Chapter II

International tribunals

In 2003, 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) moved forward with its strategy to complete investigations in 2004 and first instance trials in 2008. In May, the Security Council amended the ICTY statute to permit ad litem judges, during the period of their appointments to a trial, also to adjudicate in pre-trial proceedings in other cases. The Council reappointed Carla Del Ponte as the Tribunal’s Prosecutor for a four-year term with effect from 15 September 2003.

During the year, 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) rendered five judgements, the greatest number delivered in a single year. The Council amended the ICTR statute in order to increase the number of ad litem judges who might be used at any given time from four to nine and to empower them to adjudicate in pre-trial proceedings in cases other than those they had been appointed to try. The Council further amended the ICTR statute to establish a new position of ICTR Prosecutor, and subsequently appointed Hassan Bubacar Jallow as Prosecutor for a four-year term with effect from 15 September 2003. Until then, the ICTY Prosecutor had also acted as the ICTR Prosecutor.

International Tribunal for the Former Yugoslavia

In 2003, the International Tribunal for the Former Yugoslavia (ICTY) moved forward with its completion strategy (YUN 2002, p. 1275), adopting internal reforms to ensure compliance with Security Council resolution 1503(2003), adopted in August (see p. 1330). It also continued to prepare the States in the Balkan region for the prosecution of war crimes cases. It reached agreement with the Office of the High Representative for Bosnia and Herzegovina (see p. 399) regarding the establishment of a special chamber for war crimes prosecutions in the State Court of Bosnia and Herzegovina. That special chamber, endorsed on 12 June by the Steering Board of the Peace Implementation Council, was expected to enable ICTY to begin transferring some cases of mid- and lower-level accused by the end of 2004 or early 2005.

The Council, by resolution 1481(2003) (see p. 1315), amended the ICTY statute to permit ad litem judges to do pre-trial work in addition to participating in the trials to which they were assigned.

The judges amended the ICTY Rules of Procedure and Evidence to clarify the standards for the referral of cases to competent national courts; to permit the replacement of a judge in certain cases of judicial disability, even without the consent of the accused, when the interests of justice so warranted; and to give the Trial Chambers greater power to limit the amount of evidence presented by the prosecution.

During the year, the ICTY judicial database, providing the judges, the Chambers, the Registry and the Office of the Prosecutor with electronic access to court records of most of the cases, became operational.


The Chambers

The judicial activities of the Tribunal’s three Trial Chambers, which ran six trials simultaneously throughout the year, and of its Appeals Chamber included first instance and appeals proceedings—against judgements, interlocutory decisions and State requests for review—proceedings regarding the Tribunal’s primacy and contempt cases. ICTY had a total of 25 judges—16 permanent judges, including 2 ICTR judges serving in the Appeals Chamber, and 9 ad litem judges.
New arrests, surrenders and indictments

Milan Milutinovic, charged jointly with Slobodan Milosevic, Nikola Sainovic, Dragoljub Ojdanic and Vlajko Stojilkovic in 1999 [YUN 1999, p. 1244] but still at large in 2002 [YUN 2002, p. 1276], surrendered to the Tribunal on 20 January, making his initial appearance before the Trial Chamber on 27 January. His motion challenging the jurisdiction of ICTY was dismissed on 6 May and his appeal on 27 January. His motion rejecting his 23 January application for provisional release, which the Appeals Chamber refused on the ground that he had not shown good cause.

Four members of the Kosovo Liberation Army who had served at the Lapusnik Prison Camp in Glogovac (Kosovo province of Serbia and Montenegro) were arrested for crimes against Kosovo Serbs. Haradin Bala and Isak Musliu were arrested in Kosovo on 17 February by the international security force (KFOR) and transferred to the Tribunal the following day. At their initial appearance on 20 February, Mr. Bala pleaded not guilty to four counts and Mr. Musliu to three counts of crimes against humanity (imprisonment, cruel treatment, torture, murder), alternatively charged as violations of the laws or customs of war. Fatmir Limaj, arrested on 18 February by police in Slovenia and transferred to ICTY on 4 March, pleaded not guilty to those same charges at his initial appearance on 5 March. On 31 October, the Chamber denied a request filed by all three for provisional release. Agim Murtezi, also an indictee in the case, was arrested by KFOR in February and transferred to the Tribunal; he was released upon determination that he no longer had legal representation. On 10 May, he confidentially filed an application for leave to appeal the Trial Chamber’s decision rejecting his 23 January application for provisional release, which the Appeals Chamber refused on the ground that he had not shown good cause.

Vojislav Seselj, who surrendered to the Tribunal on 24 February, was charged with crimes against humanity and violations of the laws or customs of war in a 14-count indictment. The indictment alleged that as president of the Serbian Radical Party he participated in a plan for the forcible removal of a majority of the Croat, Muslim and other non-Serb populations from about one third of the territory of Croatia, large parts of Bosnia and Herzegovina and parts of Vojvodina in Serbia in order to make those areas part of a new Serb-dominated State. On 25 March, he pleaded not guilty to all counts.

Ivica Racic, arrested by the Croatian authorities in April, was surrendered to the Tribunal on 24 June. Originally indicted [YUN 1996, p. 1866] for crimes committed in 1993 against the civilian Muslim population in Stupni Do [YUN 1993, p. 461] and Vares [ibid., p. 462] in central Bosnia and Herzegovina, the accused pleaded not guilty to two counts of war crimes (willful killing, destruction of property) and one count of violations of the laws and customs of war (attack on civilians), at his initial appearance on 27 June.

Naser Oric was arrested in Tuzla, Bosnia and Herzegovina, on 10 April by the multinational Stabilization Force and transferred to the Tribunal the following day. At his initial appearance on 13 April, he pleaded not guilty to two counts of violations of the laws or customs of war (Article 8(2) of the ICTY statute (willful killing, plunder of property) and one count of violating the laws or customs of war under article 7(3) (murder, cruel treatment, wanton destruction of cities, towns or villages not justified by military necessity, plunder of public or private property). On 25 July, the Trial Chamber denied his request for provisional release, and, on 17 October, the Appeals Chamber affirmed that decision.

Franko Simatovic and Jovica Stanisic, who surrendered from Belgrade (Serbia) on 30 May and 11 June, respectively, pleaded not guilty, in June, to charges of four counts of crimes against humanity (persecutions, murder, deportation, inhumane acts (forcible transfer)) and one count of violating the laws or customs of war (murder).

Miroslav Radic, who surrendered to the Tribunal from Belgrade on 17 May, and Veselin Slijivanac, arrested by the authorities of Serbia and Montenegro and transferred to ICTY on 1 July, made their initial appearance on 21 May and 10 July, respectively. Both had been at large since their indictment in 1997 [YUN 1997, p. 1222] jointly with two other accused in connection with the alleged execution in Ovcara (near Vukovar, Croatia) of some 200 Croatian and other non-Serb persons removed from Vukovar Hospital in 1991.

In the case against Dusen Fustar, Pedrag Banovic, Dusko Knezevic, Momcilo Gruban and Zeljko Meakic, who were charged in the Omarska [YUN 1995, p. 1341] and Keraterm [YUN 1998, p. 1893] indictments, which were joined into a single case in 2002 [YUN 2002, p. 1270], Mr. Meakic surrendered to the Tribunal from Belgrade on 4 July and made his initial appearance on 7 July. On 18 March, the Trial Chamber dismissed Mr. Knezevic’s motion for provisional release and Mr. Gruban’s application in May to vary the terms of his provisional release. On 26 June, the Trial Chamber, having accepted a guilty plea by Mr. Banovic to one count of persecution, pursuant to a plea agreement, withdrew the other four counts in the indictment against him. In October, he was sentenced to eight years in prison.
Mitao Rusevic, indicted on 12 June 1997 regarding events that took place in Bosnia and Herzegovina at the Kameno Popravni Dom detention centre at Foca from April 1992 until October 1994 against Muslim and other non-Serb civilians [YUN 1996, p. 1186], surrendered on 20 August in Serbia. He was charged with seven counts of crimes against humanity (persecutions, torture, inhuman acts, murder, imprisonment, enslavement) and five counts of violations of the laws or customs of war (torture, cruel treatment, murder, slavery). At his 16 September initial appearance, the accused declined to enter a plea; therefore the judge entered pleas of not guilty to all charges on his behalf. The prosecution requested the Trial Chamber to hold its decision in abeyance on the challenge to the indictment, filed by the defence on 20 November, pending the filing of an amended indictment. The defence did not oppose the prosecution’s motion, filed on 2 December, for leave to amend the indictment.

Vladimir Kovacevic was arrested in Serbia on 25 September and transferred to the Tribunal on 23 October. His case was entwined with that of Miodrag Jokic, Pavle Strugar and Milan Zec (see p. 1354). Milan Babic’s testimony at the trial of Slobodan Milosevic (see p. 1313) led to an indictment filed against him in November for one count of persecution as a crime against humanity and four counts of murder, cruel treatment, wanton destruction of cities and destruction of religious institutions, as violations of the laws and customs of war. The accused, who had held various political positions in the Serb-dominated part of Croatia known as Krajina, surrendered voluntarily to the Tribunal and agreed to cooperate with the prosecution.

In 2003, public indictments were made against Vlastimir Dordevic, Vladimir Lazarevic, Sreten Lukic and Nebojsa Pavkovic, all of whom remained at large.

**Ongoing cases and trials**

On 27 January, independent medical experts confirmed that Janko Bobetko was unfit to travel and stand trial, as purported by Croatia in 2002 [YUN 2002, p. 1277]. As Croatia had failed to serve the indictment on the accused or his counsel, the judge issued an order on 19 March directing it to do so. Croatia, on 4 April, informed the Tribunal that it had served the indictment. On 29 April, the accused died; on 24 June, the case was declared closed causa mortis.

Dragoljub Ojdanic and Nikola Sainovic, charged in 1999 (see p. 1311), whose requests for provisional release in 2002 had been denied [YUN 2002, p. 1278], filed, on 7 and 10 February, respectively, their second motions for provisional release, which were again denied. Also in February, the Trial Chamber held that the Registrar should carry out a new assessment of Mr. Sainovic’s ability to remunerate counsel. (Mr. Sainovic in 2002 had challenged the Registrar’s decision requiring him to bear the cost of 1,700 hours of pre-trial investigative work.) In April, Mr. Ojdanic applied to the Trial Chamber for review of the Registrar’s decision not to provide additional funds for his pre-trial proceedings. The Chamber upheld that decision and, on 16 July, certified the matter for interlocutory appeal.

