Part 4

Legal Developments

Cloning

The United Nations continued consideration in 2004 of an international convention to prohibit all human cloning. The United Nations began discussing cloning in 2001 when the 56th General Assembly adopted a French/German resolution that tasked an *ad hoc* committee of the UN General Assembly's Sixth (Legal) Committee to consider the elaboration of a convention to ban human reproductive cloning. In 2002 and 2003, 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 limited to cloning for reproductive purposes but not for experimental purposes.

In 2004, the Sixth Committee considered two draft resolutions on cloning. One, submitted by Costa Rica and cosponsored by the United States and over 60 other countries, called for negotiation of a convention that would ban all human cloning. The competing resolution, submitted by Belgium and cosponsored by 20 other countries, called for a convention that would ban only cloning for reproductive purposes.

In November 2004, the Sixth Committee decided by consensus to take up the issue of human cloning as a non-binding declaration (instead of pursuing a resolution calling for negotiation of a legally binding convention) in February 2005. In its Decision 59/547 of December 2004, the General Assembly adopted the recommendation of the Sixth Committee to establish a working group to finalize the text of a declaration on human cloning, on the basis of the draft resolution contained in A/C.6/59/L.26, and to report to the Sixth Committee during the resumed 59th session. The United States supported this draft resolution, submitted by Italy, because it called upon member states (a) to prohibit any attempts to create human life through cloning processes and any research intended to achieve that aim; (b) to ensure that, in the application of life science, human dignity is respected in all circumstances and, in particular, that women are not exploited; and (c) to adopt and implement national legislation to bring into effect paragraphs (a) and (b).

The United States supports a ban on all cloning of human embryos, both for reproductive and so-called "therapeutic" or "experimental" purposes. The United States does not distinguish one type from the other since both entail the creation, through cloning, of a human embryo. The United States believes that using "therapeutic" cloning to create human life specifically to destroy that life for experimental purposes is no less, if not more, of an affront to human dignity than cloning for reproductive purposes.

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 2004, 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 59/39). 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 reviewed 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 ensure representation of their interests in all UNCITRAL topics. The 2004 annual plenary session was held June 14–25 in New York.

In July, the Commission concluded its four-year effort to prepare a UN Legislative Guide to business insolvency law reform, which was then endorsed by the UN General Assembly in December 2004 in Resolution 59/40. The Commission's final product elaborated on the principles which had been approved on an interim basis by the 2003 plenary session. The Guide included updated concepts of insolvency law as a part of an integrated economic system; promotion of non-discrimination between foreign and domestic creditors; and emphasis on options for reorganization of failed enterprises, including options for expedited proceedings, goals long sought by the United States. The Guide was supported by international financial institutions such as the International Monetary Fund (IMF), the World Bank, and the Asian Development Bank, reflecting recognition that an effective system for recycling economic assets is critical to financing and economic growth. The IMF and World Bank sought agreement with UNCITRAL as to

how to interrelate their work on insolvency law reform. The United States expected that the UNCITRAL Guide would be integral to proposed joint IMF-World Bank standards for assessing the progress of recipient countries in upgrading the legal framework for their economies.

In 2004, the Commission's working group on procurement undertook a project to upgrade its widely used model law on procurement of goods, construction, and services, which was extended through work by the Commission's working group on privately-financed infrastructure projects (PIF). The model legislation covered the bidding and selection process, implementation, financing, and extension and termination. A substantial part of the new effort was focused on practices emerging from electronic commerce, including electronic reverse auctions. The United States, while supporting those aims, also sought to keep new rules technologically neutral.

From the U.S. point of view, upgrading the model law on procurement would need to be carefully coordinated with the recently completed UNCITRAL work on PIF, reflected in its *Legislative Guide on Privately Financed Infrastructure Projects*, and the recent model core legislative provisions. The growth of privately financed and managed infrastructure, in partnership with governments, was a significant shift since the early 1990s away from direct government financing or bilateral aid, and the United States sought to upgrade the UN's procurement model law in a manner consistent with the policies underlying the recent PIF work.

