Managing Trials

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1. Introduction

The management of trials is a daily task for judges around the world, who have similar functions irrespective of the national judiciary to which they belong. But cases before international criminal courts present particular challenges. The ICTR Legacy Symposium in November 2014 and its follow-up provide an opportunity to recapitulate the experience acquired over the years in Arusha during the trials against 75 accused.

International criminal courts are some times criticized for being slow. It is certainly true that many trials have been time-consuming, but this does not mean that the tribunals are inefficient. As will be shown below, the complexity of the institution and the nature of the cases require time. An international trial is different from domestic proceedings. The efficient management of trials does not only require control of the courtroom, but must be seen in a broader perspective. Over the years, it was an important task for the ICTR judges to reduce delays to a minimum, while at the same time ensuring that there would be no doubt about the fairness of the proceedings.

The present contribution deals only with first instance trials, not appeal proceedings. The word 'trial' is used in the broad sense and includes pre-trial preparations, trial proceedings in the courtroom, and judgment writing. Below is an overview of some of the general and specific measures adopted to respond to the challenges arising in connection with international trials, followed by some concluding observations.

2. General observations

2.1 The mandates

As Article 12*bis* (3) of the ICTR Statute provides that the judges are elected by the General Assembly for a term of four years, it became usual to refer to these four-year periods as the 'mandates' of the Tribunal. The entire life-span of the ICTR can now be divided into five such periods.[2] Although its core function remained the same – to conduct trials and render judgments – the challenges in each of these mandates were not identical.[3]

During the first mandate (1995-1999), the main difficulty was to create a functional judicial institution and start the first trials, in a situation when the Arusha International Conference Centre at the beginning had no courtrooms, insufficient office equipment, and there were no staff. These problems were gradually addressed. Two courtrooms were constructed, leading to the opening statement in the first case in January 1997 (*Akayesu*). The six judges of the Tribunal, sitting in two Trial Chambers, rendered judgments involving seven accused, of which five judgments were single-accused cases.

[1] Former ICTR President (2003-2007) and Vice-President (1999-2003); ICTR judge 1999-2010.

[2] See, for instance, the publication 'Milestones of the ICTR', issued in connection with the ICTR 20th Anniversary.

[3] For a description of the situation during the first three mandates, see E. Møse, 'Achievements of the ICTR', *JICL* (2005) vol. 3.

In the second mandate (1999–2003), the number of judges increased from six to nine, and a third courtroom, which had been finished in late 1998, was taken into use. Sitting in three Trial Chambers, the Tribunal managed to increase the number of accused who had their cases completed. Moreover, two multi-accused trials started in 2000, the *Media* case and the *Cyangugu* case (both with three accused), and two in 2001, the *Military I* and *Butare* trials (with four and six accused).[4]

In the third mandate (2003-2007), the number of judges increased to 18, following the gradual arrival of nine ad litem-judges from 2003. This made it possible to start the last three multi-accused trials, each with four accused: *Government I* and *Government II* in November 2003 and *Military II* in September 2004. New single accused trials commenced as soon as Trial Chamber capacity made it possible. Many accused received judgments during the third mandate.

The completion of the multi-accused trials and of the remaining single-accused cases was in focus during the fourth mandate (2007-2011). Furthermore, legal reforms in Rwanda made it possible to transfer the trials of some ICTR accused to that country and to start monitoring the domestic proceedings there. In Arusha, evidence was secured concerning the prosecution of ICTR accused. In the fifth mandate (2011-2015), this work continued and the last trial judgment (*Ngirabatware*) was rendered in December 2012. A main focus was to downsize the ICTR and transfer the relevant functions to the Residual Mechanism for International Criminal Tribunals (MICT), which started assuming responsibility for the ICTR's residual functions in July 2012.[5] The ICTR closed down at the end of December 2015. The MICT will, amongst its other tasks, conduct the trials of three of the remaining accused who are presently at large once they are apprehended, and it will supervise the sentences of all ICTR convicts.

It follows from this overview that the trials at the ICTR took place from January 1997 until December 2012.

2.2 The three-partite structure

The three branches of the ICTR – the Chambers with the judges, the Prosecutor and the Registry – are to some extent a consequence of the Tribunal's status as a UN body. The Registry forms part of the UN Secretariat, led by the Secretary-General, whereas the Chambers and the Prosecutor are independent. This combination of a UN administrative structure and an international judicial body enabled the ICTR to draw on the experience and regulatory structure of the United Nations.

