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Chairman: Mr. Bródi (Hungary)
*Chairman of the Advisory Committee on Administrative
and Budgetary Questions:* Ms. McLurg

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The meeting was called to order at 10.15 a.m.

Agenda item 130: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/63/506, A/63/558 and A/63/595)

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1. **Ms. Van Buerle** (Director, Programme Planning and Budget Division) introducing the report of the Secretary-General on revised estimates relating to the budget of the International Criminal Tribunal for Rwanda for the biennium 2008-2009 (A/63/506), said that, since the approval of that Tribunal's budget for the biennium, two new developments had led to a revision of the trial schedule for 2009 and to a need for additional resources. First, three at-large fugitives had recently been apprehended. Second, the trial schedule for 2009 had been revised, and differed from the schedule available during the preparation of the budget for 2008-2009.

2. Since June 2007, the International Criminal Tribunal for Rwanda had filed applications under rule 11 bis of the Rules of Evidence and Procedure for the cases of four detainees and one fugitive to be referred to Rwanda for trial. However, the Trial Chambers had already rejected the referral of three of the four cases, and the referral of the remaining two cases was also likely to be rejected. Accordingly, the Tribunal's workload would not be reduced during the biennium 2008-2009 as originally expected. The rejection of the applications for referral would also have implications for the 13 indicted fugitives currently at large, and, in addition, the previously successful referral of a case to the Netherlands had subsequently been revoked because that country's courts had indicated that they had no jurisdiction to try it. The Tribunal would probably therefore be writing judgements and conducting trials in 17 cases involving 30 accused persons during 2009.

3. The initial appropriation for the International Criminal Tribunal for Rwanda for 2008-2009 had assumed a gradual phasing-out of the functions attaching to 339 posts in the first half of 2009. However, given that, under the revised trial schedule, the level and pace of trial activity up to the third quarter of 2009 would be likely to remain at 2008 levels, the Tribunal would require the continuation of the functions of the posts concerned until 30 September 2009. As the report indicated, the additional requirements for the Tribunal for the biennium 2008-2009 were \$28,851,100 gross (\$26,959,100 net), or \$30,190,700 gross (\$28,182,500 net) after recosting to take account of the adjustments resulting from the first performance report. The additional requirements derived from the extension of the terms of judges, increased general temporary assistance in lieu of posts earmarked for abolition, defence counsel fees, travel, rental of fixed-wing aircraft, and supplies and materials.

4. Introducing the first performance report of the International Criminal Tribunal for Rwanda for the biennium 2008-2009 (A/63/558), she indicated that changes to budgetary assumptions for the biennium 2008-2009 would result in net additional requirements of \$6,948,000, as a result of the impact of changes in inflation assumptions and adjustments to standard salary costs, partially offset by reduced requirements due to changes in exchange rates. The annex to the report compared the current budgetary assumptions for the Tribunal with the initial appropriation. Taking into consideration the revised estimates (A/63/506) and the performance report (A/63/558), the Assembly was invited to approve a revised appropriation for the biennium 2008-2009 of \$305,378,600 gross (\$282,597,100 net) for the Special Account for the International Criminal Tribunal for Rwanda.

5. Introducing the report of the Secretary-General on revised estimates relating to the budget of the International Tribunal for the Former Yugoslavia for the biennium 2008-2009 (A/63/513), she said that two developments had had an impact on the Tribunal's trial schedule, resulting in a need for additional resources. First, two of the four fugitives at large had been apprehended. Second, the trial schedule for 2009 had been revised to reflect changes in the completion dates of a number of first-instance trials, and differed from the schedule available during the preparation of the budget for 2008-2009. Although trial activity had

originally been forecast to decrease in the second half of 2009, it was expected that the apprehending of the fugitives would lead to the Tribunal conducting trials and writing judgements in 11 cases involving 27 accused persons during 2009. Based on the revised trial schedule, the Tribunal took the view that there would be no decrease in the level of trial activity during 2009.

