoing basis, as much advance notice and information as possible with the documents they expect to submit (para. 236).

Comments of ICTR

159. This observation is noted. A Translation Facilitation Committee has been set up at ICTR to identify priorities in the translation of documents.

Recommendation 43

In order to give the Chambers powers of supervision and control over their own judicial assistants and secretaries, their internal administrative matters, and budget proposals relating to the Chambers:

- **The current system for the selection of judicial assistants, in which the judges have the decisive voice, should be continued;**
- **Since the judicial assistants and the secretaries work for the judges under their direct control and supervision, the judges should be responsible for, and sign, their performance evaluations;**
- **The judges should be entitled to submit to the General Assembly budget proposals which they feel satisfy their needs;**
- **Each President, as the senior official of the respective Tribunal, should feel free to transmit proposals on the entire Tribunal budget to the Registrar, without prejudice to the authority of the latter to submit to the Secretary-General the overall budget proposals for the Tribunal as a whole;**
- **The Secretary-General might appropriately issue a revised delegation of authority or an administrative instruction realigning, to the Bureau of the Chambers, control over their internal administrative matters (paras. 241-246).**

Comments of ICTY

160. The Tribunal agrees that the current system for the selection of judicial assistants, in which the judges have the decisive voice, should be continued.

161. The Tribunal agrees that judges should be responsible for and sign the performance evaluations of their judicial assistants and secretaries. This has been implemented.

162. The Registrar notes that the President and the judges will, in the current year, be more actively involved in the submission of budget proposals for inclusion in the report of the Secretary-General to the General Assembly, and that they have been invited to do so in the past.

163. It is the view of the Registry that vesting the Bureau of Chambers, which is composed of the President, the Vice-President, and the presiding judges of the Trial Chambers, with authority over their internal administrative matters might conflict with article 17 of the Statute, rule 33 of the Rules of Procedure and Evidence as well as the Financial Rules and Regulations. The accountability of the Tribunal to the General Assembly for all financial and administrative matters rests according to these rules with the Registrar through Administrative Services.

Comments of ICTR (Judges)

164. The five-point recommendations made by the Expert Group will certainly enhance the work of the Chambers. The first two suggestions are being

implemented. Points 3 and 4 simply provide opportunities for the judges and the Presidents to participate in the budget process. According to the fifth proposal, the Secretary-General might "appropriately" delegate authority to the Bureau. The judges are confident that practical solutions can be devised within the existing structure of the Tribunal and therefore consider that the proposals are not drastic, but helpful suggestions which should be acted upon.

Comments of ICTR (Registry)

165. The Registry is pleased to observe from the outset that in all three areas identified for specific focus by the Expert Group, the ICTR practice has already conformed in substance with the Expert Group's recommendations, as is shown below. The Registry thus has no objection in principle to the Expert Group's recommendations in these areas or to the idea underlying them. It does have some observations, however, which it considers pertinent, relating to the constitutional and practical problems that the recommendations raise.

166. ICTR judges are responsible for, and sign, the performance evaluations of their legal assistants and secretaries. This practice has existed in ICTR since the current Registrar assumed office three years ago and will continue as official policy.

167. In ICTR, it has been the policy of the Registry, at least since the appointment of the present Registrar, to obtain from the judges the budgetary requirements for the Chambers and to submit these requirements as determined by the judges, without change, to the Secretary-General for submission to the General Assembly as part of the budget proposals for the Tribunal as a whole. This is in reflection of the Registry's view, which concurs with that expressed in the Expert Group's report, that the judges are in the best position to determine their own needs.

168. It has been the practice of the ICTR Registry to accept for consideration from the Chambers, through the President, any proposals/comments which may be proffered with respect to any aspect of the entire Tribunal budget. In practice such proposals/comments have usually related to other areas of Tribunal operations which may have a direct bearing on the work of the Chambers, such as, for example, operations of the United Nations Detention Facility. The recommendation that the President should feel free to transmit proposals to the Registrar on the entire Tribunal budget, if not understood within the ambit of the Tribunal's special constitutional set-up, could prove problematic. This is because the President under that set-up does not have accountability for the output of the other organs of the Tribunal (including, in particular, the Office of the Prosecutor), nor does she have accountability to the Secretary-General (as does the Registrar, for example) for compliance of the budget with budget guidelines established by the Secretary-General through the United Nations Controller. Consequently, this recommendation cannot be understood as being meant to open the way for specific budgetary proposals from the President on such matters over which she has no responsibility, as, for example, the number of investigators to be recruited for the Office of the Prosecutor, or the amount of office furniture or stationery to be procured by the Registry.

