International tribunals

In 2002, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) focused on further expediting its judicial activities by implementing a number of judicial and organizational reforms. The Tribunal began to devise a strategy to complete first instance trials by 2008 and its work definitively around 2010. Six trials were held simultaneously during the year, the highest number held in a year since the Tribunal’s establishment.

In August, the Security Council amended the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (ICTR), establishing a pool of 18 ad litem judges in order to increase the Tribunal’s judicial capacity.

In May, the Council amended the statutes of both Tribunals to address potential conflicts of nationality for the purposes of membership of the Chambers.

International Tribunal for the Former Yugoslavia

During the year, a strategy was initiated to achieve the Tribunal’s mandate to complete investigations in 2004 and first instance trials in 2008. In that regard, the gradual re-establishment of democratic institutions and reform of the judicial systems in the former Yugoslavia made it possible to consider referring certain cases to national courts. The Tribunal, therefore, intended to focus on trying major political and military leaders and referring cases involving intermediary-level accused to national courts, particularly those of Bosnia and Herzegovina. To that end, the ICTY President, Prosecutor and Registrar prepared a report setting out the main directions for the establishment of a court with special jurisdiction to try war crimes within the State Court of Bosnia and Herzegovina, which the Security Council approved (see p. 1281).

Internal reforms instituted during the year, which necessitated amendments to the Rules of Procedure and Evidence and to the Practice Directions, included the establishment in September of an Association of Defence Counsel, to which attorneys representing accused persons at the Tribunal were required to belong, making them subject to a code of professional conduct and a disciplinary system. Other reforms related to restricting applications for leave to appeal to issues certified by the Trial Chamber, the inclusion of a provision for referring certain cases either to the courts of the State in whose territory the accused was arrested or to the courts of the State in whose territory the crimes were committed, the conditions for admission of additional evidence, the possibility of holding status conferences through video-links, the confidentiality of the identity of witnesses, the continuation of a trial when one of the three judges was unavailable, and the withdrawal of the indictment by the prosecution, either before its confirmation, or between its confirmation and the assignment of the case to a Trial Chamber, or by motion after such assignment.


The Chambers

The judicial activities of the three Trial Chambers and the Appeals Chamber of the Tribunal included first instance and appeals proceedings—against judgements, interlocutory decisions and State requests for review—proceed-
ings concerning the Tribunal’s primacy, and contempt cases.

The Tribunal had three courtrooms, with six trials in session at any time (three trials sitting in the morning and three in the afternoon). ICTY had a total of 24 judges—16 permanent judges, including two ICTR judges serving in the Appeals Chamber, and eight ad litem judges.

**New cases**

An indictment against Momir Nikolic, confirmed on 26 March, remained confidential until his arrest by the multinational Stabilization Force (SFOR) on 1 April. He was transferred the next day to the Tribunal. The indictment charged him on the basis of his individual criminal responsibility with one count of genocide, four counts of crimes against humanity and one count of violation of the laws or customs of war (murder). The case formed part of the joint indictment of Vidoje Blagovevic, Dragan Obrenovic and Dragan Jokic [YUN 2001, p. 1199] for crimes relating to the events in and around Srebrenica, Bosnia and Herzegovina, in 1995 [YUN 1995, p. 529].

Momcilo Gruban was transferred on 2 May from the Federal Republic of Yugoslavia (FRY) to the Tribunal. He was charged on the basis of superior criminal responsibility with four counts of grave breaches of the Geneva Conventions for the protection of war victims of 12 August 1949 (Geneva Conventions) (wilful killing, torture, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial, three counts of violations of the laws or customs of war (murder, torture) and four counts of crimes against humanity (torture, murder, rape, imprisonment). On 10 May, the accused pleaded not guilty to the charges, which arose from the Omarska Camp indictment [YUN 1998, p. 195].

Dusko Knezevic, charged under the same indictment and under that relating to the Keraterm Camp [ibid.], pleaded not guilty to all charges on 24 May. The prosecution indicated its intention to amend and join the two indictments. On 5 June, Mr. Gruban filed a request for provisional release, which the Trial Chamber granted after having received guarantees that he would appear for trial at a later date. On 20 September, the Trial Chamber denied his request to vary the conditions of his provisional release and, on 6 November, a bench of three judges rejected his application for leave to appeal. (See also p. 1279.)

Milan Martic, a political leader in the self-proclaimed Republika Srpska Krajina (Croatia), was transferred to the Tribunal on 15 May. He pleaded not guilty on 21 May to 19 charges of violations of the laws of customs of war brought against him for an attack on Zagreb on 2 and 3 May 1995 [YUN 1995, p. 375] and for crimes committed in Krajina [ibid., p. 540]. On 10 October, his motion for provisional release was denied.

Also on 15 May, Mile Mrksic, indicted in 1997 [YUN 1997, p. 1322] jointly with Miroslav Radic and Veselin Sljivancanin, surrendered to the Tribunal. On 16 May, he pleaded not guilty to charges of grave breaches of the Geneva Conventions (wilfully causing great suffering, wilful killing), violations of the laws or customs of war (cruel treatment, murder) and crimes against humanity (inhumane acts, murder). The indictments related to the mass killing at Ovcara, near Vukovar, Croatia, of over 200 Croatian and other non-Serb persons who had been removed from Vukovar Hospital on 20 November 1991. Those acts were allegedly carried out by soldiers under the command or supervision of the accused, among others. On 23 May, the accused filed a request for provisional release, which the Trial Chamber denied on 24 July. A subsequent appeal was dismissed on 8 October. On 1 November, the prosecution was given leave to amend the indictment. The accused filed a motion challenging the form of the indictment on 29 November. The other two accused remained at large.

Darko Mrdja, following his arrest by SFOR on 13 June, was transferred to the Tribunal on 14 June. As the commander of a special police unit, the accused faced two counts of crimes against humanity (extermination, inhumane acts) and one count of violations of the laws or customs of war (murder). His initial appearance before the Tribunal took place on 17 June and his trial was set to begin in 2005.

Police officer Ranko Cesic, following his arrest by Serbian authorities on 25 May, was transferred to the Tribunal on 17 June. On the basis of individual responsibility, he was charged with six counts of violations of the laws of customs of war (murder, humiliating and degrading treatment) and six counts of crimes against humanity (murder, rape) relating to actions while a prison camp guard at the Luke Camp (Brcko, Bosnia and Herzegovina). The accused pleaded not guilty to all charges on 20 June. On 18 July, he filed a preliminary motion challenging the Tribunal’s jurisdiction and the form of the indictment; on 30 July, the prosecution filed a motion for leave to amend the indictment. Both motions were decided by the Trial Chamber on 22 November in a single decision, which brought about a third amended indictment submitted by the prosecution on 26 November.

Miroslav Deronjic was arrested on 7 July. The indictment against him was unsealed the following day and he made his initial appearance on
10 July. The accused was charged with individual and superior responsibility for crimes against humanity (persecution, murder) and violations of the laws or customs of war (murder, wanton destruction of cities, towns or villages, destruction of religious institutions, attack of an undefended village). In accordance with the Trial Chamber’s 25 October decision on the form of the indictment, the prosecution, on 29 November, submitted an amended indictment. On 6 December, the accused filed a request to challenge the legality of his arrest, claiming he had sustained serious bodily injuries during his arrest and had declared himself willing to surrender voluntarily. A decision on the request was pending.

Radovan Stankovic, arrested by SFOR on 9 July, was transferred to the Tribunal the next day and made his initial appearance on 12 July. He was charged, along with two other accused who were still at large, with crimes against humanity (enslavement, rape) and violations of the laws or customs of war (rape, outrages upon personal dignity) for acts allegedly committed against Muslim women.

The indictment against Janko Bobetko, confirmed on 17 September and unsealed on 20 September, charged him with two counts of crimes against humanity (persecutions on political, racial and religious grounds, murder) and three counts of violations of the laws or customs of war (murder, plunder of property, wanton destruction of cities, towns or villages). The crimes were alleged to have occurred in the Medak Pocket in Krajina in September 1993 [YUN 1993, p. 490]. On 17 and 20 September, confidential warrants of arrest and orders to Croatia to search for, arrest and transfer the accused to the Tribunal’s custody were issued. Croatia, on 28 November, informed the Registrar that, pursuant to rule 99 (failure to execute a warrant or transfer order), it had not served the indictment or executed the warrant of arrest and transfer due to health concerns regarding the accused. Following a request by the prosecution, a medical examination of the accused by independent and qualified experts appointed by the Registrar was ordered on 20 December.

**Ongoing cases and trials**

In the case of General Rahim Ademi, who had pleaded not guilty in 2001 [YUN 2001, p. 199], the defence filed two motions on the form of his indictment, which were decided upon on 21 January. The accused was provisionally released on 20 February and the case was expected to go to trial in 2003.

On 23 January, the Tribunal began the trial of Radoslav Brdanin and Momir Talic, both of whom had been charged with genocide and crimes against humanity in 1999 and had pleaded not guilty then [YUN 1999, p. 1235] and again in 2000 [YUN 2000, p. 1222]. On 20 September, proceedings against Mr. Talic were severed from those against Mr. Brdanin following Mr. Talic’s being diagnosed with a terminal illness and deemed unfit to stand trial. Mr. Talic was provisionally released on the same date; the case against him was retained on 23 October but remained suspended and adjourned sine die, pending a change in his health. Mr. Brdanin’s trial continued, in which lengthy arguments on a broad range of procedural issues were a prominent feature, among them legal arguments heard on 10 May on the question of whether a subpoena would be enforced against a journalist whom the prosecution sought to bring forward as a witness—a question that had arisen from the journalist’s motion of 8 May requesting that the subpoena be set aside. On 7 June, the Trial Chamber rejected the journalist’s motion. On 11 December, the Appeals Chamber overturned the Trial Chamber’s decision, setting out a new test for establishing the circumstances under which a war correspondent might be required to testify.

By order of the Appeals Chamber on 1 February, all three indictments against Slobodan Milosevic [YUN 1999, p. 1214 & YUN 2001, p. 1201] were to be heard in one trial, which began on 12 February, with the crimes alleged in respect of the Kosovo province of FRY. On 25 July, the Trial Chamber held a conference to determine the scope of the prosecution case for the Croatia and Bosnia and Herzegovina parts of the case and requested the prosecution to treat those two phases of the trial separately. Opening arguments were heard on 26 and 27 September. In addition to the trial proceedings, the case had generated a number of ancillary proceedings, including applications for a binding order to FRY and contempt proceedings, arising from alleged breaches of protective orders granted by the Chamber. Mr. Milosevic was the first and, to date, the only accused to represent himself without defence counsel. That, coupled with the enormous size and complexity of the case, led the Trial Chamber to order the appointment of amici curiae to assist in ensuring that he received a fair trial.

