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**BUDGETARY AND OTHER MATTERS RELATING TO THE INTERNATIONAL COURT OF
JUSTICE
(Item 12.d)**

- Note prepared by the Court concerning "Implications of the General Assembly's Resolution 61/262 in regard to certain provisions of the Statute of the Court"
- Outline of the International Court of Justice's budget submission for the 2008-2009 biennium

**Implications of General Assembly resolution A/RES/61/262 in regard
to certain provisions of the Statute of the Court**

I. Introduction

1. On 4 April 2007, at its 93rd meeting, the General Assembly passed, without a vote, resolution A/RES/61/262 on “Conditions of service and compensation for officials other than Secretariat officials: Members of the International Court of Justice (ICJ) and judges and *ad litem* judges of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda” (Ann. 1). Informed of the draft resolution, the President of the Court sent a letter to the President of the General Assembly, on 3 April 2007 (Ann. 2). In that letter, the President expressed the Court’s deep concern that the proposed action regarding emoluments would create inequality among judges, and requested that the Assembly to consider postponing action on the text to a later date. The President of the General Assembly distributed the letter from the President of the Court to all Permanent Representatives and Permanent Observers to the United Nations on 4 April 2007, before the adoption of the resolution.

It is noteworthy that, during the session, several Representatives intervened in order to express their concerns about the issues raised in the letter from the President.

2. On 8 May 2007, the President of the Court addressed a letter to the Secretary-General drawing his attention to the serious legal consequences of the adoption of the resolution for judges *ad hoc* sitting in the cases pending before the Court and those called upon to sit in future cases. The President underlined that by virtue of Article 31, paragraph 6, of the Court’s Statute the judges *ad hoc* must be treated on an equal basis with the permanent judges, as well as *inter se*. The President stressed with respect to a pending case that the levels of remuneration of the judges *ad hoc* would be unequal as a consequence of the adoption of resolution 61/262, because one of the *ad hoc* judges was appointed prior to the adoption of the resolution while the other *ad hoc* judge was appointed after.

3. On 19 April 2007, the Registrar of the Court had addressed a letter to the Office of Human Resources Management (OHRM) with a copy to the Legal Counsel of the Organization. In his letter, the Registrar addressed different issues of concern and asked for confirmation as to whether the compensation to be paid to judges *ad hoc* for each day on which they performed their duties corresponded to 1/365th of the annual salary of permanent judges as fixed by resolution 61/262.

By a letter dated 1 June 2007, the Assistant Secretary-General of the OHRM provided the Registrar with certain information on the implementation of the resolution, but did not refer to the question of the compensation to be paid to *ad hoc* judges.

4. The aim of this note is to present certain legal considerations which the Members of the Court would like to bring to the attention of those who will have to address the issues related to their conditions of service and compensation, with a view to ensure future co-operation in this field.

Before turning to an analysis of the situation created by the adoption of the aforementioned resolution, it would be appropriate to recall briefly the position of the Court within the United Nations system and to provide some indications regarding its activities.

A. The International Court of Justice within the United Nations system

5. The International Court of Justice is not just one of the six principal organs of the United Nations, it is its principal judicial organ. Its activities are governed by the Charter and by its Statute, which forms an integral part of the Charter. The mission of the Court is to hear the contentious cases referred to it by States in accordance with its Statute. In so doing, it helps maintain international peace and security, guaranteeing the pacific settlement of disputes between States, as provided in Articles 1 and 2 of the Charter. The Court also responds to requests for advisory opinions submitted to it by authorized organs or specialized agencies of the United Nations, thus contributing to preventive diplomacy and the development of international law.

(i) The Court: principal judicial organ of the United Nations

6. By virtue of Article 7 of the Charter (see Ann. 3), the International Court of Justice is one of the six principal organs of the United Nations. As such, the Court pursues the goals of the United Nations independently of the five other principal organs, particularly of the United Nations Secretariat.

As the principal judicial organ, the Court must seek to sustain the confidence of the greatest possible number of States. For each election, the General Assembly and the Security Council are required to bear in mind “that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured” (Art. 9 of the Statute, see Ann. 3). In practice this principle has found expression in the distribution of membership of the ICJ among the principal regions of the globe: Africa, 3; Latin America and the Caribbean, 2; Asia, 3; Eastern Europe, 2; Western Europe and other States, 5. This composition is the statutory guarantee of representation of the Member States of the United Nations; this is duly reflected in the working methods of the Court.

7. It should be noted that in all the cases brought before the Court, with the exception of the limited number of disputes heard by one of the Court’s Chambers, each judge takes part continuously and on an equal standing throughout all of the stages of the proceedings. In this respect, its working methods thus differ from those of other international judicial organs, which use systems such as that of the judge-rapporteur or have frequent recourse to limited Benches. The Court being the only international judicial institution with general jurisdiction and a truly global vocation, it is absolutely indispensable for the principal existing legal systems to be represented at each stage of its decision-making process.

(ii) The autonomy of the Court

8. By virtue of Article 92 of the Charter and Article 21, paragraph 2, of its Statute (see Ann. 3), the Court, as principal judicial organ, benefits from a unique degree of autonomy not only in its judicial functions but on the administrative level as well.

Thus, the Court is assisted by a Registry, answerable to the Court alone: the Court itself elects the Registrar and Deputy-Registrar, recruits Registry staff members and organizes the Registry. Under Article 12 of the Rules of Court, the President of the Court supervises the administration of the Court. Unlike the other judicial bodies in the system, the Court thus has significant administrative tasks in addition to its eminent judicial duties. This twofold nature of its responsibilities also characterizes the Registry. The Registry serves important functions in the administration of justice, specifically bearing responsibility for the Court’s external relations, for contacts with parties to cases, and for administrative and preparatory case management; it also advises and assists the Court in its processing of cases. At the same time the Registry assumes a

number of administrative responsibilities usually borne by the secretariats of international organizations.

9. The Court's uniqueness is further reflected in two other ways: first, unlike the other principal organs of the United Nations, the Court has only two official languages, in which it actually works at all times; secondly, unlike the other organs, it has its seat at The Hague.

B. Activity of the Court

10. In April 2006 the Court celebrated its sixtieth anniversary. Looking just at contentious proceedings, it can be observed that the Court handed down ninety-two (92) judgments and forty (40) orders in respect of the indication of provisional measures in its first 60 years. It is noteworthy that thirty-eight (38) of the ninety-two (92) judgments rendered by the Court were handed down in the first 30 years and fifty-four (54) in the following 30 years. The Court notes the patent increase in its work over time: between April 1986 and April 1996 thirteen (13) judgments were rendered and between April 1996 and April 2006 thirty (30), that is to say nearly three times as many. Moreover, judgments delivered in the last decade account for approximately one third of the total number of judgments handed down since the founding of the Court.

The same observation can be made about the orders in respect of the indication of provisional measures made by the Court since 1986. Nine (9) orders in respect of the indication of provisional measures were made between April 1986 and April 1996 and double that number, or eighteen (18) orders, between April 1996 and April 2006. At the same time, nearly one half of the total number of such orders since the founding of the Court were handed down in the last ten years.

11. As can be observed, the ten years leading up to its sixtieth anniversary saw the Court busier than ever before. It should be added that this activity should obviously not be measured solely by the number of decisions handed down but also by taking account of the growing complexity, both factual and legal, of the cases involved. The unfailingly reaffirmed confidence which the international community has placed in the Court leads us to believe that it will remain very busy in years to come.

12. The Members of the Court would like to point out in this regard that, given its pre-eminent role and ever-increasing activity, the Court, with a budget equalling less than 1 per cent of the total United Nations budget, indisputably represents an exceptionally cost-effective means for peacefully resolving disputes.

13. It would now be appropriate briefly to summarize the history of annual emoluments of Members of the Court since 1946 in order to place the consequences of resolution 61/262 in their historical context.

II. Summary of the annual emoluments of Members of the Court from 1946 to 2007

14. The emoluments of Members of the Permanent Court of International Justice (PCIJ) were originally fixed in terms of the guilder, which was the equivalent of two gold francs, hence also linked to the gold-based Swiss franc. The Executive Committee of the Preparatory Commission of the United Nations recommended that the attention of the General Assembly be called to the desirability of ensuring that the real value of the emoluments of the ICJ's judges was not less than those of the judges of the Permanent Court of International Justice during the period 1936-1939, i.e., 45,000 guilders per annum (the Deputy Secretary-General and the

Under-Secretary-General (USG) of the League were at the time paid the equivalent of some 25,500 guilders per annum).

15. In 1946, by its resolution 85 (1), the General Assembly set the annual emoluments at 54,000 guilders, equivalent to \$20,377, and the net salary of United Nations Principal Directors at \$10,000. In 1949, exchange rate changes, coupled with a 15 per cent devaluation of the guilder, reduced the dollar value to \$14,211, approximately equivalent to the salary and allowances of a Principal Director.

16. As from 1950, the emoluments of Members of the Court were expressed in dollars, and from 1950 to 1973 were equivalent to the net salary of the Executive Head of a Specialized Agency or Executive Heads of the Secretariat in Geneva. The judges' salaries were fixed at:

- \$20,000 per annum from 1950 to 1961;
- \$25,000 per annum from 1962 to 1967;
- \$30,000 per annum from 1968 to 1971;
- \$35,000 per annum in 1972 and 1973.

17. In 1974, the Secretary-General having recommended aligning judges' salaries with those of USGs (on the assumption that judges would spend half their time in The Hague)¹, the General Assembly raised judges' emoluments to \$45,000 (the net remuneration of a USG in The Hague would have been approximately \$46,000, excluding pension contributions)². In 1976, judges' emoluments were raised to \$50,000.

18. In 1977, a cost-of-living system was introduced (COL): Members of the Court were to receive, in addition to their base salary, an annual cost-of-living supplement which, based on the arithmetical average of post adjustment classifications for 51 locations around the world and in The Hague, would be adjusted in January of each year in proportion to upward or downward changes of 5 per cent or more in the cost of living. As a result, judges' emoluments were raised in 1977 to \$53,000 (\$50,000 + \$3,000) (the remuneration of a USG in Geneva was \$66,316, excluding pension contributions).

19. From 1977 to 1981, the base salary remained at \$50,000, but the COL supplement was adjusted to \$9,000 in 1978 (total increased amount: \$59,000), to \$16,500 in 1979 (total increased amount: \$66,500) and to \$24,500 in 1980 (total increased amount: \$74,500).

20. In 1981, the base salary was raised to \$70,000 and the COL supplement fixed at \$12,000, making total emoluments of \$82,000. In 1986, the base salary was again raised to \$82,000 and the COL supplement fixed at \$3,000, making total emoluments of \$85,000.

21. In 1988, the COL supplement was fixed at \$13,800, making total emoluments of \$95,800 (\$82,000 + \$13,800).

¹A/C.5/1516.

²Resolution 3193B (XXVIII).

22. As of January 1989, a floor/ceiling mechanism to protect emoluments in local currency terms against a weakening or strengthening of the dollar was introduced. In 1990, the COL supplement was raised to \$19,750, making total emoluments of \$101,750 (\$82,000 + \$19,750).

23. In 1991, the cost-of-living supplement was eliminated, as not being appropriate for judges sitting permanently in The Hague. Judges' emoluments were fixed at \$145,000 in view of the need to maintain the linkage with salaries of the Executive Heads of Specialized Agencies, and given that the judges were from that date permanently present in The Hague. On the lines of the mechanism introduced for staff by the International Civil Service Commission, a floor/ceiling mechanism was introduced to protect judges' emoluments against variations in exchange rates. In 1999, their emoluments were raised to \$160,000.

24. From 2003 to 2007, in view of the weakening of the dollar, the floor/ceiling exchange rates were kept at the 2002 levels (€1.0272 and €1.1128 respectively).

In 2005, as an interim measure, the General Assembly increased the emoluments by 6.3 per cent, raising them from \$160,000 to \$170,080, to take account of a 6.3 per cent increase in the salaries of senior officials in the Secretariat (the Secretary-General had proposed an additional increase of 4.35 per cent to take into account the increase in the cost of living in the Netherlands).

Since January 2005, Members of the Court have received a monthly emolument at the floor of €14,559.