169. A related aspect of the matter not to be overlooked is the effect of non-acceptance for inclusion in the budget of the President's proposals in these other areas. The President being such a senior figure in the Tribunal, as recognized by the Expert Group, non-acceptance of her proposals is bound at the very least to cause extreme awkwardness in and perhaps damage to the relations between the organs.

170. In view of the pre-existing practice of the ICTR Registry and the measures it has taken since the issuance of the Expert Group's report on the issues raised in recommendation 43, the Registry is of the view that the recommendation may be unnecessary as far as ICTR is concerned and that, as discussed below, it would indeed be constitutionally problematic for the Secretary-General to implement the part of the recommendation which suggests that he issue a revised delegation of authority or an administrative instruction "realigning, to the Bureau of the Chambers, control over their internal administrative matters". The ICTR Registry has made, and continues to make, every effort to ensure that the judges of the Tribunal have a decisive voice in how they are supported by the Registry. The establishment of the Chambers Selection Committee, which formalized the pre-existing practice whereby the judges select the staff members who work for them, and the similar policy of ensuring that the judges have the decisive voice with regard to the budgetary requirements of the Chambers, amply meet this need, which all parties involved agree with. This

solicitousness with which the administrative needs of the Chambers are addressed at ICTR is concretized in the fact that there is an international-level Administrative Assistant assigned exclusively to the Chambers to assist the judges in administrative matters.

171. For constitutional reasons also, the recommendation that judges assume full administrative functions over their internal administrative matters appears problematic within the framework of the United Nations. The Tribunal, being a United Nations organ (established by the Security Council under Chapter VII of the Charter of the United Nations), is constitutionally subsumed under the framework established by the Charter. By virtue of Article 97 of the Charter, the Secretary-General is designated "the chief administrative officer" of the Organization. In legal terms this means that whoever exercises administrative functions in the United Nations must be accountable therefor to the Secretary-General. The question in this case is how this accountability is to be enforced with respect to judges of the Tribunal and whether, in any case, such an arrangement, even if made, is workable or desirable. Equally undesirable, it would seem, would be a situation where administrative functions are exercised but with no accountability. Furthermore, would such a delegation of administrative functions to the judges not conflict with the provisions of Article 16, paragraph 1, of the Statute of the International Court of Justice, made applicable by the Tribunal's Statute to judges of the Tribunal, by which "no member of the court may exercise any... administrative function..."?

172. Finally, it seems doubtful that conferring administrative functions on judges such as is envisaged by the present recommendation can be legally accomplished merely by an administrative instruction from the Secretary-General, since this would be tantamount to a redistribution of functions under the Tribunal's Statute. While the Statute has extensive provisions with respect to the functions of the Chambers and the Office of the Prosecutor, it expressly confers administrative functions on only one organ of the Tribunal, the Registry. Article 16, paragraph 1, of the Statute stipulates that: "The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda." Any realignment of this statutory distribution of functions would therefore seem to require an appropriate amendment of the Statute. It should also be observed, incidentally, that the distribution of functions under the Statute, whereby administrative responsibility is vested in the Registrar, is consistent with United Nations constitutional thinking since the Registrar is appointed by the Secretary-General, who is the chief administrative officer of the Organization.

Comments of the Secretary-General

173. It is important for the success of the Tribunals that the Chambers be provided with adequate resources at all times to fulfil their responsibilities under the Statutes. However, the recommendation that the "judges should be entitled to submit to the General Assembly budget proposals which they feel satisfy their needs", if approved, would mean that neither the Registrar nor the Secretary-General would have a role in formulating the budget proposals for the Chambers of the Tribunals. It may be observed that such an arrangement would militate against the application of a unified approach to the preparation of budget proposals for the three constituent components of the Tribunals. Varying criteria might then be applied to assessing resource needs of the Chambers, the Prosecutor and the Registries even though the burden of financing such resources would fall on the same Member States in each case. Such an arrangement is not desirable and other mechanisms should be pursued to ensure that adequate resource provisions are made for the Chambers, if indeed there are any problems existing in this regard.