Parallel reform of secured financing laws along with insolvency law is a prime objective of the United States and international financial institutions in seeking to upgrade economic performance through legal reform. Following General Assembly adoption in 2001 of the UNCITRAL Convention on the Assignment of Receivables in International Trade, the Commission began preparing a Legislative Guide on General Laws on Secured Interest Financing. The United States signed the UN Assignments Convention in December 2003, and the Department of State worked with various U.S. commercial sectors in 2004 on issues relevant to possible U.S. ratification, which could be a step toward gaining ratification by other states.

The Commission agreed that the initial scope for the legislative guide project was the financing of trade and inventory receivables, which the United States proposed as an achievable goal. In 2004, the working group considered expanding the scope to certain banking and negotiable instruments. A key U.S. objective was to make sure all security devices would be covered. Sufficient progress was made at the working group's March and September meetings to seek interim approval of the draft legislative recommendations at the Commission's 2006 plenary session. The working groups on security interests and insolvency law initiated joint sessions on this project and insolvency law to coordinate the Commission's work products. In December 2004, the General Assembly endorsed this coordination.

The Commission's working group on electronic commerce continued to work on a draft convention on the formation of contracts in e-commerce and

the validity of computer messaging. Sufficient progress was made at the October meeting so that the working group reached consensus on scheduling final negotiation for the next plenary session in July 2005. The draft convention drew on recent U.S. national laws and laws and directives in the European Union and other countries. In 2004, the working group largely eliminated regulatory provisions opposed by the United States and like-minded states. Several objectives of the United States remained unresolved, such as adopting a narrow rule on when an electronic message can be presumed to be received, allowing wider scope for evidentiary proof of an electronic signature; and agreement on the scope of exclusions from the treaty system, including consumer transactions. The working group continued to elaborate provisions that would provide a treaty overlay for electronic messaging that could be applied by states to existing multilateral and bilateral instruments. The U.S. view was that such an initiative is consistent with treaty law and would expand the footprint of modern e-commerce basic law to many states, especially developing and emerging states so that they could close gaps in their access to new Internet and other e-commerce markets.

The Commission continued in 2004 to consider a draft convention on the carriage of goods by sea, and its Working Group on Transport Law reached preliminary agreement on a number of key issues, including those regarding the basis of liability under the draft instrument, scope of application of the instrument, and freedom of contract. The Working Group also made good progress on jurisdiction and arbitration, transfer of rights and right of control and electronic commerce. This draft Convention would replace outdated international transportation treaties. U.S. industry sectors and other groups concerned with carriage of goods, ship financing, and insurance supported this project. The Working Group was of the view that while completion of its work by the end of 2005 was unlikely, the project could completed in 2006 with a view to presenting it to the Commission for possible adoption in 2007.

The Commission, working with the UN Office on Drugs and Crime, convened an international colloquium in Vienna in April on the problems faced by countries and international commercial sectors from the growth of cross-border commercial fraud. Private-sector experts and national and local law enforcement authorities attended the colloquium, which covered problems involving financial documents, banking transactions, letters of credit, maritime bills of lading, computer security, and related matters. Commercial fraud was noted as an area of seriously growing concern for both developing and developed states, and appeared in part to be related to wider use of computer-based documentation. The Commission's review was facilitated by information provided by the U.S. Government and private-sector experts. Participants generally concurred that the absence of an international legal regime which allowed cross-border cooperation significantly contributed to this problem, noting that no UN system body had this subject clearly within their scope of work. While the United States supported continued examination of these problems by the Commission, other states noted that work on quasi-

criminal law matters could be outside the Commission's charter, and that resource limitations were already a serious concern vis-à-vis funding for the Secretariat and the existing working groups.

