Part 4

Legal Developments

Cloning

On March 8, 2005, the UN General Assembly adopted a U.S.-backed Declaration urging UN member states to prohibit all human cloning and to enact domestic legislation to that end. The UN General Assembly adopted the Declaration, on the recommendation of the Sixth (Legal) Committee, by a vote of 84 (U.S.) to 34, with 37 abstentions. Seven states that missed the vote later went on record as supporting the Declaration. In part, the Declaration called on UN members to adopt all measures necessary to protect adequately human life in the application of life sciences; to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life; to adopt the measures necessary to prohibit the applications of genetic engineering techniques that may be contrary to human dignity; to take measures to prevent the exploitation of women in the application of life sciences; and to adopt and implement without delay national legislation to bring into effect the above actions.

The Committee also acted on three proposed amendments to the Declaration, put forward by Belgium. The United States did not support opening the text to amendments and accordingly voted against all three proposals. The Committee adopted the first amendment, which added a clause which referenced Article 11 of the Universal Declaration on the Human Genome and Human Rights, by a vote of 59 to 47 (U.S.), with 41 abstentions. The Committee rejected the other two amendments. The second amendment, defeated by a vote of 48 to 57 (U.S.), with 42 abstentions, would have deleted operative language calling on member states to adopt measures necessary to protect human life. The third amendment, defeated by a vote of 52 to 55 (U.S.), with 42 abstentions, would have replaced operative language calling on member states to prohibit all forms of human cloning with language calling upon member states to prohibit the reproductive cloning of human beings.

The United States made a statement expressing support for the Declaration on Human Cloning, explaining that this Declaration was consistent with the longstanding U.S. position that all forms of human cloning are contrary to human dignity and should be banned. The Declaration's adoption reflected the fact that more and more UN members had come to support such a ban.

The United States had been working for the past four years with like-minded states to achieve this strong statement by the United Nations against human cloning. The United Nations began discussing cloning in 2001 when the General Assembly adopted a French/German resolution that created and tasked an *ad hoc* committee of the Sixth Committee to develop a framework for a convention to ban human reproductive cloning. In 2002, 2003, and 2004, the *ad hoc* committee and the working group of the Sixth Committee were

unable to resolve differences between countries that wanted a convention to ban all human cloning (including the United States) and countries that wanted a ban on human cloning for reproductive purposes but not for experimental purposes. In November 2004, the Committee decided by consensus to take up the issue of human cloning as a non-binding declaration (instead of a legally binding convention) which would be considered in February 2005. Italy submitted a draft declaration, which the United States supported. U.S. representatives worked with like-minded states to ensure adoption of the draft declaration by the Sixth Committee with minimal changes.

UN Commission on International Trade Law (UNCITRAL)

The UN Commission on International Trade Law (UNCITRAL), established by UN General Assembly Resolution 2205 (XXI) in 1966, continued its technical legal work on commercial and economic law reform to promote trade and commerce in all geographic regions. The Commission's work is reviewed and approved by the General Assembly's Sixth (Legal) Committee, and its international legal texts are subject to adoption or endorsement by the General Assembly. In December 2005, the General Assembly reaffirmed the Commission's mandate as the core legal body within the UN system in the field of international trade law (Resolution 60/20). The United States started its new six-year elected term on the Commission in 2004.

The Commission focuses on economic and technical effects of commercial law. It promotes economic reform through multilateral conventions, model national laws, UN legislative guidelines, and technical assistance on trade and commercial law. The United States actively participates in the work of the Commission, since its work products are generally effective and are beneficial to the U.S. private sector as well as to governmental interests.

Located at the UN's International Center in Vienna, Austria, the Commission usually holds two one-week working group meetings annually on each topic, as well as interim meetings of experts groups. Each project is then examined at the Commission's annual plenary session, which reviews and approves the work program. The Commission invites industry and private-sector nongovernmental organizations which have established expertise in the topic of a working group to participate fully as observers and speak on technical matters. U.S. private-sector associations are particularly active on this basis, and the Department of State works closely with U.S. bar and trade and industry groups to assure representation of their interests in all UNCITRAL topics. The 2005 annual plenary session was held July 4–15 in Vienna.