However, the three-partite structure also complicated the coordination of activities. The Registry's double task as part of the UN Secretariat while, at the same time, serving the two other branches of the Tribunal presented challenges. The working methods of an international bureaucracy are not necessarily suitable to achieve judicial productivity. Additionally, the efficiency of the Registry in the early years was not impressive.[6] More generally, and unrelated to the ICTR's status as a UN body, the separation between three branches made it difficult to ensure that all activities focused on the overall aim of the ICTR – the completion

[4] The distinction between single-accused and multi-accused trials is considered below (see 2.5)
[5] SC res. 1966 (2010), adopted on 23 December 2010.
[6] *Report of the Secretary-General on the Activities of the Office of Internal Oversight Services*, A/51/789, dated 6 February 1997.

of trials. It became clear that there was a need to find working methods which fostered a culture of consultation, cooperation and coordination.

An important step was the gradual introduction of regular meetings between the heads of the three branches, where obstacles affecting the trial-readiness of cases were discussed and practical solutions ventilated. This working method was strengthened through the formal establishment in 2003 of the Co-ordination Council in pursuance of the newly adopted Rule 23*bis* of the Rules of Procedure and Evidence. The President, Prosecutor and Registrar met regularly, usually on a monthly basis.

Another significant development was the Security Council's decision in August 2003 to establish a separate Prosecutor for the ICTR, instead of the original system of a common Prosecutor for the two ad hoc Tribunals (which had ensured a uniform prosecutorial policy for the ICTR and the ICTY in the beginning of their work). It was thought important to divide the heavy workload of the Prosecutor as the two Tribunals entered into the crucial period of implementing their Completion Strategy (see 2.3 below).

The continued presence of the Prosecutor in Arusha with responsibility for only one tribunal made consultation between the three branches easier. It should also be recalled that during the first years of the ICTR, the Deputy Prosecutor had his office in Kigali. This facilitated investigations and dialogue with the Rwandan authorities, but complicated regular contact with the other branches in Arusha.

According to the ICTR Statutes, the Defence is not considered as a (fourth) statutory organ. However, the defence teams of course play a vital role in all trials. It was therefore important to ensure that they had satisfactory working conditions (for instance offices, equipment, access to the accused and witnesses). This was primarily the responsibility of the Registry but in connection with individual trials the Chambers had to verify that the defence team was trial-ready and also to remove obstacles slowing down its work (see 3.4 and 4.6 below).

2.3 Planning and completion strategy

The progress of cases in a complex organization like the ICTR requires careful planning. There must be an overall strategy to ensure that the common goal of the Tribunal is achieved. This task fell primarily within the competence of the President's office, which had an overview of the cases, the availability of judges and of courtroom capacity. The President would consult with the other members of the Bureau, which was composed of the Presiding Judges of the three Trial Chambers, and there would also be contact with other presiding judges in individual cases.

In July 2003, the ICTR submitted, in a budgetary context, its first completion strategy to UN Headquarters. Then, in August 2003, the Security Council passed the resolution about a Completion Strategy for the two ad hoc Tribunals. It was decided that they should complete all investigations by 2004, all trials by 2008 and all appeals by 2010. As mentioned above, the Council also established a separate Prosecutor for the ICTR. The Tribunals had to submit six monthly progress reports to the Council.[7] These reports supplemented the annual report to the Security Council and the General Assembly according to Article 32 of the Statute.

[7] The Security Council adopted three resolutions on 28 August 2003: Res. 1503 about the deadlines for completion; Res. 1504 establishing a separate ICTR Prosecutor; and Res. 1505 appointing Hassan Bubacar Jallow (Gambia) as the Prosecutor. On 26 March 2004, SC Res. 1534 established the system of six-monthly reports from the Presidents and Prosecutors of the two Tribunals on the implementation of the Completion Strategy.

The target dates were subsequently revised in view of developments, but there is no doubt that the establishment of a formal Completion Strategy contributed to greater focus on the planning of trials. In practice, the ICTR President and the Prosecutor appeared before the Security Council twice every year, together with their colleagues from the ICTY. This reporting system did not mean that the Security Council interfered in the daily trial activities, nor did it jeopardize the judicial independence of the Tribunals.

2.4 Resources and general reforms

The efficient management of trials requires that the resources are sufficient to dispose of the workload. One important factor is an adequate number of judges. Six judges in two Trial Chambers, as stipulated in the original resolution, soon proved insufficient.[8] Following requests from the ICTR (and the ICTY), the Security Council in 1998 allowed for the election of three additional judges and consequently established a third Trial Chamber for each of the Tribunals.[9]

In 2002, after a request by the ICTR, the Security Council allowed for the creation of a pool of 18 ad litem judges in order to increase the Tribunal's judicial capacity.[10] Even though the resolution provided that only four ad litem judges could take office at any one time, this made it possible to commence four new trials involving ten accused during the second half of 2003. Two additional requests from the ICTR resulted in the Security Council deciding in 2003 to increase the number from four to nine (and to confer on the ad litem judges the competence to adjudicate over pre-trial matters).[11] As a consequence of the arrival of the remaining five ad litem judges, four new trials started in 2004, including the *Military II* case with four accused.