Mitao Vasiljevic, who had pleaded not guilty to charges against him in 2000 [YUN 2000, p. 1221], whose trial began in 2001 [YUN 2001, p. 1201] and who was sentenced in 2002 and filed a notice of appeal at that time [YUN 2002, p. 1280], filed a new notice of appeal on 12 February. In November, the Appeals Chamber heard oral arguments on the appeal.

Biljana Plavsic, who surrendered voluntarily in 2001 [YUN 2001, p. 1298] and changed her plea in 2002 to guilty in respect of one charge (persecution) [YUN 2002, p. 1279], was sentenced on 27 February to 11 years in prison. In June, she was transferred to Sweden to serve her sentence.

On 31 March, a judgement against Vinko Martinovic and Mladen Naletlic, who had pleaded not guilty in 1999 [YUN 1999, p. 1226] and 2000 [YUN 2000, p. 1222], sentenced them to 18 years and 20 years in prison, respectively. Both accused filed notices of appeal on 29 April, as did the prosecution on 2 May, and all parties filed appeal briefs between July and October. The accused also filed motions for the admission of additional evidence.

In the Celebici case (Hazim Delic, Esad Landzo, Zdravko Mucic), the Appeals Chamber, on 8 April, rejected appeals filed in 2002 [YUN 2002, p. 1280] and confirmed the sentences imposed by the Trial Chamber in 2001 [YUN 2001, p. 1201]. On 9 July, Messrs. Delic and Landzo were transferred to serve their sentences in Finland. On the same date, Mr. Mucic’s request for early release was granted, effective 18 July, as he had served two thirds of his sentence at The Hague, having been in pre-trial and trial custody since 18 March 1996 [YUN 1996, p. 1186].

The trial of Vidoje Blagojevic, Dragan Obrenovic, Dragan Jokic and Momir Nikolic, charged jointly in 2001 [YUN 2001, p. 1299] with crimes allegedly committed following the fall of Srebrenica in 1995 [YUN 1995, p. 259], began in May. In a plea agreement, Mr. Nikolic, on provisional release since 2002 [YUN 2002, p. 1276], agreed to testify against the co-accused, and both the defence and prosecution requested that sentencing be delayed until after he had testified to allow the Trial
Chamber to assess the extent of his cooperation with the prosecution. The proceedings against Mr. Nikolic were separated from those against the other three accused. Following his testimony, a sentencing hearing was held in October. As part of Mr. Nikolic’s plea agreement, the prosecution recommended a 15-to-20-year sentence, while the defence submitted that the sentence should not exceed 10 years. On 2 December, the Trial Chamber sentenced Mr. Nikolic to 27 years in prison, which he appealed. Similarly, Mr. Obrenovic entered into a plea agreement to testify against his co-accused; the proceedings against him were separated from those against the remaining two accused. Following his testimony, he was sentenced on 10 December to 17 years in prison. The trial of the remaining co-accused began on 14 May and would continue into 2004.

Goran Jelisic, whose motion for review of his 1999 sentence [YUN 1999, p. 126; YUN 2001, p. 120] was dismissed in 2002 [YUN 2002, p. 1280], was transferred in May to Italy to serve his sentence.

The trial of Momcilo Krajsnik [YUN 2000, p. 1221; YUN 2002, p. 1270], scheduled to begin in May, was postponed to 2004. The Registrar was compelled to withdraw the defence counsel because he had been disbarred in his home country. By decisions of 30 July and 16 September, he appointed a new defence team.

In the trial of Slobodan Milosevic [YUN 1999, p. 1264; YUN 2001, p. 1201; YUN 2002, p. 1277], the Trial Chamber, on 20 May, issued an oral ruling rejecting the prosecution’s argument that the case should be allowed to proceed for as long as it took to hear the testimony of all the witnesses it wished to call, stating that the trial would become excessively long and oppressive to all concerned. On 30 September, the Trial Chamber ruled that, in view of medical advice concerning the health of the accused, the Chamber would sit three days weekly. In addition to interlocutory appeals, the case had generated a number of ancillary proceedings, including prosecution applications for binding orders directed to Serbia and Montenegro for the production of documentation relevant to the proceedings.

In the case of Pasko Ljubicic, who had pleaded not guilty in 2001 [YUN 2001, p. 120] and whose indictment was amended in 2002 [YUN 2002, p. 1270], pre-trial briefs were filed by the prosecution and the defence, in June and July, respectively. The case would not be ready for trial until a large number of documents sought by the defence were produced by the Governments of Bosnia and Herzegovina and Croatia. The Trial Chamber had issued a binding order to the Government of Bosnia and Herzegovina in February, but the defence had not received all the documents sought.

In the case against General Rahim Ademi, who surrendered voluntarily and pleaded not guilty in 2001 [YUN 2001, p. 1199], pre-trial briefs were filed in June and July. However, the Prosecutor announced in July the intention to co-indict other perpetrators charged with crimes against civilian Serbs in the Medak pocket region of Croatia [YUN 1993, p. 490]. The Chamber was thus asked to defer General Ademi’s trial until the new indictments were brought.

Darko Mrda, arrested and charged in 2002 [YUN 2002, p. 1276], entered into a plea agreement with the prosecutor on 24 July, according to which he pleaded guilty to murder and inhumane acts but not to extermination. The Chamber verified that there was a sufficient factual basis for the crimes and for the accused’s participation therein, and accordingly entered a finding of guilt. Sentencing briefs were filed by the parties on 15 October and a sentencing hearing was held on 22 October.

In the trial of Milomir Stakic, who had pleaded not guilty in 2001 [YUN 2001, p. 1199] and whose defence case began in 2002 [YUN 2002, p. 1278], the Trial Chamber, on 31 July, handed down its judgement: it found the accused guilty and sentenced him to life imprisonment, with a minimum term of 20 years. In September, the prosecution and the accused filed notices of appeal.

Radislav Krstic, who was sentenced in 2001 [YUN 2001, p. 120] and whose appeal briefs were filed in 2002 [YUN 2002, p. 1278], filed two applications for the admission of additional evidence in January and August 2003. The Appeals Chamber issued its decision on the first additional evidence motion on 5 August and on the second additional evidence motion on 15 September, with reasons to follow. On 19 November, the Chamber dismissed the prosecution’s motion of 11 November to adduce additional evidence. On 20 November, the Chamber granted a supplementary motion to adduce additional evidence filed by Mr. Krstic on 4 November. The Chamber conducted evidentiary hearings and heard oral arguments on the appeal on 21, 26 and 27 November.

The trial of Radoslav Brdanin, which began in 2002 [YUN 2002, p. 1277] on charges of genocide and crimes against humanity to which he had pleaded not guilty in 1999 [YUN 1999, p. 125] and again in 2000 [YUN 2000, p. 1222], continued in 2003. Following the close of the prosecution case, the defence submitted, on 22 August, a partly confidential motion for judgement of acquittal, to which the prosecution responded. The Trial Chamber delivered its oral decision on 9 October, followed by a written decision on 28 November. The decision granted the defence motion insofar as the accused was acquitted of genocide.
in the context of the third category of joint criminal enterprise, and certain factual allegations were struck out with respect to four of the municipalities cited in the indictment; it dismissed the remaining issues raised in the defence motion, with one of the judges dissenting in part, favouring the acquittal of the accused on the counts of genocide and complicity in genocide. The prosecution subsequently filed the sixth amended indictment to comply with the Trial Chamber’s ruling. It appealed the decision of the Trial Chamber, which the Appeals Chamber upheld, and reinstated the charge of genocide with respect to the third category of joint criminal enterprise, finding that the Trial Chamber had erroneously conflated the mens rea requirements for genocide with the mental requirement of the mode of liability. Co-accused Momir Talic died on 28 May.

In the case against Miodrag Jokic, Vladimir Kovacevic, Pavle Strugar and Milan Zec [YUN 2000, p. 1200], Mr. Jokic, who was provisionally released on 20 February, entered into a plea agreement on 25 August, according to which he pleaded guilty to six counts in an amended indictment in exchange for his full cooperation with the prosecution and a joint recommendation for a maximum sentence of 10 years in prison. On 17 September, the case against Mr. Jokic was severed from the case against Meerss. Strugar and Kovacevic. Mr. Jokic’s sentencing hearing was held on 26 November. Mr. Kovacevic, arrested in Belgrade in September and transferred to the Tribunal on 23 October, was found in a state of mental disorder upon his arrival, which prevented him from entering a plea. At two initial appearances in November, he was found not fit to enter a plea. Also in November, his case was severed from the case against Mr. Strugar. A medical examination of Mr. Kovacevic by two experts concluded that he was unable to understand fully the context of the charges against him, but that he might recover if adequately treated at a mental health institution in a Bosnian/Croatian/Serbian-speaking environment; a similar finding was made by a defence psychiatrist and by the consulting psychiatrist of the Tribunal’s Detention Unit for Mr. Strugar, a third amended indictment alleged six counts of violations of the laws or customs of war, three of which related to crimes against persons (murder, cruel treatment, attacks on civilians) and three related to crimes against property (devastation not justified by military necessity, attacks on civilian objects, destruction of institutions dedicated to religion and the arts and sciences). Prior to his trial, the defence raised the question of the fitness of the accused to stand trial. The Trial Chamber, having examined a report it had ordered on his medical condition and his medical records, found no justification for ordering any further examination. His trial began on 16 December. The indictment against Milan Zec was withdrawn in 2002.

In the case of Milorad Krnojelac, who was sentenced in 2002 [YUN 2000, p. 1278], the Appeals Chamber dismissed all grounds of his appeal in September. It introduced new convictions and revised the sentence, raising it from seven and a half years of imprisonment to 15 years.

A third amended indictment, dated 26 September, charged Enver Hadzihanovic and Amir Kubura, who had pleaded not guilty in 2001 [YUN 2001, p. 1299], with violations of the laws or customs of war (two counts of murder, two counts of cruel treatment, one count of wanton destruction of cities, towns or villages not justified by military necessity, one count of destruction or wilful damage of institutions dedicated to religion, one count of plunder of public and private property). Regarding the interlocutory appeal, jointly filed in 2002, of the Trial Chamber’s decision that the doctrine of command responsibility was applicable in their case [YUN 2002, p. 1279], the Appeals Chamber affirmed it in part and reversed it in part on 16 July. It held that command responsibility in non-international conflicts was established but that the principle of a commander’s being criminally liable for acts by his subordinates committed before he assumed command had not been sufficiently clearly established as a rule of customary international law at the time of the alleged offences to form a basis for criminal liability under the Tribunal’s statute. The two accused, on provisional release since December 2001, surrendered to the custody of the Tribunal on 27 November 2003. Their trial started on 2 December. On 29 December, the Prosecutor filed an appeal regarding the Trial Chamber’s decision on the refreshment of a witness’s memory and on a 19 December motion for certification to appeal. Proceedings against the third co-accused, Mehmed Alagic, were terminated following his death in March.

