

International tribunals and court

In 2009, the international tribunals for the former Yugoslavia and for Rwanda worked towards the completion of their mandates.

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 continued to expedite its proceedings, in keeping with its completion strategy. During the year, the Tribunal rendered two Trial Chambers judgements and three Appeals Chamber judgements. As at 3 December, the nine remaining trials were expected to be completed by September 2012 and all appeals by February 2014.

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) continued to work towards its completion strategy, despite an unprecedented workload. In 2009, it rendered five Trial and two Appeals Chamber judgements and commenced 10 new trials. Two fugitives were arrested, yet 11 remained at large.

The International Criminal Court, in its sixth year of functioning, continued its proceedings with respect to situations of concern in four countries. A warrant of arrest was delivered against Omar Hassan Ahmad Al-Bashir, the President of the Sudan, for crimes against humanity and war crimes. Eight warrants of arrest were outstanding at year's end. In November, the Prosecutor requested authorization to open an investigation into the situation in Kenya, where over 355,000 civilians had allegedly been forcibly displaced, injured, raped or killed as part of a widespread and systematic attack.

International Tribunal for the Former Yugoslavia

In 2009, the International Tribunal for the Former Yugoslavia (ICTY), established by Security Council resolution 827(1993) [YUN 1993, p. 440] and based in The Hague, continued efforts to implement its

completion strategy [YUN 2002, p. 1275], which was endorsed by Council resolution 1503(2003) [YUN 2003, p. 1330]. The Tribunal focused on expediting its proceedings and the completion of all trials and appeals. During the year, ICTY also adopted or amended rules of procedure in order to enhance the efficiency of proceedings, based on recommendations made by a working group. The Office of the Prosecutor continued to seek the cooperation of the States of the former Yugoslavia and other States to fulfil its mandate, strengthen relations with its regional counterparts, and support the furtherance of the rule of law in the region. Meanwhile, the Registry continued to play a crucial role in the provision of administrative and judicial support.

On 26 October, Judge Patrick Robinson (Jamaica) and Judge O-Gon Kwon (Republic of Korea) were re-elected to the positions of President and Vice-President of the Tribunal, respectively. The Registrar, John Hocking, and the Prosecutor, Serge Brammertz, continued to fulfil their duties at the Tribunal. The Security Council adopted two resolutions—1877(2009) and 1900(2009)—addressing, among other issues, the appointment of judges, extension of their terms of office, their redeployment between Tribunals, and the maximum number of judges serving at the Tribunal (see pp. 1282–1285).

ICTY President Robinson informed the Council on 3 December [meeting 6228] that of the 161 persons indicted by the Tribunal, only a single accused remained in the pre-trial stage, 24 accused were on trial in nine cases and another 13 accused had appeals pending. Five trials were expected to be completed during the course of 2010, three in the first half of 2011, and the remaining case—that of Radovan Karadžić—in August or September 2012. It was anticipated that all appeals would be completed in 2013, except for the Karadžić appeal, which was estimated to finish in February 2014. The Council, in resolution 1900(2009), requested that the ICTY President submit an updated trial and appeals schedule.

The activities of ICTY were covered in two reports to the Security Council and the General Assembly, for the periods 1 August 2008 to 31 July 2009 [A/64/205-S/2009/394] and 1 August 2009 to 31 July 2010 [A/65/205-S/2010/413]. On 8 October, the Assembly took note of the 2008/2009 report (**decision 64/506**).

The Chambers

During the year, the Tribunal's three Trial Chambers continued to function at full capacity, running up to eight trials simultaneously and rendering two judgements involving eight accused, while the Appeals Chamber rendered three judgements on the merits involving four accused. Judicial activities included first-instance and appeals proceedings against judgements, interlocutory decisions, State requests for review, and contempt cases. As at 31 July, ICTY had 27 judges from 25 countries, comprising 13 permanent judges; two ICTR permanent judges serving in the Appeals Chamber; and 12 *ad litem* (short-term) judges.

New arrests and indictments

In 2009, no new arrests or indictments were issued by the Prosecutor, except for those for contempt of the Tribunal. Vojislav Šešelj was charged with contempt of court on 21 January (see below) and Zuhdija Tabaković was charged on 17 November (see p. 1281). Meanwhile, two fugitives—Ratko Mladić and Goran Hadžić—remained at large. The Office of the Prosecutor closely followed the work of the Serbian authorities to locate them and was regularly briefed on their activities. Serbia's National Security Council and Action Team in charge of tracking the fugitives led complex and widespread search operations against the two accused and their support networks.

Ongoing cases and trials

In the case against Vojislav Šešelj, who was charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia, Bosnia and Herzegovina and Vojvodina (Serbia) between August 1991 and September 1993 [YUN 2003, p. 1311; YUN 2004, p. 1277], the trial started on 27 November 2006 in his absence [YUN 2006, p. 1490] and began anew on 7 November 2007 [YUN 2007, p. 1337]. On 21 January 2009, Trial Chamber II issued an order in lieu of indictment charging Mr. Šešelj with contempt for having disclosed, in a book authored by him, confidential information in violation of orders granting protective measures to three witnesses, as well as excerpts of one of their written statements. On 11 February, Trial Chamber III, at the prosecution's request, adjourned the hearing of certain prosecution witnesses, finding that hearing them at that time would jeopardize the integrity of proceedings and the security of the witnesses. Also on that date, an *amicus curiae* Prosecutor was assigned by the Acting Registrar. At his initial appearance on the contempt charges on 6 March, Mr. Šešelj pleaded not guilty. The trial was held on 29 May and in the

judgement rendered on 24 July, he was convicted of contempt of the Tribunal and sentenced to 15 months of imprisonment. The primary trial of Mr. Šešelj resumed on 23 November.

The trial of Vlastimir Đorđević, a former senior Serbian police official charged with deportation, inhumane acts (forcible transfer), murder and persecutions in Kosovo [YUN 2003, p. 1312] and arrested on 17 June 2007 [YUN 2007, p. 1337], commenced on 27 January 2009. Originally, Mr. Đorđević's case was part of the Milutinović *et al.* case [YUN 2005, p. 1390], yet was severed from that of the others when the Milutinović case began with Mr. Đorđević still at large [YUN 2006, p. 1487]. The prosecution closed its case on 28 October and the defence case opened on 30 November.

On 26 February, in the case against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić, (Milutinović *et al.* case) [YUN 2006, p. 1487], who were charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Kosovo in 1999, the Trial Chamber issued its judgement, acquitting Mr. Milutinović on all counts and convicting the others on some or all of the charges. Messrs. Šainović, Pavković and Lukić were each sentenced to 22 years of imprisonment. Messrs. Ojdanić and Lazarević were each sentenced to 15 years of imprisonment. On 27 May, notices of appeal were filed for all of the accused except Milutinović.

Momčilo Krajišnik, a member of the Bosnian Serb leadership during the war, was sentenced in 2006 to 27 years in prison for persecutions, extermination, murder, deportation and forced transfer of non-Serb civilians [YUN 2006, p. 1489]. On 17 March 2009, the Appeals Chamber granted a number of grounds and subgrounds of Mr. Krajišnik's appeal, quashed a number of convictions, dismissed the remaining grounds of appeal, and reduced his sentence to 20 years in prison.

Following the refusal of Dragan Jokić to testify in the case of Popović *et al.* [YUN 2005, p. 1390], on 1 November 2007, the Trial Chamber issued an order in lieu of indictment on contempt and initiated contempt proceedings against him. On 27 March 2009, Mr. Jokić was found guilty of contempt of the Tribunal and sentenced to four months of imprisonment. On 25 June, the Appeals Chamber dismissed all grounds of a 14 April confidential appeal and affirmed Mr. Jokić's sentence; a public redacted version of the judgement was filed on 3 July.

In the case against Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, who were charged with grave breaches of the 1949 Geneva Conventions, crimes against humanity and violations of the laws or customs of war allegedly committed against Serbs and

Muslims in the Croatian-held part of Bosnia and Herzegovina between November 1991 and April 1994 [YUN 2006, p. 1487], the trial was in the defence stage. As at 31 July 2009, Messrs. Prlić and Stojić had ended their cases, while Mr. Praljak had begun to present his case on 5 May.

Following the trial of Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin [YUN 2006, p. 1490], indicted in 1997 for alleged involvement in the execution of some 200 Croatians and non-Serbs removed from Vukovar hospital in 1991 [YUN 1997, p. 1322], on 27 September 2007, the Tribunal sentenced Messrs. Mrkšić and Šljivančanin, former senior officers of the Yugoslav People's Army (JNA), to 20 years of imprisonment and five years of imprisonment, respectively, for their role in the crimes at Ovčara [YUN 2007, p. 1336]. Mr. Radić, a former JNA captain, was acquitted of all charges. On 5 May 2009, the Appeals Chamber dismissed all grounds of appeal from Messrs. Mrkšić and Šljivančanin. It affirmed Mr. Mrkšić's sentence of 20 years of imprisonment and granted the prosecution's appeal in part, increasing Mr. Šljivančanin's sentence from five to 17 years of imprisonment.

In the trial of Rasim Delić, charged on the basis of his superior command responsibility with violations of the laws or customs of war allegedly committed in Bosnia and Herzegovina between July 1993 and December 1995 [YUN 2005, p. 1388], judgement was rendered on 15 September 2008, sentencing him to three years of imprisonment. Following the filing of appeal briefs, on 11 May 2009, Mr. Delić was granted provisional release pending the hearing of his appeal.

In the case against Milan Lukić, the former leader of a paramilitary group called the "White Eagles" or "Avengers" and his cousin Sredoje Lukić, charged with murdering some 70 Bosnian Muslim women, children and elderly in a house in Višegrad, and beating Bosnian Muslim men at a detention camp in Višegrad [YUN 2007, p. 1337], the trial commenced on 9 July 2008 [YUN 2008, p. 1408] and the evidence was completed on 19 May 2009. On 20 July, judgement was delivered, sentencing Milan Lukić to life imprisonment and Sredoje Lukić to 30 years of imprisonment. On 2 November, the prosecution and the defence of Sredoje Lukić filed their appeal briefs. On 17 November, Zuhdija Tabaković, a potential witness in the case of Messrs. Lukić and Lukić, was charged with contempt of the Tribunal for allegedly providing a false statement in exchange for payment. At his initial appearance on the contempt charges on 22 December, Mr. Tabaković pleaded not guilty.

On 2 June, the trial of Jovica Stanišić and Franko Simatović recommenced [YUN 2003, p. 1311]. The Trial Chamber in May 2006 [YUN 2006, p. 1487] charged Mr. Stanišić, former head of the State Security Service (DB) of the Ministry of Internal Affairs of the

Republic of Serbia, and Mr. Simatović, commander of the DB Special Operations Unit, with four counts of crimes against humanity and one count of violation of the laws or customs of war. The trial began on 28 April 2008, but due to the health condition of Mr. Stanišić, the Appeals Chamber adjourned the proceedings on 16 May [YUN 2008, p. 1408].

The trial of Florence Hartmann, charged with contempt of the Tribunal for disclosing two confidential decisions of the Appeals Chamber in her book *Paix et châtement*, and in an article "Vital genocide documents concealed", published by the Bosnian Institute, began on 15 June 2009. Closing arguments were heard on 3 July and in the judgement, issued on 14 September, Ms. Hartmann was convicted and sentenced to pay a fine of €7,000. An appeal brief was filed on 9 October and refiled on 23 November.

Dragomir Milošević, a former Bosnian Serb Army General, was convicted on 21 December 2007 of a range of crimes committed against civilians during the final months of the 1992–1995 siege of Sarajevo and was sentenced to 33 years of imprisonment [YUN 2007, p. 1338]. Following a hearing on 21 July 2009, the Appeals Chamber, on 12 November, granted Mr. Milošević's appeal in part and reduced his sentence to 29 years of imprisonment. The prosecution's sole ground of appeal, requesting that Mr. Milošević be sentenced to life imprisonment, was dismissed in its entirety.

In the trial of Astrit Haraqija and Bajrush Morina, charged with contempt of the Tribunal for alleged intimidation and interference with a protected witness, judgement was rendered on 17 December 2008. Messrs. Haraqija and Morina were sentenced to five and three months of imprisonment, respectively. On 23 July 2009, the Appeals Chamber found that the Trial Chamber had given too much weight to untested evidence when it concluded that Mr. Haraqija had influence over Mr. Morina and instructed him to commit the crime of contempt. The Appeals Chamber reversed the conviction of Mr. Haraqija, yet affirmed the sentence of three months of imprisonment for Mr. Morina.

In the case against Mićo Stanišić and Stojan Župljanin, charged with 10 counts of crimes against humanity and violations of the laws or customs of war allegedly committed from April to December 1992 in Bosnia and Herzegovina, the trial commenced on 14 September 2009. According to the joinder indictment filed on 29 September 2008 [YUN 2008, p. 1409], Messrs. Stanišić and Župljanin participated in a joint criminal enterprise as co-perpetrators and were charged with persecutions, extermination, murder, torture, inhumane acts (including forcible transfer) and deportation; and murder, torture, and cruel treatment.

