As a member of a species also fearing imminent extinction, I would prefer to see Professor Glennon return to his earlier, more helpful way of addressing unlawful conduct.

TO THE EDITORS IN CHIEF:

W. Michael Reisman's Editorial Comment *On Paying the Piper: Financial Responsibility for Security Council Referrals to the International Criminal Court* (99 AJIL 615 (2005)) refers to the establishment of the ad hoc criminal tribunals, saying that the Security Council had "simply, but quite effectively, imposed the costs on the General Assembly under Charter Article 17, though not without some protests by Assembly members."

It might be of interest to recount that the financing of the International Criminal Tribunal for the Former Yugoslavia did indeed raise constitutional questions and resulted in some rather unusual language in General Assembly resolutions concerning the role of the Secretariat and the Security Council.

In the draft Statute of the Tribunal he presented to the Security Council, UN Doc. S/25704 (1993), the secretary-general proposed a provision on financial arrangements (Art. 32) that simply stated: "The expenses of the International Tribunal *shall* be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations" (emphasis added). The explanatory introduction to the article essentially repeated the language of the proposed article. The Security Council adopted the Statute without change.

But when the matter then went to the Fifth (Administrative and Budgetary) Committee of the General Assembly for the necessary budgetary arrangements, members voiced substantial annoyance at the way the matter had been handled by the Secretariat (and, by implication, the Council). Given that the Tribunal was an enforcement measure decided by the Security Council under Chapter VII, why finance it through the "regular budget," which meant one scale of assessments, and not the "peace-keeping operation budget," which would have meant another scale with higher assessments for the major contributors? On what basis was the Council attempting to usurp the powers of the General Assembly in deciding on the mode of financing, thus the apportionment of expenses among the members?

The Secretariat, in the light of requests for clarification, circulated a note, UN Doc. A/47/1002 (1993), which explained that the Secretariat had been expected by the Council to prepare a complete draft Statute—no "blank spaces" to be filled in later—including a provision on financial arrangements. Leaving the matter open (i.e., for General Assembly consideration) would not have facilitated the object of the exercise: the effective and expeditious establishment of the Tribunal. Moreover, the note listed the four modes of financing that the Secretariat had considered when preparing the draft Statute: voluntary contributions, expenses borne according to an ad hoc scale of assessments similar to those drawn up for peacekeeping operations, expenses borne through the regular budget, and any combination of the foregoing. The Secretariat then defended its choice of the regular budget, dismissing voluntary contributions as counter to the object of speedy and effective establishment of the Tribunal and rejecting the argument that the Tribunal should be compared to a peacekeeping operation when in fact it was a subsidiary organ of the Council.

As to the legal issue, the Secretariat concluded that in the context of preparing a comprehensive Statute to be implemented effectively and expeditiously, "there was no legal bar to the Security Council reaching its own conclusions as to the appropriate financing . . . and including a provision on the matter in the Statute which it adopted." Finally, the Secretariat, in an attempt to meet the concerns of the Assembly, concluded that "[n]evertheless, such conclusions are without prejudice to the authority of the General Assembly under the Charter to consider and approve the budget of the Organization and to apportion the expenses of the Organization among its Members."

Having been called upon to explain how that provision happened to appear in a Security Council Chapter VII–approved Statute, the Secretariat referred to it as a "conclusion" on the part of the Council, which was of course without prejudice to the Assembly's powers concerning the budget and apportionment. Was it then a "recommendation" of the Council to the Assembly even while appearing in a Statute otherwise binding on all states?

The Secretariat's note did not, apparently, convince the Fifth Committee. On September 14, 1993, and again on July 20,1995, the General Assembly adopted resolutions (GA Res. 47/235 and 49/242B) that included the following admonishment, not to the Council, but to the Secretariat: "*The General Assembly . . . [e]xpresses concern* that advice given to the Security Council by the Secretariat on the nature of the financing of the International Tribunal did not respect the role of the General Assembly as set out in Article 17 of the Charter."

The impression is left that the members of the Security Council, including most of the major contributors, had been misled by the Secretariat about the constitutional role of the Assembly on matters of financing.

In any event, for the Statute of the Rwanda Tribunal, its drafters (not the Secretariat) evidently decided to move with caution with regard to the Council's appearing to impinge on the Assembly's financial prerogatives. The provision adopted by the Council for that Statute (Art. 30) simply provided that "[t]he expenses of the . . . Tribunal . . . shall be expenses of the Organization in accordance with Article 17 of the Charter." While voluntary contributions were thus to be excluded as the main source of financing, other financial arrangements were left entirely to the Assembly.

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