25. It can thus already be seen that in the early years the Court was treated, so far as the salary of its Members was concerned, as befits a principal organ of the United Nations. Gradually, however, the position has deteriorated and the link with salaries of Executive Heads in Geneva has been lost. For a period the position of the judges was deemed to be aligned with USGs. However, that was based on the assumption that judges would spend only half their time in The Hague. Now that Members of the Court are present in The Hague for the greater part of the year in order to examine and adjudicate the numerous cases brought before the Court, that alignment should be reconsidered.

III. The resolution (A/RES/61/262) adopted by the General Assembly on 4 April 2007

26. Resolution 61/262 adopted on 4 April 2007 by the General Assembly fixes different salaries and retirement benefits for Members of the Court, depending on their date of election.

27. In paragraph 7 of its resolution 61/262, the General Assembly decided that, with effect from 1 January 2007, the annual salary of the Members of the International Court of Justice would comprise an annual net base salary fixed at \$133,500 per annum and post adjustment per index point equal to 1 per cent of the net base salary, to which the post adjustment multiplier for the Netherlands would be applied. As a result, the floor/ceiling exchange rate mechanism designed to protect judges' salaries from the effects of the dollar's loss of value, which has proved ineffective in light of the substantial depreciation of the dollar against the euro, has been abandoned.

Based on the post adjustment multiplier for the Netherlands applicable as of 1 May 2007 (55.4), the annual salary of a new Member of the Court who started his term of office on 1 January 2007 would be \$207,459, i.e., \$17,288.25 per month. At the United Nations official rate of exchange for the month of May 2007 (€0.732), this would give an annual salary of €151,860, i.e., €12,655 per month.

28. In paragraph 8 of its resolution 61/262, the General Assembly also decided to maintain, as a transitional measure, in keeping with the provisions of Article 32, paragraph 5, of the Statute of the Court (see Ann. 3), the level of annual salary approved in its resolution 59/282 for the current Members of the International Court of Justice “for the duration of their current term of office or until such a time as this amount is overtaken by the application of the revised annual salary system”. The annual salary approved by the General Assembly in its resolution 59/282 is \$170,080.

The Office of Human Resources Management indicated its understanding that paragraph 8 of the resolution ensured the protection of the current level of annual salary expressed in euros of those Members of the Court currently serving their terms of office at the level resulting from the application of the floor exchange rate mechanism. Therefore, the monthly remuneration of Members of the Court elected prior to 1 January 2007 is now frozen at an amount of €14,559 until their term of office ends, or until such a time as this amount is overtaken by the application of the revised annual salary system.

29. In paragraph 10 of its resolution 61/262, the General Assembly further decided to maintain, as an interim measure, the retirement benefits of the Members of the Court at the level resulting from the annual base salary decided in its resolution 59/282.

As the retirement benefit of a Member of the Court is equal to one half of the annual salary, Members of the Court who took up their duties as from 1 January 2001 would receive an annual retirement benefit equal either to \$85,040 (\$170,080/2) or to €87,354 (€14,559 x 12/2)³; for new judges elected after 1 January 2007, based on the new annual base salary, their retirement benefit would appear to be \$66,750 or, at the United Nations official rate of exchange for the month of May 2007, €48,861.

30. As can be seen from the above, the annual salary of Members of the Court will differ considerably depending on their date of election. This situation raises questions of compatibility with the provisions of the Statute of the Court, and in particular with the requirements of the principle of equality underlying the Statute. The lack of equality in the emoluments of judges also has a bearing on pensions, the amount of which generally corresponds to 50 per cent of a judge’s salary after a full nine-year term.

A. General considerations

31. While the International Court of Justice, the principal judicial organ of the United Nations, is fully supportive of the efforts made to enhance the cost-effectiveness of the United Nations, it is deeply concerned about the implications which the recently adopted General Assembly resolution might have for the integrity of the Statute and the Rules of the Court, the misinterpretation of which by the General Assembly might have led to the adoption of resolution A/RES/61/262.

32. The Court does not dispute that the provisions of its Statute attribute certain functions to the General Assembly, such as those provisions governing the election of judges or budgetary

³In response to the Registrar’s enquiries as to which of these two possible interpretations was likely to be adopted, the Office of Human Resources Management expressed its preference for the former. It indicated that, in its opinion, the annual retirement benefit of judges who have served a full nine-year term continues to be linked to the annual remuneration decided by the General Assembly in its resolution 59/282 expressed in dollars and should thus be equal to one half of the annual salary of \$170,080, or \$85,040.

matters, which can be interpreted by the General Assembly⁴. However, the Court considers that matters relating to the proper administration of justice require it alone authoritatively to interpret the Statute.

This is the case when, as with the implementation of the transitional measure referred to above, important issues of equality among permanent judges but also between permanent judges and judges *ad hoc*, or between judges *ad hoc*, are concerned.

B. Equality among Members of the Court

33. The principle of the complete equality between judges, as more fully explained below, is one of the pivotal principles of the system of international adjudication of disputes between States. This principle is reflected throughout the Statute of the Court, which by virtue of Article 92 of the Charter, forms an integral part of the Charter of the United Nations. Article 32, paragraph 5, of the Statute must be interpreted in this perspective. The Court feels that it is its duty, as the principal judicial organ of the United Nations, to draw the General Assembly's attention to potential incompatibilities between resolution A/RES/61/262 and the provisions of the Statute. The General Assembly might wish to consider certain adjustments to the resolution in this respect.

34. The transitional measure contained in paragraph 8 of the resolution draws a distinction between current Members of the Court and those Members elected after 1 January 2007. The General Assembly added this provision to its resolution with a view to complying with the terms of Article 32, paragraph 5, of the Statute for judges currently in office.

However, the Court regrets to note that such a measure, if applied, would result in an inequality between Members of the Court elected before 1 January 2007 and their colleagues elected after 1 January 2007. The latter would have an income substantially below the current remuneration.

35. It is a general principle of law, reflected throughout the Statute and the Rules of Court, that all Members of the Court should sit on terms of complete equality. It should be recalled at this point that the parties appearing before the Court are sovereign States, not individuals. This particular feature explains the importance which the Court attaches to the equal representation of States in the judicial proceedings. As set out in further detail below (paras. 41 *et seq.*), it is therefore absolutely essential for the proper administration of international justice that sovereign States should be assured that the judges they have chosen are sitting on terms of complete equality with the other Members of the Court. The principle of equality between judges is fundamental to ensure that the sovereign equality of States, which underlies the current international legal system, is also upheld in judicial proceedings between them. Equality of judges is a core principle in international inter-State dispute resolution and in particular within the principal judicial organ of the United Nations.

The Member States of the United Nations, enjoying sovereign equality in accordance with Article 2, paragraph 1, of the United Nations Charter, are fully entitled to assume that all the judges of the ICJ, representing the main forms of civilization and the principal legal systems of the world⁵, are sitting in total equality when a dispute between sovereign States is brought before the principal judicial organ of the United Nations. In point of fact, the Court currently has before it 12 cases

⁴Sh. Rosenne, *The Law and Practice of the International Court*, 4th ed., 2006, Vol. I, p. 78.

⁵See Art. 9 of the Statute of the Court, Ann. 3.

involving 13 States from the Group of 77, one Western European State and six Eastern European States⁶.

36. According to Article 3, paragraph 1, of the Rules of Court: “The Members of the Court, in the exercise of their functions, are of equal status (in the French version: ‘sont égaux’), irrespective of age, priority of election or length of service.” This provision confirms that equality of status and income of Members of the Court should be respected. A difference of salary and/or post adjustment between Members of the Court, depending on their election dates, would not be in conformity with that provision which, once more, only reflects a basic statutory principle.

37. This conclusion is fully supported by the drafting history of the Statute of the Permanent Court of International Justice. It was thus considered absolutely essential for the proper administration of international justice and the legitimacy of a court with a global vocation for the principle of the equality of States to be reflected in the composition of the Court. Although Members of the International Court of Justice, like those of its predecessor, are completely independent of their States of origin and sit as individuals, it would be inconceivable for there to be differences in the way in which they are treated.

In the words of Mr. Hagerup, Norwegian member of the Committee of Jurists, entrusted with the preparation of a draft Statute for the Permanent Court of International Justice, in 1920:

“in the domain of law there is one indisputable principle, that of the equality of sovereign states . . . The principle of the equality of States is the Magna Charta of the smaller States and it is an outstanding juridical argument . . . [I]f one tried to introduce an element of inequality into the scheme for the Court of Justice, this scheme would fall to the ground as did the scheme of 1907.”⁷

The League of Nations and the drafters of the Statute were conscious of the fact that any international judicial body in which the principle of equality was not respected would necessarily fail, as had been the case in 1907⁸.

38. The specific issue of the equality of judges with regard to their emoluments was only briefly discussed at the meetings of the Committee of Jurists in 1920, clear as it was at that time that a broad consensus existed on the point. This is illustrated, for example, by the following intervention of Mr. Loder, the Dutch member of the Committee of Jurists who, in 1922, became the President of the Permanent Court of International Justice, recorded thus in the Minutes of the proceedings of the Committee of Jurists: “Mr. Loder drew attention to the difficulties which might arise from the fact that the Assembly would be called upon from time to time to adjust the salaries

⁶From the Group of 77: Argentina, Republic of the Congo, Democratic Republic of the Congo, Colombia, Costa Rica, Djibouti, Republic of Guinea, Honduras, Malaysia, Nicaragua, Singapore, Uganda, Uruguay; from Western Europe: France; from Eastern Europe: Croatia, Hungary, Serbia, Slovakia, Romania, Ukraine.

⁷By this Mr. Hagerup was referring to the tentative creation of a permanent international court at the Second Hague Conference in 1907, Minutes of the proceedings of the Committee of Jurists, 16 June-24 July 1920, 8th Meeting, p. 102.

⁸See Report on the Draft Scheme of the Advisory Committee of Jurists for the establishment of the Permanent Court of International Justice, mentioned in Article 14 of the Covenant submitted to the Council of the League of Nations by the French Representative, Mr. Léon Bourgeois, 3 August 1920. PCIJ, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 23.

of judges. *Two judges sitting at the same time might receive different salaries. This would not be admissible.*⁹

39. The report of the Third Committee of the Assembly of the League of Nations also reflected that position. The report explicitly stated that “[t]o ensure equal position to all the Members of the Court of International Justice, by neutralising the different degrees in which their salaries might be affected by taxation in various countries, the Committee proposes that allowances are to be free of taxation”. The Committee further proposed “that the League of Nations should reimburse the Members of the Court for any taxes which they may have been obliged to pay” in accordance with fiscal laws applied in different countries (Ann. 4)¹⁰.

The resolution of the Assembly of the League of Nations on the salaries of judges clearly establishes that the League of Nations endorsed this recommendation fixing the same salaries and allowances, free of all tax, for all “ordinary judges” (Ann. 5)¹¹.

In 1945, the International Court of Justice was established by the Charter of the United Nations. Article 92 of the Charter states that the new Court should work on the basis of the Statute of its predecessor. Thereby all the fundamental principles underlying the PCIJ Statute were necessarily incorporated into the Statute of the ICJ, including the principle of equality of Members of the Court. In fact, the issue was not raised again.

40. It might be noted that, should resolution A/RES/61/262 and the transitional measure contained within its paragraph 8 be applied as from 1 January 2007, it would be the first time in the history of the Permanent Court of International Justice and the International Court of Justice that Members of the Court would receive different salaries.

C. Equality of *ad hoc* judges

41. The Court is seriously concerned about the consequences of the aforementioned transitional measure not only from the perspective of equality among Members of the Court, but also of that between permanent judges and judges *ad hoc* appointed by States not having a national on the Bench, and between such judges *ad hoc*.

(i) Equality between Members of the Court and *ad hoc* judges

42. It is obvious that the implementation of the transitional measure in question would also entail unequal treatment between Members of the Court elected before January 2007 and *ad hoc* judges nominated after that date. Unambiguously, Article 31, paragraph 6, of the Statute and Article 7, paragraph 2, of the Rules (see Ann. 3), require that *ad hoc* judges shall sit on terms of

⁹Minutes of the proceedings of the Committee of Jurists, 16 June-24 July 1920, 8th Meeting, pp. 196-197; emphasis added by the Court.

¹⁰Salaries of Members of the Court. Report to the Assembly by Mr. H. Lafontaine, PCIJ, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 276; emphasis added by the Court.

¹¹Resolution carried by the Assembly at its 31st and final meeting on 18 December 1920; PCIJ, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 284.