Dragan Nikolic, who had pleaded not guilty in 2000 [YUN 2000, p. 1221] and again in 2002 to new charges contained in a second amended indictment [YUN 2002, p. 1278], entered a further plea of not guilty to a third amended indictment in 2003. In a September plea agreement, the accused pleaded guilty to counts one to four of the indictment related to persecution, murder, rape and torture. In December, the Trial Chamber entered a single conviction for persecutions as subsuming all crimes and sentenced the accused to 23 years in prison.
Preliminary motions by Milan Martic against the form of his indictment, to which he had pleaded not guilty in 2002 [YUN 2002, p. 1276], triggered several amendments to the indictment, which was finally approved by the Trial Chamber on 30 May. He pleaded not guilty to a second amended indictment of 5 September of 10 counts of crimes against humanity (persecution, extermination, murder, imprisonment, torture, inhumane acts, deportation) and to nine charges of violation of the laws or customs of war (murder, torture, cruel treatment, wanton destruction of villages and religious institutions, plunder of private property, attack on civilians).

Miroslav Deronjic, arrested in 2002 [YUN 2002, p. 1276], entered a guilty plea on 30 September to a second amended indictment, which incorporated the six counts previously charged against him [ibid., p. 1277].

On 7 October, Ranko Cesic, arrested in 2002 [YUN 2002, p. 1276], filed a plea agreement in which he pleaded guilty to the 12 counts charged against him [ibid.]. The prosecutor made further submissions at a sentencing hearing held on 27 November.

The Trial Chamber delivered its judgement in the trial of Blagoje Simic, Miroslav Tadic and Simo Zaric, jointly charged in 2002 under a fifth amended indictment [YUN 2002, p. 1276]. The judgement, delivered on 17 October, found Mr. Simic guilty of a crime against humanity for persecutions based on the unlawful arrest and detention of Bosnian Muslim and Croat civilians, cruel and inhumane treatment and deportation and forcible transfer, for which he was sentenced to 17 years in prison. He filed a notice of appeal on 17 November. Mr. Tadic, found guilty of a crime against humanity for persecutions based on deportation and forcible transfer, was sentenced to eight years in prison. Mr. Zaric, pronounced guilty of a crime against humanity for persecutions based on cruel and inhumane treatment, was sentenced to six years in prison.

Regarding notices of appeals filed by Tihomir Blaskic [YUN 2000, p. 1223; YUN 2002, p. 1280], following his 1999 trial [YUN 1999, p. 1225], the Appeals Chamber, on 31 October, admitted 108 items as additional evidence, as well as rebuttal material proffered by the prosecution. Appeals against his conviction were pending.

Stanislav Galic, who had pleaded not guilty in 1999 [YUN 1999, p. 1225] and whose trial began in 2001 [YUN 2001, p. 1204] and continued in 2002 [YUN 2002, p. 1279] and 2003, was sentenced, on 5 December, to 20 years in prison. One of the three judges filed a separate and partially dissenting opinion, challenging the majority’s finding of certain facts and of some of the legal findings, and recommending a sentence of 10 years in prison. On 18 December, the prosecution filed a notice of appeal from the judgement.

An amicus curiae was appointed in a confidential contempt of court case pending before the Trial Chamber, which was seized of two other contempt cases.

Ad litem judges

The Secretary-General, on 7 May [S/2000/530], transmitted to the Security Council President a 1 May letter from the ICTY President requesting the Council to amend the ICTY statute so that ad litem judges, during the period of their appointment to a trial, could also adjudicate in pre-trial proceedings in other cases.

SECURITY COUNCIL ACTION


The Security Council,
Having considered the letter dated 18 March 2002 from the Secretary-General addressed to the President of the Security Council and the letter annexed thereto dated 12 March 2002 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General,
Having considered also the letter dated 7 May 2003 from the Secretary-General to the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council,
Convinced of the advisability of enhancing the powers of ad litem judges in the International Tribunal for the Former Yugoslavia so that, during the period of their appointment to a trial, they might also adjudicate in pre-trial proceedings in other cases, should the need arise and should they be in a position to do so,
Acting under Chapter VII of the Charter of the United Nations,
1. Decides to amend article 13 quater of the statute of the International Tribunal for the Former Yugoslavia and to replace that article with the provisions set out in the annex to the present resolution;
2. Decides to remain seized of the matter.

Annex

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

Replace article 13 quater by the following:

Article 13 quater

Status of ad litem judges

1. During the period in which they are appointed to serve in the International Tribunal, ad litem judges shall:
Office of the Prosecutor

The Prosecutor’s policy continued to be directed at the highest-level political and military leaders responsible for the gravest crimes, leaving middle- and lower-ranking criminals to be tried by national courts. The Office of the Prosecutor implemented the completion strategy it had defined in 2002 (YUN 2002, p. 1275) and which the Security Council approved in resolution 1503(2003) (see p. 1330). Particular efforts were made to obtain the cooperation of countries on which ICTY relied to carry out its mandate and to assist in the reform of the judicial systems of the countries of the former Yugoslavia—key elements of the ICTY completion strategy. The Prosecutor continued to review regularly all ongoing and pending investigations in order to ensure that all resources are adequately targeted the highest-level suspects. The Office also continued its pre-trial, trial and appeals activities and developed measures to enhance its operations, such as streamlining its procedure and consolidating its use of electronic systems.

The cooperation of Croatia had improved considerably. Following the change of Government in December, it acted immediately in regard to two new indictments and facilitated the surrender of all accused, while undertaking measures to locate and arrest Ante Gotovina, who had been indicted in 2001 (YUN 2001, p. 1899). Cooperation by Serbia and Montenegro improved but continued to be complex, partial and variable and affected by political uncertainties and developments, such as the assassination of Serbia’s Prime Minister (see p. 415). Cooperation at the federal level was minimal and, in spite of some positive developments under new leadership in February/March, the overall assessment was that the State’s cooperation was hostage to political developments. The cooperation of Bosnia and Herzegovina remained satisfactory, while that of Republika Srpska remained insufficient, notably in regard to the fugitives and access to wartime documentation. Since the Prosecutor’s decision to apply the Tribunal’s primacy regarding the investigation of allegations of war crimes committed between the security forces of the former Yugoslav Republic of Macedonia (FYROM) and organized Albanian rebel groups in 2001 (YUN 2001, p. 1204), two investigations had been opened involving perpetrators on both sides of the conflict. Following a deferral hearing, held before an ICTY Trial Chamber on 25 September to resolve the issue of primacy, national authorities continued to cooperate with the Office of the Prosecutor after a change of Government. FYROM authorities were cooperating with the Office with respect to the ongoing investigations.

Communication. In a July letter [S/2003/766] to the Security Council President, the Secretary-General, in accordance with the ICTY statute providing for the appointment of the Prosecutor by the Council on nomination by the Secretary-General, put forth the name of Carla Del Ponte as his nominee for reappointment to that position at the end of her current term as Prosecutor on 14 September.

SECURITY COUNCIL ACTION


The Security Council,
Recalling its resolution 1503(2003) of 28 August 2003,

Noting that by this resolution the Council created a new position of Prosecutor for the International Tribunal for Rwanda,

Noting also that by its resolution 1503(2003) the Council welcomed the intention of the Secretary-General to submit to the Council the name of Ms. Carla Del Ponte as nominee for Prosecutor for the International Tribunal for the Former Yugoslavia,

Having regard to Article 16, paragraph 4, of the statute of the International Tribunal for the Former Yugoslavia,

Having considered the nomination by the Secretary-General of Ms. Carla Del Ponte as Prosecutor of the International Tribunal for the Former Yugoslavia,

(a) Benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal;
(b) Have power:
(i) To adopt rules of procedure and evidence pursuant to article 15 of the statute. They shall, however, be consulted before the adoption of those rules;
(ii) To review an indictment pursuant to article 19 of the statute;
(iii) To consult with the President in relation to the assignment of judges pursuant to article 14 of the statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the statute.
(c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal;
(d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal, ad litem judges shall not:
(a) Be eligible for election as, or to vote in the election of, the President of the Tribunal or the President of a Trial Chamber pursuant to article 14 of the statute;
(b) Have power:
(i) To adopt rules of procedure and evidence pursuant to article 15 of the statute. They shall, however, be consulted before the adoption of those rules;
(ii) To review an indictment pursuant to article 19 of the statute;
(iii) To consult with the President in relation to the assignment of judges pursuant to article 14 of the statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the statute.

Appoints Ms. Carla Del Ponte as Prosecutor of the International Tribunal for the Former Yugoslavia with effect from 15 September 2003 for a four-year term.

The Registry

The Registry continued to exercise its responsibilities in the administration and servicing of the Tribunal, and provided support to the Chambers and the Office of the Prosecutor. The Registry also managed the Victims and Witnesses Section, the Detention Unit, the legal aid system and information technology instruments, facilitated court management functions and provided general administrative services.

On 4 April, in Arusha, United Republic of Tanzania, the Registrars of ICTY and ICTR signed a joint statement of implementation of the inter-Tribunal (ICTY-ICTR) project, sponsored by the European Commission. In September, the Commission approved the extension of the project’s grant to include cooperation initiatives between ICTY-ICTR and the Special Court for Sierra Leone (see p. 213).

In May, the Registrar visited the ICTY field office in Kosovo and conducted inter-agency meetings with the United Nations Interim Administration Mission in Kosovo and other international organizations, judges and prosecutors on a range of operational and administrative matters.

The Registry Advisory Section participated in working groups regarding the establishment of the Special War Crimes Chamber at the State Court of Bosnia and Herzegovina, in cooperation with the Office of the High Representative.

In keeping with recommendations in Security Council resolution 1503(2003) (see p. 130), the Tribunal, as part of its completion strategy, continued to develop and improve its outreach programme, paying special attention to improving the capacity of national jurisdictions to prosecute war crimes cases. The outreach programme enhanced its activities to strengthen national jurisdictions in their handling of war crimes cases, assisting in the creation of a responsible body of lawyers, prosecutors and other legal professionals through a broad range of training programmes. The programme organized a conference (Sarajevo, December), which brought together victims’ associations and legal professionals to discuss the impact of ICTY judgements on specific communities.

