
ARTICLES

THE ICTR: EXPERIENCES AND CHALLENGES

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I. POINTS OF DEPARTURE

The title of the Boston Conference was “The ICTR—Ten Years After.” It is true that more than ten years have lapsed since the Security Council, in November 1994, adopted a resolution to set up an International Criminal Tribunal for Rwanda (ICTR).¹ This was approximately eighteen months after the adoption of the resolution establishing the International Criminal Tribunal for the Former Yugoslavia [ICTY].² However, it is important to remember that work in Arusha started much later. Ten years ago, there was no Tribunal.

The Security Council made the decision to locate the seat of the Tribunal in Arusha in February 1995, based on the Secretary-General’s recommendation.³ The General Assembly elected the six ICTR judges in

* President of the ICTR. This contribution is based on my key-note address in Boston on 4 April 2005. A more extensive evaluation of the Tribunal is given in my article *Main Achievements of the ICTR*, 3 J. INTL CRIM. JUST. 920 (2005).

1. S.C. Res. 955 ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994) [hereinafter Resolution 955].
2. SC Res. 808 ¶ 1, U.N. Doc S/RES/808 (Feb. 22, 1993).
3. The Security Council considered other alternative locations, in particular Kigali and Nairobi (the capitals of Rwanda and Kenya), but rejected them. There was a severe shortage of premises in Kigali that could accommodate the ICTR and properly serve its needs. It also felt that the appearance of justice and fairness, in particular, complete impartiality and objectivity, required that trial proceedings be held in a neutral country. Additionally, the Secretary-General considered that there were serious security risks in bringing the leaders of the previous regime into Rwanda. The Kenyan Government ultimately decided that it would not be in a position to provide a seat for the Tribunal in Nairobi. The Tanzanian Government made an offer to accommodate the Tribunal in the Arusha International Conference Centre [AICC].

May 1995, however the judges did not officially take office until June 19, 1996, one year later.⁴ As of September 1995, the Tribunal had no courtrooms, offices, prison, legal officers, or secretaries. The Tribunal could only move into a small section of its headquarters in November 1995, one year after the Security Council decided to set up the ICTR.⁵ The first accused arrived in Arusha in May 1996, and his trial commenced in January 1997.

The ICTR faced problems not encountered by its sister Tribunal in The Hague. The general infrastructure in Arusha was quite rudimentary. There were few tarmac roads, very unstable electricity and water supplies, and austere living conditions. Telephone and fax lines were few and unreliable. Computers and office equipment had to be imported from abroad, resulting in delays. In addition, the investigation unit in Kigali had to function in an environment with a very limited infrastructure. The main challenge during the first mandate of the ICTR's history was to create a functional judicial institution under difficult conditions, in an area where there had never previously been any international court.⁶

The first two courtrooms were not ready until 1997. During the period when the courtrooms were being constructed, pre-trial hearings were held in conference rooms. As there was only one courtroom available from the outset, it was shared between the two Chambers hearing three cases that

See S.C. Res. 977, U.N. Doc S/RES/977 (Feb 22, 1995); The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955* (1994), U.N. Doc S/1995/134 (Feb. 13, 1995).

4. General Assembly, Security Council, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, ¶ 7, U.N. Doc. A/51/399, S/1996/778 (Sept. 24, 1996) (The six ICTR judges were elected by General Assembly decision 49/324). It was only after September, 1996 that they were allowed by the United Nations Headquarters to take up residence in Arusha. In the interim, they shuttled between their home countries and Arusha in order to carry out pre-trial proceedings.
5. The first indictment, *Prosecutor v. Akayesu*, Case No. ICTR 96-4-I, Confirmation of Indictment (Nov. 28, 1995), was confirmed in a hotel room. The reading of documents in the evenings occasionally took place at candle-light because of regular power-cuts. Generators were rarely available.
6. Judges shall be elected by the General Assembly for a term of four years. Statute of the International Criminal Tribunal for Rwanda, 2005, art. 12 *ter*. It is typical to refer to these four-year periods as the "mandates" of the Tribunal. The first mandate started on May 25, 1995, the date when the judges were elected, followed by the second mandate from May 25, 1999, and so forth. At present, the Tribunal is in the second half of its third mandate.

commenced in early 1997.⁷

Because the first trial began in January, 1997, it could be said that the Boston conference actually took place at the ICTR's eight and a half year anniversary! However, sufficient time has elapsed to evaluate the ICTR's work and to describe some of its challenges. A final appraisal will have to take place at the end of its activities.

