

Chapter II

International tribunals

In 2004, 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) completed remaining investigations and subsequently filed indictments for war crimes, thereby meeting the first of three deadlines set out in its 2002 completion strategy to accomplish its mandate by 2010. The other two deadlines were to complete first instance trials by 2008 and the rest of its work by 2010. 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) formalized and revised its completion strategy, based on the same objectives and targets as those of ICTY. It met its first deadline of completing investigations by year's end. Both Tribunals focused efforts during the year on the implementation of other deadlines under their respective completion strategies. In May and November progress reports, they detailed specific measures being taken in that regard and potential obstacles. In August, the Security Council encouraged them to remain on track for meeting the relevant target dates.

In related developments, the Office of the Prosecutor of ICTY developed measures to enhance its operations and streamline its procedures under the leadership of a new Deputy Prosecutor and a new Chief of Prosecutions, while the Registrar, mandated to support and facilitate the work of ICTY's other organs, began to implement an action plan to enforce sentences. ICTY also made efforts to increase the cooperation of relevant countries, which resulted in numerous arrests and a number of fugitive surrenders. In October, the review functions performed by the ICTY Prosecutor, which had enabled the Tribunal to oversee prosecutions by national authorities under the 1996 Rome Agreement (known as the "Rules of the Road"), were transferred to the State Prosecutor of Bosnia and Herzegovina. In November, the General Assembly elected 14 permanent

judges to ICTY, to replace those whose terms would expire in November 2005.

During the year, ICTR achieved its full complement of nine *ad litem* judges, which enabled it to initiate four new trials and to maintain its 2003 record of five trial judgements within a single year. To further facilitate its work, ICTR established an Appeals Section in the Office of the Prosecutor and enhanced its tracking activities to ensure that as many fugitives as possible were arrested in good time to enable trials to be completed before the end of 2008.

International Tribunal for the Former Yugoslavia

In 2004, the International Tribunal for the Former Yugoslavia (ICTY) pushed forward with the implementation of its completion strategy [YUN 2002, p. 1275], adopting further reforms to ensure compliance with Security Council resolutions 1503(2003) [YUN 2003, p. 1330] and 1534(2004) (see p. 1292). In April, ICTY amended the following Rules of Procedure and Evidence: rule 28 (A), to ensure that all indictments confirmed by the Tribunal met the Council's directive that they concentrate, *prima facie*, on one or more of the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction; and rule II bis, to facilitate the referral of cases involving intermediate- and lower-level accused by increasing the jurisdictions available to receive its cases. The latter amendment authorized the Trial Chambers to refer a case to any jurisdiction in which the accused could be tried fairly and where the death penalty would not be imposed. In December, rule 98 bis, which concerned a Trial Chamber's oral decision after hearing oral submissions of the parties at the close of the prosecutor's case, was also amended.

ICTY continued its work in preparing the States in the Balkan region for the prosecution of war crimes cases. To advance the establishment of a special chamber for that purpose in the State Court of Bosnia and Herzegovina, it formed working groups comprising representatives from

the office of the President, the Registry, the Office of the Prosecutor and the Office of the High Representative for the Implementation of the Peace Agreement for Bosnia and Herzegovina, which made substantial progress with regard to legal reform, witness protection and detention facilities. ICTY also conducted a number of training seminars in Croatia to ensure the trial-readiness of its courts.

Investigations were streamlined to concentrate on the highest-level political and military leaders responsible for having committed the gravest crimes. Particular efforts were mounted to achieve the first major deadline foreseen by the completion strategy, namely, completion by year's end of pre-indictment investigations of all remaining suspects. However, the strategy posed a number of challenges relating to the transfer of cases to courts in the former Yugoslavia, and to human resources, scheduling and legacy issues. Attention was moreover drawn to the budget limitations for the Investigations Section of the Office of the Prosecutor, the shortfall in contributions and the associated recruitment freeze amidst an increasing vacancy rate throughout ICTY, all of which could result in serious obstacles to achieving the completion schedule set by the Council.

The activities of ICTY, established by Council resolution 827(1993) [YUN 1993, p. 440], were covered in two reports to the Council and the General Assembly, for the periods 1 August 2003 to 31 July 2004 [A/59/215-S/2004/627] and 1 August 2004 to 31 July 2005 [A/60/267-S/2005/532 & Corr.1]. On 15 November, the Assembly took note of the 2003/2004 report (**decision 59/511**).

The Chambers

The judicial activities of the Tribunal's three Trial Chambers, which ran six trials simultaneously during the year, and of its Appeals Chamber included first instance and appeals proceedings against judgements, interlocutory decisions and State requests for review; proceedings concerning the Tribunal's primacy; and contempt cases. ICTY had a total of 25 judges—14 permanent judges, 2 judges from ICTR serving in the Appeals Chamber and 9 ad litem judges.

New arrests, surrenders and indictments

On 3 March, the following officials of the former self-proclaimed "Croatian Union of Herceg-Bosna" [YUN 1993, p. 460] and of Croatia were indicted jointly for crimes committed against Serbs in the Croatian-held part of northern Bosnia in 1992 and 1993: Jadranko Prlic (Prime Minister), Bruno Stojic (Head, Ministry of Defence) and

Valentin Coric (Head, Military Police); and Slobodan Praljak (Croatia's Deputy Defence Minister and Military Commander, Croatian Defence Council (HVO)), Milivoj Petkovic (Chief, HVO military staff) and Berislav Pusic (Head, HVO Commission for Exchange of Prisoners). They surrendered to the Tribunal on 5 April and pleaded not guilty at their initial appearance the following day to 26 counts of war crimes (wilful killing, torture, inhumane treatment, extensive destruction of property, plunder, unlawful labour and attacks on civilians), violations of the laws and customs of war (wanton destruction of cities and villages) and crimes against humanity (persecution, murder, torture, inhumane treatment, imprisonment and deportation). On 30 July, the Trial Chamber granted the applications of all six co-accused for provisional release on the grounds that they posed no threat to victims, witnesses and other persons and that they would appear for trial. However, 16 preliminary motions filed on 15 December by defence counsel challenging the form of the indictment and the Tribunal's jurisdiction, and calling for severance of the cases, were denied by the Chamber. A request for certification to appeal that decision was filed.

Ivan Cermak and Mladen Markac, whose indictment was confirmed on 24 February, surrendered in Croatia on 11 March. At their initial appearance on 12 March, they pleaded not guilty to seven counts of crimes against humanity and violations of the laws or customs of war (persecutions; murder; plunder of property; wanton destruction of cities, towns or villages; deportation and forced displacement; and other inhumane acts) committed against the Serb population in the Krajina region of Croatia. On 1 April, the Trial Chamber granted protective measures to victims and witnesses, and on 29 April, it denied motions for provisional release filed by the accused, who again filed similar motions in July and alleged defects in the form of the indictment. On 2 December, the Appeals Chamber overturned the Trial Chamber's decision and ordered that the accused be provisionally released under various terms and conditions.

On 11 May, Colonel Mirko Norac, who was serving a national prison sentence imposed on him in Croatia for other war crimes, was indicted with two counts of crimes against humanity (persecutions and murder) and three counts of violations of the laws and customs of war (murder, plunder of property and wanton destruction of cities) committed against Serb civilians during the military operation in the Medak pocket in Croatia [YUN 1993, p. 490]; he pleaded not guilty. On 27 May, the Prosecutor filed a motion for joinder with the case against General Rahim Ademi

[YUN 2001, p. 1199; YUN 2003, p. 1313], with the intention of seeking referral of the joint case to a Court in Croatia. On 30 July, the Trial Chamber granted the joinder application and, on 2 September, the Prosecutor moved for referral of the joint case. The referral bench was currently deliberating.

Ljubisa Beara, Chief of Security in the Bosnian Serb Army, who was arrested in Serbia and transferred to the Tribunal on 10 October, made his initial appearance on 11 November and pleaded not guilty of crimes in Srebrenica, for which he was indicted.

Beqe Beqaj, indicted on 21 October for contempt or attempted contempt for allegedly interfering or attempting to interfere with potential witnesses in the trial against Fatmir Limaj, Haradin Bala and Isak Musliu [YUN 2003, p. 1311], was arrested by the international security force (KFOR) in Kosovo on 4 November and made his initial appearance on 5 November.

Miroslav Bralo, member of the HVO Special Forces Unit, whose indictment was made public in October, surrendered voluntarily on 12 November and was transferred to the Tribunal the following day. At his initial appearance on 13 December, he pleaded not guilty to eight counts of crimes in Lasva River Valley, Bosnia and Herzegovina.

Dragomir Milosevic, Chief Commander, Romanija Corps of the Bosnian Serb Army, who was indicted in 1999 for crimes in Sarajevo and who remained at large until 2004, arrived at the Tribunal on 3 December and made his initial appearance on 7 December.

In 2004, public indictments were made against Goran Hadzic and Stojan Zupljanin (Commander of the Serb-operated Regional Security Services Centre), both of whom remained at large.

Ongoing cases and trials

On 12 January, Milan Babic, indicted in 2003 for a crime against humanity and violations of the laws and customs of war [YUN 2003, p. 1312], filed a joint plea agreement with the Prosecutor, in exchange for cooperation with the prosecution in other cases. As part of the plea agreement, Mr. Babic pleaded guilty as an aider and abettor of a joint criminal enterprise, for which the prosecutor recommended a sentence not exceeding 11 years' imprisonment. He later changed his plea. On 29 June 2004, he was sentenced to 13 years in prison. The accused appealed the judgement.

In the case against Mitar Rasevic, who was indicted with other accused, and for whom the judge in 2003 entered pleas of not guilty [YUN 2003, p. 1312], a motion for leave to amend the in-

dictment was filed on 2 December 2003 by the prosecution. The defence did not oppose the motion but filed, on 12 January 2004, a fresh preliminary motion on the form of the indictment. On 28 April, the Trial Chamber granted the motion to amend the indictment. On 12 May, the prosecution filed an amended indictment, and on 10 June, the defence filed a further motion challenging parts of the amended indictment, which was denied on 27 July. In November, the prosecution moved for referral of the case to the authorities of Bosnia and Herzegovina.

