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Programme budget for 2021

Request for a subvention to the Special Tribunal for Lebanon

Forty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2021

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the request for a subvention to the Special Tribunal for Lebanon ([A/75/763](#)). During its consideration of the report, the Committee interacted remotely with the Registrar of the Tribunal, who provided additional information and clarification, concluding with written responses received on 17 March 2021.

2. The Special Tribunal for Lebanon was established following the adoption of Security Council resolution [1757 \(2007\)](#) to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of the former Prime Minister of Lebanon, Rafik Hariri, and in the death or injury of other persons. Under the agreement annexed to resolution [1757 \(2007\)](#), 51 per cent of the expenses of the Tribunal are to be borne by voluntary contributions from States, while the remaining 49 per cent are to be borne by the Government of Lebanon.

3. In the report, the Secretary-General indicates that he informed the Security Council, in his letter dated 10 February 2021 ([S/2021/149](#)), of the financial difficulties faced by the Tribunal with regard to its operation beyond 31 March 2021 and of his intention to request a subvention from the General Assembly. In her letter dated 16 February 2021 addressed to the Secretary-General ([S/2021/150](#)), the President of the Security Council informed the Secretary-General that the members of the Council had taken note of the intention expressed in his letter, with the understanding that the subvention would be subsequently reimbursed from the voluntary contributions received by the Tribunal.

4. The Secretary-General indicates that the Government of Lebanon continues to underscore its support to the Tribunal but faces an unprecedented socioeconomic and financial crisis, exacerbated by the explosion in Beirut of 4 August 2020 and the coronavirus disease (COVID-19) pandemic. Therefore, the level and timing of its



contribution for 2021 to the Tribunal is uncertain. The Secretary-General also indicates that several donors are unable to commit the same contribution amounts as in previous years. Therefore, despite the fundraising efforts, the resources currently available for the Tribunal would not be sufficient to sustain its operations until the end of 2021. Consequently, the Secretary-General is seeking the approval of the General Assembly for an additional appropriation under the programme budget for a subvention to the Tribunal in the amount of \$24,741,900 for 2021. **The Advisory Committee considers that the current proposal is submitted in relation to exceptional events.**

II. Judicial accomplishments and completion plans

Ayyash et al. case (STL-11-01)

5. The *Ayyash et al.* case (STL-11-01) concerns the attack on the former Prime Minister of Lebanon, which killed 22 people and injured 226 others (A/75/763, paras. 19 and 20). In August 2020, the Trial Chamber found Salim Jamil Ayyash guilty and in December 2020, the Trial Chamber sentenced him to five concurrent sentences of life imprisonment, while the others accused were found not guilty (*ibid.*, para. 23). In January 2021, the Prosecutor, the Defence for Mr. Ayyash and the legal representatives of victims filed notices of appeal. The Secretary-General indicates that the appellate judgment is expected to be issued by mid-2022 (*ibid.*, paras. 24 and 28).

Ayyash case (STL-18-10)

6. The “connected” *Ayyash* case (STL-18-10) relates to three attacks against Lebanese politicians, Marwan Hamade, George Hawi and Elias El-Murr, on 1 October 2004, 21 June 2005 and 12 July 2005, respectively (*ibid.*, para. 25). In this case, the Prosecution pretrial brief has been filed and the Defence pretrial brief is due in April 2021. The trial is expected to start shortly thereafter and to be completed towards the end of 2022 (*ibid.*, paras. 25, 27 and 28). Upon enquiry, the Advisory Committee was informed that the body of evidence in the connected case is anticipated to be a fraction of that presented in the *Ayyash et al.* trial and that the Presiding Judge of Trial Chamber II has indicated his commitment to conducting a trial within one year, plus judgment drafting period. The Committee notes, however, that the completion timeline in this case was drawn up notwithstanding the independent Prosecutor’s purview over ongoing investigatory work or other matters within his mandate (*ibid.*, para. 28). Moreover, the information provided to the Committee indicates that the case could be subject to appeal.

Completion plans

7. The Secretary-General indicates that the Tribunal has developed a strategic plan for 2021–2022 which is aimed at operating with a significantly reduced budget, while ensuring efficiency and the non-interruption of judicial work, and achieving the targeted completion of existing judicial work within the shortest time frame possible (*ibid.*, para. 31). Upon enquiry, the Advisory Committee was informed that within this two-year period, the Tribunal intends to complete all current judicial activities and be ready to hand over residual functions or transition to any post-mandate residual/dormant entity, as appropriate.