The Commission finalized and adopted the UN Convention on the Use of Electronic Communications in International Contracts, which was subsequently endorsed and opened for signature and ratification by the General Assembly in Resolution 60/21, adopted on November 23. The

Convention broke new ground, first by adopting basic rules to enable international e-commerce, so as to promote harmonization between states before the otherwise inevitable enactment of widely disparate national laws, and second by including optional provisions enabling states to modernize pre-existing treaties. The Convention's rules were based on the Commission's 1996 model law on e-commerce, which was the basis in the United States of both federal and uniform state law on e-commerce. It adopted a minimalist and non-regulatory approach, favored by the United States and like-minded states.

The Convention applies generally to international contracts; validates computer-based messages in commerce; and provides rules for signatures, originals, location of parties, time and place of sending and receipt, and certain automated transactions, all of which are important for Internet and email-based commerce and are difficult to resolve under traditional contract law. These rules preserve party autonomy and can be varied by transacting parties; they are also subject to broad exclusion by states, in recognition that e-commerce is in an early stage of development. Excluded altogether are consumer transactions and certain financial and market transactions.

The Convention's provisions allow states to optionally apply it to existing treaties to which it is a party, which is consistent with the practice under international private law, of allowing formal declarations by states which vary application of certain provisions only in that state, but which do not affect other states' application of those provisions. The Commission rejected a controversial provision sought by the European Commission which would have had a UN treaty regulate European Union (EU) internal affairs, which was opposed by the United States and 16 of 17 EU member states attending (the United Kingdom represented the EU Presidency and did not take a position).

Working Group I continued to draft changes to the Commission's Model Law on Procurement of Goods, Construction, and Services, which has been used by the World Bank and others to promote economically sound laws for public acquisition which also promote transparency, competition, and anti-collusion practices. The changes were mainly focused on updating the Model Law to incorporate electronic bidding and computer-based transactions and acquisitions.

The Working Group also considered draft provisions on electronic communications and relevant controls over e-procurement, electronic reverse auctions, framework agreements, permissible uses of suppliers' lists, remedies and enforcement, community participation, legalization of documents, and other matters. While remaining consistent with modern principles in public procurement, reflected in U.S. state and federal laws and practice, the Commission's objectives were to produce texts and principles that could be more readily adopted by developing and emerging states.

Working Group II continued its effort to resolve several long-standing differences on the power of an arbitral tribunal to grant interim relief,

including relief on an ex-parte basis, as well as interim measures issued by state courts in support of arbitration. Issues involving interim relief and ex parte orders in particular remained contentious. Once resolved, they may be considered as additional provisions to the already widely adopted UNCITRAL Model Law on International Commercial Arbitration. A compromise solution supported by the United States is hoped to be finalized in 2006.

The Working Group, in conjunction with the International Bar Association, various regional and national arbitration centers, and others, continued to monitor the legislative implementation of the 1958 UN "New York" Convention on Enforcement of Foreign Arbitral Awards. The Working Group also considered potential future work, including revising the widely used UNCITRAL Arbitration Rules; on-line dispute resolution; arbitration of intra-corporate disputes; and disputes involving immovable property, insolvency, or unfair competition.

Working Group III continued its effort to bring unity to a field of law largely split for almost 80 years between differing sets of international rules and national laws, by drafting a new convention on carriage of goods by sea and other modes of transportation. The complexity of the issues reflected the number of stakeholders involved, such as carriers, shippers, freight forwarders, insurers, consignees, and others. The draft, in addition to its focus on carriage of goods by sea, also would deal with related issues involving land transportation, as well as bills of lading, liability limitations, right of control, transfer of rights, jurisdiction, arbitration, party autonomy, and special rules for negotiated contracts.

