



UNITED STATES INSTITUTE OF PEACE www.usip.org

SPECIAL REPORT

1200 17th Street NW • Washington, DC 20036 • 202.457.1700 • fax 202.429.6063

ABOUT THE REPORT

This report examines and makes recommendations for the permanent retention of the records of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Special Panels and Serious Crimes Unit in East Timor, and the internationalized courts and prosecutors in Kosovo.

Trudy Huskamp Peterson is a certified archivist and the past president of the Society of American Archivists and the International Conference of the Round Table on Archives. She served as acting archivist of the United States from 1993 to 1995, was the founding executive director of the Open Society Archives, and directed the archives and records program for the United Nations High Commissioner for Refugees. She recently published a book on the records of truth commissions.

A longer version of this report was prepared while she was a grantee of the United States Institute of Peace. Research for the report included visiting the courts in The Hague and East Timor (Timor Leste); interviewing court staff members, lawyers, academics, archivists, and human rights activists; and reviewing the files of the United Nations Archives on the records of the courts.

The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate specific policy positions.

SPECIAL REPORT 170

AUGUST 2006

CONTENTS

Introduction	2
Courts and Their Records	3
The Role of the United Nations	4
Users and Records of the Courts	6
Need for an International Judicial Archives	8
Appraising Court Records	11
Evidence	16
Access to Court Records	17
Conclusion	19
Recommendations	19

Trudy Huskamp Peterson

Temporary Courts, Permanent Records

Summary

- Temporary international criminal courts create voluminous records of tremendous and lasting significance to victims, scholars, and legal practitioners, and arrangements must be made for their permanent protection, storage, and use.
- A conceptual framework is offered for creating a central international judicial archives under UN auspices and for standards to select, preserve, and manage the records of temporary international criminal courts.
- The closure of these courts makes a decision on the disposition of their records urgent: the Timor Leste Special Panels and Serious Crimes Unit closed in May 2005; the status talks on Kosovo are currently under way; the Sierra Leone court is to close in mid-2007; and the ICTY and ICTR are to complete all proceedings by 2010.
- A survey of the five courts reveals substantial differences among them because of the varied roles played by the United Nations in their establishment and operations. These differences in turn lead to differences in the potential disposition of the records.
- When the ICTY and ICTR close, their records will become the responsibility of the United Nations Archives and Records Management Section. The legal responsibility for the Sierra Leone court records is to be negotiated between the United Nations and the government of Sierra Leone. The management of the copies of the East Timor records held by the United Nations is controlled by an agreement between that government and the United Nations. The records of the UN mission in Kosovo relating to the Kosovo internationalized courts will be divided among the government and the three organizations currently comprising the UN mission.
- Records of the tribunals are key research resources for victims, civic activists, academics, journalists, educators, and successors to current court officials. Potential users of the tribunal records urge officials to place the records where research will be fostered.
- Preservation requires active intervention to ensure that records can be used; if records are simply stored they will deteriorate, and electronic and audiovisual records will deteriorate irretrievably.

ABOUT THE INSTITUTE

The United States Institute of Peace is an independent, nonpartisan federal institution created by Congress to promote the prevention, management, and peaceful resolution of international conflicts. Established in 1984, the Institute meets its congressional mandate through an array of programs, including research grants, fellowships, professional training, education programs from high school through graduate school, conferences and workshops, library services, and publications. The Institute's Board of Directors is appointed by the President of the United States and confirmed by the Senate.

BOARD OF DIRECTORS

J. Robinson West (Chair), Chairman, PFC Energy, Washington, D.C. • **María Otero** (Vice Chair), President, ACCION International, Boston, Mass. • **Betty F. Bumpers**, Founder and former President, Peace Links, Washington, D.C. • **Holly J. Burkhalter**, Director of U.S. Policy, Physicians for Human Rights, Washington, D.C. • **Chester A. Crocker**, James R. Schlesinger Professor of Strategic Studies, School of Foreign Service, Georgetown University • **Laurie S. Fulton**, Partner, Williams and Connolly, Washington, D.C. • **Charles Horner**, Senior Fellow, Hudson Institute, Washington, D.C. • **Seymour Martin Lipset**, Hazel Professor of Public Policy, George Mason University • **Mora L. McLean**, President, Africa-America Institute, New York, N.Y. • **Barbara W. Snelling**, former State Senator and former Lieutenant Governor, Shelburne, Vt.

MEMBERS EX OFFICIO

Barry F. Lowenkron, Assistant Secretary of State for Democracy, Human Rights, and Labor • **Peter W. Rodman**, Assistant Secretary of Defense for International Security Affairs • **Richard H. Solomon**, President, United States Institute of Peace (nonvoting), • **Frances C. Wilson**, Lieutenant General, U.S. Marine Corps; President, National Defense University

- The ICTY, ICTR, and the Special Court for Sierra Leone must establish basic access rules for their records before closing; they should make every attempt to harmonize their access provisions.
- The United Nations should explore constructing and staffing an international judicial archives in The Hague and should begin providing copies of publicly available court records to institutions in the countries affected by the court proceedings. Governments and donors should actively encourage and support the United Nations in these efforts.

Introduction

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

This report provides a conceptual framework for creation of an international judicial archives that could house and preserve the records of these historically significant institutions and the standards for managing these records. It looks at five explicitly temporary courts: the East Timor Special Panels and Serious Crimes Unit, which closed in May 2005; the internationalized courts in Kosovo, where status talks that are likely to lead to the closure of the United Nations' mission there are presently under way; the Special Court for Sierra Leone, which is to close in mid-2007; and the ICTY and ICTR, which are to complete all proceedings by 2010. The need to establish a preservation and access strategy for the records of these courts is urgent.

The United Nations established all five of these diverse courts, and it is responsible for the preservation of some or all of their records. The records of the ICTY and ICTR are records of the United Nations per se and, like records of governments, they are inalienable. Together with such records of the other courts as come into UN custody, they form an historically important, sensitive body of records that the United Nations has a duty to preserve and make available in scrupulous good faith. The United Nations is entrusted to find a secure location for the preservation and use of these records after the courts close, and it must begin planning now to fulfill its archival responsibilities. Governments such as that of the United States, which played a central role in bringing these courts into existence, as well as those whose citizens have the primary stakes in the courts' work, should actively support and encourage the United Nations' efforts.