6. The initial appropriation for the International Tribunal for the Former Yugoslavia for 2008-2009 had assumed a gradual phasing-out of the functions attaching to 258 posts in the second half of 2009. However, given the increase in its trial schedule and workload, the Tribunal would require the continuation of the functions of those posts until 31 December 2009. The additional requirements for the Tribunal for the biennium 2008-2009 were \$13,117,900 gross (\$11,404,700 net), or \$15,548,100 gross (\$14,455,500 net) after recosting to take account of the adjustments resulting from the first performance report. The additional requirements derived from extension of the terms of judges, increased general temporary assistance in lieu of posts earmarked for abolition, defence counsel fees and travel.

7. Introducing the first performance report of the International Tribunal for the Former Yugoslavia for 2008-2009 (A/63/559), she indicated that the increase in resources of \$11,404,700, net of staff assessment, resulted from changes in exchange rates and inflation rates, and adjustments to standard salary costs. The annex to the report compared the current budgetary assumptions for the Tribunal with the initial appropriation. Taking into consideration the revised estimates (A/63/513) and the performance report (A/63/559), the Assembly was invited to approve a revised appropriation for the biennium 2008-2009 of \$376,232,900 gross (\$342,332,300 net) for the Special Account for the International Tribunal for the Former Yugoslavia.

8. Introducing the report of the Secretary-General on revised estimates arising in respect of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the International Tribunal for the Former Yugoslavia (A/62/809), she recalled that, by its resolution 1800 (2008), the Security Council had decided that the Secretary-General could appoint, within existing resources, additional ad litem judges over the statutory maximum of 12, at the request of the President of Tribunal, in order to conduct additional trials and thereby accelerate the pace of trial

activity during 2008. The report reflected the projected temporary increase in the number of ad litem judges during the course of 2008 and the related resource requirements. Although every effort would be made to meet the costs from within the current appropriation, actual costs related to the appointment of the additional ad litem judges would only be reported in the context of the second performance report for the biennium 2008-2009, in the latter part of 2009.

9. **The Chairman** recalled the introduction before the Committee, at its 32nd meeting of the sixty-second session, of the report of the Secretary-General on a comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/62/681) and the related report of the Advisory Committee (A/62/734), and, in addition, the reference in the report of the Secretary-General in question to the report of the International Civil Service Commission for 2007 (A/62/30 and Corr.1). He also recalled the introduction before the Committee, at its 7th meeting of the current session, of the financial reports and audited financial statements for the period ended 31 December 2007 and reports of the Board of Auditors on the Tribunals (A/63/5/Add.11 and Add.11/Corr.1 and Add.12).

10. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the report of the Advisory Committee on the financing of the International Tribunals (A/63/595), said that it covered the financial reports and audited financial statements for the period ended 31 December 2007 and reports of the Board of Auditors on the Tribunals (A/63/5/Add.11 and Add.11/Corr.1 and Add.12); the reports of the Secretary-General on revised estimates relating to the budgets of the Tribunals for the biennium 2008-2009 (A/63/506 and A/63/513); and the first performance reports of the Tribunals for the biennium 2008-2009 (A/63/558 and A/63/559).

11. The Advisory Committee's observations on the reports of the Board of Auditors were self-explanatory, and required no further comment. With respect to the performance reports, the Advisory Committee recommended approval of additional requirements for the current biennium resulting from changes in exchange rates and adjustments to inflation assumptions and standard costs.

12. The revised estimates for the Tribunals reflected the additional workload caused by a number of developments since the approval of the budgets for the current biennium, such as the arrest of fugitives. In addition, the complexity of proceedings and a number of external factors had caused some of the ongoing trials to fall behind the planned schedule. Both Tribunals must consequently plan for additional trials and longer ongoing trials, with trial activity forecast to remain at 2008 levels during much of 2009.