The Commission clarified some issues concerning working methods of the Working Group and the informal work of industry groups and states both at the meetings and between the meetings. The United States and like-minded states and the maritime and transportation industry have pursued discussion of a number of issues in informal settings in order to move the process forward; the Commission agreed that the Working Group and the Commission remained responsible for any decisions made. Even with approval of four weeks of intergovernmental negotiations per year, twice that of most UNCITRAL projects and given the number and complexity of issues, final adoption was considered likely only in 2008.

Working Group VI continued its work on a UN Legislative Guide for Secured Finance Reform, building on its completion of the 2001 UNCITRAL Convention on the Assignment of Receivables in International Trade (Assignments Convention). In the 2005 meeting, the United States stated that modernizing such laws could release significantly more assets for collateral, and promote new finance, including finance for small and medium enterprises, in credit-deficient countries and regions. Initially focused on inventory financing and sales, the Commission authorized an extension of the legislative guide to intangibles such as bank deposits, letter of credit proceeds, and intellectual property rights. It was agreed that the Commission would seek coordination with work underway at the Organization of American States, the

World Bank, and others in this field. A basic divide remained between modern economic laws already tested in the United States and some other capital markets, which depend on transparent systems and public filings, and older traditions in some countries. Coordination of this project with prior work already completed by the Commission in its 2004 Legislative Guide on Insolvency Law presented difficult policy issues for the Group, since each project sought to boost trade in quite different ways. Given the rate of overall progress, the Commission was expected to seek interim approval of the secured finance legislative guide in 2006.

The U.S. Congress enacted the 1997 UNCITRAL Model Law on Cross-Border Insolvency Cases as the new Chapter 15 of the U.S. Bankruptcy Code, effective in October 2005, reaffirming the value UN negotiated texts could have in the field of private law. The Senate Judiciary Committee and others expressed the hope that other countries would follow suit. Chapter 15 opens U.S. courts to a wider range of actions involving foreign interests in business bankruptcy actions and is expected to promote more effective redistribution of assets in cross-border cases of business failure, a critical factor for modern economies.

Building on that, and the subsequent completion in 2004 of the UN Legislative Guide on Insolvency Law, in 2005, the Commission held an international colloquium in Vienna to assess needs for further work in this field. Attendees supported work in the following three areas: treatment of corporate groups in cross-border insolvency cases; protocols to effect cross-border cooperation between courts and administrators in different countries; and rules allowing post-bankruptcy commencement financing, a key to enabling U.S.-style business rescue and reorganization to take place.

The Commission continued its effort, supported by the United States, to develop information useable to stem the rising problem of international commercial fraud, affecting banks and other financial institutions in countries at all levels of development. In 2005, the Commission held an international colloquium involving experts from many countries, a method of work that permits a wide variety of interests to present their views to the Commission. A number of commercial sectors were involved, such as banking, letters of credit, insurance, and maritime shipping and cargo. This work was done in coordination with the UN's Commission on Crime Prevention and Criminal Justice, which also meets in Vienna.

The Commission reviewed its working methods, reaffirming its objective of avoiding politicized issues and south versus north issues. It continued to support its tradition of adoption of technical commercial law provisions on the basis of substantial majority support, thus avoiding requirements for complete consensus which would render adoption of complex commercial law impractical. It also confirmed its method of assuring market effectiveness of its products by obtaining sufficient technical input from qualified nongovernmental organizations, which participate by special invitation.

Host Country Relations

The General Assembly established the Committee on Relations with the Host Country in 1971 to address issues concerning the presence of the United Nations and the UN diplomatic community in the United States. These issues concerned the security of missions, the safety of their personnel, tax questions, legal and visa issues, and privileges and immunities. The UN Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations provide the legal framework for the work of the Committee.