174. The delegation of authority for financial and personnel matters will continue to be given solely to the Registrars of ICTY and ICTR, who are appointed by the Secretary-General. In order to maintain a clear line of accountability, it is essential that those holding delegations under the Financial Regulations and Rules and Staff Regulations and Rules of the United Nations are officials appointed under the authority of the Secretary-General. To endow the Bureau of Chambers with administrative authority would create a situation whereby either: (a) the clear line of accountability has to be broken so as to relieve the Bureau of Chambers of the need to accept instructions from the Secretary-General, or (b) the Bureau of Chambers would have to accept instructions from the Secretary-General, which would appear to be contrary to the existing spirit and letter of the Statutes. Should the Security Council decide to revise the administrative elements in the respective Statutes, such revision would need to be

subject to a full understanding between the General Assembly and the Security Council as regards their respective authorities before any changes can be effected with respect to delegation of authority.

Recommendation 44

To avoid disruption of the work of the Office of the Prosecutor through the application of the normal United Nations rules relating to the period of service of interns attached to that Office, consideration should be given to allowing, through an exception to the rules, those interns assigned to trial work to be appointed for a period of one year or the duration of the trial to which they are assigned, whichever is longer (para. 249).

Comments of ICTY

175. The Registry, which is responsible for the implementation of the Internship Programme, strongly disagrees with this recommendation for the following reasons: first, the Office of the Prosecutor would effectively be obtaining gratis personnel, which is a clear violation of the General Assembly policy on gratis personnel. If the workload within the Office of the Prosecutor is overwhelming, additional posts should be requested.

176. Secondly, implementing the recommendation would indirectly contravene the policy of geographical distribution by favouring candidates from wealthy countries or universities that would be more likely to receive sponsorship, or candidates from countries that are proximate to The Hague, for whom the costs of relocating to the Netherlands are not so prohibitive. Thirdly, it would be detrimental to interns that are self-sponsored, as they would be unlikely to be able to support themselves for such a duration. Furthermore, if self-sponsored candidates indicate when applying that they would not be available for one year or the duration of a trial, this may have the effect of decreasing the likelihood that they will be accepted as interns. Fourthly, if the Expert Group is implying in paragraph 249 that the six-month interval before recruitment should be waived for interns in the Office of the Prosecutor, then only the General Assembly can authorize this. Moreover, such a waiver should be applied to all ICTY interns, not just those of the Office of the Prosecutor.

177. The view of the Prosecutor is as follows: the Office of the Prosecutor has been struggling to find a solution to the lacuna created by the six-month limitation. It is possible that general temporary assistance may be sought to address the need for junior-level legal assistance throughout the duration of the trials. The implementation of the recommended practice would be a partial solution to the problem.

Comments of ICTR: See consolidated comments on recommendations 44 to 45, in paragraphs 184 to 195 below.

Observations of the Prosecutor

178. The Prosecutor is gratified that the Expert Group recognized the unique situation with regard to interns in the Office of the Prosecutor and welcomes their endorsement of considering an exception to the six-month period-of-service rule. Apart from the benefits to the interns themselves in that they would be able to fully engage in trial work from beginning to end, there are only eight entry-level legal positions in the Prosecutor's office. As such, the Prosecutors have relied on the interns to carry out a great deal of work, particularly in the trial preparation period. When the limitation of the six-month rule was introduced, it had a severe impact on the work of the Trial Section. The quality of the work assignments to interns was also affected, as any assignments had to be limited to work that could be completed within a six-month period. The Office of the Prosecutor has been struggling to find a solution to the lacuna created by the six-month limitation and as yet it has not found one. It is possible that general temporary assistance may be sought to fill the need for junior-level legal assistance throughout the duration of the trials. The implementation of this recommendation would be a welcome partial solution to the problem.

Comments of the Secretary-General

179. The recommendation would appear to envisage solutions to the problem, which may be more objectionable than the problem itself. As regards the adequacy of resources, it would appear that, should a need be demonstrated that resources should be augmented, then the particular object of expenditure to be utilized would need to be determined in the light of the particular circumstances prevailing.