Vojislav Seselj, charged in 2003 [YUN 2003, p. 1311] in a 14-count indictment alleging crimes against humanity and violations of the laws or customs of war, filed an interlocutory appeal on 12 January 2004, following the Trial Chamber's rejection of his request for permission to be visited in detention by a representative of his religion. On 29 January, the Appeals Chamber dismissed the appeal, having considered that the determination of visits an accused was allowed to receive while at the detention unit fell within the competence of the Registry and not of the Chambers. On 15 January, Mr. Seselj filed a motion challenging the Tribunal's jurisdiction and parts of the indictment. On 26 May, the Trial Chamber rejected the first part of the motion concerning the Tribunal's jurisdiction and most of the complaints of the accused about the indictment, and ordered the prosecution to amend the indictment, as the crimes for which Mr. Seselj was held responsible, committed in Vojvodina, were not properly charged. On 28 June, the prosecution filed an interlocutory appeal from the Trial Chamber's decision, submitting that the Chamber had applied an incorrect and narrow standard for the jurisdictional elements charged under article 5 of the ICTY statute; had interpreted too narrowly the words "committed in armed conflict"; and for those reasons, had erred when it held that article 5 could apply to crimes that allegedly occurred in Vojvodina only if an armed conflict existed there at the relevant time. The prosecution sought clarification from the Appeals Chamber of the phrase "committed in armed conflict", and a finding that the Trial Chamber had erred in requiring an armed conflict in Vojvodina to have occurred. On 29 July, the Appeals Chamber decided that the appeal was validly filed.

On 13 January, Blagoje Simic, found guilty of a crime against humanity and sentenced to 17 years in prison in 2003 [YUN 2003, p. 1315], was granted an extension to file his appeal brief, which he did on 17 June 2004. On 25 June, he filed a motion for disclosure of documents, and on 22 September, he filed an amended notice of appeal. On

21 October, Mr. Simic was granted provisional release from 4 to 7 November to attend a memorial service for his father.

In the case against Dragoljub Ojdanic, charged jointly with Milan Milutinovic, Slobodan Milosevic, Nikola Sainovic and Vljako Stojiljkovic in 1999 [YUN 1999, p. 1214], a scheduled appeal briefing resumed on 16 January 2004 regarding the Trial Chamber's dismissal of Mr. Ojdanic's motion challenging ICTY's jurisdiction. Mr. Ojdanic submitted that the Trial Chamber had erred in finding that the Tribunal had jurisdiction to try him for crimes allegedly committed in the territory of Kosovo as the Security Council did not have the power to vest the Tribunal with jurisdiction over the territory of the Federal Republic of Yugoslavia (currently known as Serbia and Montenegro), which, at that time, was not a Member of the United Nations. On 12 May (with reasons issued on 8 June), the Appeals Chamber dismissed the appeal. Pre-trial briefs were filed by the prosecution on 14 June, and by the defence on 13 September. In December, Mr. Milutinovic filed his second, Mr. Ojdanic his fourth, and Mr. Sainovic his third application for provisional release.

On 16 January, Dragan Nikolic, convicted and sentenced to 23 years in prison [YUN 2003, p. 1314], filed a notice of appeal from the judgement on 16 January 2004 and an appeal brief on 30 June.

Enver Hadzihanovic and Amir Kubura, who had pleaded not guilty in 2001 [YUN 2001, p. 1199] and, by a third amended indictment, were further charged in 2003 with violations of the laws or customs of war [YUN 2003, p. 1314], were granted provisional release from 18 to 20 January 2004 and from 13 to 15 March, respectively, to attend the funerals of relatives in Bosnia and Herzegovina. On a defence motion relating to the scope of prosecution examination of its witnesses, the Trial Chamber ruled on 16 March that, in the absence of an explicit mention in the third amended indictment, a charge of cruel treatment did not include allegations of inhuman treatment consisting of the use of detainees to carry out forced labour (trench digging). On 2 April, the Appeals Chamber reversed the Trial Chamber's 2003 decision [ibid.] barring the prosecution from showing one of its witnesses written extracts from his previous statement to refresh his memory. On 23 July 2004, the prosecution closed its case, having called 99 prosecution witnesses and one court witness. Mr. Hadzihanovic's defence opened its case on 18 October.

In the case against Slobodan Milosevic [YUN 1999, p. 1214; YUN 2001, p. 1201; YUN 2002, p. 1277], the Trial Chamber had granted the accused an adjournment of three months to prepare his de-

fence, and required him to present within six weeks a list of witnesses and evidentiary exhibits. In an appeal, the amici curiae argued that both periods were unreasonably short for the accused to prepare a meaningful defence, given that the case had come to trial in a relatively short period of time, that the prosecution had had a considerable amount of time available to it and that the accused was suffering from ill health. On 20 January, the Appeals Chamber dismissed the appeal and held that the Trial Chamber had acted with proper sensitivity to the concerns of a self-representing defendant and that there had been no violation of the right of the accused to a fair trial by the time limits imposed. On 25 February, the prosecution rested its case-in-chief, subject to several matters pertaining to the admission of documents and its case in rebuttal. The accused opened his case on 31 August. However, owing to frequent interruptions and delays caused by his chronic health condition, the Trial Chamber decided that, in order to safeguard his right to a fair trial, it was necessary to assign him counsel to assist him in his defence. Subsequently, two amici curiae were appointed as counsel for the defence. Following a challenge of that decision by the accused, the Appeals Chamber upheld the assignment of counsel in November, but reversed a subsequent order of the Trial Chamber regarding the modalities by which assigned counsel would fulfil their mandate.

An amended indictment, dated 23 January, brought further charges against Mile Mrksic, Miroslav Radic and Veselin Slijivancanin, who had been indicted jointly with other accused in 1997 [YUN 1997, p. 1322] for the alleged execution in Ovcara (near Vukovar, Croatia) of some 200 Croatian and other non-Serb persons removed from Vukovar Hospital in 1991. Mr. Radic and Mr. Slijivancanin had made initial appearances before the Tribunal in 2003 [YUN 2003, p. 1311]. In its decision authorizing additional charges, the Trial Chamber upheld challenges from the accused and ordered the prosecution to amend the indictment in a manner that complied with the Tribunal's pleading principles. A further decision on the form of the indictment, issued on 20 July 2004, which partly granted motions by the accused, directed the prosecution to amend and re-file the indictment no later than 17 August.

Sentencing hearings were held on 27 January and 5 March in the case of Miroslav Deronjic, who was arrested in 2002 [YUN 2002, p. 1276] and pleaded guilty in 2003 [YUN 2003, p. 1315] to charges brought against him. On 30 March 2004, the Trial Chamber entered a single conviction against the accused for persecutions, a crime against humanity, and sentenced him to 10 years in prison.

The presiding judge, in his dissent, held that the accused deserved a sentence of no less than 20 years' imprisonment. On 28 April, Mr. Deronjic filed a notice of appeal from the judgement.

Ivica Rajic, who pleaded not guilty in 2003 [YUN 2003, p. 1311], entered the same plea on 29 January 2004 to an amended indictment alleging five counts of war crimes (wilful killing, inhumane treatment and sexual assault, unlawful confinement, appropriation of property and wanton destruction) and five counts of violations of the laws and customs of war (murder, outrages upon personal dignity, cruel treatment, plunder, wanton destruction of towns and unjustified devastation). In response to a defence motion on the form of the second indictment, the Trial Chamber ordered the Prosecutor on 27 April to clarify a number of allegations in the indictment.

In January, Franko Simatovic and Jovica Stanisic, who pleaded not guilty in 2003 to four counts of crimes against humanity and one count of violating the laws or customs of war [YUN 2003, p. 1311], filed applications for provisional release, which were granted on 28 July 2004, based mainly on expert evidence as to the medical condition of Mr. Stanisic. On 29 July, the Trial Chamber, upon request from the prosecution, ordered the stay of the decisions to enable the prosecution to seek leave to appeal. On 3 December, the Appeals Chamber dismissed the prosecution's appeal and ordered the provisional release of both accused.

The trial of Momcilo Krajisnik, who pleaded not guilty to charges of genocide and other crimes in 2000 [YUN 2000, p. 1221], began on 3 February 2004 with the prosecution's opening arguments and presentation of evidence. By 27 February, seven witnesses had testified for the prosecution, including an expert witness on the Bosnian Serb leadership. The proceedings were adjourned several times to allow the defence team time to prepare its case and for the two sides to negotiate the number of crime-based and expert witnesses.

In the case against General Pavle Strugar, accused, in a third amended indictment, of crimes against persons and crimes against property [YUN 2003, p. 1314], the Trial Chamber, on 26 May, denied a 3 February motion by the defence, which again sought to terminate the trial based on a claim that the accused was unfit to stand trial. The prosecution case, comprising 29 *viva voce* witnesses and over 200 exhibits, concluded on 18 May. The defence case commenced on 28 June and concluded on 22 July.

Milomir Stakic, found guilty and sentenced in 2003 [YUN 2003, p. 1313] to life imprisonment, with a minimum term of 20 years, filed his appeal brief

and a motion for the admission of additional evidence on 3 February 2004; he re-filed the appeal on 9 March. On 8 June, the prosecution filed a motion to strike an alleged new ground of appeal of the defendant raised in the reply brief, which the Appeals Chamber granted on 20 July.

In the case against Milka Maglov, who had pleaded not guilty in December 2003 to two counts of contempt of court for allegedly intimidating a witness in the Radoslav Brdanin case (see p. 1280), in which she had formerly served as defence co-counsel, the Trial Chamber, on 6 February 2004, upheld a motion by the *amicus curiae* Prosecutor to amend the indictment. The amendment added a third charge of attempted interference or intimidation. The prosecution case was heard from 16 to 19 February. On 19 March, a motion for acquittal brought by Ms. Maglov was dismissed, and her request for certification to appeal the decision was denied. The defence case was delayed by a confidential application, which was dismissed, seeking the disqualification and withdrawal of some judges, and the filing of an unopposed motion on 15 July for continuance on the basis that she was unfit to stand trial. On the same day, the Trial Chamber adjourned the case and directed the Registry to identify a psychiatrist who could establish the respondent's fitness to stand trial.

In the trial of Sefer Halilovic, who was charged with one count of violation of the laws of war and was granted provisional release in 2001 [YUN 2001, p. 1199], the Trial Chamber dismissed, on 16 February 2004, a defence motion for subpoenas to be issued so that certain prosecution witnesses could be interviewed by the defence. On appeal by the defence, the Appeals Chamber, with one of the judges dissenting, allowed the appeal in part, on 21 June, having found that the Trial Chamber had erred in rejecting the defence request for subpoenas solely on the basis that the defence would have the opportunity to cross-examine the witnesses, and should have examined whether the defence had presented reasons for the need to interview those witnesses, which went beyond the need to prepare a more effective cross examination. The Appeals Chamber directed the Trial Chamber to reconsider the matter and to issue subpoenas if its re-examination disclosed a need to interview the witnesses. Other issues that preoccupied the defence and prosecution related to counsel, assistance in obtaining access to material and information, and disclosures of materials and further investigations in the case.