The urgent need to preserve and protect these records is illustrated forcefully by recent events in East Timor. The riots of May 2006 in the capital, Dili, led to the loss of at least some of the records assembled by the Serious Crimes Unit to prosecute those responsible for the country's devastation in 1999. Whether the looters targeted the records for destruction or whether they were merely looting is irrelevant: the databases are lost and some of the paper records are gone. Fortunately, the United Nations Security Council had required that a copy of the records of the Serious Crimes Unit be made, and that was done in the spring and summer of 2005. Without that copy in the hands of the United Nations, crucial

evidence would be irretrievably lost. Preserving the copy, in a safe location with sound access controls, is of the utmost importance.

Courts and Their Records

Deciding what records to save, where to save them, and under what access controls are fundamental choices that must be made. To make those decisions for the records of the temporary international criminal courts, it is important first to understand the nature and scope of the records.

The word “court” to describe these diverse bodies is misleading. They do include courts, in the traditional sense, that hear and adjudicate cases and appeals, but they encompass far more, including some or all of the following:

- Offices of the prosecutor, including investigation staffs;
- Offices of public defenders;
- Registrars’ offices to operate the courts and possibly detention and/or victims’ centers;
- Field offices for prosecutors and registrars; and
- Public outreach offices (located at the court or where alleged crimes occurred), which in some cases have sophisticated broadcast capabilities.

To use a U.S. analogy, a temporary international criminal court includes the Federal District Court, the Supreme Court, the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, the Federal Witness Protection Service, the Bureau of Prisons, and perhaps the office of a public defender.

Each of these bodies creates records that reflect its unique functions. The records are all the documents made or received and maintained in the course of business, ranging from evidence presented in court to investigation files to personnel dossiers and travel vouchers. Many of these bodies create records of more than one physical type, ranging from paper records through all varieties of audiovisual formats to electronic records. For example, in May 2005 the ICTY had a Judicial Database with 220 gigabytes (and expected to grow to 8 terabytes by the court’s closure), 45,000 videotapes of proceedings and another 5,500 videotapes of evidence, nearly 6 million items of paper and still photographic evidence, and more than 13,000 artifacts obtained as evidence.

The temporary courts were established by different legal processes, have different locations and compositions, and operate in different judicial contexts. The United Nations Security Council, acting under its Chapter VII powers, established ICTY and ICTR. The Special Court for Sierra Leone was established by a treaty between the United Nations and the government of Sierra Leone. The courts, the prosecutor’s office, and the defense counsel’s office in East Timor were established by the UN mission in East Timor. The UN mission in Kosovo inserted international judges into existing courts in Kosovo and added international prosecutors to handle particularly sensitive cases. ICTY and ICTR operate outside the country where the events that form the basis of the charges occurred; the other three courts sit in the relevant countries. ICTY and ICTR have external judges and prosecutors only; the other three have a mix of national and international staff. Sierra Leone and East Timor simultaneously had truth commissions operating as the prosecutions were under way; the other three did not.

Looking at all the courts and their records helps identify similarities in context and content and clarifies the issues that will face the archivists who take custody of the records. Table 1 describes the key differences in legal authority, composition, function, and types of records of the five courts.

Dangerous Records

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

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

Table 1. Comparative Analysis of the Courts and Their Records

	ICTY	ICTR	SCSL	East Timor	Kosovo
Courts and their composition					
Est. by Security Council	X	X			
Est. by treaty			X		
Est. by UN mission				X	X
Court in country			X	X	X
Court outside country	X	X			
External judges/prosecutors	X	X			
External and internal judges/prosecutors			X	X	X
Truth commission			X	X	
UN court functions and units					
Courts	X	X	X	panels	judges*
Prosecutor	X	X	X	X	prosecutors*
Investigators	X	X	X	X	
Registrar	X	X	X		
Victims and witness support	X	X	X		
Detention facility	X	X	X		
Victims facility					X
Outreach program	X	X	X		
Public information	X	X	X	X	
Liaison to defense counsel	X	X			
Defense counsel office			X	X	
Court monitoring					X
Administration	X	X	X	prosecutor	
Physical types of records					
Paper	X	X	X	X	X
Electronic tracking systems	X	X	X	prosecutor	
Electronic document management systems	X	X	X		
Web sites	X	X	X	prosecutor	
Audio of court sessions	X	X	X		
Video of court sessions	X	X	X	X	
Audiovisual evidence	X	X	X	X	
Objects as evidence	X	X	X	X	
Architectural records	X	X	X		

* Individual judges and prosecutors inserted into Kosovo courts

** Where not marked, some functions such as investigations and detention, are carried out solely by local authorities.

Because the Yugoslavia and Rwanda tribunals were created by the United Nations Security Council, their records are under the control of the United Nations Secretariat.

The Role of the United Nations

Yugoslavia and Rwanda Tribunals

Because the Yugoslavia and Rwanda tribunals were created by the United Nations Security Council, their records are under the control of the United Nations Secretariat. Staff mem-

bers of the United Nations, both in the Secretariat and in the tribunals, consistently interpret the UN rules governing disposition of records as mandating that the records of the two tribunals, upon closure, will become the responsibility of the United Nations Archives and Records Management Section of the Secretariat. Any alternative arrangement, they believe, would require a decision by the Security Council. The working assumption has been that the records of both tribunals would be shipped to the UN archives in New York when the tribunals close.

When the records come into the custody of the UN archives, their preservation and management will be governed by UN administrative instruction ST/AI/326 (1984) and the secretary-general's bulletin on the UN archives, ST/SGB/242 (1991). These issuances give the UN archives the exclusive right to authorize destruction of UN records and to determine which records to maintain as archives. The legal title to the records rests with the United Nations, and the UN archives is mandated to "maintain, preserve and repair" the archives, "arrange and describe" and "prepare finding aids to make them available for use," and release records to the public in accordance with conditions of access outlined in the 1984 instruction. Records are open for research when twenty years old, unless restrictions are imposed by the secretary-general.

During the past decade, UN archives staff members have visited both tribunals and issued reports on their records systems, and tribunal staff members have visited New York to discuss records issues. The UN archives has authorized destruction of records at the tribunals under the UN general records schedules, and it has approved retention and destruction for some specific sets of tribunal records. No records have yet been shipped from ICTY to the UN archives, but the first body of ICTR records was sent in the winter of 2006.

Special Court for Sierra Leone

The Special Court for Sierra Leone was created through an agreement between the United Nations and the Sierra Leone government that specified that the "archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable." It did not, however, specify the permanent custodian of the court's archives. At present, the United Nations and the government appear to have an informal understanding that the United Nations will take responsibility for preserving the court records, with copies of the public records remaining in Sierra Leone.