Recommendation 45

In order to reduce misperceptions as to the relationship between the Chambers and the Office of the Prosecutor, to increase the efficiency of that Office by giving it control over certain supportive administrative units and to better reflect the independence of the Prosecutor, a realignment of administrative matters, through a re-delegation or administrative instruction, should be considered (paras. 250-252).

Comments of ICTY

180. This recommendation is more comprehensively delineated in paragraphs 250 to 252, in which the Expert Group recommends separate administrative staff, a separate translation unit and a separate witness protection unit for the Office of the Prosecutor.

(a) Separate administrative staff

181. In paragraph 250, the Expert Group refers to the conflict of interest inherent in the fact that the administrative staff of the Registry service both the Office of the Prosecutor and the Chambers. Chambers and Registry submits in response that, to the extent that a separate administrative unit for the Office of the Prosecutor would require many administrative positions to be duplicated, the current size and workload of the Tribunal do not justify the significant increase in the total number of administrative staff that would result. Hence, at the current stage, such a move is inadvisable owing to the costs related to both the recruitment of additional administrative staff and the resultant physical reorganization of Tribunal offices and facilities.

182. Although the Prosecutor strongly supports the creation of separate administrative staff in principle, she accepts that many administrative areas in the Registry now effectively respond to the needs of the Prosecutor. Furthermore, several staff members in Administration have recently been assigned to work exclusively on matters for the Office of the Prosecutor.

(b) Separate translation units

183. In paragraph 251, the Expert Group concurs with the stance of the Prosecutor, that "if both her offices had their own translation units, instead of relying on those of the Registry, the prosecution would be in an improved position with respect to prioritizing and controlling the fulfilment of its translation needs".

184. It is the view of Chambers and Registry that while providing the Translation Unit with further resources as per recommendation 41 could significantly contribute to the efficiency of the Tribunal, the creation of a separate translation unit for the Office of the Prosecutor would be neither an adequate nor an appropriate solution. The ability of the Tribunal to recruit additional translators is limited by the scarcity of professional translators who are not only versed in legal vocabulary, but also familiar with the terminology of, *inter alia*, ballistic, forensic and military reports. It would therefore be an inefficient allocation of resources to attempt to duplicate those services by establishing a separate translation unit for the Office of the Prosecutor. In terms of the Office of the Prosecutor controlling and prioritizing its own translation needs, the Translation Unit in practice already designates a certain number of translators to work exclusively for the prosecution so that those translators can more accurately gauge the priority of the different documents.

185. The Prosecutor is in favour of establishing a completely independent translation service for the Office of the Prosecutor. This is in accordance with the view of the Prosecutor that there are certain translation tasks, involving highly sensitive or confidential sources of information that require the utmost protection during investigations, which should not be performed outside the Office of the Prosecutor.

(c) Separate staff for the protection and care of witnesses

186. In paragraph 251, the Expert Group observes that "the Registry's policy of neutrality may lead its representatives to emphasize to witnesses that they have a right not to testify, and this would tend to undermine prior efforts of the Office of the Prosecutor". They therefore conclude that the Office of the Prosecutor's "functions would be aided by having its own personnel to deal, in both Tribunals, with the protection and care of witnesses in pre-trial periods" (para. 251).

187. The Preparatory Committee for the International Criminal Court (ICC) extensively considered this issue, and it was concluded in the Statute of ICC that the victims and witnesses unit should ideally be situated

within the neutral framework of the Registry. The Registry therefore considers it to be inadvisable for the Tribunal to adopt a conflicting practice. Furthermore, the creation of a separate victims and witnesses unit for the Office of the Prosecutor would contradict the jurisprudence of ICTY, which has treated witnesses as being "witnesses of the court" with independent rights.

188. The Prosecutor's view is as follows: at present, the Registry does not have responsibility for the care and protection of witnesses and potential witnesses during the investigation stage. It therefore falls to the investigators and attorneys themselves to contact and make the necessary arrangements for witnesses in the pre-trial stage. Staff are thus diverted from other duties. The Prosecutor therefore advocates the establishment of a small unit within the Investigations Division to handle particularly sensitive witnesses during the pre-trial stage.