II. CURRENT SITUATION

As of October 2005, twenty-six people brought before the Tribunal received judgments in the first instance. Trials of another twenty-six detainees are on-going. Consequently, fifty-two cases are completed or are in progress. In addition, seventeen detainees are awaiting trial. The Tribunal is a full-fledged judicial institution. The proceedings take place in four high-tech courtrooms, and a convoy of vehicles transport between ten and twenty detainees to and from the Tribunal almost every day.

From the outset, the Prosecutor's indictment strategy has concentrated on those individuals in leadership positions in Rwanda in 1994, and who are therefore alleged to bear the greatest responsibility for the crimes committed. The fact that the fifty-two cases mentioned above include one Prime Minister, eleven Government Ministers, one Parliamentarian, four Prefects, eight bourgmestres, as well as members of the media and military leaders, illustrates this point. Members of the clergy are also on the ICTR list of convicts and indictees.

This strategy could not have been successful without the cooperation of many states. Alleged leaders of the 1994 events were arrested, for example, in Nairobi in July 1997, and also as a consequence of cooperation with several West African countries in 1998. The United States and many European states have also facilitated the apprehension and transfer of Tribunal indictees to Arusha.

Most of the indictees who fled Rwanda in 1994 would probably not have been brought to justice at all had it not been for the Tribunal's efforts to investigate their crimes and insist upon their arrest and transfer to the ICTR. Many states are reluctant to initiate investigations and institute criminal proceedings at their own expense against individuals who may have committed crimes in other countries. Extradition to other states is also a cumbersome process, when it is requested at all. In the case of Rwanda, it may be impeded by the fact that capital punishment, under Rwandan law, remains a possible penalty for crimes of this magnitude. Thus, the fact that the accused will receive a fair trial by an independent

7. The *Akayesu* trial started on January 9, 1997, followed by *Prosecutor v. Rutaganda*, Case No. ICTR 96-3 in March, and *Prosecutor v. Kayishema*, Case No. ICTR 95-1 in April, 1997. The third courtroom was finished in late 1998.

Tribunal has likely facilitated the transfer of many persons to Arusha.⁸

There is no doubt that the Tribunal's proceedings involving persons in very high positions have sent a strong signal both to the African continent, and to the world at large, that impunity for crimes of this magnitude will not be tolerated by the international community.

In August 2003, the Security Council decided that both Tribunals shall complete all investigations by 2004, all trials by 2008, and all appeals by 2010.⁹ In accordance with these Completion Strategy commitments, it is estimated that by the time it concludes its operations, it will have tried between sixty-five and seventy accused.¹⁰ This is approximately three times the number of individuals tried at Nuremberg. At present, twenty-one indictees are at large. Some of them may be dead, and others may never be arrested.

It is obvious that the ICTR, in its lifespan, cannot address all of the crimes committed in Rwanda during 1994. A very large number of perpetrators are awaiting proceedings in Rwanda.¹¹ The ordinary courts in Rwanda and the *gacaca* process (the grass roots courts in Rwanda) must be viewed as complementary means for ensuring justice for the majority of the victims of these terrible events.

Having addressed the difficult beginnings, and the results thus far, this contribution will now focus on some of the achievements of the ICTR and the challenges that it has confronted.

III. CREATION OF JURISPRUDENCE

Through its judgements and decisions, the ICTR has bequeathed highly significant case law to the international community. In particular, the ICTR jurisprudence provides abundant interpretative material on the legal nature and factual realities of the crime of genocide. The *Prosecutor*

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8. The Rwandan Government has, in another context, recently stated that the country would be willing forego the death penalty in relation to ICTR indictees.
 9. See S.C. Res. 1503, U.N. Doc. S/RES/1503 (Aug. 28, 2003) (containing the deadlines for completion); S.C. Res. 1534, U.N. Doc. S/RES/1534 (March 26, 2004) (requesting bi-annual reports from the Presidents and Prosecutors of the two Tribunals regarding the implementation of the Completion Strategy).
 10. The ICTR President, *Letter Dated 23 May 2005 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, at Summary, addressed to the President of the Security Council, U.N. Doc. S/2005/336 (May 24, 2005).
 11. A large number of prisoners were released in 2003 and 2005, but there are still an estimated 60,000 genocide suspects in Rwanda's prisons.