“complete equality” with Members of the Court¹². The rationale is the same as that requiring full equality between Members of the Court.

43. The principle of equality between permanent judges and *ad hoc* judges is illustrated by the method of calculation of their compensation. *Ad hoc* judges receive daily compensation amounting to exactly 1/365th of the net base salary payable to a permanent Member of the Court. It is evident from this method of calculation that the treatment of *ad hoc* judges is aimed at complete equality between Members of the Court and judges *ad hoc*. Any difference in overall treatment is based on a purely objective criterion: the actual days of service for the Court. This matter of principle is also reflected in the Secretary-General’s Report of 1985 on the conditions of service and compensation of the Members of the Court, when the compensation of judges *ad hoc* was reviewed. The Secretary-General recalled at that point that “[the] compensation has always been composed of two elements, described as ‘fee’ and ‘subsistence payment’ and, up to 1980, was so calculated that their sum was equivalent to 1/365 of the annual salary of a Member of the Court. This practice reflects the requirement of ‘complete equality’ expressed in paragraph 6 of Article 31.”¹³ (Ann. 6.)

44. Further, the Court had argued at the time that the cost-of-living supplement was entirely independent of the place where its Members resided or performed their duties and that this should also apply to judges *ad hoc*. This position was endorsed by the Secretary-General in his report to General Assembly dated 22 October 1985 clearly in order to ensure complete equality of judges *ad hoc* and Members of the Court¹⁴.

45. It is further apparent from the drafting history of the Court’s Statute that the principle of equality between Members of the Court and *ad hoc* judges was always considered a cardinal principle within the functioning of the Court. The rationale of introducing judges *ad hoc* into the Court might explain why the principle of equality between *ad hoc* judges and Members of the Court is so utterly important within the functioning of the Court. Indeed, States parties in a case were allowed to designate a judge *ad hoc* when they had no judge of their nationality on the Bench with the precise aim of ensuring equality of the parties *before* the Court and *in* the Court¹⁵.

46. Thus as early as 1922 it was understood that:

“Judges summoned under Article 31 are to take part in any decision on an equal footing with their colleagues. Consequently, they will have rights and privileges in all respects equal to those of the regular judges. *Any differentiation in treatment would*

¹²Pieter Kooijmans, “Article 31”, in: Andreas Zimmermann, Christian Tomuschat, Karin Oellers-Frahm (eds.), *The Statute of the International Court of Justice — A Commentary*, Oxford University Press, 2005, pp. 496-506 (498 and 501) and Carlos Espósito, “Article 32”, *ibid.*, pp. 507-523 (520).

¹³Report of the Secretary-General A/C.5/40/32, Ann. 5, p. 13.

¹⁴Report of the Secretary-General A/C.5/40/32, p. 19, see also A/RES/40/257 of 17 December 1980, A/RES/48/252 of 26 May 1994, A/RES/50/216 of 23 December 1995 and A/RES/53/214 of 18 December 1998.

¹⁵See in this respect Pieter Kooijmans, “Article 31”, in: Andreas Zimmermann, Christian Tomuschat, Karin Oellers-Frahm (eds.), *The Statute of the International Court of Justice — A Commentary*, Oxford University Press, 2005, pp. 496-506 (501). B. Schenck von Stauffenberg, *Statut et règlement de la Cour permanente de Justice internationale; Eléments d’interprétation*, Berlin 1934, pp. 180 *et seq.* (183). M. Hudson, *The Permanent Court of International Justice 1920-1943, A Treatise*, New York, 1943, p. 354.

*necessarily involve a differentiation in standing, and such differentiation would render the system of national judges provided for in this Article a complete failure.”*¹⁶

(ii) Equality between judges *ad hoc*

47. The Court notes further that the transitional measure referred to above may also give rise to inequality between *ad hoc* judges sitting in the same case, depending on their date of nomination. Such unequal treatment would of course also be contrary to Article 31, paragraph 6, of the Statute.

As emphasized above, according to Article 31, paragraph 6, of the Statute, no inequality should exist between judges *ad hoc* and Members of the Court. If there should be no difference in treatment between Members of the Court themselves and the judges *ad hoc* should be treated equally with Members of the Court, it is clear that judges *ad hoc* should also be treated equally between themselves. This obvious conclusion flows from the same rationale, i.e., to ensure equality of States “before and in” the Court.

48. In the past, the principle of equality between judges *ad hoc* has continuously been protected by the Court. The Secretary-General and the General Assembly have also always attempted to fulfil the requirements of complete equality among judges *ad hoc* when reviewing their compensation.

49. The transitional measure adopted in resolution A/RES/61/262, should it be applied, would, once again, undermine those endeavours aiming to ensuring complete equality.

50. These difficulties raised by the implementation of the resolution are not of a purely theoretical kind; the Court has already encountered them in practice in a pending case. As already indicated above, the Court has very recently been faced with a situation of some concern with respect to the treatment to be afforded to the judges *ad hoc* sitting in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*¹⁷. Since the compensation to be paid to judges *ad hoc* for each day on which they perform their duties corresponds to 1/365th of the annual salary of permanent judges, one of the possible consequences of resolution 61/262 could have been a difference in the compensation of the two judges *ad hoc* in the above-mentioned case, given that one *ad hoc* judge had been appointed prior to the passing of the resolution, while the other was appointed in May 2007, i.e., after its adoption.

51. In view of the overall primacy of the Charter (of which the Court’s Statute is an integral part) over any other legal commitment, the Court has decided to give equal treatment to both judges *ad hoc* in this case. The President of the Court, in a letter dated 29 May 2007, duly notified this decision to the Secretary-General, informing him that the Court had decided to proceed with the hearings in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* “on the basis that the *ad hoc* judge now appointed by Nicaragua will receive the same emoluments as the *ad hoc* judge who had already been appointed by Colombia” (prior to the adoption by the General Assembly of resolution 61/262).

¹⁶*Acts and Documents, Series D, No. 2*, Preparation of the Rules of Court, Minutes, Ann. 42, p. 336; emphasis added by the Court.

¹⁷In which the hearings were held from 4 June to 8 June 2007.

The Secretary-General, in a letter to the President of the Court dated 13 June 2007, noted that the Court's decision was seemingly inconsistent with resolution 61/262. However, he also recognized that paragraph 7 of that resolution "would appear to be inconsistent with Article 31, paragraph 6 of the Statute, ensuring that *ad hoc* judges 'take part in the decision on terms of complete equality with their colleagues'". The Secretary-General further indicated that he had been requested to submit a report to the Sixty-second Session of the General Assembly on options for designing a pension scheme for the Members of the Court, and expressed his intention at that point to "suggest possible practical measures for resolving problematic issues" in his report to the General Assembly.

52. Given all the above, the Court considers that, the current emoluments of Members of the Court having been fixed at €174,708 a year, all judges *ad hoc* should receive 1/365th of the annual salary of permanent judges (€174,708/365) per working day.

D. Other issues to be considered

(i) Decrease in salaries

53. Freezing the emoluments of Members of the Court now in office results in a decrease in their remuneration in real terms. Article 32, paragraph 5, of the Statute of the Court states that the salaries, allowances and compensation of Members of the Court may not be decreased during their term of office. However, freezing the emoluments of current Members of the Court now in office at €14,559 per month would, in reality, result in a decrease in their remuneration:

- because there would no longer be the potential for a judge's monthly salary to fluctuate as it had previously between a minimum of €14,559 and a maximum of €15,772 by operation of the floor/ceiling mechanism;
- because the figure decided, €14,559, would in the near future not be subject to adjustment for fluctuating exchange rates and/or increases in the cost of living in the Netherlands.

54. It may be noted that, in the past, the International Court of Justice has expressed the view that downward adjustments to supplementary cost-of-living payments, not forming part of the salary, would, as such, not be *a priori* contrary to the provisions of the Statute¹⁸. The adjustment must, however, be based on objective criteria, such as a reduction of living expenses in The Hague. Downward adjustments must be limited to supplementary cost-of-living payments; they must also in any case respect the Statute of the Court and, in particular, Article 32, paragraph 5, of the Statute as well as the principle of total equality among judges. In a similar vein, the Court accepted, within the floor/ceiling system, which replaced the supplementary cost-of-living payments, that the monthly emoluments of Members of the Court would vary, including downwards, in order to take into account an objective factor, similar to the cost of living: fluctuating exchange rates.

¹⁸See the views expressed by the President of the Court in 1976, referred to in Sh. Rosenne, *The Law and Practice of the International Court*, 4th ed., 2006, Vol. II, p. 456. See also A/RES/31/204 of 22 December 1976, para. 2, whereby the General Assembly:

"2. Decides further, with effect from 1 January 1977, that . . . members of the International Court of Justice may also receive, in addition to their annual salary as defined in Article 32, paragraph 1 and 5, of the Statute of the Court, an interim cost-of-living supplement, which shall not be deemed to form part of the said salary and the amount of which shall be governed by the provisions set out in paragraph 17 of the report of the Advisory Committee."

(ii) Re-elected judges

55. Further, it follows from the terms of paragraph 8 of resolution A/RES/61/262 that it seems to intend that Members of the Court re-elected after the critical date of 1 January 2007, would not benefit from the protection of Article 32, paragraph 5, of the Statute. In this regard too, paragraph 8 of the resolution gives rise to legal difficulties.

56. The Court considers it accurate to hold that the terms of Article 32, paragraph 5, of the Statute allow for no decrease of salaries during the time of service of a Member of the Court. Accordingly, Article 32, paragraph 5, of the Statute applies also to a second term of office for re-elected judges, when it is continuous with the first one. Under Article 13 of the Statute of the Court, "Members of the Court shall be elected for nine years and may be re-elected". In accordance with Article 20, they must, "before taking up [their] duties", make a solemn declaration. The Rules of Court specify, in application of the provisions of the Statute, that a "Member of the Court who is re-elected shall make a new declaration only if his new term is not continuous with his previous one" (Art. 4, para. 3). Further, in respect of the applicable rules of precedence, the Rules of Court state that Members of the Court shall take precedence according to the date on which "their terms of office respectively began" (Art. 3, para. 2) and that "[a] Member of the Court who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence" (Art. 3, para. 4). When a Member of the Court is re-elected for a further term immediately after the end of the preceding term, the new term is thus to be considered, in accordance with the Statute and the Rules of Court, as a continuation of the existing term in office. It would be inconceivable for the salaries, allowances and compensation of judges re-elected to continue exercising their functions to be subject to a decrease after re-election.

57. The interpretation upheld by the Court is the only one consistent with the French version of Article 35, paragraph 2, which is, historically, the original. The French text proscribes any decrease "pendant la durée des fonctions" instead of during the "term of office". This interpretation is also in conformity with the object and purpose of the provision concerned.

58. Apart from the legal implications, the Court is deeply concerned about the practical consequences of this regulation. According to the Court's Statute, a judge may be re-elected for a second term. If the new régime of compensation was to be applied for re-elected judges who had already served for nine years, it is doubtful that many of them would consider running for re-election. Since its creation, the Court has had a reasonable balance of old and new Members. The Court would regret the loss of this source of great legal and intellectual expertise. The decreasing number of re-elected judges could in time result in a lack of experienced candidates to fill the positions of President and Vice-President and, by the same token, endanger the proper functioning of the Court.

59. The Court further notes that it is not clear from the resolution whether re-elected judges would acquire their retirement benefits at the level of their first term of office or whether their benefits would be reduced to the new level, in case different levels of pensions would co-exist, which the Court would view as highly regrettable. Lastly, the Court notes that the resolution does not indicate the salary for a judge replacing a Member of the Court who leaves office during his term because of death, illness or other reasons.

E. Further issues

60. In resolution 61/262, the General Assembly requested the Secretary-General to submit three reports at its Sixty-second Session. The Court wishes to make a few remarks with regard to issues which have not yet been dealt with above.

(i) Revision and update of the travel and subsistence regulations for the International Court of Justice

61. In this respect, it is to be emphasized that Members of the Court are not officials of the United Nations and that the Court's staff does not belong to the Secretariat. In accordance with Article 32, paragraph 7, of the Statute of the Court, the conditions of travel of Members of the ICJ and the Registrar have always been considered by the General Assembly on an *ad hoc* basis. Treatment of Members of the ICJ has traditionally been at least comparable to that of General Directors of specialized agencies. The travel and subsistence regulations of the ICJ as currently in force, which reflect that tradition, were adopted on 27 December 1982 by General Assembly resolution 37/240.