Comments of ICTR (judges) on recommendations 44 and 45

189. These recommendations for improving the efficiency of the Office of the Prosecutor may well facilitate fulfilment of the Tribunal's mandate.

Comments of ICTR (Registry) on recommendation 45

190. Once again, as with recommendation 43, relating to the Chambers, the Registry has no objection in principle to the thrust of the present recommendation regarding the Office of the Prosecutor. Once again, however, the Registry considers it pertinent to raise some constitutional and practical issues relating to implementation of the recommendation and, in particular, to wonder about the necessity for such a measure at the current stage of the life of the Tribunal.

191. The complications and difficulties raised in relation to realigning administrative responsibilities to judges are similarly applicable to the recommendation for a realignment of administrative functions to the Office of the Prosecutor. First, such a realignment would also require, it would seem, an amendment of the Tribunal's Statute in view of the provisions of article 16 and cannot be accomplished otherwise.

192. Secondly, as discussed in the case of the judges, the principle of responsibility going hand-in-hand with accountability would have to apply. This would mean that the Prosecutor, appointed by the Security Council and independent in the performance of her prosecutorial functions, would necessarily have to be accountable to the Secretary-General for the aspects of the administrative services over which she assumes control. How such accountability will be rendered and enforced needs to be considered both in terms of the Prosecutor's position and the Secretary-General's responsibilities under the Charter of the United Nations. It needs also to be pointed out that, unlike the situation with the Chambers, where there are relatively few staff, all engaged in essentially similar duties, transfer of administrative responsibility for the Office of the Prosecutor to the Prosecutor will radically alter the scope and even the nature of her job, because with a combined strength of over 600 (mostly Professional) staff, engaged in such diverse activities as investigation, tracking and litigation, administrative management of such staff will loom very large indeed in the Prosecutor's responsibility and daily schedule, rendering her more of a programme manager in the ordinary United Nations departmental sense. This is particularly so since she must become responsible for career development issues for her staff as well as ensure that they are administered in accordance with Staff Regulations and Rules of the United Nations.

193. Moreover, at a practical level, for a realignment of administrative functions to the Office of the Prosecutor to be effective, a complete duplication of the administrative services currently provided by the Registry would have to be created (including the post of Chief of Administration) for the Office of the Prosecutor under the supervision of the Prosecutor. Such a duplicate structure would be necessary, first, to prevent any entanglement of the reporting lines of such administrative staff as between the prosecution and the Registry. Secondly, implementation of the Expert Group recommendation on its terms would leave some important administrative support functions still under the responsibility of the Registry. These include communications, transport, security, procurement and building management services. Since some at least of these functions, e.g., transport, security and communications, can become critical to the operations of the Office of the Prosecutor in any given circumstance, there is no reason to believe that the Prosecutor or her staff would not soon want to control these functions as well or that complaints would not equally arise with respect to services received from the Registry in these areas. Thus, it would seem, only a completely self-sufficient and parallel administrative

support structure for the Office of the Prosecutor, with attendant budgetary implications, would satisfy the idea behind this recommendation.

194. Finally, there are special complications arising in the implementation of this recommendation from the split location of ICTR. Currently, to service the Office of the Prosecutor based in Kigali, the Registry has established an administrative support structure at Kigali. If the Registry retains some support functions under the new arrangement as noted above (communications, security, etc.), it would have to maintain a separate, albeit smaller, support structure in Kigali to carry out these functions. This support structure, belonging to the Registry, would presumably have to operate parallel to the main administrative structure of the Office of the Prosecutor in Kigali and cannot be integrated into it, with serious consequences for efficiency. Correspondingly, in Arusha, where the Tribunal courts are located, and where the entire prosecution teams are to be based, the Office of the Prosecutor would have to establish an administrative structure to provide service to such staff members of the Office of the Prosecutor based in Arusha with respect to the areas of administrative responsibility of the Office. This unit too would have to operate outside of and parallel to the Registry-run main administrative structure at Arusha and rely for support on its parent unit in Kigali. This, to say the least, would present a truly problematic scenario, particularly if one also envisaged a small administrative unit responsible to Chambers and backing it up in the exercise of its limited administrative functions.

