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Chairman: Mr. MacKay (New Zealand)
*Chairman of the Advisory Committee on Administrative
and Budgetary Questions:* Mr. Kuznetsov

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The meeting was called to order at 10.10 a.m.

Agenda item 120: Administration of justice at the United Nations (*continued*) (A/59/706 and A/59/715)

1. **The Chairman** recalled that the Committee had previously considered the item at its 27th and 28th meetings on 24 and 29 November 2004. At that time, the Controller had introduced the report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the Office of Legal Affairs (A/59/78).

2. **Ms. Axenidou** (Senior Legal Adviser in the Office of the Under-Secretary-General for Management), introducing the report of the Secretary-General on the administration of justice in the Secretariat (A/59/706), recalled that, pursuant to the request made by the General Assembly in its resolution 57/307, the Office of Internal Oversight Services (OIOS) had conducted a management review of the appeals process (A/59/408). The Office had made a number of recommendations, the majority of which had been accepted by the Secretary-General. Subsequently, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had requested the Secretariat to provide the General Assembly with the cost implications of those recommendations. The report before the Committee had been prepared in response to that request.

3. For the current biennium, the estimated resource requirements amounted to \$462,100. The bulk of that amount would be allocated to the Office of Human Resources Management, the Geneva and Nairobi Joint Appeals Boards and the Office of the Under-Secretary-General for Management for general temporary assistance with a view to eliminating the current backlog in the appeals process. In addition, \$30,000 would be used for start-up costs for training the members of all Joint Appeals Boards. The Secretary-General would ensure that the estimated requirements were accommodated from within existing 2004-2005 resources.

4. For the biennium 2006-2007, the additional resource requirements amounted to \$1,021,600, which would be allocated to organizational units involved in the appeals process, in accordance with the recommendations of OIOS. The estimates would be submitted to the General Assembly in the context of the proposed programme budget for the biennium 2006-2007 and the support account budget for the

period from 1 July 2005 to 30 June 2006. Every effort would be made to identify offsetting amounts within other areas of the budget to ensure that no additional resources would be required.

5. **Mr. Kuznetsov** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related interim report of ACABQ (A/59/715), said that the report of the Secretary-General was in follow-up to a report that had been taken up by the Advisory Committee in November 2004 (A/59/449). It had been issued in response to the Advisory Committee's request for an analysis of the financial resources necessary to achieve the objectives referred to in the main report. It had been the intention of the Advisory Committee to revert to the matter before the end of December 2004. Regrettably, the requested report (A/59/706) had not been received until 18 February 2005 and it did not respond fully to the Advisory Committee's request for a clear justification of needs as well as a full exposé of what would be achieved through the provision of additional resources. In any case, the Advisory Committee was of the firm view that providing additional resources would not of itself solve the underlying difficulties with administrative processes and procedures and the culture of staff-management relations. The tendency of some staff to file numerous and/or frivolous appeals must also be addressed. It had been more than 20 years since the Advisory Committee had first drawn attention to the need to simplify rules and procedures and to identify those aspects of staff administration that gave rise to an inordinate number of appeals. Those problems persisted, however, and the Advisory Committee intended to revisit the issue, as outlined in paragraphs 9 and 10 of its report.

6. In the meantime, the Advisory Committee recommended that the Secretariat should be authorized to proceed with its effort to eliminate current backlogs, using existing resources, as proposed by the Secretary-General. It would take up the resource requests for 2006-2007 when it considered the proposed programme budget. The proposals relating to the support account budget would be taken up in late March 2005.

7. The report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the Office of Legal Affairs (A/59/78) contained a proposal for the transfer of the resources relating to the Tribunal from

section 8 (Legal affairs) to section 1 (Programme-making, direction and coordination) of the programme budget, as from the biennium 2006-2007. The Advisory Committee considered that, from a technical standpoint, such matters would best be dealt with in the context of the proposed programme budget. In any case, the question appeared to require a policy decision by the General Assembly. Should the Advisory Committee have any further comment to make, it would do so in the context of the consideration of the proposed programme budget for the biennium 2006-2007.