The trial of Radovan Karadžić, former President of Republika Srpska and Supreme Commander of its armed forces, commenced on 26 October 2009. Mr. Karadžić was charged under 11 counts with genocide, crimes against humanity, and violations of the laws or customs of war allegedly committed in Bosnia and Herzegovina between 1992 and 1995. Following his arrest and transfer to the Tribunal on 30 July 2008 [YUN 2008, p. 1407], pleas of not guilty were entered on his behalf to all charges.

In the trial of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Kosovo in 1998, judgement was delivered on 3 April 2008 [YUN 2008, p. 1407]. Mr. Brahimaj was sentenced to six years of imprisonment, while Messrs. Haradinaj and Balaj were acquitted. Appeals from judgement were filed before the Appeals Chamber with the prosecution requesting a reversal of the decision to acquit Messrs. Haradinaj, Balaj and Brahimaj on certain counts in the indictment. The appeal hearing was held on 28 October 2009.

In the case against Ljube Boškoski and Johan Tarčulovski, charged with violations of the laws or customs of war allegedly committed against ethnic Albanians in the former Yugoslav Republic of Macedonia in August 2001 [YUN 2005, p. 1388], Mr. Boškoski was acquitted on all counts and Mr. Tarčulovski was sentenced to 12 years of imprisonment in the judgement delivered on 10 July 2008 [YUN 2008, p. 1408]. Appeals were filed on both judgements and the appeal hearing took place on 29 October 2009.

Judges of the Court

Extension of terms of office

In a May assessment report [S/2009/252] to the Security Council, the ICTY President indicated that the Tribunal would not be in a position to complete all its work in 2010, with two cases anticipated to be completed in 2011 and early 2012. He noted that the extension of the terms of office of the Tribunal's trial and ad litem judges until 31 December 2009, and its current appeal judges until 31 December 2010, by Council resolution 1837(2008) [YUN 2008, p. 1411], was not sufficient. Consequently, a request would be made to the Council to remedy the situation.

On 19 June [S/2009/333], the Secretary-General transmitted to the Council letters from the ICTY and ICTR Presidents relating to the ability of the Tribunals to implement their completion strategies. In his letter dated 27 May (Annex I), the ICTY President requested that the Council extend the term of office of ICTY judges; authorize ICTY to exceed temporarily the statutory maximum number of ad litem judges serving at the Tribunal; and expand the membership of

the Appeals Chamber through the redeployment of four permanent judges from the Trial Chambers to the Appeals Chamber.

SECURITY COUNCIL ACTION

On 7 July [meeting 6155], the Security Council unanimously adopted **resolution 1877(2009)**. The draft [S/2009/339] was submitted by Austria.

The Security Council,

Taking note of the letter dated 19 June 2009 from the Secretary-General to the President of the Security Council attaching the letter dated 27 May 2009 from the President of the International Tribunal for the Former Yugoslavia ("the International Tribunal") and the letter dated 29 May 2009 from the President of the International Criminal Tribunal for Rwanda,

Recalling its resolutions 827(1993) of 25 May 1993, 1581(2005) of 18 January 2005, 1597(2005) of 20 April 2005, 1613(2005) of 26 July 2005, 1629(2005) of 30 September 2005, 1660(2006) of 28 February 2006, 1668(2006) of 10 April 2006, 1800(2008) of 20 February 2008, 1837(2008) of 29 September 2008 and 1849(2008) of 12 December 2008,

Recalling in particular its resolutions 1503(2003) of 28 August 2003 and 1534(2004) of 26 March 2004, in which the Council calls upon the International Tribunal 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 work in 2010,

Taking note of the assessment by the International Tribunal in its completion strategy report that the International Tribunal will not be in a position to complete all its work in 2010,

Having considered the proposals submitted by the President of the International Tribunal,

Expressing its determination to support the efforts made by the International Tribunal towards the completion of its work at the earliest date,

Recalling that in its resolution 1837(2008), the Council extended the term of office of the permanent judges of the International Tribunal, including permanent judges Liu Daqun (China), Theodor Meron (United States of America) and Fausto Pocar (Italy), who are members of the Appeals Chamber, until 31 December 2010, or until the completion of the cases to which they are assigned if sooner,

Expressing its expectation that the extension of the term of office of judges will enhance the effectiveness of judicial proceedings and contribute towards the implementation of the completion strategy of the International Tribunal,

Noting that permanent judges Iain Bonomy (United Kingdom of Great Britain and Northern Ireland), Mohamed Shahabuddeen (Guyana) and Christine Van Den Wyngaert (Belgium) have resigned from the International Tribunal,

Convinced of the advisability of allowing the Secretary-General to appoint an ad litem judge additional to the twelve ad litem judges authorized by the statute of the International Tribunal, as a temporary measure, to enable the International Tribunal to assign a reserve judge to one of the trials, and taking note of the assurance by the Presi-

dent of the International Tribunal that this temporary measure will be within existing resources,

Convinced also of the need to enlarge the membership of the Appeals Chamber in view of the anticipated increase in the workload of the Appeals Chamber upon completion of the trial proceedings,

Stressing the need to ensure that none of the Appeals Chamber judges is assigned to any case to which he or she was assigned at the pretrial or trial stage,

Urging the International Tribunal to take all possible measures to complete its work expeditiously,

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

1. *Decides* to review the extension of the term of office of the permanent judges at the International Tribunal, who are members of the Appeals Chamber, by 31 December 2009, in the light of the progress of the International Tribunal in the implementation of the completion strategy;

2. *Decides also* to extend the term of office of the following permanent judges at the International Tribunal until 31 December 2010, or until the completion of the cases to which they are assigned if sooner:

- Mr. Carmel A. Agius (Malta)
- Mr. Jean-Claude Antonetti (France)
- Mr. Christoph Flügge (Germany)
- Mr. O-gon Kwon (Republic of Korea)
- Mr. Bakone Melema Moloto (South Africa)
- Mr. Alphonsus Martinus Maria Orié (Netherlands)
- Mr. Kevin Horace Parker (Australia)
- Mr. Patrick Lipton Robinson (Jamaica)

3. *Decides further* that the term of office of the permanent judges appointed to replace Mr. Iain Bonomy (United Kingdom of Great Britain and Northern Ireland), Mr. Mohamed Shahabuddeen (Guyana) and Ms. Christine Van Den Wyngaert (Belgium) shall extend until 31 December 2010, or until the completion of the cases to which they will be assigned if sooner;

4. *Decides* to extend the term of office of the following ad litem judges, currently serving at the International Tribunal, until 31 December 2010, or until the completion of the cases to which they are assigned if sooner:

- Mr. Melville Baird (Trinidad and Tobago)
- Mr. Pedro David (Argentina)
- Ms. Elizabeth Gwaunza (Zimbabwe)
- Mr. Frederik Harhoff (Denmark)
- Mr. Uldis Kinis (Latvia)
- Ms. Flavia Lattanzi (Italy)
- Mr. Antoine Mindua (Democratic Republic of the Congo)
- Ms. Michèle Picard (France)
- Mr. Árpád Prandler (Hungary)
- Mr. Stefan Trechsel (Switzerland)

5. *Decides also* to extend the term of office of the following ad litem judges, who are not currently appointed to serve at the International Tribunal, until 31 December 2010, or until the completion of any cases to which they may be assigned if sooner:

- Mr. Frans Bauduin (Netherlands)
- Sir Burton Hall (Bahamas)

- Mr. Raimo Lahti (Finland)
- Mr. Jawdat Naboty (Syrian Arab Republic)
- Ms. Chioma Egondú Nwosu-Iheme (Nigeria)
- Ms. Prisca Matimba Nyambe (Zambia)
- Mr. Brynmor Pollard (Guyana)
- Ms. Vonimbolana Rasoazanany (Madagascar)
- Tan Sri Dato' Lamin bin Haji Mohd Yunus (Malaysia)

6. *Decides further* to allow ad litem judges Harhoff, Lattanzi, Mindua, Prandler and Trechsel to serve in the International Tribunal beyond the cumulative period of service provided for under article 13 ter, paragraph 2, of the statute of the International Tribunal;

7. *Decides* that, upon the request of the President of the International Tribunal, the Secretary-General may appoint additional ad litem judges in order to complete existing trials or conduct additional trials, notwithstanding the fact that the total number of ad litem judges serving at the International Tribunal will from time to time temporarily exceed the maximum of twelve provided for in article 12, paragraph 1, of the statute, to a maximum of thirteen at any one time, returning to a maximum of twelve by 31 December 2009;

8. *Decides also* to amend article 14, paragraphs 3 and 4, of the statute and to replace those paragraphs with the provisions set out in the annex to the present resolution;

9. *Decides further* to remain seized of the matter.

ANNEX

Article 14

Officers and members of the Chambers

3. After consultation with the permanent judges of the International Tribunal, the President shall assign four of the permanent judges elected or appointed in accordance with article 13 bis of the Statute to the Appeals Chamber and nine to the Trial Chambers. Notwithstanding the provisions of article 12, paragraph 1, and article 12, paragraph 3, the President may assign to the Appeals Chamber up to four additional permanent judges serving in the Trial Chambers, on the completion of the cases to which each judge is assigned. The term of office of each judge redeployed to the Appeals Chamber shall be the same as the term of office of the judges serving in the Appeals Chamber.

4. Two of the permanent judges of the International Criminal Tribunal for Rwanda elected or appointed in accordance with article 12 bis of the Statute of that Tribunal shall be assigned by the President of that Tribunal, in consultation with the President of the International Tribunal, to be members of the Appeals Chamber and permanent judges of the International Tribunal. Notwithstanding the provisions of article 12, paragraph 1, and article 12, paragraph 3, up to four additional permanent judges serving in the Trial Chambers of the International Criminal Tribunal for Rwanda may be assigned to the Appeals Chamber by the President of that Tribunal, on the completion of the cases to which each judge is assigned. The term of office of each judge redeployed to the Appeals Chamber shall be the same as the term of office of the judges serving in the Appeals Chamber.

In a letter dated 8 July [A/63/957], the Security Council President transmitted the text of resolution 1877(2009) to the General Assembly President. On 9 September, the Assembly endorsed the actions taken by the Council in operative paragraphs 1 through 8 of that resolution (**decision 63/426**).

Appointment of new judges

By a letter of 22 July [S/2009/386], the Secretary-General referred to the resignations of Judges Mohamed Shahabuddeen (Guyana), Iain Bonomy (United Kingdom) and Christine Van Den Wyngaert (Belgium), effective 10 May, 31 August and 1 September respectively. The Governments of Belgium and the United Kingdom had nominated Guy Delvoie and Howard Morrison to replace Judges Wyngaert and Bonomy, respectively. The Government of Guyana, indicating that it was not in a position to nominate a candidate to replace Judge Shahabuddeen, had requested that the other States of the region be asked for possible nominees. Consequently, the Government of the Bahamas nominated Sir Burton Hall, an ad litem judge at the International Tribunal not yet assigned to any cases. As the three candidates met the qualifications prescribed in the Tribunal's Statute, the Secretary-General expressed his intent to appoint them as permanent judges of the International Tribunal, which the Security Council supported on 27 July [S/2009/387].

On 7 August, the Secretary-General informed the Council [S/2009/410] and General Assembly [A/63/946] Presidents that he had appointed Mr. Delvoie, Mr. Morrison and Sir Burton Hall as ICTY permanent judges, effective 1 September 2009, 31 August 2009 and 7 August 2009, respectively, until 31 December 2010, or until the completion of the cases to which they would be assigned if sooner.

On 9 September, the Assembly decided to include the agenda item on ICTY in the draft agenda of its sixty-fourth (2009) session and to consider it directly in plenary meeting (**decision 63/562**).

Ad litem judges

By identical letters of 28 October to the Security Council [S/2009/570] and General Assembly [A/64/510] Presidents, the Secretary-General transmitted a 29 September letter from the ICTY President, requesting the extension of the terms of office of two ad litem judges, Judges Kimberly Prost (Canada) and Ole Bjørn Støle (Norway), until the end of March 2010, to enable them to complete the judgment in the case of the *Prosecutor v. Popović et al.* [YUN 2008, p. 1408]. Their terms of office were set to expire on 31 December 2009. He also sought the appointment of ad litem Judge Prisca Matimba Nyambe (Zambia) effective 1 December in order to commence the Zdravko Tolimir trial [ibid., p. 1409].

SECURITY COUNCIL ACTION

On 16 December [meeting 6242], the Security Council unanimously adopted **resolution 1900(2009)**. The draft [S/2009/644] was submitted by Austria.