13. The impact on the Tribunals' completion strategies would be considerable, as downsizing during the second half of the biennium 2008-2009 had originally been expected. The revised estimates provided additional resources for the continuation of functions earmarked for abolition during 2009, defence counsel fees, honorariums for judges, travel costs and other operating expenses. The recosted additional requirements were \$30,190,700 for the International Criminal Tribunal for Rwanda and \$15,548,100 for the International Tribunal for the Former Yugoslavia, with the difference in the additional amounts being accounted for by the difference in completion strategies. The budget approved for the International Criminal Tribunal for Rwanda had been established on the basis of a more accelerated completion strategy, anticipating a faster downsizing from the start of 2009, whereas that approved for the International Tribunal for the Former Yugoslavia had provided for the abolition of some posts only from mid-2009. Taking into account the recosting of the additional requirements, the Advisory Committee recommended approval of the Secretary-General's proposed additional appropriations.

14. A continuing cause of concern was the difficulty in recruiting and retaining staff in the context of the impending closure of the Tribunals. The Board of Auditors had also commented on that situation. Notwithstanding the difficulties, the Advisory Committee emphasized the need to maintain staff levels adequate to ensure the successful completion of the mandate of the Tribunals and recommended that the Tribunals should intensify their efforts in that regard.

15. **Mr. Cazalet** (France), speaking on behalf of the European Union, expressed disappointment that so many important agenda items were being introduced after the originally scheduled end of the main part of the session, and with so few days remaining before the forecast new end date, making it unlikely that they

would receive the in-depth consideration that they deserved.

16. Since their establishment, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia had embodied the international community's drive to ensure that perpetrators of crimes abhorrent to humanity should not escape justice or enjoy impunity. The European Union applauded the efforts of the staff of both of the Tribunals to adhere to their completion strategies, and welcomed the non-financial incentives established to retain staff. However, it was important for the Tribunals to have the resources needed to adhere to the completion strategy deadlines determined by the Security Council. Management of those resources should be efficient and transparent.

17. While the European Union was concerned at the emphasis of matter paragraphs in the reports of the Board of Auditors, it had noted that they referred to after-service health insurance liabilities, an issue which should be addressed under the appropriate agenda item. Finally, recalling the presentation of the financial situation of the Organization made by the Under-Secretary-General for Management at the Committee's 13th meeting, the European Union emphasized that payment of assessed contributions in full, on time and without conditions was a fundamental duty of the Member States.

18. **Mr. Ndabarasa** (Rwanda), speaking on behalf of the Group of African States, said that the Group, taking into account the difficulties facing the International Criminal Tribunal for Rwanda in connection with uncompleted cases and staff retention, and considering the additional requirements for the biennium 2008-2009, the justifications provided and the recosting performed, supported the approval of the resources requested, as recommended by the Advisory Committee.

19. Noting that the Tribunal had realized significant achievements in connection with its mandate by ensuring the arrest and trial of some of the most notorious genocide suspects, by gaining the cooperation of an increasing number of countries and by combating the culture of impunity, the Group looked forward to the forthcoming conclusion of the military trial, which would constitute a further major achievement.

20. Recalling the provisions of Security Council resolution 1503 (2003) regarding the transfer to national jurisdictions, including Rwanda, of cases which were not completed within the respective deadlines for trials and appeals and which related to intermediate- and lower-rank accused, as well as the requirement for the Tribunal to establish a detailed strategy in that regard, the Group believed that the Tribunal should conclude its work in a timely and orderly manner and begin promptly the transfer of cases and convicts to national jurisdictions. Financing of the Tribunal beyond 2010 was not an option.

21. The transfer of cases to Rwanda was essential, as the crimes falling within the Tribunal's mandate had been committed there, mostly by Rwandans and against fellow Rwandans; the evidence and witnesses used by the Tribunal had come from there; and the administration of justice by the Tribunal should be especially visible there. Having visited the country on several occasions to verify its readiness and willingness to assume the Tribunal's outstanding caseload, the Prosecutor and Registrar had been satisfied that Rwanda's judicial institutions were sufficiently prepared. The Group hoped for a successful conclusion of the completion strategy in 2010 with no adverse effect on current, pending or future cases.