v. Akayesu judgment was the first in which an international tribunal was called upon to interpret the definition of genocide set forth in the Genocide Convention.¹² The comparatively fewer indictments for genocide before the ICTY mean that the ICTR jurisprudence is a particularly important source for both the definition and elucidation of the legal ingredients of this offense. The *Akayesu* judgment was also groundbreaking for its affirmation of rape as an international crime. This and subsequent judgments are notable for finding that rape may comprise a constituent act of genocide.¹³

The ICTR was the first international tribunal after Nuremberg to hand down a judgment against a Head of Government. Some three years before the former Yugoslav President Slobodan Milošević was transferred to The Hague to face trial at the ICTY, the ICTR had convicted Jean Kambanda, the Prime Minister of Rwanda from April to July 1994, for genocide.¹⁴ This reaffirmed the principle that no individual enjoys impunity for such crimes on account of their official position.

In *Prosecutor v. Nahimana* [the *Media case*],¹⁵ the ICTR developed a further legacy of the post-World War II case law. This is the first contemporary judgment to examine the role of the media in the context of mass crimes. The judgment addresses the boundary between the right guaranteed under international law to freedom of expression, and incitement to international crimes.¹⁶ This case was the first pronouncement by an international tribunal on these questions since the conviction of Julius Streicher at Nuremberg.¹⁷

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12. See *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶¶ 112-13 (Sept. 2, 1998).
 13. As of October 2005, the Tribunal had prosecuted rape and sexual crimes with respect to five out of the twenty-six accused, in the following completed cases: *Akayesu*, ICTR 96-4-T, Judgment at ¶¶ 112-13; *Prosecutor v. Musema*, Case No. ICTR 96-13-A, Judgment and Sentence (Jan. 27, 2000); *Prosecutor v. Semanza*, Case No. ICTR 97-20-T, Judgment and Sentence (May 15, 2003); *Prosecutor v. Muhimana*, Case No. ICTR 95-1B-T, Judgment and Sentence (Apr. 28, 2005). Many other such cases are under way.
 14. *Prosecutor v. Kambanda*, Case No. ICTR 97-23-S, Judgment and Sentence, Verdict (Sept. 4, 1998). This case was also the first judgment where a Head of Government pleaded guilty to genocide. *Id.* at ¶5. More generally, it was one of the earliest sentences to be meted out by the ad hoc Tribunals following a plea of guilty. See generally, *Id.*
 15. *Prosecutor v. Nahimana*, Case No. ICTR 99-52-T, Judgment and Sentence (Dec. 3, 2003).
 16. See *id.* This case is presently on appeal.
 17. INT'L MILITARY TRIBUNAL, JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE TRIAL OF THE GERMAN MAJOR WAR CRIMINALS NUREMBERG 30TH SEPTEMBER AND 1ST OCTOBER 1946 100-02 (London: HMSO, reprint 1966) (1946).

The ICTR's case law, which applied its Article 6(3) within a conflict that was both internal and composed of important non-military components, also endorses application of the doctrine of command responsibility to the civilian leadership.

In addition to its judgments, the Tribunal has handed down thousands of written decisions and in-court oral rulings. They form an important part of the Tribunal's jurisprudence and clarify a wealth of procedural issues arising under the Statute and the Rules of Procedure and Evidence [the Rules].

In a nutshell, the ICTR has already made significant contributions to the development of international criminal law, human rights law and international humanitarian law. Above all, the ICTR has shown that international criminal justice actually works. Far from being a mere statement of lofty idealism, the ICTR has become a working reality, even under the most difficult of conditions.

IV. LESSONS LEARNED

The path toward these results has not always been smooth or unproblematic. Nor has the ICTR been free from error or inefficiency throughout its history.¹⁸ To a large extent, such problems were inevitable. In setting up the two ad hoc Tribunals, the Security Council entered uncharted territory. They were the first international criminal tribunals post-Nuremberg, and the first tribunals ever set up by a Security Council resolution under Chapter VII of the UN Charter. With such a new venture, there was always going to be a steep learning curve and the emergence of issues that would be resolved only through the costly process of trial and error.¹⁹

18. See, e.g. The Secretary-General, *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services, delivered to the General Assembly*, U.N. Doc. A/51/789 (Feb. 6, 1997) (concluding that there were serious operational difficulties in the Tribunal).

19. See General Assembly, *Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda*, ¶ 15, submitted to the Secretary-General on 11 November 1999, U.N. Doc. A/54/634 (Nov. 22, 1999).