8. The Advisory Committee was also informed, upon enquiry, that the Tribunal has developed an emergency drawdown plan that would facilitate a drawdown to a “dormant” model that retains the same legal structure but only the budget and staffing capacity to facilitate the bare minimum of functions to support key residual activities,

such as the protection of witnesses and the preservation of confidential and sensitive evidentiary material.

9. The Advisory Committee was further informed, upon enquiry, that a premature closure of the Tribunal would result in the forced cessation of the judicial proceedings. Such occurrence would be unprecedented among international criminal jurisdictions. Moreover, such a closure would leave the United Nations, Lebanon and the States of the Management Committee to address multifaceted legal ramifications and issues in relation to the security of witness and victims, the preservation of confidential or sensitive evidential material and rights concerning data privacy of a large portion of the Lebanese population.

10. **The Advisory Committee notes the two-year completion plan developed by the Tribunal and trusts that detailed information on the emergency drawdown plan will be provided to the General Assembly at the time of its consideration of the present report. In addition, the Committee emphasizes the importance of regularly updating the comprehensive case completion plan and the need to take all necessary measures to expedite case completion, including effective planning, while fully respecting the requirements of the judicial process.**

III. Budget for 2021 and fundraising efforts

Budget overview

11. The Secretary-General indicates that in February 2021, the Management Committee of the Tribunal approved a budget for 2021 of \$42,186,000, reflecting a decrease of \$24,774,200, or 37 per cent, compared with the approved budget for 2020 (*ibid.*, para. 49).

12. According to the report of the Secretary-General, the requirements for personnel for 2021 in the amount of \$34,677,400, include the following elements:

(a) Posts: an amount of \$25,622,100 would provide for 234 posts (1 Under-Secretary-General, 1 Assistant Secretary-General, 2 D-2, 3 D-1, 16 P-5, 30 P-4, 49 P-3 and 28 P-2/1, 9 Field Service, 4 General Service (Principal level), 74 General Service (Other level), 17 General Service (Local level)), reflecting a decrease of 108 posts compared to 2020. Upon enquiry, the Advisory Committee was informed that eight posts were vacant as at 10 March 2021 (1 D-1, 1 P-5, 4 P-4, 1 Field Service and 1 General Service);

(b) Non-staff compensation: an amount of \$3,010,100 would provide for the continuation of 11 judges;

(c) Other staff costs: an amount of \$6,045,200 covers the costs of 61 temporary positions, which represents a decrease of 33 positions compared to 2020 (*ibid.*, tables 2 and 3).

13. The non-personnel resources for 2021 of \$7,508,600 represent a reduction of \$7,220,400, or 49 per cent, compared with the approved budget for 2020 (*ibid.*, table 2).

14. Upon request, the Advisory Committee was provided with information on past budgetary periods which shows that, every year since inception, the Tribunal has incurred underexpenditure vis-à-vis the approved budget, resulting in significant unused balances, including \$11,833,000 in 2018, \$7,522,300 in 2019 and \$6,236,500 in 2020.¹ **The Advisory Committee notes the lack of information regarding the**

¹ The approved budget for 2020 amounts to \$66,960,200, but the funds available only amount to \$63,415,400. As the expenditures are estimated at \$60,723,700, the unused balance which could be brought forward is limited to \$2,691,700.

management of the unused balance. The Committee requested, but at the time of reporting was not provided with, the full text of the Tribunal's budgets for 2020 and 2021. The Committee trusts that the information and justification will be provided to the General Assembly at the time of its consideration of the present report.

15. While noting the significant reduction in the requirements for 2021 compared with 2020, the Advisory Committee is of the view that it is essentially related to the reduced judicial workload anticipated during the case completion phase and the pattern of underexpenditure over the previous budgetary periods. The Committee trusts that the Tribunal could further reduce its costs and enhance its efficiency, including through the further drawdown of its workforce.

Fundraising efforts

16. In the agreement annexed to resolution [1757 \(2007\)](#), it is stated that in the event that voluntary contributions are insufficient, the Secretary-General and the Security Council are to explore alternative means of financing the Tribunal. In addition, the terms of reference of the Management Committee of the Tribunal stipulate that the Committee is to assist the Secretary-General in ensuring that adequate funds are available for the operation of the Tribunal, including through the development of fundraising strategies in close consultation with the Registrar ([A/75/763](#), paras. 36 and 37; and para. 2 above).