22. **Ms. Pham** (United States of America) said that the United States had been a leading financial and political supporter of the International Tribunals. Her delegation supported the recommendations of the Advisory Committee, as the provision of additional resources would enable the Tribunals to take on a larger workload in 2009 with as little deviation as possible from their completion strategies. The Tribunals should operate at maximum capacity and efficiency to expedite trials so that they could meet their timelines for completion and still deal with defendants who might be taken into custody in the future.

23. Recalling Security Council resolution 1800 (2008), which authorized the Secretary-General to appoint, within existing resources, additional ad litem judges for the International Tribunal for the Former Yugoslavia in order to execute the Tribunal's completion strategy, she endorsed the Advisory Committee's stated expectation that such appointments would be implemented from within existing resources.

24. Her delegation was open to suggestions on ways to ensure that the Tribunals were able to retain key staff in the final periods of their operations, but had serious reservations about the proposals that had been put forward. None of them seemed to be limited to the specific needs of the Tribunals, and all failed to target the specific skills and abilities that would be required. They also risked setting a precedent that was not provided for in the common system. With respect to the proposed retention bonus, it appeared that the information provided by the International Civil Service Commission in its report for the year 2007 (A/62/30 and Corr.1) continued to be valid, and consequently, that the Commission's conclusions — that such bonuses would be inappropriate, and that the existing contractual framework and non-monetary incentives should be used instead — also remained valid.

25. **Mr. Berti Oliva** (Cuba), recalling that the Security Council, in its resolution 1800 (2008), had decided that the Secretary-General could appoint additional ad litem judges at the International Tribunal for the Former Yugoslavia within existing resources, and that the report of the Secretary-General on revised estimates arising in respect of that resolution (A/62/809) had also indicated that every effort would be made to meet the costs arising from the appointment of the additional ad litem judges within the current appropriation for 2008-2009, said that the Committee was witness to a further encroachment by the Security Council on the prerogatives of the General Assembly, which alone had the authority to allocate resources. Furthermore, he had been surprised that the Advisory Committee, in paragraph 6 of its related report (A/62/7/Add.38), had simply reflected the matter without comment.

26. **Mr. Quezada** (Chile) said that the staff of the International Tribunals were an important component of international law. Both Tribunals were facing a potential exodus of staff, which might jeopardize full completion of their mandates. Staff retention was important because recruiting new staff members would cost 10 times as much as paying retention bonuses. Tribunal staff expected fair remuneration and career development; the Secretary-General's proposal was a just solution that would seek a balance between the needs of staff members and the Organization's budgetary constraints.

27. The Tribunals were currently dealing with the largest workloads they had faced since their

establishment. The necessary resources should be allocated so that they could complete their mandates as soon as possible. His delegation therefore supported the recommendations of the Advisory Committee to that effect. Maintaining confidence in the international justice system was paramount.

Agenda item 118: Programme budget for the biennium 2008-2009 (*continued*)

Revised estimates relating to the programme budget for the biennium 2008-2009 related to the Rule of Law Unit (A/63/154 and A/63/594)

28. **Ms. Van Buerle** (Director, Programme Planning and Budget Division), introducing the report of the Secretary-General on the revised estimates relating to the programme budget for the biennium 2008-2009 related to the Rule of Law Unit (A/63/154), recalled that, at the 2005 World Summit, Member States had called upon the United Nations to strengthen its activities relating to the rule of law. The General Assembly, in its resolution 62/70, had endorsed the creation of the Rule of Law Coordination and Resource Group and a small substantive unit. The Rule of Law Unit had initially comprised four Professional staff seconded on a temporary basis from the key United Nations actors identified by the Secretary-General in his report on enhancing United Nations support for the rule of law (A/61/636-S/2006/980 and Corr.1). In the present report, the Secretary-General put forward proposals for the Unit to comprise seven new posts to be established effective 1 January 2009 and for related operational resources, which would amount to \$953,800 under the programme budget for the biennium 2008-2009. The resource requirements of the Unit and the functions of the individual posts sought were explained in chapter II of the report and in the annex. Chapter IV detailed the actions sought on the part of the General Assembly.

29. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee on Administrative and Budgetary Questions (A/63/594), said that the Advisory Committee recommended that the staff required for the Rule of Law Unit in 2009 should continue to be provided through secondment from the entities participating in the Rule of Law Coordination and Resource Group. As the chief administrative officer of the Organization, the Secretary-General had the

authority to redeploy human resources within the Secretariat to meet the Unit's needs. The Advisory Committee's position took into account the Secretary-General's original concept of staffing the Unit by drawing on existing staff from key United Nations actors involved in the area of rule of law. That would allow the Unit to benefit from the experience of those entities and would promote a sense of ownership of the process, which would in turn facilitate coordination.

30. The Advisory Committee discouraged the practice of proposing new posts for existing functions in the middle of the biennium, as symptomatic of a lack of planning and budgetary discipline. Should it be determined that additional staff were required for the Unit, a request could be made in the proposed programme budget for the biennium 2010-2011.

31. **Mr. Gonnet** (France), speaking on behalf of the European Union, said that the European Union supported the Rule of Law Coordination and Resource Group; the voluntary contributions made or announced by several of its member States were evidence of that support. The Rule of Law Unit played a vital role in coordinating the functioning of the Group, and therefore the European Union supported the proposals set out in the Secretary-General's report (A/63/154).

32. **Mr. Gürber** (Switzerland), speaking also on behalf of Liechtenstein, said that the two delegations regretted that the matter in question was being introduced after the date on which the work of the Fifth Committee was to have ended and that the report of the Advisory Committee had been made available only on the previous working day. Such time constraints prevented Member States from effectively managing the budget process.

33. The Rule of Law Unit played a critical role in ensuring that the United Nations system collectively addressed rule-of-law issues in the most strategic, efficient and effective manner possible. If given proper resources, it could rationalize United Nations capacities in that area and could serve as a Headquarters focal point for collecting and streamlining a wealth of knowledge and experience, thus minimizing duplication and enhancing opportunities for synergy. The Unit was, however, underresourced. Switzerland and Liechtenstein challenged the Advisory Committee's analysis regarding the benefits of secondment of specialized staff from relevant entities. While such secondment

could promote a sense of ownership and facilitate coordination among partner entities, it was unsustainable in the long term. That would affect the continuity, and thus the quality, of the work done by the Unit.

34. **Mr. Yamada** (Japan) said that he fully supported the Advisory Committee's recommendations. It was inopportune to submit proposals for posts during an off-budget year. His delegation was therefore reluctant to allocate additional resources to the Unit during the current biennium.

35. Since the Rule of Law Unit served as the focal point for system-wide coordination on the rule of law and for enhancing the engagement of various United Nations entities in that area, the most appropriate way to finance the Unit would be through cost-sharing among Secretariat departments and funds and programmes. Moreover, secondment of staff from different entities had intrinsic merit.

Agenda item 119: Programme planning (*continued*)
(A/C.5/63/L.4)

Draft resolution A/C.5/63/L.4: Programme planning

36. *Draft resolution A/C.5/63/L.4 was adopted.*

Agenda item 127: Administrative and budgetary coordination of the United Nations with the specialized agencies and the International Atomic Energy Agency (*continued*) (A/C.5/63/L.3)

Draft decision A/C.5/63/L.3: Budgetary and financial situation of the organizations of the United Nations system

37. *Draft decision A/C.5/63/L.3 was adopted.*

The meeting rose at 11.30 a.m.