The Security Council,

Taking note of the letter dated 28 October 2009 from the Secretary-General to the President of the Security Council, attaching the letter dated 29 September 2009 from the President of the International Tribunal for the Former Yugoslavia ("the International Tribunal"),

Recalling its resolutions 827(1993) of 25 May 1993, 1581(2005) of 18 January 2005, 1597(2005) of 20 April 2005, 1613(2005) of 26 July 2005, 1629(2005) of 30 September 2005, 1660(2006) of 28 February 2006, 1668(2006) of 10 April 2006, 1800(2008) of 20 February 2008, 1837(2008) of 29 September 2008, 1849(2008) of 12 December 2008 and 1877(2009) of 7 July 2009,

Recalling in particular its resolutions 1503(2003) of 28 August 2003 and 1534(2004) of 26 March 2004, in which the Council called upon the International Tribunal 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 work in 2010,

Taking note of the assessment of the International Tribunal in its completion strategy report that the International Tribunal will not be in a position to complete all its work in 2010,

Recalling that, in resolution 1877(2009), the Council extended the term of office of permanent judges and ad litem judges until 31 December 2010, or until the completion of the cases to which they are assigned, if sooner, and decided to review the extension of the term of office of the permanent judges at the International Tribunal, who are members of the Appeals Chamber, by 31 December 2009, in the light of the progress of the International Tribunal in the implementation of the completion strategy,

Convinced of the advisability of allowing the total number of ad litem judges serving at the International Tribunal to temporarily exceed the maximum of twelve provided for in article 12, paragraph 1, of the statute of the International Tribunal,

Urging the International Tribunal to take all possible measures to complete its work expeditiously,

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

1. *Underlines its intention* to extend, by 30 June 2010, the terms of office of all trial judges at the International Tribunal based on the International Tribunal's projected trial schedule and the terms of office of all appeals judges until 31 December 2012, or until the completion of the cases to which they are assigned, if sooner, and requests the President of the International Tribunal to submit to the Security Council an updated trial and appeals schedule, including information on the judges for whom extension of the terms of office or redeployment to the Appeals Chamber will be sought;

2. *Decides* that, notwithstanding the expiry of their terms of office on 31 December 2009, Judges Kimberly Prost (Canada) and Ole Bjørn Støle (Norway) shall complete the *Popović* case, which they began before the expiry of their terms of office, and takes note of the intention of the International Tribunal to complete the case before the end of March 2010;

3. *Also decides*, in this regard, that the total number of ad litem judges serving at the International Tribunal may temporarily exceed the maximum of twelve provided for in article 12, paragraph 1, of the statute of the International Tribunal, to a maximum of thirteen at any one time, returning to a maximum of twelve by 31 March 2010;

4. *Further decides* to allow ad litem Judges Prost and Stole to serve at the International Tribunal beyond the cumulative period of service provided for under article 13 ter, paragraph 2, of the statute of the International Tribunal;

5. *Decides* to remain seized of the matter.

By a letter dated 22 December [A/64/591], the Council President transmitted the text of resolution 1900(2009) to the General Assembly President. On 23 December, the Assembly endorsed the actions taken in operative paragraphs 1 through 4 of that resolution (**decision 64/416**).

Office of the Prosecutor

In 2009, the Office of the Prosecutor made significant progress towards the completion of the trial programme. It also continued to seek the full cooperation of the States of the former Yugoslavia and other States to fulfil its mandate. Two fugitives—Ratko Mladić and Goran Hadžić—remained at large. On 15 October, the Office of the Prosecutor severed the Mladić indictment from the Karadžić indictment, and streamlined it. The Office also completed the transfer of all investigative dossiers to regional authorities late in the year. Seventeen case files with investigative material on 43 suspects were transferred to the prosecutors' offices in Bosnia and Herzegovina, Croatia and Serbia. Serge Brammertz and Norman Farrell continued their duties as Prosecutor and Deputy Prosecutor, respectively [YUN 2008, p. 1412].

As at 31 July, the Office was prosecuting 21 accused in seven trials. Meanwhile, appellate work had remained constant. During the year, the prosecution had filed appeals against five of the six accused in the first multiple-accused judgement. In addition, briefs were filed in four cases, one oral hearing was held on 21 July and hearings in two other briefed cases were held in October. By year's end, only one case remained at the pre-trial stage.

On international cooperation, developments at the political level and the new leadership at the operational level led to an improvement in Serbia's cooperation with the Office of the Prosecutor. Serbia had complied with the majority of requests for assistance and by July nearly all requests for access to documents and archives had been addressed. The Office closely followed the work of the Serbian authorities to locate the two fugitives (Mladić and Hadžić), and was regularly briefed on their activities. The Serbian authorities continued to facilitate the appearance of witnesses before the Tribunal, including serving summonses on individuals.

Croatia responded adequately to the majority of requests for assistance, and the Office received adequate assistance from the Office of the Croatian Prosecutor. However, the Office faced difficulties in securing Croatia's cooperation in the Gotovina et al. trial [YUN 2008, p. 1407], including the prosecution's long-standing request for military documents relating to Operation Storm in 1995 that remained outstanding. In October, the Croatian Government created an inter-agency task force to examine concerns communicated by the Prosecutor's Office about identified shortcomings in the administrative investigation concerning the missing military documents and to locate, or account for, those records.

The authorities of Bosnia and Herzegovina responded adequately to requests for assistance regarding documents and access to government archives and to facilitate the appearance of witnesses before the Tribunal. However, the Office remained concerned that Radovan Stanković, indicted by the Tribunal for crimes against humanity and war crimes, remained at large. The Tribunal had transferred Mr. Stanković to Bosnia and Herzegovina in May 2005, where he escaped from prison while serving a 20-year sentence in Foča. The Prosecutor's Office encouraged Bosnia and Herzegovina authorities, as well as neighbouring States, to take all necessary measures to apprehend him.

The Registry

The Registry continued to provide operational support to the Chambers and the Office of the Prosecutor and to manage the administration of the Tribunal. It also managed the Detention Unit, the Victims and Witness Section, the legal aid office and the interpretation and translation service. In an effort to downsize the Tribunal's staff and its legacy, the Registrar merged sections and redistributed functions within the Registry to streamline their operations and increase efficiency, in line with the completion strategy [YUN 2002, p. 1275]. The Deputy Registrar, John Hocking, served as Acting Registrar from 1 January 2009 until his appointment as Registrar, effective 15 May.

Between August 2008 and July 2009, the Court Management and Support Services Section supported up to eight trials, as well as numerous pre-trial, contempt and appeals hearings. It was also involved in establishing the Court Records Database, and worked closely with the Tribunal's Archive Section on a project to digitize the audio-visual archives of all court proceedings. The Victims and Witnesses Section facilitated 727 witnesses travelling to The Hague to give evidence, while its Protection Unit coordinated professional responses to an increased number of threats to witnesses. The Office for Legal Aid and Detention Matters serviced over 500 defence

team members in cases in pretrial, trial and appellate proceedings. The Detention Unit continued to operate at a high level of activity, serving the judicial process on a daily basis for accused in the trial phase and providing secure custodial care for all detained persons.

The Communications Service, which fell under the Registrar's supervision, managed major public events, such as the beginning of the Radovan Karadžić trial, that aroused interest on the part of the media, academics and members of the general public. The Tribunal's outreach programme, which marked its tenth anniversary, continued to raise awareness of the Tribunal's work. The website of the Tribunal was further developed as an information and legacy tool through the inclusion of new features and the translation of material into Bosnian/Croatian/Serbian and French.

Financing

2008–2009 biennium

Report of Secretary-General. The second performance report on the ICTY budget for the 2008–2009 biennium [A/64/512], submitted in response to General Assembly resolution 63/255 [YUN 2008, p. 1414], reflected an increase of \$12,655,400 gross (\$3,623,900 net) as compared with the revised appropriation for that biennium of \$376,232,900 gross (\$342,067,000 net). The Assembly was requested to approve the final appropriation of \$388,888,300 gross (\$345,690,900 net) for 2008–2009 to the ICTY Special Account.

ACABQ report. In December [A/64/555], the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended approval of the final appropriation.

2010–2011 biennium

In October [A/64/476], the Secretary-General submitted ICTY resource requirements for the 2010–2011 biennium, which before recosting amounted to \$301,895,900 gross (\$279,847,400 net) and reflected a decrease in real terms of \$62,219,600 net or 18.2 per cent, compared to the revised appropriation for 2008–2009. ACABQ, in December, recommended approval of those requirements, subject to its observations and recommendations [A/64/555].

In December [A/64/570], the Secretary-General submitted revised estimates to the ICTY proposed budget for 2010–2011, which included the effect of changes in rates of exchange and inflation, and after recosting amounted to \$290,923,100 gross. ACABQ found no technical basis for objecting to the Secretary-General's revised estimates and transmitted them to the Assembly for consideration [A/64/7/Add.19].

GENERAL ASSEMBLY ACTION

On 24 December [meeting 68], the General Assembly, on the recommendation of the Fifth (Administrative and Budgetary) Committee [A/64/593], adopted **resolution 64/240** without vote [agenda item 144].

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,

I

Second performance report on the budget of the International Tribunal for the Former Yugoslavia for the biennium 2008–2009

Having considered the second performance report of the Secretary-General on the budget, for the biennium 2008–2009, of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the related report of the Advisory Committee on Administrative and Budgetary Questions,

Recalling its resolution 47/235 of 14 September 1993 on the financing of the International Tribunal for the Former Yugoslavia and its subsequent resolutions thereon, the latest of which were resolutions 62/230 of 22 December 2007 and 63/255 of 24 December 2008,

1. *Takes note* of the second performance report of the Secretary-General on the budget, for the biennium 2008–2009, of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the related report of the Advisory Committee on Administrative and Budgetary Questions;

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

3. *Resolves* that, for the biennium 2008–2009, the amount of 376,232,900 United States dollars gross (342,067,000 dollars net) approved in its resolution 63/255 for the financing of the International Tribunal for the Former Yugoslavia shall be adjusted by the amount of 12,655,400 dollars gross (3,623,900 dollars net), for a total amount of 388,888,300 dollars gross (345,690,900 dollars net);

II

Budget of the International Tribunal for the Former Yugoslavia for the biennium 2010–2011

Having considered the reports of the Secretary-General on the financing of the International Tribunal for the Former Yugoslavia for the biennium 2010–2011 and on the revised estimates arising from the effects of changes in rates of exchange and inflation,

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

1. *Takes note* of the reports of the Secretary-General on the financing of the International Tribunal for the Former Yugoslavia for the biennium 2010–2011 and on the revised estimates arising from the effects of changes in rates of exchange and inflation;

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

3. *Welcomes* the work of the Tribunal to ensure the expeditious completion of its mandate and, with regard to the current budget, the commensurate reduction in the financing of the Tribunal;

4. *Stresses* the importance of transparency in the presentation of staffing changes;

5. *Emphasizes* that redeployment should not be used to transfer posts to different functional areas;

6. *Takes note* of paragraphs 49 (a) to (d) of the report of the Advisory Committee on Administrative and Budgetary Questions, and decides not to accept the redeployment and reclassification of staff as set out in paragraphs 72 to 74 of the report of the Secretary-General on the financing of the Tribunal for the biennium 2010–2011;

7. *Decides* to establish the following posts:

(a) One P-5 Chief of the Immediate Office of the Registrar;

(b) One P-4 Legal Officer for the Immediate Office of the Registrar;

(c) One P-3 Legal Officer for the Immediate Office of the Registrar;

(d) One P-4 Head of the Press and Information Office;

(e) One P-3 Registry Liaison Officer in Zagreb;

8. *Emphasizes* that general temporary assistance positions shall be provided to replace posts while their functions are required;

9. *Requests* that future budget proposals of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia be harmonized to facilitate better comparative analysis, particularly with respect to their completion strategies;

10. *Decides* to appropriate to the Special Account for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 a total amount of 290,285,500 dollars gross (268,265,300 dollars net) for the biennium 2010–2011, as detailed in the annex to the present resolution;

11. *Also decides* that the financing of the appropriation for the biennium 2010–2011 under the Special Account shall take into account the estimated income of 277,500 dollars for the biennium, which shall be set off against the aggregate amount of the appropriation;

12. *Further decides* that the total assessment for 2010 under the Special Account, amounting to 157,659,400 dollars, shall consist of:

(a) 145,004,000 dollars, being half of the estimated appropriation approved for the biennium 2010–2011, after taking into account 138,750 dollars, which is half of the estimated income for the biennium of 277,500 dollars;

(b) 12,655,400 dollars, being the increase in the final appropriation for the biennium 2008–2009 approved by the General Assembly in paragraph 3 of section I above;

13. *Decides* to apportion the amount of 78,829,700 dollars gross (68,808,900 dollars net) among Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2010;

14. *Also decides* to apportion the amount of 78,829,700 dollars gross (68,808,900 dollars net) among Member States in accordance with the scale of assessments applicable to peacekeeping operations for 2010;

15. *Further 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 13 and 14 above, their respective share in the Tax Equalization Fund of the estimated staff assessment income of 20,041,600 dollars approved for the International Tribunal for the Former Yugoslavia for 2010.