Report of Secretary-General. In response to General Assembly resolution 57/288 [YUN 2002, p. 1283], the Secretary-General, in an August report [A/58/288], described progress made by ICTY to reform its legal aid system, particularly with regard to rationalizing the costs of defence counsel and establishing indigence. A new system regarding defence counsel promised greater efficiency and eliminated time- and resource-consuming litigation of invoices before the Chambers or the ICTY President. As to the establishment of indigence, the Registry developed a financial formula that took into account the accused’s income and assets, expenses for dependants and the costs and necessary duration of legal aid and other measures, such as means in relation to the projected cost of legal representation. The ability of the accused to contribute to defence costs was reassessed regularly. The report reviewed other issues related to the legal aid system, including financial investigations to address the issue of fee splitting, in which counsel and the accused arranged to share lawyer fees; the Association of Defence Counsel, established in 2002 [YUN 2002, p. 1275]; a Disciplinary Panel to address ethical violations; external factors affecting legal aid costs; and future reforms.

ACABQ report. In an October report [A/58/449], the Advisory Committee on Administrative and Budgetary Questions (ACABQ) said that, from the available documentation, it was not in a position to ascertain the effect of the measures taken to reform the legal aid system on the estimated resource requirements of $29.5 million for defence counsel for the 2004-2005 biennium, even though, according to supplementary information provided to it, the estimates took into account the application of a revised system of paying for trials adopted as from July 2002. It requested detailed information in the context of the next budget estimates for ICTY on the effectiveness of the measures outlined in the Secretary-General’s August report.

Financing

2002-2003 biennium

Report of Secretary-General. A November report of the Secretary-General [A/58/303], submitted in response to General Assembly resolution 57/288 [YUN 2002, p. 1283], contained the second performance report of ICTY for the 2002-2003 biennium. The report reflected a net additional requirement of $18.8 million over the revised appropriation for that biennium. The increased requirements included changes with respect to exchange rates ($20.4 million) attributable mainly to the weakening of the United States dollar against the euro and inflation ($3.8 million). The Assembly was requested to revise the appropriation for 2002-2003 to $288.3 million gross ($255 million net) to the ICTY Special Account.

ACABQ report. ACABQ, in November [A/58/605], recommended the revision of the 2002-2003
appropriated to the ICTY Special Account as requested by the Secretary-General.

GENERAL ASSEMBLY ACTION

On 23 December [meeting 79], the General Assembly, on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/58/580], adopted resolution 58/254 without vote [agenda item 132].


The General Assembly,

Having considered the second performance report of the Secretary-General for the biennium 2002-2003 on 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 related report 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 were resolutions 56/247 A of 24 December 2001, 56/247 B of 27 March 2002 and 57/288 of 20 December 2002,

1. Takes note of the second performance report of the Secretary-General for the biennium 2002-2003 on 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 related report of the Advisory Committee on Administrative and Budgetary Questions;

2. Endorses the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;

3. Notes with concern the late issuance of the second performance report of the Secretary-General for the biennium 2002-2003, bearing in mind the nature of the report and the period covered therein;

4. Resolves that, for the biennium 2002-2003, the amount of $288,322,200 United States dollars gross ($254,603,800 United States dollars net), approved in its resolution 57/288 of 20 December 2002 for the budget of the International Tribunal for the Former Yugoslavia shall be adjusted by the amount of $25,668,500 dollars gross ($22,999,000 dollars net) for a total amount of $313,990,700 dollars gross ($277,599,800 dollars net).

2004-2005 biennium

Reports of Secretary-General. In response to General Assembly resolution 57/288 [YUN 2002, p. 1285], the Secretary-General submitted an August report [A/58/296], containing the ICTY resource requirements for the 2004-2005 biennium. The requirements before recosting amounted to $262 million gross ($235 million net) and reflected a decrease in real terms of $992,500 net, compared to the revised 2002-2003 appropriation (see p. 1317). The changes reflected a proposed reorganization and initial downsizing of the staffing table as a first step to implement the completion strategy [YUN 2002, p. 1275]. In nominal terms, the estimate for 2004-2005 amounted to $330 million gross ($299 million net) and reflected an increase of $64 million net, mostly due to the decline of the United States dollar against the euro.

A September report of the Secretary-General [A/58/368] estimated a reduction in ICTY requirements for 2004-2005 of $2.3 million gross ($1.9 million net) in the light of Security Council resolution 1503(2003) (see p. 1330), which established the new position of ICTR Prosecutor and thus reduced the number of posts from the ICTY budget. Therefore, the overall requirements for 2004-2005 in nominal terms were reduced from $330 million gross ($299 million net) to $327.3 million gross ($297 million net).

ACABQ report. In an October report [A/58/449], ACABQ commented on the potential for economies under a number of objects of expenditure, and recommended that the estimated ICTY requirements for 2004-2005 be reduced by $20 million gross.

GENERAL ASSEMBLY ACTION

On 23 December [meeting 79], the General Assembly, on the recommendation of the Fifth Committee [A/58/580], adopted resolution 58/255 without vote [agenda item 132].

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,

Having considered the reports of the Secretary-General on the financing for the biennium 2004-2005 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 related report 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 were resolutions 56/247 B of 27 March 2002 and 57/288 of 20 December 2002, and

Resolving also Security Council resolution 1503(2003) of 28 August 2003 concerning the creation of a new position of Prosecutor of the International Tribunal for Rwanda,

Welcoming the developments and improvements in the management and the activities of the International Tribunal for the Former Yugoslavia thus far achieved during the biennium 2002-2003,
1. Takes note of the reports of the Secretary-General on the financing for the biennium 2004-2005 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 related report of the Advisory Committee on Administrative and Budgetary Questions;

2. Endorses the conclusions and recommendations contained in the report of the Advisory Committee, subject to the provisions of the present resolution;

3. Notes with concern the levels of unpaid assessed contributions, and urges Member States to pay their assessed contributions on time, in full and without conditions;

4. Concurs with the view of the Advisory Committee that continued close collaboration between the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda is essential, and urges the Secretary-General to take all necessary measures to ensure this;

5. Decides not to endorse the recommendation contained in paragraph 38 of the report of the Advisory Committee;

6. Encourages Member States to consider paying their assessments in euros, consistent with regulation 3.9 and rule 103.3 of the Financial Regulations and Rules of the United Nations;

7. Requests the Secretary-General to ensure that the report requested by the General Assembly in paragraph 2 of its resolution 55/225 A of 23 December 2000, including the views of the Board of Auditors thereon, is submitted to the Assembly at the main part of its fifty-ninth session;

8. Welcomes the efforts of the Secretary-General to present the proposed programme budget for the biennium 2004-2005 in a results-based budgeting format, and encourages the Secretary-General to make further progress in this regard;

9. Invites the Security Council to continue to monitor closely the progress made by the Tribunal towards completing its mandate, in accordance with the completion strategy;

10. Requests the Secretary-General to develop further the link between the Tribunal’s completion strategy and objectives and the resources requested in future budget proposals;

11. Also requests the Secretary-General to continue, where appropriate, to prioritize and deploy resources in support of the completion strategy and to report thereon in the context of his first and second performance reports for the biennium 2004-2005;

12. Further requests the Secretary-General to undertake efficiency measures to streamline the work of the Tribunal and to provide an assessment of the financial impact of those measures in the context of future budget proposals;

13. Encourages the Tribunal to continue to implement and closely monitor reforms to its legal aid system, and requests the Secretary-General to report thereon, in particular on consequent savings in defence costs, in his first performance report for the biennium 2004-2005;

14. Recalls paragraph 25 of its resolution 58/253 of 23 December 2003, and requests the Secretary-General to include, where appropriate, the International Tribunal for the Former Yugoslavia in the scope of his consideration and recommendations referred to in paragraphs 38 and 39 of his comprehensive report on the progress made by the International Tribunal for Rwanda in reforming its legal aid system;

15. Decides that vacancy rates of 10.2 per cent for Professional staff and 7.3 per cent for General Service staff shall be used as a basis for the calculation of the budget for the biennium 2004-2005;

16. Decides also not to approve the proposed increase in resources for consultants and experts;

17. Decides further to approve the proposed post and non-post resources for the Investigations Division for 2004 and to defer consideration of the resource requirements for the Division for 2005 until its fifty-ninth session;

18. Requests the Secretary-General to resubmit, in the context of his first performance report for the biennium 2004-2005, a proposal for the resource requirements for the Investigations Division for 2005, and to ensure that the proposal is adequate for the effective implementation of the completion strategy;

19. Endorses the conclusions and recommendations of the Advisory Committee contained in paragraph 28 of its report;

20. Concurs with the Advisory Committee that the volume of work and the pace of completion should be monitored continuously in order to determine whether some of the posts identified for abolition or redeployment could be abolished or released for transfer to other areas of the Tribunal before the second half of 2005;

21. Decides to reduce the appropriation for contractual services to the level proposed in the second performance report of the Secretary-General on the programme budget for the biennium 2002-2003 as the proposed final appropriation, before recosting, given the savings achieved in respect of defence counsel during the biennium;

22. Decides also to reduce the proposed resources for travel of Registry staff by 200,000 United States dollars;

23. Decides further to appropriate to the Special Account for 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 total amount of 298,226,900 dollars for the biennium 2004-2005, as detailed in the annex to the present resolution;

24. Decides that the financing of the appropriation for the biennium 2004-2005 under the Special Account shall take into account the estimated income of 184,000 dollars for the biennium 2004-2005, which shall be set off against the aggregate amount of the appropriation;

25. Decides also that the total assessment for 2004 under the Special Account, amounting to 174,689,650 dollars, shall consist of:

(a) 149,021,150 dollars, being half of the estimated appropriation approved for the biennium 2004-2005;

(b) 25,668,500 dollars, being the increase in the final appropriation for the biennium 2002-2003 approved by the General Assembly in its resolution 58/254 of 23 December 2003;

26. Decides further to apportion the amount of 87,344,825 dollars, being half of the total assessment for 2004, among Member States in accordance with the

International tribunals
27. Decides to apportion the amount of 87,344,825 dollars, being half of the total assessment for 2004, among Member States in accordance with the rates of assessment applicable to peacekeeping operations for 2004;

28. Decides also 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 26 and 27 above, the amount of 20,051,150 dollars, consisting of:
   (a) 13,185,850 dollars, being half of the estimated staff assessment income approved for the Tribunal for the biennium 2004-2005;
   (b) 6,865,300 dollars, being the increase in staff assessment income for the biennium 2002-2003 approved by the General Assembly in its resolution 58/254.