It cannot be overemphasized that establishing a new and unique prosecutorial and judicial institution with the task of implementing a complex and not well defined set of legal norms with respect to extraordinary events in inhospitable environments was inescapably going to involve a lengthy development period . . . No system of international justice embodying standards of fairness, such as those reflected in the creation of ICTY and ICTR would, under the best of circumstances, either be inexpensive or free of the growing pains that

This trial and error learning process becomes evident by looking at the increased number of accused that have been tried in ICTR proceedings over time. After the completion of cases involving seven accused during the first mandate,²⁰ the number doubled to another fourteen accused in the second.²¹ This number is expected to be much higher during the third mandate. Other indicators – such as the number of courtroom days required for trials²² and the streamlining of Tribunal judgments²³ – have

inhere in virtually all new organizations.

Id.

20. The Tribunal rendered six judgments involving seven accused during the first mandate, mostly single-accused cases. *See generally* Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment and Sentence (Sept. 2, 1998) (Jean-Paul Akayesu); *Kambanda*, ICTR 97-23-S, Judgment and Sentence (Jean Kambanda, who pleaded guilty); Prosecutor v. Serushago, Case No. ICTR 98-39-S, Sentence (Feb. 5, 1999) (Omar Serushago, who pleaded guilty); Prosecutor v. Kayishema, Case No. ICTR 95-1-T, Judgment (May 21, 1999) (Clément Kayishema and Obed Ruzindana); Prosecutor v. Musema, Case No. ICTR 96-13-A, Judgment and Sentence (Jan. 27, 2000) (Alfred Musema).
21. *See generally* Prosecutor v. Ruggiu, Case No. ICTR 97-32-I, Judgment and Sentence (June 1, 2000) (Georges Ruggiu, who pleaded guilty); Prosecutor v. Bagilishema, Case No. ICTR 95-1A-T, Judgment (June 7, 2001) (Ignace Bagilishema); Prosecutor v. Ntakirutimana, Case No. ICTR 96-10, ICTR 96-17-T, Judgment and Sentence (Feb. 21, 2003) (Elizaphan Ntakirutimana and Gérard Ntakirutimana); Prosecutor v. Semanza, Case No. ICTR 97-20-T, Judgment and Sentence (May 15, 2003) (Laurent Semanza); Prosecutor v. Niyitegeka, Case No. ICTR 96-14-T, Judgment and Sentence (May 16, 2003) (Eliézer Niyitegeka); Prosecutor v. Kajelijeli, Case No. ICTR 98-44A-T, Judgment and Sentence (Dec. 1, 2003) (Juvénal Kajelijeli); Prosecutor v. Nahimana, Case No. ICTR 99-52-T, Judgment and Sentence (Dec. 3, 2003) (Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze) [hereinafter *Media case*]; Prosecutor v. Kamuhanda, Case No. ICTR 95-54A-T, Judgment (Jan. 22, 2004) (Jean de Dieu Kamuhanda); Prosecutor v. Ntagerura, Case No. ICTR 99-46-T, Judgment and Sentence (Feb. 25, 2004) (André Ntagerura, Emmanuel Bagambiki, and Samuel Imanishimwe).
22. In the first few years, the average length of trial per accused was sixty-two trial days, although the last trial in the first mandate – *Musema*, ICTR 96-13 - was completed in only thirty-nine trial days. Cases completed more recently reflect a lower number of trial days per accused. *See Ntakirutimana*, ICTR 96-10, ICTR 96-17-T, Judgment and Sentence (thirty trial days per accused); *Niyitegeka*, ICTR 96-14-T (thirty-five trial days); Prosecutor v. Gacumbitsi, Case No. ICTR 2001-64-T, Judgment (June 17, 2004) (thirty-two trial days); Prosecutor v. Ndindabahizi, Case No. ICTR 2001-71-I, Judgment & Sentence (July 15, 2004) (twenty-seven trial days); Prosecutor v. Muhimana, Case No. ICTR 95-1B-T, Judgment & Sentence (Apr. 28, 2005) (thirty-four trial days). It is expected that this trend will continue with respect to single-accused trials. The period required for judgment writing has also been reduced. Multi-accused trials, due to their complexity, will continue to require longer periods, both during the trial and judgment writing phases.

also continued to indicate progress. Further refinement of the working methods is an on-going process.

Some general lessons deserve to be highlighted. First, it takes time to build up a judicial infrastructure. The construction of offices and courtrooms, the election of judges, the appointment of a Chief Prosecutor, and the recruitment of staff take a considerable amount of time. This has become evident not only from the experiences of the ad hoc Tribunals for Yugoslavia and Rwanda, but also from hybrid courts such as the Special Court for Sierra Leone and Cambodia. It is also foreseeable that the international community will meet such challenges whenever it seeks to establish any further tribunals, particularly in regions affected by armed conflict. However, the International Criminal Court [ICC], being a permanent institution, will not face identical challenges whenever a new conflict is placed before it.