17. The Secretary-General indicates that in December 2020, as part of the fundraising efforts, he sent an urgent letter of appeal to all Member States, seeking the support of the international community for the operations of the Tribunal. The Secretary-General also indicates that since its establishment, 29 donors have voluntarily contributed to the Tribunal, which is committed to expanding its network of donors, through research and outreach to States that have an interest in its work, in particular those in the Middle East and the North Africa region. The Secretary-General further indicates that the Tribunal intends to increase its fundraising efforts with the assistance of its Management Committee and the Group of Interested States (*ibid.*, paras. 38, 41, 43 and 44).

18. In view of the challenges faced by the Government of Lebanon in maintaining its financial support to the Tribunal, the Advisory Committee trusts that the Secretary-General and the Tribunal will intensify their fundraising efforts, including by broadening the donor base and encouraging the members of the Management Committee and the Group of Interested States to renew their financial efforts.

IV. Financial position and subvention request

Financial position

19. The Secretary-General indicates that at the time of reporting, the Tribunal had received confirmed pledges in an amount of \$3.6 million payable in 2021, while expected voluntary funding was projected to amount to \$11.1 million. These pledges, together with the unused fund balance of \$2.7 million from 2020, would amount to a total projected funding of \$17.4 million, and a shortfall of \$24.7 million (*ibid.*, para. 50). Upon enquiry, the Advisory Committee was informed that on 2 March 2021, the Tribunal received the payment of a pledge in the amount of \$4.2 million. With that payment, the cash balance of the Tribunal amounts to \$3.5 million, which should be sufficient to cover its expenditures until the end of April 2021. The Committee was also informed upon enquiry, that if in April or May 2021, the funding situation of the

Tribunal has not significantly improved, the Management Committee will request a revision of the budget to reflect reasonably expected funding at that point. Regarding the overall financial status of the Tribunal, the Committee was provided, upon request, with the Tribunal's financial ratios, which reflect a good financial situation since inception.

20. In view of the fluid situation of the Tribunal's funding, the Advisory Committee trusts that updated financial information, including monthly expenditures, contributions received and budgetary adjustment, if any, will be provided to the General Assembly at the time of its consideration of the present report.

Subvention request

21. The Secretary-General indicates that the requested subvention of \$24,741,900 would supplement contributions, including those that have been pledged but have not yet been paid, as well as those received (*ibid.*, para. 11). Upon enquiry, the Advisory Committee was informed that the subvention would cover the share of the Government of Lebanon (\$20,671,140) and a shortfall of \$4,070,760 in voluntary contribution from other donors.

22. The Advisory Committee notes that the requested subvention would cover the majority of the approved budget of the Tribunal for 2021 and exceeds the share of the Government of Lebanon, and considers that a subvention at that level would act as a disincentive to potential contributions. **Therefore, the Advisory Committee recommends to the General Assembly to apply the subvention to the potential shortfall in the share of the Government of Lebanon to the Special Tribunal only and to approve it at the level of \$15,503,355, representing 75 per cent of the above-mentioned share. The Committee expects that while the subvention will address specific challenges, contributions will continue to be received on the basis of the cost-sharing arrangement.**

23. The Secretary-General indicates that, should the shortfall in funding be reduced owing to additional contributions received during 2021, the final amount sought from the General Assembly will be adjusted and reported in the context of the financial performance report for 2021 (*ibid.*, para. 11). Upon enquiry, the Advisory Committee was informed that should voluntary contributions be received in excess of the current estimates for 2021, any programme budget funds provided to the Tribunal would be refunded to the United Nations. **The Advisory Committee recalls that the President of the Security Council informed the Secretary-General that the members of the Council had taken note of the intention expressed in his letter, with the understanding that the subvention would be subsequently reimbursed from the voluntary contributions received by the Tribunal, the applicable reporting requirements to the General Assembly would be complied with, and the voluntary nature of the funding arrangement of the Tribunal would not be changed (*ibid.*, para. 10).**

24. The Secretary-General also indicates that, should the General Assembly approve the subvention, the amount would be appropriated under section 8, Legal affairs, of the programme budget for 2021 and disbursed to the Registrar of the Tribunal on a periodic basis (*ibid.*, paras. 53 and 57 (b)). Upon enquiry, the Advisory Committee was informed that in line with General Assembly resolution [75/256](#), the Working Capital Fund would be used pending receipt of the assessment.

25. The Secretary-General further indicates that he would submit a progress report to the General Assembly at its seventy-sixth session on, *inter alia*, the status of the financial position of the Tribunal. The Secretary-General also indicates that, if the same financial situation continues, a request for a subvention for 2022 would be

included in the context of the same progress report ([A/75/763](#), para. 52) (see paras. 4 and 22 above).