The ICTR's trial capacity was not only improved by statutory amendments, such as the gradual increase in the number of judges and the establishment of a separate prosecutor. Important were also numerous amendments of the Rules of Procedure of Evidence, adopted by the judges in the Plenary according to Article 14 of the Statute. In a comparative perspective, it is unusual that the judicial branch exercises legislative power with respect to the procedural rules according to which trials are conducted. However, as shown below, it has been a clear advantage that the judges could adjust the Rules in the light of their practical experience, thereby removing obstacles to expedient trials.

With a large number of trials, sufficient courtroom capacity is indispensable. As mentioned above (2.1), the first two courtrooms were ready in 1997, thereby allowing the (then) two Trial Chambers to conduct trials simultaneously, and the third courtroom was available for the third Chamber from late 1998. The arrival of the ad litem judges and the consequential increase of the number of trial judges to 18, made it possible to conduct more trials

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[8] SC Res. 955, 8 November 1994.

[9] SC Res. 1165, 30 April 1998, for the ICTR; SC Res. 1166, 13 May 1998, for the ICTY. Already in its Res. 955 (1994), the Security Council had indicated that it would 'consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary'. 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.

[10] SC Res. 1431, 8 August 2002. This followed a previous similar reform at the ICTY, see SC Res. 1329, 30 November 2000, which also enlarged the membership of the common Appeals Chamber by two judges (in order to ease the workload of the Appeals Chamber and to ensure that the ICTR was represented with two judges in that Chamber, which was not envisaged under the original Statutes).

[11] SC Res. 1512, 27 October 2003.

simultaneously. This resulted in the construction of a fourth courtroom. It was used from March 2005 and increased the judicial output of the Tribunal further.[12]

2.5 Single-accused and multi-accused trials

In a management perspective it is important to distinguish between single-accused and multi-accused cases, involving one or several indicted persons, respectively. At the ICTR, the Prosecutor originally planned a trial against 29 accused, but the request for confirmation of such a joint indictment was rejected in 1998.[13] The prosecution then prepared seven multi-accused trials involving a more limited number of accused, each group allegedly having participated in the same criminal transaction: *Butare* (six accused); *Cyangugu* (three); *Government I* (four), which was later referred to as *Karemera et al.* (three); *Government II* (four), *Media* (three); *Military I* (four); and *Military II* (four). These trials (listed in alphabetical order) were clearly the most challenging part of the ICTRs work, involving masses of documents and a high number of witnesses. The number of days spent in the courtroom amounted to hundreds, and the total time span of an entire trial could be several years, including breaks between sessions and time needed to write a judgment of several hundreds pages.

The single-accused cases were also complex but still more manageable than the multi-accused trials. The number of days in the courtroom ranged from slightly less than 30 days to under 100 days, depending on the circumstances of the case, and the total duration of the trial would be from a little less of 12 months to a few months more than a year. In some of the Completion Strategy reports to the Security Council, a mathematical average of 62 days was used for planning purposes.[14] The judgments in these cases usually amounted to about 100 pages or more.

Multi-accused cases allowed for the possibility to view all the evidence in context and determine the respective role of several accused who acted together; they reduced the need of the parties to present the same evidence several times before the Tribunal; and they alleviated the burden of witnesses, often vulnerable victims, to repeat their testimony about painful events. An assessment of the total duration of such trials should also take into account that the average time needed to complete single-accused cases was more than one year. This said, I think it could be argued, with the benefit of hindsight, that the number of accused should not normally exceed three or four, in view of the particular burden bigger trials impose on the persons involved (including the judges, the prosecution and defence teams as well as registry personnel).

2.6 Twin-tracking and shift system

With many cases and only three (later four) courtrooms, the question arose how to divide available trial time in the most efficient way. With the commencement of two multi-accused trials in 2000 (*Media* and *Cyangugu*), two in 2001 (*Military I* and *Butare*) and four single-

[12] The construction and running costs of the fourth courtroom were funded through voluntary contributions from the Norwegian and UK governments and not by the Tribunal's general budget.

[13] Decision, *Bagosora and 28 Others*, Dismissal of Indictment, 31 March 1998; Decision, *Bagosora and 28 Others*, Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing an Indictment, Appeals Chamber, 8 June 1998.