In light of the enhanced national security requirements implemented in the United States following the events of September 11, 2001, and the difficulties experienced by representatives to the United Nations arriving and departing from the United States, the U.S. Mission hosted a special briefing at the United Nations on August 10, 2005, for all missions in preparation for the 60th General Assembly. The briefing included guidance on diplomatic overflight and landing clearances, expedited port courtesies, customs and immigration, the escort-screening program, and related matters. Members were encouraged to do their part to make the processes work smoothly. The number of complaints from delegations to the 60th General Assembly with respect to arrivals and departures were minimal.

Host Country Committee members continued to express concern about the implementation of the Parking Program for Diplomatic Vehicles, which was adopted in 2002. The Committee agreed that the host country would continue to bring to the attention of New York City officials reports of problems encountered by the permanent missions and that the Committee would remain seized of the matter.

On November 23, the General Assembly adopted without a vote the "Report of the Committee on Relations with the Host Country" (Resolution 60/24). The resolution requested that the host country continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of the missions; noted that the Committee would continue to review the implementation of the Parking Program; expressed its appreciation for the efforts made by the host country; noted that some travel restrictions previously imposed on the staff of certain missions and staff members of the Secretariat of certain nationalities were removed; and noted that the Committee anticipates that the host country will continue to ensure the timely issuance of visas to representatives of member states for the purpose of attending official UN meetings.

International Court of Justice

The International Court of Justice (ICJ) is the UN's principal judicial organ. The Court decides cases submitted to it by states and gives advisory opinions on legal questions at the request of international organizations authorized to request such opinions. The UN General Assembly and the Security Council vote separately to elect the Court's judges from a list of

persons nominated by national groups on the Permanent Court of Arbitration. Judges are elected for nine-year terms, with five judges elected every three years.

The ICJ is composed of 15 judges, no two of whom may be nationals of the same state. As of December 31, 2005, the Court was composed as follows: Shi Jiuyong (China—President); Raymond Ranjeva (Madagascar—Vice President); Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia); and Ronny Abraham (France).

In elections held on November 6, 2005, Judge Thomas Buergenthal of the United States was re-elected to the seat on the Court he has held since 2000. In addition, four other judges were elected to the Court for the first time: Kenneth Keith (New Zealand); Bernardo Sepulvdea Amor (Mexico); Mohammed Bennouna (Morocco); and Leonid Skotnikov (Russian Federation). The terms of these judges begin on February 6, 2006. In addition, on February 15, Ronny Abraham (France) was elected to fill out the remainder of the term of Judge Gilbert Guillaume (France), who retired.

The United States was not party to any cases before the Court in 2005. On February 28, 2005, President Bush issued a determination that the United States would comply with the Court's 2004 decision in a case brought by Mexico under the Vienna Convention on Consular Relations. (This case is discussed in more detail in the report on U.S. Participation in the United Nations in 2004.)

The ICJ is funded from the UN regular budget, of which the United States pays 22 percent. The ICJ's appropriation in 2005 was $16.9 million.

International Criminal Court (ICC)

The International Criminal Court (ICC) is not a UN body, and the United States is not a party to the Rome Statute establishing the ICC. As in previous years, the United States dissociated itself from consensus on the annual resolution in the General Assembly on the ICC which, among other things, called on all states that are not parties to the Rome Statute to consider ratifying or acceding to it without delay. In its statement on the resolution in the General Assembly on November 23, 2005, the United States emphasized that it respects the rights of states to become parties to the Rome Statute, but asks in return that other states respect our decision not to do so. The United States also stressed its commitment to ensuring accountability for perpetrators of genocide, war crimes, and crimes against humanity, and urged common efforts to advance these objectives and avoid divisiveness over the ICC.