In 2004, the Commission's Secretariat (the UN Office of Legal Affairs Trade Law Branch) was reorganized into two "pillars," the first being preparation of new international commercial and trade law instruments; and the second covering adoption and implementation of those instruments, and coordination within and outside of the UN system, and technical assistance for states with an emphasis on developing countries.

Coordination within as well as outside the UN system was upgraded in 2004, to include regular meetings to rationalize the agendas of the principal intergovernmental bodies working on international private law matters. Developments in regional intergovernmental bodies such as the European Commission and the Organization of American States were taken into account as appropriate by the Commission's working groups.

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 18, 2004, for all missions in preparation for the 59th 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 59th General Assembly with respect to arrivals and departures were diminutive, a significant improvement over the previous year.

Host Country Committee members continued to express concern about the implementation of the Parking Program for Diplomatic Vehicles, which was adopted in 2002 after considerable rancor in the diplomatic community. An initial review of the implementation of the Parking Program, as recommended in 2002 by the UN Legal Counsel in his opinion, was undertaken and concluded in 2004. 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 December 2, the General Assembly adopted without a vote Resolution 59/42, "Report of the Committee on Relations with the Host Country." 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 remained seized of the matter of the Parking Program; expressed its appreciation for the efforts made by the host country; 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. There were no elections for the Court during 2004; the next regular elections for Judges on the Court will occur in 2005.

The ICJ is composed of 15 judges, no two of whom may be nationals of the same state. As of December 31, 2004, the Court was composed as follows: Shi Jiuyong (China—President); Raymond Ranjeva (Madagascar—Vice President); Gilbert Guillaume (France); 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); and Peter Tomka (Slovakia).

The ICJ is funded from the UN regular budget, of which the United States pays 22 percent. The ICJ's appropriation in 2004 was $17.5 million.

The United States was involved in the following matters in the Court in 2004.

Mexico v. *United States of America*

On January 9, 2003, Mexico brought a case against the United States claiming that the United States violated its obligations under the Vienna Convention on Consular Relations, including its obligation to inform, "without delay," a number of Mexican nationals that they were entitled to communicate with Mexican consular officers as required under Article 36 of the Convention. These nationals were arrested, and subsequently tried, convicted, and sentenced to death in criminal proceedings in the United States. Following

preliminary proceedings in the case, Mexico filed its Memorial on June 23, 2003, and the United States filed its Counter-Memorial on November 2, 2003. The Court held oral proceedings in the case from December 15–19, 2003.

On March 31, 2004, the Court issued its judgment in the case. In its judgment, the Court held, by a vote of 14 to 1 (Judge Parra-Aranguren dissenting), that the United States had breached its obligations under Article 36 of the Vienna Convention in Consular Relations with respect to 51 of the Mexican nationals at issue in the case. The appropriate reparation in the case consisted in the obligation of the United States to provide, by means of its own choosing, review and reconsideration of the nationals' convictions and sentences, taking account both of the violation of the rights set forth in the Vienna Convention and particular considerations set out in the Court's Judgment.

The Court further found, by a unanimous vote, that the commitment undertaken by the United States to ensure implementation of Article 36 must be regarded as meeting the request by Mexico for guarantees and assurances of non-repetition. The ICJ also found that, should Mexican nationals nevertheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1(b), of the Convention having been respected in the future, the United States shall provide, by means of its own choosing, review and reconsideration of the conviction and sentence, so as to allow full weight to be given to the violation of the rights set forth in the Convention, taking account of particular considerations set out in the Court's Judgment.

[Note: On February 28, 2005, President Bush issued a determination that the United States would comply with the Court's decision.]

Advisory Opinion on Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory

On December 8, 2003, in an emergency session, the UN General Assembly adopted Resolution ES-10/14 requesting an advisory opinion from the ICJ on the following question: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?" Pursuant to the December 19, 2003, order of the Court, the United Nations and its member states and Palestine were given the opportunity to file written statements with the Court with information related to the question on which the Advisory Opinion was sought.