Special Panels and Serious Crimes Unit in Timor Leste

The United Nations established all judicial institutions in Timor Leste, including the Special Panels for Serious Crimes of the Dili District Court and the Serious Crimes Unit (SCU) of the public prosecutor's office, during its mission there. Those specialized bodies, which included both foreign and domestic personnel, were established to handle conflict-related serious criminal offences, defined as genocide, war crimes, crimes against humanity, and, if committed between January 1 and October 25, 1999, murder, sexual offenses, and torture. Responsibility for the Special Panels and SCU was transferred to the new Timor Leste government in May 2002. Thereafter, the United Nations continued to fund those bodies, but in 2004 the Security Council decided that the SCU should complete its investigations by November 2004 and "should conclude trials" not later than May 2005. Because all trials before the Special Panels originated with the SCU, the closure of one meant the closure of the other.

The foreign Special Panels judges wanted to ensure that the basic records of their cases would survive and be made public. Consequently, they initiated a program to scan key documents in each case file, copy them onto compact discs, and provide duplicates of the compact discs to the United Nations, the War Crimes Research Office at Washington

The Special Court for Sierra Leone was created through an agreement between the United Nations and the Sierra Leone government.

The SCU decided to scan all the paper-based evidence it had collected and create a database containing basic information about each scanned item.

College of Law at American University, the War Crimes Studies Center at the University of California–Berkeley, and the Timor Leste–based Judicial Systems Monitoring Programme.

The SCU records were a different matter. The Security Council, acting at the urging of several governments and nongovernmental organizations (NGOs) worried about the long-term preservation of the SCU records, adopted S/RES/1599 in spring 2005 to require the United Nations “in agreement with Timor-Leste authorities, to preserve a complete copy of all the records compiled by the Serious Crimes Unit.” With its UN mandate near termination, the SCU decided to scan all the paper-based evidence it had collected and create a database containing basic information about each scanned item. Color photographs in the evidence were copied onto separate discs, databases of both evidence and case information were duplicated, and paper copies were made of the approximately 500 binders of litigation case files. The University of California at Berkeley’s War Crimes Studies Center assumed control of the SCU website, while the United Nations took custody of the administrative records of the SCU, which it considered a part of the records of the UN mission.

The agreement between the government of Timor Leste and the United Nations governing the preservation of and access to the SCU copies destined for the United Nations was signed in spring 2006, nearly a year after the copies were made. The agreement and its implementing instructions to the UN staff have not been made public, but it apparently specifies that the Timor Leste government will control access to the copies in UN custody. The UN staff views the UN copy as simply a backup copy for preservation purposes only, with the ultimate control over the documents residing in the hands of the Timor government. The UN copy, held by the UN in Timor while the negotiations over the agreement dragged on, suddenly became dramatically important when the attorney general’s office was looted in late May 2006 and the SCU databases and some files were taken.

Internationalized Judicial Services in Kosovo

The United Nations Mission in Kosovo (UNMIK) is a tripartite mission of the United Nations, the European Union (EU), and the Organization for Security and Cooperation in Europe (OSCE). Under its administrative powers, UNMIK appointed international judges and prosecutors to all courts in Kosovo, inserting them into the criminal justice system to work alongside sitting jurists. The official records of the hybrid court panels (those including both national and foreign judges) in the five district courts and the Supreme Court of Kosovo are in the custody of the Kosovo courts. The international judges maintain in their offices some records that they deem to be personal property and generally take with them when they leave Kosovo. The United Nations probably has custody of the office records of the international prosecutors along with the records of other important UNMIK court-related programs.

It seems likely that once the mission closes, UNMIK records will be divided among the three partner organizations. The UN portion of the records will be divided once again, with the records of “work with local authorities” turned over to a government in Kosovo under the United Nations’ policy (as in Timor Leste) that all records created in connection with the government are the property of local authorities. Records of staff members who had dual responsibilities for activities of both the United Nations and the local authorities are to be divided, with the UN records sent to the UN archives and the local records sent to the respective Kosovo government offices.

It seems likely that once the mission closes, UNMIK records will be divided among the three partner organizations.

Over time, active records created and received by a working office change into inactive records in an archives, or they are destroyed.

Users and Records of the Courts

To decide which records of the courts need to be saved, where the archives housing them should be located, and what access needs to be provided to them, it is important to understand who the future users will be. Records are saved so that they may be used. Over time, active records created and received by a working office change into inactive records

in an archives, or they are destroyed. Archivists say that records have primary value for the creating institution and secondary value for everyone else. All records have primary value—that is, the value that records possess, by virtue of their contents, for the transaction of business. Not all records have any appreciable secondary value for persons other than the original user, and such records can be destroyed when no longer needed for legal, financial, or administrative purposes.

Users of Records for Their Primary Values

It is relatively easy to identify the potential users of records for their primary value: the current actors and their functional successors. In the future, judges, prosecutors, registrars, and (in many cases) defense counsel will need the records in various circumstances, such as the following:

- **Persons who are indicted but not apprehended before the indicting tribunal closes are subsequently arrested.** When these persons are apprehended, someone will need to prosecute and judge them, and the records that led to the indictment will be needed.
- **Those convicted raise legal matters.** If, for example, there is an appeal for a review of a sentence or petition to return home to die or to seek a rehearing, the original records of the case will be needed. David Crane, former prosecutor in Sierra Leone, points out that the youth of the defendants means that they will be seeking legal recourse for decades, and the prosecutors will need to have access to the “untainted” case records.
- **Further evidence surfaces supporting an indictment when added to the evidence already in the prosecutor’s files.** Successor international or domestic prosecutors will need access to the original evidence to make this judgment.
- **Witness protection issues arise.** Whether or not under court protection, if a witness who testified is intimidated, put in jeopardy, or otherwise endangered, that individual’s case file and documentation of the witness’s protection must be available.

Even some administrative records may have primary value for years to come. For example, personnel records of court employees have value as long as the subjects of the records are due employee benefits.

The records that successor bodies will need are principally those of the office of the prosecutor (particularly the evidence and the work product, such as legal memoranda, developed by investigators and prosecutors), transcripts or recordings of the proceedings, the records of witnesses’ and victims’ protection, and the tribunal staff personnel files. These records correspond to the continuing functions of future prosecutions, management of incarceration, witness protection, and personnel administration. The use of tribunal records for their primary values—the use by the courts and their successors—ends when all the potentially affected persons have died. Thereafter, the interests of secondary users prevail.

Users of Records for Their Secondary Values

Researchers usually want records either to find evidence of what the organization that created the records did or to use information accumulated by the creating entity about persons, places, things, or phenomena. The first, the evidential value of the records, focuses on how the organization worked: for example, how did the investigators find that piece of evidence? How did the prosecutors decide on one charge instead of another? What was the process by which the court entered into witness protection arrangements? The second, the informational value, includes everything else that might be learned from the records.