On March 31, the UN Security Council adopted Resolution 1593 referring the situation in Darfur, Sudan, to the ICC. The United States abstained on this resolution. In its statement in the Security Council on the

resolution, the United States indicated that, in light of its concerns about the ICC, it believed that a hybrid tribunal in Africa would have been a better mechanism for addressing serious crimes committed in Darfur. The statement indicated that the United States decided not to oppose the resolution because of the need for the international community to work together in order to end the climate of impunity in Sudan, and because the resolution provided protections from investigation or prosecution by the ICC for U.S. nationals and members of the armed forces of countries that are not parties to the Rome Statute.

International Law Commission (ILC)

The UN General Assembly established the International Law Commission (ILC) to promote the codification and progressive development of international law. Its 34 members, each of a different nationality, are persons of recognized competence in international law who serve in their individual capacities. The General Assembly elects them for five-year terms. The current member of the Commission from the United States is Michael Matheson, a former Principal Deputy Legal Adviser (and Acting Legal Adviser) at the Department of State. Mr. Matheson was elected in 2003 to fill the vacancy arising from the resignation of Robert Rosenstock, a former Legal Counselor at the U.S. Mission to the UN in New York. Mr. Matheson's term, as a result, expires in 2006.

The ILC studies international law topics referred to it by the General Assembly or that it decides are suitable for codification or progressive development. It usually selects one of its members (designated a "special rapporteur") to prepare reports on each topic. After discussion in the ILC, special rapporteurs typically prepare draft articles for detailed discussion by the members of the ILC. These are considered and refined in a drafting group prior to formal adoption by the ILC. The ILC reports annually on its work to the Sixth (Legal) Committee of the General Assembly.

At its 57th session in 2005, the ILC continued its work on the topic of "Shared Natural Resources." In addition to considering the third report of the Special Rapporteur, which contained 25 draft articles on the law of transboundary aquifers, the ILC established a Working Group on Transboundary Groundwaters to review draft articles presented by the Special Rapporteur, bearing in mind the ILC's discussion on the topic. The Working Group reviewed and revised eight draft articles, which it will consider further in 2006.

The ILC also continued its work on the topic "Responsibility of international organizations." In that regard, the Commission adopted nine draft articles (along with commentaries) dealing with the existence of a breach of an international agreement by an international organization and the responsibility of an international organization in connection with the act of a state or another international organization.

With regard to the topic "Effects of armed conflict on treaties," the ILC reviewed the first report of the Special Rapporteur on the subject, which, among other things, contained a set of 14 draft articles. The ILC endorsed the Special Rapporteur's suggestion that a request for information be sent to member Governments for information regarding their practice with regard to this topic.

The ILC also continued its work on the topic of "Diplomatic protection," by considering the sixth report of the Special Rapporteur, which dealt with whether the clean hands doctrine should be included in draft articles on this topic. The ILC also worked on the following topics: "Expulsion of aliens," reviewing the Special Rapporteur's preliminary report on the topic; "Unilateral acts of States," considering the eighth report of the Special Rapporteur that analyzed 11 cases of state practice; "Reservations to Treaties," referring seven draft guidelines concerning the validity of reservations and the definition of object and purpose of the treaty to the Drafting Committee and adopting two draft guidelines on the definition of objections to reservations and the definition of objection to the late formulation or widening of the scope of a reservation; and "Fragmentation of international law" (difficulties arising from the diversification and expansion of international law), exchanging views on the topic based on a presentation by the Chair of the Study Group on the work of the Study Group.

During the annual consideration by the Sixth Committee of the UN General Assembly of the Commission's report, the U.S. representative made detailed observations on various procedural and substantive aspects of the ILC's work, including the following: the view that, as a general matter, it is important that the ILC proceed cautiously in the area of responsibility of international organizations and that it carefully assess the unique considerations relevant to this topic and not simply work to develop analogous rules to those set forth that would apply to states; the view that the current project on diplomatic protection should be limited in scope to the codification of customary international law, or at most, vary from or supplement customary international law only as warranted by sound public policy considerations supported by a broad consensus of states; the view that, rather than producing another convention to address pressures on transboundary groundwaters, it would be more useful for the ILC to develop a list of guidelines that states might take into account in negotiation more specific and meaningful bilateral or regional arrangements; support for the ILC's work on aquifers, as part of its work on shared natural resources, and the view that the ILC should avoid taking on more controversial sub-topics, such as oil and gas; the belief that to suggest that a state can be bound to a treaty without the benefit of a reservation it has made would be in direct conflict with the basic principle of consent; and the opinion that "Fragmentation of international law" is not a topic that lends itself to the development of draft articles. The United States expects the ILC to take these observations into account in its work on these topics at its 58th session in 2006.