On January 30, 2004, the United States filed a written statement in the case. In its Statement, the United States expressed its view that the giving of an Advisory Opinion in this matter risked undermining the Israeli-Palestinian peace process and politicizing the Court. It emphasized that the Court should give due regard to the principle that advisory opinion jurisdiction

is not intended as a means of circumventing the rights of states to determine whether to submit their disputes to judicial settlement. It also emphasized the following two principles in connection with the Israeli-Palestinian peace process: the permanent status issues at the core of the Israel-Palestinian conflict are to be resolved by negotiations between the parties to the dispute; and Israelis and Palestinians must fulfill their security responsibilities separately and in coordination and cooperation with one another. In addition to the United States, 43 other states, Palestine, and the United Nations also submitted written statements.

The Court issued its advisory opinion on July 9. After finding that it had jurisdiction and deciding to comply with the General Assembly's request, a large majority of the Court found that the construction of the wall and its associated regime were contrary to international law and that all states were obligated not to recognize the illegal situation resulting from the construction of the wall or to render aid or assistance in maintaining that situation. The Court's opinion also stated that "illegal actions and unilateral decisions [had been] taken on all sides" and called for renewed efforts toward a negotiated solution "to the outstanding problems and the establishment of a Palestinian state, existing side by side with Israel and its other neighbours, with peace and security for all in the region."

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. In anticipation of the Rome Statute coming into force in July 2002, the United States was concerned that the ICC could improperly seek to assert jurisdiction over U.S. peacekeepers and others involved in UN-authorized or established missions that could fall under the jurisdiction of the ICC. This concern prompted the United States to seek appropriate protections, which resulted in compromise language in UN Security Council Resolution 1422 in 2002; Resolution 1487, adopted June 12, 2003, renewed this resolution. Both resolutions provided that, for a 12-month period, the ICC was precluded from initiating any investigation or prosecution of current or former officials or personnel from states not party to the Rome Statute of the ICC concerning acts or omissions relating to UN-authorized or established missions. Although Resolution 1487 expressed the Security Council's intention to adopt a similar resolution in 2004, the Council was unable to agree on the text of such a follow-on resolution, and none was adopted. The United States was disappointed at the failure of the Security Council to renew the text of Resolution 1487.

The United States has pursued bilateral agreements recognized by Article 98 of the Rome Statute to protect U.S. nationals and military personnel from surrender to the ICC. One hundred one agreements have been concluded to date, 19 in 2004. The American Servicemembers' Protection Act of 2002 prohibits certain military assistance to certain countries that are parties to the Rome Statute. The President may waive these prohibitions with respect to a

country that has entered into a bilateral Article 98 agreement or where the President determines that it is important to U.S. national interest to do so. The Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2005, signed into law on December 8, 2004, prohibits the use of fiscal year 2005 Economic Support Funds to provide assistance to the government of a country that is a party to the Rome Statute and has not entered into bilateral Article 98 agreements with the United States. The President may waive this restriction with respect to certain countries where he determines that it is important to the national security to do so.

The United States continued to be a forceful advocate for accountability for war crimes and other grave violations of international law. U.S. policy encouraged states to pursue justice within their sovereign institutions and, when appropriate, through *ad hoc* courts and other mechanisms authorized by the UN Security Council.

International Law Commission (ILC)

The UN General Assembly established the International Law Commission (ILC) in 1947 to encourage "the progressive development of international law and its codification." Its 34 members, who are of recognized competence in international law, serve not as government representatives but in their personal capacity as experts. Members are elected for a five-year term. 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 in New York. Mr. Matheson's term, as a result, expires in 2006.

The Commission 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 Commission, special rapporteurs prepare draft articles for detailed discussion by the members of the Commission. These articles are considered and refined in a drafting group before formal adoption by the Commission. The Commission reports annually on its work to the Sixth (Legal) Committee of the General Assembly.