Potential users of tribunal court records for their secondary values include the following:

In the future, judges, prosecutors, registrars, and (in many cases) defense counsel will need the records in various circumstances.

Persons interested in memorializing an event, creating educational materials, and engaging in civic discussions will need the records.

- **Victims, surrogates, and heirs:** These individuals will want to use the records to learn what the prosecutors and investigators knew about their cases or about the fates of their loved ones, or to seek recompense. They will need access to the records of the prosecutor and the investigators for these sensitive inquiries. Some affected individuals may seek to use records to provide intergenerational validation (“this happened to me”) within their families; public proceedings may be sufficient for this purpose.
- **Civic activists:** Persons interested in memorializing an event, creating educational materials, and engaging in civic discussions will need the records. Communities often want information that is already on tribunal Web sites and publicly available, such as the public versions of audio and video recordings of the proceedings. Memorials and museums likely will want to use artifacts, whether or not entered as evidence.
- **Government officials:** Representatives of governmental institutions may seek access to records for purposes of vetting individuals under consideration for various public positions or activities. They will need access to the records of the prosecutor and investigators for these inquiries.
- **Legal researchers:** Lawyers, law professors, and law students interested in the history of jurisprudence, the development of international criminal law, and the history of particular litigation will want the records of the prosecutor and perhaps the investigators as well as the proceedings in whole.
- **Academic researchers:** Academics, such as historians, political scientists, and sociologists, who are interested in the history of a trial, a community, a conflict, or the United Nations will want correspondence and investigatory materials from all parts of the tribunal. Typically they are less likely to want artifacts than electronic and paper records.
- **Media:** Journalists and documentary filmmakers researching current stories that have roots in the past are likely to be interested primarily in proceedings and audiovisual evidence. Some journalists will be interested in a variety of records from all parts of the court.
- **Court planners:** Persons interested in establishing a similar tribunal will want to learn from previous courts. These may be employees of the United Nations, governments, activists from universities or NGOs, or aggrieved parties. Much of the information they require will be on the Web sites of the courts or in published materials.

Potential users interviewed for this study confirm the central importance of the court records for future research. When asked what records should be saved, the first reaction of many people is “keep them all.” After a bit of discussion, most researchers agree that “housekeeping records” of routine administration can be destroyed. Researchers believe that the official records of the formal proceedings in the courtroom, in whatever official format, including exhibits, should be retained. Beyond that, consensus among researchers on keeping or destroying any kind of record is hard to achieve.

When asked what records should be saved, the first reaction of many people is “keep them all.”

Need for an International Judicial Archives

An archives should foster research, provide consistent service, and use resources efficiently to preserve the records and make them available. Establishing a single, centralized judicial archives for the records of all of the temporary international criminal courts would support all these goals.

Foster Research

Potential users of the tribunal records urge officials to place the records where research will be fostered. Particularly for research on international jurisprudence, keeping the records of all the courts in one place would do that, in their opinion.

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

If the United Nations is to preserve the original records of the Special Court for Sierra Leone, it makes sense to place them with the ICTR records, because the Special Court modeled many of its practices on those of the ICTR. And if the records of the ICTY, the ICTR, and the Special Court are in one archives, it would be practical to store the UN copies of records from East Timor's Special Panels and Serious Crimes Unit with them, allowing the judicial records specialists on the staff of the archives to handle them as well. However, the small quantity of records likely to come to the United Nations from the Kosovo judicial processes suggests that those records may be best left with the rest of the UNMIK records in the UN archives in New York, where researchers can understand them in the UNMIK context.

Creating a central archives does not mean that access will be prohibitively difficult for researchers in the countries most directly concerned with the work of the tribunals. A sound work program for a central archives would include large-scale copying of records for deposit in institutions in those countries as well as robust description and delivery services.

Provide Consistent Administration

One of the great problems in managing bodies of sensitive records is to provide consistent services. For example, all victims need to have equal reference services; all journalists must be given the same research choices. This is difficult to do with any body of records; trying to achieve consistency when managing records located in different places is an added burden. The risk is that the standards will not be the same and that the users, particularly those who were victims of crimes, will receive unequal treatment. Housing the records in one location, served by one staff of archivists with one set of lawyers advising them, minimizes the risk of unwarranted disclosures or of inconsistent reference service.

Conserve Resources

The archives will need specialized storage for paper, electronic materials, audio recordings, video recordings, photographs, and artifacts. Each of these physical types needs special preservation conditions. Temperature and relative humidity need to be controlled in the storage areas, stable conditions (uninterrupted electrical power, for example) are crucial for long-term preservation, and dust must be held to the absolute minimum around magnetic media such as audio, video, and data tapes. Major computer systems need specialized rooms.

In addition to special preservation conditions, court records require special security. A substantial portion of the original records retained as archives will require high levels of security for decades. Videotapes and audio recordings and transcripts of proceedings usually exist in both public and nonpublic versions (see discussion below), and the nonpublic version must be secured. Files of prosecutors, investigators, defense lawyers, and registrars all have items that are potentially damaging if released prematurely. The facility that houses these materials will need effective physical and electronic security programs.

Consistent electricity, temperature and humidity controls, and good security regimes are absolutely essential. If the United Nations houses tribunal records in two, three, or more locations, the costs of providing these services will be doubled or tripled. Similarly, reference services for the records require the same staffing and the same reading rooms, the same computers and the same videotape players, no matter which court's records are

One of the great problems in managing bodies of sensitive records is to provide consistent services.

The archives will need specialized storage for paper, electronic materials, audio recordings, video recordings, photographs, and artifacts.

If the United Nations houses tribunal records in two, three, or more locations, the costs of providing these services will be doubled or tripled.

being used. It is simply more cost effective to put the tribunal records in a single location rather than to operate archives in two or more locations.

Location Options

The privileges and immunities the United Nations enjoys under its charter make the premises the United Nations occupies inviolable. Records housed in UN premises are, therefore, normally safe from intrusions and unwarranted access. For UN records with the sensitivity of the temporary international criminal courts records, housing them in a UN facility provides an important protection. However, neither the current UN archives facilities in New York nor the UN's European archives facility in Geneva has space for the voluminous records of the temporary international criminal tribunals. Moreover, neither has quality archival space with adequate preservation controls for nonpaper materials, and neither has an in-house preservation capacity. Preservation requires active intervention to ensure that records can be used; if records are simply stored on a shelf or in a box they will deteriorate, and electronic and audiovisual records will deteriorate irretrievably. Also, neither UN facility has the space for the physical objects (as diverse as architectural models and spent ammunition) in the courts' possession, and additional security controls would have to be installed for the sensitive court records. In either city, new space and new preservation resources would have to be found to accommodate the archives.