Annex

<table>
<thead>
<tr>
<th></th>
<th>Gross</th>
<th>Net</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Estimated appropriation for the biennium 2004-2005</td>
<td>327,323,000</td>
<td>296,955,800</td>
</tr>
<tr>
<td>2. Recommendations of the Advisory Committee on Administrative and Budgetary Questions</td>
<td>(20,000,000)</td>
<td>(19,948,800)</td>
</tr>
<tr>
<td>3. Recommendations of the Fifth Committee</td>
<td>(9,096,700)</td>
<td>(5,152,400)</td>
</tr>
<tr>
<td>4. Revised estimated appropriation for the biennium 2004-2005</td>
<td>298,226,300</td>
<td>271,854,600</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Estimated income for the biennium 2004-2005</td>
<td>(184,000)</td>
<td>(184,000)</td>
</tr>
<tr>
<td>6. Total assessment for 2004, comprising:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Requirements representing half of the estimated appropriation for the biennium 2004-2005</td>
<td>149,021,150</td>
<td>135,835,300</td>
</tr>
<tr>
<td>(b) Requirements arising from the final appropriation for the biennium 2002-2003</td>
<td>25,668,500</td>
<td>18,803,200</td>
</tr>
<tr>
<td>Including:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2004</td>
<td>87,344,825</td>
<td>77,319,250</td>
</tr>
<tr>
<td>8. Contributions assessed on Member States in accordance with the rates of assessment applicable to peacekeeping operations of the United Nations for 2004</td>
<td>87,344,825</td>
<td>77,319,250</td>
</tr>
</tbody>
</table>

Also on 23 December, the Assembly decided that the item on the financing of ICTY would remain for consideration during its resumed fifty-eighth (2004) session (decision 58/565).

International Tribunal for Rwanda

In 2003, ICTR, in Arusha, United Republic of Tanzania, rendered five judgements, the greatest number delivered in a single year. ICTR continued to explore innovative measures to expedite trials, which included amendments to its statute by the Security Council (see p. 1324) in order to increase the number of ad hoc judges that might be used at any given time from four to nine and to expand their competence by empowering them to adjudicate over pre-trial matters. The Council further amended the statute to allow for an ICTR Prosecutor (see p. 1325). In September, Hassan Bubacar Jallow joined ICTR as its Prosecutor.

In the light of Council resolution 1503(2003) (see p. 1330), the ICTR President submitted a revised completion strategy [S/2003/946] based on information available as at 29 September. In 2003, ICTR was awarded the Friedrich-Ebert-Stiftung Human Rights Award for its contribution to human rights.


The Chambers

New cases
On 16 February, Ildephonse Hategekimana, former commander of the Ngoma camp, was arrested in Brazzaville, Congo, and transferred to ICTR three days later. He appeared before the Tribunal on 28 February for arraignment and pleaded not guilty to charges of genocide and crimes against humanity.

On 15 August, Juvenal Rugumbarara, former Bourgmestre of Bicumbi commune, was arrested in Uganda and transferred to Arusha. At his initial appearance, on 15 August, he pleaded not guilty to charges of genocide, crimes against humanity and serious violations of the Geneva Conventions of 12 August 1949 and of Additional Protocol II [YUN 1997, p. 706].

Ongoing trials
In February, the Chamber sentenced Elizaphan Ntakirutimana and his son, Gerard Ntakirutimana, to 10 and 25 years in prison, respectively. Both accused, whose trial began in
2001 [YUN 2001, p. 1208] and was ongoing in 2002 [YUN 2002, p. 1285], lodged appeals against the judgement.

In May, the Chamber rendered a judgement in the case of Eliezer Nyitengeka, who had pleaded not guilty in 1999 [YUN 1999, p. 1223] and whose trial was ongoing in 2002 [YUN 2002, p. 1285]. The accused, who was sentenced to life in prison, filed a notice of appeal on 20 June.

Also in May, Laurent Semanza, whose trial began in 2000 [YUN 2000, p. 1226] and was ongoing in 2001 [YUN 2001, p. 1208] and 2002 [YUN 2002, p. 1286], was sentenced to 25 years in prison. Both the accused and the prosecutor appealed the judgement.

The trial of Sylvestre Gacumbitsi, who was arrested and pleaded not guilty in 2001 [YUN 2001, p. 1207], began on 28 July.


The trial of Emmanuel Ntindahabihizri, who was arrested and pleaded not guilty in 2001 [YUN 2001, p. 1207], began on 1 September.

On 6 November, the trial began against Casimir Bizimungu, Justin Mugenzi, Jerome Bicamumspa and Prosper Mugiraneza, referred to as the Government II case [YUN 1999, pp. 1222 & 1223].

On 27 November, the trial began against Edouard Karemera, Andre Rwamakuba, Matthieu Ngorumapate and Joseph Nzirorera, referred to as the Government I case [YUN 1999, pp. 1222 & 1223].

In December, the Chamber sentenced Juvenal Kajelijeli, whose trial began in 2001 [YUN 2001, p. 1208] and was ongoing in 2002 [YUN 2002, p. 1286], to three concurrent sentences: a life sentence each for genocide and for a crime against humanity (extermination) and 15 years in prison for direct and public incitement to commit genocide. He was acquitted of a crime against humanity (rape). The accused appealed the judgement.

In the “Media” case [YUN 1999, p. 1222], which was ongoing in 2002 [YUN 2002, p. 1285], Ferdinand Nahimana and Hassan Ngeze, in December, were sentenced to life in prison, while Jean-Bosco Barayagwiza was sentenced to 35 years in prison. They filed appeals against the judgement.


Regarding an appeal by Georges Anderson Nderubumwe Rutaganda against his life sentence [YUN 1999, p. 1223], the Appeals Chamber, on 26 May, quashed the conviction on count 7 of the indictment (crime against humanity (murder)), overturned his acquittal on counts 4 and 6 of the indictment (murder as a violation of the 1949 Geneva Conventions) and rejected the remainder of his grounds for appeal. The Appeals Chamber confirmed the life sentence imposed by the Trial Chamber.

An accused, Samuel Musabyimana, who was arrested in 2001 [YUN 2001, p. 1207], passed away on 24 January.

**Election of judges**

In 2003, the General Assembly elected 11 ICTR judges for terms of office to expire on 24 May 2007. In addition, 18 ad litem judges were elected.

In order to achieve the target for the Tribunal to complete all trial activities at first instance by the end of 2008, as set by the Security Council in resolution 1503(2003) (see p. 1330), the Council amended the ICTR statute to permit an ad litem judge who was appointed to serve for a trial to adjudicate in pre-trial proceedings. The statute was also amended to authorize the use of up to nine ad litem judges at any one trial, rather than a maximum of four.

**Permanent judges**

In January, the General Assembly adopted decision 57/414 A without vote [agenda item 18].

**Election of judges 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**

At its 80th plenary meeting, on 31 January 2003, the General Assembly, in accordance with article 12 of 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 Rwanda and Neighbouring States between 1 January and 31 December 1994.
Neighbouring States between 1 January and 31 December 1994, elected the following eleven judges to serve in the Trial Chambers of the Tribunal for a term of office of four years, that is until 24 May 2007:

Mr. Mansoor AHMED (Pakistan)
Mr. Sergei Alekseevich EGOROV (Russian Federation)
Mr. Asoka de Zoyya GUNAWARDANA (Sri Lanka)
Mr. Mehmet GÜNEY (Turkey)
Mr. Erik MØSE (Norway)
Ms. Arlette RAMAROSON (Madagascar)
Mr. Jai Ram REDIN (Fiji)
Mr. William Hussein SEKULE (United Republic of Tanzania)
Ms. Andrésia VAZ (Senegal)
Ms. Inés Mónica WEINBERG DE DOCA (Argentina)
Mr. Lloyd George WILLIAMS (Saint Kitts and Nevis)

Communications. In identical letters of 16 April [A/57/790-S/2003/43] to the Presidents of the Security Council and the General Assembly, the Secretary-General transmitted a March letter of the ICTR President, Judge Navanethem Pillay, requesting extensions of the term of office of four permanent judges who were not elected to a new term, in order to allow them to dispose of a number of ongoing cases expected to continue beyond the end of their term on 24 May. The requests raised institutional and budgetary questions regarding the status of a judge beyond his/her elected term of office and related financial arrangements. Approval by the Council, as the parent organ of the Tribunal, and of the Assembly, as the organ that elected its judges, would be desirable to preclude any question on the legality of the extensions. The Registry estimated the associated costs at $1,893,800.

The Council President, in a 30 April letter [8/2003/550] to the Secretary-General, presented the views of Council members on the requested extensions to the effect that each request raised a different set of legal and practical issues. Council members had asked him to seek the advice of the President of the International Criminal Court (ICC) regarding the extension of Judge Pillay, who, on 4 February, had been elected an ICC judge for a term that had started on 11 March. Furthermore, Council members asked Judge Pillay for clarification of the issues raised and for quarterly reports on the progress of the cases in question, once the Council took action on the requests.

Mexico, on 19 May [8/2003/354], transmitted a 30 April letter from the Council President to the ICC President seeking advice on Judge Pillay’s availability and the ICC Vice-President’s 2 May reply, stating that it was not envisaged that she would be assigned substantive case work before year’s end.

An 8 May letter [8/2003/554] from the Secretary-General to the Council President transmitted the views of Judge Pillay on the requests contained in her March letter (above), particularly regarding the extension of Judge Winston Churchill Matanzima Maqutu’s term to December 2005 in order to complete the “Butare” case (see p. 1321). 

Regarding her election to ICC judge, Judge Pillay confirmed that she would be fully available as an ICTR judge and would not engage in substantive work as an ICC judge during the period required to complete the “Media” case (see p. 1321), which was expected to be completed no later than year’s end.