195. As noted in the report of the Expert Group, it would be desirable if the Registry and the Office of the Prosecutor could reach agreement on the provision of support services to the Office of the Prosecutor, thereby obviating the need for a redelegation of administrative functions to the latter. The Registry at ICTR knows of no reason why such an agreement cannot be reached, given the Registry's manifest determination to provide the Office of the Prosecutor with as responsive and efficient a support service as is possible within the limitations of the Tribunal's work environment.

196. In its effort to support and service the Office of the Prosecutor, the Registry of ICTR has created branches of relevant administrative services, headed by a Deputy Chief of Administration at the P-5 level, in Kigali to exclusively service the Office of the Prosecutor. Constant efforts are made to ensure that the services provided by the Registry to the prosecution are efficient and effective, and the situation has improved fundamentally since the difficult early days of the Tribunal. A clear example of the effective administrative support provided by the Registry to the Office of the Prosecutor is the establishment by the Registrar of a Special Recruitment Task Force in early 1999 to ensure that vacancies, especially those in the Office of the Prosecutor, were filled, thus ensuring that this organ of the Tribunal had the necessary human resources to perform its functions of investigations and trials. The programme managers of the Office of the Prosecutor, as in all other instances, had a decisive voice in the selection of the recruited candidates. As a result of the work of the Task Force and the Personnel Section in the Registry, the vacancy problem in the Office of the Prosecutor was more or less eliminated.

197. With specific reference to witness support matters, the ICTR Registry sees no problem with an arrangement that assures the Office of the Prosecutor of full say in the handling of prosecution witnesses. Not only has the right, and indeed responsibility, of the Office of the Prosecutor to handle witnesses and potential witnesses at the pre-trial stage been long recognized, but the Registry has sought to operate a two-track witness support system separating prosecution from defence witnesses and allowing each party to control the disposition and briefing of its own witnesses. The neutrality of the Registry has been manifested in scrupulously avoiding discussing witnesses' testimony with them or indeed whether they should or should not testify.

198. The two-track system was in fact carried to its logical conclusion recently when, at the beginning of March 2000, the Witnesses and Victims Support Section was split into two completely separate sections, one handling exclusively prosecution witnesses and the other exclusively defence witnesses. This move, which has been welcomed by both the Office of the Prosecutor and defence counsel, ensures not only that potential conflict-of-interest situations are avoided, but that there is an identity of interest between each party and the respective Witness Support Section of the Registry.

199. What the foregoing clearly demonstrates is that there is nothing in the statutory responsibility of the Registry to provide administrative support services to the Office of the Prosecutor which per se hinders in

any way the effectiveness and independence of that Office in the performance of its own statutory functions of investigations and trials, so as to suggest that the only effective solution would be to transfer such functions to the Office of the Prosecutor itself. There is equally nothing to suggest that the Office of the Prosecutor, being vested with administrative functions, would perform these more efficiently than they are currently being performed. What cannot be doubted, however, is the much greater added cost of such an arrangement to the overall Tribunal budget, raising legitimate questions about the cost-effectiveness of the entire Tribunal undertaking. If, on the other hand, the issue is one of control of administrative services by the Prosecutor for its own sake, a position which some have advocated,[1] then, of course, the foregoing analysis provides no response.

200. The Registry remains, of course, ready to cooperate in implementing whatever arrangements are finally agreed upon by the Member States.

Observations of the Prosecutor

201. As the Expert Group has recognized, the Office of the Prosecutor does not have an integrated administrative organization and as a result the competition for services at times leads to strains among the organs and puts perhaps undue pressure on the Registry to respond to conflicting demands from them. In principle, the Prosecutor strongly supports the idea of a separate administrative structure to support her Office. However, over the years, with an increase in resources, support services have improved, and most of the early tensions between the Registry and the Office of the Prosecutor have disappeared, particularly in ICTY where many administrative areas now effectively respond to the needs of the Prosecutor. In a new development since the visit of the Expert Group, several individuals in ICTY dedicated to the work of the Office of the Prosecutor have been outposted to the Office from Administration. This step has contributed greatly to improving delivery of many services. Staff of the Office of the Prosecutor have also become familiar with the workings of the United Nations system.