62. Although first-class travel is authorized under the autonomous régime created by this resolution for Members of the Court, judges do in fact practically always travel at a lower standard. In any event, most flights departing from Amsterdam do not offer first-class service. It should be noted that the very rare journeys in first class are made only on long-haul intercontinental routes, thus allowing a judge immediately to return to effective work on arrival in The Hague.

63. Moreover, it is to be emphasized that the current travel policy applicable to Members of the Court, in particular to judges who have opted for non-resident status, forms part of their terms and conditions of service. In effect, on taking up office, a judge opting for non-resident status takes into account the fact that, throughout his term of office, he will be entitled to three first-class trips each year between his place of residence and the seat of the Court. Currently, the four non-resident judges reside in countries very far away from the seat of the Court, for which direct flights are not always available. The question thus arises as to whether, under the terms of the Court's Statute, a judge's conditions of service may validly be modified to his detriment during his term of office.

64. Confusion may have arisen recently as a result of the establishment of international criminal tribunals, as subsidiary organs of the Security Council, whose members are generally treated as Under-Secretaries-General. While in some respects the members of those tribunals and the Members of the ICJ enjoy similar treatment, this is in no way a general rule, since the organs (subsidiary organs of the Security Council) which the former belong to are of a very different nature to the ICJ.

65. If, despite the above, the standards of travel service of Members of the ICJ were to be revised, it would be imperative, given the Court's particular status and administrative independence, as established by the United Nations Charter and the Statute of the Court, for the President of the ICJ to be given the authority to grant derogations on grounds of health or for any other relevant reason.

(ii) Options for devising a pension scheme for *inter alia* the Members of the International Court of Justice

66. It might be useful to recall that in 1946, it was admitted that the costs of pensions of Members of the Court were to be borne by the United Nations, i.e., Members of the Court would not have to contribute to the pension fund of the Organization (see Ann. 7). This principle was justified by the analogy, *inter alia* as regards pensions, between judges of the International Court of Justice and the Secretary-General of the United Nations. The main reason behind the principle of non-contribution was that Members of the Court, before taking office, had to abandon a career they would not be able to resume when they cease to be judges¹⁹. The same reasoning was made with regard to the pension plan for the Secretary-General.

67. In this respect, the introduction of a defined contribution scheme would be a total novelty, without precedent since 1922. Moreover, the establishment of such a scheme would once again raise a question of principle under the Statute, as, even if a transitory régime were to be adopted with a view to avoiding the decrease in emoluments which judges currently in office would undergo as a result of the payment of contributions, it would still result in a dual régime with respect to the emoluments, contrary to the principle of the equality of judges.

68. It should be pointed out that a review of pension benefits to be granted to Members of the ICJ was presented in the reports of the Secretary-General to the General Assembly at its Forty-eighth, Forty-ninth and Fiftieth Sessions. In this last report, the Secretary-General annexed a study made by a consulting actuary, the conclusions of which were *inter alia* that the pensionable remuneration of a judge should be defined as being equal to half of the annual salary and that the pension scheme should be non-contributory (see Ann. 8).

F. Conclusion

69. The Court notes with regret that it was not consulted, as has been the usual practice, regarding the adoption and application of the new system for calculating the emoluments of judges when resolution 61/262 was being prepared. Over the years, such consultation had proved to be beneficial and would probably have made it possible to avoid the difficulties now raised by this resolution. The Court hopes that, in light of the above, some uncertainties as to the content and meaning of certain provisions of the Statute and of the Rules of Court have been elucidated.

70. Regrettably, the present resolution is not compatible with the basic principles underlying the Statute of the Court, in particular the principle of equality of all judges, nor with its Article 31, paragraph 6, and Article 32, paragraph 5.

71. Those principles and provisions being pivotal principles of the international judiciary, it might prove difficult to apply the resolution adopted by the General Assembly on 4 April 2007 to the Members of the International Court of Justice or to judges *ad hoc* without seriously compromising the proper administration of justice.

72. The resolution of the General Assembly is not, as it now stands, compatible with the provisions of the Statute of the International Court of Justice which, as an integral part of the

¹⁹Memorandum of the Registrar of the Court dated 13 June 1946, App. A to the Report of the Secretary General (United Nations doc. A/110), p. 294. See also Sh. Rosenne, *The Law and Practice of the International Court of Justice*, 4th ed., 2006, Vol. I, p. 474.

Charter, has primacy over any other text. The Court is more than willing to participate in the elaboration of necessary adaptations in view of bringing the resolution in line with the Statute.

73. The Court's Statute was obviously not interpreted in full awareness of all of its legal implications by the drafters of the resolution. The Court notes an increasing tendency to ignore its basic specificities. In particular, in the financial field, the huge costs of the criminal tribunals have progressively led competent authorities to focus on the problems of these tribunals and to adopt solutions aimed only at resolving them. Unfortunately, as a result of an oversimplification, these solutions have, more than once, been mechanistically extended to the ICJ, without taking into account its very different nature and functions. This has repeatedly, over the past years, created unnecessary difficulties for the Court. Resolution 61/262 is a clear example of this. The problems raised by the resolution for the Court, because it is the principal judicial organ of the United Nations the mission of which is to solve disputes between sovereign States, are not necessarily as serious for the tribunals. In order to avoid similar difficulties in the future, the Court requests the decoupling of the conditions of service of Members of the Court and of the tribunals and expects that any question related to it will, henceforth, be duly examined taking into consideration its own characteristics as enshrined in its Statute. The Court would nevertheless like to emphasize that it does not wish to prejudice in any way the legitimate interests of other international judicial institutions, with which it maintains excellent relations.

74. The functioning of the United Nations depends not only on the institutional independence of its principal organs but also on their co-operation. The co-operation of the principal organs represents, in the same way as their independence, a constitutional principle of the Charter. It is in that spirit that the Court is proposing some alternatives, while respecting the decision of the General Assembly to abandon the floor/ceiling mechanism.

75. The General Assembly, recalling that the International Court of Justice is the principal judicial organ of the United Nations, has recently reaffirmed the principle whereby the conditions of service and compensation of judges of the Court — who are not officials of the Secretariat — must be separate and distinct from those of Secretariat officials (A/RES/61/262 of 4 April 2007). In this context, noting the fact that the General Assembly wishes to introduce a more transparent system for fixing the salaries of Members of the Court (see A/RES/59/282), the Court would suggest two conceivable means of so doing.

76. First, it is not unprecedented for the Members of the Court to be remunerated in local currency, as were the Members of its predecessor, the Permanent Court of International Justice, and indeed the Members of the International Court of Justice until that system was abandoned in 1950 because of the very serious devaluation of the Dutch guilder.

Since the Members of the International Court of Justice perform their duties in the Netherlands and incur their expenditure mostly in euros, it would seem reasonable to fix their salaries directly in euros, the official local currency at the seat of the Court. The situation of the Members of the Court is comparable to that of the judges at the European Court of Human Rights in Strasbourg, the Court of Justice of the European Communities in Luxembourg and the International Criminal Court in The Hague.

Remuneration in local currency would not only provide transparency but also have the advantage of being simpler and more stable. If the Members of the Court were to receive their current emoluments in local currency, it would no longer be necessary to work out complex methods of adjusting the remuneration to take account of both variations in exchange rates and the local cost-of-living index. It would be sufficient, in the regular reviews of salaries for Members of

the Court, to take only the cost of living into account and to adjust the salaries accordingly. This more transparent, more straightforward and fairer system would ensure the stability of salaries without infringing the basic principles of the Statute of the Court.

77. In the event that such a system, despite its obvious advantages, were not to be approved, an alternative to fixing the emoluments of judges in euros would be, in the context of the post adjustment system, to increase the amount of annual net base salary in such a way as to ensure, after application of the official United Nations adjustment and exchange rate index, that the present amount of remuneration for Members of the Court was maintained. To comply with the principle of equality between judges, the annual net base salary should thus be fixed at \$155,000 at least, instead of \$133,500. Moreover, in doing this, account would have to be taken of the fact that a judge, after a full nine-year term of office is generally entitled to a pension equal to half his net annual salary. It is quite clearly unthinkable that the application of the new system for calculating the emoluments of judges should result in a dramatic decrease in the pension benefits to which they are entitled. Thus, given the current level of pensions of \$85,000 per annum, the reference annual level of emoluments to calculate the pension of a judge after a full nine-year term could not in any case be less than \$170,000.

78. The Members of the Court are deeply concerned at the present situation and urge the political organs of the United Nations, in particular the General Assembly, to take account of the legal analysis contained in this note, so as to allow another of the principal organs to operate in conformity with its Statute and with the Charter of the United Nations.

List of Annexes

Annex 1

A/RES/61/262 — Resolution adopted by the General Assembly on 4 April 2007

Annex 2

Letter from the President of the International Court of Justice to the President of the General Assembly, dated 3 April 2007

Annex 3

Relevant Articles of the Charter, of the Statute and the Rules of Court

Annex 4

Third Committee — salaries of Members — Report to the Assembly of the League of Nations by Mr. H. Lafontaine

Annex 5

Resolution of the Assembly of the League of Nations on the salaries of the judges; carried by the Assembly at its 31st meeting on 18 December 1920

Annex 6

United Nations doc. A/C.5/40/32 — Proposed programme budget for the biennium 1986-1987 — Report of the Secretary-General

Annex 7

A/110 with Appendices — Report by the Secretary-General on pensions of the judges and staff of the International Court of Justice

Annex 8

United Nations doc. A/C.5/50/18 — Proposed programme Budget for the biennium 1996-1997 — Report of the Secretary-General

United Nations

A/RES/61/262



General Assembly

Distr.: General
3 May 2007Sixty-first session
Agenda item 117

Resolution adopted by the General Assembly

*[on the report of the Fifth Committee (A/61/592/Add.4)]***61/262. Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda***The General Assembly,*

Recalling section VIII of its resolution 53/214 of 18 December 1998, its resolutions 55/249 of 12 April 2001, 56/285 of 27 June 2002 and 57/289 of 20 December 2002 and section III of its resolution 59/282 of 13 April 2005,

Recalling also Article 32 of the Statute of the International Court of Justice, as well as relevant General Assembly resolutions that govern the conditions of service and compensation for the members of the International Court of Justice and the judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and 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,

Having considered the report of the Secretary-General¹ and the related report of the Advisory Committee on Administrative and Budgetary Questions,²

1. *Reaffirms* the principle that the conditions of service and compensation for non-Secretariat United Nations officials shall be separate and distinct from those for officials of the Secretariat;
2. *Recalls* that the International Court of Justice is the principal judicial organ of the United Nations;
3. *Also recalls* section III, paragraph 4, of its resolution 59/282, by which it decided to increase the annual salary of the members of the International Court of

¹ A/61/554.

² A/61/612 and Corr.1.

Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda by 6.3 per cent as an interim measure, and further recalls section III, paragraph 8, of the resolution;

4. *Endorses* the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report,² subject to the provisions of the present resolution;

5. *Recalls* its resolution 37/240 of 21 December 1982, and requests the Secretary-General to review and update the travel and subsistence regulations for the International Court of Justice, taking into account the recommendation of the Advisory Committee on Administrative and Budgetary Questions in paragraph 15 of its report² and bearing in mind the relevant provisions of the Statute of the International Court of Justice, and to report thereon to the General Assembly, for its approval, at its sixty-second session;

6. *Endorses* the proposal of the Secretary-General contained in paragraph 80 of his report¹ whereby the annual salaries of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda would comprise an annual base salary with a corresponding post adjustment per index point equal to one per cent of the net base salary to which would be applied a post adjustment multiplier, as appropriate, taking into account the proposals of the Secretary-General contained in paragraphs 83 and 84 of his report;¹

7. *Decides* to set, effective 1 January 2007, the annual net base salary of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda at 133,500 United States dollars, with a corresponding post adjustment per index point equal to one per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate;

8. *Also decides* to maintain, as a transitional measure, in line with the provisions of Article 32, paragraph 5, of the Statute of the International Court of Justice, the level of annual salary approved in section III of its resolution 59/282 for the current members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda for the duration of their current term of office or until such a time as this amount is overtaken by the application of the revised annual salary system;

9. *Further decides* that any decisions with regard to the increase in the salary and other allowances of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda shall not constitute a precedent for any other category of judges working within the United Nations system and that any decision regarding the service of any other category of judges shall be taken on a case-by-case basis;

10. *Decides* to maintain, as an interim measure, the retirement benefits of the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda at the level resulting from the annual base salary decided in section III of

its resolution 59/282, and requests the Secretary-General to revise article 1, paragraph 2, of the Pension Scheme Regulations accordingly;

11. *Requests* the Secretary-General to submit a report to the General Assembly at its sixty-second session on options for designing pension schemes for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office;

12. *Recalls* section I of its resolution 61/239 of 22 December 2006, and decides to extend its decision on the level of education grant for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda;

13. *Requests* the Secretary-General to report to the General Assembly on the additional expenditures in the context of the second performance report on the programme budget for the biennium 2006–2007 and the second performance reports on the budgets of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda for the biennium 2006–2007.