Furthermore, potential users and current court staff alike argue that records sent to New York will be too far both from the sites where the events on trial occurred and from the current sites of the courts. They further worry that records sent to New York will simply be locked up, inaccessible to users.

The location that gains the most support from users is The Hague, largely because the records would be proximate to both the International Criminal Court (ICC) and the International Court of Justice (ICJ). The city, too, supports the idea. Wim Deetman, the city's mayor, published a document in 2005 on the role of The Hague in international law, in which he posits hosting an international judicial archives service. The city advertises itself as the "world capital of peace and justice," noting that it is the home of the Permanent Court of Arbitration, the ICC, the ICJ, the Academy of International Law, the Organisation for the Prohibition of Chemical Weapons, and Europol, as well as ICTY.

The Peace Palace in The Hague, managed by the Dutch Carnegie Foundation, houses the archives of the ICJ and its predecessor, the Permanent Court of International Justice, as well as the records of the post-World War II Nuremberg tribunal (the International Military Tribunal, or IMT). Short of space, the Peace Palace has had to place some of its records in courtesy storage in the National Archives of The Netherlands, and the UN General Assembly recently authorized funds to take preservation actions on the records of the IMT. An international judicial archives in The Hague could provide storage and reference services for at least the IMT records, if not the records of the ICJ itself.

The ICC in The Hague will also need judicial archives storage and services. While the legal framework of the ICC may preclude using a single archives service that would manage the UN records as well as those of the ICC, future storage and user services needs of the ICC should be considered when planning an international judicial archives. Because the permanent facility for the ICC has not yet been constructed, it would be possible to harmonize the plans for an international judicial archives with those of the archives for the ICC.

Retaining the ICTY records in The Hague would avoid costly shipping of the largest body of temporary court records. The archives could take over computer and other equipment from the ICTY, and the transition from court to successor archives could be handled without the break in service that would result from shipping the records elsewhere. Whether the records from ICTR or SCSL are shipped to New York or The Hague is probably cost neutral.

The location that gains the most support from users is The Hague, largely because the records would be proximate to both the ICC and the ICJ.

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

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

Appraising Court Records

As the temporary international criminal courts close, some of their records will be preserved and others destroyed; in the archival field, deciding what to keep and destroy is termed "appraisal." All future use of the records depends on wise appraisal decisions. The UN archives has not appraised the records of the IMT or the ICJ, so appraising the records of the temporary international criminal courts will be the archives' first major review of court and prosecution records. These records differ in character from the usual UN records of a peacekeeping mission or a headquarters office; consequently, the UN archives will need to draw on the experiences of other archives as it makes appraisal judgments.

Court and Prosecution Archives: National Practices

National government archives have long handled the records of courts, prosecutors, investigators, and prisons. A review of their appraisal decisions provides some helpful benchmarks to appraise the value of temporary court records, showing a number of common elements among the United States, Canada, the United Kingdom, France, and Germany, as well as the IMT (for Germany and the Far East) at the end of World War II.

- The nature of the case is key to deciding whether to save the court file. In the nations surveyed, the very serious types of cases the temporary tribunals handle would be saved.
- Retention of prosecution and investigation records often parallels that of the court files. If the records of the case are saved in the court, the prosecutor's corresponding files are also saved. The administrative records of prosecution and investigation offices, however, are usually destroyed under the government's general records policies.
- Fewer prison records are saved than those of courts, prosecutors, or investigators. At minimum, however, records of especially important individual prisoners are retained, along with records relating to prison administration policies and inmate welfare.
- Judges' and defense attorneys' papers are recognized as important for the public's understanding of the law and law practice, but they are considered their personal property and are not usually retained in government archives.
- A very large percentage of the records of the two IMTs, even some routine administrative records, are saved in various locations around the world.

In addition to the international judicial presence in the city, The Hague is a center for archival excellence.

All future use of the records depends on wise appraisal decisions.

Judges' and defense attorneys' papers are recognized as important for the public's understanding of the law and law practice, but they are considered their personal property.

- If an archives decides to save a case file or a series of files, the office retains all physical types: paper, audiovisual, and electronic. Some artifacts, particularly those useful for educational exhibits, are retained.

Archivists use several appraisal approaches. One method lists all of the institution's series of records, states the decision to save or to discard, and for those to be discarded, indicates the date they can be destroyed. Another method lists only the records saved (called a retention schedule), permitting records not included to be destroyed. A third method lists only the records to be destroyed, requiring those not listed to be retained or examined further. All of these methods depend on the institution's accurate prior identification of all records.

The following recommended approach for temporary court records is a hybrid of three elements. First, records to be retained in all cases are listed. Second, records that can be destroyed are discussed. Finally, an approach to working through the rest of the records is recommended, and a few particularly important and controversial bodies of records (audiovisual records of proceedings, electronic document management systems, and evidence) are considered.

General Retention

The following records, common to most tribunals and hybrid courts, should be retained:

- **Official proceedings:** records of all cases in both lower and appellate courts, including the pleadings, the evidence, the tracking systems, and the official copies of the transcripts, rulings, and judgments.
- **Published decisions.**
- **Meeting records:** records of meetings of plenary bodies of judges, of judges and prosecutors, and of judges, prosecutors, and registrar.
- **Records of key staff:** records of the office of the president and the vice president of the court, the prosecutor and the deputy prosecutor, the chief and deputy chief of investigations, chief and deputy chief of the office of the defense counsel, the registrar and deputy registrar.
- **Manuals:** master set of all versions of policy and procedures manuals.

General Destruction

The records that are the principal candidates for large-scale destruction at temporary international criminal courts are the administrative records. Archivists usually manage the disposition of administrative records through a "general records schedule." The UN general records schedules apply to the records of the Yugoslavia and Rwanda tribunals, while the UN mission records retention schedules (based on the general records schedules) apply to the administrative records of the East Timor Special Crimes Unit and to the UN section (but not to the EU or OSCE sections) of the UN Mission in Kosovo. Given the very special nature of the international criminal courts and their records, however, some records authorized for destruction under the existing general records schedule authorities should not be destroyed in the courts. The schedules for the basic administrative functions of finance, personnel, and procurement, as well as the usual authority to destroy duplicate copies of UN official documents that are saved elsewhere in the UN system, are appropriate. The remainder of the general records schedules—authorizing the destruction of records relating to facilities, working files, chronological files, reading files, and daily activities records—should not be used because some international court records in these categories may have long-term value due to the special nature of the international courts (unlike records in regular UN offices for which the schedules were written). In particular,

The records that are the principal candidates for large-scale destruction at temporary international criminal courts are the administrative records.

the schedules covering documents in electronic systems and the hard-copy source for scanned items should not be applied. The relationship between electronic and hard copies in the courts is much too complex to be handled in a simple instruction.