The prosecution case against Vinko Martinovic and Mladen Naletilic, who had pleaded not guilty in 1999 [YUN 1999, p. 1260] and 2000 [YUN 2000, p. 1225] and whose trial began in 2001 [YUN 2001, p. 1201], closed on 4 February. The defence for Mr. Naletilic was completed by mid-July.
Following a third (28 February) and fourth (11 April) amended indictment, the trial of Milomir Stakic, who had pleaded not guilty in 2001 [YUN 2001, p. 1296], began on 16 April. Under the fourth amended indictment, he was charged with two counts of genocide and complicity in genocide, five counts of crimes against humanity (murder, extermination, deportation, other inhumane acts, persecutions) and one count of violating the laws or customs of war (murder). Following the prosecution’s conclusion of its case on 27 September, the defence filed a motion for acquittal of all charges. On 31 October, the Trial Chamber granted the motion in part, finding that the charge of instigation in relation to a number of counts was not proved and, accordingly, dismissed it. In addition, certain factual allegations were dismissed proprio motu because the Chamber found insufficient evidence to support them. The defence case began on 18 November and was ongoing at year’s end.

The filing of briefs in the appeal of Radislav Krstic, sentenced in 2001 [YUN 2001, p. 1201], was completed on 6 March.

The Trial Chamber handed down its judgement on 15 March in the case of Milorad Krnojelac, who had pleaded not guilty to charges against him in 1999 [YUN 1999, p. 1216]; his trial began in 2000 [YUN 2000, p. 1223] and the hearings were completed in 2001 [YUN 2001, p. 1201]. The accused was convicted of two counts of crimes against humanity (persecution, inhumane acts) and two counts of violations of the laws or customs of war (both for cruel treatment). Acquitted of eight counts, he was sentenced to a single term of seven and a half years imprisonment. Notices of appeal were filed on 5 and 12 April. On 12 December, the Appeals Chamber granted provisional release of the accused.

Dragan Nikolic, who had pleaded not guilty in 2000 [YUN 2000, p. 1221], pleaded not guilty on 18 March to new charges contained in a second amended indictment of 15 February. Pre-trial briefs were filed by the prosecution on 3 October and by the defence on 29 November.

The case against Nenad Banovic [YUN 2000, p. 1200] was withdrawn, following a 27 March prosecution motion of insufficient evidence.

The accused, Dragoljub Ojdanic and Nikola Sainovic, originally charged jointly with the defendants in the case of Slobodan Milosevic and Others [YUN 1999, p. 1241] in connection with the events in the first half of 1999 [ibid., p. 333] in Kosovo, made their initial appearances on 26 April and 3 May, respectively. The co-accused filed requests for provisional release on 5 and 10 June, which the Trial Chamber granted on 26 June. Following the Prosecutor’s appeal of that decision, the Appeals Chamber, by a 30 October decision, allowed the appeal, quashed the decision and denied provisional release. On 12 December, the Appeals Chamber denied motions filed by Mr. Ojdanic for modification of the decision on provisional release and to admit additional evidence. On 5 September, the Trial Chamber rendered its decision on the prosecution’s motion to amend the indictment, which resulted in the severance of the case against Mr. Milosevic and the dismissal of the case against another accused, Vlajko Stojkovic, who committed suicide on 13 April in Belgrade, FRY. Another of the accused, Milan Milutinovic, was still at large.

In May, the Trial Chamber rendered an oral decision, severing the cases of four of the five accused in the case of Simic and Others [YUN 1998, p. 1192; YUN 1999, p. 1215; YUN 2000, p. 1223]; Blaguje Simic, Milan Simic, Miroslav Tadic and Simo Zaric; the proceedings of the fifth co-accused, Stevan Todorovic, had been severed from the case in 2001 [YUN 2001, p. 1201], following a plea agreement in 2000 [YUN 2000, p. 1214]. On 13 May, Milan Simic, against whom the Trial Chamber had brought contempt proceedings in 1999 [YUN 1999, p. 1215] and who had been provisionally released in 2000 [YUN 2000, p. 1223], entered into a plea agreement with the prosecution. Following entry of convictions on the two counts to which he pleaded guilty, his case was severed from that of his co-accused on 28 May. On 17 October, he was sentenced to five years in prison. A fifth (30 May) amended indictment against Messrs. B. Simic, Tadic and Zaric charged them with persecution, and deportation and unlawful transfer. The prosecution case closed on 30 September. Each of the accused filed a motion for acquittal. The Trial Chamber entered a judgement of acquittal on the aspect of the charge of a crime against humanity, of persecution concerning destruction of property of Bosnian Croat and Muslim civilians and destruction or wilful damage to religious institutions. The defence case for Messrs. Tadic and Zaric began on 12 November, and for Mr. B. Simic on 13 November. On 11 December, the Trial Chamber ruled that 21 defence witnesses would give evidence in deposition form.

Dragan Jokic, charged with extermination, murder and persecution in 2001 [YUN 2001, p. 1299], was provisionally released on 28 May, subject to certain guarantees to be implemented by the authorities of the Netherlands, Bosnia and Herzegovina and its entity, Republika Srpska.

The proceedings in the case of Sefer Halilovic, who pleaded not guilty in 2001 [YUN 2001, p. 1299], were delayed due to repeated changes in defence counsel since June.
The form of the indictment against Pasko Ljubicic, who had pleaded not guilty in 2001 to charges brought against him \[YUN \, 2001, \, p. \, 1299\], was amended in June and again in December. On 2 August, the Trial Chamber denied his motion for provisional release.

General Pavle Strugar and Admiral Miodrag Jokic, who surrendered voluntarily in 2001 \[YUN \, 2001, \, p. \, 1299\], were granted provisional release in November 2001 \[ibid., \] and on 20 February, respectively. The defence for General Strugar filed a preliminary motion on jurisdiction and on the form of indictment. The part on jurisdiction was rejected on 7 June, while that on the indictment was granted on 19 June. Accordingly, the prosecution announced its intention to amend the indictment.

The Appeals Chamber, in its 12 June judgement in the case against Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, who were charged in 1999 \[YUN \, 1999, \, p. \, 1225\] and sentenced in 2001 \[YUN \, 2001, \, p. \, 1299\], dismissed all grounds of appeal against their convictions and sentences, but corrected the formal disposition of the trial judgement to reflect an oral statement made by the Trial Chamber, to the effect that the Appellants would receive credit for the time already served.

On 17 September, the Trial Chamber granted the prosecution’s motion for joinder of accused and ordered that the Keraterm indictment \[YUN \, 1995, \, p. \, 1314\] against Dusen Fustar, Pedrag Banovic \[YUN \, 2001, \, p. \, 1299\] and Dusko Knezevic (see p. 1276) and the Omarska indictment \[YUN \, 1995, \, p. \, 1314\] against Zeljko Mejakic \[YUN \, 1998, \, p. \, 1395\], Momcilo Gruban (see p. 1276) and Dusko Knezevic be joined and given a common case number. On 21 November, the Chamber granted the prosecution’s request to amend the indictments and ordered that the consolidated indictment, as attached to the prosecution motion for joinder filed on 5 July, be the operative indictment. The consolidated indictment contained five counts: Messrs. Gruban and Fustar were charged with persecution on political, racial or religious grounds, murder, inhumane acts and cruel treatment; Messrs. Banovic and Knezevic were charged with the same crimes. On 10 December, Messrs. Gruban and Knezevic pleaded not guilty to the new charges.

The Trial Chamber accepted, on 2 October, a change of plea from the accused Biljana Plavsic, who surrendered voluntarily in 2001 \[YUN \, 2001, \, p. \, 1298\], to one of guilty in respect of one charge of persecution. The case was severed on 25 November from that against Momcilo Krajinak \[ibid., \] who pleaded not guilty in 2000 \[YUN \, 2000, \, p. \, 1221\] and whose trial was scheduled for 2003. Ms. Plavsic, who had been granted provisional release \[YUN \, 2001, \, p. \, 1299\], returned to the Detention Unit for sentencing hearings in December and was then permitted to return to FYR pending announcement of the sentencing judgement. In view of the change of plea, the prosecution withdrew all other charges against the accused and sought a sentence ranging from 15 to 25 years. The defence suggested that, in view of the age of the accused (72), any sentence in excess of her calculated life expectancy of 8.2 years would amount to de facto life imprisonment. The sentencing hearings were held in December; a judgement was expected in 2003.

On 11 October, the indictment against Ratko Mladic, Commander of the Main Staff of the Army of the Serbian Republic of Bosnia and Herzegovina/ Republika Srpska \[YUN \, 1995, \, p. \, 1314\], was amended. He was charged with genocide, complicity in genocide, crimes against humanity and violations of the laws or customs of war. The accused remained at large.

Also on 11 October, the Prosecutor signed an order to lift the seal of confidentiality of an amended indictment, arrest warrants and nondisclosure order regarding the case of Radovan Karadzic \[YUN \, 1995, \, p. \, 1314\].

An 8 November indictment confirmed against Mr. Mladic named General Stanislav Galic as a member of a joint criminal enterprise with Mr. Mladic. General Galic had pleaded not guilty to charges brought against him in 1999 \[YUN \, 1999, \, p. \, 1225\] and had received new defence counsel in 2000 \[YUN \, 2000, \, p. \, 1223\]; his trial, which began in 2001 \[YUN \, 2001, \, p. \, 1299\], continued in 2002.

Co-accused General Enver Hadzhasanovic and Colonel Amir Kubura, who had pleaded not guilty in 2001 \[YUN \, 2001, \, p. \, 1299\], had applied for leave to appeal the decision on a motion to change the terms of their respective provisional releases, which was denied on 5 September. On 12 November, the Trial Chamber rendered a decision on a challenge to jurisdiction, jointly filed by the defence. The Chamber held that the doctrine of command responsibility was applicable in the context of an internal armed conflict under customary international law as at 1991 (prior to the assumption of command). The defence jointly filed an interlocutory appeal of the decision on 27 November.