[14] Single-accused trials with about 30 days in the courtroom included *Musema*: 39 trial days (with judgment within a year); *Ntakirutimana* (two accused): 30 trial days; *Niyitegeka*: 35 trial days; *Gacumbitsi*: 32 trial days; *Ndindabahizi*: 27 trial days; and *Muhimana*: 34 trial days.

accused trials between 1999 and 2001, this dilemma became acute. The judges wanted to move as many cases as possible to the trial stage in order to avoid unnecessary pre-trial litigation. The solution was 'twin-tracking': one Trial Chamber composition of three judges would hear two trials in consecutive slots (for instance trial A five weeks, trial B five weeks, trial A five weeks, etc.). The purpose was to use the inevitable breaks which occurred during one trial to ensure progress in another case. It also allowed the prosecution and the defence team in case A to prepare for the next stage of the proceedings while case B was being heard, and vice versa. Almost all judges sat in one multi-accused trial and at least one single-accused case.

Another method to reduce the consequences of lack of courtroom space was the 'shift-system': one courtroom could be used for two cases, heard in morning and afternoon sessions, respectively (for instance, 8.45 to about 13.00, and then an afternoon shift until about 18.30). At times, some of the judges sat in two different trials on the same day in order to ensure rapid progress.

These two strategies resulted in the production of a considerable number of judgments. But experience also seems to suggest that twin-tracking could be cumbersome where the multi-accused case heard by the Chamber was particularly voluminous and complex.

2.7 The three stages

The survey given above illustrates that the efficient management of trials at the ICTR depended on many factors which did not specifically relate to the individual cases. In order to increase the Tribunal's efficiency it was necessary to carry out general reforms. The complexity of international trials, involving all three branches of the Tribunal, means (borrowing a description of politics), that 'everything is linked to everything'. Several other examples will be mentioned below. This required a broad management perspective.

Below follows an overview of more concrete management issues arising in connection with the trial proceedings. This is not an exhaustive enumeration. It is useful to distinguish between three stages: pre-trial preparations, trial proceedings in the courtroom, and judgment writing. But as illustrated below, these stages are connected. For instance, the better a case is prepared at the pre-trial stage, the fewer problems will occur during the trial proceedings in the courtroom. Secondly, the more work on the assessment of the evidence during the trial (for instance by writing witness summaries), the less time will be required for judgment writing. Thirdly, some problems arise both at the pre-trial and trial stage and require similar solutions, for instance the disposal of motions from the parties, timely disclosure of documents and their translation.

3. Pre-trial stage

3.1 Confirmation and amendment of indictments

The confirmation of an indictment under Article 18 of the Statute and Rule 47 of the Rules required that there was a prima facie case against a suspect. If so, a warrant of arrest would be issued. When a confirming judge examined whether the Prosecutor had submitted sufficient evidence to provide reasonable grounds for believing that the suspect had committed a crime, the scrutiny would be rather limited, compared to the thorough assessment by the Bench of the evidence adduced by both parties during the trial stage. Still, in the early years of the

ICTR the Rules stated that the judges were disqualified from participating in a trial if they had confirmed the indictment against an accused in that trial. This was changed at the plenary in 2000. The judges considered that such a disqualification clause was neither necessary in the interests of justice nor required by human rights law. As a consequence of this amendment, it became less complicated for the leadership of the Tribunal to assign judges to the Trial Chambers.

An important reform in connection with the confirmation of indictments took place through a change in the Prosecutor's practice. In many cases during the first mandates the prosecution would request numerous amendments of indictments under Rule 50 after the initial appearance of the accused until shortly before the commencement of trial, in view of further investigations and updated assessments of the case. Gradually, it became the policy of the Prosecutor to ensure that the case was ready for trial at the confirmation stage, in the sense that all approved identified investigations were completed, a draft pre-trial brief was prepared (together with draft exhibits and a witness list), and that disclosure searches (as of the date of confirmation) were completed. This made it easier to proceed to the trial.

3.2 Motions

The main challenge at the beginning of the second mandate was to start the multi-accused trials. One particular problem was a very high number of pre-trial motions from both the prosecution and the defence, in particular as a result of the amended indictments (see 3.1). Consequently, the first task for the judges was to dispose of these motions in order to move the cases to the trial stage. This was a cumbersome task, because in the first mandate, the Rules required that all motions, irrespective of their significance, had to be heard orally. As a consequence, it was necessary to request defence teams from many parts of the world to come to Arusha, find a suitable time for everyone involved (in some cases four or six defence counsel, who were also busy in their offices at the national level), ensure the availability of a courtroom, etc.

At the 1999 plenary, Rule 73 was amended to allow motions under that provision to be considered on the basis of written submissions only, thereby avoiding a hearing and the need to summon the parties to the seat of the Tribunal. The introduction of written submissions greatly improved the efficiency of Chambers, reduced the number of pending motions, and reduced the Tribunal's costs.

Another improvement adopted in 1999 was to allow some motions to be decided by a single judge rather than by the full Bench. Also this reform simplified judicial administration and saved resources. In practice, this new procedure was used mainly to decide straight-forward motions (for instance about witness protection) and not with respect to complex or sensitive requests.