ANNEX

Financing for the biennium 2010–2011 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>	
Estimated appropriation for the biennium 2010–2011	294,311,100	272,744,600
Revised estimates: effect of changes in rates of exchange and inflation	16,783,000	16,239,800
Recommendations of the Advisory Committee on Administrative and Budgetary Questions	(20,171,000)	(20,171,000)
Recommendations of the Fifth Committee	(637,600)	(548,100)
Estimated initial appropriation for the biennium 2010–2011	290,285,500	268,265,300
<i>Less:</i>		
Estimated income for the biennium 2010–2011	(277,500)	(277,500)
TOTAL assessment for 2010	157,659,400	137,617,800
<i>Comprising:</i>		
(a) Requirements representing half of the estimated appropriation for the biennium 2010–2011, after taking into account 138,750 dollars, which is half of the estimated income for the biennium 2010–2011 of 277,500 dollars	145,004,000	133,993,900
(b) Requirements arising from the final appropriation for the biennium 2008–2009	12,655,400	3,623,900
<i>Of which:</i>		
Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2010	78,829,700	68,808,900
Contributions assessed on Member States in accordance with the scale of assessments applicable to peacekeeping operations of the United Nations for 2010	78,829,700	68,808,900

On 24 December, the General Assembly decided that the agenda item on ICTY financing would remain for consideration during its resumed sixty-fourth (2010) session (**decision 64/549**).

International Tribunal for Rwanda

In 2009, the International Criminal Tribunal for Rwanda (ICTR), established by Security Council resolution 955(1994) [YUN 1994, p. 299] and based in Arusha, United Republic of Tanzania, delivered five Trial Chambers judgements and two Appeals Chamber judgements. The accelerated efforts of the Office of the Prosecutor resulted in the arrest of two fugitives, who made their initial appearance before the Tribunal. ICTR continued to explore innovative measures to expedite trials, requesting the Council to authorize a judge to engage in another professional occupation in his home country and work part-time while drafting his final judgement; and two judges of the same nationality to serve at the Tribunal simultaneously (see p. 1291). The Council also permitted, as a temporary measure, an increase in the number of ad litem judges from nine to twelve and extended the term of office of judges [ibid.].

In May [S/2009/247] and November [S/2009/587] the ICTR President reported on progress made in implementing the completion strategy. Addressing the Security Council on 3 December [meeting 6228], he said that of the 10 new trials that began during the year, judgements had been delivered in two; the entire evidence had been heard in three; and the defence phase would be completed by year's end or in the first half of 2010 in the remaining five. The four ongoing multi-accused cases continued to pose the greatest challenge to the Tribunal. Judgement drafting in those cases was expected to be completed during 2010, but progress was continuously challenged by parallel assignments of the judges and their legal staff to support other cases. On the 11 fugitives remaining at large, he said that the time for their arrest was long overdue and called upon Member States, particularly those where there was significant evidence that fugitives were hiding in their territory, such as Kenya, to fully cooperate with the Tribunal.

The activities of ICTR were covered in two reports to the Security Council and the General Assembly, for the periods of 1 July 2008 to 30 June 2009 [A/64/206-S/2009/396] and 1 July 2009 to 30 June 2010 [A/65/188-S/2010/408]. On 8 October, the Assembly took note of the 2008/2009 report (**decision 64/505**).

The Chambers

The ICTR Chambers were composed of 14 permanent judges and 11 ad litem judges at the end of June. Seven permanent judges sat in the three Trial Chambers, while seven permanent judges sat in the Appeals Chamber. Each Trial Chamber could be divided into sections of three judges. Since the adop-

tion of Security Council resolution 1855(2008) [YUN 2008, p. 1419], the sections could be composed of ad litem judges exclusively, which also meant that they were competent to preside over a case. The Appeals Chamber was common with ICTY, and was composed of seven judges.

New arrests

Grégoire Ndahimana, a former *bourgmestre*, was arrested on 10 August in the Democratic Republic of the Congo (DRC) and made his initial appearance on 28 September, when he pleaded not guilty to all counts in the indictment. The Chamber began pre-trial proceedings in the case. It was also handling pre-trial matters in the case of Ildephonse Nizeyimana, former second-in-command in charge of intelligence and military operations at the École des sous-officiers during 1994. Mr. Nizeyimana was arrested on 5 October in Uganda and made his initial appearance on 14 October, when he pleaded not guilty to all counts in the indictment.

Ongoing cases and trials

The case of Ildephonse Hategekimana, former commander of Ngoma Military Camp, opened on 26 January following the Trial and Appeals Chambers' rejection of the requested referral of the case to Rwanda for trial in late 2008 [YUN 2008, p. 1417]. The trial commenced on 8 March 2009 and closed on 6 October. Over the course of 43 trial days, the prosecution and the defence called 20 witnesses each. A site visit to Rwanda involving the Chambers and both parties was conducted between 2 and 6 November.

François Karera, former préfet of Kigali-Rural, convicted and sentenced to life imprisonment in December 2007 [YUN 2007, p. 1344], filed his notice of appeal on 14 January 2008 [YUN 2008, p. 1417]. On 2 February 2009, the Appeals Chamber upheld the convictions for instigating and committing genocide and extermination, and instigating, committing, ordering, and aiding and abetting murder. It also affirmed the sentence imposed.

The contempt trial of Léonidas Nshogoza, a former defence investigator in the *Kamuhanda* trial, commenced on 9 February and the evidence was concluded on 31 March. The Chamber heard testimony from five prosecution witnesses and 11 defence witnesses. On 2 July, the Chamber convicted Mr. Nshogoza on one count of contempt of the Tribunal and acquitted him on three other counts in the indictment. He was sentenced to 10 months of imprisonment, but since he was entitled to credit for time served at the UN Detention Facility in Arusha since 8 February 2008, the Chamber ordered his immediate release.

In the case of Augustin Ngirabatware, former Minister of Planning, following his initial appearance before the Court on 10 October 2008 [YUN 2008, p. 1416], at which he pleaded not guilty to all counts in the indictment, a further appearance took place on 9 February 2009. On 12 March, after concluding that sufficient evidence existed to initiate contempt proceedings against an individual for allegedly disclosing confidential information and threatening, intimidating and otherwise interfering with a prosecution witness, the Chamber issued an order in lieu of an indictment. The case opened on 23 September and over the course of 46 trial days, the Chamber heard the evidence of 17 prosecution witnesses.

The trial of Hormisdas Nsengimana, the priest and former rector of the *Collège Christ-Roi* in Nyanza (Butare prefecture), began on 22 June 2007 [YUN 2007, p. 1343]. The Chamber called 43 witnesses during 42 trial days, including the defence case that began on 2 June 2008 [YUN 2008, p. 1416], and heard closing arguments on 12 and 13 February 2009. On 17 November, the Chamber rendered a judgement acquitting Mr. Nsengimana on all counts: genocide and murder and extermination as crimes against humanity.

The trial of Colonel Tharcisse Renzaho, former prefect of Kigali-ville, charged with six counts of genocide, complicity in genocide, crimes against humanity (murder, rape) and violations of the Geneva Conventions and Additional Protocol II, began on 8 January 2007 [YUN 2007, p. 1343]. During the trial, the parties called 53 witnesses over the course of 49 trial days, with closing arguments heard on 14 and 15 February 2008 [YUN 2008, p. 1416]. In the judgement delivered on 14 July 2009, Mr. Renzaho was sentenced to life imprisonment for genocide, crimes against humanity and war crimes.

In the *Ndindiliyimana et al. ("Military II")* case [YUN 2006, p. 1497]—against Augustin Ndindiliyimana, former Chief of Staff of the Gendarmerie; Augustin Bizimungu, former Chief of Staff of the Army; François-Xavier Nzuwonemeye, former Commander of the Reconnaissance Battalion; and Innocent Sagahutu, former Second-in-Command of the Reconnaissance Battalion—the proceedings were adjourned on 4 December 2008 [YUN 2008, p. 1417]. On 16 February 2009, the Chamber heard the evidence of four recall and additional witnesses as a remedy for the prosecution's violation of its obligation to disclose exculpatory material under rule 68 of the Rules of Procedure and Evidence. On 31 March, the parties filed their final closing briefs, and from 13 to 17 April, the Chamber and the parties conducted a site visit to Rwanda. The Chamber heard closing arguments on 24, 25 and 26 June.

In the *Nyiramasuhuko et al. trial ("Butare" case)*, which closed on 2 December 2008 [YUN 2008, p. 1417],

pursuant to defence requests, the Chamber recalled four prosecution witnesses on 23 and 24 February 2009. The case opened in 2001 [YUN 2001, p. 1208] and involved six persons charged with genocide, crimes against humanity and serious violations of the Geneva Conventions: Pauline Nyiramasuhuko, former Rwandan Minister for Family and Women Affairs; her son and alleged former leader of an Interahamwe militia in Butare, Arsène Shalom Ntahobali; Sylvain Nsabiimana, former prefect of Butare; Alphonse Nteziryayo, former Commanding Officer of the Military Police and former prefect of Butare; Joseph Kanyabashi, former Mayor of Ngoma; and Elie Ndayambaje, former Mayor of Muganza. They were accused of committing killings in a calculated, cold-blooded and methodical manner and playing a prominent role in the commission of the crimes in Butare, a religious and academic centre in Rwanda [YUN 2007, p. 1343]. Oral closing arguments were heard from 20 to 30 April 2009, and following a 30 October order by the Chamber, a new *amicus curiae* report for alleged false testimony and contempt of court in relation to three witnesses was filed.

On 27 February, the Chamber delivered its judgement in the case of Emmanuel Rukundo, a former military chaplain [YUN 2001, p. 1207]. He was convicted of genocide and crimes against humanity (extermination and murder) based on his participation in the killing of and the causing of serious bodily harm to Tutsi in April and May 1994 in Kabgayi, Gitarama prefecture. Mr. Rukundo was also found guilty, by a majority of the Chamber, of causing serious mental harm for the sexual assault of a young Tutsi woman. Considering Mr. Rukundo's stature in society as a priest as an aggravating circumstance, the Chamber sentenced the accused to 25 years of imprisonment. Over 67 trial days, the Chamber heard 50 witnesses, including Mr. Rukundo. The judgement was under appeal.

Since February, the Chamber had been overseeing the trial readiness in the case of Callixte Nzabonimana, former Minister of Youth [YUN 2008, p. 1416]. The trial opened on 9 November.

On 3 March, in the trial of Karemera et al.—against Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera—which was stayed from August 2008 until March 2009 due to the ill-health of the second accused [YUN 2008, p. 1416], the Chamber ordered the severance of Mr. Ngirumpatse from the case, finding that he would be unfit to stand trial for an indeterminate period of time, yet stayed its decision pending the Appeals Chamber ruling. Mr. Ngirumpatse consented to the proceedings continuing in his absence, and Mr. Karemera concluded his defence on 28 May. On 19 June, the Appeals Chamber reversed the Chamber's decision on severance and remanded the matter to the Trial Chamber, which ordered

a further stay of proceedings. Joseph Nzirorera, former National Secretary of the Mouvement républicain national pour le développement et la démocratie, began his defence at the end of October.

On 20 March, a pretrial conference was held in the case of Yussuf Munyakazi, a businessman and former leader of a militia group in Cyangugu prefecture [YUN 2004, p. 1286]. The trial opened on 22 April; the Chamber heard 11 prosecution and 20 defence witnesses over the course of 19 trial days. The parties filed their written closing briefs on 16 December.

On 26 March, the Chamber handled a status conference for the trial of Jean-Baptiste Gatete, a businessman and former Mayor of Murambi commune (Byumba prefecture) [YUN 2002, p. 1285]. The trial began on 20 October; the prosecution concluded its case on 16 November, with 22 witnesses having been presented.

In the case of Lieutenant-Colonel Ephrem Setako, former Director of the Judicial Affairs Division of the Ministry of Defence, the trial began on 25 August 2008 [YUN 2008, p. 1416], the prosecution completed its case on 22 April 2009 and the Defence finished its case on 26 June. Over the course of 60 trial days, 56 witnesses gave evidence. The closing arguments were heard on 5 November.

The trial of Dominique Ntawukulilyayo, former sub-prefect in the Butare prefecture [YUN 2008, p. 1416], commenced on 6 May. The prosecution called 12 witnesses over 12 trial days and the Chamber heard 23 defence witnesses over 21 trial days. The evidence phase of the case closed on 17 December.

Following the Appeals Chamber judgement of 29 August 2008, in which it ordered a retrial of Tharcisse Muvunyi, former Lieutenant-Colonel, École des sous-officiers in Butare, for an alleged speech he gave in May 1994 at the Gikore Trade Centre [YUN 2008, p. 1418], the prosecution commenced its case on 17 June. It concerned one allegation of the indictment—namely incitement to commit genocide. The Chamber heard 13 witnesses over nine trial days. Closing arguments were presented on 2 October.

On 22 June, the Chamber delivered the judgement in the case of Callixte Kalimanzira, the former chef de cabinet of the Ministry of the Interior [YUN 2005, p. 1397]. The trial began on 5 May 2008 [YUN 2008, p. 1416] and the Chamber heard 66 witnesses, including Mr. Kalimanzira, over 37 trial days, with closing arguments on 20 April 2009. The Chamber found Mr. Kalimanzira guilty of genocide and direct and public incitement to commit genocide; it sentenced him to 30 years of imprisonment.

The trial against Gaspard Kanyarukiga, a former businessman arrested and transferred to the Tribunal on charges of genocide, complicity in genocide, conspiracy to commit genocide and extermination as

a crime against humanity in July 2004 [YUN 2004, p. 1286], commenced on 31 August.