Subsequent to a 2001 judgement \[YUN \, 2001, \, p. \, 1299\], the accused in the case of Kvocka and Others (Milojica Kos, Mirsolav Kvocka, Dragoljub Prvac, Mlado Radic, Zoran Zigic) filed their notices of appeal, with the filing of the briefs completed on 13 November. The Appeals Chamber was in the process of reviewing motions for additional evidence.
On 29 November, the Trial Chamber rendered its judgement in the case of Mitar Vasiljevic, who had pleaded not guilty to charges against him in 1999 [YUN 2000, p. 1223] and whose trial had begun in 2001 [YUN 2001, p. 1201]. The Chamber found him guilty of murder as a violation of the laws or customs of war and of persecution as a crime against humanity, but not guilty of having participated in the burning alive of about 70 Bosnian Muslims. He was sentenced to 20 years in prison. Mr. Vasiljevic filed his notice of appeal on 30 December, the re-filing of which was ordered by the Appeals Chamber following a motion by the prosecution alleging defects in it.

During the year, appeals from trial chamber judgements were pending in the case against Tihomir Blaskic, who filed notice of appeal in 2000 [YUN 2000, p. 1225], following his 1999 trial [YUN 1999, p. 1226]; the Celebici case (Zdravko Mucic, Esad Landzo, Hazim Delic), on which the Trial Chamber rendered its sentencing judgement in 2001 [YUN 2001, p. 1201] regarding the 1998 sentencing [YUN 1998, p. 1195]; the case of Dario Kordic and Mario Cerkez, charged in 1999 [YUN 1999, p. 125] and sentenced in 2001 [YUN 2001, p. 1201]; and the cases of Milorad Krnojelac (see p. 1278), Radislav Kristic (see p. 1278), Kovacka and Others (see p. 1279), and Mitar Vasiljevic (see above). In the case of Goran Jelisic, whose motion for review of his sentence, as pronounced in 1999 [YUN 1999, p. 126] and reaffirmed in 2001 [YUN 2001, p. 1201], was dismissed by the Appeals Chamber on 2 May on the ground that the alleged new fact did not constitute a new fact in terms of the relevant article of the ICTY statute and of the Rules of Procedure and Evidence. Also dismissed by the Chamber, on 30 July, was a request filed by Dusko Tadic for review [YUN 2000, p. 1224] of his case and proceedings [YUN 1999, p. 126]. A motion was pending for review on the basis of the discovery of new facts not known at trial or on appeal, filed on 30 July by Drago Josipovic—one of two convicted (the other being Vladimir Santic) in the case of Kupreskic and Others [YUN 1998, p. 1194], on which the Appeals Chamber rendered a judgement in 2001 [YUN 2001, p. 1202] on an appeal of their sentences in 2000 [YUN 2000, p. 1222]. The Prosecutor continued to direct her prosecution policy at the highest-level political and military leaders, leaving lower-ranking subordinates to be tried by national courts. In October, she undertook a review of all ongoing and pending investigations to determine priority investigation lists.

Following the Prosecutor’s decision to reserve a limited forensic capability in her Office, only one exhumation was carried out from a mass grave in Kosovo and an additional site was probed to determine the presence of human remains. The Office undertook the post-mortem examinations of 979 bodies in Bosnia and Herzegovina and monitored exhumations there, in Croatia and in the former Yugoslav Republic of Macedonia (FYROM).

In April, the Prosecutor opened investigations into three more cases of alleged war crimes committed by FYROM security forces and organized Albanian rebel groups, in addition to the two investigations opened in 2001 [YUN 2001, p. 1204] (National Liberation Army Leadership case, Mavrovo Road Workers case, Lipkovo Water Reserve case, Ljuboten investigation, Neprosteno investigation). The Trial Chamber denied a request for referral of all current and future investigations, in view of the completion strategy (see p. 1281).

Cooperation by Croatian authorities continued to improve, although it was sometimes selective and slow. In FRY, it was still neither full nor proactive. Cooperation with the Federation of Bosnia and Herzegovina remained satisfactory, and had improved to some extent with Republika Srpska regarding access to documents and witnesses; however, there were no positive developments regarding efforts to locate and arrest fugitives. In that regard, all those countries and entities had failed to act upon most of the outstanding Tribunal arrest warrants. FYROM cooperated with the Office in some minor problems and assisted with exhumations.

An advocacy training course was held in May for prosecutors at The Hague.

The Office continued to maintain six field offices in the territory of the former Yugoslavia (Banja Luka, Belgrade, Pristina, Sarajevo, Skopje, Zagreb).

**Office of the Prosecutor**

The involvement of the Prosecutor, Carla Del Ponte, in trial, pre-trial and appellate work increased dramatically in 2002 due to the use of ad litem judges appointed in 2001 [YUN 2001, p. 1203]. She was also involved in the process of reflection on the referral of cases to national courts as part of the Tribunal’s completion strategy (see p. 1281).

**Communication.** In a 23 October letter [S/2002/1262] to the Security Council, the President of the Tribunal expressed concern over the failure of FRY to comply with its obligations to cooperate with ICTY. According to the Prosecutor, FRY had breached its international obligations by failing to arrest or transfer the accused in its territory, and had adopted an 11 April law on cooperation with ICTY, which violated its commitments to the
Tribunal. The President asked the Council to take measures to force FRY to assume its international obligations.

(See also p. 1295 for Council action regarding cooperation by States with the Tribunals).

The Registry

The Registry of the Tribunal continued to exercise court management functions and provide administrative services to the Chambers and the Office of the Prosecutor. It also served as the Tribunal’s channel of communication to the media and the public, administered the legal aid system, under which it assigned defence counsel to indigent accused, and supervised the Detention Unit.

The Registry continued negotiations with States to reach agreements on enforcement of sentences and relocation of witnesses. An agreement on enforcement of sentences was concluded with Denmark on 4 June. Other States that signed similar agreements were Austria, Finland, France, Italy, Norway, Spain and Sweden. During the year, Drago Josipovic and Vladimir Santic were transferred to Spain to serve their sentences; Dusko Sikirica and Damir Dosen, sentenced in 2001 [YUN 2001, p. 1201], to Austria; Radomir Kovac and Zoran Yukovic (see p. 1279) to Norway; and Dragoljub Kunarac (see p. 1279) to Germany, following an ad hoc agreement concluded in November.

Under the Registrar, the Tribunal’s outreach programme sought to ensure that ICTY activities were transparent, accessible and intelligible to different communities in the former Yugoslavia. It played a role in the ICTY completion strategy (see p. 1281), by assisting in the development of courts in the region capable of prosecuting war crimes fairly.

Judicial status and referral of cases

In June, the Secretary-General transmitted to the Security Council a report prepared by the ICTY President, Prosecutor and Registrar on the Tribunal’s judicial status and the prospects for referring certain cases to national courts [S/2002/658] as part of the Tribunal’s completion strategy. It presented a statistical evaluation of the activity of the Prosecutor and Chambers to determine the scope of the referral process. Data regarding investigations, trials and judgements reflected increased activity resulting from the implementation of reforms initiated in 2000 [YUN 2000, p. 1227], including the appointment of ad litem judges [YUN 2000, p. 1227]. In view of the heightened activity, the report proposed a process involving the referral of intermediary-level accused to national courts provided certain conditions had been satisfied. The Prosecutor believed that Bosnia and Herzegovina was the only country that currently might be considered for the referral process, as it had started its judicial reform. The referral of cases would allow the Tribunal to complete first instance trials by 2008. At that point, the Tribunal would devote all resources to appeals, reviews and other proceedings. Two further judges’ mandates would be required to complete the proceedings, which meant that work would finish definitively around 2010. It recommended the establishment of a Chamber with the jurisdiction to try the accused referred by the Tribunal within the State Court of Bosnia and Herzegovina; that international judges serve alongside national judges for at least a set period; and that local prosecutors, judges and court personnel receive training in international humanitarian law. The possibility of having international observers ensure that the proceedings instigated in local courts were conducted properly, pursuant to the 1998 Rome Statute of the International Criminal Court [YUN 1998, p. 1209], was being considered.

Security Council action

On 23 July [meeting 4581], the Security Council held a private meeting to consider the item on ICTY. It heard a briefing by the ICTY President and comments by the Prosecutor, with whom Council members had a discussion.

On the same date [meeting 4582], following consultations among Council members, the President made statement S/PRST/2002/21 on behalf of the Council:

The Security Council welcomes the report on the judicial status of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the prospects for referring certain cases to national courts submitted by the President of the Tribunal on 10 June 2002.

The Council recognizes, as it has done on other occasions, for example in its resolution 1329(2000) of 30 November 2000, that the International Tribunal should concentrate its work on the prosecution and trial of the civilian, military and paramilitary leaders suspected of being responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, rather than on minor actors.

The Council therefore endorses the broad strategy of the report for the transfer of cases involving intermediary and lower-level accused to competent national jurisdictions as likely to be in practice the best way of allowing the International Tribunal to achieve its current objective of completing all trial activities at first instance by 2008. The Council invites States and relevant international and regional organizations to contribute as appropriate to the
strengthening of national judicial systems of the States of the former Yugoslavia in order to facilitate the implementation of this policy.

The Council takes note of the recommendations of the International Tribunal with regard to the creation, as proposed by the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina, of a specific Chamber, within the State Court of Bosnia and Herzegovina, to deal with serious violations of international humanitarian law. The Council is ready to look constructively and positively at this matter when more details of the proposed arrangements are available. The Council also takes note of the intention of the International Tribunal to amend its Rules of Procedure and Evidence in order to facilitate the referral of cases to competent national jurisdictions.

The Council will remain seized of this matter.

Compensation

On 18 March [S/2002/504], the Secretary-General transmitted to the Security Council a 12 March letter from the ICTY President regarding compensation of persons who might have been wrongly detained, prosecuted or convicted. The Tribunal had recently received claims for compensation from two persons held in detention while awaiting determination of their appeals and released after their convictions were quashed by the Appeals Chamber. Before taking any decision on those claims, the President sought the Council’s opinion on a letter he had submitted in 2000 [YUN 2000, p. 1231] proposing that the Tribunal compensate persons wrongly detained, prosecuted or convicted.

Financing

Following consideration of reports submitted in 2001 on the financing of ICTY [YUN 2001, p. 1205], the General Assembly, on 27 March [meeting 97], on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/56/750/Add.1], adopted resolution 56/247 B without vote [agenda item 131].

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law

The General Assembly, following consideration of reports submitted in 2001 on the financing of ICTY [YUN 2001, p. 1205], the General Assembly, on 27 March [meeting 97], on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/56/750/Add.1], adopted resolution 56/247 B without vote [agenda item 131].