SECURITY COUNCIL ACTION


The Security Council,
Taking note of the letter dated 16 April 2003 from the Secretary-General addressed to the President of the Security Council attaching the letter dated 26 March 2003 from the President of the International Tribunal for Rwanda addressed to him,
Taking note also of the letter dated 30 April 2003 from the President of the Security Council addressed to the President of the International Criminal Court and the reply from the Vice-President of the International Criminal Court dated 2 May 2003, and of the letter dated 30 April 2003 from the President of the Security Council addressed to the Secretary-General and the reply from the Secretary-General dated 8 May 2003, to which is attached the letter addressed to him from the President of the International Tribunal for Rwanda dated 6 May 2003,
1. Decides, in response to the request by the Secretary-General, that:
(a) Judge Dolenc, once replaced as a member of the International Tribunal for Rwanda, finish the Gyangugu case which he has begun before expiry of his term of office;
(b) Judge Maqutu, once replaced as a member of the Tribunal, finish the Kayijli and Kamuhanda cases which he has begun before expiry of his term of office;
(c) Notwithstanding article 11, paragraph 1, of the statute of the Tribunal and on an exceptional basis, Judge Ostrovsky, once replaced as a member of the Tribunal, finish the Gyangugu case which he has begun before expiry of his term of office;
(d) Judge Pillay, once replaced as a member of the Tribunal, finish the Media case which she has begun before expiry of her term of office;
2. Takes note, in this regard, of the intention of the Tribunal to finish the Gyangugu case before the end of February 2004 and the Kayijli, Kamuhanda and Media cases before the end of December 2003;
3. Requests the President of the Tribunal to provide it, by 1 August 2003, 15 November 2003 and 15 January 2004, respectively, with reports on the progress of the cases referred to in paragraph 1 above.

Also on 19 May [A/57/841], the Secretary-General transmitted the Council’s resolution to the General Assembly.
On 22 May, the General Assembly adopted decision 57/414 B without vote [agenda item 18].

Election of judges 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

At its 86th plenary meeting, on 22 May 2003, the General Assembly decided to endorse those recommendations of the Secretary-General that were endorsed by the Security Council in its resolution 1482 (2003) of 19 May 2003, that Judge Dolenc, once replaced as a member of the Tribunal, would finish the Cyanugu case which he had begun before expiry of his term of office; Judge Maqutu, once replaced as a member of the Tribunal, would finish the Kajelijeli and Kamuhanda cases which he had begun before expiry of his term of office; notwithstanding article 11, paragraph 1, of the statute of the Tribunal and on an exceptional basis, Judge Ostrovsky, once replaced as a member of the Tribunal, would finish the Cyanugu case which he had begun before expiry of his term of office; Judge Fillay, once replaced as a member of the Tribunal, would finish the Cyanugu case which he had begun before expiry of his term of office. The Assembly also took note of the intention of the Tribunal to finish the Cyanugu case before the end of February 2004 and the Kajelijeli, Kamuhanda and Media cases before the end of December 2003.

Ad litem judges

Communications. On 6 March [S/2003/290], the Secretary-General forwarded to the Security Council a list of the 26 nominations, together with their curricula vitae, that he had received with their curricula vitae, noting that the list remained short of the minimum number of 36.

Security Council action


Also on 29 April [A/57/800], the Council President transmitted the Council’s resolution to the General Assembly.

Communications by Secretary-General. By a 30 April memorandum [A/57/801], the Secretary-General submitted the list of candidates selected by the Security Council to the General Assembly. He transmitted their curricula vitae through a...
June \[A/57/801/Add.1-5\], the Secretary-General in-
imemorandums issued between 16 May and 26
Security Council President an 8 September letter
office beginning on 25 June 2003:
inqing eighteen ad litem judges for a four-year term of
12 ter of the statute of the T ribunal, elected the follow-
general Assembly, in accordance with articles 12 and
1324 Legal questions
judicial business and enable the T ribunal to make
adjudicate in pre-trial proceedings in other cases. He/she could also
during the period in which an ad litem judge was
powers of ad litem judges in the International T ribu-
al for Rwanda so that, during the period of their ap-
pointment to a trial, they might also adjudicate in pre-
trial proceedings in other cases, should the need arise
and should they be in a position to do so,
Convinced of the advisability of increasing the number of ad litem judges that may be appointed at any one time to serve in the Trial Chambers of the International Tribunal for Rwanda, so that the Tribunal might be better placed to complete all trial activi-
ties at first instance by the end of 2008, as envisaged in its Completion Strategy.
Acting under Chapter VII of the Charter of the United Nations,
1. Decides to amend articles 11 and 12 quater of the Statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in the annex to the present resolution;
2. Decides to remain actively seized of the matter.
Annex
Article 11
Composition of the Chambers
1. The Chambers shall be composed of sixteen per-
1300
manent independent judges, no two of whom may be
nationals of the same State, and a maximum at any one
complete the trials of all persons currently being, or who might in the future be, prosecuted before it.

**GENERAL ASSEMBLY ACTION**

In June, the General Assembly adopted decision 57/414 C without vote [agenda item 18].

Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible and Other Violations of International Humanitarian Law Commited 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

At its 92nd plenary meeting, on 25 June 2003, the General Assembly, in accordance with articles 12 and 12 ter of the statute of the Tribunal, elected the following eighteen ad litem judges for a four-year term of office beginning on 25 June 2003:

- Aydin Sefa AKAY (Turkey)
- Ms. Florence Rita ARREY (Cameroon)
- Ms. Salome Bahungu BOSSA (Uganda)
- Mr. Robert FREMR (Czech Republic)
- Ms. Taghreed HIKMAT (Jordan)
- Ms. KariN HØKBORG (Sweden)
- Mr. Vago JOENSEN (Denmark)
- Ms. Karin HÖKBORG (Sweden)
- Ms. T aghreed HIKMA T (Jordan)
- Mr. Robert FREMR (Czech Republic)
- Mr. Vagn JOENSEN (Denmark)
- Mr. Gherdau Gustave RAM (Burkina Faso)
- Mr. Tan Sri Dato’ Hj. Mohd. Azmi Dato’ Hj. KAMARUDDIN (Malaysia)
- Ms. Flavia LATTANZI (Italy)
- Mr. Kenneth MACHIN (United Kingdom of Great Britain and Northern Ireland)
- Mr. Joseph Edward Chiondo MASANCHE (United Republic of Tanzania)
- Mr. Lee Gacuiga MUTHOGA (Kenya)
- Mr. Seon Ki PARK (Republic of Korea)
- Mr. Mparany Mamy Richard RAJOINSON (Madagascar)
- Mr. Emile Francis SHORT (Ghana)
- Mr. Albertus Henricus Joannes SWART (Netherlands)
- Ms. Aura Emérita GUERRA DE VILLALAZ (Panama)

Amendment of statute
The Secretary-General transmitted to the Security Council President an 8 September letter \[S/2003/879\] from the ICTR President requesting that the Council amend the ICTR statute so that, during the period in which an ad litem judge was appointed to serve for a trial, he/she could also adjudicate in pre-trial proceedings in other cases. The amendment would facilitate the conduct of judicial business and enable the Tribunal to make better use of the time and abilities of the ad litem judges.

In a 29 September letter \[S/2003/946\], the President stated that if ICTR’s judicial capacity remained unchanged, it would take until 2011 to
time of nine 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 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 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 quater**

**Status of ad litem judges**

1. During the period in which they are appointed to serve in the International Tribunal for Rwanda, ad litem judges shall:
   (a) Benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal for Rwanda;
   (b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal for Rwanda;
   (c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal for Rwanda;
   (d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal for Rwanda, ad litem judges shall not:
   (a) Be eligible for election as, or to vote in the election of, the President of the International Tribunal for Rwanda or the Presiding Judge of a Trial Chamber pursuant to article 13 of the present statute;
   (b) Have power:
      (i) To adopt rules of procedure and evidence pursuant to article 14 of the present statute. They shall, however, be consulted before the adoption of those rules;
      (ii) To review an indictment pursuant to article 18 of the present statute;
      (iii) To consult with the President of the International Tribunal for Rwanda in relation to the assignment of judges pursuant to article 13 of the present statute or in relation to a pardon or commutation of sentence pursuant to article 27 of the present statute.

**Office of the Prosecutor**

The Office of the Prosecutor had instituted internal reforms to increase the trial capacity of ICTR to the level of prosecuting up to six different cases every day. The Office focused on individuals who allegedly were in positions of leadership and bore the gravest responsibility for the crimes committed in 1994. Accused and suspects alleged to have been mid- to low-level participants in those crimes were to be transferred to national jurisdictions, including Rwanda, for trial. An updated version of the completion strategy for ICTR’s work was submitted to the Security Council on 29 September [S/2003/846] (see p. 1290).


**SECURITY COUNCIL ACTION**


The Security Council, 
Recalling its resolution 1503(2003) of 28 August 2003, 
Noting that by that resolution the Council created a new position of Prosecutor of the International Tribunal for Rwanda,
Having regard to article 15, paragraph 4, of the statute of the International Tribunal for Rwanda, as adopted by the Council in its resolution 1503(2003),
Having considered the nomination by the Secretary-General of Mr. Hassan Bubacar Jallow as Prosecutor of the International Tribunal for Rwanda,
Appoints Mr. Hassan Bubacar Jallow as Prosecutor of the International Tribunal for Rwanda with effect from 15 September 2003 for a four-year term.

**The Registry**

In the light of the completion strategy (see p. 1220), management reforms and organizational restructuring were undertaken in the Office of the Registrar. Significant changes included the re-amalgamation of the witnesses and victims support mechanisms of the Registry into a single section and the remerging of the offices into a single section and the re-amalgamation of the witnesses and victims support mechanisms of the Registry into a single section and the remerging of the offices into a single section and the re-amalgamation of the witnesses and victims support mechanisms of the Registry into a single section and the remerging of the management of the United Nations Detention Facility with that of the Defence Counsel to form the Defence Counsel and Detention Management Section.

In March, the Registrar signed an agreement with France on the enforcement of sentences.

The recruitment, in June, of a Gender Adviser within the Gender Advisory Unit of the Office provided the impetus for more strategic action in gender-sensitive areas. The Unit contributed to the establishment of policy guidelines aimed at encouraging a more conducive environment for the participation of victims and witnesses in the
judicial proceedings. Physical and psychological support measures were provided to victims, especially those who had been subjected to rape and sexual assault, summoned to testify before the Tribunal.

Report of Secretary-General. In response to General Assembly resolution 57/289 [YUN 2002, p. 1291], the Secretary-General, in September [A/58/566], described progress made in the reform of the ICTR legal aid system, particularly with regard to rationalizing the costs of defence counsel and other services. The Defence Counsel and Detention Management Section instituted measures to monitor and control the upward trend of defence costs. The report of a consultant, which was annexed to the main report, stated that the systems at both ICTY and ICTR were flawed and open to abuse and made recommendations regarding defence team costs and indigency.