The trial of Michel Bagaragaza, the former Director-General of the Government office that controlled the Rwandan tea industry [YUN 2007, p. 1345], was to have begun on 31 August. However, the parties filed a joint motion for the consideration of a guilty plea for complicity in genocide, which the Chamber accepted on 17 September, granting the prosecution's motion to amend the indictment, and dropping all other charges against Mr. Bagaragaza. On 3 and 4 November, the Chamber heard one character witness, admitted written evidence and heard the parties' closing arguments. On 5 November, the Chamber rendered its judgement, sentencing Mr. Bagaragaza to eight years of imprisonment.

In the trial of Protais Zigiranyirazo, a businessman and brother-in-law of the late Rwandan President, Juvénal Habyarimana, the Chamber found him guilty of having participated in a joint criminal enterprise with the common purpose of committing genocide and extermination of Tutsi, as well as aiding and abetting genocide, and sentenced him to 20 years of imprisonment on 18 December 2008 [YUN 2008, p. 1417]. On 28 September 2009, the Appeals Chamber heard the parties, and in its judgement on 16 November, having found serious legal and factual errors in the assessment of his alibi, reversed Mr. Zigiranyirazo's convictions and entered a verdict of acquittal.

In the trial of Siméon Nchamihigo, former Deputy Prosecutor of Cyangugu, the Chamber convicted him in September 2008 [YUN 2008, p. 1416] of genocide and extermination, murder and other inhumane acts as crimes against humanity based on his participation in the killing of Tutsi in April 1994 at various places in Cyangugu. He was sentenced to life imprisonment. The Appeals Chamber heard the parties on 29 September 2009.

The hearing of the appeal in the case of Simon Bikindi, a singer and composer of popular music [YUN 2002, p. 1285], took place on 30 September. Mr. Bikindi was convicted of direct and public incitement to commit genocide and sentenced to 15 years of imprisonment in December 2008 [YUN 2008, p. 1417].

Judges of the Court

Extension of terms of office and ad litem judges

In a 14 May assessment report [S/2009/247] to the Security Council, the ICTR President indicated that the Tribunal would not be in a position to complete all its work in 2010, with judgement deliveries expected at the end of 2010 in one case and in mid-2010 in three multi-accused cases. He also reported that the existing number of judges, not all of whom were available to assume new cases, had turned out to

be insufficient to form benches for all ten new cases. Consequently, requests to the Council were being prepared to address the need for a higher number of ad litem judges and for a mechanism to add additional judges to the roster, as well as to extend the mandate of judges.

The Secretary-General transmitted a 29 May letter [A/63/942] from the ICTR President, requesting that the General Assembly expand the membership of the Appeals Chamber by authorizing the President to re-deploy four permanent judges from the Trial Chambers to the Appeals Chamber; extend the term of office of ICTR judges; allow one judge to engage in another professional occupation in his home country and work part-time while drafting his final judgement; and reconsider the entitlements of ad litem judges. The ICTR President further requested, in a letter dated 15 June [A/63/941], that the Assembly permit the Tribunal to recruit an additional ad litem judge from among the former ICTY permanent judges or the ICTY ad litem judges who had not been assigned to any case.

On 19 June [S/2009/333], the Secretary-General transmitted to the Council letters from the ICTR and ICTY Presidents relating to the ability of the Tribunals to implement their completion strategies, including the ICTR President's 29 May letter. On 26 June, the ICTR President's 15 June letter [S/2009/334] was transmitted to the Council.

In a 1 July letter [A/63/940] transmitted to the Assembly, the ICTR President stated that the Russian Federation intended to replace Judge Sergei Alekseevich Egorov when he resigned from the Tribunal, and requested that, though replaced, Judge Egorov be permitted to continue to serve at the Tribunal until the completion of the cases to which he was assigned. As the Tribunal would then have two permanent judges from the Russian Federation serving at the same time, he also requested that the Assembly allow derogation from the statutory prohibition against two judges of the same nationality serving at the same time. The Secretary-General also transmitted the ICTR President's 1 July letter to the Council [S/2009/336] for its consideration.

SECURITY COUNCIL ACTION

On 7 July [meeting 6156], the Security Council unanimously adopted **resolution 1878(2009)**. The draft [S/2009/340] was submitted by Austria.

The Security Council,

Taking note of the letter dated 19 June 2009 from the Secretary-General to the President of the Security Council attaching the letter dated 29 May 2009 from the President of the International Criminal Tribunal for Rwanda ("the International Tribunal") and the letter dated 27 May 2009 from the President of the International Tribunal for the Former Yugoslavia, the letter dated 26 June 2009 from the

Secretary-General to the President of the Security Council attaching the letter dated 15 June 2009 from the President of the International Tribunal and the letter dated 7 July 2009 from the Secretary-General to the President of the Security Council attaching the letter dated 1 July 2009 from the President of the International Tribunal,

Recalling its resolutions 955(1994) of 8 November 1994, 1165(1998) of 30 April 1998, 1329(2000) of 30 November 2000, 1411(2002) of 17 May 2002, 1431(2002) of 14 August 2002, 1717(2006) of 13 October 2006, 1824(2008) of 18 July 2008 and 1855(2008) of 19 December 2008,

Recalling in particular its resolutions 1503(2003) of 28 August 2003 and 1534(2004) of 26 March 2004, in which the Council called upon the International Tribunal 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 work in 2010,

Taking note of the assessment by the International Tribunal in its completion strategy report that the International Tribunal will not be in a position to complete all its work in 2010,

Having considered the proposals submitted by the President of the International Tribunal,

Expressing its determination to support the efforts made by the International Tribunal towards the completion of its work at the earliest date,

Recalling that in its resolution 1824(2008), the Council extended the term of office of permanent judges Mehmet Güney (Turkey) and Andréia Vaz (Senegal), who are members of the Appeals Chamber, until 31 December 2010, or until the completion of the cases before the Appeals Chamber if sooner,

Expressing its expectation that the extension of the term of office of judges will enhance the effectiveness of judicial proceedings and contribute towards the implementation of the completion strategy of the International Tribunal,

Noting that permanent judge Sergei Alekseevich Egorov (Russian Federation) intends to resign from the International Tribunal,

Convinced of the need to enlarge the membership of the Appeals Chamber in view of the anticipated increase in the workload of the Appeals Chamber upon completion of the trial proceedings,

Stressing the need to ensure that none of the Appeals Chamber judges is assigned to any case to which he or she was assigned at the pretrial or trial stage,

Noting the concerns expressed by the President of the International Tribunal about the terms and conditions of service of ad litem judges in the light of their duration of service and share of the workload of the International Tribunal,

Urging the International Tribunal to take all possible measures to complete its work expeditiously,

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

1. *Decides* to review the extension of the term of office of the permanent judges at the International Tribunal, who are members of the Appeals Chamber, by 31 December 2009, in the light of the progress of the International Tribunal in the implementation of the completion strategy;
2. *Decides also* to extend the term of office of the following permanent judges at the International Tribunal, who are members of the Trial Chambers, until 31 Decem-

ber 2010, or until the completion of the cases to which they are assigned if sooner:

- Sir Charles Michael Dennis Byron (Saint Kitts and Nevis)
- Mr. Joseph Asoka Nihal de Silva (Sri Lanka)
- Ms. Khalida Rachid Khan (Pakistan)
- Ms. Arlette Ramaroson (Madagascar)
- Mr. William H. Sekule (United Republic of Tanzania)

3. *Decides further* that the term of office of the permanent judge appointed to replace Mr. Sergei Alekseevich Egorov (Russian Federation) shall extend until 31 December 2010, or until the completion of the cases to which he or she will be assigned if sooner;

4. *Decides* to extend the term of office of the following ad litem judges, currently serving at the International Tribunal, until 31 December 2010, or until the completion of the cases to which they are assigned if sooner:

- Mr. Aydin Sefa Akay (Turkey)
- Ms. Florence Rita Arrey (Cameroon)
- Ms. Solomy Balungi Bossa (Uganda)
- Ms. Taghreed Hikmat (Jordan)
- Mr. Vagn Joensen (Denmark)
- Mr. Gberdao Gustave Kam (Burkina Faso)
- Mr. Joseph Edward Chiondo Masanche (United Republic of Tanzania)
- Mr. Lee Gacuiga Muthoga (Kenya)
- Mr. Seon Ki Park (Republic of Korea)
- Mr. Mparany Mamy Richard Rajohnson (Madagascar)
- Mr. Emile Francis Short (Ghana)

5. *Decides also* to allow ad litem judge Joensen to serve at the International Tribunal beyond the cumulative period of service provided for under article 12 ter, paragraph 2, of the statute of the International Tribunal;

6. *Decides further*, in the light of the exceptional circumstances, that, notwithstanding article 12 bis, paragraph 3, of the statute of the International Tribunal, Judge Joseph Asoka Nihal de Silva and Judge Emile Francis Short may work part-time and engage in another judicial occupation or occupation of equivalent independent status in their home countries during the remainder of their terms of office until the completion of the cases to which they are assigned; takes note of the intention of the International Tribunal to complete the cases by mid-2010; and underscores that this exceptional authorization shall not be considered as establishing a precedent. The President of the International Tribunal shall have the responsibility to ensure that this arrangement is compatible with the independence and impartiality of the judges, does not give rise to conflicts of interest and does not delay the delivery of the judgement;

7. *Decides* that, notwithstanding article 11, paragraph 1, of the statute of the International Tribunal, and on an exceptional basis, Judge Egorov, once replaced as a member of the International Tribunal, shall complete the cases which he began before his resignation; and takes note of the intention of the International Tribunal to complete the cases by the end of 2009;

8. *Decides also* to amend article 13, paragraph 3, of the statute of the International Tribunal as set out in the annex to the present resolution;

9. *Decides further* to remain seized of the matter.

ANNEX

Article 13

Officers and members of the Chambers

3. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign two of the permanent judges elected or appointed in accordance with article 12 bis of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Tribunal for Rwanda. Notwithstanding the provisions of article 11, paragraph 1, and article 11, paragraph 3, the President may assign to the Appeals Chamber up to four additional permanent judges serving in the Trial Chambers, on the completion of the cases to which each judge is assigned. The term of office of each judge redeployed to the Appeals Chamber shall be the same as the term of office of the judges serving in the Appeals Chamber.

On 8 July [A/63/956], the Council President transmitted the text of resolution 1878(2009) to the General Assembly President. On 9 September, the Assembly endorsed the actions taken by the Council in operative paragraphs 1 through 8 of that resolution (**decision 63/425**).

Appointment of new judge. In a 31 July letter [S/2009/403], the Secretary-General informed the Security Council President that Judge Sergei Alekseevich Egorov (Russian Federation) had resigned and that the Russian Federation had nominated Professor Bakhtiyar Tuzmukhamedov to replace him. He expressed the view that Professor Tuzmukhamedov met the qualifications prescribed in the statute of the Tribunal. Citing Council resolution 1878(2009), he also stated that, on an exceptional basis, Judge Egorov, once replaced, would complete the cases he began before his resignation. On 4 August, the Council supported the Secretary-General's intention to appoint Professor Tuzmukhamedov as a permanent judge of the Tribunal [S/2009/404].

On 18 August [S/2009/425], the Secretary-General informed the Council President that he had appointed Professor Tuzmukhamedov as a permanent judge of the ICTR, effective 18 August 2009 until 31 December 2010, or until the completion of the cases to which he would be assigned, if sooner. On the same date [A/63/947], he also informed the Assembly President of the appointment.

On 9 September, the Assembly decided to include the item relating to the ICTR in the draft agenda of its sixty-fourth (2009) session and to consider it directly in plenary meeting (**decision 63/561**).

Letters from ICTR President. The Secretary-General transmitted a 15 October letter [S/2009/571] from the ICTR President requesting that the Council permit the Tribunal to exceed the maximum number of ad litem judges allowed by its statute by extending,

to 31 December 2010, the authorization granted in Council resolution 1855(2008) [YUN 2008, p. 1419]. In a 6 November letter [S/2009/601] transmitted by the Secretary-General, he further requested that the Council authorize Judge Erik Møse to serve at the Tribunal beyond the 31 December 2009 expiry of his term of office so that he might complete the *Setako* case.

On 23 November [A/64/513], the Secretary-General transmitted to the General Assembly two letters from the ICTR President, noting that the Council, as the Tribunal's parent organ, and the Assembly, as the organ that elected its judges, would have to decide on those requests.

SECURITY COUNCIL ACTION

On 16 December [meeting 6243], the Security Council unanimously adopted **resolution 1901(2009)**. The draft [S/2009/645] was submitted by Austria.