The General Assembly, having considered the report of the Secretary-General on the financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law, Committee in the Territory of the former Yugoslavia since 1991, having considered the report of the Secretary-General on the financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law, Committee in the Territory of the former Yugoslavia since 1991, and having approved the revised estimates resulting from the strengthening of the role of internal oversight services at the International Tribunal for the former Yugoslavia and the International Tribunal for Rwanda for the biennium 2002-2003, having further considered the relevant reports of the Advisory Committee on Administrative and Budgetary Questions, recalling its resolution 47/235 of 14 September 1993 on the financing of the International Tribunal for the former Yugoslavia and its subsequent resolutions thereon, the latest of which was resolution 56/247 A of 24 December 2001,

1. Reaffirms the provisions contained in its resolution 56/247 A, subject to the provisions of the present resolution;
2. Endorses the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions, subject to the provisions of the present resolution;
3. Approves the staffing table for the International Tribunal for the former Yugoslavia for the biennium 2002-2003, as recommended by the Advisory Committee, except that there shall be no additional trial preparatory team, as described in paragraph 56 of the report of the Advisory Committee, and requests the Secretary-General to report to the Committee in the annual performance report on the impact of this arrangement;
4. Also approves resources for the continuation of oversight functions at the International Tribunal for the former Yugoslavia for the remainder of the biennium 2002-2003 in the amount of $40,300 United States dollars gross ($31,700 United States dollars net);
5. Requests the Secretary-General to take all necessary steps to address accountability, management and efficiency problems at the International Tribunal for the former Yugoslavia and to report to the General Assembly on the measures taken;
6. Regrets the delay in the issuance of the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Operational Functioning of the International Tribunal for the former Yugoslavia and the International Tribunal for Rwanda, and reiterates the request for the submission of the report for consideration by the General Assembly at its fifty-seventh session;
7. Decides on a revised appropriation for the Special Account for the International Tribunal for the former Yugoslavia of a total amount of $248,926,290 dollars gross ($223,109,800 dollars net) for the biennium 2002-2003;
8. Decides also to review assessments at its fifty-seventh session in the context of the annual performance report.

Reports of Secretary-General. In response to General Assembly resolution 54/239 B [YUN 2000, p. 1232], the Secretary-General, in August [A/57/367], presented the seventh annual financial performance report of ICTY for the year ended 31 December 2001, including actual performance indicators. Expenditures totalled $188,901,390 gross ($108,901,300 net), resulting in a reduction in requirements of $4,867,300 gross ($5,360,800 net). The reduced requirements represented the
net effect of overexpenditures for posts, other staff costs, furniture and equipment, alteration of premises and staff assessment, which were offset by underexpenditures for salaries and allowances of judges, consultants and experts, travel, contractual services, general operating expenses, hospitality and supplies and materials. The Assembly was requested to take note of the report, particularly the utilization of the commitment authority, and of the associated financing for unassessed expenditures of $413,600 to be drawn from the balance available in the ICTY Special Account.

In October, the Secretary-General submitted the first performance report of ICTY for the 2002-2003 biennium [A/57/480], pursuant to Assembly resolution 56/247 A [YUN 2001, p. 1205]. The report reflected a requirement for net additional appropriations of $18.1 million based on a decline in exchange rates ($4.4 million), inflation ($5.8 million) and standard costs ($3.4 million). Income was estimated to rise by $1 million. Provision was also sought for two additional trial teams at a cost of $600,000. The Assembly was requested to revise the appropriation for 2002-2003 and to approve the additional financing by utilizing the unencumbered balance available in the ICTY Special Account.

ACABQ report. A November report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) [A/57/395] requested that, in the future, the ICTY annual financial performance report provide information on productivity, including savings, if any, from the implementation of control and monitoring measures recently introduced to improve the management of the ICTY legal aid programme. It recommended the approval of one additional trial team for the Prosecution Division. In the context of the completion strategy (see p. 1281), ACABQ was of the view that the Tribunal should start to plan early for the reduction or reallocation of the investigative staff capacity of the Office of the Prosecutor and the non-judicial, administrative functions of the Chambers should be presented in a results-based format linking indicators of achievement.

GENERAL ASSEMBLY ACTION

On 20 December [meeting 78], the General Assembly, on the recommendation of the Fifth Committee [A/57/654], adopted resolution 57/288 without vote [agenda item 124].

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

The General Assembly,

Taking note of the reports of the Secretary-General, namely the first performance report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 for the biennium 2002-2003, the report on the financial performance of the International Tribunal for the Former Yugoslavia for the period from 1 January to 31 December 2001, the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, as well as the related report of the Advisory Committee on Administrative and Budgetary Questions,


1. Endorses the Secretary-General to present the proposed budget for the International Tribunal for the Former Yugoslavia for the biennium 2004-2005 to the General Assembly at its fifty-eighth session in accordance with the following provisions:

(a) The budget should include detailed reference as to how the resources requested for the biennium will support the implementation of a sound and realistic completion strategy and the status of implementation of Board of Auditors recommendations, where relevant, with regard to specific items of proposed expenditure;

(b) The budget requirements for the Registry, the Office of the Prosecutor and the non-judicial, administrative functions of the Chambers should be presented in a results-based format linking objectives and inputs to expected accomplishments to be measured by indicators of achievement;

(c) Proposed allocations for costs for translation of documents and travel of witnesses should specify application and prior approval procedures by the Registrar to ensure they do not exceed demonstrated requirements;

(d) Proposals for defence costs should take into account experience to date in the revised lump-sum renumeration arrangements for defence counsel and the application of assessing contributions from defendants...
based on ability to pay and taking into account revised definitions of indigence and partial indigence; (e) The proposed post structure for the biennium 2004-2005 should reflect reductions and shifts in requirements within the International Tribunal for the Former Yugoslavia owing to the expected completion of investigations by 2004 and, where appropriate, address any new requirements for established posts through redeployment;

5. **Concurs** with the recommendation of the Board of Auditors in paragraph 62 of its report, and invites the judges of the International Tribunal for the Former Yugoslavia to give due consideration to implementing fully a system of designating defence counsel at random from a list of available lawyers established by the Registrar’s office;

6. **Notes with concern** that the posts approved by the General Assembly in its resolutions 56/247 A and B for on-site audit and investigative services in the International Tribunal for the Former Yugoslavia have not been filled, and calls upon the Office of Internal Oversight Services to fill these positions without any further delay;

7. **Decides** that the financing for the unassessed expenditures incurred in 2001, in the amount of 413,600 United States dollars, shall be drawn from the unencumbered balance available in the Special Account for the International Tribunal for the Former Yugoslavia;

8. **Resolves** that, for the biennium 2002-2003, the amount of 248,926,200 dollars gross (223,169,800 dollars net), approved in its resolution 56/247 B for the budget of the International Tribunal for the Former Yugoslavia, shall be increased by 13,727,500 dollars gross (12,785,200 dollars net), for a total amount of 262,653,700 dollars gross (235,955,000 dollars net);

9. **Decides** that the increases resulting from the recosting and the establishment of one additional trial team, in the amount of 13,727,500 dollars gross (12,785,200 dollars net), shall be drawn from the unencumbered balance available in the Special Account for the International Tribunal for the Former Yugoslavia as at 31 December 2001;

10. **Decides also** to apportion for the year 2003 the amount of 64,275,950 dollars gross (58,066,375 dollars net), including 6,863,750 dollars gross (6,392,600 dollars net), being the increase in assessments, among Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2003 as set out in its resolutions 55/5 B of 23 December 2000 and 57/4 B of 20 December 2002;

11. **Decides further to apportion** for the year 2003 the amount of 64,275,950 dollars gross (58,066,375 dollars net), including 6,863,750 dollars gross (6,392,600 dollars net), being the increase in assessments, among Member States in accordance with the rates of assessment applicable to peacekeeping operations for 2003;

12. **Decides** that, in accordance with the provisions of its resolution 973(X) of 15 December 1955, there shall be set off against the apportionment among Member States, as provided for in paragraphs 10 and 11 above, their respective share in the Tax Equalization Fund in the amount of 26,763,400 dollars, including the amount of 1,007,000 dollars, being the increase in the estimated staff assessment income approved for the International Tribunal for the Former Yugoslavia for the biennium 2002-2003.

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**Annex**

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

<table>
<thead>
<tr>
<th>Gross (United States dollars)</th>
<th>Net (United States dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Appropriation for the biennium 2002-2003 (resolution 56/247 B)</td>
<td>248,926,200</td>
</tr>
<tr>
<td>Add:</td>
<td></td>
</tr>
<tr>
<td>2. Proposed changes for the biennium 2002-2003 (revised parameters/stands and requirements for two additional trial teams)</td>
<td>14,060,300</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>3. Recommendations of the Advisory Committee on Administrative and Budgetary Questions on the additional trial teams (establishment of only one additional trial team)</td>
<td>(332,800)</td>
</tr>
<tr>
<td>4. Proposed revised appropriation for the biennium 2002-2003 (1+2-3)</td>
<td>262,653,700</td>
</tr>
<tr>
<td>Add:</td>
<td></td>
</tr>
<tr>
<td>5. Unassessed expenditures in 2001</td>
<td>413,600</td>
</tr>
<tr>
<td>6. Total amount to be financed (4+5)</td>
<td>263,067,300</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>7. Amount to be financed from the unencumbered balance as at 31 December 2001 (2-3+5)</td>
<td>(14,141,100)</td>
</tr>
<tr>
<td>8. Balance to be assessed for the biennium 2002-2003 (6-7)</td>
<td>248,926,200</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>9. Assessment for 2002</td>
<td>(120,374,300)</td>
</tr>
<tr>
<td>10. Balance to be assessed for 2003</td>
<td>128,551,900</td>
</tr>
<tr>
<td>Of which:</td>
<td></td>
</tr>
<tr>
<td>11. Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2003</td>
<td>64,275,950</td>
</tr>
<tr>
<td>12. Contributions assessed on Member States in accordance with the scale of assessments applicable to peacekeeping operations for 2003</td>
<td>64,275,950</td>
</tr>
</tbody>
</table>

Also on 20 December, the Assembly decided that the item on financing of ICTY would remain for consideration during its resumed fifty-seventh (2003) session (decision 57/585).

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**International Tribunal for Rwanda**

In 2002, ICTR’s judicial capacity was increased by the Security Council’s creation of a pool of 18 ad litem judges. The Tribunal reviewed the progress of trials, discussed its completion strategy and adopted changes to its Rules of Procedure.
and Evidence in order to facilitate the proceedings.