26. The Advisory Committee recommends that the Secretary-General present an update on the financial situation of the Tribunal to the General Assembly during its current session.

V. Other matters

Audit

27. The Advisory Committee was also informed, upon enquiry, that the external auditors (the National Audit Office of the United Kingdom of Great Britain and Northern Ireland) had issued unqualified opinions for the years 2015 to 2018 and that the audited financial statements for those years were compliant with the International Public Sector Accounting Standards (IPSAS). The Committee was further informed that the audit costs amounted to 82,000 euros for each of the years 2019 and 2020. **The Advisory Committee notes that the auditors will complete the audit certification for the year 2019 in March or April 2021, and that the financial statements for 2020 have yet to be finalized. The Committee encourages the Secretary-General to explore the possibility of using the services of the Board of Auditors to audit the accounts and financial statements of the Tribunal for 2021.**

28. The Secretary-General indicates that the Management Committee recently established the Advisory Committee on Finance and Audit (ACFA) which will examine the approach of the Tribunal regarding financial management, internal controls and risk management ([A/75/763](#), para. 18). Upon enquiry, the Advisory Committee was informed that ACFA, which is composed of three unremunerated experts, will have the responsibility to: (a) review the financial statements; (b) review the reports of external auditors and discuss the internal audit workplan; (c) review the draft budgets of the Tribunal; (d) review the regular financial and performance reports of the Tribunal; and (e) attend the meetings of the Management Committee to make recommendations regarding the proposed budgets and financial reports, as appropriate.

Impact of the coronavirus disease pandemic

29. With regard to the activities of the Tribunal, the Secretary-General indicates that owing to strict national measures relating to COVID-19, ordinary in-person judicial proceedings from the courtroom have not been possible. However, the Tribunal has facilitated remote hearings, with limited in-person attendance (*ibid.*, para. 47). Upon enquiry, the Advisory Committee was informed that the Judge, Court Officer, Court Clerk, Chambers Legal Officer and various other participants, including representatives of the parties, were physically present. For the parties and participants attending hearings remotely from within Lebanon, the Tribunal used its Beirut office to secure a stable Internet connection. In terms of technology, the Tribunal used a hybrid videoconferencing system based on CISCO WebEx Meetings, paired with the existing audiovisual courtroom infrastructure. The integration of those systems and the provision of remote access to victims cost approximately 50,000 euros. The Committee was further informed that the cost was considerably offset by the savings in travel costs that would have been incurred for courtroom participation. In this regard, the information provided to the Committee shows an underexpenditure of \$1,069,800 under travel in 2020.

Training

30. The Secretary-General indicates that the expenditures for training were estimated at \$59,200 in 2020 and that the requirement for 2021 amounts to \$25,400. Upon enquiry, the Advisory Committee was informed that the Tribunal maintains a limited number of licences for online training to fill skills gaps. The Tribunal also provides in-house training for cross-skilling, which is undertaken at no additional cost. In addition, it has benefited from specific training provided by, or through the United Nations Interim Force in Lebanon (UNIFIL), particularly with regard to firearms training.

31. The Advisory Committee encourages the Tribunal to make further use of online training and videoconferencing to reduce its costs.

VI. Conclusion and recommendations

32. The Advisory Committee considers that a subvention to the Tribunal should be exceptional and the funding modalities decided upon by the Security Council remain valid.

33. Nonetheless, in view of the projected funding shortfall and the challenges faced by the Government of Lebanon, the Advisory Committee recommends that the General Assembly:

(a) **Appropriate an amount of \$15,503,355 under section 8, Legal affairs, of the programme budget for 2021, by way of a subvention to the Tribunal;**

(b) **Request the Secretary-General to submit an update to the Assembly at its current session on the financial position of the Tribunal and at its seventy-sixth session on the utilization of the subvention in 2021.**

34. The Advisory Committee further recommends that the subvention be approved on the basis that:

(a) **The Secretary-General engages in all efforts to increase the level of voluntary contributions;**

(b) **The subvention would be subsequently reimbursed from the voluntary contributions received by the Tribunal and returned to Member States;**

(c) **Appropriate measures for achieving further savings and efficiencies in the Tribunal are in place;**

(d) **Appropriate monitoring and reporting arrangements are in place to ensure an incremental release of funds to the Tribunal, based on the monthly cash position.**