Standard archives practice is to destroy the finding aids when the corresponding records series is destroyed. For example, when a set of procurement records is destroyed, the archives would destroy paper records, electronic documents, and the electronic tracking system for both electronic and paper documents. This means the information in the electronic document management system would track only the retained electronic documents and paper files. The courts should adopt this approach and, when electronic documents in the system reach their destruction date under the general records schedule, should delete both the documents and the metadata about them.

Public Notice

Interviews and media reports make clear that public concern about the disposition of the courts' records is intense. Beyond the general approach detailed above and the court-specific recommendations that follow, many detailed and difficult appraisal decisions on specific bodies of records remain to be made. The tribunals and hybrid courts must be cautious about destroying too many records; it is wiser to retain a record that may or may not have future use than to destroy it and later explain endlessly why that was done.

Because of the interest in these records, it is important that any future disposal of records be as transparent as possible. Concerned parties should have an opportunity to voice their opinions about proposed destruction of specific records. One way to offer this opportunity is for the archives to publish a notice of intent to dispose and give the public time to respond to the proposal. This procedure has two important benefits: first, it requires the archivists to be clear about what they are doing and why; second, it allows the public to express its views, thereby becoming a part of the process. After giving due weight to any comments received, the archives makes the final decision and publishes a notice of it. UN authorities administering the archives need to work with national governments and NGOs to ensure that interested populations can receive notices of proposed destruction through a variety of media outlets.

Audiovisual Records of Proceedings

The Yugoslavia and Rwanda tribunals and the court in Sierra Leone use audio and video recording technologies in the courtroom. The immense volume, uneven technical quality, multiple formats, high preservation costs, and intricate access issues all complicate archival retention of these audiovisual records.

Video Recordings

The characteristics of the video recordings vary among the tribunals. At the Special Court for Sierra Leone, the video recordings exist only as complete recordings of the proceedings (that is, closed sessions are included). By contrast, at the Rwanda tribunal, video recordings exist both as complete and public-use versions. A 2002 study of the ICTR audiovisual records projected that 12,790 videotapes would exist by December 2008, in two different formats (DVCAM and VHS), with three soundtracks on each DVCAM video and the "floor" language (the words that are actually spoken in court) captured on the VHS recording. All the video recordings in both Sierra Leone and ICTR should be retained.

The situation in the Yugoslavia tribunal is very different. Complete and public-use versions exist (called, respectively, "video edit" and "video edit backup"), plus tapes of direct feeds from four or more cameras trained on the courtroom (called isolated camera, or ISO tapes). The proceedings are initially recorded on the ISO tapes, which an editor combines in a master video edit, which in turn is redacted to produce a public-use video edit backup

Interviews and media reports make clear that public concern about the disposition of the courts' records is intense.

The Yugoslavia and Rwanda tribunals and the court in Sierra Leone use audio and video recording technologies in the courtroom.

version. The video edit includes private sessions, closed sessions, and ex-parte hearings that do not appear on the public-use version. As of May 2005, more than 28,000 ISO tapes existed, plus nearly 10,000 video edits and more than 8,500 video edit backups, each of the latter two in three different formats.

The question is what part of this mass of ICTY video must be retained. The ISO tapes provide views of the defendant, witness, prosecutor, defense attorney, and judges during every moment of the proceedings. The video edit should have the video of whoever is speaking in the courtroom; however, it will not necessarily have the demeanor of the defendant and the witness as they confront each other or the defendants' reactions to the attorneys' or judges' statements. The video edit backup is needed for public use until such time as the public can use the full video edit.

Both the video edit and the video edit backup should be retained. In addition, the ISO tapes of the very first (Tadic) trial, showing the court coming to terms with the camera in its midst, should be retained, as should the ISO tapes of the historic—even though ultimately incomplete—trial of Slobodan Milosevic, where issues of nonverbal intimidation make the full footage necessary to understand the courtroom dynamics. If Radovan Karadic and Ratko Mladic are eventually tried, archivists should decide whether the ISO tapes are also required in these important cases. These recordings are likely to be of the greatest interest to researchers. The remainder of the ISO tapes can be destroyed when no longer needed for the ICTY's own use.

Preserving videotape is expensive because it requires making a copy of any item to be used instead of the original; maintaining proper temperature and humidity for storing the tapes; monitoring the condition of the tapes; and, when deterioration is found or when the tape format is obsolete, transferring the materials to a newer format. All this requires consistent, attentive management supported by costly technical services.

Audio Recordings

Audio recordings have been exceptionally important in Sierra Leone and Rwanda as a source for radio broadcasts of trial proceedings. In the Sierra Leone court, audio recordings exist both as unredacted (complete) and public-use versions. The public-use audio is the version that the court outreach and public affairs sections use for radio broadcasts and from which translation into the Krio language is made. The archives should keep the public-use versions to use as the reference copy for the foreseeable future and the complete version to provide the full historical record.

At the ICTR, audio recordings also exist both as unredacted and public-use versions. By December 2008 they are expected to amount to 38,360 recordings. A 2002 study of the ICTR's audiovisual records reported that the soundtracks on the audio- and the videotapes are identical, making the retention of the audio unnecessary if the video is retained. However, video recordings were not made until 2000, so for 1996–1999 the audio recordings are the only oral record of the court proceedings. Pre-2000 audio recordings of all proceedings, including private sessions, closed sessions, and ex-parte hearings, should be retained, while the audio recordings from 2000 onward can be destroyed when no longer needed for the ICTR's own use.

Like the ICTY video records, the ICTY audio recordings present a significantly different problem from those in Sierra Leone and the ICTR, primarily because the Yugoslavia tribunal routinely uses more languages (always three, sometimes four). From its first session, all ICTY proceedings have been audio recorded in all interpreted languages, plus an audio recording of the “floor” language. (The participants in the multilingual courtroom hear the proceedings in their tongue from a participant using that language and from the voice of the translator for all other speech.) As of May 2005, the audio recordings in ICTY consisted of nearly 22,000 cassettes and 7,500 CDs. Recording on cassette was discontinued by mid-2004; currently two CDs are used to record the floor and interpretation channels.

The question is what part of this mass of ICTY video must be retained.

In the Sierra Leone court, audio recordings exist both as unredacted (complete) and public-use versions.