The Chambers

New cases

Athanase Seromba, a former Catholic priest at Nyange parish (Kibuye prefecture) who surrendered to the Tribunal, was transferred to the UN Detention Facility in Arusha on 6 February, following his arrest by the authorities of the United Republic of Tanzania. At his initial appearance on 8 February, he pleaded not guilty to four counts of genocide or complicity in genocide, conspiracy to commit genocide and crimes against humanity (extermination).

On 4 March, Vincent Rutaganira, former Councillor of Mubuga, Gishyita Commune (Kibuye prefecture), was transferred to Arusha, following his surrender to Tanzanian authorities in Kigoma. At his initial appearance on 26 March, he pleaded not guilty to seven counts of genocide, conspiracy to commit genocide, crimes against humanity for murder, extermination and other inhumane acts, and violations of the Geneva Conventions.

Paul Bisengimana, former Bourgmestre of Gikoro, Kigali-Rural, was transferred to Arusha on 11 March from Mali, where he had been arrested and detained in 2001. He pleaded not guilty on 18 March to 12 counts of genocide or complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, crimes against humanity (murder, extermination, rape, torture, other inhumane acts) and violations of the Geneva Conventions.

Aloys Simba, arrested in 2001 [YUN 2001, p. 1208], was transferred to Arusha on 11 March. On 18 March, he pleaded not guilty to four counts of genocide or complicity in genocide, and crimes against humanity (murder, extermination).

Joseph Nzabirinda, arrested in 2001 [YUN 2001, p. 1208], was transferred to the Tribunal on 20 March from Belgium.

On 21 March, Hormisdas Nsengimana, a former priest and Rector of Christ-Roi College in Nyanza (Butare prefecture), was arrested in Yaoundé by Cameroonian authorities. He was transferred to the Tribunal on 10 April and pleaded not guilty on 16 April to four counts of genocide, conspiracy to commit genocide and crimes against humanity (murder, extermination).

Simon Bikindi, a Rwandan musician and former director of a ballet performance group, was transferred to the Tribunal on 27 March from the Netherlands, where he had been arrested in 2001. On 4 April, he pleaded not guilty to five counts of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, and crimes against humanity (murder, persecution).

Augustin Bizimungu, former Chief of Staff of the Rwandan Army, was arrested on 2 August in Luena, Angola, and transferred to the Tribunal on 14 August. At his initial appearance on 21 August, he pleaded not guilty to 10 counts of genocide, conspiracy to commit genocide, crimes against humanity and serious violations of the Geneva Conventions.

On 11 September in the Congo, Jean-Baptiste Gatete, the former Mayor of Murambi commune (Byumba prefecture), was arrested and transferred to the Tribunal on 13 September. At his appearance on 20 September, he pleaded not guilty to 10 counts of genocide or complicity in genocide, direct and public incitement to commit genocide, crimes against humanity (extermination, murder, persecution, rape) and serious violations of the Geneva Conventions.

Tharcisse Renzaho, former prefect of Kigali-ville, was arrested on 29 September in Kinshasa, Democratic Republic of the Congo (DRC), and transferred to the Tribunal on the following day. On 21 November, he pleaded not guilty to three counts of genocide or complicity in genocide and crimes against humanity (murder).

Ongoing trials

The joint trial of four senior Rwandan military officers (Théoneste Bagosora, Anatole Nsengiyumva, Aloys Ntakakuze, Gratien Kabigiti), consolidated as the “Military” case in 1999 [YUN 1999, p. 1222], began on 2 April. Interlocutory appeals had been lodged by the accused in 2001 [YUN 2001, p. 1209].

Trials were in progress in the cases of Eliezer Niyitegeka, who had pleaded not guilty in 1999 [YUN 1999, p. 1223]; Jean-Bosco Barayagwiza, Ferdinand Nahimana and Hassan Ngere, whose case was cojoined as the “Media” trial in 1999 [ibid., p. 1222]; Jean de Dieu Kamuhanda, whose trial began in 2001 [YUN 2001, p. 1208]; Elizaphan Ntakirutimana and his son, Gerard Ntakirutimana, whose

Following an appeal hearing held on 2 July, the Appeals Chamber, on 3 July, rejected a claim by Ignace Bagilishema that the prosecution’s appeal, filed in 2001 [YUN 2001, p. 1208], was inadmissible, dismissed the prosecution’s appeal on its merits and thus affirmed Mr. Bagilishema’s acquittal on all counts. Hearings were held on 4 and 5 July on the merits of an appeal that had been pending since its filing in 1999 by Georges Anderson Mderubumwe Rutaganda [YUN 1999, p. 1221].

Election of judges

Permanent judges

On 26 September [S/2002/1106], the Secretary-General forwarded to the Security Council a list of the 17 nominations submitted within the required 60-day submission period for elections to fill the positions of the 11 permanent judges whose terms were to expire on 24 May 2003, drawing attention to the required minimum number of 22 nominations, as stipulated in the Tribunal’s statute. The Council replied on 11 October [S/2002/113] that it had extended the deadline for nominations until 15 November.

On 20 November [S/2002/1272], the Secretary-General forwarded to the Council the curricula vitae of 22 nominees.

SECURITY COUNCIL ACTION

On 13 December [meeting 4666], the Security Council unanimously adopted resolution 1449 (2002). The draft [S/2002/1356] was prepared in consultations among Council members. The Security Council,


Having considered the nominations for permanent judges of the International Tribunal for Rwanda received by the Secretary-General,

Forwards the following nominations to the General Assembly in accordance with article 12 bis, paragraph 1 (d), of the Statute of the International Tribunal:

Mr. Mansoor Ahmad (Pakistan)
Mr. Teimuraz Bakradze (Georgia)
Mr. Kocou Arsène Capo-Chichi (Benin)
Mr. Frederick Mwenda Chomba (Zambia)
Mr. Pavel Dolenc (Slovenia)
Mr. Sergei Alekseevich Egorov (Russian Federation)
Mr. Robert Fremr (Czech Republic)
Mr. Asoka de Zoysa Gunawardana (Sri Lanka)
Mr. Mehmet Güney (Turkey)
Mr. Michel Mahouve (Cameroon)
Mr. Winston Churchill Matanzima Maqutu (Lesotho)
Mr. Erik Mose (Norway)
Ms. Arlette Ramaroson (Madagascar)
Mr. Jai Ram Reddy (Fiji)
Mr. William Hussein Sekule (United Republic of Tanzania)
Mr. Emile Francis Short (Ghana)
Mr. Francis M. Sekandi (Uganda)
Mr. Cheick Taaré (Mali)
Mr. Xenofon Ulianovschi (Republic of Moldova)
Ms. Andresia Vaz (Senegal)
Ms. Inés Mónica Weinberg de Roca (Argentina)
Mr. Mohammed Ibrahim Werfalli (Libyan Arab Jamahiriya)
Mr. Lloyd George Williams (Saint Kitts and Nevis)

On the same date [A/57/491], the Council President transmitted the Council’s resolution to the President of the Assembly.

Memorandum and note of Secretary-General.

By a 13 December memorandum [A/57/492 & Corr.1], the Secretary-General submitted the list of candidates to the General Assembly and set out the procedure for electing permanent judges. By a 16 December note [A/57/493], he transmitted the curricula vitae of the candidates.

GENERAL ASSEMBLY ACTION

On 20 December, the General Assembly decided that the item on the election of ICTR judges would remain for consideration during its resumed fifty-seventh (2003) session (decision 57/585).

Ad litem judges

In identical letters of 4 March [A/56/861-S/2002/241] to the Security Council and the General Assembly, the Secretary-General transmitted a 6 February letter from the Tribunal President drawing attention to the urgency of implementing her 2001 proposal to amend the ICTR statute to permit the creation of a pool of 18 ad litem judges [YUN 2001, p. 1206] to enable the Tribunal to expedite current and future trials. It was further proposed that the ad litem judges be empowered to adjudicate in pre-trial proceedings and that a
trial chamber section be composed of ad litem judges only in order to avoid delays.

SECURITY COUNCIL ACTION


The Security Council,


Having considered the letter dated 14 September 2001 from the Secretary-General addressed to the President of the Security Council and the letter annexed thereto dated 9 July 2001 from the President of the International Tribunal for Rwanda addressed to the Secretary-General,

Having considered also the letter dated 4 March 2002 from the Secretary-General addressed to the President of the Security Council and the letter annexed thereto dated 6 February 2002 from the President of the International Tribunal for Rwanda addressed to the Secretary-General,

Convinced of the need to establish a pool of ad litem judges in the International Tribunal for Rwanda in order to enable it to expedite the conclusion of its work at the earliest possible date, and determined to follow closely the progress of the operation of the Tribunal,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides to establish a pool of ad litem judges in the International Tribunal for Rwanda, and to this end decides to amend articles 11, 12 and 13 of the statute of the Tribunal and to replace those articles with the provisions set out in annex I to the present resolution, and decides also to amend articles 13 bis and 14 of the statute of the International Tribunal for the Former Yugoslavia and to replace those articles with the provisions set out in annex II to the present resolution;

2. Requests the Secretary-General to make practical arrangements for the election as soon as possible of eighteen ad litem judges in accordance with article 12 ter of the statute of the International Tribunal for Rwanda, and for the timely provision to the Tribunal of personnel and facilities, in particular, for the ad litem judges and related offices of the Prosecutor, and also requests him to keep the Security Council closely informed of progress in this regard;

3. Urges all States to cooperate fully with the International Tribunal for Rwanda and its organs in accordance with their obligations under resolution 955(1994) and the statute of the Tribunal;

4. Decides to remain actively seized of the matter.

Annex I

Amendments to the statute of the International Tribunal for Rwanda

Replace articles 11, 12 and 13 by the following:

Article 11

Composition of the Chambers

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of four ad litem independent judges appointed in accordance with article 12 ter paragraph 2 of the present statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of four ad litem judges shall be members of each Trial Chamber. Each Trial Chamber to which ad litem judges are assigned may be divided into sections of three judges each, composed of both permanent and ad litem judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the present statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

4. A person who for the purposes of membership of the Chambers of the International Tribunal for Rwanda could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

Article 12

Qualifications of judges

The permanent and ad litem judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 12 ter

Election of permanent judges

1. Eleven of the permanent judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for permanent judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 12 of the present statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") in accordance with article 13 bis of the statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than
candidates; the importance of a fair representation of female and male
four candidates meeting the qualifications set out in
the Secretary-General, each State may nominate up to
clared elected; should two candidates of the same
nationality obtain the required majority vote, the one
who received the higher number of votes shall be con-
sidered elected.
2. In the event of a vacancy in the Chambers
amongst the permanent judges elected or appointed in
accordance with this article, after consultation with the
President of the Security Council and of the General
Assembly, the Secretary-General shall appoint a
person meeting the qualifications of article 12 of the pres-
ent statute, for the remainder of the term of office con-
cerned.
3. The permanent judges elected in accordance
with this article shall be elected for a term of four
years. The terms and conditions of service shall be
those of the permanent judges of the International
Tribunal for the Former Yugoslavia. They shall be eli-
gible for re-election.