The Security Council,

Taking note of the letters dated 2 and 23 November 2009 from the Secretary-General to the President of the Security Council attaching letters dated 15 October and 6 November 2009, respectively, from the President of the International Criminal Tribunal for Rwanda ("the International Tribunal"),

Recalling its resolutions 955(1994) of 8 November 1994, 1165(1998) of 30 April 1998, 1329(2000) of 30 November 2000, 1411(2002) of 17 May 2002, 1431(2002) of 14 August 2002, 1717(2006) of 13 October 2006, 1824(2008) of 18 July 2008, 1855(2008) of 19 December 2008 and 1878(2009) of 7 July 2009,

Recalling in particular its resolutions 1503(2003) of 28 August 2003 and 1534(2004) of 26 March 2004, in which the Council called upon the International Tribunal 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 work in 2010,

Taking note of the assessment by the International Tribunal in its completion strategy report that the International Tribunal will not be in a position to complete all its work in 2010,

Recalling that, in resolution 1878(2009), the Council extended the term of office of permanent judges and ad litem judges, who are members of the Trial Chambers, until 31 December 2010, or until the completion of the cases to which they are assigned, if sooner, and decided to review the extension of the term of office of the permanent judges at the International Tribunal, who are members of the Appeals Chamber, by 31 December 2009, in the light of the progress of the International Tribunal in the implementation of its completion strategy,

Convinced of the advisability of extending the authorization granted to the Secretary-General in resolution 1855(2008) to appoint ad litem judges additional to the nine ad litem judges authorized by the statute of the International Tribunal, as a temporary measure to enable the International Tribunal to complete trials and conduct additional trials as soon as possible in order to meet the goals of the completion strategy,

Urging the International Tribunal to take all possible measures to complete its work expeditiously,

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

1. *Underlines its intention* to extend, by 30 June 2010, the terms of office of all trial judges at the International Tribunal based on the International Tribunal's projected trial schedule and the terms of office of all appeals judges until 31 December 2012, or until the completion of the cases to which they are assigned, if sooner, and requests the President of the International Tribunal to submit to the Security Council an updated trial and appeals schedule, including information on the judges for whom extension of the terms of office or redeployment to the Appeals Chamber will be sought;

2. *Decides* that, in order for the International Tribunal to complete existing trials or conduct additional trials, the total number of ad litem judges serving at the International Tribunal may from time to time temporarily exceed the maximum of nine provided for in article 11, paragraph 1, of the statute of the International Tribunal, to a maximum of twelve at any one time, returning to a maximum of nine by 31 December 2010;

3. *Decides also* that, notwithstanding the expiry of his term of office on 31 December 2009, Judge Erik Møse shall complete the *Setako* case, which he began before the expiry of his term of office, and takes note of the intention of the International Tribunal to complete the case before the end of February 2010;

4. *Decides further* to remain seized of the matter.

On 22 December [A/64/590], the Council President transmitted the text of resolution 1901(2009) to the General Assembly President. On 23 December, the Assembly endorsed the actions taken by the Council in operative paragraphs 1 through 3 of that resolution (**decision 64/415**).

Office of the Prosecutor

The Office of the Prosecutor accelerated efforts to ensure the arrest of the remaining 13 fugitives, many of whom were in the conflict zones of the Great Lakes region. The Prosecutor continued to finalize preparation of the cases against the fugitives, with a view to the eventual transfer of 9 of the 13 fugitives to national jurisdictions for trial. The Office also continued to respond to requests for mutual legal assistance from national jurisdictions conducting investigations, with a view to the prosecution or extradition of Rwandan fugitives appearing on the INTERPOL wanted list.

During the second half of 2009, the efforts of the tracking team resulted in the arrest of two fugitives, Grégoire Ndahimana and Ildephonse Nizeyimana, and cooperation with Member States in the region made possible their transfer to the Tribunal for trial. In November, the Prosecutor hosted the annual Colloquium of Prosecutors of the International Criminal Tribunals in Kigali, which was attended by the prosecutors and senior staff of all the international tribunals and representatives of civil society organizations.

The Registry

The Registry continued to support the judicial process by servicing the Tribunal's other organs and the defence, as well as by seeking support from States, international organizations and other stakeholders in the conduct of proceedings. It maintained high-level diplomatic contacts with States and international organizations, and reported a significant increase in judicial cooperation with Member States. The Registry's Press and Public Affairs Unit continued to improve the internal circulation of Tribunal-related media reports. It also processed numerous local and international media enquiries and broadcast several trial proceedings via satellite for use by media professionals. Through the Outreach Programme, the Tribunal inaugurated six provincial information centres strategically located throughout Rwanda. The Court Management Section provided support services to the Chambers and other stakeholders in the judicial process, including support for site visits in Rwanda, depositions and video-link hearings from various countries. The Defence Council and Detention Management Section provided administrative support to the various defence teams and detainees in Arusha.

Between August 2008 and July 2009, the Witness and Victims Support Section ensured the timely availability of 311 witnesses, who were brought from 32 countries in support of the trials of 16 accused persons.

Financing

2008–2009 biennium

In November [A/64/538], the Secretary-General submitted, in response to General Assembly resolution 63/254 [YUN 2008, p. 1420], the second performance report on the ICTR budget for the 2008–2009 biennium, which reflected a decrease in requirements of \$840,600 gross (\$3,224,500 net) as compared to the revised appropriation of \$305,378,600 gross (\$282,597,100 net) [ibid.] for the biennium. The General Assembly was requested to revise the appropriation for 2008–2009 to the Special Account for ICTR to \$304,538,000 gross (\$279,372,600 net).

ACABQ, in December [A/64/555], recommended approval of the final appropriation as proposed by the Secretary-General.

2010–2011 biennium

In October [A/64/478], the Secretary-General presented resource requirements for the ICTR budget for the 2010–2011 biennium, which before recosting, amounted to \$244,085,700 gross (\$226,618,500

net), reflecting a decrease in real terms of \$61,292,900 gross or 20.1 per cent (\$55,978,600 net or 19.8 per cent), compared to the revised appropriation for the 2008–2009 biennium.

ACABQ, on 4 December [A/64/555], recommended approval of those resource requirements, subject to its observations and recommendations.

In November [A/64/532], the Secretary-General presented revised estimates to the proposed programme budget for the 2010–2011 biennium, which included measures identified for strengthening security and incorporated the related resource proposals in the ICTR budget.

ACABQ, on 11 December [A/64/7/Add.15 & Corr.1], recommended that the PACT II security enhancements for ICTR should be reviewed and prioritized during 2010–2011, taking into account the lessons learned in the initial implementation at other duty stations, and the revised requirements should be submitted in the context of the budget proposals for the 2012–2013 biennium.

On 14 December [A/64/570], the Secretary-General submitted revised estimates for the ICTR proposed budget for 2010–2011, which included the effect of changes in rates of exchange and inflation, and after recosting, amounted to \$244,615,400 gross. ACABQ found no technical basis for objecting to the Secretary-General's revised estimates and transmitted them to the Assembly for consideration [A/64/7/Add.19].

GENERAL ASSEMBLY ACTION

On 24 December [meeting 68], the General Assembly, on the recommendation of the Fifth Committee [A/64/592], adopted **resolution 64/239** without vote [agenda item 143].

**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,

I

**Second performance report on the budget
of the International Criminal Tribunal for Rwanda
for the biennium 2008–2009**

Having considered the second performance report of the Secretary-General on the budget, for the biennium 2008–2009, of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States

between 1 January and 31 December 1994, and the related report of the Advisory Committee on Administrative and Budgetary Questions,

Recalling its resolution 49/251 of 20 July 1995 on the financing of the International Criminal Tribunal for Rwanda and its subsequent resolutions thereon, the latest of which were resolutions 62/229 of 22 December 2007 and 63/254 of 24 December 2008,

1. *Takes note* of the second performance report of the Secretary-General on the budget, for the biennium 2008–2009, of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the related report of the Advisory Committee on Administrative and Budgetary Questions;

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

3. *Resolves* that, for the biennium 2008–2009, the amount of 305,378,600 United States dollars gross (282,597,100 dollars net) approved in its resolution 63/254 for the financing of the International Criminal Tribunal for Rwanda shall be adjusted by the amount of 840,600 dollars gross (3,224,500 dollars net), for a total amount of 304,538,000 dollars gross (279,372,600 dollars net);

II

Budget of the International Criminal Tribunal for Rwanda for the biennium 2010–2011

Having considered the reports of the Secretary-General on the financing of the International Criminal Tribunal for Rwanda for the biennium 2010–2011 and on the revised estimates arising from the effects of changes in rates of exchange and inflation,

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

1. *Takes note* of the reports of the Secretary-General on the financing of the International Criminal Tribunal for Rwanda for the biennium 2010–2011, and on the revised estimates arising from the effects of changes in rates of exchange and inflation;

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

3. *Welcomes* the arrest of two further indictees, requests the Tribunal to proceed with their prosecutions from available resources, and requests the Secretary-General, in this respect, to report to the General Assembly on the financial implications of these prosecutions at its next session;

4. *Also welcomes* the work of the Tribunal to ensure the expeditious completion of its mandate and, with regard to the current budget, the commensurate reduction in the cost of the Tribunal;

5. *Recognizes* the critical importance of retaining highly skilled and experienced staff members with relevant

institutional memory in order to successfully complete the trials and meet the targets set out in the completion strategy of the Tribunal;

6. *Reaffirms* paragraph 5 of its resolution 63/256 of 24 December 2008, and requests the Secretary-General to utilize his existing authority under the existing contractual framework to offer contracts to staff, taking into account the needs of the Tribunal;

7. *Requests* the Secretary-General to explore the possibility of employing at the United Nations, should their services be required, staff who remain with the Tribunal until the completion of its mandate;

8. *Recognizes* the importance of ensuring that the Tribunal retains the courtroom capacity needed for the expeditious completion of all trials, and in this regard, decides that the fourth courtroom shall be funded during the biennium from within the 2010–2011 budget;

9. *Notes* that the Tribunal relies on ad litem judges in the implementation of its completion strategy;

10. *Also notes* that the Secretary-General is conducting a review of conditions of service of ad litem judges at the Tribunal, and anticipates addressing the review at the first part of the resumed sixty-fourth session;

11. *Requests* that future budget proposals of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia be harmonized to facilitate better comparative analysis, particularly with respect to their completion strategies;

12. *Decides* to appropriate to the Special Account for the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 a total amount of 245,295,800 dollars gross (227,246,500 dollars net) for the biennium 2010–2011, as detailed in the annex to the present resolution;

13. *Also decides* that the total assessment for 2010 under the Special Account amounting to 121,807,300 dollars shall consist of:

(a) 122,647,900 dollars, being half of the estimated appropriation approved for the biennium 2010–2011;

(b) 840,600 dollars, being the decrease in the final appropriation for the biennium 2008–2009 approved by the General Assembly in paragraph 3 of section I above;

14. *Further decides* to apportion the amount of 60,903,650 dollars gross (55,199,375 dollars net) among Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2010;

15. *Decides* to apportion the amount of 60,903,650 dollars gross (55,199,375 dollars net) among Member States in accordance with the scale of assessments applicable to peacekeeping operations for 2010;

16. *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 14 and 15 above, their respective share in the Tax Equalization Fund of the estimated staff assessment income of 11,408,550 dollars approved for the International Criminal Tribunal for Rwanda for 2010.

ANNEX

Financing for the biennium 2010–2011 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>	
Estimated appropriation for the biennium 2010–2011	257,849,900	239,988,300
Revised estimates: effects of changes in rates of exchange and inflation	5,186,500	5,066,200
Recommendations of the Advisory Committee on Administrative and Budgetary Questions	(18,421,000)	(18,421,000)
Proposals under the standardized access control project (A/64/532) less the reduction recommended by the Advisory Committee on Administrative and Budgetary Questions	680,400	613,000
Recommendations of the Fifth Committee	—	—
Estimated initial appropriation for the biennium 2010–2011	245,295,800	227,246,500
TOTAL assessment for 2010	121,807,300	110,398,750
<i>Comprising:</i>		
(a) Requirements representing half of the estimated appropriation for the biennium 2010–2011	122,647,900	113,623,250
(b) Requirements arising from the final appropriation for the biennium 2008–2009	(840,600)	(3,224,500)
<i>Of which:</i>		
Contributions assessed on Member States in accordance with the scale of assessments applicable to the regular budget of the United Nations for 2010	60,903,650	55,199,375
Contributions assessed on Member States in accordance with the scale of assessments applicable to peacekeeping operations of the United Nations for 2010	60,903,650	55,199,375

On 24 December, the Assembly decided that the agenda item on ICTR financing would remain for consideration during its resumed sixty-fourth (2010) session (**decision 64/549**).

Functioning of the Tribunals

Implementation of completion strategies

ICTY

In response to Security Council resolution 1534(2004) [YUN 2004, p. 1292], the ICTY President reported in May [S/2009/252] and November [S/2009/589] on progress made in implementing the ICTY completion strategy. The Tribunal adopted concrete measures to enhance the efficiency of proceedings, including those identified by the Working Groups on Speeding up Appeals and Trials, which were reconstituted in 2008 [YUN 2008, p. 1423] to assess the effectiveness of measures implemented and to

identify innovations to enhance the efficient conduct of trials and appeals.