*93rd plenary meeting
4 April 2007*

03-APR-2007 15:30

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*Le Président**The President*

129995

3 April 2007

Dear President Al Khalifa,

I am writing urgently on behalf of the International Court of Justice, the principal judicial organ of the United Nations, to draw your attention to a draft resolution A/C.5/61/L.40 submitted to the plenary by the Fifth Committee on the "Conditions of service and compensation for officials other than Secretariat officials: Members of the International Court of Justice and judges and ad litem judges of the ICTY and the ICTR". As the Court understands, the General Assembly is to take action on the draft on 4 April 2007.

I am instructed by the Court to express its extremely serious and deep concern that the proposed action regarding emoluments, if approved by the General Assembly, would not be in conformity with the Statute of the Court, which forms an integral part of the Charter of the United Nations. The Court is convinced that this could not have been the intention of its drafters.

It is very likely if not almost certain that the remuneration of newly elected judges, including those due to take their office on 5 February 2009, will be substantially below the current remuneration which is to be applied as a transitional measure for the current judges until such time as this amount is overtaken by the new system. (At present, a difference of approximately \$2,500 per month has been identified). Under Article 32, paragraph 1, of the Statute, each Member of the Court shall receive an annual salary. As a matter of the principle of equality, the salary shall be the same for each Member. Article 31, paragraph 6, of the Statute emphasises that judges ad hoc shall also sit in equality with the permanent Bench.

The equality of all Judges is a fundamental principle underlying the Statute. That principle can in no way be set aside by provisions that stipulate that all new Members shall be on the same salary, and that the present salary of existing Members shall be protected. The proposed system would still result in discrimination between Members of the Court, i.e. those who assumed office before 1 January 2007 and those who will assume office after this date.

Any rules that may apply in this respect to national courts can have absolutely no relevance with respect to the International Court of Justice, principal judicial organ of the United Nations which is called upon to settle disputes between sovereign States. The Member States of the United Nations who bring cases before the Court are fully entitled to assume that all Judges on the bench are sitting in total equality.

In addition, the above-mentioned draft resolution also violates Article 32, paragraph 5, of the Statute: freezing the emoluments of the Members of the Court currently in office, as envisaged in paragraph 7 of the draft resolution, without taking further account of changes in the exchange rate and the cost of living in the future will most certainly result in a de facto reduction in said emoluments.

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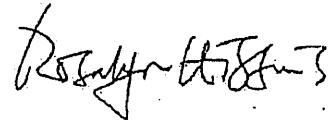
The Court had earlier taken note of paragraph 10 of the ACABQ Report (A/61/612) in which the latter recommended elaboration of alternative methods for adjusting remuneration according to market exchange rates and movements of the local cost-of-living index, with a view to protecting the level of remuneration, and that the new proposals should be presented by the Secretary-General to the General Assembly at its Sixty-Second Session. The Court expected to be consulted, as usual, in the process of the preparation of such a Report. Unfortunately, it was not; it has now been caught by surprise, without being previously informed, by the proposed new system being submitted for approval by the General Assembly.

You will appreciate that the problem thus created is extremely serious since quite apart from the financial aspects briefly summarized above, it concerns the very integrity of the Court's Statute.

The Court, which represents the principal legal systems of the world, is the guardian of legality under the Charter. It would urge the General Assembly to postpone the approval of any new system, subject to submission by the Secretary-General of new proposals as recommended by the ACABQ.

May I kindly ask you, dear Madam President, to ensure the circulation of this letter as a working document before any discussion of the matter by members of the General Assembly.

Please accept, Excellency, the assurances of my highest consideration,



Rosalyn Higgins
President

H.E. Haya Rashed Al Khalifa
President of the Sixty-first Session of the General Assembly
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**RELEVANT ARTICLES OF THE CHARTER, OF THE
STATUTE AND THE RULES OF COURT**

Charter of the United Nations

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Statute of the International Court of justice

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the Members of the Court forming the chamber to give place to the Members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each Member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than Members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to Members of the Court and to the Registrar, and the conditions under which Members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Rules of Court

Article 3

1. The Members of the Court, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

2. The Members of the Court shall, except as provided in paragraphs 4 and 5 of this Article, take precedence according to the date on which their terms of office respectively began, as provided for by Article 2 of these Rules.

3. Members of the Court whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.

4. A Member of the Court who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.

5. The President and the Vice-President of the Court, while holding these offices, shall take precedence before all other Members of the Court.

6. The Member of the Court who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President is in these Rules designated the “senior judge”. If that Member is unable to act, the Member of the Court who is next after him in precedence and able to act is considered as senior judge.

Article 7

1. Judges *ad hoc*, chosen under Article 31 of the Statute for the purposes of particular cases, shall be admitted to sit on the Bench of the Court in the circumstances and according to the procedure indicated in Article 17, paragraph 2, Articles 35, 36, 37, Article 91, paragraph 2, and Article 102, paragraph 3, of these Rules.

2. They shall participate in the case in which they sit on terms of complete equality with the other judges on the Bench.

3. Judges *ad hoc* shall take precedence after the Members of the Court and in order of seniority of age.

Article 12

The President shall preside at all meetings of the Court; he shall direct the work and supervise the administration of the Court.

54.

THIRD COMMITTEE — SALARIES OF MEMBERS.
REPORT TO THE ASSEMBLY BY M. H. LAFONTAINE.

The fixing of the salaries of Members of the Permanent Court of International Justice was referred by the Council to the Third Committee. After detailed discussion, the following principles have been approved. They are based on Article 32 of the Statute:

The Judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

The Committee was of opinion that the annual remuneration of all ordinary judges should be fixed at a minimum of fifteen thousand (15,000) Dutch florins. The special annual allowance assigned to the President was fixed at 45,000 florins, which brings his total remuneration to 60,000 florins per year.

As the other members of the Court are not obliged to live at the seat of the Court throughout the whole year, it was considered that the allowance assigned to them should be proportional to the length of time they should spend at the seat of the Court. In the consideration of this allowance two points of view were advanced: they were fixed not merely on the basis of the period of duty, but also according to the length of residence at the Hague. The allowance per day for the period of duty has consequently been fixed for each ordinary judge at 100 florins and for the Vice-President at 150 florins. As for the deputy-judges, it was considered that a larger duty allowance should be granted them. The ordinary judges receive an annual salary of 15,000 florins, and it must be taken into consideration that the deputy-judges must hold themselves at the disposal of the Court and may be called upon to undertake a more or less unforeseen journey and to abandon their profession or the post which they hold in their country of origin. As they receive no annual salary, it seems just to compensate them by raising their daily allowance to 150 florins.

The subsistence allowance had been fixed for all the members of the Court, except the President, who has a different fixed allowance, at 50 florins per day.

The maximum indemnity for the different members of the Court would thus, calculating the days of session in each year at 200 (Sundays and vacations deducted), amount to 30,000 florins for the Vice-President, 20,000 for ordinary judges and 30,000, for deputy-judges.

To ensure an equal position for all the members of the Court of International Justice, by neutralising the different degrees in which their salaries might be affected by taxation in the various countries, the Committee proposes that all salaries and allowances are to be free of taxation. As, however, the decisions of the Assembly might be inoperative as against the fiscal laws applied in the different countries, it has been proposed that the League of Nations should reimburse the members of the Court for any taxes which they may have been obliged to pay.

With regard to travelling expenses, the Committee is of opinion that the expenses of moving the near relatives of members of the Court should be defrayed the League of Nations.

Finally the payment of salaries and allowances and the reimbursement for expenses shall take place on the basis of accounts approved by the President.

The table attached to the resolution set out below will give a clear idea of the remuneration allotted to each class of member of the Court.

DRAFT RESOLUTION.¹

The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute, fixes the salaries and allowances of members of the Permanent Court of International Justice as follows:—

President:

	Dutch florins
Annual salary.	15,000
Special allowance	45,000
Total	<u>60,000</u>

Vice-President:

Annual salary.	15,000
Duty-allowance (200×150)	30,000 (maximum)
Total	<u>45,000</u>

Ordinary Judges:

Annual salary.	15,000
Duty-allowance (200×100)	20,000 (maximum)
Total	<u>35,000</u>

Deputy-Judges:

Duty-allowance (200×150)	<u>30,000 (maximum)</u>
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Duty allowances are payable from the day of departure until the return of the beneficiary.

An additional allowance of 50 florins per day is assigned for each day of actual presence at the Hague to the Vice-President and to the ordinary and deputy-judges.

Allowances and salaries are free of all tax.

¹ This Resolution was *carried* by the Assembly at its 31st and final meeting on December 18th, 1920. (Note by the Secretary.)

57.

RESOLUTION OF THE ASSEMBLY ON THE SALARIES OF THE JUDGES.

The Assembly of the League of Nations, in conformity with the provisions of Article 32 of the Statute, fixes the salaries and allowances of members of the Permanent Court of International Justice as follows:—

President:

	Dutch florins
Annual salary.	15,000
Special allowance	45,000
Total	<u>60,000</u>

Vice-President:

Annual salary.	15,000
Duty-allowance (200×150)	30,000 (maximum)
Total	<u>45,000</u>

Ordinary-Judges:

Annual salary.	15,000
Duty-allowance (200×100)	20,000 (maximum)
Total	<u>35,000</u>

Deputy-Judges:

Duty-allowance (200×150)	<u>30,000 (maximum)</u>
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Duty allowances are payable from the day of departure until the return of the beneficiary.

An additional allowance of 50 florins per day is assigned for each day of actual presence at the Hague to the Vice-President and to the ordinary and deputy-judges.

Allowances and salaries are free of all tax.

¹ This Resolution was carried by the Assembly at its 31st and final Meeting on December 18th, 1920. (Note by the Secretariat.)

UNITED
NATIONS

A



General Assembly

Distr.
GENERAL

A/C.5/40/32
22 October 1985

ORIGINAL: ENGLISH

Fortieth session
FIFTH COMMITTEE
Agenda item 116

PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Report of the Secretary-General

Introduction

1. In paragraphs 1 and 3 of resolution 31/204 of 22 December 1976, the General Assembly decided "that the annual salaries of members of the International Court of Justice shall next be reviewed at its thirty-fifth session and thereafter normally every five years" and "that the allowances and compensation provided for in article 32, paragraphs 2 to 4, of the Statute of the International Court of Justice and the retirement pensions given to members of the Court shall be reviewed concurrently with the periodic review of their annual salary".
2. In conformity with the above decision, the General Assembly is scheduled to review the emoluments of the members of the Court at the current session.
3. By resolution 37/237, section XIV of 21 December 1982, the General Assembly took note of the views expressed by Member States on the question of an education grant for certain full-time officials other than members of the Secretariat and decided to consider that question at its thirty-eighth session as part of an overall review of compensation and other conditions of such officials. Following the adoption of resolution 37/237, the Secretary-General submitted a report (A/C.5/38/27), entitled "Conditions of Service and compensation for officials other than Secretariat officials", in which, after reviewing, *inter alia*, the salary of the members of the Court and their other entitlements, he made certain recommendations to the General Assembly at its thirty-eighth session (1983), relating to (a) the amendments to be introduced in the Pension Scheme Regulations

for members of the Court and (b) the granting for the first time to eligible members of the Court or their survivors of allowances related to education of children, relocation upon separation and compensation to survivors in the event of death. The report also suggested that the General Assembly might wish to consider raising the amount of the special allowance received by the President of the Court or the Vice-President when acting as President.