8. **Ms. Taylor Roberts** (Jamaica), speaking on behalf of the Group of 77 and China, said that the administration of justice at the United Nations had been on the Committee's agenda for many years. Lack of accountability and transparency and chronic delays in the consideration of cases submitted for review were longstanding problems, and the Group strongly believed that there should be no further delay in deciding on a course of action to improve the situation.

9. The Group had taken note of the immediate and short-term proposals made in the Secretary-General's report (A/59/706) and of the resources requested. It was concerned, however, that despite the recognition of serious deficiencies in the system, the Administration's prescription for change was very limited, with the report focusing primarily on the provision of additional resources for clearing the backlog in the appeals process. The Group was also disappointed that the Advisory Committee had decided to defer its comprehensive consideration of the administration of justice at the United Nations pending receipt of a submission on resources. The Advisory Committee should undertake, as soon as possible, a comprehensive review of the reports submitted under the item so that the Committee would have the benefit of its observations at the resumed session. She noted that the Committee's consideration of the item had been hampered by the late issuance of documentation.

10. With regard to the report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the Office of Legal Affairs (A/59/78), the perceived lack of transparency in the administration of justice discouraged staff from seeking redress and adversely affected their morale and motivation. The General Assembly, in its resolution 57/309, had requested the Secretary-General to take steps to ensure the

independence of the Tribunal. The proposal for the transfer of resources relating to the Tribunal from section 8 to section 1 of the programme budget would secure the Tribunal's financial independence and the Group therefore supported it. However, it had expected that the report would also contain proposals to ensure that body's functional independence.

11. **Mr. van den Bossche** (Belgium), speaking on behalf of the European Union, the acceding countries (Bulgaria and Romania), the candidate countries (Croatia and Turkey), the stabilization and association process countries (Albania, Bosnia and Herzegovina, Serbia and Montenegro and the former Yugoslav Republic of Macedonia), and, in addition, Liechtenstein, said that more than 20 years had passed since attention had first been drawn to the urgent need to simplify the administration of justice at the United Nations. While the General Assembly had addressed many aspects of the matter in its resolution 57/307, many provisions of that resolution had yet to be implemented.

12. A good system of justice was based on trust and informal contacts played a significant role in the early resolution of grievances, which helped to alleviate pressure on the appeals system. The European Union therefore attached great importance to the work of the Ombudsman. Good staff-management relations were also vital. Indeed the effectiveness of the process depended, to a great extent, not only on the quality of the preparation of cases but also on the interaction between the parties in the early stages. The formal system also merited special attention. A fair and effective system would increase transparency and accountability within the Organization and enhance staff-management relations. Such a system must allow the United Nations to implement its activities efficiently, while ensuring that administrative procedures were respected.

13. Some of the problems could be resolved quickly by implementing the proposals of the Secretary-General and the recommendations of ACABQ, while others required in-depth analysis and broader policy guidance. The European Union was ready to approve the transfer of resources relating to the United Nations Administrative Tribunal (UNAT) from section 8 to section 1 of the programme budget, as from the biennium 2006-2007, with a view to increasing the Tribunal's independence. It also supported the expeditious approval of the amount of \$462,100 to

clear the current backlogs in the appeals process. For matters that required more detailed consideration, it recognized the value added by the Advisory Committee's analyses. In that connection, it had taken note of the Advisory Committee's intention to conduct a comprehensive review of the administration of justice in the context of its consideration of the proposed programme budget for the biennium 2006-2007.

14. **Mr. Torres Lepori** (Argentina), speaking on behalf of the Rio Group, said that the Group associated itself with the statement made by the representative of Jamaica on behalf of the Group of 77 and China. He welcomed the introduction of the Secretary-General's report on the administration of justice in the Secretariat (A/59/706) and the related report of ACABQ (A/59/715), which would finally enable the Committee to begin its consideration of the question.

15. The Secretariat was the backbone of the Organization, responsible for its day-to-day running, and the rights of its staff must therefore be protected by appropriate judicial guarantees. The Rio Group had taken note of the additional resource requirements for the Secretariat and was extremely interested in the possibility of strengthening the administration of justice, which was directly linked to the provisions of General Assembly resolution 57/307 on responsibility and accountability. Emphasis should also be placed on strengthening and, where appropriate, ensuring the independence of the various organs associated with the administration of justice, which would not necessarily entail the creation of new posts.