Special Committee on the Charter of the United Nations

In 1974, the General Assembly adopted Resolution 3349, which established an Ad Hoc Committee on the Charter of the United Nations. The Committee was mandated to consider, among other things, any specific proposals that governments might make with a view to enhancing the UN's ability to achieve its purposes as well as other suggestions for the more effective functioning of the United Nations that might not require amendments to the Charter. Since its 30th session, the General Assembly has reconvened the Special Committee on the Charter of the United Nations ("Special Committee") every year, considered its successive reports, and renewed and revised its mandate on an annual basis in its resolutions on the topic of the Report of the Special Committee. The General Assembly, in Resolution 50/52 (1995), decided that the Charter Committee should henceforth be open to all UN member states and that it would continue to operate on the basis of consensus.

The Special Committee held its annual session at UN Headquarters from March 14–18, 2005. The General Assembly adopted by consensus Resolution 60/23, entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization," which addressed, among other things, implementation of the provisions of the UN Charter related to assistance to third states affected by the application of sanctions and, on a priority basis, ways and means of improving the Special Committee's working methods and enhancing its efficiency.

As regards the question of implementation of the provisions of the Charter related to assistance to third states affected by the application of sanctions, the Special Committee recommended that the General Assembly request that it continue to consider, in an appropriate substantive manner and framework, the results of the June 1998 *ad hoc* expert group meeting on methodological approaches to assessing the third-country effects of sanctions. The Special Committee also recommended that the General Assembly address further the question of implementation of provisions of the Charter relating to assistance to third states affected by the application of sanctions under Chapter VII of the Charter and the implementation of General Assembly resolutions, taking into account all pertinent reports of the Secretary-General on the subject, proposals presented and views expressed in the Special Committee.

As regards the question of improving the working methods of the Special Committee and identification of new subjects, the United States continued to support initiatives to streamline the Committee's work, including through a mechanism for removing from the Committee's meeting agenda longstanding, often politically-charged proposals that were duplicative of matters being considered elsewhere in the organization and/or stood no chance of being agreed on. The United States considered as unnecessary and inappropriate continued efforts by some other delegations to foster new, generic criteria and guidelines aimed at establishing certain controls with

respect to such issues as the imposition of sanctions, peacekeeping operations, the use of force, and General Assembly versus Security Council prerogatives.

Other subjects considered by the Committee included the peaceful settlement of disputes, proposals concerning the Trusteeship Council, and the Repertory Practice of the UN Organs and the Repertoire of the Practice of the Security Council. With regard to the item on peaceful settlement of disputes, some delegations acknowledged achievements made in improving the organization's dispute prevention and settlement capabilities with specific reference to such instruments as the Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security. On the subject of the Trusteeship Council, delegations were unable to agree on whether proposals to abolish the Council or change its status should be addressed to the General Assembly. As for the subject of the repertory practice of the UN Organs and the Repertoire of the Practice of the Security Council, the Special Committee recommended to the General Assembly that it encourage voluntary contributions to both the Trust Fund for Updating the Repertoire of the Practice of the Security Council and the Trust Fund for the elimination of the backlog on the Repertory of Practice of the United Nations Organs; the sponsoring on a voluntary basis, at no cost to the United Nations, of associate experts to assist in the preparation of studies of both the Repertoire of the Practice of the Security Council and the Repertory of Practice of the United Nations Organs; and the enhancing of cooperation between the Secretary-General and academic institutions to facilitate preparation of studies of both the Repertoire of the Practice of the Security Council and the Repertory of Practice of UN Organs.