4. At the request of the Fifth Committee, at the thirty-eighth session the Advisory Committee on Administrative and Budgetary Questions (ACABQ) considered separately the portions of the Secretary-General's report dealing with the amendments to the Pension Scheme Regulations for members of the Court and submitted a report (A/38/7/Add.23) thereon whose recommendations were approved by the General Assembly in resolution 38/239 of 20 December 1983. The Pension Scheme Regulations for members of the Court were amended accordingly with effect from 1 January 1984. At the same session, the General Assembly also decided in its resolution 38/234, section XVII, of 20 December 1983 "to defer until its thirty-ninth session, consideration of the recommendations of the Secretary-General with regard to which no action has been taken during the current session".

5. At the thirty-ninth session of the General Assembly, ACABQ considered and reported on those parts of the Secretary-General's report of 1983 on which no action had been taken at the thirty-eighth session. By resolution 39/236, section V, of 18 December 1984, the General Assembly decided to defer further consideration of the report of the Secretary-General (A/C.5/38/27) and the related report of ACABQ (A/39/7/Add.1) until its fortieth session.

6. This report therefore responds both to resolution 31/204 concerning the quinquennial review of the emoluments of the members of the Court and to resolution 39/236 referred to in the preceding paragraph. To facilitate consideration of the various issues, the present report has been divided into two main parts. Part I deals with the emoluments of members of the Court and is subdivided into four sections: remuneration, special allowance of the President and of the Vice-President when acting as President, pensions and compensation of judges ad hoc. Part II deals with the conditions of service of members of the Court and is also subdivided into four sections: general considerations, cost of educating children, relocation upon completion of service and compensation for survivors in the event of death.

I. EMOLUMENTS OF MEMBERS OF THE COURT

A. Remuneration

7. Article 32 of the Statute of the Court provides, inter alia, that each member of the Court shall receive an annual salary (para. 1), the President shall receive a special annual allowance (para. 2) and the Vice-President shall receive a special allowance for each day on which he acts as President (para. 3). Paragraph 5 of the Article also states that these salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office".

8. The Secretary-General, at the request of ACABQ, submitted to the General Assembly at its thirty-first session in 1976 a comprehensive study (A/C.5/31/13) on

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the question of the emoluments of the members of the Court, with a view to formulating proposals which would "assure adequate remuneration and eliminate the need for frequent reviews". To that end, he proposed in particular the introduction of a variable cost-of-living supplement which would not be subject to the above-mentioned prohibition of a decrease and suggested that the most appropriate of several indices upon which changes in the amount of the supplement might be based would be the simple arithmetic average of post adjustment classifications at selected locations around the world (the APA index). The provision of such a supplement, when justified, was intended to obviate the necessity of undertaking a salary review more frequently than once every four or five years.

9. The General Assembly, acting on the recommendations of ACABQ which had reviewed the various alternatives presented, decided by resolution 31/204 of 22 December 1976 that (a) the annual salary of the members of the Court, which had been set at \$50,000, with effect from 1 January 1976 by General Assembly resolution 3537 B (XXX) of 17 December 1975, should next be reviewed at its thirty-fifth session and normally every five years thereafter; (b) between such periodic reviews, the judges would be entitled to receive an interim cost-of-living (COL) supplement which would be reviewed each January, beginning in January 1977, and adjusted, upward or downward, proportionate to changes in the cost-of-living of 5 per cent or more; and (c) the allowances and compensation provided for in article 32, paragraphs 2 to 4, of the Statute and retirement pensions of the members of the Court (*ibid.*, para. 7) should be reviewed concurrently with the periodic review of their annual salary, and that the system of interim adjustments should not apply to them.

10. The working of the new system of remuneration thus instituted was the subject of a comprehensive report (A/C.5/35/33) on the occasion of the salary review undertaken at the thirty-fifth session of the General Assembly in 1980. On the basis of comparative data, the report concluded that

"the arrangements introduced with effect from 1 January 1977 [the COL supplement and adjustment procedure], have since then provided reasonable protection of the value of the Judges' emoluments and have increased the absolute levels of these emoluments to an extent similar to the changes in the emoluments of senior Secretariat officials, of full-time members of subsidiary organs of the United Nations and of persons in the highest judicial posts in certain best-paying national administrations, taking into account the cost-of-living at the locations concerned".

11. At the same time, the report noted that an imbalance had evolved between the two components of the Judges' emoluments, i.e. the annual base salary (\$50,000) and COL supplement (\$24,500), as well as between the level of total emoluments (\$74,500) and the pension of a retired Judge (\$25,000), which, under the pension scheme applicable to the Judges, was calculated as one half of the annual base salary. Therefore, the consolidation of \$20,000 of the COL supplement into the base salary was proposed to increase the latter to \$70,000 per year, with a corresponding decrease in the amount of the supplement. The effect of that proposal was to maintain the level of the emoluments received by the Judges until changed on the basis of the movement of the APA index.

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12. In its report A/35/7/Add.10, ACABQ endorsed the proposals made by the Secretary-General and noted that the movement of the APA index would most likely justify an increase in the COL supplement on 1 January 1981. Such increase did take place, bringing the total emoluments payable to a member of the Court to \$82,000 as of that date.

13. The General Assembly, by resolution 35/220 of 1 December 1980, approved the recommendations of ACABQ. Thus, the annual base salary of the members of the Court was set at \$70,000 with effect from 1 January 1981, and the COL supplement at \$12,000. The APA indices were rebased so that future increases in the COL supplement would be calculated in relation to the revised annual salary of \$70,000 for movements of 5 per cent or more of the revised index. As the International Civil Service Commission (ICSC) had increased the coverage of the weighted average of post adjustments (WAPA) index applicable to staff in the Professional and higher categories to 51 locations, the Assembly also agreed that, in the future, APA be calculated on the basis of the same 51 locations and The Hague.

14. There has been no change in the emoluments of the members of the Court since 1 January 1981. Therefore, the annual base salary of the judges is still set at \$70,000, with a COL supplement of \$12,000, yielding a total net remuneration of \$82,000 per year.

15. In the comprehensive study made in 1976 (A/C.5/31/13), the Secretary-General had suggested that, while

"there should be no direct and automatic link between the emoluments of the Judges and those of senior Secretariat officials ... on the occasion of full reviews, as distinct from interim adjustments, the emoluments of the Judges should be examined in the light of the changes which have taken place in the remuneration of senior Secretariat officials and of full-time members of other organs or subsidiary organs of the United Nations. As a further indicator, comparisons might also continue to be made, where possible, between the Judges' emoluments and those related to the highest judicial post in certain national administrations. On the basis of an assessment of all these factors, as well as others which may be relevant at the time of the review, an independent judgement could be made as to the appropriate level of the Judges' salary. In this way, the sui generis situation of the Judges could be maintained."

16. Accordingly, the report presented on the occasion of the periodic review in 1980 (A/C.5/35/33) provided a comparison of the changes which had taken place in the remuneration of the Judges with those of senior Secretariat officials (net base salary plus post adjustment at the dependency rates) and those of full-time members of subsidiary organs of the United Nations (the Chairman of ACABQ, the Chairman and Vice-Chairman of ICSC and the members of the Joint Inspection Unit (JIU)). It also provided information on the gross emoluments of the President and members of the highest courts in three national judiciaries. Similar tables are supplied below providing the basis for an assessment of the evolution of the situation in the five years since the last review.

17. Table 1 below shows the movement of the Judges' total emoluments in dollar and guilder terms over the period 1 January 1981 to 1 October 1985 in relation to the movement of the APA index, the post adjustment index at The Hague and the Netherlands consumer price index. As a result of the appreciation in the value of the dollar vis-à-vis most other currencies, the APA index has declined from 103.9 (column 2) as of January 1982 or 3.9 per cent over the base level of January 1981 to the current 97.5 (column 5) which reflects a decrease over the base level on 1 January 1981 of 2.5 per cent for January 1985.

18. Table 2 compares the changes which have taken place in the remuneration of the Court with the changes in that of senior Secretariat officials (net base salary plus post adjustment at dependency rates and representation allowance) and those full-time members of other subsidiary organs of the United Nations (the Chairman of ACABQ, the Chairman and Vice-Chairman of ICSC and members of JIU). These changes should be assessed in relationship to the changes in the post adjustment index at each of the locations for the senior Secretariat officials and the increase in the cost-of-living index for New York for the Chairman and Vice-Chairman of ICSC and the Chairman of ACABQ for the period January 1981 to January 1985 (25.9 per cent).

Table 1

<u>ICJ</u>	<u>January 1981</u>	<u>January 1982</u>	<u>January 1983</u>	<u>January 1984</u>	<u>January 1985</u>	<u>October 1985</u>
<u>Total emoluments</u>	(1)	(2)	(3)	(4)	(5)	(6)
Net base salary (\$US)	70 000	70 000	70 000	70 000	70 000	70 000
COL supplement (\$US)	<u>12 000</u>	<u>12 000</u>	<u>12 000</u>	<u>12 000</u>	<u>12 000</u>	<u>12 000</u>
Total (\$US)	<u>82 000</u>	<u>82 000</u>	<u>82 000</u>	<u>82 000</u>	<u>82 000</u>	<u>82 000</u>
Guilder equivalent	173 840	205 000	213 200	251 740	291 100	246 000
(exchange rate)	(2.12)	(2.50)	(2.60)	(3.07)	(3.55)	(3.00)
<u>Index of emoluments</u>						
<u>Movement: January 1981=100</u>						
US dollars	100.0	100.0	100.0	100.0	100.0	100.0
Guilders	100.0	117.9	122.6	144.8	167.5	141.5
<u>Cost-of-living indices</u>						
<u>January 1981 = 100</u>						
APA index (52 cities)	100.0	103.9	103.6	100.2	97.5	99.9
PA index for The Hague	100.0	93.1	94.3	84.5	74.7	87.6
Netherlands CPI	100.0	106.0	107.3	110.8	113.5	115.2

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Table 2
(In United States dollars)

<u>ICJ</u>	<u>January</u> <u>1981</u>	<u>January</u> <u>1982</u>	<u>January</u> <u>1983</u>	<u>January</u> <u>1984</u>	<u>January</u> <u>1985</u>	<u>October</u> <u>1985</u>
President <u>a/</u> Index	94 200 100.0	94 200 100.0	94 200 100.0	94 200 100.0	94 200 100.0	94 200 100.0
Members of the Court Index	82 000 100.0	82 000 100.0	82 000 100.0	82 000 100.0	82 000 100.0	82 000 100.0
<u>Senior Secretariat</u> <u>officials</u>						
The Hague						
USG <u>c/</u> <u>e/</u>	92 687	87 236	88 145	80 424	72 792	82 904
ASG <u>b/</u>	84 366	79 364	80 198	73 113	66 110	75 389
Index	100.0	94.1	95.1	86.7	78.4	89.4
Geneva						
USG <u>c/</u>	97 229	100 402	98 591	94 504	84 501	94 612
ASG <u>b/</u>	88 533	91 451	89 784	86 033	76 854	86 133
Index	100.0	103.3	101.4	97.2	86.9	97.3
New York						
USG <u>c/</u>	70 886	77 698	80 878	84 057	91 419	91 419
ASG <u>b/</u>	64 361	70 612	73 530	76 447	83 202	83 202
Index	100.0	109.6	114.1	118.6	129.0	129.0
<u>Full-time members of</u> <u>subsidiary organs</u>						
Chairman						
ACABQ <u>d/</u>	72 000	77 360	80 978	80 978	87 056	87 056
Index	100.0	107.4	112.5	112.5	120.9	120.9
Chairman						
ICSC <u>d/</u>	72 000	77 360	80 978	80 978	87 056	87 056
Index	100.0	107.4	112.5	112.5	120.9	120.9
Vice-Chairman						
ICSC	67 000	72 360	75 978	75 978	82 056	82 056
Index	100.0	108.0	113.4	113.4	122.5	122.5
Members						
JIU (Geneva)	75 915	78 504	77 024	73 699	65 551	73 784
Index	100.0	103.4	101.5	97.1	86.4	97.2

- a/ Includes a special allowance of \$12,200 per year.
- b/ Includes representational allowance of \$3,000 per year.
- c/ Includes representational allowance of \$4,000 per year.
- d/ Includes an additional special allowance of \$5,000 per year.
- e/ Included for comparison purposes only as there is no post at that level at The Hague. /...