ACABQ report. A November report of ACABQ [A/58/554] commended the course of action proposed in the Secretary-General's report. However, it did not share the concern raised in the report as to the discriminatory effect of restricting the lists of lead counsel, co-counsel, legal assistants and investigators to persons residing in Africa, or that all co-counsel, legal assistants and investigators should be from Africa. The Committee was of the view that the effect of implementing the recommendations on the cost of defence counsel was not yet clear, but that it was bound to be considerable. Information on progress made in that regard should be provided.

Financing

2002-2003 biennium

Report of Secretary-General. A November report of the Secretary-General [A/58/597], submitted in response to General Assembly resolution 57/289 [YUN 2002, p. 1291], contained the second performance report of ICTR for the 2002-2003 biennium. The report indicated an additional requirement of $4.5 million gross ($4.4 million net) over the revised appropriation for that biennium. The increased requirements pertained to changes with respect to the combined effect of exchange rates and inflation ($7.5 million gross ($7.5 million net), partially offset by decreases in post incumbency and other changes ($3 million gross ($3.1 million net)). The Assembly was requested to revise the appropriation for the 2002-2003 biennium to $208,5 million gross ($187.3 million net) to the ICTR Special Account.

ACABQ report. A November report of ACABQ [A/58/605] recommended that the General Assembly approve the revision of the 2002-2003 appropriation to the ICTR Special Account as requested by the Secretary-General's report (above).

GENERAL ASSEMBLY ACTION

On 23 December [meeting 79], the General Assembly, on the recommendation of the Fifth Committee [A/58/570], adopted resolution 58/252 without vote [agenda item 13].

Second performance report for the biennium 2002-2003 on 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 second performance report of the Secretary-General for the biennium 2002-2003 on 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 related report of the Advisory Committee on Administrative and Budgetary Questions,

Recalling its resolution 49/238 of 20 July 1995 on the financing of the International Tribunal for Rwanda and its subsequent resolutions thereon, the latest of which were resolutions 56/248 A of 24 December 2001, 56/248 B of 27 March 2002 and 57/289 of 20 December 2002,

1. Takes note of the second performance report of the Secretary-General for the biennium 2002-2003 on 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 related report of the Advisory Committee on Administrative and Budgetary Questions;

2. Endorses the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;

3. Notes with concern the late issuance of the second performance report of the Secretary-General for the biennium 2002-2003, bearing in mind the nature of the report and the period covered therein;

4. Resolves that, for the biennium 2002-2003, the amount of 203,962,600 United States dollars gross (182,870,700 dollars net) approved in its resolution 57/289 of 20 December 2002 for the budget of the International Tribunal for Rwanda, shall be adjusted by the amount of 4,37,100 dollars gross (4,392,200 dollars net) for a total amount of 208,479,700 dollars gross (187,262,900 dollars net).
**2004-2005 biennium**

Reports of Secretary-General. An August report of the Secretary-General [A/58/368] contained the ICTR resource requirements for the 2004-2005 biennium. Those requirements, before recosting, amounted to $209 million gross ($187.3 million net), including growth of $4.8 million gross ($4.4 million net), or 2.4 per cent, compared with the revised 2002-2003 appropriation (see p. 1326).

The real resource changes included provisions for the delayed impact of 169 new posts and the ad litem judges approved for 2002-2003 (see p. 1325). In nominal terms, the estimate for 2004-2005 amounted to $235 million gross ($213 million net) and reflected an increase of $26 million net mostly due to the impact of changes in inflation, offset by a decrease in exchange rates.

A September report of the Secretary-General [A/58/369] estimated additional ICTR requirements for 2004-2005 of $4 million gross ($3.4 million net) in the light of Security Council resolution 1503 (2003) (see p. 1330), which established the new position of ICTR Prosecutor. Thus, the overall requirements for 2004-2005 in nominal terms increased from $235 million gross ($213 million net) to $293.2 million gross ($261.3 million net).

A September note by the Secretary-General [A/58/367] stated that, as at 12 September, the Council, pursuant to General Assembly resolution 57/289, continued the temporary arrangements set out in resolution 57/289, for which resources in the amount of $250,000 were included in the revised 2002-2003 appropriation (see p. 1326).

In nominal terms, the estimate for 2004-2005 amounted to $235 million gross ($213 million net) and reflected an increase of $26 million net mostly due to the impact of changes in inflation, offset by a decrease in exchange rates.

**ACABQ report.** In a November report [A/58/550], the Secretary-General set out the resource requirements for 2004-2005 in the light of Council resolution 1512 (2003) (see p. 1324), which established five additional ICTR posts for ad litem judges. The estimated additional requirements would amount to $12.2 million gross ($11.2 million net), with an additional 45 temporary posts, thus increasing the overall requirements from $293.2 million gross ($261.3 million net) to $251.4 million gross ($227.5 million net).**

**ACABQ report.** In November report [A/58/554], ACABQ recommended approval of the estimated ICTR requirements for the 2004-2005 biennium of $251.4 million gross ($227.5 million net).

**GENERAL ASSEMBLY ACTION**

On 23 December [meeting 79], the General Assembly, on the recommendation of the Fifth Committee [A/58/579], adopted resolution 58/253 without vote [agenda item 131].

**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 documents submitted by the Secretary-General on the financing for the biennium 2004-2005 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 and the related report 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 were resolutions 56/248 A of 24 December 2001, 56/248 B of 27 March 2002 and 57/289 of 20 December 2002,

Recalling also Security Council resolution 1503(2003) of 28 August 2003 concerning the creation of a new position of Prosecutor of the International Tribunal for Rwanda,

Recalling further Security Council resolution 1312 (2003) of 27 October 2003 concerning the authorization of the use of up to nine ad litem judges in the International Tribunal for Rwanda,

Welcoming the developments and improvements in the management and the activities of the Tribunal thus far achieved during the biennium 2002-2003,

1. Takes note of the documents submitted by the Secretary-General on the financing for the biennium 2004-2005 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 and the related report of the Advisory Committee on Administrative and Budgetary Questions;

2. 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;

3. Notes with concern the levels of unpaid assessed contributions, and urges Member States to pay their assessed contributions on time, in full and without conditions;

4. Welcomes the efforts of the Secretary-General to present the proposed budget for the biennium 2004-2005 in a results-based format, and encourages him to make further progress in this regard;

5. Requests the Secretary-General to ensure that the report requested in paragraph 2 of General Assembly resolution 55/226 of 23 December 2000, as well as the views of the Board of Auditors thereon, is submitted to the Assembly during the main part of its fifty-ninth session;
6. Welcomes the appointment of a Prosecutor and the authorization for the use of up to nine ad litem judges, as approved by the Security Council in its resolutions 1503(2003) and 1512(2003), and stresses the importance of ensuring that the Tribunal receives adequate financial and human resources to support its strengthened judicial capacity and to enable it to meet the targets set out in its completion strategy;

7. Welcomes also the efforts made by the Tribunal to enhance coordination between the Chambers, the Office of the Prosecutor and the relevant sections of the Registry, through the establishment of the various management committees;

8. Requests the Tribunal to continue to enhance its engagement with the defense counsel establishment in the facilitation of trial work;

9. Welcomes the development of the completion strategy, and invites the Tribunal to revise the strategy, where appropriate, to take into account the provisions of Security Council resolutions 1503(2003) and 1512 (2003) and the resultant increased judicial capacity of the Tribunal;

10. Requests the Secretary-General to develop further the link between the Tribunal’s completion strategy and objectives and the resources requested in future budget proposals.

11. Concurs with the view of the Advisory Committee on Administrative and Budgetary Questions that continued close collaboration between the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda is essential, and urges the Secretary-General to take all necessary measures to ensure such collaboration;

12. Notes with concern that the vacancy rate at the International Tribunal for Rwanda remains high, while acknowledging that the level has been reduced during the biennium 2002-2003, and requests the Secretary-General to take the necessary measures, as a matter of priority, to reduce the vacancy rate during the biennium 2004-2005, including, if appropriate, through delegating authority to the Registrar for recruitment in the Professional category and considering extending the contracts of core staff for longer periods, consistent with the staff regulations and rules, and bearing in mind the targets set in the completion strategy;

13. Requests the Secretary-General to continue, where appropriate, to prioritize and deploy resources in support of the completion strategy and to report thereon in his first and second performance reports;

14. Also requests the Secretary-General to undertake efficiency measures to streamline the work of the Tribunal and to provide an assessment of the financial impact of those measures in future budget proposals;

15. Invites the Security Council to continue to monitor closely the progress made by the Tribunal towards completing its mandate, in accordance with the completion strategy;

16. Also invites the Security Council to request the Secretary-General to make initial preparations, including establishing the rules of procedure, for the transfer of cases to national jurisdictions;

17. Requests the Secretary-General to report to the General Assembly at its fifty-ninth session on proposals for the resources necessary to aid in the transfer of cases to national jurisdictions;

18. Decides to maintain the current level of funding for consultants and experts;

19. Also decides to approve the proposed post and non-post resources for the Investigations Division for 2004 and to defer consideration of the resource requirements for the Investigations Division for 2005 until the fifty-ninth session of the General Assembly;

20. Requests the Secretary-General to resubmit, in his first performance report for the biennium 2004-2005, proposals for the resource requirements for the Investigations Division for 2005 and to ensure that the proposals are adequate for the effective implementation of the completion strategy;

21. Also requests the Secretary-General to review the outreach programme of the Tribunal and to report to the General Assembly during the main part of its fifty-ninth session on optimal media for the dissemination of information on the work of the Tribunal and on the resources allocated to this function, and on how future outreach initiatives and coordination with other parts of the United Nations system support the completion strategy and contribute to the reconciliation process in Rwanda;

22. Further requests the Secretary-General to report on oversight functions in the Tribunal in his first performance report for the biennium 2004-2005, with specific reference to oversight of resources allocated for the upgrading of prison facilities to international standards;

23. Requests the Secretary-General to pursue the possibility of assistance to the Tribunal from the United Nations Office at Nairobi and other offices of the United Nations system to increase remote translation capabilities and to report on cost comparisons in his first performance report;

24. Welcomes the comprehensive report of the Secretary-General on the progress made by the Tribunal in reforming its legal aid system;

25. Requests the Secretary-General to continue to reform the legal aid system, taking into account the recommendations contained in the comprehensive report or other reforms deemed more appropriate by the Tribunal, as a top priority, and to report on the implementation and consequent savings in defence costs in his performance report for the biennium 2004-2005;