Article 12 ter
Election and appointment of ad litem judges
1. The ad litem judges of the International Tribu-
nal for Rwanda shall be elected by the General Assem-
bly from a list submitted by the Security Council, in the
following manner:
(a) The Secretary-General shall invite nominations
for ad litem judges of the International Tribunal for
Rwanda from States Members of the United Nations
and non-member States maintaining permanent obser-
ver missions at United Nations Headquarters;
(b) Within sixty days of the date of the invitation of
the Secretary-General, each State may nominate up to
candidates meeting the qualifications set out in
article 12 of the present statute, taking into account the
importance of a fair representation of female and male
candidates;
(c) The Secretary-General shall forward the nomi-
nations received to the Security Council. From the
nominations received the Security Council shall estab-
lish a list of not less than thirty-six candidates, taking
due account of the adequate representation of the
principal legal systems of the world and bearing in
mind the importance of equitable geographical distri-
bution;
(d) The President of the Security Council shall
transmit the list of candidates to the President of the
General Assembly. From that list the General Assembly
shall elect eleven permanent judges of the Interna-
tional Tribunal for Rwanda. The candidates who re-
ceive an absolute majority of the votes of the States
Members of the United Nations and of the non-
member States maintaining permanent observer mis-
sions at United Nations Headquarters shall be de-
clared elected.
(e) The ad litem judges shall be elected for a term
of four years. They shall not be eligible for re-election.
2. During their term, ad litem judges will be ap-
pointed by the Secretary-General, upon request of the
President of the International Tribunal for Rwanda, to
serve in the Trial Chambers for one or more trials, for a
cumulative period of up to, but not including, three
years. When requesting the appointment of any particu-
lar ad litem judge, the President of the International
Tribunal for Rwanda shall bear in mind the criteria set
out in article 12 of the present statute regarding the
composition of the Chambers and sections of the Trial
Chambers, the considerations set out in para-
graphs (b) and (e) above and the number of votes the
ad litem judge received in the General Assembly.

Article 12 quater
Status of ad litem judges
1. During the period in which they are appointed
in accordance with this article, the President of the
International Tribunal for Rwanda shall bear in mind the
criteria set out in article 12 of the present statute.
2. The President of the International Tribunal for
Rwanda shall elect a President from amongst
their number.

Article 13
Officers and members of the Chambers
1. The permanent judges of the International Tribu-
nal for Rwanda shall elect a President from amongst
their number.
2. The President of the International Tribunal for
Rwanda shall be a member of one of its Trial Cham-
bers.
3. After consultation with the permanent judges of
the International Tribunal for Rwanda, the President
shall assign two of the permanent judges elected or ap-
pointed in accordance with this article 12 of the present
statute to be members of the Appeals Chamber of the
International Tribunal for the Former Yugoslavia and
eight to the Trial Chambers of the International Tribunal for Rwanda.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

5. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign such ad hoc judges as may from time to time be appointed to serve in the International Tribunal for Rwanda to the Trial Chambers.

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of that Trial Chamber as a whole.

Annex II

Amendments to the statute of the International Tribunal for the Former Yugoslavia

Replace articles 13 bis and 14 by the following:

Article 13 bis

Election of permanent judges

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for the position of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (hereinafter referred to as “the International Tribunal for Rwanda”) in accordance with article 12 bis of the statute to the International Tribunal for Rwanda elected or appointed in accordance with article 12 bis of the statute of that Tribunal.

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world.

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 14

Officers and members of the Chambers

1. The permanent judges of the International Tribunal shall elect a President from amongst their number.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the permanent judges of the International Tribunal, the President shall assign four of the permanent judges elected or appointed in accordance with article 13 bis of the statute to the Appeals Chamber and nine to the Trial Chambers.

4. Two of the permanent judges of the International Tribunal for Rwanda elected or appointed in accordance with article 12 bis of the statute of that Tribunal shall be assigned by the President of that Tribunal, in consultation with the President of the International Tribunal, to be members of the Appeals Chamber and permanent judges of the International Tribunal.

5. After consultation with the permanent judges of the International Tribunal, the President shall assign such ad hoc judges as may from time to time be appointed to serve in the International Tribunal to the Trial Chambers.

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of the Trial Chamber as a whole.

Office of the Prosecutor

In 2002, the Prosecutor revised the investigation programme to conduct investigations against 14 new individuals, in addition to 10 ongoing investigations. The resulting 24 new indictments, which the Prosecutor intended to submit for confirmation by the end of 2004, would conclude the investigation programme. The rate of arrests and the joinder of accused would influence the actual number of new trials.

The tracking team in charge of tracking suspects who remained at large in Africa, Europe and North America created a computerized system to manage and assess sources and informers.
The Registry

The Registry continued to service the Chambers and the Office of the Prosecutor in the performance of their functions. In addition to its court management functions, the Judicial and Legal Services Division managed a legal aid system of assigning defence counsel to indigent accused. The Division of Administration was responsible for personnel, finance, language services, security and general services, and for managing and running the UN Detention Facility in Arusha.

In February, the Registrar visited the DRC as part of a drive to enhance the cooperation of States in the Central African region with ICTR.

The Registry’s Outreach Programme continued to be consolidated with the Information and Documentation Centre. Extensive use was made of all the facilities offered, which included a law library, a collection of videos of trial proceedings, ICTR public documents, Internet access and a public meeting room. A legal and reference library continued to provide legal information support to the Chambers.

Communication. On 14 May [N/2002/540], the DRC transmitted to the Security Council President a letter to the Registrar inviting the Tribunal to consider establishing an ICTR unit in the country.

Financing

Following consideration of reports submitted in 2001 on the financing of ICTR [YUN 2001, p. 120], the General Assembly, on 27 March [meeting 97], on the recommendation of the Fifth Committee [A/56/731/Add.1], adopted resolution 56/248 B without vote [agenda item 122].

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

The General Assembly,

Having considered the report of the Secretary-General on the financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994,

Having also considered the revised estimates resulting from the strengthening of the role of internal oversight services at the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia for the biennium 2002-2003,

Having further considered the relevant reports of the Advisory Committee on Administrative and Budgetary Questions,

Recalling its resolution 49/254 of 20 July 1995 on the financing of the International Tribunal for Rwanda and its subsequent resolutions thereon, the latest of which was resolution 56/248 A of 24 December 2001,

1. Reaffirms the provisions contained in its resolution 56/248 A, subject to the provisions of the present resolution;

2. Endorses the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions, subject to the provisions of the present resolution;

3. Approves the staffing table for the International Tribunal for Rwanda for the biennium 2002-2003, as recommended by the Advisory Committee;

4. Also approves resources for the continuation of oversight functions at the International Tribunal for Rwanda for the remainder of the biennium 2002-2003 in the amount of 493,300 United States dollars gross (398,800 dollars net);

5. Requests the Secretary-General to take all necessary steps to address accountability, management and efficiency problems at the International Tribunal for Rwanda and to report to the General Assembly on the measures taken;

6. Regrets the delay in the issuance of the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, and reiterates the request for the submission of the report for consideration by the General Assembly at its fifty-seventh session;

7. Requests the Secretary-General to ensure the completion of the report on the likely long-term financial obligations of the United Nations with regard to the enforcement of sentences for consideration by the General Assembly at its fifty-seventh session;

8. Decides on a revised appropriation for the Special Account for the International Tribunal for Rwanda of a total amount of 197,127,300 dollars gross (177,739,400 dollars net) for the biennium 2002-2003;

9. Decides also to review assessments at its fifty-seventh session in the context of the annual performance report.

(For the Secretary-General’s report on implementation of the recommendations of the Expert Group mentioned in the resolution, see p. 1293.)

Reports of Secretary-General. In response to General Assembly resolution 56/248 B (above), the Secretary-General, in August [A/57/347], estimated the probable long-term UN financial obligations arising from the enforcement of prison sentences. About $1,015,800 would be needed annually for costs directly related to sentence enforcement and those pertaining to transfer, relocation and movement of prisoners, review of their convictions, consideration of their possible
early release and inspection of their conditions of detention. An additional $141,000 would be required resulting from prisoners’ relocation to suitable destinations or the disposal of their remains should they pass away while serving their sentences. The report identified existing and new mechanisms to deal with issues during sentence enforcement, noting that costs would be associated with their operation and use.

In response to Assembly resolution 49/251 [YUN 1995, p. 1225], the Secretary-General submitted, in August [A/57/368], the seventh annual performance report of ICTR for the year ended 31 December 2001, including actual performance indicators. Expenditures for 2001 amounted to $96,639,300 gross ($87,487,600 net), resulting in a shortfall of $2,664,500 gross ($1,880,000 net).

An October report of the Secretary-General [A/57/481 & Corr.1], submitted in response to Assembly resolution 56/248 A [YUN 2001, p. 1211], contained the first performance report of ICTR for the 2002-2003 biennium. The report reflected a requirement for net additional appropriations of $2.2 million based on favourable exchange rates ($13.3 million) and standard costs ($0.3 million), which were offset by adverse inflation rates ($12 million) and defence counsel expenses ($3.7 million). The Assembly was requested to revisit the appropriations for 2002-2003 and to approve financing for 2003.

Referring to Security Council resolution 1431(2002) (see p. 1287), which established a pool of ad litem judges, the Secretary-General, in October [A/57/482], presented the resource requirements for 2003 for the use of a maximum of four ad litem judges. The estimated additional requirements would amount to $5,060,100 gross ($4,605,400 net), which the Assembly was requested to appropriate. The total resource requirements of ICTR for 2002-2003 amounted to $204,365,100 gross ($183,224,000 net).