War Crimes Tribunals

International Criminal Tribunal for Rwanda

The Security Council established the International Criminal Tribunal for Rwanda (ICTR) in November 1994. The Tribunal investigates and tries individuals accused of having committed genocide, crimes against humanity, and other serious violations of international humanitarian law in Rwanda from January 1, 1994, through December 31, 1994. Under the Tribunal's completion strategy, as endorsed by the UN Security Council, the ICTR seeks to complete all trials by 2008, and all work on appeals by 2010.

The surrender and prosecution of indictees by the ICTR, especially senior leader Felicien Kabuga, remained a critical priority for the United States and the Security Council in 2005. The United States continued to strongly urge all pertinent parties, particularly the Governments of Rwanda, the Democratic Republic of the Congo, Kenya, and the Republic of the Congo, to cooperate and support the efforts and integrity of the ICTR by apprehending and transferring, freezing the assets, and restricting travel of fugitive indictees. The Court began seven new trials and delivered three judgments in 2005. Three indictees were also arrested in 2005. At the end of 2005, 19 ICTR indictees remained fugitives from justice.

The U.S. Government continued to closely monitor the tribunal and to ensure that it adopted and adhered to practices that improved efficiency and effectiveness. The 2005 budget for ICTR was approximately $138 million; the United States was assessed $33.5 million for ICTR in 2005, approximately a quarter of the total costs.

International Criminal Tribunal for the former Yugoslavia

The Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993 to investigate and try individuals accused of having committed genocide, crimes against humanity, and other serious violations of international humanitarian law on the territory of the former Yugoslavia. A Security Council resolution provides for the ICTY's continuing mandate, with reports due to the Council every six months.

The ICTY has indicted 161 individuals. Twenty-five indictments were withdrawn prior to completion of the proceedings. Of the 132 persons who appeared before the Tribunal, 40 were convicted and eight were acquitted of all charges. Six indictees, including Stojan Zupljanin, Vlastimir Djordjevic, Goran Hadzic, Zdravko Tolimir, and the two most wanted—Radovan Karadzic and Ratko Mladic—remained fugitives from justice. In December 2005, Ante Gotovina, a fugitive indicted by the ICTY in 2001, was arrested and transferred to the Tribunal.

The apprehension and prosecution at the ICTY of persons indicted for war crimes—especially senior leaders Karadzic and Mladic—has long been a critical priority for the United States and the Security Council. As such, the United States strongly urged all entities and states, particularly the Republika Srpska in Bosnia and Herzegovina and the Republic of Serbia, to cooperate and support the efforts and integrity of the ICTY by apprehending and transferring fugitive indictees to the Tribunal, and by freezing the assets and restricting travel of fugitive indictees and those who support them. The United States also made clear to regional authorities that meeting their obligations to the ICTY is a prerequisite for full integration into Euro-Atlantic institutions.

To support the ICTY completion strategy, the United States helped create the capacity for the fair and credible adjudication of low- and mid-level war crime cases by domestic courts in the region, and it supported the transfer of such ICTY cases to domestic courts. For example, in 2005, the United States was the single largest contributor of funds—almost $14 million—to help establish the War Crimes Chamber of the Bosnia and Herzegovina State Court for this purpose.

The United States continued to support the Tribunal's efforts to ensure a successful completion strategy, which calls for completion of all trials by 2008 and appeals by 2010. The United States welcomed the ICTY's successful meeting of its first Completion Strategy benchmark when it issued its last indictments at the end of 2004.

The United States continued to monitor the Tribunal closely to ensure that it adopts and adheres to practices that improve both efficiency and

effectiveness, and that any increases to its budget are fully justified and in line with the Tribunal's Security Council-endorsed Completion Strategy.