19. Table 3 provides information obtained, with the assistance of the Permanent Missions of the countries concerned, on the current gross emoluments of the President and members of the highest courts in the three national judiciaries, as compared to those in effect in 1981. It also gives information on the emoluments of the presidents and members of two international tribunals, one judicial - Court of the European Communities - and one arbitral - the United States-Iran Claims Tribunal. As regards the Court of the European Communities, the salary of the President is equal to that of the President of the European Commission, while the members of the Court receive a salary equal to that of a European Commissioner.

20. The Secretary-General has received a letter from the Court suggesting that grounds exist for increasing the total annual compensation of the Judges from \$82,000 to \$94,000. The relevant extracts of this letter are quoted below.

"2. For the purposes of this year's review, the Court, having regard to its current base salary of \$70,000 a year and the current cost-of-living supplement of \$12,000, i.e. the total of \$82,000, decided, at a meeting held on 21 February 1985, to propose that its total annual compensation be increased to \$94,000. The constituent elements of such an increase might comprise possibilities such as salary increase, consolidation of the current cost-of-living supplement into the base salary, and perhaps other elements. One of the Court's objectives is positively to affect the level of pensions, whether by way of such consolidation or salary increase. The Court also wishes to preserve an appropriate cost-of-living supplement system.

"3. In adopting these proposals, the Court has kept in mind the guiding principles set forth in the report of the Preparatory Commission of the United Nations on the basis of which the salaries of Judges in the Court were initially established in 1946, notably that the salaries should be such as to render the office of Judge acceptable to the most eminent of the persons qualified to hold that office, and accordingly their salaries should not be less than they received in their own country; and the Judges should be accorded salaries such as to guarantee their absolute independence. The Court has also taken into account the position of the Secretary-General, as expressed in his 1976 report on the item (A/C.5/31, para. 13), that 'on the occasion of full reviews, ..., the emoluments of the Judges should be examined in the light of the changes which have taken place in the remuneration of senior Secretariat officials ...' and that 'as a further indicator, comparisons might also continue to be made, where possible, between the Judges' emoluments and those related to the highest judicial posts in certain national administrations'.

"4. In this connection, the Court noted the fact that, at its last session, the General Assembly, by resolutions 39/27 and 39/236 (Part XVII), decided to consolidate 20 points of post adjustment into, respectively, the net base salary of Secretariat staff in the Professional and higher categories and the base salaries of the Administrator of the United Nations Development Programme and the Director-General for Development and International Economic Co-operation. While recognising that regional and arbitral tribunals cannot be fully compared with a permanent, universal court which is a principal organ of the United Nations, nevertheless the Court also noted the current level of compensation being received by members of international judicial and arbitral tribunals such as the Court of the European Communities and the

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Table 3United States
Supreme Court

	<u>1981</u>		<u>1983</u>		<u>1985</u>	
	<u>Chief Justice</u>	<u>Associate Justice</u>	<u>Chief Justice</u>	<u>Associate Justice</u>	<u>Chief Justice</u>	<u>Associate Justice</u>
\$US	92 400	88 700	100 700	96 700	104 700	100 600

Pension: Non-contributory scheme; amount of pension equal to full salary if either (a) retirement at age 70 or over with minimum 10 years' service or (b) retirement at age 65 with minimum of 15 years' service.

Supreme Court
of Canada

	<u>1981</u>		<u>1983</u>		<u>1985</u>	
	<u>Chief Justice</u>	<u>Member</u>	<u>Chief Justice</u>	<u>Member</u>	<u>Chief Justice</u>	<u>Member</u>
\$Can	94 100 <u>b/</u>	86 600 <u>c/</u>	106 600 <u>b/</u>	98 100 <u>c/</u>	117 800 <u>b/</u>	108 400 <u>c/</u>
\$US <u>a/</u>	79 076	72 773	86 667	79 756	89 924	82 748

Pension: Contributions prior to 17 February 1976 at 1.5 per cent of salary; after 1976 at 7 per cent of salary; amount of pension equal to two thirds of final salary if either (a) retirement at age 70 with minimum of 10 years' service or (b) retirement at age 65 with minimum of 15 years' service. Mandatory retirement at age 75.

United Kingdom

	<u>1981</u>		<u>1983</u>		<u>July 1985</u>	
	<u>Lord Chief Justice</u>	<u>Master of the Rolls</u>	<u>Lord Chief Justice</u>	<u>Master of the Rolls</u>	<u>Lord Chief Justice</u>	<u>Master of the Rolls</u>
Pounds sterling	37 000	37 000	52 500	48 250	69 500	63 750
\$US <u>a/</u>	82 405	82 405	84 677	77 823	90 147 <u>d/</u>	82 685 <u>d/</u>

Note. As from 1 March 1986, the salaries of the Lord Chief Justice and the Master of the Rolls will be set at pounds sterling 75,000 and 69,000, respectively. At the United Nations operational rate of exchange in effect on 1 October 1985, the figures would be equivalent to \$US 105,485 and \$US 97,046, respectively.

Pension: Non-contributory scheme; amount of pension equal to 50 per cent of final salary after minimum of 15 years' service.

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Table 3 (continued)

Court of the European
Communities

1 January 1985

	<u>President of the Court</u>	<u>Member of the Court</u>
Belgian francs	5 990 088	4 883 232
\$US e/	95 081	77 512

Pension: The amount of the pension shall be 4.5 per cent of the basic salary last received for each full year in office and one twelfth of that sum for each complete month. The maximum pension shall be 70 per cent of the basic salary last received.

United States-Iran
Claims Tribunal

American judge

Third-Country judge

\$US	125 000	150 000
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Pension and other conditions of service: No information has been provided regarding pension entitlements or other conditions of service applicable to the members of the United States-Iran Claims Tribunal.

a/ Exchange rates in effect on 1 January 1981, 1 January 1983 and 1 January 1985 were used to convert the local currency amounts into United States dollars.

b/ In addition, entitled to a representational allowance of \$Can 5,000.

c/ In addition, entitled to a representational allowance of \$Can 2,500.

d/ Exchange rate in effect on 1 July 1985 was used to convert the local currency amounts into United States dollars.

e/ Exchange rate in effect on 1 January 1985 was used to convert the local currency amounts into United States dollars.

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United States-Iran Claims Tribunal, the latter, significantly, having its seat in The Hague. The fact is that the net annual compensation of such senior officials of the United Nations, and of the members of the Court of the European Communities and of the United States-Iran Claims Tribunal is much higher than is the current net compensation of Judges of the International Court of Justice, and would remain materially higher even if Judges were to be accorded the increased compensation requested above."

21. Bearing in mind the letter of the Court in conjunction with the tabulated data above, having regard, especially, to the emolument levels indicated for other international tribunals and the highest national courts, a rise in the annual remuneration from \$82,000 to \$85,000 as of 1 January 1986 would not be unreasonable. Should the General Assembly concur, the Secretary-General would recommend that the present base salary (\$70,000) be increased by \$3,000 and that \$9,000 of the present \$12,000 COL supplement be incorporated in the base salary with a corresponding decrease in the amount of the supplement. Thus the annual base salary of the members of the Court as of 1 January 1986 would be set at \$82,000 with a COL supplement of \$3,000 yielding a total net remuneration of \$85,000 per year.

22. Under such an approach, the APA indices would be rebased by dividing the current indices by 1.171. Future increases in the supplement would be calculated in relation to the revised annual salary of \$82,000 and would be based on movements of 5 per cent or more, upwards or downwards, of the revised APA index in accordance with the arrangement in effect since 1 January 1981.

**B. Allowances of the President and Vice-President
acting as President**

23. Article 32, paragraphs 2 and 3 of the Statute provide that the President shall receive a special annual allowance and that the Vice-President shall receive a special allowance for every day on which he acts as President. From 1950 and until 1976, the special annual allowance of the President and the special allowance payable to the Vice-President for every day on which he acted as President had been increased by the same percentage and at the same time as the annual salary. It thus remained at a constant proportion (24 per cent) of the annual base salary. The General Assembly decided to introduce, with effect from 1 January 1976, a system of remuneration consisting of an annual base salary and COL supplement. As the allowances are not subject to automatic COL adjustment, there ceased to be a direct relationship between the increases in the total emoluments of the Judges and the allowances payable to the President and the Vice-President when acting as President. The present level of \$12,200 was fixed by resolution 31/204 to take effect from 1 January 1977 and represented 24 per cent of the \$50,000 concurrently decided as the annual salary. As from 1 January 1977, however, the allowance began to decline as a proportion of total emoluments, since resolution 31/204 had excluded it from the effects of the new interim adjustment system. On the occasion of the salary review in 1980, no increase in the allowance was proposed and none was approved by the General Assembly when the annual base salary was raised by 40 per cent with a consequent reduction of the COL supplement. From 1 January 1981 to the present the unchanged allowance has represented 17.4 per cent of the annual base salary (\$70,000) and 14.6 per cent of the adjusted emoluments (\$82,000) including COL supplement.

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24. In the report prepared for submission to the thirty-eighth session of the Assembly (A/C.5/38/27), in which the President's allowance was considered in the framework of the Judges' conditions of service, it was suggested that the relationship between the special allowance and the annual base salary be re-established at the level existing prior to 1 January 1981 and that consequently the General Assembly might wish to consider raising the allowance from \$12,200 to \$16,800 as of 1 January 1985. It was also suggested that a corresponding increase be applied to the special allowance of the Vice-President (likewise excluded from the benefit of interim adjustments), raising the daily amount from \$76 per day to \$104.

25. ACABQ, in its report (A/39/7/Add.1), was of the opinion that, in view of the introduction as of 1 January 1976 of a new system of remuneration consisting of an annual base salary and a cost-of-living supplement, the level of the special allowance should not be determined through the application of a fixed ratio to the base annual salary; rather it should be fixed at an amount which would not be subject to automatic change whenever the base annual salary was increased. Accordingly, it recommended that the special annual allowance payable to the President of the Court be set at \$15,000 as of 1 January 1985 with a corresponding adjustment to \$94 per day (up to a maximum of \$9,400 per year) for the special daily allowance paid to the Vice-President when acting as President.

26. On balance, the Secretary-General would concur with the ACABQ recommendation to increase the President's special allowance from \$12,200 to \$15,000 per year as of 1 January 1985 with a corresponding increase in the special daily allowance paid to the Vice-President when acting as President from \$76 to \$94. The latter has always been subject to a maximum corresponding to 100 times the daily compensation. Bearing in mind the Statute of the Court (art. 32, para. 3) which stipulates the pecuniary compensation of the Vice-President "for every day on which he acts as President", the Secretary-General believes that the maximum should not be seen as a legal bar to seeking a further allotment in a situation where the Vice-President, through the death or incapacity of the President, must act as President for more than 100 days in any calendar year.

C. Pensions

27. As mentioned above, the members of the Court are entitled to retirement pensions, the conditions of which have been fixed by the General Assembly through the adoption of regulations in accordance with article 32, paragraph 7, of the Statute of the Court. These pensions, of a non-contributory character, provide one half of the annual salary to a retired Judge who has completed a full term of nine years and, subject to a minimum period of service, proportionally less to one who has not. A re-elected Judge also receives by way of pension on retirement 1/600th of annual salary for each further month of service, up to a maximum pension of two thirds of annual salary. Amendments to the Pension Scheme Regulations, adopted by the General Assembly in resolution 38/239 of 20 December 1983 (see para. 4 above), reduced the minimum period of qualifying service from five to three years and the age after which a pension may be paid from 65 to 60, provided better entitlements for disabled Judges and the widows of those who die in office and removed the need for regularly revising the ceiling on child's benefit by expressing it henceforth in percentage rather than pecuniary terms. In the present

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context, it is important to note that the General Assembly, by these amendments, defined "annual salary", for pension purposes, as "annual base salary", thus excluding any allowances and the COL supplement (see Regulations, art. V, para. 2). It is also to be noted that the Regulations provide that:

"Pensions in payment shall be automatically revised by the same percentage and at the same date as pension entitlement." (Ibid., art. VII, para. 2.)

Any decision taken by the General Assembly on Judges' pensions will therefore affect the situation of existing pensioners as well as of serving Judges.