26. Decides that a vacancy rate of 18.2 per cent for Professional staff and 9.7 per cent for General Service staff shall be used as a basis for the calculation of the budget for the biennium 2004-2005;

27. Recalls paragraph 3 of its resolution 57/289, in which it urged the Secretary-General to request the Office of Internal Oversight Services to conduct a management review of the Office of the former Prosecutor, and requests the Secretary-General to submit the report on the matter to the General Assembly no later than at its resumed fifty-eighth session;

28. Decides to appropriate to the Special Account for 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 total amount of 235,324,200 United States dollars
for the biennium 2004-2005, as detailed in the annex to the present resolution;

29. Decides also that the total assessment for 2004 under the Special Account, amounting to 122,179,200 dollars, shall consist of:

(a) 117,662,100 dollars, being half of the estimated appropriation approved for the biennium 2004-2005;
(b) 4,517,100 dollars, being the increase in the final appropriation for the biennium 2002-2003 approved by the General Assembly in its resolution 58/252 of 23 December 2003;

30. Decides further to apportion the amount of 61,089,600 dollars, being half of the total assessment for 2004, among Member States in accordance with the rates of assessment applicable to the regular budget of the United Nations for 2004, as set out in its resolution 58/1 B of 23 December 2003;

31. Decides to apportion the amount of 61,089,600 dollars, being half of the total assessment for 2004, among Member States in accordance with the rates of assessment applicable to peacekeeping operations for 2004;

32. Decides also 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 30 and 31 above, the amount of 11,149,250 dollars, consisting of:

(a) 11,024,350 dollars, being half of the estimated staff assessment income approved for the Tribunal for the biennium 2004-2005;
(b) 124,900 dollars, being the increase in staff assessment income for the biennium 2002-2003 approved by the General Assembly in its resolution 58/252 of 23 December 2003.

Annex
Financing for the biennium 2004-2005 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></th>
<th>Gross (United States dollars)</th>
<th>Net (United States dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Estimated appropriation for the biennium 2004-2005</td>
<td>251,388,400</td>
<td>227,469,200</td>
</tr>
<tr>
<td>2. Recommendations of the Advisory Committee on Administrative and Budgetary Questions</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3. Recommendations of the Fifth Committee</td>
<td>(16,064,200)</td>
<td>(14,193,700)</td>
</tr>
<tr>
<td>4. Revised estimated appropriation for the biennium 2004-2005</td>
<td>235,324,200</td>
<td>213,275,500</td>
</tr>
<tr>
<td>5. Estimated income for the biennium 2004-2005</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>6. Total assessment for 2004, comprising:</td>
<td>122,179,200</td>
<td>111,029,950</td>
</tr>
<tr>
<td>(a) Requirements representing half of the estimated appropriation for the biennium 2004-2005</td>
<td>117,662,100</td>
<td>106,637,750</td>
</tr>
<tr>
<td>(b) Requirements arising from the final appropriation for the biennium 2002-2003</td>
<td>4,517,100</td>
<td>4,392,200</td>
</tr>
</tbody>
</table>

Also on 23 December, the Assembly decided that the item on financing of ICTR would remain for consideration during its resumed fifty-eighth (2004) session (decision 58/365).

Prison facilities
Following the Security Council’s adoption of resolution 1512(2003) (see p. 1324), the Council President, on 27 October [meeting 4849], made statement S/PRST/2003/18 on behalf of the Council:

The Security Council notes the invitation of the General Assembly contained in paragraph 7 of its resolution 57/289 of 20 December 2002 that it address uncertainties regarding the power of the International Tribunal for Rwanda under its statute to finance the upgrading of prison accommodation in which persons convicted by the Tribunal are to serve their sentences.

The Council confirms that it is within the lawful powers of the International Tribunal for Rwanda under its statute to fund the renovation and refurbishment of prison facilities in States that have concluded agreements with the United Nations for the carrying out of prison sentences of the Tribunal. Such funds shall be used to bring up to international minimum standards the prison accommodation to be occupied or used pursuant to those agreements.

The Council will remain seized of this matter.

Functioning of the tribunals
Office of the Prosecutor
On 28 July [S/2003/766], the Secretary-General informed the Security Council President that, in view of his consultations with Council members, he had concluded that it was time to split the role of the Prosecutor, heretofore shared by both ICTY and ICTR. He felt that, as the two Tribunals moved towards implementing their completion strategies, it seemed essential, in the interests of
efficiency and effectiveness, for each to have its own Prosecutor. To that end, he proposed amendments to the ICTR statute, as set out in the annex to his letter, to permit the appointment of a separate Prosecutor for ICTR.

SECURITY COUNCIL ACTION


The Security Council,


Noting the letter dated 28 July 2003 from the Secretary-General to the President of the Security Council,

Commending the important work of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda in contributing to lasting peace and security in the former Yugoslavia and Rwanda, and the progress made since their inception.

Noting that an essential prerequisite for achieving the objectives of the completion strategies of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda is full cooperation by all States, especially in apprehending all remaining at-large persons indicted by the Tribunals, but noting with concern that certain States are still not offering full cooperation,

Urging Member States to consider imposing measures against individuals and groups or organizations assisting indictees at large to continue to evade justice, including measures designed to restrict the travel and freeze the assets of such individuals, groups, or organizations.

Recalling and reaffirming in the strongest terms the statement of 23 July 2002 made by the President of the Security Council, endorsing the strategy of the International Tribunal for the Former Yugoslavia for completing investigations by the end of 2004, all trial activities by the end of 2008, and all of its work in 2010 (the International Tribunal for the Former Yugoslavia Completion Strategy), by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate, including Rwanda, in order to allow the International Tribunal for Rwanda to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (International Tribunal for Rwanda Completion Strategy),

Noting that the above-mentioned completion strategies in no way alter the obligation of Rwanda and the countries of the former Yugoslavia to investigate those accused whose cases would not be tried by International Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia and take appropriate action with respect to indictment and prosecution, while bearing in mind the primacy of the Tribunals over national courts,

Noting also that the strengthening of national judicial systems is crucially important to the rule of law in general and to the implementation of the completion strategies of the International Tribunal for the Former Yugoslavia and International Tribunal for Rwanda in particular,

Urging the International Tribunal for Rwanda to formalize a detailed strategy, modelled on the International Tribunal for the former Yugoslavia Completion Strategy, to transfer cases involving intermediate- and lower-rank accused to competent national jurisdictions, as appropriate, including Rwanda, in order to allow the International Tribunal for Rwanda to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010 (International Tribunal for Rwanda Completion Strategy),

Noting further that an essential prerequisite for achieving the objectives of the International Tribunal for the Former Yugoslavia Completion Strategy is the expeditious establishment under the auspices of the High Representative and early functioning of a special chamber within the State Court of Bosnia and Herzegovina (the “War Crimes Chamber”) and the subsequent referral by the International Tribunal for the Former Yugoslavia of cases of lower- or intermediate-rank accused to the Chamber,

Convinced that the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda can most efficiently and expeditiously meet their respective responsibilities if each has its own Prosecutor,

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

1. Calls upon the international community to assist national jurisdictions, as part of the completion strategies, in improving their capacity to prosecute cases transferred from the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, and encourages the Presidents, Prosecutors, and Registrars of the Tribunals to develop and improve their outreach programmes;

2. Calls upon all States, especially Serbia and Montenegro, Croatia, and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the International Tribunal for the Former Yugoslavia, particularly to bring Radovan Karadžić and Ratko Mladić, as well as Ante Gotovina and all other indictees to the Tribunal, and calls upon these and all other at-large indictees of the Tribunal to surrender to it;

3. Calls upon all States, especially Rwanda, Kenya, the Democratic Republic of the Congo, and the Republic of the Congo, to intensify cooperation with and render all necessary assistance to the International Tribunal for Rwanda, including on investigations of the Rwandan Patriotic Army and efforts to bring Felicien Kabuga and all other such indictees to the Tribunal, and calls upon these and all other at-large indictees of the Tribunal to surrender to it;
4. Calls upon all States to cooperate with the International Criminal Police Organization (ICPO-Interpol) in apprehending and transferring persons indicted by the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda;

5. Calls upon the donor community to support the work of the High Representative for Bosnia and Herzegovina in creating a special chamber, within the State Court of Bosnia and Herzegovina, to adjudicate allegations of serious violations of international humanitarian law;

6. Requests the Presidents of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda and their Prosecutors, in their annual reports to the Council, to explain their plans to implement the completion strategies of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda;

7. Calls upon the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all of their work in 2010 (the completion strategies);

8. Decides to amend article 15 of the statute of the International Tribunal for Rwanda and to replace that article with the provision set out in the annex to the present resolution, and requests the Secretary-General to nominate a person to be the Prosecutor of the International Tribunal for Rwanda;

9. Welcomes the intention expressed by the Secretary-General in his letter dated 28 July 2003 to submit to the Security Council the name of Ms. Carla Del Ponte as nominee for Prosecutor of the International Tribunal for the Former Yugoslavia;

10. Decides to remain actively seized of the matter.

Annex

Article 15 The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

OIOS report

Pursuant to General Assembly resolution 57/289 [YUN 2002, p. 1291], the Secretary-General transmitted a review by the Office of Internal Oversight Services (OIOS) [A/58/677] of the Office of the Prosecutor of ICTR and of ICTY. The review, conducted in June and July, concluded that the then sole Prosecutor for both Tribunals had taken initiatives to improve the performance of the two Offices through the use of information technology and changing working methods, such as the way translations were carried out. However, best practices were not always shared between the Offices, resulting in missed opportunities for building synergies. In addition, arrangements for planning and monitoring needed internal strengthening, in coordination with the other organs of the ‘Tribunals. There was insufficient information to confirm the Tribunals’ contention to the Security Council that investigation and prosecution mandates would be completed by 2004 and 2008, respectively. The Offices lacked a strategy document that formed part of a coordinated Tribunal-wide approach and that identified the factors that impacted on the Tribunals’ ability to achieve the completion dates. While certain elements were present in the ICTR and ICTY proposed 2004-2005 budgets, which included a revised management structure, reduction and redeployment of staff of the Office of the Prosecutor of both Tribunals, nowhere were those clearly indicated as requirements to achieve the completion dates. The review found delays in recruiting the ICTR Deputy Prosecutor and the Chief of Prosecutions to be due to inappropriate recruitment procedures on the part of the Offices and the Registries. The Secretary-General took note of the OIOS findings and concurred with the recommendations. The ICTR and ICTY Prosecutors had accepted the recommendations and were in the process of implementing them.