In 2000, the judges also introduced deadlines for some motions and a general time-limit for responding to motions. Questions pertaining to the form of the indictment could be raised in one motion only. An explicit provision was adopted to allow a Chamber to impose sanctions against counsel who brought motions which, in the opinion of the Chamber, were frivolous or an abuse of process. Such sanctions could include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof. My recollection is that this possibility was used sparingly, but it cannot be excluded that the provision had a certain preventive effect.

A large number of motions also caused problems during the trial. This is considered below (see 3.4 and 4.6).

3.3 Disclosure and translation

A recurring problem at the pre-trial stage was insufficient disclosure of documents by the prosecution teams. A typical situation would be that a prosecution witness had been interviewed several times by the investigators, perhaps in connection with investigations concerning several accused. The defence teams would require all such written witness statements and use possible discrepancies between them during cross-examination with a view to weaken the credibility of the witness. Furthermore, the Prosecutor was under a general obligation to disclose exculpatory and other relevant material (Rule 68). In the masses of material at the disposal of the Prosecutor's office following extensive investigations it happened that documents could be overlooked and not disclosed. A related problem was that the prosecution team did not consider documents relevant or exculpatory, while the defence was of the opposite view.

Such issues gave rise to a large number of motions which slowed down pre-trial preparations. This was particularly visible during the attempts to commence the multi-accused trials from 1999 after the rejection of the Prosecutor's motion to join 29 accused, but similar challenges existed more generally over the years, and also at the trial stage. The above-mentioned (3.2) reform allowing for decisions on the basis of a written procedure was therefore of utmost importance. Another useful amendment of the Rules was the possibility for the Prosecutor to make available to the Defence, in electronic form, collections of relevant material in accordance with Rule 68 (B).

Linked to disclosure was the need for translation of the documents. The official languages of the ICTR were English and French (Article 31 of the Statute). Witness statements and other documents in the Prosecutor's possession had usually been drafted in only one language. There was also material in Kinyarwanda, which required translation into the official languages. If the original version was on audio tapes, for instance radio transmissions from the 'hate radio' RTLM, transcription in Kinyarwanda was necessary before translation was possible. This made the situation even more complicated.

The ICTR had a highly qualified translation department, but even with increased staff the translation of thousands of pages was an immense challenge and sometimes slowed down pre-trial preparations. That department had the continuing task to translate motions before and during trials, as well as judgments rendered both at the trial level and on appeal. Requests for translation could come from the three Trial Chambers with several on-going trials, from the prosecution and the defence teams, as well as from the Appeals Chamber. Prioritization was difficult when urgent requests were made simultaneously.

Solutions could only be found when the problems were addressed in context, taking into account the overall functioning of the Tribunal. It was necessary to reduce the volume of documents that required translation. A working group was established to speed up the translation of documents, thereby reducing delays in the judicial proceedings. The amount of translation could be reduced when both parties had bilingual expertise within their team, as well as knowledge of Kinyarwanda.[15] This made it possible to identify the parts of an extensive document where translation was really required. Another possibility was to have

[15] When assigning both a Lead Counsel and a Co-counsel in each trial (see 4.1 below), the Registry preferred to select one from the common law and one from the civil law tradition, whereas the investigator came from Rwanda. This normally ensured sufficient linguistic knowledge within the team.

the relevant pages interpreted in the courtroom. The interpretation would then appear in the trial transcripts. However, in spite of many such techniques, it was still necessary to establish priorities. In practice, solutions were found after consultation but some delays were unavoidable due to a lack of staff.

3.4 Pre-trial conferences

From 1998, the ICTR Trial Chambers began organizing pre-trial conferences in conformity with the newly adopted Rule 73*bis*, during which the Bench met with the parties. The purpose was to ensure that the cases were trial-ready and would not be marred by unforeseen delays during trial, and that the proceedings would be focused. A Chamber could 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 could order that the number of witnesses be reduced and the length of the testimonies be shortened. A similar system was introduced for the second part of the trial, the Defence case. The pre-defence conference (Rule 73*ter*) was usually held at the end of the prosecution case.

During such conferences the party in charge of presenting the evidence explained how it intended to conduct the proceedings and mentioned obstacles relating to issues listed in Rule 73*bis* and *ter*, whereas the other party provided comments and identified possible problems. As experience with such conferences grew, the discussions could cover also other matters affecting the smooth running of the trial (for instance disclosure and translation) and become more detailed. For instance, with the emergence of *gacaca* trials in Rwanda, disclosure requests could include the availability of judgments from those lay courts.