16. The report of OIOS on the management review of the appeals process at the United Nations (A/59/408) contained an instructive study on the time taken to complete the appeals process in different duty stations. The Rio Group agreed with a number of the recommendations contained in the report, particularly those designed to ensure that equal legal recourse was available to both applicants and appellants. The report of the Joint Inspection Unit on Administration of Justice (A/59/280) raised a number of interesting points concerning the comparison between the Statutes of UNAT and the International Labour Organization Administrative Tribunal (ILOAT). It seemed somewhat premature to envisage the establishment of a single administrative tribunal for the whole United Nations system, as more information about the compatibility of procedures and practices, as well as a cost-benefit analysis of the unification, were needed. Lastly, with

reference to the Secretary-General's report on the possibility of the financial independence of UNAT from the Office of Legal Affairs (A/59/78), he stressed that all the necessary steps must be taken to ensure the independence of the Tribunal, which would lead to improved justice within the United Nations.

17. **Mr. Dutton** (Australia), speaking also on behalf of Canada and New Zealand, said that the administration of justice at the United Nations had serious deficiencies, as demonstrated by the lack of confidence among both staff and managers. Those deficiencies included the absurd length of time taken to resolve cases, the unnecessary complexity of the system, the excessive amounts of compensation awarded in some cases, the lack of a mechanism to dismiss frivolous appeals, the limited access of field staff to the system and perceived conflicts of interest. The system of justice must be as simple as possible and transparent to all parties. It must provide fair, efficient and timely reviews of administrative decisions and disciplinary action, properly balancing the interests of staff members and of the Organization. It must also help to ensure accountability in the Secretariat. The delegations of Australia, Canada and New Zealand would support reforms aimed at achieving those objectives.

18. The scope of the system's problems seemed to require a comprehensive response from the Committee and it was therefore regrettable that the Advisory Committee had not been able to comment in greater detail on the matter. That, however, should not prevent the Committee from embarking on a full discussion, since it would be interesting to learn what the causes of appeals were and how the Organization ensured that administrative decisions were well informed, legally correct and fair. The dynamics of staff-management relations and the frequency of frivolous appeals also warranted attention. In the longer term, consideration must be given to initiatives to reduce the number of appeals, including educating managers about their responsibilities and responding appropriately to decisions by UNAT that exposed management weaknesses or inappropriate behaviour by staff. There might also be merit in simplifying and consolidating existing regulations and rules. Greater efforts should be made to settle disputes informally at all stages of the process, including after unfavourable decisions by the Joint Appeals Board. In that connection, the establishment of the Office of the Ombudsman had

been a welcome step. The Ombudsman should be the primary means of informal dispute resolution, and the three delegations saw no merit in establishing new mechanisms or panels.

19. With regard to the appeals system itself, OIOS had provided a very sensible report (A/59/408) on ways of improving the current mechanisms. The Secretary-General had accepted only those recommendations that related to resources and not those that called for tighter deadlines. However, it was doubtful whether resources alone could correct the deficiencies of the system.

20. The quality of the decisions of UNAT could be improved. They had taken note of the recommendations of the Joint Inspection Unit (JIU) on harmonization of the Statutes of UNAT and ILOAT (A/59/280). The proposal to increase the authority of UNAT to grant compensation or order specific performance warranted attention, as did the request for remuneration of its members. However, action on those proposals would have to be taken in conjunction with measures to improve the selection and appointment of the Tribunal's members and raise the level of their qualifications.

21. The Committee should be prepared to make radical changes if it concluded that they were needed. The system of justice was seriously flawed and it should be a priority of the Committee to correct it.

22. **Mr. Mazumdar** (India) lamented the fact that, owing to the delays in the submission of the Secretary-General's report, the Committee had been unable to present its considered views on all aspects of the item. It was unfortunate that the zeal for reform displayed by the Secretariat appeared to be absent when it came to the reform of the administration of justice. Nevertheless, although the Secretary-General's report dealt only with measures to reduce the delays in the appeals process, the other reports currently before the Committee covered almost every aspect of the administration of justice and provided sufficient background information to enable the Committee to take many of the urgently needed decisions.