From its first session, all ICTY proceedings have been audio recorded in all interpreted languages, plus an audio recording of the “floor” language.

In some trials, controversies have arisen over the translation of parts of the testimony; the only way to examine such issues would be to compare the participant's spoken word with the translator's spoken word. Once all such controversies have been resolved, then the question is whether it is necessary to keep each translation for future research use. While it is true that audio conveys voice inflection the way nothing else can, audio recordings are usually the least used format in an archives: the transcript of an audio recording is almost always preferred to the audio, and mixed audio and video is usually preferred to audio alone.

Deciding how many sound recordings to retain depends to some extent on the content and quality. Between 1994 and 2000, both the complete and the public-use versions of the videotape carried only the sound of the floor language and, in some cases, the English interpretation. This means that prior to 2001, the audiotapes are the only source for all interpreted languages. Since 2000, four languages are on the complete video edit tape (permanent, as noted above) and all are edited and distributed with the public-use video edit backup. However, because the video has only four sound tracks, if the court is operating in four languages, the floor language is not recorded in favor of picking up the fourth translation. That leaves the CD recording of the floor language as the only record of the actual speech.

The ICTY should obtain the advice of an audio specialist to determine whether the quality of the sound from the floor on the videotape is equal to the quality of the sound on the audio recordings. If it is, then the audio recordings from 2001 on need to be retained only if a videotape of the session is unavailable, defective, or lacking the floor language. If the audio recording is of better quality than the video, then it needs to be retained.

In addition to sound quality, another factor in deciding what audio to save is whether a transcript exists. Transcripts of both English and French translations are always made and are permanently retained in both paper and electronic formats. Occasionally transcripts in another court language are made and, if made, these transcripts are also permanent. No translation is made of the words actually spoken in the mix of languages. Consequently, the unique value of the audio recording is to provide the spoken word. The ICTY should retain the "floor" audio recordings of all proceedings and all audio of the first (Tadic) trial and the trial of Slobodan Milosevic. As with the videotape, if Radovan Karadic and Ratko Mladic are eventually tried, archivists should decide whether all the audiotape should be saved. All other recordings can be destroyed when the ICTY no longer needs them for reference.

In addition to sound quality, another factor in deciding what audio to save is whether a transcript exists.

Electronic Document Management Systems

The Special Court for Sierra Leone and the Yugoslavia and Rwanda tribunals have electronic document management systems maintained by the registry staff. These are central resources for any research in court records and should be retained.

Unlike the standard commercial databases used by the Rwanda and Sierra Leone courts, the Yugoslavia tribunal's Judicial Database (JDB) was built within the ICTY and has components that go far beyond a standard document management system. The ICTY has demonstrated that the document storage in the JDB could be downloaded to and managed by the document management system used by the UN archives in New York. However, in doing so, some of the major JDB functionalities would be lost, to the detriment of future users. In addition, a third of the contents of the JDB are currently restricted; the archives will have to manage extensive permissions for access and will have to review the JDB prior to public release of its contents. Finally, because it is a custom-built system, the long-term maintenance, migration, and preservation of the JDB could be costly as technologies evolve. The Yugoslavia tribunal should contract with an electronic archives specialist to do a complete review of the preservation options for the system. Unless the cost is prohibitive, the custom-built JDB with all its functionalities should be preserved.

Prosecutors' offices may use electronic document management systems that they manage separately from the system managed by the registry. In addition, other offices, such as field offices, may use separate electronic document management systems. Alternatively, these offices may not use a formal electronic document management system, but simply store documents, including e-mail, electronically in standard software. The archivists will need to appraise these electronic storage systems and determine which of them should be retained in whole or in part.

The temporary international criminal courts hold evidence in many physical formats.

Evidence

The temporary international criminal courts hold evidence in many physical formats. While the evidence introduced in court would be permanent, as discussed above, much additional evidence is in the records of the office of the prosecutor. Prosecutors use electronic records systems to track evidence, and they may also maintain databases of the evidence itself. Each of these must be considered for retention.

Electronic Evidence Systems

All electronic records systems that are proprietary to a prosecutor's office should be retained; for example, databases of evidence, digital copies of evidence, indexes of witness statements, and indexes of documents obtained under a confidentiality agreement.

Documentary Evidence

In the Yugoslavia and Rwanda tribunals, documentary evidence such as paper and photographs is scanned and preserved electronically.

In the Yugoslavia and Rwanda tribunals, documentary evidence such as paper and photographs is scanned and preserved electronically. For evidentiary purposes, including potential future court use, the original materials should be retained even if the items have been scanned.

Two special issues concern the original documents obtained from governments and items obtained under confidentiality provisions. After all trials are completed, if the originating government does not require return of the original documents, the archives should retain them. If, however, the governments demand the return of the documents and the court agrees, the archives should make official copies of the documents, place them in the records at the point where the originals are filed, and return the originals to the government of origin. The records covered by the confidentiality provisions are probably copies, not originals, and the agreements with originating institutions control any further disposition. Unless those agreements dictate otherwise, the archives should retain the copies.

Artifacts and Scale Models

Archives sometimes retain the objects (including scale models) that are used as exhibits in important cases, especially if the objects have value for educational and exhibit purposes. Scale models, for instance, are particularly good tools for explaining what happened at a site.

Heirs could request that any artifact specifically linked to an individual be given to them, and a judge could order the donation.

The archives should retain custody of the artifacts from ICTY, ICTR, and, if agreed to by the parties, SCSL. Heirs could request that any artifact specifically linked to an individual be given to them, and a judge could order the donation. A photograph of the item could be added to the evidence database to document the item, and the evidence database annotated to show the donation. All remaining artifacts would be available for loan to institutions for exhibitions over extended periods consistent with preservation of the item, with UN control over the interpretation of the item within the exhibition. Artifacts would also be available for use in any future trials. An international judicial archives might even have an exhibition area and an educational program where some of the artifacts might be used. Priority should be given, however, to provision of these items on a long-

term basis for educational and historical exhibit purposes within the states and regions where the events occurred.

Access to Court Records

An access policy for the records of a temporary international criminal court must balance the public's right to know about activity by the court with individuals' (including defendants, victims, witnesses, and court personnel) rights to protect information about themselves from potentially harmful public disclosure. Such a policy must state, for the information of the public and for use by the archivists, what information might be restricted in what circumstances. The fact that about a third of the ICTY's judicial database, for example, is currently considered confidential indicates the complexity and scale of the access issues that must be resolved.

