



## **WHY IT IS IMPERATIVE FOR THE ICTY AND THE ICTR TO RETAIN THEIR STAFF**

Some three years ago, the ICTY and the ICTR became concerned that their Completion Strategies (CS) would have an undesired side effect: staff would leave their positions well in advance of the completion of their appointments. And indeed, staff from all areas of both Tribunals left.

Expected to increase as the International Tribunals move closer to the target dates of the CS, this attrition has a double negative impact:

- the departure of experienced staff can only but affect the efficiency and quality of the proceedings at a time where Tribunals are required to be more efficient and thorough than ever;
- the recruitment of new staff is a time-consuming and costly matter with the average rotation costs for one post estimated at US\$75,000.

To alleviate these negative effects – and save money! - the ICTY and the ICTR management, fully supported by staff, decided to try to establish a “retention incentive,” to be paid upon separation to those staff members who would be required to stay until their post is abolished as a result of the completion strategy.

The Retention Incentive proposal was reviewed and endorsed by the UN Central Administration and submitted as an official document for consideration by the legislative bodies. The proposal is now before the ACABQ (Advisory Committee on Administrative and Budgetary Questions) and the Fifth Committee of the General Assembly.

The Tribunals hope that it will not be deferred yet again, and that it will be discussed during the short resumed session of the General Assembly later this month.

This is why ICTY Digest publishes, as a supplement (see page 3), a document explaining that establishing a Retention Incentive is less expensive than bearing staff turnover costs, and is also a guarantee for the Tribunals’ continuing high-quality work!

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24 April

### **ICTY Registrar sets forth “major challenges”**

The retention incentive (see above) is one of the “Tribunal’s major challenges” outlined by the ICTY Registrar, Hans Holthuis, during a briefing given at the invitation of the German Embassy. Saying that other challenges are the scheduling of cases, the budget for the biennium 2008/2009, the enforcement of sentences, and the relocation of witnesses, Hans Holthuis concludes that the ICTY (and the ICTR), is facing “an unprecedented situation: closing (...) in acceptable legal, financial and logistical conditions.”

*The full text of the Registrar’s briefing notes is available upon request (in English and in French).*

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26 April

### **ICTY recognized through a Belgian Doctorate awarded to President Pocar**

Judge Fausto Pocar, the ICTY President, is conferred the degree of Doctor Honoris Causa by the University of Antwerpen (Belgium): “We pay tribute to his academic career and at once acknowledge the great social responsibility he has assumed in fighting violations of international law,” said Professor Marta Pertegas in her laudation. Adding that, as Judge and then as the President of the ICTY, Judge Pocar “worked diligently towards the creation of an international system of criminal law procedures that offers a dignified and forceful response in the struggle against international impunity,” she stressed that the honour bestowed upon Fausto Pocar “is also a mark of public recognition of the vital and valiant role the Tribunal has played in recent years.”

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[27 April](#)

**Milorad Trbić referred to BiH**

The Referral Bench decides to refer the case *The Prosecutor v. Milorad Trbić* “to the authorities of Bosnia and Herzegovina, so that those authorities may forthwith refer the case to the appropriate national court for trial within that state.”

*This makes the 15th case to be referred to a national jurisdiction under Rule 11bis. To date 13 accused have been definitively referred to local courts for trials: ten to Bosnia and Herzegovina, two to Croatia and one to Serbia. Milan Lukić has appealed the Referral Bench’s decision to refer his case to BiH.*

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[27 April](#)

**ICTY takes part in peace exhibition**

The ICTY participates in the exhibition “What is happening in The Hague to preserve peace?” organized by The Hague Peace Platform in the City Hall of The Hague, between 27 April and 3 May.

*The ICTY’s display stand included audio-visual and photographic materials and posters illustrating the ICTY. This material was prepared by staff in the Communications Service and the Graphics Unit who were also on hand at various times during the exhibition to provide information materials and answer questions from visitors.*

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[1 and 2 May](#)

**OTP wraps up two cases**

The Prosecution completed on Tuesday 1 May its case-in-chief for the *Milutinović et al.* case (Kosovo) and, the day after, closed its case in the trial of Dragomir Milošević (Sarajevo siege).