23. While the trappings of a justice system existed within the United Nations, it was not effective, as illustrated by, inter alia, the fact that managers took an average of 448 days to respond to an appeal. The Panel of Counsel, moreover, was composed of volunteer staff who often received no training on the rules and

regulations of the Organization and appellants had to pay for external legal assistance whereas managers were defended by the Department of Management. The delays at each stage of the administration of justice, attributable to the lack of resources and to managerial apathy born out of a pervasive sense of impunity, were a travesty of justice and no reform of the system would be complete without the enhancement of managerial accountability called for in General Assembly resolution 51/226.

24. The culture of impunity had to change, but it must not be replaced by a litigious culture that allowed staff to submit frivolous appeals, since the Organization could ill afford a situation where managers delayed taking decisions for fear of reprisals. Nevertheless, management action had to stand the test of conformity with rules and regulations and, more importantly, had to be perceived as being based on objective considerations. If that was not the case, sanctions should be applied.

25. The current system was riddled with conflicts of interest. For instance, the Department of Management served as the respondent in cases before the Joint Appeals Board while taking the final decisions on the Board's recommendations. It had also overturned a number of the Board's unanimous recommendations. OIOS had drawn attention to a number of such conflicts of interest and his delegation looked forward to addressing them.

26. United Nations staff were the highest paid civil servants in the world and their work, by its very nature, should be deeply satisfying. Yet disaffection and mistrust were rife and staff-management relations were close to the breaking point. Reforming the system was important in order not only to attract, retain and promote the best talent but also to improve staff morale and, consequently, the productivity, efficiency and effectiveness of the Organization. It was clear that a system that had festered for so long could not be corrected overnight, but decisions must not be postponed until the budget negotiations merely because they had financial implications. He was sure that substantive progress could be achieved at the current part of the resumed session and looked forward to working with all delegations to that end.

27. **Mr. Berti Oliva** (Cuba) said that ensuring the right of the staff to a transparent and impartial system of justice would improve the Organization's operation

and credibility. The current serious situation should not be allowed to persist. The reports before the Committee gave the impression that, in its 59 years of existence, the Organization had never had a system which genuinely allowed staff members' appeals to be settled fairly and transparently.

28. His delegation had repeatedly expressed its view that reform of human resources management must be accompanied by greater accountability on the part of programme managers and a genuine system of justice. That was the only way to ensure that the Organization's staff, on whom the Member States depended to implement their decisions, were motivated and better able to contribute to the implementation of the Charter and the mandates of Member States. For that reason, his delegation would have preferred the items on administration of justice and reform of human resources management to have been discussed together during the main part of the Assembly's current session.

29. While it was unthinkable and unjust to increase the Secretariat's power over its staff in the absence of such a system, even modest improvements appeared impossible. Perhaps the Organization's support for justice, equality and workers' rights was becoming a dead letter within its own walls. The administration of justice affected staff morale and deserved close attention and commitment from the Secretariat and Member States. The inadmissible and incomprehensible delay in issuing certain documents had forced the General Assembly to postpone consideration of the matter and prevented it from taking legislative action. The Secretariat should explain the reasons for that delay and for the failure to supply information, including the information which the Advisory Committee had requested in 2004.

30. Even though the Advisory Committee had pointed to a lack of new information in the report of the Secretary-General, its own report presented interim information and focused on matters of finance rather than substance. In November 2004, a number of delegations had expressed their concern and had called for an urgent, detailed and substantive report to help the Committee's discussions. The report currently before the Committee had failed to live up to expectations and had confirmed the Committee's tendency to examine substantive issues in the light of the proposed programme budget when they should instead be considered on their own merits.

31. The Assembly at its current session should propose changes to the administration of justice in order to make it effective and fair. To that end, the Chairman of the Advisory Committee should explain what steps the Committee should take in order to obtain a genuine report from the Advisory Committee by the end of the Assembly's current session.