As at 15 November, out of the 161 accused indicted by the Tribunal, only one remained in the pretrial stage awaiting the commencement of trial, 24 were being tried and another 13 had appeals pending. However, two accused, Ratko Mladić and Goran Hadžić, were still at large. All other cases had been completed. Eight cases were at the trial stage and one was at the judgement drafting stage. Five of those nine cases would be completed during the course of 2010, three during the first half of 2011 and the remaining case, that of Radovan Karadžić, was estimated to be completed by September 2012. While there had been slippage in the trial schedule resulting from factors not within the Tribunal's control, it was expected to have minimal impact on the completion of all appeals by mid-2013, provided a significant redeployment of trial resources was made to the Appeals Chamber during 2010 and 2011. Those changes would enable the Tribunal to form three Appeals Chamber benches to deal with an anticipated total of 24 appeal cases. Each appellate Judge would be assigned six or seven appeals. Thirteen appeals would be completed in 2011, eight in 2012, two during the first half of 2013 and the remaining appeal, that of Mr. Karadžić, by February 2014.

As the Tribunal neared the end of its mandate, the issue of staff retention remained a concern, with highly qualified and essential staff continuing to leave the Tribunal at alarming rates for more secure employment. The ICTR President urged the Security Council to formulate and support meaningful staff retention measures.

ICTR

In response to Security Council resolution 1534(2004) [YUN 2004, p. 1292], the ICTR President submitted reports in May [S/2009/247] and November [S/2009/587] that assessed progress made in implementing the ICTR completion strategy. That strategy called for completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010.

Between May and November 2009, four judgements in single-accused cases were delivered, including one contempt of court case and a sentencing judgement for a guilty plea. Six cases concerning 17 accused, including one retrial, were in the judgement drafting phase, with at least two more judgements to be delivered by December. The presentation of evidence in two cases had been completed and closing arguments were forthcoming at the beginning of 2010. Six trials involving eight accused were ongoing. The evidence phase of all first instance trials was projected to be finalized before mid-2010, with the exception of

the trial in Karemera et al. The Appeals Chamber was seized of eight appeals from judgement.

The judicial calendar remained an essential element in the Tribunal's efforts to comply with its completion strategy. In the ongoing pre-closure and downsizing phase, it was the basis of planning for all three organs of the Tribunal concerning the scope of budget requests and contract extensions. Between May and November, 10 different sections of the Trial Chambers used the four Tribunal courtrooms in 12 different cases. On the management of proceedings, the Tribunal achieved significant results, and in a majority of cases, the Chambers were able to adhere to the time standards set out in previous reports. The projected average duration of four weeks for the presentation of prosecution and defence evidence was met in a number of cases, and certain cases took significantly less time.

The Office of the Prosecutor, in addition to continuing with ongoing trial and appellate work and preparations in pending cases, had also started preparation for the trials of the two indictees arrested during the year. It was also in the process of preparing the cases of the three top fugitives for preservation of the evidence. Efforts at tracking the remaining 11 fugitives in the DRC and neighbouring countries had been intensified. The Office also awaited a response to its latest communication with the Kenyan Government on the movement of Félicien Kabuga, who had allegedly left Kenya. Several requests from the Prosecutor to Kenyan authorities on the alleged departure had remained unanswered as at 9 November. The increasing workload of its Appeals and Legal Advisory Division was another area of the Office's focus, as it was expected that every judgement passed by the Trial Chamber, except for those in which the indictee pleaded guilty, would be challenged on appeal by the defence, and in some cases appeals would also be filed by the Office.

Establishment of ad hoc mechanism

Report of Secretary-General. In a 21 May report [S/2009/258], submitted pursuant to Security Council presidential statement S/PRST/2008/47 [YUN 2008, p. 1424], the Secretary-General explored administrative and budgetary aspects of possible locations for the ICTY and ICTR archives and the seat of the residual mechanism(s), including the availability of suitable premises for the conduct of judicial proceedings by the mechanism(s), with particular emphasis on locations where the United Nations had a presence.

Discussion in the Security Council Informal Working Group on the International Tribunals (see below) was ongoing, and there were many key areas where further decisions were needed. Consequently, the report identified the key areas where it fell to the Council to make decisions, in particular on which

potential residual functions were to be transferred to the mechanism(s); presented rough estimates of the staffing requirements and costs on the basis of illustrative examples of a possible mechanism or mechanisms; and provided information regarding the feasibility and costs of 14 potential locations for the mechanism(s) and/or archives with UN offices, or offices of other international organizations. The report set out a series of recommendations to the Council. It was suggested that when agreement was reached among Working Group members on further key issues, a report be requested from the Secretary-General on the establishment and location of the residual mechanism(s) and the location of the archives.

The recommendations to the Council included requesting that the Tribunals, as part of their completion strategies, intensify their efforts to: refer further cases to national jurisdictions, and strengthen the capacity of the affected countries; consider ways to review witness protection orders and decisions with a view to withdrawing or varying those that were no longer necessary; implement an approved records retention policy in order to identify archives for permanent preservation; prepare all digital records for future migration into the recordkeeping systems of the institution designated to receive them; prepare all hard-copy archives and inventories for transfer to that institution; develop a regime to govern the management of, and access to, the Tribunals' archives; develop and implement an information security strategy that included the appropriate (de)classification of all records and archives; review all agreements with States and other international bodies, and contracts with private entities, to determine whether there were any that should not continue after the closure of the Tribunals; and examine the feasibility of establishing information centres in the affected countries to give access to the public records.

In a 28 September letter [S/2009/496] to the Secretary-General, Council members welcomed the recommendations of the Tribunals and requested that the Secretary-General write to the ICTY and ICTR Presidents to ensure that those tasks were carried out. The Council emphasized the request for the Tribunals to report on ways to review witness protection orders and decisions with a view to withdrawing or varying unnecessary ones, as well as on concrete steps to be taken by the Tribunals towards that end.

Working Group report. On 30 December [S/2009/687], the Chairman of the Security Council Informal Working Group on the International Tribunals submitted a summary of its activities in 2009. The Working Group was established in 2000 on an informal basis to consider matters relating to the United Nations and UN-assisted tribunals—particularly the ICTY and the ICTR. During the first half of the year, the Working Group met nearly every week to discuss the

establishment of the residual mechanism, including its location, structure and organization, commencement date and residual functions, and fugitives to be tried by the mechanism. From July to September, the Working Group considered the Secretary-General's report, and then resumed its negotiations on a draft resolution on the establishment of an international residual mechanism prepared by the Working Group chair with assistance from the Office of Legal Affairs. The Group completed its first reading of the draft resolution in December and would resume its negotiations in early 2010.

In other activities, the Working Group considered requests by the ICTR and ICTY Presidents, including the extension of the terms of office of judges, redeployment of judges to the Appeals Chamber and the appointment of additional ad litem judges. The Group's recommendations led to the adoption of Security Council resolutions addressing those issues.

International Criminal Court

In 2009, the International Criminal Court (ICC), established by the Rome Statute [YUN 1998, p. 1209] as a permanent institution with jurisdiction over persons accused of the most serious crimes of international concern (genocide, crimes against humanity, war crimes and the crime of aggression), carried out investigations in the Central African Republic, the DRC, Darfur (the Sudan) and Uganda. Reports covering ICC activities during the year were submitted to the General Assembly [A/64/356; A/65/313]. As at 31 December, 110 countries had ratified the Rome Statute.

In March, an arrest warrant was issued against Omar Hassan Ahmad Al-Bashir, the President of the Sudan, for crimes against humanity and war crimes. By year's end, there were eight arrest warrants outstanding, including Mr. Al-Bashir's. Seven had been outstanding for two years and five had been outstanding for three or more years.

The Office of the Prosecutor received and analysed 4,870 communications related to purported crimes between 1 August 2008 and 30 June 2009. Of those, some 3,823 related to the situation in South Ossetia, Georgia. The remaining 1,047 communications did not provide any basis for the Office to take further action. Six situations under analysis by the Office had been made public: Afghanistan, Colombia, Côte d'Ivoire, Georgia, Kenya and Palestine.

GENERAL ASSEMBLY ACTION

On 2 November [meeting 34], the General Assembly adopted **resolution 64/9** [draft: A/64/L.9 & Add.1] without vote [agenda item 75].

Report of the International Criminal Court

The General Assembly,

Recalling its resolution 63/21 of 11 November 2008, and all its previous relevant resolutions,

Recalling also that the Rome Statute of the International Criminal Court reaffirms the purposes and principles of the Charter of the United Nations,

Reiterating the historic significance of the adoption of the Rome Statute,

Emphasizing that justice, especially transitional justice in conflict and post-conflict societies, is a fundamental building block of sustainable peace,

Convinced that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent such abuses in the future,

Noting with satisfaction the fact that the International Criminal Court has achieved considerable progress in its analyses, investigations and judicial proceedings in various situations and cases which were referred to it by States parties to the Rome Statute and by the Security Council, in accordance with the Rome Statute,

Recalling that effective and comprehensive cooperation and assistance in all aspects of its mandate by States, the United Nations and other international and regional organizations remains essential for the International Criminal Court to carry out its activities,

Expressing its appreciation to the Secretary-General for providing effective and efficient assistance to the International Criminal Court in accordance with the Relationship Agreement between the United Nations and the International Criminal Court ("Relationship Agreement"),

Acknowledging the Relationship Agreement as approved by the General Assembly in its resolution 58/318 of 13 September 2004, including paragraph 3 of the resolution with respect to the payment in full of expenses accruing to the United Nations as a result of the implementation of the Relationship Agreement, which provides a framework for continued cooperation between the International Criminal Court and the United Nations, which could include the facilitation by the United Nations of the Court's field activities, and encouraging the conclusion of supplementary arrangements and agreements, as necessary,

Welcoming the continuous support given by civil society to the International Criminal Court,

Recognizing the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter,

Expressing its appreciation to the International Criminal Court for providing assistance to the Special Court for Sierra Leone,

1. *Welcomes* the report of the International Criminal Court for 2008/09;

2. *Welcomes* the States that have become parties to the Rome Statute of the International Criminal Court in the past year, and calls upon all States in all regions of the world that are not yet parties to the Rome Statute to consider ratifying or acceding to it without delay;

3. *Welcomes* the States parties as well as States not parties to the Rome Statute that have become parties to the Agreement on the Privileges and Immunities of the International Criminal Court, and calls upon all States that have not yet done so to consider becoming parties to that Agreement;

4. *Calls upon* States parties to the Rome Statute that have not yet done so to adopt national legislation to implement obligations emanating from the Rome Statute and to cooperate with the International Criminal Court in the exercise of its functions, and recalls the provision of technical assistance by States parties in this respect;

5. *Welcomes* the cooperation and assistance provided thus far to the International Criminal Court by States parties as well as States not parties, the United Nations and other international and regional organizations, and calls upon those States that are under an obligation to cooperate to provide such cooperation and assistance in the future, in particular with regard to arrest and surrender, the provision of evidence, the protection and relocation of victims and witnesses and the enforcement of sentences;

6. *Emphasizes* the importance of cooperation with States that are not parties to the Rome Statute;

7. *Invites* regional organizations to consider concluding cooperation agreements with the International Criminal Court;

8. *Recalls* that, by virtue of article 12, paragraph 3, of the Rome Statute, a State which is not a party to the Statute may, by declaration lodged with the Registrar of the International Criminal Court, accept the exercise of jurisdiction by the Court with respect to specific crimes that are mentioned in paragraph 2 of that article;

9. *Encourages* all States parties to take the interests, the need for assistance and the mandate of the International Criminal Court into account when relevant matters are being discussed in the United Nations;

10. *Emphasizes* the importance of the full implementation of the Relationship Agreement between the United Nations and the International Criminal Court, which forms a framework for close cooperation between the two organizations and for consultation on matters of mutual interest pursuant to the provisions of the Relationship Agreement and in conformity with the respective provisions of the Charter of the United Nations and the Rome Statute, as well as the need for the Secretary-General to inform the General Assembly at its sixty-fifth session of the expenses incurred and reimbursements received by the United Nations in connection with assistance provided to the International Criminal Court;

11. *Expresses its appreciation* for the work undertaken by the International Criminal Court liaison office to United Nations Headquarters, and encourages the Secretary-General to continue to work closely with that office;

12. *Encourages* States to contribute to the Trust Fund established for the benefit of victims of crimes within the jurisdiction of the International Criminal Court and the families of such victims, and acknowledges with appreciation contributions made to that Trust Fund thus far;

13. *Notes* that the Special Working Group on the Crime of Aggression, which was open to all States on an equal footing, has concluded its mandate and has elaborated proposals for a provision on the crime of aggression, in accordance with article 123 of the Rome Statute;

14. *Notes* that the Assembly of States Parties to the Rome Statute decided at its seventh session, while recalling that, according to article 112, paragraph 6, of the Rome Statute, the Assembly of States Parties shall meet at the seat of the International Criminal Court or at the United Nations Headquarters, to hold its eighth session in The Hague, looks forward to the eighth session, which is to be held from 18 to 26 November 2009, and requests the Secretary-General to provide the necessary services and facilities in accordance with the Relationship Agreement and resolution 58/318;

15. *Notes* the convening by the Secretary-General of the Review Conference, which will begin on 31 May 2010 in Kampala, and which may provide an opportunity to address issues, in addition to those related to the possible definition of the crime of aggression, that have been identified by States, including States that are not parties to the Rome Statute;

16. *Encourages* the widest possible participation of States in the Assembly of States Parties and particularly in the Review Conference, invites States to contribute to the Trust Fund for the participation of the least developed countries, and acknowledges with appreciation contributions made to that Trust Fund thus far;

17. *Invites* the International Criminal Court to submit, in accordance with article 6 of the Relationship Agreement, a report on its activities for 2009/10, for consideration by the General Assembly at its sixty-fifth session.