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**[ICTY PROCEEDINGS COMPLETED WITH REGARD TO 105 ACCUSED](#)**

**Since the very first hearing (referral request in the Tadić case) on 8 November 1994, the Tribunal has indicted a total of 161 individuals, and has already completed proceedings with regard to 105 of them: five have been acquitted, 50 sentenced (six are awaiting transfer, 27 have been transferred, 16 have served their term, and one died while serving his sentence), 14 have had their cases transferred to local courts. Another 36 cases have been terminated (either because indictments were withdrawn or because the accused died, before or after transfer to the Tribunal).**

**Proceedings are on-going with regard to 56 accused: 12 are at the appeals stage, four are awaiting judgement by a Trial Chamber, 25 are currently on trial, nine are at pre-trial and six are still at large.**

*The figure of the accused at the appeals stage includes Sefer Halilović, Fatmir Limaj and Isak Musliu (who have been acquitted and released but against whom an appeal by the Office of the Prosecutor is running), as well as Amir Kubura and Naser Orić. These two accused have been sentenced and granted early release (Kubura) and release (Orić), but the OTP has appealed against the Trial Chamber’s Judgements.*

**A further 19 individuals have also been the subject of contempt proceedings.**

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*Extracts of, and/or quotes from, legal documents are not authoritative;  
only the Order, Decision or Judgement in its entirety reflects the opinion of the Trial Chamber and/or the Appeals Chamber.*

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# RETENTION INCENTIVE

Staff from all areas of the Tribunals have been leaving the Tribunals well in advance of the completion of their appointments, and it is expected that the number of departures will increase further as the Tribunals are moving closer to their completion dates in 2010.

This will impact negatively on the development, efficiency and quality of the proceedings and incur substantial financial costs.

The establishment of a retention incentive as an effective anti-attrition measure is believed to alleviate these negative effects.

## I. Financial implications of retention incentive far offset the additional costs associated with higher rates of staff turnover

- Substantial savings can be achieved if the retention incentive enables the Tribunals to retain their staff until their posts are no longer required, since the average rotation costs for one post amount to approximately \$75,000.<sup>1</sup>
- As agreed with OHRM, the retention incentive would be based on the existing Staff Rules and apply only to the Tribunals. This is due to the large number of staff in functions not normally found in the UN system, and the need to close the Tribunals in accordance with the completion strategy.



- the final proceedings will have to be completed with inexperienced staff and interns. This will impact negatively on the Tribunals' current high standard of judicial work, thus almost inevitably endangering the legacy and the public perception of the Tribunals in Rwanda, the former Yugoslavia and worldwide. This may even have negative effects on the notion of international criminal justice as such.

- In general, morale has always been extremely high at the Tribunals as staff is very committed to the cause. High morale and personal commitment of all staff members at both the G and P level are indispensable in order to deal with the enormous workload and amount of working hours. However, morale would certainly and understandably suffer if staff had to complete cases with teams that are not properly and permanently staffed with qualified people. Thus, the retention incentive is an indispensable tool to create the conditions which allow staff to do its work and to keep morale up.



## II. Loss of productivity if no retention incentive is provided

- All offices which are already under strict time constraints due to the completion strategy will waste precious time with the recruitment process of new staff members (a panel of at least 4 staff members is working several full days per recruitment round. A senior staff member said that the recruitment of eight P3 took him 15 full working days!). Also, the recruitment of new staff will become increasingly difficult when moving closer to 2010, as the new staff can only be offered short-term positions.
- The departure of highly experienced staff would impact particularly negatively on the conduct of pre-trial, trial and appellate proceedings, as critical institutional memory and expertise will be lost. In particular, the Prosecutor's office is under so much time pressure to meet the deadlines that it cannot afford to lose experienced staff.
- It normally takes 3 to 6 months before newly recruited staff can be considered to be fully operational, due to the legal and factual complexity of the cases and the new technology (e-court). The Tribunals will simply not be in a position to afford such delay.



- The loss of productivity outlined above would almost inevitably lead to one of two possible scenarios (or a combination of both):

- (pre-)trial and appellate proceedings will be delayed, which would translate into additional costs and would endanger the completion strategy; and/or

- "Head hunting" of highly qualified Tribunals' staff by other UN agencies, NGOs or international courts and investigations has already begun. At this stage, these posts have a more long-term perspective and offer more job security so that the Tribunals have to effectively compete with those agencies.
- A competitive retention incentive will be particularly attractive for staff with partners within the Tribunals. It is of specific importance to retain these staff members, as the departure of one partner will most likely result in the departure of the other partner.

It should also be considered that staff rights are limited (in particular, some staff's rights to remain in the Netherlands are dependent upon the job) and that they may have to leave the Netherlands immediately upon completion of their employment contract. Also, staff members have no right to social security in the Netherlands or their home countries. The retention incentive may be able to compensate to an extent for these disadvantages.

Further, staff members are not considered internal candidates for any posts elsewhere in the UN, which makes the applications to new posts within the UN system more difficult.

Finally, it is important to note that 80% of surveyed ICTY staff members stated in 2004 that they would be more likely to remain with the ICTY if a retention incentive package would be provided.<sup>2</sup>

<sup>1</sup> See Report of the Secretary-General, *Financial and any other implications resulting from the introduction of staff retention incentive at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia*, 17 October 2006, para. 18.

<sup>2</sup> Results and Analysis of the Staff Survey on the Completion Strategy, March 2004, 3. Results. Conclusions. On file with the ICTY Staff Union.