On 16 February, the Appeals Chamber dismissed motions for additional evidence presented by Mlado Radic, Dragoljub Prcac and Zoran Zigic, who were sentenced with other ac-

cused to prison terms in 2001 [YUN 2001, p. 1201]. However, the Appeals Chamber found two pieces of evidence presented by Mr. Zigic admissible as additional evidence on appeal, and two witnesses were called to testify in that regard.

Dario Kordic and Mario Cerkez, sentenced in 2001 [YUN 2001, p. 1200] to 25 and 15 years' imprisonment, respectively, for crimes against humanity and violations of the laws and customs of war, appealed the judgement. In that regard, Mr. Kordic filed a supplemental appeal brief on 23 February 2004. On 26 March, the Appeals Chamber dismissed motions by Mr. Cerkez for the admission of additional evidence, and on 16 April, rejected his motion for admission of a witness transcript. On 17 December, the Appeals Chamber rendered its final judgement on the appeals of the accused; it rejected Mr. Kordic's first, second, fifth and sixth grounds of appeal, as well as his appeal concerning his responsibility for crimes committed in various locations. The Chamber did allow Mr. Kordic's appeal concerning his responsibility for crimes committed in other locations, and accordingly, pursuant to article 7 (1) of the ICTY statute, reversed his convictions under eight counts of the indictment relating to the respective locations in question, but affirmed his convictions with regard to 12 other counts. The Chamber also reversed his remaining convictions under count 1 and affirmed the sentence of 25 years' imprisonment. Regarding Mr. Cerkez, the Appeals Chamber allowed his appeal in part, rejecting a number of his grounds of appeal but allowing his appeal concerning his responsibility for certain crimes. It reversed his conviction, imposing a new sentence of 6 years' imprisonment.

On 25 February, the Appeals Chamber dismissed the appeal filed by Mitar Vasiljevic, who was sentenced to 20 years in prison in 2002 [YUN 2002, p. 1280]. However, the Chamber reduced his sentence to 15 years' imprisonment, having found, contrary to the Trial Chamber's findings, with one of the judges dissenting, that he was responsible as an aider and abettor, and not as a co-perpetrator, to murder as a violation of the laws or customs of war under article 3 of the ICTY statute, and to persecution under article 5.

In the trial, which began in 2003 [YUN 2003, p. 1312], of Vidoje Blagojevic and Dragan Jokic, charged jointly with other accused in 2001 [YUN 2001, p. 1199] for their alleged involvement in events in and around Srebrenica in 1995 [YUN 1995, p. 529], the prosecution's case concluded on 27 February 2004, and that of the defence for the two accused on 25 June and 23 July, respectively. The trial ended on 1 October, and judgement was expected in 2005.

The trial of Fatmir Limaj, Haradin Bala and Isak Musliu, arrested in 2003 with other accused for alleged crimes against Kosovo Serbs [YUN 2003, p. 1311], began on 15 November 2004; pre-trial briefs were filed by the prosecution on 28 February and the accused on 1 June.

Following a February defence motion seeking dismissal of the contempt of court charge against Dusko Jovanovic, a media practitioner, the prosecution filed a request in March to withdraw the indictment, on the understanding, as agreed between the parties, that the accused would publish a written statement acknowledging full personal and professional responsibility for publishing the details of a protected witness, in violation of protective measures orders issued by the Trial Chamber. Following the publication of the agreed statement on 19 April, the prosecution motion to withdraw the indictment was granted and the proceedings against Mr. Jovanovic were terminated.

The prosecution, in the case of Stanislav Galic, sentenced to 20 years in prison in 2003 [YUN 2003, p. 1315], with one of the judges filing a separate and partially dissenting opinion, with an alternative recommendation of 10 years in prison, filed its appeal brief on 2 March 2004. In response, Mr. Galic filed a notice of appeal on 4 May, and on 18 June, a motion for the admission of additional evidence.

In the case against Naser Oric, who was arrested in 2003 [YUN 2003, p. 1311] and pleaded not guilty to six counts of violations of the laws or customs of war, the defence filed its pre-trial brief on 4 March 2004. The trial commenced on 6 October.

On 11 March, Ranko Cesic, arrested in 2002 [YUN 2002, p. 1276], pleaded guilty under a plea agreement to all 12 counts charged in the indictment against him and was sentenced to 18 years in prison.

Miodrag Jokic, who entered into a plea agreement in 2003 [YUN 2003, p. 1314], according to which he pleaded guilty to six counts in an amended indictment, was sentenced to seven years in prison on 18 March 2004. Mr. Jokic filed a notice of appeal from the sentencing judgement on 16 April, two motions for the admission of additional evidence on 2 and 21 June, and his appeal brief on 30 June. The Appeals Chamber denied those motions on 31 August.

In the trial of Radoslav Brdanin, which began in 2002 [YUN 2002, p. 1277] on charges of genocide and crimes against humanity, the Appeals Chamber ruled on 19 March 2004 on a prosecution motion requesting the reversal of the Trial Chamber's 2003 decision [YUN 2003, p. 1313] to grant a defence motion for acquittal of genocide in the

context of the third category of joint criminal enterprise liability. The Appeals Chamber allowed the prosecution's appeal, reversed the decision of the Trial Chamber and reinstated the charge of genocide, having found that the Trial Chamber had erred by conflating the mens rea requirement of the crime of genocide with the mental requirement of the mode of liability. Closing arguments in the case were heard in April 2004. On 1 September, the Trial Chamber acquitted Mr. Brdanin of genocide, complicity in genocide and extermination, but found him guilty of persecutions as a crime against humanity. He was sentenced to 32 years' imprisonment. Notices of appeal were filed by the Prosecutor on 30 September, and by Mr. Brdanin on 1 October.

On 31 March, Darko Mrda, who was charged in 2002 [YUN 2002, p. 1276] and pleaded guilty in 2003 [YUN 2003, p. 1313] to murder and inhuman acts under a plea agreement, was sentenced to 17 years' imprisonment.

Pre-trial briefs were filed by the prosecution on 1 April, and by the defence on 21 June in the case against Radovan Stankovic, charged in 2002 along with other accused [YUN 2002, p. 1277] of crimes against humanity and violations of the laws or customs of war for acts allegedly committed against Muslim women. On 21 September 2004, the Prosecutor moved for referral of the case to the State Court of Bosnia and Herzegovina in Sarajevo. That decision was appealed on its merits by the accused, while the Prosecutor appealed the part of the decision ordering it to monitor the process in Sarajevo and report regularly to the Referral Bench. On 29 November, the Prosecutor moved again for the referral of the case to Bosnia and Herzegovina.

On 19 April, the Appeals Chamber rendered its judgement in the case of Radislav Krstic, who had filed appeal briefs in 2002 [YUN 2002, p. 1278] against his conviction and sentencing in 2001 [YUN 2001, p. 1201]. The Appeals Chamber set aside Mr. Krstic's conviction as a participant in a joint criminal enterprise to commit genocide and his conviction as a participant in murder under article 3 of the ICTY statute, committed between 13 and 19 July 1995. He was found guilty, however, of aiding and abetting in genocide and murder as a violation of the laws or customs of war. The Appeals Chamber confirmed his conviction for participation in murder committed at other times (between 10 and 13 July 1995) as a violation of the laws or customs of war and as persecution. The Appeals Chamber further held that the Trial Chamber had incorrectly disallowed Mr. Krstic's convictions as a participant in extermination and persecution (on the grounds that they were cumulative with his conviction for genocide), but

that his level of responsibility was that of an aider and abettor in extermination and persecution as crimes against humanity. Appeals by both Mr. Krstic and the prosecution were otherwise dismissed, and Mr. Krstic was sentenced to 35 years' imprisonment. One of the judges appended a partial dissenting opinion.

In the case against Zeljko Mejakic, Momcilo Gruban, Dusen Fustar and Dusko Knezevic, charged jointly in 2002 [YUN 2002, p. 1279] with Pedrag Banovic, who was sentenced to eight years in prison in 2003 [YUN 2003, p. 1311], the Trial Chamber ruled in April 2004 on a prosecution motion to admit 252 facts that were the subject of prior adjudication by Trial Chambers in three other cases. It granted the prosecution's request in part, excluding those facts that were too broad, too tendentious, not sufficiently significant or not sufficiently relevant to the case; it also rejected facts that were derived from a judgement based on a plea agreement. On 17 June, the Chamber ruled, on the question of a potential conflict of interest arising from the appointment by the Registrar as counsel for Mr. Mejakic the same counsel already assigned as lead counsel to Dragoljub Prcac, that in the light of the hypothetical nature of the application, the matter was best left to the relevant Trial Chamber to decide when and if it arose. On 13 July, the prosecution filed an appeal brief submitting that the Trial Chamber erred in law in finding that the representation of two accused by one and the same counsel was not likely to affect the integrity of the proceedings or otherwise irreversibly prejudice the administration of justice. On 2 September, the Prosecutor filed a motion requesting referral of the case against the four accused to the authorities of Bosnia and Herzegovina.

On 7 May, the prosecution filed its pre-trial brief in the case against Milan Martić, who pleaded not guilty in 2003 [YUN 2003, p. 1315] to 10 counts of crimes against humanity and nine charges of violations of the laws or customs of war. The defence appealed the Trial Chamber's 1 July 2004 decision to uphold the Registrar's determination of the level of complexity of the case. The defence was given until 15 September to file its pre-trial brief.

On 24 May, Momir Nikolic, who was sentenced to 27 years in prison in 2003 [YUN 2003, p. 1313], filed an appeal against the sentence. On 8 June 2004, the prosecution filed a motion to strike out parts of the appeal, and, on 18 June, Mr. Nikolic filed a motion for the admission of additional evidence.

In the case against Vladimir Kovacevic and Milan Zec [YUN 2001, p. 1200], Mr. Kovacevic was released provisionally on 2 June and, on 7 June, he

was transferred to a mental institution in Belgrade for psychiatric treatment for an initial period of six months to ascertain whether he would be fit to stand trial. On 28 October, the Prosecutor moved for referral of the case to Serbia and Montenegro, but the Referral Bench refrained from considering the motion until the question of Mr. Kovacevic's fitness to stand trial was determined.