In addition to such conferences in connection with individual trials, general steps were taken. For instance, during the last year of the second mandate, representatives of Chambers, the Prosecutor and the Registry met in a newly established 'New Trial Committee' to ensure an early start of trials in the third mandate. The Committee's task was to identify and contribute to the resolution of problems that could slow down the proceedings (disclosure, translation, availability of counsel, etc.). It was also in contact with the defence teams. Generally, experience showed that a 'Trial Committee' like this facilitated the trial-readiness of many cases.

4. Trial

4.1 Availability

As international trials may take considerable time, there is a great risk that the persons who are required to be in the courtroom on a permanent basis may be become unavailable, either for short periods or permanently. Based on practical experience, the ad hoc Tribunals took several steps to ensure that such circumstances did not unduly affect the progress of the cases.

As regards the judges, the plenary adopted Rule 15*bis* (A) and (B) in 2001, which addressed the situation of 'absences of a short duration'. The new provision allowed the continuation of the trial hearing if a judge, because of illness or other personal reasons, or for reasons of authorized Tribunal business, was unable to be present, provided that the remaining judges were satisfied that it was in the interest of justice to do so and the absence did not exceed five working days. Alternatively, the hearing could be adjourned, but the remaining judges could dispose of other matters in the case if that was in the interest of justice. In practice, this

amendment was useful not only for short illnesses, but also when the President of the Tribunal had to go to the Security Council or the General Assembly during an on-going trial in which he or she was sitting.

Another amendment addressed the situation when a judge was unable to continue sitting in a case for a period which was 'likely to be longer than of a short duration', for instance because of death, illness, resignation, non re-election or non-extension of the judge's term of office.[16] According to Rule 15*bis* (C) and (D), the proceedings could, under certain conditions, continue with a new substitute judge who had to familiarize himself or herself with the record of the proceedings. This amendment was very important, because it made it possible to continue the *Military I* and *Butare* trials, in which some judges had not been re-elected or had resigned, instead of restarting the cases *de novo*.

Turning now to the absence of other persons participating in the proceedings, the defence teams were vulnerable if counsel fell ill or was unavailable for professional reasons (for instance urgent engagements in his or her home country). Gradually, the number of interruption of trials on such grounds was reduced because the ICTR insisted in its assignment practice that an accused should have both a Lead Counsel and a Co-counsel. Another risk of delay existed in cases where the accused refused to select three names from the Registry's list of defence lawyers, as required by the Tribunal's regulations. This gradually occurred less frequently, as the problem could be solved by adding to the list the accused's preferred lawyer, who would then become eligible. It also happened that the accused insisted on the need to change counsel due to a breakdown of communication between them. If a solution was not found, a period of reasonable notice was required to enable the new counsel to finalize engagements previously entered into in his or her home country before starting the trials in Arusha. Fortunately, such situations were rare.

The prosecution team did not present any particular risk of unavailability, as it was usually composed of several persons who could replace each other.

4.2 Witnesses

Witness testimony was essential in ICTR proceedings, and the timely presence of witnesses was a main condition for the steady progress of the trials. States around the world usually co-operated by issuing travel documents etc.[17] The highly professional witness and victims support section within the Registry (WVSS) assisted with travel arrangements, ensured the protection and assistance of the witnesses, and transported them to and from the courtroom.

However, when witnesses refused to travel, or when they fell ill after arrival in Arusha or decided that they would not testify, valuable trial time was lost.[18] In the early years of the

[16] More generally, it is important that states nominate only persons that are in good health in view of the heavy and at times stressful workload facing the judges, see the Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616/, 23 August 2004, para. 45.

[17] Rwanda generally cooperated well with the ICTR and there was a steady flow of witnesses from Kigali, usually arriving in Arusha with the ICTR aircraft. Only during a brief period in 2002, Rwanda declined all applications made by the Tribunal for the issuance of travel documents for witnesses, resulting in the loss of approximately 21 trial days. This led to the Security Council issuing a statement through its President, recalling the mandatory obligation of all states, including Rwanda, to cooperate fully with the ICTR, see statement of 18 December 2002 by the President of the Security Council (S/PRST/2002/39).

[18] Many witnesses were also victims. As mentioned above, it was burdensome for vulnerable witnesses to give testimony about painful events. Gradually, the Registry provided for physical and psychological rehabilitation of witnesses, including rape victims. The ICTR Medical Clinic in Kigali included staff with psychological

ICTR, the judges often had to adjourn the hearing because witnesses who were expected to testify did not appear in the courtroom. The judges managed to reduce this problem by instructing counsel who were presenting evidence to ensure, in co-operation with the WVSS, that there should be a least one substitute witness available and ready to testify in case of unforeseen circumstances.