In recent years, the ILC has met for two six-week sessions in the May through August period, with a break in the middle. During the 56th session, held between May and August 2004, the Commission focused on the issues of diplomatic protection, responsibility of international organizations, shared natural resources, international liability for injurious consequences arising out of acts not prohibited by international law, unilateral acts of states, reservations to treaties, and fragmentation of international law (difficulties arising from the diversification and expansion of international law). The first reading of the articles on diplomatic protection and the principles on international liability was completed, and it appears that the Commission will

produce a final version of these items in 2006. It is not likely that there will be a similar outcome on the other topics within this time frame.

In addition, the Commission decided in 2004 to begin work on a series of new topics. Two topics were added to the current work program, the effect of armed conflict on treaties and the expulsion of aliens. The work on these topics will begin in 2005. One new topic—the obligation to extradite or prosecute—was added to the long-term program of work, and a decision may be taken in 2005 to add this to the current work program. Finally, proposals to add one or more new topics on the question of collective security were not accepted, partly because it was unclear whether the Commission could usefully add to the existing law in this area and partly because the proposals were thought to risk politicizing the Commission's work and intruding on the responsibilities of the political organs of the United Nations.

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.

General Assembly Resolution 59/44, adopted on December 2, 2004, provided that the Special Committee will continue its consideration of a variety of proposals (including on questions concerning implementation of the provisions of the UN Charter related to assistance to third states affected by sanctions, the peaceful settlement of disputes, the UN Trusteeship Council, improving the Committee's working methods, and enhancing its efficiency). In practice, the role the Committee plays is small, due largely to the controversial nature of many of the proposals before it and the fact that it operates by consensus. Indeed, the U.S. goal has been to ensure that the Committee resists the formation of elaborate machinery to deal with issues or other efforts that could impinge on Security Council prerogatives, and to keep attention focused on the question of reform of the Committee.

Of particular concern with regard to issues that could impinge on Security Council prerogatives, would be the Committee's consideration of Article 50 of the Charter. This article provides that when preventive or

enforcement measures (e.g., sanctions) against any state are taken by the Security Council, any other state which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems. The United States, the European Union, and Japan, among others, reiterated their long-standing position that the Charter Committee should not deal with issues that have been assigned to, or are being addressed by, other parts of the United Nations.

The Committee also discussed UN peacekeeping and the issue of International Court of Justice advisory opinions. The United States stressed that the Committee should avoid duplicating the work on peacekeeping carried out by other bodies, in particular the Special Committee on Peacekeeping Operations. The United States also did not support a proposal put forth by Russia on the issue of advisory opinions.

However, the United States continually supports proposals that aim to streamline the work of the Special Committee, such as moving the Committee towards considering technical or drafting issues having to do with amending the Charter.

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 appeals by 2010.

The surrender to and prosecution of indictees by the ICTR, especially senior leader Felicien Kabuga, was a critical priority for the United States and the Security Council. The United States strongly urged 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 fugitive indictees, and by freezing the assets and restricting travel of fugitive indictees. In 2004, ICTR had a total of four convictions and two acquittals.

The United States continued to closely monitor the tribunal and to ensure that it adopted and adhered to practices that improved efficiency and effectiveness. The United States helped make sure that all increases to the budgets were fully justified and in line with the tribunal's completion strategies. In 2004, the United States was assessed $72.2 million for ICTR, 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 committing genocide, crimes against humanity, and other serious violations of international humanitarian law in the territory of the former Yugoslavia. A UN Security Council resolution provides for the ICTY's continuing mandate, with reports due to the Council every six months.

By the end of 2004, the ICTY prosecution had presented all of its final indictments for confirmation which, when finally confirmed, totaled 162 individuals. Fifteen accused died before completion of proceedings, and 21 indictments were withdrawn prior to completion of the proceedings. By the end of 2004, 47 of the defendants appearing in court were either convicted or pled guilty, and five were acquitted of all charges. Twenty remained fugitives from justice, including the most-wanted Radovan Karadzic, Ratko Mladic, and Ante Gotovina.