On 18 June, Dragan Obrenovic, who was sentenced to 17 years in prison in 2003 [YUN 2003, p. 1313], was transferred to Norway to serve his sentence.

In the case of Pasko Ljubicic, the prosecution and defence filed pre-trial briefs in 2003 [YUN 2003, p. 1313], but Mr. Ljubicic was not deemed ready for trial until documents sought by the defence were produced by the Governments of Bosnia and Herzegovina and Croatia. The defence declared on 23 July 2004 that the accused was ready to go to trial even if not all the documents had been produced.

Regarding the notices of appeal filed by Tihomir Blaskic [YUN 2000, p. 1223; YUN 2002, p. 1280] following his 1999 trial [YUN 1999, p. 1216], the Appeals Chamber delivered its judgement on 29 July 2004; it allowed by majority, with one of the judges dissenting, Mr. Blaskic's grounds of appeal concerning his responsibility for the crimes committed in Ahmici, Santici, Pirici and Nadioi on 16 April 1993 and reversed his convictions pursuant to articles 7 (1) and 7 (3) of the ICTY statute. It also unanimously allowed his appeal against his convictions for a number of other counts in the indictment, but affirmed his conviction for the detention-related crimes committed in detention facilities, for ordering the use of protected persons for the construction of defensive military installations and for the inhuman treatment of detainees occasioned by their use as human shields, but dismissed his appeal in all other respects. It did, however, allow in part Mr. Blaskic's grounds of appeal against his sentence and imposed on him, by majority, with one of the judges dissenting, a new sentence of nine years' imprisonment. The dissenting judge appended a partial dissenting opinion and another judge appended a separate opinion limited to the sentence. On 29 July 2004, Mr. Blaskic was granted early release, effective 2 August.

On 20 October, the Appeals Chamber dismissed rule 115 motions on the admission of additional evidence filed by Vinko Martinovic and Mladen Naletilic in connection with their appeal of the Trial Chamber's sentence in 2003 [YUN 2003, p. 1312] of 18 years and 20 years in prison, respectively. In November 2004, the accused filed

further motions with the same request, which were being considered by the Appeals Chamber.

Election of judges

Permanent judges

On 5 April [S/2004/288], the Secretary-General informed the Security Council President that Judge Richard May (United Kingdom) had resigned as a permanent judge of ICTY, effective 31 May, and that the United Kingdom had presented Iain Bonomy to replace him. Annexed to the letter was Lord Bonomy's curriculum vitae.

Following consultations with Council members, the Council President, on 8 April [S/2004/289], informed the Secretary-General that he supported his intention to appoint Lord Bonomy as a permanent judge of ICTY.

In September [S/2004/754] and October [A/59/438], the Secretary-General forwarded to the Council and the General Assembly, respectively, the list of candidates nominated to replace the 14 permanent judges of ICTY whose terms would expire on 16 November 2005. The memorandum also contained the procedure for electing them. By a 21 October note [A/59/439], the Secretary-General submitted to the Assembly the curricula vitae of the 22 nominated candidates.

SECURITY COUNCIL ACTION

On 14 October [meeting 5057], the Security Council unanimously adopted **resolution 1567(2004)**. The draft [S/2004/813] was prepared in consultations among Council members.

The Security Council,

Recalling its resolutions 827(1993) of 25 May 1993, 1166(1998) of 13 May 1998, 1329(2000) of 30 November 2000, 1411(2002) of 17 May 2002, 1481(2003) of 19 May 2003, 1503(2003) of 28 August 2003 and 1534(2004) of 26 March 2004,

Having considered the nominations for Permanent Judges of the International Tribunal for the Former Yugoslavia received by the Secretary-General,

Forwards the following nominations to the General Assembly in accordance with Article 13 bis, paragraph 1 (d), of the statute of the International Tribunal:

- Mr. Carmel A. Agius (Malta)
- Mr. Jean-Claude Antonetti (France)
- Mr. Iain Bonomy (United Kingdom of Great Britain and Northern Ireland)
- Mr. Liu Daqun (China)
- Mr. Mohamed Amin El-Abbassi El Mahdi (Egypt)
- Mr. Elhagi Abdulkader Emberesh (Libyan Arab Jamahiriya)
- Mr. Rigoberto Espinal Irias (Honduras)
- Mr. O-gon Kwon (Republic of Korea)
- Mr. Theodor Meron (United States of America)
- Mr. Bakone Melema Moloto (South Africa)
- Ms. Prisca Matimba Nyambe (Zambia)
- Mr. Alphonsus Martinus Maria Orié (Netherlands)

Mr. Kevin Horace Parker (Australia)
 Mr. Fausto Pocar (Italy)
 Mr. Yeni Olungu (Democratic Republic of the Congo)
 Mr. Sharada Prasad Pandit (Nepal)
 Ms. Vonimbolana Rasoazanany (Madagascar)
 Mr. Patrick Lipton Robinson (Jamaica)
 Mr. Wolfgang Schomburg (Germany)
 Mr. Mohamed Shahabuddeen (Guyana)
 Ms. Christine Van den Wyngaert (Belgium)
 Mr. Volodymyr A. Vassylenko (Ukraine)

On the same day [A/59/437], the Council President transmitted the text of the Council's resolution to the General Assembly.

GENERAL ASSEMBLY ACTION

On 19 November [meeting 57], the General Assembly adopted **decision 59/406** without vote [agenda item 18].

Election of judges 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

At its 57th plenary meeting, on 19 November 2004, the General Assembly, pursuant to article 13 bis of the statute 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, elected the following fourteen permanent judges for a four-year term of office beginning on 17 November 2005:

Mr. Carmel AGIUS (Malta)
 Mr. Jean-Claude ANTONETTI (France)
 Mr. Iain BONOMO (United Kingdom)
 Mr. O-gon KWON (Republic of Korea)
 Mr. LIU Daqun (China)
 Mr. Theodor MERON (United States)
 Mr. Bakone Melema MOLOTO (South Africa)
 Mr. Alphonsus Martinus Maria ORIE (Netherlands)
 Mr. Kevin Horace PARKER (Australia)
 Mr. Fausto POCAR (Italy)
 Mr. Patrick Lipton ROBINSON (Jamaica)
 Mr. Wolfgang SCHOMBURG (Germany)
 Mr. Mohamed SHAHABUDEEN (Guyana)
 Ms. Christine VAN DEN WYNGAERT (Belgium)

Office of the Prosecutor

During the year, the efficiency and work of the Office of the Prosecutor improved markedly, as it completed remaining investigations and the subsequent filing of the indictments for war crimes, thereby enabling it to meet the first deadline of the completion strategy initiated in 2002 [YUN 2002, p. 1275]. Also, as part of the strategy, the Prosecutor filed motions for the transfer of 10 cases concerning 18 accused to be tried by national jurisdictions in Bosnia and Herzegovina, Croatia, or Serbia and Montenegro. The transfer of four of those cases had been granted, one was denied and the outcome on the others was pending. The

Office continued its pre-trial, trial and appeals activities. It enhanced its operations and streamlined its procedures under the leadership of a new Deputy Prosecutor and a new Chief of Prosecutions, both of whom were appointed during the reporting period.

Efforts were made to increase the cooperation of relevant countries, resulting in numerous arrests and some fugitive surrenders. Cooperation with Croatia remained satisfactory in terms of requests for assistance, information, archives, witnesses and suspects, but no progress was made regarding that country's efforts to arrest Ante Gotovina, one of the high-profile fugitives accused of serious violations of international humanitarian law. Cooperation by Serbia and Montenegro improved late in the year, but was still not complete, consistent and speedy. Problems persisted with respect to the production of sensitive documents, and although the Government had secured surrenders of outstanding and new accused—a total of 14 accused were transferred from or through Belgrade—its reluctance to execute Tribunal arrest warrants continued.

In Bosnia and Herzegovina, cooperation by the entity government of the Federation of Bosnia and Herzegovina was satisfactory. However, cooperation by the other entity, the Republika Srpska, though improved, was still insufficient, particularly with regard to the transfer of fugitives and wartime documentation. To further cooperation, the Office of the High Representative promoted and implemented the Monitoring Group on Cooperation with the Tribunal, formed in 2003 [YUN 2003, p. 408], involving all relevant entities and State structures. In October 2004, the Prosecutor's review functions, which had enabled ICTY to oversee the prosecution of accused persons by relevant national authorities under the 1996 Rome Agreement [YUN 1996, p. 1187] (also known as the "Rules of the Road"), were transferred to the State Prosecutor of Bosnia and Herzegovina.

There were no problems regarding cooperation with the former Yugoslav Republic of Macedonia, enabling the Office of the Prosecutor to complete all investigations concerning that country.

Communication. On 6 May [S/2004/353], the President of the Tribunal transmitted to the Security Council President the report of the Prosecutor regarding the non-compliance by Serbia and Montenegro with its obligation to cooperate with ICTY. According to the Prosecutor, the level of that cooperation had declined since December 2003, particularly its failure to execute Tribunal arrest warrants, cooperate with the Prosecutor in securing the testimony of witnesses and docu-

mentary evidence, and respond to the Registrar's requests for an explanation of those failures, which could impinge on the Tribunal's ability to meet the expectations of its completion strategy.

The Registry

The Registry continued its managerial, administrative and judicial support functions to facilitate the work of the Chambers, the Office of the Prosecutor and the defence. It also managed the Detention Unit, the Victims and Witnesses Section, the legal aid office and the interpretation and translation service. The Registry also facilitated the implementation of the Tribunal's completion strategy, initiated in 2002 [YUN 2002, p. 1275], including an action plan to enforce sentences and relocate protected witnesses and their families. Consistent with Security Council resolution 1534(2004) (see p. 1292), the Registrar, in consultation with the President of the Tribunal and the Prosecutor, launched an initiative to convince more States to accept convicted persons to serve sentences in their respective territories. In that regard, on 11 March 2004, the Tribunal signed, on behalf of the United Nations, an agreement on the enforcement of sentences with the United Kingdom, the tenth UN Member State to conclude such an agreement; other States indicated their willingness to do the same.