Second, international criminal proceedings face certain challenges generally not found at the national level. There is a considerable volume of documents required in trying the alleged architects of these genocidal atrocities, many of which are high-ranking members of governments. These documents are subject to disclosure and must be translated for legal teams and the accused. Also, translation of thousands of pages of documents into the official languages of the Tribunal is often required. The number of witnesses in these trials is also considerable, particularly in the multi-accused trials. All testimony must be interpreted in three languages. The Tribunals often have to extract witnesses from a difficult environment, and afford them considerable protection before and after testimony, including relocation.

Moreover, the staff and counsel involved in these cases come from different cultures and legal traditions. Effective communication requires new skills and extra efforts, particularly because the legal framework in which the Tribunals operate is at a relatively early stage of development, and represents a mixture of legal systems. Additionally, defense counsel often have to leave their other case-work for considerable periods to spend time working at the ICTR in Arusha. Unlike domestic legal systems, the ad hoc Tribunals depend greatly on the cooperation of States so as to ensure the transfer of the accused, the availability of witnesses, and the locations for convicts to serve out their sentences.

Third, there is a need for know-how. When the Security Council established the ad hoc Tribunals, virtually no one knew how to operate an international court. The trials conducted before these Tribunals are legally and factually complex, frequently involving multiple defendants and crimes

23. Previously, ICTR judgements were typically two hundred to three hundred pages in length. More recently, they tend to be about one hundred pages long.

of enormous magnitude and scale. Trying complex cases of this nature would be time-consuming and expensive for any legal system.²⁴

An important contribution of the ICTR has therefore been the emergence of new professional groups – judges, prosecutors, defense counsel and Registry staff skilled in the unique requirements of international criminal justice. Not only has there been learning within each institution, but also there has been a transfer of knowledge between the various institutions. For instance, the ICC has already benefited from the experience of persons from the ad hoc Tribunals. Such mobility leads to a beneficial sharing of experience, but also creates problems. This is particularly true for the two Tribunals, which face difficulties retaining staff as a consequence of their Completion Strategy. The impending completion of the Tribunal's work has caused some staff members to anticipate looking for new jobs well in advance of its mandate.

IV. REVISING THE STATUTE

The Statutes of both Tribunals provided for six judges in two Trial Chambers. Not unexpectedly, this soon proved insufficient, in particular because of the high number of accused and the time needed to conduct the voluminous trials. In 1997 the ICTR, soon followed by the ICTY, requested that the Security Council to establish a third Trial Chamber. The Security Council consequently established one additional Trial Chamber for each of the Tribunals, bringing the total number of permanent Trial Chamber judges to nine.²⁵

In 2000, the ICTY proposed the introduction of ad litem judges, who would be made available to serve in the Trial Chambers when needed. The purpose of this initiative was to increase the Tribunal's judicial capacity. In November 2000, the Security Council established a pool of ad litem judges in the ICTY.²⁶ Following a similar request for ad litem judges by

24. See, e.g., *Closing Arguments Today in McVeigh Trial*, CNN, May 28, 1997, <http://www.cnn.com/US/9705/28/mcveigh.4pm/> (the US federal government spent approximately sixty million United States dollars to prosecute and defend Timothy McVeigh, the perpetrator of a single complex criminal incident (the Oklahoma City bombing)).

25. S.C. Res. 1165, U.N. Doc. S/RES/1165 (Apr. 30, 1998) (establishing a third Trial Chamber for the ICTR); S.C. Res. 1166, U.N. Doc. S/RES/1166 (May 13, 1998) (establishing a third Trial Chamber for the ICTY). In 1994 the Security Council had already indicated that it would “consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary.” Resolution 955, *supra* note 1. The election of the three new ICTR judges coincided with the end of term of office of the six judges who had been elected in 1995, and the election of all nine judges took place in November 1998.

26. S.C. Res. 1329, U.N. Doc. 1329 (Nov. 30, 2000) (providing that nine ICTY ad litem

the ICTR, in August 2002 the Security Council allowed for the creation of a pool of eighteen judges.²⁷ They were elected by the General Assembly on June 25, 2003.