The apprehension and prosecution at ICTY of persons indicted for war crimes—especially senior leaders Karadzic, Mladic, and Gotovina—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, the Republic of Serbia in Serbia and Montenegro, and Croatia, to cooperate and support the efforts and integrity of the ICTY by apprehending and transferring fugitive indictees to the ICTY, 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 was 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, the United States was the single largest contributor of funds—$10 million in 2004—to help establish the special war crimes chamber of the Sarajevo State Court for this purpose.

The United States remained committed to the ICTY's Security Council-endorsed Completion Strategy and the timelines it set out for the ICTY to complete its mandate. The United States also welcomed the ICTY's successful meeting of its first completion strategy benchmark, when it concluded all investigations by the end of 2004, and looked forward to the completion of trials by the end of 2008, and appeals by the end of 2010.

The United States continued to monitor the Tribunal closely to ensure that it adopted and adhered to practices that improved both efficiency and effectiveness, and that any increases to the budgets were fully justified and in line with the Tribunal's completion strategies.

In 2004, the Tribunal's budget was approximately $183 million; U.S. assessed contributions for the Tribunal totaled approximately $43 million.

Theodor Meron (United States) was re-elected to the bench of the ICTY in November 2004 and will remain as the Tribunal's President until November 2005.

Special Court for Sierra Leone

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

Since the Court's inception, it has indicted 13 people, two in 2004. These indictments included a 17-count indictment against former Liberian President Charles Taylor in March. The indictment against Taylor charged him with war crimes, crimes against humanity, and other serious violations of international humanitarian law. Indictments against two persons were withdrawn in December due to their deaths.

In resolutions concerning the UN Mission in Sierra Leone, the Security Council included provisions that stressed the importance of the SCSL and a related Truth and Reconciliation Commission (TRC). These resolutions, among other things, called upon all member states to financially support the work of these institutions. The Security Council unanimously adopted these measures. The United States publicly echoed the resolution's call for donor assistance to the SCSL.

The TRC, which was established in 2002, also continued to collect testimony of victims and perpetrators. It held hearings to create a record of human rights violations, which would promote healing and national reconciliation. The United States believes that both the SCSL and the TRC have important and complementary roles to play in promoting reconciliation and the rule of law in Sierra Leone. The United States has contributed $700,000 total to the TRC since its inception. The United States did not contribute any funds to the TRC in 2004.

The United States is also an active member of the Court's Management Committee, comprised of the largest donors (United States, the United Kingdom, the Netherlands, and Canada) as well as Nigeria, Lesotho, Sierra Leone, and UN representatives. The Committee provides policy advice and direction on all the non-judicial aspects of the Court's operations, including the Court's annual budget.

The United States has been a key supporter of the SCSL, voluntarily contributing a total of $12 million in 2004. A U.S. citizen, David Crane, was appointed as Prosecutor for a three-year term that began in 2002.

Cambodia Khmer Rouge Tribunal

In 2003, the United States welcomed the agreement between the United Nations and Cambodia to establish the Khmer Rouge tribunal to bring to justice 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.

On October 4, 2004, the Cambodian National Assembly ratified the agreement between the Royal Government of Cambodia (RGC) and the United Nations to create an international tribunal to try surviving leaders of the Khmer Rouge. This action, along with the necessary related amendments to Cambodian national law passed by the National Assembly on October 5, marked the end of a seven-year process of negotiation between Cambodia and the United Nations on the establishment of the Khmer Rouge Tribunal (KRT). On December 10, a UN team led by UN KRT Coordinator Mohammed Said concluded discussions with the RGC on the final budget for the three-year tribunal, setting the budget at $56.3 million ($43 million to be provided by international donors and $13.3 million to be provided by the RGC).