As recommended in Council resolution 1503 (2003) [YUN 2003, p. 1330], the Tribunal continued to develop and improve its outreach programme as part of its completion strategy, with special attention paid to improving the capacity of national jurisdictions to prosecute war crimes cases. The programme significantly enhanced its activities in that regard. It assisted in the establishment of a responsible body of lawyers, prosecutors and other legal professionals in the former Yugoslavia, and organized in Croatia between May and October training seminars for judges and prosecutors likely to participate in the trial of war crimes cases. In efforts to engage victims across the region, particularly those whose communities were most affected by the crimes under the Tribunal's jurisdiction, the programme held the first in a series of community events in Bosnia and Herzegovina, intended to promote better local visibility of justice served, prevent historical revisionism and foster reconciliation.

Financing

2004-2005 biennium

Report of Secretary-General. The first performance report of ICTY for the 2004-2005

biennium [A/59/547], submitted by the Secretary-General in response to General Assembly resolution 58/255 [YUN 2003, p. 1318], reflected a requirement of additional appropriations of \$26.8 million, net of staff assessment, over the initial appropriation for that biennium. The increased requirement included, among other things, changes with respect to exchange rates resulting from the weakening of the United States dollar vis-à-vis the euro and changes in inflation (\$22,579,200), and provision for the Investigations Division for 2005 (\$15,240,400), including staff and travel costs. The Assembly was requested to revise the appropriation for 2004-2005 in the amount of \$329,501,900 gross (\$298,437,000 net) to the ICTY Special Account.

ACABQ report. In November [A/59/561], the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended approval of the Secretary-General's proposed staffing and travel requirements for ICTY's Investigations Division for 2005.

Board of Auditors

The Secretary-General submitted his financial report on the ICTY accounts for the 2002-2003 biennium, including the report of the Board of Auditors for the same period [A/59/5/Add.12].

The budget for the biennium totalled \$288.3 million, with actual expenditures amounting to \$284.3 million, leaving an unencumbered balance of \$4.0 million. The total expenditure represented an increase of 35.8 per cent over total expenditures for 2000-2001.

Following a review of the operations of ICTY and an audit of its financial statements for the year ended 31 December 2003, the Board of Auditors was concerned about the level of unpaid assessed contributions, which stood at \$53.3 million. It found that: the balance of reserves showed a shortfall of \$12.6 million; procedures in place had led to an initial understatement of \$79.0 million in deferred charges; liabilities for judges' pensions were neither assessed nor disclosed in financial statements; the usual UN staff medical standards were not applied to candidates for a judgeship; and the criteria for assigning counsel to indigent accused were still to be completed. In addition, while responsibility for the United Nations House in Sarajevo had been transferred to the Tribunal, no entity had been specified for handover in 2006, when the Tribunal was scheduled to downsize its Sarajevo site. The Board recommended that the Tribunal liaise with UN Headquarters to improve the rate of occupancy of the building and to transfer its management to another entity before the Tribunal left the premises. The Board remained concerned that the

2010 deadline set by the completion strategy might not be met. It recommended that the Tribunal develop efforts to collect outstanding contributions from Member States and review procedures for reporting on deferred charges. It further recommended that the Tribunal liaise with UN Headquarters to account for the liability relating to judges' pensions and plan for the transfer of pension commitments to a permanent entity at the termination of the Tribunal. In addition, the Tribunal should ensure that amendments were made to ICTY's Rules of Procedure and Evidence concerning the conditions for the designation of counsel by the accused, and consider applying the usual UN staff medical standards to candidates for judgeship.

GENERAL ASSEMBLY ACTION

On 23 December [meeting 76], the General Assembly, on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/59/604], adopted **resolution 59/274** without vote [agenda item 122].

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, namely the first performance report for the biennium 2004-2005 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 report on biennial budgeting at the Tribunals,

Having also considered the report of the Board of Auditors and the recommendations contained therein,

Having further considered 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 Tribunal and its subsequent resolutions thereon, the most recent of which were resolutions 58/254 and 58/255 of 23 December 2003,

1. *Takes note* of the first performance report of the Secretary-General for the biennium 2004-2005 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 his report on biennial budgeting at the Tribunals;

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

3. *Notes with concern* the precarious financial situation of the Tribunal;

4. *Also 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;

5. *Further notes with concern* the resulting freeze imposed by the Secretariat on the Tribunal and the negative impact it is having on the completion strategy schedule, and requests the Secretary-General, in consultation with the Tribunal, to submit proposals on ways to ameliorate the staffing situation at the Tribunal in the context of the proposed budget for the biennium 2006-2007;

6. *Requests* the Secretary-General to ensure that areas critical to the successful completion of the mandate of the Tribunal, in accordance with the completion strategy, are exempt from any freezes;

7. *Also requests* the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunal, including through extending contracts of staff performing functions that are central to the implementation of the completion strategy beyond the period of the current budget;

8. *Decides* to approve the proposed post and non-post resources for the Investigations Division for 2005;

9. *Also decides* on a revised appropriation 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 of a total amount of 329,317,900 United States dollars gross (298,437,000 dollars net) for the biennium 2004-2005;

10. *Further decides*, for the year 2005, to apportion among Member States, in accordance with the scale of assessments applicable to the regular budget of the United Nations for the year, the amount of 90,148,375 dollars gross (81,300,850 dollars net), including 15,637,800 dollars gross (13,383,200 dollars net), being the increase in assessments;

11. *Decides*, for the year 2005, to apportion among Member States, in accordance with the rates of assessment applicable to peacekeeping operations for the year, the amount of 90,148,375 dollars gross (81,300,850 dollars net), including 15,637,800 dollars gross (13,383,200 dollars net), being the increase in assessments;

12. *Also decides* that, in accordance with the provisions of its resolution 973(X) of 15 December 1955, there shall be set off against the apportionment among Member States, as provided for in paragraphs 10 and 11 above, their respective share in the Tax Equalization Fund in the amount of 17,695,050 dollars, including 4,509,200 dollars, being the increase in the estimated staff assessment income approved for the Tribunal for the biennium 2004-2005.

Annex

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

	<i>Gross</i>	<i>Net</i>
	<i>(United States dollars)</i>	
1. Initial appropriation for the biennium 2004-2005 (resolution 58/255)	298 226 300	271 854 600
Add:		
2. Proposed changes for the biennium 2004-2005 (A/59/547)	38 023 300	33 514 100

	<i>Gross</i>	<i>Net</i>
	<i>(United States dollars)</i>	
Less:		
3. One-time adjustment reflecting projected savings for 2004 (A/59/547)	(6 747 700)	(6 747 700)
4. Estimated income for the biennium 2004-2005	(184 000)	(184 000)
5. Proposed revised appropriation for the biennium 2004-2005	329 317 900	298 437 000
6. Assessment for 2004	(149 021 150)	(135 835 300)
7. Balance to be assessed for 2005	180 296 750	162 601 700
Including:		
8. Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2005	90 148 375	81 300 850
9. Contributions assessed on Member States in accordance with the rates of assessment applicable to peacekeeping operations of the United Nations for 2005	90 148 375	81 300 850

Also on 23 December, the Assembly decided that the item on the financing of ICTY would remain for consideration during its resumed fifty-ninth (2005) session (**decision 59/552**).

International Tribunal for Rwanda

In 2004, the International Criminal Tribunal for Rwanda (ICTR), in Arusha, the United Republic of Tanzania, rendered five trial judgements, the same as in the previous year [YUN 2003, p. 1320]. The number of ad litem judges serving ICTR rose to nine—the maximum number permitted under Security Council resolution 1512(2003) [ibid., p. 1324]. That enabled the Tribunal to increase the number of new trials initiated during the year to four, concerning seven accused, bringing the total number of persons on trial to 25. In April [S/2004/341], as requested in Security Council resolution 1503(2003) [ibid., p. 1330], the ICTR President submitted an updated and revised version of the ICTR completion strategy (see p. 1292), which was further revised in November [S/2004/921].

The 2004 activities of ICTR, established by Council resolution 955(1994) [YUN 1994, p. 299], were covered in two reports to the Council and the General Assembly, for the periods 1 July 2003 to 30 June 2004 [A/59/183-S/2004/601] and 1 July 2004 to 30 June 2005 [A/60/229-S/2005/534]. On 15 November, the Assembly took note of the 2003/04 report (**decision 59/510**).

The Chambers

New cases

On 25 February, Ephrem Setako, former senior official in the Rwanda Armed Forces, was arrested in the Netherlands, and he was transferred to ICTR on 17 November. He made his initial appearance on 22 November.

Yusuf Muniyazi, a businessman and leader of a militia group in Cyangugu Prefecture, who was arrested in the Democratic Republic of the Congo on 5 May, was transferred to ICTR on 7 May and made his initial appearance on 12 May.

On 16 July, Gaspard Kanyarukiga was arrested in South Africa and was transferred to the Tribunal on 19 July. At his initial appearance on 22 July, he pleaded not guilty to charges of genocide, complicity in genocide, conspiracy to commit genocide and extermination as a crime against humanity.

Ongoing trials

On 22 January, Jean de Dieu Kamuhanda, who pleaded not guilty in 2000 to charges of genocide and crimes against humanity [YUN 2000, p. 1225] and whose trial was held in 2001 [YUN 2001, p. 1208] and 2002 [YUN 2002, p. 1285], was convicted and sentenced to life in prison. The accused appealed the judgement.

In the case of Juvénal Kajelijeli, who was sentenced in 2003 [YUN 2003, p. 1321] to three concurrent sentences (a life sentence each for genocide and for a crime against humanity and 15 years in prison for direct and public incitement to commit genocide), and who had appealed the judgement at the time, the Appeals Chamber, on 23 January 2004, denied the prosecution's motion for acceptance of its notice of appeal out of time, stating that the prosecution's failure to file a timely notice was not excused by "good cause".

On 12 February, the Appeals Chamber dismissed the prosecution's appeal against the Trial Chamber's decision denying leave to amend the indictment in the case against Casimir Bizimungu, Justin Mugenzi, Jérôme Bicomumpaka and Prosper Mugiraneza, referred to as the "Government II" case [YUN 1999, pp. 1222 & 1223], and whose trial began in 2003 [YUN 2003, p. 1321]. On 15 July 2004, the Appeals Chamber rendered a decision on Mr. Mugiraneza's appeal against the decision of the Trial Chamber on exclusion of evidence and directed that the request of the accused be reconsidered. The Prosecutor's counter-appeal was dismissed.