32. **Mr. Repasch** (United States of America) said that the reports before the Committee provided the detailed information necessary to make informed decisions about improving the administration of justice at the United Nations. His delegation generally supported the recommendations made and the conclusions drawn by the Secretary-General, ACABQ, JIU and UNAT regarding the need for streamlined procedures, adequate resource allocation and enhanced coordination between UNAT and ILOAT. However, it also agreed with the Advisory Committee and the staff representatives that cumbersome and lengthy administrative procedures and poor staff-management relations were at the heart of the system's problems.

33. In any effective human resources environment, staff and management representatives must routinely sit face to face in a cooperative effort to address both sides' concerns about internal justice issues. The Administration and the staff unions should therefore use the current window of opportunity to begin or resume discussions on such matters as training, transparency, mediation and the effectiveness of administrative panels and submit joint proposals thereon for consideration by the General Assembly.

34. His delegation supported the Advisory Committee's plan to conduct its own comprehensive review of the issues under discussion. However, it wished to know what additional information was required from the Secretariat in order for ACABQ to conduct the review and whether the Advisory Committee believed that the resources requested for 2004-2005 would be well spent absent such a review.

35. With regard to the report of OIOS on the management review of the appeals process at the United Nations (A/59/408), his delegation noted that the Secretariat had accepted the majority of the Office's recommendations and urged their implementation as soon as possible. It concurred with the Secretariat's view that it would not be feasible to impose deadlines at all stages of the process until the staff and resource shortages that had led to the current

backlog had been addressed. It also agreed that there was a need for increased training for staff involved in the judicial process.

36. With regard to the Secretary-General's two options for the future role of the Panels on Discrimination and Other Grievances (A/59/414), he observed that the Panels appeared to function in Geneva and Vienna but not in New York. Prior to choosing either option, the Committee should listen to the views of management and staff.

37. Regarding the financial independence of UNAT, his delegation supported the proposed transfer of resources from section 8 to section 1 of the programme budget. It agreed that the Secretary-General should develop a mechanism to enhance cooperation and facilitate dialogue between UNAT, ILOAT and other international administrative tribunals. As to the proposals for harmonization of the statutes of the two Tribunals, it would reserve its support pending assurances that the changes would make the administration of justice more efficient.

38. **Mr. Elji** (Syrian Arab Republic) said that it was difficult to see why the report requested by the Advisory Committee had been submitted late, because it was a very short document dealing solely with the issues raised by OIOS. His delegation would have preferred to see proposals that focused on the reform and strengthening of the administration of justice. While the package of reform measures contained in General Assembly resolution 57/307 was not an ideal solution to the problem, it had been the best possible outcome at the time.

39. The current system was costly, inefficient and lengthy and the bodies involved tended to duplicate each other's work. In order to rectify that situation, administrative processes must be strengthened, delays in the processing of cases reduced and greater emphasis placed on the role of the Ombudsman. The legal stage of the process was also beset by problems. The members of UNAT were not qualified legal professionals and the opinions of the Tribunal often contradicted those delivered by other, external administrative tribunals, thereby demonstrating that the status of international civil servants working for the United Nations differed from that of civil servants working outside the Organization.

40. **Mr. Alarcón** (Costa Rica), speaking on a point of order, said that he was having some difficulty

understanding the interpretation into Spanish and asked the representative of the Syrian Arab Republic to speak a little more slowly.

41. **Mr. Elji** (Syrian Arab Republic) said that, while the recommendations contained in the reports of the Secretary-General and OIOS were important, the time was right for a total overhaul of the administration of justice with a view to simplifying and streamlining all aspects of the process and reducing delays. Reforming the system should not be seen as an attempt to undermine the prerogatives of the Secretariat, but rather as a way of granting civil servants greater freedom, boosting morale and allowing for better management of the Organization's working methods. He hoped that a sense of responsibility would prevail during the negotiations and that the dialogue would be constructive.