Originally, only four ICTR ad litem judges could take office at any one time.²⁸ Pursuant to two requests in September 2003 from the ICTR, in October the Security Council decided to increase the number from four to nine, and it also conferred to the ad litem judges the power to adjudicate in pre-trial matters.²⁹ The arrival of the nine ad litem judges made it possible to start seven new trials at the ICTR. For quite some time now, there have been eighteen (nine permanent and nine ad litem) judges in Arusha.

Another important reform concerned the role of the Prosecutor. The Statutes of the two Tribunals originally provided for a common Prosecutor, as well as a common Appeals Chamber. This had the advantage of ensuring a uniform prosecutorial policy for the ICTR and the ICTY. In August 2003, the Security Council, for reasons of efficiency, decided to establish a separate Prosecutor for the ICTR. It was thought important to divide up the comprehensive work performed by the Prosecutor as the two Tribunals entered into the crucial period of implementing their Completion Strategy.³⁰

V. AMENDING THE RULES

Amendments to the Rules of Procedure and Evidence are decided by the judges in plenary sessions, usually held once or twice a year in Arusha. Since its establishment, the ICTR has had fifteen plenary sessions. Only some of the most important improvements will be mentioned here. In 1999 the judges amended Rule 73 so as to allow motions under that provision to be considered on the basis of written submissions. In the first mandate, all motions, irrespective of their significance, were heard orally, which contributed to delays in the proceedings. The introduction of written submissions greatly improved the efficiency of the Trial Chambers, reduced the number of outstanding motions, and reduced the Tribunal's costs. Another innovation adopted in 1999 allowed some motions to be decided by a single judge rather than by a Chamber.

judges could serve at any one time). In the same resolution, membership of the common Appeals Chamber was also enlarged by two judges. *Id.* This reform was intended to ease the workload of Appeals Chamber. It would also ensure that the ICTR was represented with two judges in the common Appeals Chamber, which was not envisaged under the original Statutes.

27. S.C. Res. 1431, U.N. Doc. S/RES/1431 (Aug. 8, 2002).

28. *Id.*

29. S.C. Res. 1512, U.N. Doc. S/RES/1512 (Oct. 27, 2003).

30. S.C. Res. 1504, U.N. Doc. S/RES/1504 (Aug. 28 2003).

Amendments to Rule 15 *bis* were also significant. Previously, a case would be stopped if a judge was ill or absent, and a case would have to resume *de novo* in the event of the death or non re-election of a judge. Now, a Trial Chamber may continue a case with a substitute judge under the amended Rule 15 *bis*.

In 2000, the judges introduced deadlines for some motions and a general time limit for responding to motions. They allowed questions pertaining to the form of the indictment to be raised in one motion only; and they introduced a filtering process at the appellate level.

Finally, an explicit provision was also adopted to allow a Chamber to impose sanctions against counsel who brings motions that, in the opinion of the Chamber, are frivolous or an abuse of process. Such sanctions include non-payment, in whole or in part, of fees associated with the motion and costs thereof. It has been used in some cases.

VI. PRACTICAL MEASURES

Legal amendments are significant, but equally important is the streamlining of working methods through practical measures. For instance, experience has shown that long term planning is required to ensure the timely commencement of new trials. Since 1998, the ICTR Trial Chambers began organizing pre-trial and pre-defense conferences in conformity with the newly adopted Rules 73 *bis* and 73 *ter*, respectively. For these conferences the Chamber may require a list of witnesses, a summary of the intended content and length of the testimony of each witness, a statement of agreed facts and law, a statement of contested facts and law, and a list of exhibits. On this basis, the Chamber can order that the number of witnesses and the length of the testimonies be reduced. In practice, a suggestion to the parties to avoid repetitive evidence is often successful.

The Tribunal also had problems with disclosure of witness statements and other documents to the defense, as well as with a need to translate thousands of pages into the two official languages of the Tribunal. A working group has found ways to speed up translation of documents, thereby reducing delays in judicial proceedings. Techniques have been developed to reduce the volume of documents that require translation. However, the Tribunal still has to prioritize. This is not an easy task because the translation services work for the Appeals Chamber, the three Trial Chambers, the Prosecution, the Defense and the Registry. In practice, solutions are found after consultation, but some delays are unavoidable.

Another important innovation was the establishment of the Trial Committee in 2003. This Committee is composed of representatives from the Chambers, the Registry and the Prosecution. The Committee's work facilitates the trial-readiness of many cases. It identifies and contributes to the resolution of problems that may slow down the proceedings, such as

lack of disclosure, translation and the availability of counsel. The Committee is also in contact with the various defense teams.