In the trial against Edouard Karemera, Andre Rwamakuba, Matthieu Ndirumpatse and Joseph Nzirorera, which began in 2003 [YUN 2003, p. 1321]

and was referred to as the “Government I” case [YUN 1999, pp. 1222 & 1223], the Appeals Chamber granted the prosecution’s appeal against a decision to deny leave to amend the indictment. On 13 February 2004, the indictment was amended, and an initial appearance was held on 23 February to enable the accused to plead the new charges. On 29 March, the defence filed motions for the disqualification of the three judges on the case for alleged bias; those motions were dismissed. However, one of the judges elected to withdraw and the remaining two decided to continue the trial with a substitute judge. By a decision of 21 June, the Appeals Chamber allowed the appeals of Messrs. Rwamakuba, Karemera and Ngirumpatse challenging the decision of the remaining judges, who were found to have erred in law by deciding to continue the trial without giving the accused the opportunity to be heard. The matter was remanded to the remaining judges for reconsideration. Following an appeal filed by the defence, the Appeals Chamber, in its decision of 28 September and reasons of 22 October, disqualified the three judges engaged in the trial and ordered that the trial start *de novo* before a newly constituted Trial Chamber. Other appeals by Messrs. Karemera, Ngirumpatse and Nzirorera challenging the indictment, ICTR’s jurisdiction and a number of other decisions relating to the case were dismissed.

On 25 February, the Chamber rendered a judgement in the joint trial of Samuel Imanishimwe, Emmanuel Bagambiki and André Ntagerura, referred to as the “Cyangugu” case [YUN 1999, p. 1222], which began in 2000 [YUN 2000, p. 1226] and terminated in 2003 [YUN 2003, p. 1321]. Mr. Imanishimwe, former officer in the Rwandan Armed Forces, was sentenced to 27 years in prison, while Messrs. Bagambiki, former Prefect of Cyangugu, and Ntagerura, former Minister of Transport, were both acquitted. Mr. Imanishimwe and the prosecution appealed the judgement.

In the case against Mikaeli Muhimana, who was arrested in 1999 [YUN 1999, p. 1223] and charged with genocide, crimes against humanity and violations of the Geneva Conventions, the trial began on 29 March 2004, and on 30 April, the prosecution closed its case. The defence case was scheduled to start later in the year.

On 26 March, the Trial Chamber granted the prosecution’s motion for leave to amend the indictment in the case against Augustin Bizimungu, former Chief of Staff of the Rwandan Army, who was arrested in 2002 [YUN 2002, p. 1285], Augustin Ndindiliyimana, former Chief of Staff of the Gendarmerie, Francois-Xavier Nzuwonemeye, former Commander of the 42

Battalion, and Innocent Sagahutu, former Second-in-Command of the Reconnaissance Battalion, all of whom were arrested in 2000 [YUN 2000, p. 1225], in a case consolidated as the “Military II” case. On 31 March 2004, the prosecution filed the amended indictment, and further initial appearances were held on 30 April. The joint trial of the accused began on 20 September.

On 9 July, the Appeals Chamber upheld the conviction and affirmed the life sentence imposed on Eliezer Niyitegeka in 2003 [YUN 2003, p. 1321]. The appellant was currently seeking a review of the appeal judgement on the grounds that the prosecutor failed to disclose to him alleged exculpatory statements by witnesses, which were disclosed in another case. The briefing was ongoing.

On 4 June, the Appeals Chamber dismissed in part the appeal against the Trial Chamber’s decision on the preliminary defence motion regarding defects in the form of the indictment in the case of Aloys Simba, who had pleaded not guilty in 2002 [YUN 2002, p. 1285] to charges of genocide or complicity in genocide. On 29 July 2004, a further appeal by the accused challenging the indictment was also dismissed, and on 30 August his trial began. On 30 September, the Appeals Chamber dismissed Mr. Simba’s appeal challenging the decision of the Trial Chamber, which had found that the second indictment adequately pleaded the *mens rea* for joint criminal enterprise and that the allegations relating to murder as a crime against humanity were adequately connected to the widespread and systemic attack that had occurred. The prosecution closed its case on 10 November, and, on 13 December, the defence case began.

On 17 June, Sylvestre Gacumbitsi, who had pleaded not guilty in 2001 [YUN 2001, p. 1207] and whose trial began in 2003 [YUN 2003, p. 1321], was convicted of genocide and crimes against humanity (extermination and rape), but acquitted of a crime against humanity (murder). He was sentenced to 30 years’ imprisonment.

In the joint trial against Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Elie Ndayambaje, referred to as the “Butare” case, which began in 2001 [YUN 2001, p. 1208], the Appeals Chamber partially granted appeals by Ms. Nyiramasuhuko and Mr. Ntahobali against the Trial Chamber’s decision to declare parts of the evidence of certain witnesses inadmissible. On 27 September, the Appeals Chamber dismissed Ms. Nyiramasuhuko’s request for reconsideration of the appeal, and on 4 October, it also dismissed her appeal concerning a decision to admit as evi-

dence a diary allegedly belonging to her. On 4 November, the prosecution closed its case.

Appeals were heard from 7 to 9 July in the case against Elizaphan Ntakirutimana and his son, Gérard Ntakirutimana, who were sentenced in 2003 to 10 and 25 years' imprisonment, respectively [YUN 2003, p. 1320]. On 13 December 2004, the Appeals Chamber rendered its judgement; it quashed a number of the convictions against both appellants, but affirmed the sentences imposed on them.

Emmanuel Ndindabahizi, a former Minister of Finance, who was arrested and pleaded not guilty in 2001 [YUN 2001, p. 1207], and whose trial began in 2003 [YUN 2003, p. 1321], was convicted on 15 July 2004 of genocide and crimes against humanity (extermination and murder) and sentenced to life in prison.

On 20 September, the trial began against Athanase Seromba, the Catholic priest of Nyange Parish in the Kivumu Commune, Kibuye Prefecture, who surrendered to ICTR in 2002 [YUN 2002, p. 1285].

On 14 October 2004, the prosecution closed its case in the joint trial, begun in 2002 [YUN 2002, p. 1285], of four senior Rwandan military officers (Théoneste Bagosora, Gratien Kabiligi, Anatole Nsengiyumva, Aloys Ntabakuze), consolidated in 1999 [YUN 1999, p. 1222] and currently referred to as the "Military I" case. Defence motions for acquittal were denied, and the defence case was scheduled for 2005.

On 8 December 2004, Vincent Rutaganira, who had pleaded not guilty in 2002 [YUN 2002, p. 1285], entered a guilty plea for crimes against humanity (extermination). As he had been indicted jointly with other accused, the Trial Chamber ordered the severance of the indictment against him. The parties presented their submissions on sentencing, and a joint recommendation was made for a term of imprisonment ranging from six to eight years.

In the case of 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], the Appeals Chamber granted a motion for admission of additional evidence. Hearings were heard on 13 and 14 December 2004.

Election of judges

By a 23 July letter [S/2004/619] to the President of the Security Council, the Secretary-General informed the Council of the resignation, effective 30 June, of Judge Asoka Gunawardana (Sri Lanka) as a permanent judge of ICTR. To replace him, the Government of Sri Lanka had presented the candidacy of Judge J. Asoka de Silva, whose curriculum vitae was annexed to the letter and

who, in the view of the Secretary-General, met the qualifications prescribed in article 12 of the ICTR statute.

On 27 July [S/2004/620], the Council President, having consulted with Council members, expressed support for the Secretary-General's intention to appoint Judge de Silva.

On 3 August [S/2004/621], the Secretary-General appointed Judge de Silva as a permanent judge of ICTR, for the remainder of the term of office of Judge Gunawardana, which would expire on 24 May 2007.

Office of the Prosecutor

The Office of the Prosecutor, in a continuing effort to implement the ICTR completion strategy, established an Appeals Section in January. Investigations were completed to meet the new targets within the completion strategy deadline of 31 December 2004, and the Office stepped up its tracking activities to ensure that as many fugitives as possible were arrested sufficiently early to enable trials to be completed before the end of 2008. The Prosecutor continued to focus attention on accused persons who were allegedly in positions of leadership and who bore the gravest responsibility for the crimes committed. Other suspects alleged to have been mid- to low-level participants would be transferred to national jurisdictions, including Rwanda, for trial. The Prosecutor believed it was important to explore the idea of transferring cases to those African countries where certain suspects currently lived. In that regard, the possibility of transferring cases to Rwanda raised a number of issues, including the question of the death penalty, which had been imposed in genocide cases; the capacity of that country's judicial system to handle transferred cases at a time when it faced difficulties in coping with tens of thousands of local cases relating to genocide; and the issue of resources. It was decided that the transmission of the files of suspects and transfer of current detainees to Rwanda should await the resolution of those issues. Moreover, in preliminary discussions with national authorities, the Office of the Prosecutor found that the laws of the State in which a suspect was present might not confer jurisdiction over the suspect or the crime. Should it, therefore, not be possible to transfer cases to national jurisdictions, the Prosecutor would make alternative proposals to the Security Council and highlight related budgetary implications.

As part of global activities to mark the tenth anniversary of the Rwandan genocide (see p. 159), the Office of the Prosecutor hosted a colloquium of prosecutors of international criminal

tribunals (Arusha, United Republic of Tanzania, 25-27 November), attended by representatives of ICTR, ICTY, the International Criminal Court and the Special Court for Sierra Leone, and legal practitioners from 12 countries. The aim was to discuss common problems, share ideas and solutions and adopt best practices. Participants discussed how to better prepare themselves for meeting the challenges of delivering international criminal justice. On 27 November, they issued a joint statement reaffirming commitment to ending impunity, deterring crimes against humanity, instituting a culture of accountability and bringing about peace and reconciliation in post-conflict societies. They also called on national and international authorities to assist the Tribunals by arresting and transferring indicted fugitives for trial.

The Registry

The Registry continued to support the judicial process by servicing the Tribunal's other organs and by participating in implementing the completion strategy. During the year, it signed a wide range of agreements with States and institutions concerning the reinforcement of sentences, the movement and relocation of witnesses and financial support for activities not covered by the regular budget. On 17 March and 27 April, Italy and Sweden became the fifth and sixth countries, respectively, to sign an agreement with the Tribunal on the enforcement of sentences imposed by ICTR. Between 20 and 22 September, top-level Rwandan Government officials and senior ICTR members discussed practical modalities for an agreement between the Rwandan Government and the United Nations regarding enforcement of ICTR sentences in Rwanda, pursuant to article 26 of the ICTR statute. The European Union also finalized details for an agreement to fund projects strengthening the managerial and operational capacity of the Tribunal.