The records of the three parts of a court present different access issues. The access issues for the records of the courts per se principally concern the records of closed proceedings; there may also be questions about access to records that were created and maintained in judges' offices. The investigative and prosecutorial records from the office of the prosecutor pose numerous difficult access issues, such as concerns that release of records would interfere with current or future prosecutions, invade the privacy of living persons, endanger the physical safety of individuals, or violate confidentiality agreements with sources. The registrar's office records raise the issues of privacy regarding victims, witnesses, and detainees in detention centers. The registrar also has the records of the court personnel, the defense counsel, and any disciplinary actions, which likewise raise privacy concerns.

The conditions of public access to records in the custody of the UN archives are outlined in the 1984 instruction as noted above on page 5:

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

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

These regulations are not appropriate for the records of the temporary criminal tribunals, given their nature. Before a court closes, it must take a number of steps to ensure access:

1. Designate a successor to the prosecutor who will determine whether requests by national or international prosecutors or defense attorneys for access to records will be granted.
2. Establish the standard of privacy that the archives should use to review records for possible public release.
3. Establish a process to unseal records and a body to handle petitions for unsealing.
4. Declare that any court-created documents with security markings are to be considered unclassified and may be reviewed for possible release as any other record.

After the records are in archival custody, a team of archivists and attorneys will need to take additional steps:

The registrar's office records raise the issues of privacy regarding victims, witnesses, and detainees in detention centers.

1. Adopt and publish an access policy. It should include rights for victims or witnesses to see their files and for former employees of the court to see records that they originated, reviewed, signed, or received while employed by the court.
2. Establish an appeal route for the public to contest denials of access and a separate appeal process for attorneys who are denied access to records requested for litigation.
3. Establish guidelines for the types of records to be accessible and not accessible to a person convicted by the court.
4. Establish rules for notification when the archives proposes to release (a) classified records of governments and (b) documents provided under nondisclosure agreements.

Access through Duplication and Description

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

One important benefit to the institutions holding copies is that copies can be used without worrying about their preservation; if a copy item is damaged or destroyed, it can always be replaced from the originals preserved in the archives. Copies free the recipient institutions from the preservation expenses of holding originals. Copies of unrestricted records can be made available to all users without worrying about security or needing to screen records before making them available. Liberally placing copies also avoids the problem of choosing which of the countries in a region will house the archives. The ICTR already has explored the possibility of depositing public records of the tribunal with outside institutions, and three Balkan NGOs have a project to copy the public-use videotapes of the ICTY for their communities.

Because the courts already have made so many records public, including the public-use versions of court proceedings, many research needs can be met with existing copies. Depositing copies of the videotapes and the Web site from the Rwanda tribunal and from the Special Court for Sierra Leone in one or more institutions in Africa, for example, would allow access to local users, including journalists, community groups, and scholars, providing communities with important research resources. Keeping the information that is now available on the Web sites of those three courts alive on some public electronic system will permit important quantities of information to be used anywhere in the world, which will particularly benefit academic users. And if a legal publisher would systematically publish opinions from international tribunals and hybrid courts, that form of duplication would satisfy yet another group of users.

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

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

Making copies is not inexpensive, but it is far less costly than operating permanent archives in multiple locations.

Many options are available that do not require visiting the archives to see a limited number of items from a specified body of records.

Describing the records is a fundamental part of the access process. The better the description, the easier it is for users at a distance to specify what records they wish to see and to order copies. Description also provides assurance to people who may not have any immediate need to see the records but who want to know where the records are and that they are safe. The archives for the temporary international criminal courts needs a solid description program that will make information about the records available to all.

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

Conclusion

The East Timor Special Panels and the Serious Crimes Unit have closed; the Special Court for Sierra Leone is to close in mid-2007; final status talks on Kosovo are underway; and ICTR and ICTY have fixed closures in 2010. Given how long it takes to prepare appropriate archival facilities for storing sensitive records, now is the time to determine what will happen to the records of these bodies.

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

Given how long it takes to prepare appropriate archival facilities for storing sensitive records, now is the time to determine what will happen to the records of these bodies.

Recommendations

The United Nations and the temporary courts should initiate several programs in the short term to lay the foundation for a central judicial archives to preserve the courts' records, conserve resources, and provide access to researchers and the general public.

- **Role of the United Nations:** The United Nations should establish a single international judicial archives for the permanently valuable records (paper files, audio and video recordings, electronic records, and objects) of the temporary tribunals, including the ICTY, the ICTR, the Special Court for Sierra Leone, and the UN copies from the Special Panels and Serious Crimes Unit in Timor Leste.
- **Role of the United States and other governments:** Governments such as the United States that played a central role in creating and funding the temporary courts, and governments whose citizens have the primary stake in the courts' work, should actively encourage and support a UN effort to properly preserve and make available for use the records of the temporary courts.
- **Location:** The United Nations should discuss with the city of The Hague, the government of The Netherlands, and the Dutch Carnegie Foundation the possibility of locating an international judicial archives in The Hague. The United Nations should also begin to canvas international donors, both governments and nongovernmental institutions, to evaluate the level of resources that might be available for construction and, critically, continued staffing and maintenance of the archival program.

An online edition of this and related reports can be found on our Web site (www.usip.org), together with additional information on the subject.

- **Duplication program:** Meanwhile, the United Nations should plan a program of copying and describing that will meet research needs in the countries affected. This program can begin immediately and would provide an opportunity for the United Nations to work cooperatively with institutions in the regions.
- **Personal papers:** The courts should adopt clear guidelines to differentiate between institutional court records and personal papers that judges and staff members may take upon leaving the court or its closure. The UN archives should be given the authority to solicit personal papers and other relevant materials from the private sector.
- **Record destruction and public notice:** Some records of the courts are permanently valuable and some, primarily housekeeping records, can be destroyed. Ample public notice should be provided of all records proposed for destruction to allow the public to comment on the proposals.
- **Access policy:** The ICTY, ICTR, and SCSL must establish basic access rules for their records before closing; they should make every attempt to harmonize their access provisions. The access policy must balance the public's right to know about the courts' activities and the right of defendants, victims, witnesses, and court personnel to protect information about themselves from potentially harmful public disclosure.
- **Artifacts for use in exhibits:** The objects and artifacts maintained by a tribunal, if not returned to a family, should be retained by the archives and made available for loan to institutions for exhibits and educational programs.

Of Related Interest

- Truth Commissions Digital Collection, Margarita S. Studemeister Digital Library in International Conflict Management, www.usip.org/library/diglib.html.
- *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, by Rosalind Shaw (Special Report, February 2005).
- *Morocco: Betting on a Truth and Reconciliation Commission*, by Pierre Hazan (Special Report, July 2006).



**United States
Institute of Peace**

1200 17th Street NW
Washington, DC 20036

www.usip.org