Further measures designed to increase productivity include conducting trials on a twin-track basis.³¹ The purpose of this system is to use the inevitable breaks that occur during one trial to ensure progress in another. This also allows the Prosecution and the Defense to prepare for the next stage of the proceedings while the other case is being heard. The strategy has resulted in the production of a considerable number of judgments. The Tribunal has also used the "shift system" by sitting in morning and afternoon sessions.³²

With many on-going trials the lack of courtroom space soon became a problem in Arusha. A fourth courtroom was inaugurated on March 1, 2005, funded by voluntary contributions from two Governments. It was constructed in record time - only four weeks - and has been used for trials from the day of its inauguration. This new courtroom is an important element in the Tribunal's Completion Strategy.

One factor contributing to the reduction in the number of trial days is the difficulty of obtaining the appearances of witnesses from Rwanda, or their falling ill upon their arrival in Arusha. In order to reduce this problem, judges expect counsel to have substitute witnesses available in case the witness scheduled to testify fails to appear or falls ill. Another problem is that counsel frequently requests additional time for the preparation of cross-examination in situations where unexpected evidence emerges or is tendered without proper prior notice. In order to avoid such delays, Chambers require "will-say" statements when counsel discovers that a witness may provide new information during the testimony. This reduces the element of surprise as well as subsequent requests for adjournments.

31. "Twin-tracking" means that two trials are heard in consecutive slots. For instance consider the following pattern: Trial A five weeks, trial B five weeks, trial A five weeks, etc. Defense counsel in trial A will leave Arusha while trial B is heard. Almost all judges sit on one multi-accused trial and at least one single-accused trial. See Security Council, Letter dated 23 May 2005 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council, ¶ 50, S/2005/336 (May 24, 2005).

32. The "shift-system" means that one court room is used for two cases: one heard in the morning, from about 8:45 am to 1:00 pm; and the other in an afternoon session that lasts until about 6:30 pm. Some of the judges sit in two different trials on the same day in order to ensure rapid progress. See *id.*

The Tribunal's insistence on having two defense counselors, so that in the event of illness or absence of one counselor, the other can continue representing the defendant, has also reduced the number of interruptions to trials.

At the administrative level, the establishment of the Coordination Council has improved coordination between the three branches of the Tribunal. The Coordination Council consists of the President, the Prosecutor and the Registrar; and it was established following a Rule change in 2003 (Rule 23 *bis*).

VII. GLIMPSES FROM THE PROCEEDINGS

The trial judges come from a wide variety of legal cultures; predominantly African, European, and Asian. The Tribunal's practices and procedures are a mix of common law and civil law traditions. In other words, they have created a legal system which is largely *sui generis*.

The Tribunals adopt an open attitude regarding evidence that may be considered admissible. However, irrelevant evidence is excluded. Hearsay evidence is accepted in principle, but carries very limited weight. None of the convictions at the ICTR have been based on hearsay evidence. This approach assists in the search for truth and often avoids time-consuming discussions of admissibility. It also allows all sides to convey their versions of the events that took place in Rwanda, and is in the interest of fairness. As in the common law tradition, there is an emphasis on cross-examination to test the veracity of evidence.

It is important to note that trials in the Tribunal have a number of objectives, some of which are not readily comparable to those found in other criminal courts. For example, besides efficiently prosecuting people for alleged commission of crimes, another aim of these trials is to establish a historical record. This may require more time and effort than would be necessary to simply complete a case.

Readers of the *New England Journal of International and Comparative Law* may wish to note that there has never been an American trial judge at the Arusha Tribunal. However, two American Presidents of the ICTY have served as presiding judges of the ICTR Appeals Chamber (Judges Gabrielle Kirk McDonald and Theodor Meron). Many American lawyers are also part of the Prosecution and Defense teams, and are members of the Chambers' legal staff. Also, numerous court reporters are of American, Canadian or Australian origin.

In the daily life of the Tribunal, the differences between common law and civil law traditions play a limited role. The judges tend to reason similarly, irrespective of their national systems of origin. Disagreement between the judges appears to be more a matter of personality than legal culture. Therefore, dissenting opinions are rare.

Dressed in their various national robes, lawyers from diverse national legal systems appear in the courtroom and perform their respective roles to the best of their abilities. In each trial a common understanding of the rules within this *sui generis* system emerges.