Financing

2004-2005

Report of Secretary-General. In November [A/59/549], the Secretary-General submitted, in response to General Assembly resolution 58/253 [YUN 2003, p. 1327], the first performance report of ICTR for the 2004-2005 biennium. The report reflected a requirement of additional appropriations of \$18.2 million, net of staff assessment. The increased requirements reflected changes arising from variations to budgetary assumptions (\$10,705,600 net) and the provision of resources

for the Tribunal's Investigations Division for 2005 (\$12,587,400 net), including provision for the staffing component approved for 2004, comprising 106 temporary posts (88 in the Professional and higher categories and 18 in the General Service category), and proposed resource requirements for investigative travel in the amount of \$550,000. It also reflected projected savings of \$5,062,000. The Secretary-General recommended that the Assembly approve the proposed staffing and resource requirements for the Division, and revise the appropriation for 2004-2005 in the amount of \$255,909,500 gross (\$231,506,500 net) to the Special Account for ICTR.

ACABQ report. In November [A/59/561], ACABQ recommended approval of the Secretary-General's proposed staffing and travel requirements for ICTR's Investigative Division for 2005.

Board of Auditors

The Secretary-General submitted his financial report on the ICTR accounts for the 2002-2003 biennium, including the report of the Board of Auditors for the same period [A/59/5/Add.11].

Against a budget of \$208.5 million for the biennium, actual expenditures amounted to \$208.4 million, leaving an unencumbered balance of \$0.1 million. The total expenditure represented an increase of 15.9 per cent over total expenditures for 2000-2001.

The Board of Auditors, having reviewed ICTR's operations and audited its financial statements for the year ended 31 December 2003, found that its total reserves and fund balances decreased by approximately 52 per cent, from \$5.5 million in 2000-2001 to \$2.6 million in 2002-2003, and that its financial position had significantly worsened due to an increase in unpaid assessed contributions, which stood at \$34.8 million. The Board also found that amounts owed to the Organization were reflected in accounts payable, while amounts owed by the Organization were reflected in accounts receivable, resulting in the netting-off of payables against receivables, which contravened UN system accounting standards, and the Tribunal's reserves were inadequate to cover its end-of-service and post-retirement benefit liabilities of \$27.4 million. It did not seem possible that ICTR would be able to complete its work by 2010, and there was a risk that many of the indictees might never be brought to trial owing to the closure in April of the Investigations Unit at Kigali, Rwanda. The Board further found that the impact of initiatives to improve the Tribunal's legal aid system was yet to be evaluated; requests for the translation of documents that were apparently of no probative

value to cases before the Tribunal added to the already heavy workload of the Language Services Section; and procurement contracts or extensions thereto were, in some instances, signed after the commencement date of the contract or not at all.

The Board recommended measures to improve the presentation and disclosure of the Tribunal's financial statements, review the funding mechanism for end-of-service and post-retirement benefit liabilities, monitor progress in implementing the completion strategy, intensify efforts to gain the cooperation of States, continue to monitor and limit defence counsel expenditures, prevent the translation of non-essential documents, shorten the procurement lead time and improve the process of approving contracts.

GENERAL ASSEMBLY ACTION

On 23 December [meeting 76], the General Assembly, on the recommendation of the Fifth Committee [A/59/603], adopted **resolution 59/273** without vote [agenda item 121].

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 reports of the Secretary-General, namely the first performance report for the biennium 2004-2005 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 report on biennial budgeting at the Tribunals,

Having also considered the report of the Board of Auditors and the recommendations contained therein,

Having further considered the related report of the Advisory Committee on Administrative and Budgetary Questions,

Recalling its resolution 49/251 of 20 July 1995 on the financing of the Tribunal and its subsequent resolutions thereon, the latest of which were resolutions 58/252 and 58/253 of 23 December 2003,

1. *Takes note* of the first performance report of the Secretary-General for the biennium 2004-2005 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 his report on biennial budgeting at the Tribunals;

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

3. *Notes with concern* the precarious financial situation of the Tribunal;

4. *Also 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;

5. *Further notes with concern* the resulting freeze imposed by the Secretariat on the Tribunal and the negative impact it is having on the completion strategy schedule, and requests the Secretary-General, in consultation with the Tribunal, to submit proposals on ways to ameliorate the staffing situation at the Tribunal in the context of the proposed budget for the biennium 2006-2007;

6. *Requests* the Secretary-General to ensure that areas critical to the successful completion of the mandate of the Tribunal, in accordance with the completion strategy, are exempt from any freezes;

7. *Also requests* the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunal, including by extending contracts of staff performing functions that are central to the implementation of the completion strategy beyond the period of the current budget;

8. *Further requests* the Secretary-General to submit the reports requested in paragraphs 17 and 23 of resolution 58/253 in the context of the proposed budget of the Tribunal for the biennium 2006-2007;

9. *Welcomes* the efforts of the Tribunal, in accordance with its statute, to assist the Government of Rwanda in strengthening its judiciary, and requests the Tribunal to increase its capacity-building efforts for the judiciary of Rwanda, including through recruitment of Rwandan legal professionals and training and attachment programmes, in view of the intention to transfer cases for prosecution to Rwanda as from 2005;

10. *Recognizes* the importance of carrying out an effective outreach programme within the overall mandate of the Tribunal and its completion strategy, and requests the Tribunal, in accordance with its mandate, to develop and implement outreach programmes that are proactive, utilizing available resources optimally, and that contribute to the reconciliation process by effectively developing an increased understanding of its work among Rwandans;

11. *Requests* the Secretary-General to report on the outreach programme of the Tribunal and on future measures to ensure the smooth transfer of cases to national jurisdiction in the context of the proposed budget of the Tribunal for the biennium 2006-2007;

12. *Decides* to approve the proposed post and non-post resources for the Investigations Division for 2005;

13. *Decides also* on a revised appropriation 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 Janu-

ary and 31 December 1994 of a total amount of 255,909,500 United States dollars gross (231,506,500 dollars net) for the biennium 2004-2005;

14. *Decides further*, for the year 2005, to apportion among Member States, in accordance with the scale of assessments applicable to the regular budget of the United Nations for the year, the amount of 69,123,700 dollars gross (62,434,375 dollars net), including 10,292,650 dollars gross (9,115,500 dollars net), being the increase in assessments;

15. *Decides*, for the year 2005, to apportion among Member States, in accordance with the rates of assessment applicable to peacekeeping operations for the year, the amount of 69,123,700 dollars gross (62,434,375 dollars net), including 10,292,650 dollars gross (9,115,500 dollars net), being the increase in assessments;

16. *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 14 and 15 above, their respective share in the Tax Equalization Fund in the amount of 13,378,650 dollars, including 2,354,300 dollars, being the increase in the estimated staff assessment income approved for the Tribunal for the biennium 2004-2005.

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

	<i>Gross</i>	<i>Net</i>
	<i>(United States dollars)</i>	
1. Initial appropriation for the biennium 2004-2005 (resolution 58/253)	235 324 200	213 275 500
Add:		
2. Proposed changes for the biennium 2004-2005 (A/59/549)	25 647 300	23 293 000
Less:		
3. One-time adjustment reflecting projected savings for 2004 (A/59/549)	(5 062 000)	(5 062 000)
4. Proposed revised appropriation for the biennium 2004-2005	255 909 500	231 506 500
5. Assessment for 2004	(117 662 100)	(106 637 750)
6. Balance to be assessed for 2005	138 247 400	124 868 750
Of which:		
7. Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2005	69 123 700	62 434 375
8. Contributions assessed on Member States in accordance with the rates of assessment applicable to peacekeeping operations of the United Nations for 2005	69 123 700	62 434 375

Also on 23 December, the Assembly decided that the item on financing of ICTR would remain

for consideration during its resumed fifty-ninth (2005) session (**decision 59/552**).

Functioning of the Tribunals

Office of the Prosecutor

GENERAL ASSEMBLY ACTION

On 8 April [meeting 83], the General Assembly, having considered the 2003 report of the Office of Internal Oversight Services (OIOS) on its review of the Office of the Prosecutor of ICTY and ICTR [YUN 2003, p. 1331], on the recommendation of the Fifth Committee [A/58/752], adopted **resolution 58/287** without vote [agenda items 131 & 132].

Review of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia

The General Assembly,

Recalling its resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999,

Recalling also its resolutions 57/289 of 20 December 2002 and 58/253 and 58/255 of 23 December 2003,

Having considered the report of the Office of Internal Oversight Services on the review of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia,

Takes note of the report of the Office of Internal Oversight Services on the review of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

Biennial budgeting

Report of Secretary-General. In response to General Assembly resolutions 58/253 [YUN 2003, p. 1327] and 58/255 [ibid., p. 1318], the Secretary-General submitted a July report [A/59/139] on the results of the biennialization of the budgets of ICTR and ICTY, introduced at the United Nations in 1974 but only used in the Tribunals for the 2002-2003 biennium. The Secretary-General noted that the implementation of the biennial budgeting cycle had saved the Tribunals time and effort, providing them a greater scope for planning, managing and coordinating their activities, and had enabled them to become more focused on the realization of their completion strategy. Biennialization was also helping to alleviate the heavy agenda of the legislative and expert bodies, thereby allowing more time for the review of budget performance and evaluation, among other things. Returning to annual budgets would imply the issuance of yearly staff contracts,

thereby exacerbating the already difficult situation of staff retention, and have a negative impact on staff morale and the functioning of the Tribunals and their completion strategies. The Secretary-General therefore proposed that the Assembly maintain a biennial budget presentation for the Tribunals.

Annexed to the report were the views of the Board of Auditors, which concurred with the Secretary-General's proposal.

ACABQ report. In November [A/59/561], ACABQ also supported the Secretary-General's proposal that the Assembly maintain the biennial format for the presentation of the Tribunals' budgets.

Implementation of completion strategies

Following its consideration in March of the work of ICTY and ICTR, the Security Council emphasized the importance of fully implementing the completion strategies, as set out in Council resolution 1503(2003) [YUN 2003, p. 1330], which called for completing investigations by the end of 2004, first instance trials by 2008 and the work of both Tribunals by 2010. The Council requested each Tribunal to provide, by 31 May and every six months thereafter, assessments of progress made in that regard (see below).

SECURITY COUNCIL ACTION

On 26 March [meeting 4935], the Security Council unanimously adopted **resolution 1534(2004)**. The draft [S/2004/232] was prepared in consultations among Council members.