ACABQ report. On 7 November [A/57/565], ACABQ recommended that the General Assembly take note of the Secretary-General’s August report on costs related to sentence enforcement, on the understanding that future budgetary requests on enforcement of sentences would be considered on a case-by-case basis, taking into account the legal, administrative and financial justification in support of each request. ACABQ drew attention to the need for the Assembly and the Security Council to address issues raised in the report regarding mechanisms to deal with matters arising in the course of sentence enforcement.

Regarding the Secretary-General’s October report on ICTR’s first performance report, ACABQ stated that it was not necessary to appropriate the amount of $2.2 million as favourable exchange rates for the period January to October 2002 had led to a projected reduction of $13,257,800 in the 2002-2003 estimates. It recommended that the Assembly authorize the Secretary-General to incur commitments up to $2.2 million, should it be deemed necessary, and report thereon in the next performance report. It further recommended that the Assembly approve the financing of the unassessed expenditure for 2001 of $2,664,500 gross ($1,880,000 net) from the unencumbered balance in the Tribunal’s Special Account.


The General Assembly,

Having considered the reports of the Secretary-General, namely the first performance report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 for the biennium 2002-2003, the report on the financial performance of the International Tribunal for Rwanda for the period from 1 January to 31 December 2001, the comprehensive report on the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, the report on the long-term financial obligations of the United Nations with regard to the enforcement of sentences and the report on the conditions of service for the ad litem judges of the International Tribunal for Rwanda,

Having also considered the revised estimates arising in respect of Security Council resolution 1431(2002) of 14 August 2002 on the establishment of ad litem judges in the International Tribunal for Rwanda,

Having further considered the related report of the Advisory Committee on Administrative and Budgetary Questions,
Recalling its resolutions 56/248 A of 24 December 2001 and 56/248 B of 27 March 2002 on the financing of the International Tribunal for Rwanda for the period from 1 January 2002 to 31 December 2003,

Taking note of Security Council resolution 131 (2002) on the establishment of ad litem judges for the International Tribunal for Rwanda,

1. Endorses the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions, subject to the provisions of the present resolution;

2. Notes with concern that the vacancy rate at the International Tribunal for Rwanda remains at unacceptably high levels and that, by the end of 2002, the posts of Chief of Prosecution and Deputy Prosecutor will have been vacant for more than two years and nineteen months, respectively, despite information indicating that there was an abundance of qualified candidates in the region and elsewhere, and requests the Registrar of the Tribunal to ensure that the aforementioned posts are filled without further delay and to report thereon to the General Assembly no later than at its fifty-eighth session;

3. Urges the Secretary-General to request the Office of Internal Oversight Services to conduct a management review of the Office of the Prosecutor, paying particular attention to the problems which have arisen with regard to the enforcement of sentences, to report thereon to the General Assembly at its fifty-eighth session and, to keep the cost estimates under periodic review;

4. Notes with concern that the posts approved by the General Assembly in its resolutions 56/248 A and B for on-site audit and investigative services in the International Tribunal for Rwanda have not been filled, and calls upon the Office of Internal Oversight Services to fill those positions without any further delay;

5. Takes note of the report of the Secretary-General on the long-term financial obligations of the United Nations with regard to the enforcement of sentences, on the understanding that future budgetary requests for enforcement of sentences will be considered on a case-by-case basis, taking into account legal, administrative and financial justification provided in support of each request;

6. Affirms that it would be appropriate for the United Nations to bear the immediate costs arising from providing prisoners serving sentences imposed by the International Tribunal for Rwanda with a regime of imprisonment that is consistent with those outlined in paragraph 17 of the report of the Secretary-General;

7. Invites the Security Council to address uncertainties arising from issues identified in paragraphs 8, 42 and 43 of the report of the Secretary-General and to provide guidance on possible amendments to the statute of the International Tribunal for Rwanda;

8. Requests the Secretary-General to report to the General Assembly at its fifty-eighth session on these issues, including the consideration of the Security Council;

9. Also requests the Secretary-General, as an ad hoc and interim measure, to charge the costs related to the needs arising with regard to the enforcement of sentences within presently appropriated resources before the end of the biennium 2002-2003;

10. Further requests the Secretary-General, in full cooperation with the International Tribunal for Rwanda, to ensure that due consideration is given in all future budget proposals for the Tribunal to the provision of resources to facilitate the enforcement of sentences;

11. Requests the Secretary-General to ensure adequate oversight of prison facility upgrade projects and the subsequent maintenance of minimum international prison standards where those maintenance costs are borne by the United Nations;

12. Also requests the Secretary-General to continue to assess the accuracy of the cost estimates proposed in his report on the enforcement of sentences, to report thereon to the General Assembly at its fifty-eighth session, and to keep the cost estimates under periodic review;

13. Urges the International Tribunal for Rwanda to continue to consult closely with the International Tribunal for the Former Yugoslavia in implementing its own completion strategy;

14. Requests the Secretary-General to prepare a comprehensive report on the progress made by the International Tribunal for Rwanda in reforming its legal aid system for consideration by the General Assembly at the main part of its fifty-eighth session;

15. Also requests the Secretary-General to submit to the General Assembly at its fifty-eighth session the proposed budget of the International Tribunal for Rwanda for the biennium 2004-2005, which should include the following elements:

(a) The budget should include detailed information as to how the resources requested for the biennium will support the development of a sound and realistic completion strategy and the status of implementation of Board of Auditors recommendations, where relevant, with regard to specific items of proposed expenditure;

(b) The budget requirements for the Registry, the Office of the Prosecutor and the non-judicial, administrative functions of the Chambers should be presented in a results-based format linking objectives and inputs to expected accomplishments to be measured by indicators of achievement;

(c) Revised arrangements for preventing overexpenditures by defence counsel and for managing, monitoring and controlling the expenses of the legal aid system of the International Tribunal for Rwanda should be included in support of proposals for defence costs, including a full definition and establishment of quantitative criteria for determining indigence and partial indigence based on, inter alia, the defendants’ circumstances and ability to pay;

(d) Proposed allocations for costs for travel of investigators should be supported by those procedures implemented by the Registrar in order not to exceed requirements;

(e) The proposed post structure for the biennium 2004-2005 should reflect reductions and shifts in requirements within the International Tribunal for Rwanda owing to the expected completion of investigations by 2003 and, where appropriate, address any new requirements for established posts through redeployment;

16. Further requests the Secretary-General to consider the introduction, wherever feasible, in the Inter-
international Tribunal for Rwanda of all measures undertaken in the International Tribunal for the Former Yugoslavia that have proved effective with regard to controlling administrative costs, including maintaining efficient administrative and managerial functions;

17. Approves the additional resources for the International Tribunal for Rwanda for 2003 as recommended by the Advisory Committee, except that the staffing complement shall be reduced by four posts, and requests the Secretary-General to report on the use of ad litem judges and their impact in the second performance report for the biennium 2002-2003;

18. Requests the Secretary-General to ensure that optimum use is made of ad litem judges, following their introduction, to increase the number of court sessions and extend scheduled working hours;

19. Decides that the financing for the unassessed expenditures incurred in 2001, in the amount of 2,664,500 United States dollars gross (1,880,000 dollars net), will be transferred from the unspent balance in the Special Account for the International Tribunal for Rwanda;

20. Resolves that, for the biennium 2002-2003, the amount of 197,127,300 dollars gross (177,739,400 dollars net), approved in its resolution 56/248 B for the budget of the International Tribunal for Rwanda, shall be adjusted by the amount of 4,656,600 dollars gross (4,254,100 dollars net) arising for ad litem judges in respect of Security Council resolution 1431 (2002) for a total amount of 201,784,900 dollars gross (181,995,500 dollars net);

21. Authorizes the Secretary-General to enter into commitments, where necessary, in an amount not to exceed 2,177,700 dollars gross (879,200 dollars net) for the resource requirements of the International Tribunal for Rwanda to support the re-costing of resources of the International Tribunal for Rwanda of all measures under the Functioning of the tribunals Annex.

22. Decides to apportion for the year 2003 the amount of 53,047,600 dollars gross (47,759,100 dollars net), including 5,202,750 dollars gross (4,321,450 dollars net), being the increase in assessments among Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for the year 2003 as set out in its resolutions 55/5 B of 23 December 2000 and 57/4 B of 20 December 2002;

23. Decides also to apportion for the year 2003 the amount of 53,047,600 dollars gross (47,759,100 dollars net), including 5,202,750 dollars gross (4,321,450 dollars net), being the increase in assessments among Member States in accordance with the rates of assessment applicable to peacekeeping operations for the year 2003;

24. Decides further that, in accordance with the provisions of its resolution 973(X) of 15 December 1955, there shall be set off against the apportionment among Member States provided for in paragraphs 22 and 25 above, their respective share in the Tax Equalization Fund in the amount of 19,791,400 dollars, including 463,300 dollars, being the increase of the estimated staff assessment income approved for the International Tribunal for Rwanda for the biennium 2002-2003.

**Annex**

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

<table>
<thead>
<tr>
<th>Gross (United States dollars)</th>
<th>Net (United States dollars)</th>
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<tbody>
<tr>
<td>197,127,300</td>
<td>177,739,400</td>
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<td>Add:</td>
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<tr>
<td>2,177,700</td>
<td>879,200</td>
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<tr>
<td>5,206,100</td>
<td>4,605,400</td>
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<tr>
<td>(a) Recommendations of the Advisory Committee on Administrative and Budgetary Questions on ad litem judges</td>
<td>(282,100) (245,500)</td>
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<tr>
<td>(b) Recommendations of the Fifth Committee</td>
<td>(120,400) (105,800)</td>
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<tr>
<td>203,962,600</td>
<td>182,872,700</td>
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<td>Less:</td>
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<tr>
<td>195,889,700</td>
<td>186,475,300</td>
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<tr>
<td>106,095,200</td>
<td>95,518,200</td>
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<td>Of which:</td>
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<tr>
<td>9. Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2003</td>
<td>53,047,600 47,759,100</td>
</tr>
<tr>
<td>10. Contributions assessed on Member States in accordance with the scale of assessments applicable to peacekeeping operations for 2003</td>
<td>53,047,600 47,759,100</td>
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On 20 December, the Assembly decided that the item on ICTR financing would remain for consideration during its resumed fifty-seventh (2003) session (decision 57/585).