The Tribunal's budget for 2005 was approximately $180.3 million. In 2005, U.S. assessed contributions for the Tribunal totaled approximately $43.7 million. Theodor Meron (United States) was President of the Tribunal until November 2005, when his term expired and he returned to being a Tribunal judge.

Special Court for Sierra Leone

The Special Court for Sierra Leone was established by an agreement between the Government of Sierra Leone and the United Nations. The court would be financed by voluntary donations. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996.

The Special Court originally intended to complete its work in 2005. This proved to be unattainable, as three joint trials of three defendants each continued and former Liberian President Charles Taylor, indicted by the Special Court, was not in its custody. In May 2005, the Special Court presented its completion strategy to the UN Secretary-General, aiming to complete its work in 2007.

Bringing former President Taylor to justice remained a priority for the United States. In November 2005, the United States joined other Security Council members in adopting Resolution 1638, which stressed that Taylor remained under indictment by the Special Court and determined that his return to Liberia would constitute an impediment to stability and a threat to the peace of Liberia and to international peace and security in the region. The resolution authorized the UN Mission in Liberia (UNMIL) to apprehend and detain Taylor in the event of his return to Liberia and to transfer him or facilitate his transfer to Sierra Leone for prosecution before the Special Court. UNMIL's ability to apprehend Taylor was important to U.S. objectives in the region.

The individuals under indictment by the Special Court for Sierra Leone were individuals with histories of abuse of power and support from many in the region who contributed to Sierra Leone's instability. To curb the threat they presented, on September 19, the United States joined the other Security Council members in adopting Resolution 1626, which authorized UNMIL to deploy up to 250 military personnel to Sierra Leone to provide security for the Special Court. The resolution further authorized UNMIL to deploy military personnel to Sierra Leone, if and when needed, to evacuate officials of the Special Court for Sierra Leone in the event of a serious security crisis affecting Court personnel. UNMIL assumed responsibility for the Special Court's security on December 1. The Nigerian unit of the UN Mission in Sierra Leone, which had been guarding the Special Court, stayed on, under UNMIL command, until deployment of an UNMIL unit of Mongolian peacekeepers in January 2006.

The United States has been the largest financial contributor to the Special Court for Sierra Leone, contributing a total of $22 million in 2003 and 2004. The United States did not make a voluntary contribution in 2005. In 2005, the Court did not receive sufficient contributed funds to cover its operating costs. The UN regular budget paid $32.1 million to the Court to make up the shortfall.

Cambodia Khmer Rouge Tribunal

The United Nations and the Royal Government of Cambodia (RGC) signed an agreement in June 2003 to establish the Khmer Rouge Tribunal (KRT) to try senior leaders of the Khmer Rouge and those who were most responsible for the atrocities that were committed by that regime between April 17, 1975, and January 7, 1979. The official name of the Tribunal is the Extraordinary Chambers in the Courts of Cambodia. The Cambodia National Assembly ratified the agreement in October 2004. In 2005 Sean Visoth (Cambodia) was appointed Director of the KRT's office of administration and Michelle Lee (China) was appointed Deputy Director.

The KRT will consist of Pre-Trial and Trial chambers, and a Supreme Court. There will be two prosecutors (one from each chamber) and two investigating judges (likewise). A Cambodian law included in the agreement provides that life imprisonment shall be the maximum sentence for anyone convicted by the KRT.

The United States did not make financial contributions to the KRT in 2005. The Fiscal Year 2005 Consolidated Appropriations Act (Sec. 554(a)(1) stated that, "None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia." Although it is a joint Cambodian and international venture, the KRT will lie within the existing Cambodian court structure. Furthermore, the Senate Appropriations Committee Report on the subject stated that, "The Committee again restricts assistance to the Cambodian Government, with few exceptions, and notes that the budget request does not contain funding for a United States contribution to the Khmer Rouge Tribunal."