202. However, there still remain several areas of concern. In the ICTR the Deputy Chief of Administration in Kigali should have a much larger delegation of authority in order to effect payments to main contractors for items such as fuel for vehicles and generators, repair of photocopiers, security guards, rental of premises, etc., and to settle staff claims on miscellaneous matters such as travel and education grants.

203. In ICTY there is a lack of suitable administrative arrangements for the handling of witnesses (particularly certain sensitive witnesses) during investigations. At present the Registry does not have responsibility for the care and protection of witnesses and potential witnesses during the investigation stage. It falls to the investigators and attorneys themselves to contact and make the necessary arrangements for witnesses in the pre-trial stage. Staff are thus diverted from other duties. The Prosecutor would therefore be eager to explore further the possibility of establishing a small unit within the Investigations Division to handle particularly sensitive witnesses during the pre-trial stage.

204. Another area of continuing concern to the Prosecutor in both Tribunals relates to control over language resources and the translation of documents. The Prosecutor sees the need for an organizational change that would create a completely independent translation service under the Office of the Prosecutor. The level of resources is, of course, one issue, but the daily control and tasking of staff and the determination of priorities creates constant tension.

205. There are also certain particular translation tasks that should not be performed outside the Office of the Prosecutor. These tasks involve highly sensitive or confidential sources of information that require the utmost protection during investigations. Recourse to other organs of the Tribunal is not appropriate for this work, which should remain entirely within the Office of the Prosecutor.

206. In ICTR it should be possible for the Prosecutor to make decisions concerning the travel of her own staff without the need to seek administrative approval from the Registry. The deployment of the Prosecutor's staff is an operational matter, in which administrative arrangements should be as streamlined as possible

[1] This is more or less the situation envisaged in the case of the International Criminal Court. That situation, however, is completely different since that Court is a treaty-based stand-alone institution in which the Secretary-General of the United Nations, for example, has no comparable constitutional role as he does with the ad hoc Tribunals.

given the often urgent need to respond to changing circumstances. Refusal to authorize travel can seriously affect the success of investigations and prosecutions. Although similar problems are not experienced in ICTY, in principle the Prosecutor considers that she should have the necessary spending authority and corresponding financial accountability. If the operational areas of control highlighted above are addressed, the Prosecutor sees no immediate need to seek any further realignment of administrative structures beyond the creation of a separate translation service of the Office of the Prosecutor.

Comments of the Secretary-General

207. It is important that for the success of the Tribunals the Office of the Prosecutor be provided with all necessary administrative support at all times so that it is able to fully discharge its responsibilities under the Statutes. At present, the Registries are provided with full administrative authority by the Secretary-General so that they may discharge their responsibilities for supporting the Office of the Prosecutor. A re-delegation to the Prosecutor of financial and human resources authorities currently granted by the Secretary-General to the two Registries would require that the Prosecutor become subject to the direct authority of the Secretary-General. This would be undesirable for the same reason indicated in paragraphs 173 and 174 above concerning the delegation of authority to the Bureau of Chambers. In addition, the provision of such delegation of authority to another component of the Tribunal beyond the Registrars would lead to a proliferation of administrative units and a duplication of capacity with the likelihood that uniformity in the administration of rules and regulations within the Tribunals would be lost. The best solution to ensuring the availability of adequate administrative support to the Office of the Prosecutor may be to improve the "client service" culture in the Registries through a combination of training service personnel and establishing procedures to ensure that good performance standards are met.

Recommendation 46

On balance, there seems to be no compelling reason for a recommendation that the Security Council amend the statute to provide an independent Prosecutor for ICTR;

However, the Expert Group trusts that the Prosecutor will find occasion for more frequent visits to ICTR, covering longer periods of time and continuing close oversight of the ICTR prosecutorial operation in order, *inter alia*, to ensure similar standards in regard to the supervision she exercises over her staff, whether in The Hague or in Arusha/Kigali;

At the same time, some recognition should be given, at the appropriate time in the future, to the special responsibilities which devolve upon the Deputy Prosecutor in Kigali in terms of the more independent nature of his work, which includes day-to-day contact with senior officials in the Government of Rwanda (para. 259).