Report of Secretary-General. Pursuant to General Assembly resolution 63/21 [YUN 2008, p. 1426], the Secretary-General submitted a report [A/64/363] on expenses incurred and reimbursement received by the United Nations in connection with assistance to ICC.

Assembly of States Parties

The Assembly of States Parties to the Rome Statute of the International Criminal Court adopted one decision at its resumed seventh session (New York, 19–23 January and 9–13 February) [ICC-ASP/7/20/Add.1] and seven resolutions at its eighth session (The Hague, 18–26 November) [ICC-ASP/8/20].

Following a 13 February decision [ICC-ASP/7/Dec.1], in which the Assembly requested that its Bureau continue consideration of the establishment of an independent oversight mechanism, the Assembly, in a 26 November resolution [ICC-ASP/8/Res.1], decided to establish an independent oversight mechanism with a budget of €341,600 to cover its start-up and continuing maintenance costs. By another resolution, the Assembly requested that its Bureau appoint a new facilitator of the Assembly for cooperation, for a two-year period [ICC-ASP/8/Res.2].

On strengthening ICC and the Assembly [ICC-ASP/8/Res.3], the Assembly decided to keep the status of ratifications to the Rome Statute under review, and to monitor legislation implementation, with a view to facilitating the provision of technical assistance that States parties or those wishing to become States par-

ties to the Statute might wish to request from other States parties or institutions. It also decided to establish a liaison office for the Court at AU headquarters in Addis Ababa, Ethiopia. Also on 26 November, the Assembly adopted resolutions on family visits for indigent detainees [ICC-ASP/8/Res.4]; permanent premises for the Court [ICC-ASP/8/Res.5]; and the Review Conference of States Parties to the Rome Statute [ICC-ASP/8/Res.6], which would be held in Kampala, Uganda, from 31 May to 11 June 2010, for a period of ten working days.

On financing, the Assembly approved the Court's 2010 programme budget [ICC-ASP/8/Res.7], with appropriations totalling €103,623,300. It resolved that the Working Capital Fund for 2010 would be established in the amount of €7,405,983, and authorized the Registrar to make advances from the Fund.

The Chambers

The judicial activities of the Court were conducted by the Chambers, which consisted of 18 judges, organized in three divisions: the Appeals Division, the Trial Division and the Pre-Trial Division. The Presidency constituted three Pre-Trial Chambers: Pre-Trial Chamber I—the DRC and Darfur (the Sudan); Pre-Trial Chamber II—Uganda; and Pre-Trial Chamber III—the Central African Republic.

In March, Pre-Trial Chamber I issued a warrant of arrest against Omar Hassan Ahmad Al-Bashir, the President of the Sudan (see below). Pre-Trial Chamber II confirmed charges of war crimes and charges of crimes against humanity against Jean-Pierre Bemba Gombo in June. In September, the Appeals Chamber upheld the decision rendered by Pre-Trial Chamber II in March, which had ruled that the case against four accused (alleged members of the Lord's Resistance Army) was admissible before the Court. Two trials commenced during the year.

New arrests, warrants and summonses

During the year, there were no new arrests by the Court. One arrest warrant was issued in the situation in Darfur (the Sudan). Eight arrest warrants were outstanding at year's end: one in the situation in the DRC, three in the situation in Darfur and four in the situation in Uganda. Seven had been outstanding for two years and five had been outstanding for three or more years. The Court also issued two summonses, both in the situation in Darfur.

On 4 March, Pre-Trial Chamber I, issued a first warrant of arrest against President Al-Bashir, for five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (attacking civilians and pillaging). The prosecution appealed a decision rejecting the additional counts of genocide.

On 7 May, Pre-Trial Chamber I issued a summons to appear for Bahr Idriss Abu Garda for crimes allegedly committed against AU peacekeepers in Haskanita, Darfur on 29 September 2007. Mr. Abu Garda made his initial appearance voluntarily on 18 May 2009. The hearing took place from 19 to 30 October. A total of 87 victims were authorized to participate through their legal representatives in the confirmation of charges proceedings.

On 27 August, in the case against Abdallah Banda Abakaer Nourain (Commander-in-Chief of the Justice and Equality Movement) and Saleh Mohammed Jerbo Jamus (former Chief-of-Staff of the Sudan Liberation Army-Unity), Pre-Trial Chamber I issued an under-seal summons to appear against the two alleged rebel leaders. The prosecution alleged that both men participated as co-perpetrators or indirect co-perpetrators to an attack on the Haskanita military group site on 29 September 2007.

On 4 December [meeting 6230], during the presentation of his tenth report to the Security Council on the status of the investigation into the situation in Darfur, the Prosecutor highlighted the lack of cooperation by the Government of the Sudan, the continuation of the alleged crimes on the ground and the need to execute the outstanding arrest warrants.

Communications. On 16 March [S/2009/148], a resolution adopted by the League of Arab States Council at its extraordinary session (Cairo, Egypt, 4 March), expressing concern regarding the ICC issuance of an arrest warrant for President Al-Bashir, was transmitted to the Security Council President.

On 8 July [A/63/926], Botswana transmitted to the Secretary-General a press release issued by the Government of Botswana indicating that it did not agree with the AU Summit decision (Sirte, Libyan Arab Jamahiriya, 3 July) to denounce the ICC and refuse to extradite President Al-Bashir.

Ongoing cases and trials

A hearing that began on 12 January to confirm eight charges against Jean-Pierre Bemba Gombo (the situation in the Central African Republic), was adjourned on 3 March by Pre-Trial Chamber III, requesting the Prosecutor to consider amending the charges. On 15 June, Pre-Trial Chamber II confirmed three charges of war crimes (murder, rape and pillage) and two charges of crimes against humanity (murder and rape) against Mr. Bemba in his capacity as a military commander, but not as originally charged as a co-perpetrator. On 22 June, the Prosecutor sought leave to appeal the decision of the Chamber that declined to confirm the charge of torture as a war crime or as a crime against humanity. On 18 September, the Presidency referred the case to Trial Chamber III. The trial was scheduled to start in April 2010.

On 26 January, the Court commenced the trial against Thomas Lubanga Dyilo, the alleged leader of the Union des patriots congolais and Commander-in-Chief of its military wing, charged with having committed war crimes in the DRC, specifically the enlisting, conscripting and use of children under the age of 15 to participate actively in hostilities. The prosecution concluded the presentation of its evidence on 14 July, having tendered 119 items of evidence. On the same date, Trial Chamber I issued a decision giving notice to the parties that the legal characterization of facts might be subject to changes in accordance with regulations of the Court, which both the defence and the prosecution appealed. On 8 December, the Appeals Chamber reversed the Trial Chamber decision, determining that the Chamber had erred.

In the case against Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, the arrest warrants for the four alleged members of the Lord's Resistance Army (LRA) in the situation in Uganda had been outstanding since July 2005 [YUN 2005, p. 1404]. Following the initiation of proceedings on the admissibility of the case by Pre-Trial Chamber II in October 2008, the Chamber, on 10 March 2009, issued its decision on admissibility, reaffirming that it was the Court that had the responsibility for determining whether or not a case was inadmissible. On 16 September, the Appeals Chamber upheld the Chamber's decision, which had ruled that the case against the four accused was admissible before the Court. Mr. Kony, alleged LRA Commander-in-Chief, was charged with 33 counts, including 12 counts of crimes against humanity and Mr. Otti, alleged Vice-Chair and Second-in-Command of LRA, was charged with 11 counts of crimes against humanity and 21 counts of war crimes. Mr. Odhiambo, alleged Deputy Army Commander and LRA Brigade Commander, was charged with 2 counts of crimes against humanity and 8 counts of war crimes. Mr. Ongwen, alleged LRA Brigade Commander, was charged with 3 counts of crimes against humanity and 4 counts of war crimes. None of the four accused had been arrested as at 31 December 2009.

In the case against Germain Katanga and Mathieu Ngudjolo Chui, two former leaders of armed groups active in the Ituri region of the DRC, Pre-Trial Chamber I confirmed 7 charges of war crimes (wilful killing, using children to participate actively in hostilities, sexual slavery, rape, attacking civilians, pillaging and destroying the enemy's property) and 3 charges of crimes against humanity (murder, sexual slavery and rape) for each of the accused in September 2008 [YUN 2008, p. 1428]. Mr. Katanga challenged the admissibility of the case against him, arguing that he had previously been subject to legal proceedings for the same crimes in the DRC. Following the holding of a public hearing on the issue, Trial Chamber II

dismissed Mr. Katanga's challenge on 12 June, finding that the national authorities had not opened any investigation into the attack for which he was being prosecuted. The trial of Messrs. Katanga and Ngudjolo Chui for crimes allegedly committed in an attack on the Bogoro village on 24 February 2003, started on 24 November with the presentation of prosecution evidence.

Office of the Prosecutor

Investigations

Throughout the year, the Office of the Prosecutor continued investigations into four situations: the Central African Republic, the DRC, Darfur (the Sudan) and Uganda. During the year ending 31 July, the Office conducted 34 missions to eight countries for trial preparations and investigations related to the ongoing cases in the situation in the DRC and a third case focusing on alleged crimes committed in the North and South Kivu provinces. From 8 to 11 July, the Prosecutor visited Bunia and the Ituri district in the DRC.

The Office conducted investigative activities on the situation in Uganda, including eight missions to six countries, collecting information on crimes allegedly being committed by LRA in the DRC, the Sudan and the Central African Republic. According to the information received, the incidence of alleged crimes rose sharply from September 2008. The Office received reports of particularly savage attacks taking place in December 2008 and January 2009, with the killing and abduction of several hundred people in a series of raids on towns and villages across a broad area of the DRC and southern Sudan. The Office continued efforts to galvanize support for the arrests of suspects sought by the Court.

The Office carried out 49 missions to six countries in relation to the situation in the Central African Republic, gathering evidence with a view to establishing responsibility for the crimes committed in 2002 and 2003, including through forensic activities such as exhumation and autopsy, with the cooperation of the Government.

On the situation in Darfur, the Office conducted 30 missions to 13 countries. On the execution of arrest warrants, the tracking team worked for six months with a variety of actors to locate and facilitate the voluntary surrender of the alleged perpetrators. In his briefing to the Security Council on 3 December [meeting 6228], the Prosecutor reported that the Government of the Sudan continued to not comply with its legal obligation under Council resolution 1593(2005) to enforce the judicial decisions of the Court. He emphasized that the execution of arrest warrants required concrete decision-making.

On 26 November, the Prosecutor requested authorization from Pre-Trial Chamber II to open an investigation into the situation in Kenya, noting that 1,220 persons had been killed, thousands raped (both reported and unreported), 350,000 forcibly displaced and 3,561 injured as part of a widespread and systematic attack against civilians.

The Registry

The ICC Registry provided judicial and administrative support to all organs of the Court and carried out its specific responsibilities concerning victims, witnesses, defence and outreach. On the instruction of Pre-Trial Chamber I, the Registrar transmitted requests for cooperation to all States parties to the Rome Statute, and to all Security Council members not party to it, for the arrest and surrender of President Al-Bashir. The Chamber also directed the Registrar to transmit requests for cooperation to any other State as might be necessary to ensure Mr. Al-Bashir's arrest.

In the case of Mr. Bemba, the Registrar on 24 September rejected a second application for the payment of legal aid to Mr. Bemba, who alleged that he was unable to pay the fees because his properties and assets had been frozen or seized by the Court. On 19 November, Trial Chamber III ordered the Registrar to advance funding in a sum equivalent to the amount of legal aid payable by the Court retrospectively to March and ongoing until a material change in the circumstances. The Registrar was asked to search for, freeze and realize Mr. Bemba's assets to fund that advance.

International cooperation

ICC continued to rely on cooperation with and assistance from States, international organizations and civil society. UN cooperation remained essential to the Court institutionally and in the different situations and cases. UN logistical support facilitated the Court's work in the field. Peacekeeping missions assisted the Court in areas such as transportation, provision of information, communication support and the use of UN facilities. ICC benefited from the expertise provided by UN offices, for example, in the area of witness protection. The Office of Legal Affairs played the leading role in facilitating cooperation, in particular with respect to the testimony of UN officials before the Court, the provision of information and the mainstreaming of the Court throughout the UN system.

The Court made numerous requests to States parties, other States and international organizations for cooperation or assistance. It also continued to develop its structural arrangements for cooperation, especially with respect to investigative activities, witness protection, sentence enforcement, and the provisional release of accused persons pending trial. Efforts continued to finalize a memorandum of understanding between the AU and the Court, as well as on a possible cooperation agreement with the Organization of American States. The Court met regularly with representatives of States, international organizations and civil society to update them on the Court's work and discuss items of mutual interest.