**Functioning of the tribunals**

**Expert Group recommendations**

Note by Secretary-General. A March note of the Secretary-General [A/56/855], submitted in re-
sponse to General Assembly resolution 54/239 B [YUN 2000, p. 1232], reviewed the results of the implementation of the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda [YUN 1999, p. 1290]. The report, which contained each of the 46 recommendations together with the comments of both Tribunals thereon, concluded that the Tribunals had achieved a high degree of success; ICTY was demonstrating its will and ability to fulfill its mandate by giving priority to leadership cases; it had established a completion strategy (see p. 1289) and implemented the recommendations of the Expert Group, thereby improving its efficiency. ICTR had made tremendous strides by convicting a head of Government for the crime of genocide (Jean Kambanda) [YUN 1998, p. 1292], and apprehending and bringing into custody high-level political and military officials accused of such crimes. The Group’s report and the continuing process of implementing its recommendations had made a critical contribution to the fulfillment of ICTR’s vision.

**ACABQ report.** A November ACABQ report [A/57/993] noted that considerable changes had been made in the Courts as a result of the Expert Group’s recommendations. ACABQ intended to continue to follow up on the implementation of the Group’s recommendations in the context of its review of the 2004-2005 budget estimates for the Tribunals and proposed that the Assembly take note of the Secretary-General’s report.

The Assembly took note of the Expert Group’s report in resolution 57/288 (see p. 1283).

**Cooperation of States**


Assembly take note of the Secretary-General’s mates for the Tribunals and proposed that the Assembly address ICTR’s “shortcomings” to the Security Council, namely, inefficiency, corruption, nepotism, harassment and lack of protection of ICTR witnesses, employing perpetrators of genocide as members of defence teams and investigators, mismanagement, the slow pace of trials, insufficient competent staff, negligence and false allegations concerning the Government of Rwanda. It concluded that the United Nations had to address ICTR’s problems or risk having a Tribunal whose legacy would bring shame rather than honour. It proposed a series of recommendations regarding ICTR’s functioning for the Council’s consideration.

Also on 26 July [S/2002/842], the ICTR President transmitted copies of decisions by the Trial Chambers drawing attention to the Rwandan Government’s failure to issue travel documents in a timely manner so that witnesses could appear. The President stated that it was uncertain that three trials (of the Kajelijeli, Nyitegeka and Butare cases), which had been postponed, would be able to resume without the Council’s intervention.

On 8 August [S/2002/923], the ICTR President provided the Council with a factual recapitulation of events that constituted a failure by the Rwandan Government to issue travel documents
for witnesses in a timely manner and with factual clarifications on other aspects of the functioning of ICTR raised in Rwanda’s July reply to the Prosecutor’s report (see p. 1294).

Rwanda, on 17 September [S/2002/1943], transmitted a letter from IBUKA, refuting the Prosecutor’s allegations and clarifying the reasons for suspending its cooperation with the Tribunal.

A 12 December letter [S/2002/1558] contained a statement by the Minister of Justice and Institutional Relations of Rwanda regarding Rwanda’s call for dialogue with ICTR in May and June. It said the management of the Tribunal had turned down the invitation, which led to the proposal to have an independent third party facilitate discussions between the two parties. Rwanda stated that the unilateral decision of the ICTR President and Registrar to withdraw the request to the third party was unacceptable.

Also on 12 December [S/2002/1375], the ICTR President informed the Secretary-General that she had extended an invitation in October to Rwanda’s Minister of Justice, President of the Supreme Court, and Prosecutor General to visit the Tribunal to observe its judicial proceedings. The visit was scheduled for 10 December. However, on 9 December, the ICTR President was informed by the Minister of Justice that the visit should be postponed, with no indication of future scheduling. Nevertheless, she would pursue the matter in early 2003.

SECURITY COUNCIL ACTION

On 29 October [meeting 4637], the Security Council held a private meeting to consider the item on ICTY and ICTR. The Council heard informative briefings by the ICTY and ICTR Presidents and the Prosecutor of both Tribunals, followed by a discussion.

Following consideration of the item on 18 December [meeting 4674] and consultations among Council members, the President made statement S/PRST/2002/39 on behalf of the Council:


The Council reaffirms its support for the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (the Tribunals), impartial and independent bodies which contribute to the maintenance of international peace and security and to bringing justice and reconciliation to the people of the countries concerned.

The Council recalls the mandatory obligation of all States, including the Governments of Rwanda and Yugoslavia, pursuant to its resolutions 827(1993) of 25 May 1993 and 955(1994) of 8 November 1994 and the statutes of the Tribunals, to cooperate fully with the Tribunals and their organs, including the duty to comply with the requests by the Tribunals for the arrest or detention of indictees and their surrender or transfer to the Tribunals, to make witnesses available to the Tribunals, and to assist with the ongoing investigations of the Tribunals.

The Council stresses the importance it attaches to the full cooperation by all States, particularly those directly concerned, with the Tribunals.

The Council also stresses the importance of constructive dialogue between the Tribunals and the Governments concerned to resolve any outstanding issues affecting the work of the Tribunals that arise in the course of their cooperation, but insists that such dialogue, or lack thereof, must not be used by States as an excuse for failure to discharge their obligations to cooperate fully with the Tribunals, as required by Council resolutions and the statutes of the Tribunals.

The Council will remain seized of the matter.

Composition of the Chambers

In May, the Security Council amended the statutes of both Tribunals to address potential conflicts of nationality for the purposes of membership of the Chambers.

SECURITY COUNCIL ACTION

On 17 May [meeting 4535], the Security Council unanimously adopted resolution 1411(2002). The draft [S/2002/544] was prepared in consultations among Council members.

The Security Council,
Recognizing that persons who are nominated for, or who are elected or appointed as, judges of the International Tribunal for the Former Yugoslavia or of the In-
international Tribunal for Rwanda may bear the nationali-
ties of two or more States,

Being aware that at least one such person has already
been elected a judge of one of the International Tribunals,

Considering that, for the purposes of membership of
the Chambers of the International Tribunals, such
persons should be regarded as bearing solely the na-
tionality of the State in which they ordinarily exercise
civil and political rights,

Acting under Chapter VII of the Charter of the
United Nations,

1. Decides to amend article 11 of the statute of the
International Tribunal for the Former Yugoslavia and
to replace that article with the provisions set out in
annex I to the present resolution;
2. Decides also to amend article 11 of the statute of the
International Tribunal for Rwanda and to replace
that article with the provisions set out in annex II to
the present resolution;
3. Decides to remain actively seized of the matter.

Annex I

Amendment to the statute of the International
Tribunal for the Former Yugoslavia

Replace article 12 by the following:

Article 12

Composition of the Chambers

1. The Chambers shall be composed of sixteen per-
manent independent judges, no two of whom may be na-
tionals of the same State, and a maximum at any one time
of nine ad litem independent judges appointed in ac-
cordance with article 13ter, paragraph 2, of the Statute,
no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any
one time of six ad litem judges shall be members of
each Trial Chamber. Each Trial Chamber to which ad
litem judges are assigned may be divided into sections
of three judges each, composed of both permanent
and ad litem judges. A section of a Trial Chamber shall
have the same powers and responsibilities as a Trial
Chamber under the Statute and shall render judge-
ment in accordance with the same rules.

3. Seven of the permanent judges shall be mem-
bers of the Appeals Chamber. The Appeals Chamber
shall, for each appeal, be composed of five of its mem-
ers.

4. A person who for the purposes of membership
of the Chambers of the International Tribunal could
be regarded as a national of more than one State shall be
deemed to be a national of the State in which that
person ordinarily exercises civil and political rights.

Annex II

Amendment to the statute of the International
Tribunal for Rwanda

Replace article II by the following:

Article II

Composition of the Chambers

1. The Chambers shall be composed of sixteen in-
dependent judges, no two of whom may be nationals
of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial
Chambers;

(b) Seven judges shall be members of the Appeals
Chamber. The Appeals Chamber shall, for each ap-
peal, be composed of five of its members.

2. A person who for the purposes of membership
of the Chambers of the International Tribunal for
Rwanda could be regarded as a national of more than
one State shall be deemed to be a national of the State
in which that person ordinarily exercises civil and pol-
itical rights.

OIOS report

By a February note [A/56/856], the Secretary-
General transmitted an OIOS report, which fol-
lowed up its 2000 investigation into possible fee-
splitting arrangements between defence counsel
and indigent detainees at both Tribunals [YUN
2000, p. 1235]. Between October 2001 and January
2002, a team of OIOS investigators visited the Tri-
unals and other locations and conducted inter-
views. The team observed that most of its rec-
ommendations had been implemented and that the
Registries had initiated steps to prevent further
abuse of their legal aid systems and to ensure
high standards were maintained by the defence.

During the period under review, one former
counsel and two current counsels of ICTR re-
ported fee-splitting solicitations by their clients.
Regarding ICTY, one detainee, while claiming to
be indigent, had the financial means to buy real
estate property. The matter was to be further re-
viewed by the Registry for possible bearing on the
detainee’s indigency status and for the source of
the funding, including whether it came from a
fee-splitting arrangement.

OIOS recommendations for both Tribunals in-
cluded revising their statutory texts so that re-
ports of solicitations by the defence teams to the
Registries were not considered a breach of confi-
dentiality owed to their respective clients; the
signing of a special form by the defence teams
and detainees indicating that fee-splitting was
prohibited and making it obligatory to inform
the Registrars of a breach of the matter by any
defence team member; and instituting proper
controls so that approval systems for payments,
reimbursements and other matters could not be
exploited for corrupt purposes. Additional rec-
ommendations addressed to ICTR emphasized
prompt and appropriate action regarding a staff
member who had admitted taking kickbacks and
consideration of the effectiveness of the work of
the Chief of the Lawyers and Defence Facilities
Management Section in view of the failure to take
timely and documented action when advised of
wrongdoing. The Secretary-General concurred with the OIOS recommendations.
GENERAL ASSEMBLY ACTION

On 27 March [meeting 97], the General Assembly, on the recommendation of the Fifth Committee [A/56/881], adopted resolution 56/278 without vote [agenda items 130-132].

Follow-up investigation into possible fee-splitting arrangements between defence counsel and indigent detainees at the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia

The General Assembly,

Recalling its resolution 55/250 of 12 April 2001,

1. Takes note of the report of the Office of Internal Oversight Services on the follow-up investigation into possible fee-splitting arrangements between defence counsel and indigent detainees at the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

2. Expresses concern at the findings set out in the report of the Office of Internal Oversight Services, and requests the Secretary-General to ensure the full and expeditious implementation of the recommendations contained in the report;

3. Requests the Secretary-General to follow up further on the investigation expeditiously, with a view to ensuring that errant officials are held accountable.

sponsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;