Comments of ICTR

208. The judges are not convinced that a strong imperative exists for the appointment of a separate Prosecutor for ICTR, and support upgrading the status of the Deputy Prosecutor for the reasons mentioned.

209. The Chief Prosecutor has acted upon her announced intention to come personally to Arusha and Kigali and to oversee her prosecutorial obligations there. The ICTR judges welcome this action.

Observations of the Prosecutor

210. While in The Hague, the Prosecutor divides her time between her ICTY and ICTR duties. In addition she has already spent six weeks in Arusha and Kigali since she took office in September 1999 and intends to continue to make substantial visits to the seat of ICTR and to her office in Rwanda. She has appeared in court on several occasions and intends to undertake personally the prosecution of a major case. She has taken a very active role in the management of her staff, has regular discussions with the President and the Registrar, and has made high-level contact personally with the Rwandan authorities.

211. The Prosecutor welcomes the conclusion of the Expert Group that there seems to be no compelling reason for it to recommend that the Security Council amend the Statute to provide an independent Prosecutor for ICTR. She supports the proposal concerning recognition of the role of the Deputy Prosecutor, but particularly in the light of her frequent visits to ICTR and corresponding absence from ICTY, she would not like to see a substantial difference in status between the Deputy Prosecutor in Kigali and her Deputy in The Hague.

Annex II

Prosecutor's general observations

1. The Prosecutor welcomes the report of the Expert Group and commends its members for producing such a detailed and insightful document in the time available to them. The report makes an important contribution to ongoing efforts to design and streamline the procedures and practices of the International Tribunals. Different legal systems approach familiar issues in different ways, and what is emerging in the Tribunals is a unique blend of ideas and practice, one that incorporates diverse features from major national criminal justice systems. The law and procedure of the Tribunals also attempts to address the unique challenges faced by the very nature of an international war crimes tribunal. Since their establishment, the Tribunals have subjected their rules to a continuing process of refinement and change. It is both encouraging and refreshing to have the result of that exercise examined by an independent and eminent group of outside experts. The Prosecutor wishes to thank the Expert Group for its efforts and wishes to emphasize her readiness to embrace new initiatives and to implement recommendations that will improve the workings not only of her Office but of ICTR and ICTY as institutions.

2. Although on some issues the Prosecutor's responses may differ from those of the other organs of the Tribunals, that simply reflects the specific roles and interests of the Office of the Prosecutor. There is, however, no essential division among the organs of ICTR or ICTY on the broad aims and objectives of the Tribunals, namely to deliver high-quality justice with proper dispatch in each of the cases brought before them. Trials must be speedy and fair, and many of the initiatives under way or proposed address the delicate balance that often must be struck between these two imperatives. As experience develops, much progress is being made in an atmosphere of genuine cooperation and, to some extent still, in a spirit of experimentation. Creating an efficient and just body of rules against the backdrop of ongoing prosecutions is an enormously challenging task. The Expert Group's report has prompted new ideas and stimulated internal discussions. Some developments have taken place since the information for the report was gathered and other measures are actively being considered at present. The pace of prosecution has picked up considerably, but there remains much scope for development of procedure and practice.

3. The Prosecutor wishes to make detailed responses to the individual recommendations of the Expert Group (see annex I). Where a recommendation is not addressed, the Prosecutor fully agrees with the responses of the respective Chambers and Registry, and has nothing to add.

Annex III

General comments of the Registry, International Criminal Tribunal for Rwanda

1. The Registry of the International Criminal Tribunal for Rwanda welcomes the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of ICTY and ICTR. The ICTR Registry has found the report, in its treatment of issues concerning the Registry of ICTR, to be generally accurate in its reflection of the challenges and achievements of this organ of the Tribunal.

2. In accordance with the request of the Under-Secretary-General for Legal Affairs, The Legal Counsel, in his letter to the President of ICTR dated 25 January 2000 and copied to the Registrar, and taking into account the opinion of the Advisory Committee on Administrative and Budgetary Questions, expressed in its report to the General Assembly on the proposed requirements of the ICTR for 2000, that the Tribunal should indicate "which of the recommendations [of the Expert Group] are being or will be implemented" (A/54/646, para. 3), the Registry submits the following comments and observations (see annex I).