The testimony of Kinyarwanda-speaking witnesses presents particular problems. Vigilance is of the essence when the communication between the witness and those asking the questions takes place through translation into two languages - Kinyarwanda to French, and then French to English. Occasionally, there is a need for repetition of the evidence in order to avoid mistakes. Cultural differences also play a role. For instance, Rwandan witnesses will often try to avoid giving estimates of numbers, distances and time. Not all witnesses make a clear distinction between what they saw and what they heard. Additional questions may clarify the issues, but all this requires time.

Many witnesses were also victims during the 1994 events. In this regard, the ICTR is committed to ensuring that the witnesses are accorded respect and treated with dignity. A Witness and Victims Support Section [WVSS] within the Registry provides witnesses with all necessary assistance. Thusfar the WVSS has ensured the availability of about 1,200 witnesses from 38 countries. It establishes initial contact with the witnesses after their names and addresses have been provided by the prosecution or the defense. The WVSS also confirms their availability to testify, assesses their specific needs, ensures that travel documents are issued, provides escort from their place of residence to Arusha, and places them in safe houses or other accommodations once they have arrived. While witnesses are in Arusha, the WVSS ensures their security, familiarizes them with court procedures, provides psychological and medical support, buys clothes for those who need them in order to appear in court, and transports them to and from court. After the trial, the WVSS returns the witnesses to their places of residence and provides them with security. They have also adopted specific measures with respect to witnesses who have expressed serious security concerns.

A special project for the psychological and medical support of witnesses and potential witnesses provides technical support to the WVSS for the physical and psychological rehabilitation of witnesses, including rape victims.³³ Psychological counseling has reduced the trauma for witnesses in connection with their testimony, which has reduced the occurrence of delays during trial. This brief summary of an important but little-known part of the Tribunal's work illustrates the weight given to the

33. The ICTR Medical Clinic in Kigali employs a psychologist, gynecologist, nurse-psychologist, and laboratory technician. The Clinic's many activities include treatment for HIV/AIDS.

protection of and assistance to victims and witnesses. In the courtroom, the Chambers endeavor to ensure the necessary balance between cross-examination required to test the evidence of witnesses and the need to protect them from harassment.

FINAL OBSERVATIONS

At the beginning of the 1990s, there were no international criminal tribunals. The last decade has, however, witnessed a proliferation of such courts. When the ICTR commenced its judicial activities, little international jurisprudence was available. Guidance as to the interpretation of the Statute and the Rules could be found in case law from the Nuremberg and Tokyo tribunals, human rights bodies, and the limited jurisprudence developed by the ICTY since its establishment. Solutions in national legal systems have also provided inspiration. The Tribunals' practice, in turn, has had an impact on judicial proceedings at the national level.

An abundance of substantive and procedural law has emerged at the ICTR. Although not bound to do so, the ICTY and ICTR Chambers often rely on one another's case law. The law developed by the two ad hoc Tribunals constitutes a basis for subsequent trials in international and hybrid tribunals, including the ICC, and the Sierra Leone and Cambodia tribunals. New professional groups of international judges, prosecutors, defense counsel and administrators have experience that did not exist ten years ago.

At present, the ICTR has held a high number of people in positions of leadership accountable for their actions, and has conducted judicial proceedings in conformity with the highest standards of international due process. The principle of individual criminal responsibility for everyone, including leaders, has been firmly established. Accountability has replaced impunity in principle, if not yet entirely in practice.

When the Tribunal was set up, the Security Council stated that the prosecution of persons responsible for serious violations of international humanitarian law would "contribute to the process of national reconciliation."³⁴ Although reconciliation cannot be enforced from outside, it is certainly an aim of the Tribunal to contribute to the process of reconciliation in Rwanda. The judicial proceedings at the Tribunal represent the core element in the process of reconciliation. By conducting fair trials, listening to the parties, establishing the facts, and applying the law in an impartial manner, the Tribunal decides the guilt or innocence of the accused with respect to each of the charges against them. It is also reasonable to believe that guilty pleas, combined with expressions of

34. S.C. Res. 955, preambular ¶¶ 7, 9, U.N. Doc S/RES/955 Nov. 8, 1994).

remorse, may contribute to reconciliation.³⁵ Of great importance is the ICTR Outreach Programme, designed to reach all sectors of Rwandan society, and the world at large. The programme includes a wide range of measures whose impact should be assessed closer to the end of the Tribunal's mandate, and in the last resort, by Rwandans themselves.

Although a final appraisal can only be made upon the completion of its work, it is beyond doubt that the ICTR has made a significant contribution to the development of international criminal justice.

35. So far, four persons have pleaded guilty at the ICTR. This is a much lower number than at the ICTY.