Delays could also occur when a prosecution or defence counsel was preparing a witness who should testify the next day and realized that the testimony would contain new evidence which was not included in the witness's previous written statement(s), prepared by the investigators. In such situations, it was not uncommon that counsel for the other side would request and be granted additional time for the preparation of cross-examination. In order to avoid such delays, Chambers began requiring that the lawyer becoming aware of such new evidence should send an urgent 'will-say' statement (for instance by email) to the other party and the judges. This method reduced the element of surprise and thereby the need for adjournments.

4.3 Admissibility and hearing of evidence

The ICTR judges generally showed a liberal approach to the admission of evidence and often ruled that, for instance, a document would be allowed but at the same time stated that its weight would be decided on the merits in connection with judgment writing. This approach had several advantages. In a long trial raising many complex issues which were interlinked, the issue of whether a document or a portion of a testimony was irrelevant could be quite complicated. Frequent disputes about admissibility could be time-consuming. Furthermore, the admission of contested evidence reflected that the judges had an open mind to different versions of the truth (see 6 below).

During the hearing of the evidence, including testimonies, it was important that the Bench exercised control over the proceedings. The evidence should focus on information that could be useful during judgment writing. Endless, ambiguous or vague statements should be avoided. How to draw the borderline was primarily the task of the presiding judge in each trial, in co-operation with his or her colleagues, based on the concrete circumstances of the situation.

More generally, a question was how active the Bench should be when directing counsel to move on in his or her witness examination or legal argumentation, and also to what extent the judges should ask questions to the witnesses to clarify the evidence. As in national courts, international judges have different style and may be inclined to be more or less interventionist. This does not primarily depend on whether they come from a civil law or common law tradition, but on their personality. A related issue, which is also important to the management of trials, is how to divide the time in the courtroom between the hearing of evidence and oral arguments about procedural issues.

In my view, the best approach is that international judges should seek to avoid that the parties spend time on unnecessary evidence and time-consuming procedural discussions, in view of the trials' inherent complexity and duration.[19] Courtroom time is precious. On the other hand,

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expertise. Psychological counselling alleviated the trauma of witnesses in connection with their testimony, which again reduced the occurrence of delays during trial.

[19] Research seems to confirm that such an approach contribute to increased trial efficiency, see R. Byrne: 'The New Public International Lawyer and the Hidden Art of International Trial Practice', 25 *Connecticut Journal of International Law* (2010) pp. 243-305, and the same author 'Drawing the missing map: What socio-legal

judicial interventions must never be formulated in a way which casts doubts about the judges' impartiality or fairness.

4.4 Interpretation

Interpretation between English and French required additional time in the courtroom, unlike trials at the national level where interpretation is usually not necessary. In addition, most Rwandan witnesses testified in Kinyarwanda, either because they only knew that language or because they were not sufficiently comfortable with French in a courtroom situation. The situation was the same for some of the accused. Consequently, everything that was said in the courtroom had to be interpreted between the two official languages and Kinyarwanda.

Originally, there were no Kinyarwanda interpreters in the UN system, and training was required. During the first and the beginning of the second mandate, this part of the interpretation was consecutive: The Kinyarwandan interpreter (who would sit next to the witness) heard the entire answer of the witness before interpreting it into French. The French version was then interpreted into English. This system was very time-consuming. Due to further training, simultaneous interpretation from and into Kinyarwanda became possible. This was gradually introduced in all three Trial Chambers and saved a lot of time.

In spite of these improvements and the high level of the ICTR interpreters, the interpretation process took time. The judges therefore sought to limit the reading out of documents to what was strictly necessary and rather accepted them on the record as exhibits.

4.5 Transcription

All utterances in the courtroom were transcribed into the two official languages by English and French court reporters. The transcripts from a trial could amount to many thousand pages. They were indispensable to the parties and judges, both during the daily proceedings and in connection with judgment writing.

The transcripts contributed to the expediency of the trials. A draft transcript was available to the parties in the afternoon on the same day. When the testimony of a witness continued the following day, for instance as cross-examination, this made it possible to base the questioning on a common record of the evidence instead of individual notes, which might differ and lead to disputes. Subsequently, the system was improved through 'real time' recording, which allowed the parties and judges to see the draft transcripts on their individual computers in the courtroom at the same time as the testimony was given. Consequently, time-consuming discussions about whether there was a contradiction with what the witness had testified earlier disappeared – it was sufficient to consult the transcripts.

4.6 Status conferences

As already mentioned, pre-trial and pre-defence conferences were aimed at reducing problems that could delay the trial (see 3.4 above). Experience showed that during the trial regular status conferences were useful. The frequency of such meetings in the courtroom could vary, for instance once a week, or monthly. They provided an opportunity to raise issues that needed to be solved and mention possible factors which could affect the progress of the trial. Illustrations of matters that were ventilated include insufficient access of defence

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research can offer to international criminal trial practice', 26 *Leiden Journal of International Law* (2013) pp. 991-1007.

counsel to the detention facility to consult with the accused, problems with obtaining relevant documents from Rwanda, and the duration of breaks during voluminous trials.