The Security Council,

Recalling its resolutions 827(1993) of 25 May 1993, 955(1994) of 8 November 1994, 978(1995) of 27 February 1995, 1165(1998) of 30 April 1998, 1166(1998) of 13 May 1998, 1329(2000) of 30 November 2000, 1411(2002) of 17 May 2002, 1431(2002) of 14 August 2002 and 1481(2003) of 19 May 2003,

Recalling and reaffirming in the strongest terms the statement of 23 July 2002 made by the President of the Security Council endorsing the International Tribunal for the Former Yugoslavia Completion Strategy, and its resolution 1503(2003) of 28 August 2003,

Recalling that resolution 1503(2003) called 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 its work in 2010 (the completion strategies), and requested the Presidents and Prosecutors of the Tribunals, in their annual reports to the Council, to explain their plans to implement the completion strategies,

Welcoming the presentations made by the Presidents and Prosecutors of the Tribunals to the Security Council on 9 October 2003,

Commending the important work of both Tribunals in contributing to lasting peace and security and national reconciliation and the progress made since their inception, commending them on their efforts so far to give effect to the completion strategies, and calling upon them to ensure effective and efficient use of their budgets, with accountability,

Reiterating its support for the Prosecutors of the Tribunals in their continuing efforts to bring at-large indictees before the Tribunals,

Noting with concern the problems highlighted in the presentations to the Security Council on 9 October 2003 in securing adequate regional cooperation,

Also noting with concern indications in the presentations made on 9 October that it might not be possible to implement the completion strategies set out in resolution 1503(2003),

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

1. *Reaffirms* the necessity of trial of persons indicted by the International Tribunal for the Former Yugoslavia, reiterates its call 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 Tribunal, particularly to bring Radovan Karadzic and Ratko Mladic, as well as Ante Gotovina and all other indictees, to the Tribunal, and calls upon all at-large indictees of the Tribunal to surrender to it;

2. *Reaffirms* the necessity of trial of persons indicted by the International Tribunal for Rwanda, reiterates its call 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 Tribunal, 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 all at-large indictees of the Tribunal to surrender to it;

3. *Emphasizes* the importance of fully implementing the completion strategies as set out in paragraph 7 of resolution 1503(2003), which calls upon the Tribunals 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 its work in 2010, and urges each Tribunal to plan and act accordingly;

4. *Calls upon* the Prosecutors of the Tribunals to review the case load of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, respectively, in particular with a view to determining which cases should be proceeded with and which should be transferred to competent national jurisdictions, as well as the measures which will need to be taken to meet the completion strategies referred to in resolution 1503(2003), and urges them to carry out this review as soon as possible and to include a progress report in the assessments to be provided to the Council under paragraph 6 of the present resolution;

5. *Calls upon* each Tribunal, in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the relevant Tribunal, as set out in resolution 1503(2003);

6. *Requests* each Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards the implementation of the Completion Strategy of the Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate- and lower-rank accused to competent national jurisdictions; and expresses the intention of the Council to meet with the President and the Prosecutor of each Tribunal to discuss these assessments;

7. *Declares* the determination of the Council to review the situation, and, in the light of the assessments received under the foregoing paragraph, to ensure that the time frames set out in the Completion Strategies and endorsed in resolution 1503(2003) can be met;

8. *Commends* those States which have concluded agreements for the enforcement of sentences of persons convicted by the International Tribunal for the Former Yugoslavia or the International Tribunal for Rwanda or have otherwise accepted such convicted persons to serve their sentences in their respective territories; encourages other States in a position to do so to act likewise; and invites the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda to continue and intensify their efforts to conclude further agreements for the enforcement of sentences or to obtain the cooperation of other States in this regard;

9. *Recalls* that the strengthening of competent national judicial systems is crucially important to the rule of law in general and to the implementation of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda completion strategies in particular;

10. *Welcomes*, in particular, the efforts of the Office of the High Representative, the International Tribunal for the Former Yugoslavia and the donor community to create a war crimes chamber in Sarajevo; encourages all parties to continue efforts to establish the chamber expeditiously; and encourages the donor community to provide sufficient financial support to ensure the success of domestic prosecutions in Bosnia and Herzegovina and in the region;

11. *Decides* to remain actively seized of the matter.

Progress assessment

In response to Security Council resolution 1534(2004) (see p. 1292), the Presidents of ICTY and ICTR submitted May and November reports containing revised and updated versions of their completion strategies and detailing progress made towards implementing them.

The May report on ICTY [S/2004/420] reviewed the progress of proceedings regarding first instance trials and cases on appeal. It outlined measures taken to implement the completion strategy, including the referral of cases involving lower- and intermediate-rank accused to competent national jurisdictions, compliance with the requirement of seniority contained in Council resolution 1534(2004), operation of the Trial

Chambers at full capacity, efforts to make interlocutory appeals more effective and to shorten appeal judgements, and the establishment of a working group on scheduling cases, tasked with improving the efficiency of scheduling trials. The report also provided an updated prognosis of ICTY's ability to realize the completion strategy under current conditions, emphasizing that the Tribunal, in order to meet its mandate, needed to be able to try the most senior fugitives accused of serious violations of international humanitarian law, particularly Radovan Karadzic and Ratko Mladic, both of whom were indicted in 1995 [YUN 1995, p. 1314], as well as Ante Gotovina, indicted in 2001 [YUN 2001, p. 1199]. Although the unsealing of new indictments in March and April 2004 had created additional uncertainties for the completion strategy, the Tribunal was still in a position to try all accused currently in detention and on provisional release by the end of 2008, including Mr. Gotovina, provided he arrived in The Hague before 2006. However, because the new indictments would likely result in two new trials involving eight new defendants, it was unlikely that the Tribunal would be able to try within the completion strategy deadlines any other fugitives or new indictees, including Messrs. Karadzic and Mladic, unless some cases could be resolved through referral to a domestic jurisdiction or by a guilty plea. Other measures, including enhanced cooperation by Member States in transferring the high-profile fugitives and eliminating delays due to the election of new judges in 2005, would help the Tribunal meet the goals set out in the completion strategy. Such other measures as the general freeze on hiring personnel were bound to interfere with the Tribunal's work and with the completion strategy. It was, therefore, imperative that the Tribunal be in a position to replace departing essential staff, particularly in the Chambers. ICTY's November report [S/2004/897] updated information provided in May and demonstrated that the implementation of the completion strategy was on course. The first deadline would be met with the completion of all new investigations by year's end, when 11 motions requesting the transfer of cases to be tried by local jurisdictions would have been filed. However, the successful implementation of the completion strategy called for further increasing the Tribunal's efficiency. In that regard, the freeze on new recruitment needed to be lifted as soon as possible, and States of the former Yugoslavia needed to arrest and transfer all remaining 20 fugitives promptly.

The May report on ICTR [S/2004/341] outlined the Tribunal's completion strategy, based on the information available as at 26 April and taking into account the deadlines set in Council resolu-

tions 1503(2003) [YUN 2003, p. 1330] and 1534(2004). The report reviewed recent judgements and trials in progress; the status of detainees awaiting trial; the Tribunal's workload relating to detainees currently in Arusha, United Republic of Tanzania, persons at large and other trial work; the transfer of cases to national jurisdictions; and past and current strategies. It was projected that by 2008 ICTR could complete trials and judgements relating to 65 to 70 persons, depending on the progress of current and future trials. Assessing ICTR's human resources needs, the report noted that the prosecution envisaged a substantial increase in the number of trial attorneys, an expansion of the Tribunal's Appeals Section and investigative and administrative support. The prosecution expected that at the anticipated conclusion of investigations at year's end, some posts currently held by investigators could be redeployed to increase the number of trial attorneys, legal advisers and other staff required for trial. The November report on ICTR [S/2004/921], which revised its completion strategy based on information available as at 19 November, noted, however, that in order to adhere to the time frames set out in relevant Council resolutions, ICTR needed to continue to receive the necessary resources. In that regard, the recruitment of new staff had been frozen because some Member States had failed to pay their assessed contributions.

SECURITY COUNCIL ACTION

On 4 August [meeting 5016], following consultations among Security Council members, the President made statement **S/PRST/2004/28** on behalf of the Council:

The Security Council takes note of the letter dated 21 May 2004 from the President 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 addressed to the President of the Security Council.

The Council also takes note of the letter dated 30 April 2004 from the President 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 addressed to the President of the Security Council.

The Council thanks the Presidents and Prosecutors of the two Tribunals for these assessments requested by resolution 1534(2004), as supplemented by their oral reports at the 4999th meeting of the Council on 29 June 2004.

The Council reaffirms its support for the two Tribunals and welcomes their efforts to carry out their completion strategies. The Council strongly encourages the Tribunals to make every effort to ensure that they remain on track to meet the target dates of the completion strategies.

The Council stresses that the full cooperation of all States with the Tribunals is not only a mandatory obligation of all States under its resolutions 827(1993) and 955(1994) and the statutes of the Tribunals, but is also an essential element in realizing the completion strategies. In this regard, the Council takes careful note of the assessments presented with respect to the level of cooperation by the authorities of Serbia and Montenegro and the Republika Srpska within Bosnia and Herzegovina with the International Tribunal for the Former Yugoslavia. We welcome as well the commitments made by the new Government in Serbia regarding cooperation with the International Tribunal for the Former Yugoslavia. The Council takes note of developments in Croatian and Rwandan cooperation with the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for the Rwanda, respectively.

The Council reiterates its call upon all States, especially Serbia and Montenegro, Croatia, Bosnia and Herzegovina, and 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 Karadzic and Ratko Mladic, as well as Ante Gotovina and all other such indictees to the Tribunal.

The Council reiterates its call 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 Criminal 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.

The Council notes with concern that the shortfall in financial contributions from Member States is having a disruptive effect on the work of the Tribunals and urges Member States to fulfil their commitments in a timely manner.

The Council emphasizes the importance of the referral of cases involving lower- and intermediate-rank accused to competent national jurisdictions in achieving the completion strategies and recalls the provisions of its resolutions 1503(2003) and 1534(2004), including the call for assistance to ensure the success of this effort.

The Council also notes the concerns expressed by the President of the International Tribunal for the Former Yugoslavia on the effect the expiry of the terms of permanent judges may have on case management and takes note of the letter of 15 July 2004 from the Acting Legal Counsel bringing forward an invitation to Member States to submit nominations for permanent judges of the Tribunal before 13 September 2004.

The Council encourages further dialogue between the Tribunals and its Working Group on matters of mutual concern.

The Council will remain seized of the matter.