42. **Ms. Axenidou** (Senior Legal Adviser in the Office of the Under-Secretary-General for Management), replying to the question posed by the representative of Cuba, said that document A/59/706 had been submitted later than anticipated because the Secretariat had been waiting until the review of the budget outline had been completed in order to ensure that the additional requirements described in the report could be met from within existing resources, in line with the objective of a zero-growth budget.

43. **Mr. Saha** (Vice-Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee shared the Committee's concerns and had made it clear in its report (A/59/715, para. 8) that the problems with the administration of justice at the United Nations went much deeper than the perceived lack of resources. The Advisory Committee had recommended that every effort should be made to accommodate the cost of disposing of the appeals backlog from within existing resources, that proposals for the 2006-2007 programme budget should be fully justified and that the calls for a linkage between administration of justice and personal responsibility and accountability should be addressed.

44. The Advisory Committee took a comprehensive approach to the issue of administration of justice, encompassing bodies such as UNAT, the Office of the Ombudsman, the Office of the Under-Secretary-General for Management, the Office of Human Resources Management and the Office of Legal Affairs. It also wanted a better insight into the

operations of the justice systems of other organizations and entities. Further information would be provided during informal consultations.

45. **Mr. Berti Oliva** (Cuba) said that the reasons for the delay in issuance of the report of the Secretary-General (A/59/706) were apparently related to the current focus on the establishment of the new Department of Safety and Security. He wondered why the Advisory Committee had not asked the Secretariat for additional information earlier and why the Secretariat had failed to provide it.

46. **Ms. Taylor Roberts** (Jamaica), speaking on behalf of the Group of 77 and China, asked the Secretariat to clarify the assertion that the report had been issued late because the proposed programme budget outline must first be reviewed to identify resources that could be redeployed to meet the needs of the system of justice, thus maintaining zero real growth. She had understood that General Assembly mandates must be financed unless there was a good reason not to do so.

47. **Ms. Lock** (South Africa) asked whether the Secretariat could also clarify its pursuit of zero budget growth in the light of her understanding that in its consideration of the proposed programme budget outline for 2006-2007, the Committee had been considering merely indicative information.

48. **Ms. Axenidou** (Senior Legal Adviser in the Office of the Under-Secretary-General for Management) said that she was unfortunately not an expert in budget matters, but could confirm that once the proposed programme budget outline had been adopted in December 2004, a review had been launched to identify redeployable resources so as to avoid requesting additional appropriations for the system of justice.

49. **Ms. Lock** (South Africa) said that she was still confused, since it had been her understanding that any resource requirements for the administration of justice should have been incorporated automatically into the proposed programme budget outline. Perhaps a member of the Programme Planning and Budget Division could be asked to clarify the matter, as that Division had confirmed that the proposed programme budget outline was merely indicative.

50. **Mr. Elji** (Syrian Arab Republic) agreed that the proposed programme budget outline was merely

indicative. There was no legislative mandate to enforce zero growth. In fact, zero growth had not been implemented, as the budget had grown by 30 per cent between 2002 and 2005 because of new legislative mandates. He supported the request of the representative of South Africa for a member of the Programme Planning and Budget Division to clarify the matter.

51. **The Chairman** said that he would communicate the Committee's concerns about the content and late issuance of reports on the administration of justice at the United Nations to senior Secretariat officials.

Other matters

52. **Mr. Elji** (Syrian Arab Republic), referring to the previous day's informal consultations on conditions of service and compensation for officials other than Secretariat officials, said that it was unfair for members of the International Court of Justice and judges of the International Criminal Tribunals to be paid less than registry or prosecution staff, some of whom had salaries equivalent to that of an Under-Secretary-General or Assistant Secretary-General. In any national court system, judges were paid salaries commensurate with their responsibilities and to guarantee their impartiality.

53. He wished to point out that the large number of participants in the current session of the Commission on the Status of Women was placing huge pressures on the Secretariat facilities and causing inconvenience for the Organization's staff and for delegations. He hoped that the Secretariat staff responsible for planning the session and for safety and security would explain to the Committee why they had allowed the building to become so crowded. He was also concerned at the several different types of security pass issued to the attendees and at the prospect of having to evacuate such large numbers in the event of an emergency.

The meeting rose at 11.40 a.m.