Such conferences also contributed to a reduction of the number of motions by the parties, because concerns could be aired orally. This was a considerable advantage in a trial management perspective. Even though motions could be decided on the basis of written submissions (see 3.2 above), this required considerable time, particularly in trials with many motions. In order to ease that burden the judges often opted for oral decisions, which meant that the ruling was read into the record.

An additional method to avoid unexpected delays could be that the Bench asked the legal officers to get in touch informally with each of the parties to inquire whether there were upcoming problems.

5. Judgment writing

In view of the masses of evidence produced during trial, judgment writing was a heavy task. In single-accused cases, it was not often that the Trial Chambers managed to deliver judgment within three months, and more than a year could be required in multi-accused trials. Obviously, the time needed depended to a large extent on the individual circumstances of the case, in particular the intricacy of the assessment of the evidence.

A concise plan with deadlines for individual contributions – a method which is well-known in connection with team work – contributed to the steady progress of the judgment writing. The level of preparations carried out in parallel with the trial proceedings was also important, in particular witness summaries (see 2.7 above). There was a certain development over the years: from very brief overviews of the testimony; then recapitulations closer to the formulations used by the witnesses; and finally summaries in judgment style, with footnotes referring to the relevant transcript pages. In addition, provisional credibility assessments could facilitate the subsequent deliberations, even though the final evaluation had to be made in the light of the entire evidentiary situation (including the testimony of other witnesses about the same events).

Writing judgments about genocide, crimes against humanity and war crimes based on masses of evidence was a complicated process. Several rounds of drafting were usually required before the judges considered that the judgment could be regarded as final. When the Tribunal commenced its activities, there was little international jurisprudence available. The task became easier when ICTR or ICTY judgments had had created well established case law concerning the legal findings. As time passed, it also became easier to let seasoned legal officers supervise the drafting of less experienced colleagues before the judges deliberated on the revised version. This saved time.

Many tribunal judgments were long. The main reasons were the complicated assessment of the facts and the need to provide the Appeals Chamber with the full picture of the trial judges' evaluation. However, it is worth mentioning that there was a general wish to reduce the number of pages in the judgments. The judges sought to achieve this aim in several ways, such as shortening or deleting the introduction in the first judgments which had described the mandate of the ICTR, by limiting the overview of the procedural history of the case (alternatively placing it in an annex to the judgment), and by brief cross-references to precedents instead of repeating the discussions in those judgments. If the Chamber had taken judicial notice that there had been a genocide in Rwanda, this also facilitated the drafting (and made it possible to avoid unnecessary evidence in the courtroom (see 4.3 above).

6. Concluding observations

Established since the 1990s, international criminal courts are a rather recent phenomenon. They had to prove in practice that they deserve the confidence of the various stakeholders: the international community which entrusted them with the task to achieve justice and prevent impunity; the society in which conflicts resulted in atrocities (in this context Rwanda); those appearing in the courtroom (lawyers, accused, witnesses and victims); and observers (media, academia and public opinion).

Such confidence depends on the perception that the courts are independent, impartial and fair. Efficiency is also an important factor. When international trials are time-consuming, this may be perceived as inefficiency or incompetence. Lengthy trials may undermine the credibility of international criminal justice. It is therefore essential that the inherent delays of such complex trials be reduced to the extent possible. Judges of international courts have an important role to play when managing the trials.

The ICTR judges were faced with challenges that are not easily comparable to those encountered by national courts. Several such factors have been described above. The Trial Chambers also took into account the need to dispel any doubt that all international standards of justice were complied with, thereby increasing the confidence in the newly established Tribunal.

Apart from efficiently prosecuting persons for having allegedly committed serious crimes, there were also other aims involved. The ICTR's task to contribute to the process of reconciliation in Rwanda could influence the way in which the proceedings were conducted. For instance, it could occur that the Bench listened to evidence which was felt essential to one party's perception of what happened in 1994 but would appear to be of little significance during subsequent judgment writing.[20] Furthermore, establishing a historical record also required more time and effort than would be necessary simply to complete the case. Even though the ICTR was a court and not a fact-finding commission, there can be no doubt that it contributed, meticulously and in trial after trial, to the clarification of what happened in the various areas of Rwanda during the hundred days of the genocide.

Even for judges with extensive experience from criminal cases at the national level, it would take time to get used to the challenges of international trials. The ICTR gradually improved its working methods through general structural and administrative reforms as well as many concrete measures during the daily activities in the courtroom. This contributed to an efficient management of trials.

[20] See more generally, E. Møse, 'The ICTR and Reconciliation in Rwanda', *FICHL Policy Brief Series* No. 30 (2015).