28. As indicated earlier, the General Assembly decided, in resolution 31/204 of 22 December 1976, that the retirement pension given to members of the Court should be reviewed concurrently with the periodic review of their annual salary and that the interim adjustment procedure applicable to the salaries should not apply to pensions. In other words, the changes in the COL supplement received by Judges do not give rise to changes in the pensions, which therefore remain static in dollar terms between reviews of the emoluments of the Judges by the General Assembly. The level of pensions increases only whenever there is an increase in the annual salary through either a direct increase or the consolidation of a portion of the COL supplement into the annual salary.

29. Following consolidation of part of the COL supplement into the base salary on 1 January 1981, which increased the latter from \$50,000 to \$70,000, the prospective pension entitlement of the Judges elected to serve nine years was increased from \$25,000 to \$35,000. It has since remained at that level.

30. In considering, for the second time since the institution of the present system nine years ago, the impact on the relationship between emoluments and pensions of the decisions taken in resolution 31/204, it should be borne in mind that the presumable intention of the General Assembly in formulating the pension provisions in 1976 was that the normal full pension should equal one half of the annual compensation at the time of retirement and that, the Assembly's decision to have the pensions reviewed on the same occasion as the salary could be seen, in particular, as providing for periodic examinations of the level of pensions in relation to the other emoluments and, in this regard, to consider the possibility of incorporating some or all of the COL supplement into the annual base salary.

31. As a result of the decisions taken by the General Assembly on the occasion of the last review, by resolution 35/220 of 1 December 1980 the amount of a normal full pension became the equivalent of approximately 42.7 per cent of the total remuneration of a serving Judge, i.e., \$35,000 as against a total remuneration of \$82,000. This situation has prevailed ever since. It means that a Judge retiring in 1985 would receive the same amount of pension as a former colleague who retired in 1981 and that the latter has had his pension unadjusted over the last four years, notwithstanding any cost-of-living changes in his place of retirement.

32. Furthermore, should the base salary remain at \$70,000 until the next comprehensive review scheduled for 1990, the pension entitlement would remain unchanged for the next five-year period. Consequently, the pension entitlement payable to a Judge would remain set at \$35,000 for nearly a 10-year period, i.e., from 1981 through 1990.

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33. It is in this light that the Secretary-General would suggest that it would be advisable to change the proportions of the components reflected in a Judge's total annual compensation so as to increase the annual base salary with a corresponding decrease in the COL supplement. This would result in an increase in the pension benefit of former members of the Court and/or their beneficiaries as well as in the prospective benefit of serving Judges.

34. As indicated in paragraph 21, should the General Assembly fix the annual remuneration of members of the Court at \$85,000, the base salary could be established at \$82,000 with a COL supplement of \$3,000. This would increase the prospective pension entitlements of the serving Judges from \$35,000 to \$41,000 (an increase of 17.1 per cent) and proportionately increase the pensions currently in payment to retired Judges and/or their beneficiaries by 17.1 per cent.

D. Compensation of Judges ad hoc

35. The persons whom parties to cases before the Court choose, pursuant to article 31 of its Statute, to "take part in the decision on terms of complete equality with their colleagues [i.e., the Members of the Court]" (para. 6f) are known as Judges ad hoc and, according to article 32, paragraph 4, of the Statute, "shall receive compensation for each day on which they exercise their functions".

36. For historical reasons that can be traced back to the original remuneration system of the Permanent Court of International Justice, that compensation has always been composed of two elements, described as a "fee" and a "subsistence payment" and, up to 1980, was so calculated that their sum was equivalent to 1/365th of the annual salary of a Member of the Court. This practice reflects the requirement of "complete equality" expressed in paragraph 6 of article 31, as quoted above. Prior to 1980 the method followed was simply to subtract, from the sum reached by division of the salary, an amount equivalent to the per diem of a senior official, and to call the remainder the "fee". However, since the notion of "subsistence" is bound up with that of service away from home, it was provided that a Judge ad hoc who normally resided at the seat of the Court should not receive the "subsistence" portion of the compensation. This situation occurred only once, in 1968-1969, with the result that a Judge ad hoc resident in The Hague received less compensation than the Judge ad hoc chosen by the other party. He also received, for each day of service, less than 1/365th of the annual salary of his other colleagues, the Members of the Court, even though this was of an indivisible nature and did not contain any identifiable subsistence element. (It should be noted that members of the Court did not then, and do not now, receive any per diem or other form of subsistence allowance for service at the seat of the Court, irrespective of their residential position.) Thus on the one occasion just cited, the condition of non-residence in The Hague for the receipt of the "subsistence" element resulted in at least an arguable breach of the principle of equal treatment.

37. By the effect of resolution 31/206 of 22 December 1976, the emoluments of members of the Court became divisible into the annual base salary and the COL supplement. In relation to Judges ad hoc, this was first reflected in 1980, on the most recent occasion on which their compensation was reviewed.

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38. The General Assembly then decided, in paragraph 3 of resolution 35/220, that, as from 1 January 1981, the

"ad hoc Judges referred to in article 31 of the Statute of the International Court of Justice shall receive a fee of \$192 for each day on which they exercise their functions and those ad hoc Judges who do not normally live at The Hague shall receive an additional subsistence payment equal to 1/365 of the interim cost-of-living supplement payable at the time to a member of the Court."

The figure of \$192 is the equivalent of 1/365th of the annual base salary (\$70,000) fixed for members of the Court on the same occasion, so that it will be evident from the text as a whole that the aim of achieving equality by division of total net emoluments was retained.

39. It should be pointed out that the "subsistence payment" in respect of Judges ad hoc bears no relationship in either its method of calculation or its amount to the allowance payable to senior officials in the United Nations system. The subsistence payable to a senior official in travel status at The Hague stands at present at \$118, whereas the "additional subsistence payment" to a Judge ad hoc is \$33. The term "additional subsistence payment" is therefore a misnomer. The latter payment could moreover vary from nothing to a substantial amount, according to the prevailing relationship between the annual base salary and the COL supplement.

40. The Court points out that the COL supplement is entirely independent of the place where its members reside or perform their duties. By analogy, the Court feels that this should also be true of that element of a Judge ad hoc's compensation which corresponds to that supplement and that there is therefore no reason to make its receipt conditional upon non-residence in The Hague.

41. In light of the above it should be sufficient to provide in future that the "ad hoc Judges referred to in Article 31 of the Statute of the International Court of Justice shall receive for each day on which they exercise their functions, 1/365th of the sum of the annual base salary and interim cost-of-living supplement payable at the time to a Member of the Court".

II. Conditions of service of members of the Court

A. General

42. In 1983, the Secretary-General received suggestions from the International Court of Justice regarding the provision to members of the Court of certain allowances to which heretofore they were not entitled. The proposals related to the following:

- (a) Dependent children;
- (b) Cost of education for their children;

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(c) Relocation on completion of service;

(d) Compensation to survivors in the event of the death of a serving member of the Court.

No proposals were made by the International Court of Justice at that time as regards specific amounts or eligibility criteria.

43. On that occasion, the Secretary-General indicated in his report of 1983 (A/C.5/38/27) that some importance should be attached to the factor of expatriation in the determination of entitlements. In the case of the members of the Court, there is a need to define, for this purpose, the expatriation criteria. In the revised Travel and Subsistence Regulations of the International Court of Justice, adopted by the General Assembly in resolution 37/240, a distinction is made between the travel and related entitlements of

"(a) the President, who is required by Article 22, paragraph 2, of the Statute of the Court to reside at the seat of the Court and those other members who, in compliance with Article 23 of the Statute, have taken up residence at The Hague and (b) those members of the Court who maintain their primary residence elsewhere."

44. Through this distinction, the Assembly recognized that the President and those Judges who took up residence at The Hague, in changing their primary residence, were incurring extra expenses normally incurred by expatriate officials, while the same could not be said for the other Judges who maintained their primary residences elsewhere. Under these circumstances, it seemed logical to apply the same distinction in determining entitlements to the expatriate-related provisions dealt with below.

45. Bearing in mind (a) the decision of the General Assembly to extend to the President and those Judges who established their primary residences at The Hague the installation grant provisions applicable to senior officials of the Secretariat and (b) the suggestions made by the Court, the Secretary-General expressed his belief that there was a case for extending to the President and those Judges who had established their primary residences at The Hague certain provisions recognized as appropriate and justifiable for persons serving outside their respective countries on a continuing basis, as well as to grant compensation to survivors in the event of death of a serving member of the Court.

B. Cost of educating children

46. The Secretary-General indicated that he shared the views expressed by a number of delegations in the Fifth Committee in 1982 that the Organization should provide a grant to help meet part of the additional cost of education arising from the expatriate status of the officials concerned.

47. Consequently, the report suggested (A/C.5/38/27, para. 83) that the President and members of the Court who had taken up residence in The Hague be reimbursed for

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the actual cost of educating their children in respect of each child up to the award of the first recognized degree. The amount of reimbursement per child might be subject to a ceiling of \$4,500 for the actual cost of educating their children in respect of each child up to the award of the first recognized degree. It was also suggested that provision be made for one related travel per year from the place of scholastic attendance when outside the Netherlands to The Hague. ACABQ (A/39/7/Add.1, para. 17) expressed its support for the Secretary-General's suggestion that the President and members of the Court who had taken up residence in The Hague be reimbursed up to a ceiling of \$4,500 for the actual cost of educating their children in respect of each child each year up to the award of the first recognized degree. The Committee expressed its understanding that the amount to be paid for education would be in the form of reimbursement for identifiable expenses actually incurred.

48. ACABQ also agreed that provision be made for one related travel per year from the place of scholastic attendance, when outside the Netherlands, to The Hague (*ibid.*).

C. Relocation upon completion of service

49. Upon the completion of their appointment with the Court, the Judges who established their primary residence in The Hague will undoubtedly incur additional expenses upon their resettlement in a new location after an extended period of having their primary residence at The Hague. The Secretary-General therefore suggested that, upon provision of evidence of relocation outside the Netherlands, the members of the Court who had taken up residence at The Hague might receive a lump-sum payment, the amount of which would be expressed in number of weeks of base salary and would vary according to their number of years of service at the Court. It was furthermore suggested that the lump sum might be calculated according to the following schedule:

<u>Years of service at the time of separation</u>	<u>Number of weeks of annual compensation</u>
up to 2	5
3	8
4	11
5	14
6	16
7	18
8	20
9	22
10 or more	24

50. Taking into account the likely length of service (since members of the Court are elected to terms of nine years), ACABQ agreed in principle (A/39/7/Add.1, para. 19) that those Judges who had maintained a bona fide residence at The Hague for an extended period during service with the Court should be paid a lump sum upon the completion of their appointment with the Court and their resettlement outside of the Netherlands. The Committee believed that "extended period" should be taken

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to mean at least five continuous years and that, while the actual amount to be paid should vary according to the number of years served while maintaining continuous primary residence at The Hague, the schedule of payments should be simpler than indicated in paragraph 49 above.

51. Accordingly, ACABQ recommended that those Judges who had maintained a bona fide primary residence at The Hague for at least five continuous years during service with the Court should receive a lump sum equivalent to 18 weeks of annual net base salary upon completion of their appointment and resettlement outside the Netherlands, and that those Judges who had completed nine continuous years or more of eligibility should receive instead the equivalent of 24 weeks of annual net base salary upon completion of service and relocation outside the Netherlands (A/39/7/Add.1, para. 20).

D. Compensation for survivors in the event of death

52. The Secretary-General also believed it desirable to provide some compensation to the survivors in the event of the death of a member of the Court during his service (A/C.5/38/27, para. 84). The need for such compensation had been demonstrated on the occasion of several recent regrettable instances. Consequently, it was suggested that such compensation be in the form of a lump-sum payment equivalent to one month of base salary per year of service, subject to a minimum of three months and a maximum of nine months. This would apply in the case of all members of the Court.

53. ACABQ recommended approval of a death benefit scheme for the members of the Court along those lines (A/39/7/Add.1, para. 21).

E. Conclusions

54. The Secretary-General recommends that the General Assembly approve the arrangements set out in paragraphs 47, 48, 51 and 52 above, regarding assistance in meeting the cost of educating children and a relocation grant in respect of those Judges who take up residence in The Hague as well as compensation to the survivors of members of the Court in the event of death in service. The corresponding amounts and conditions of entitlement should be as recommended by ACABQ in its 1984 report (A/39/7/Add.1).

Financial implications

55. In summary, should the General Assembly approve the proposals contained in paragraphs 21, 26, 34 and 41 of part I and paragraphs 47, 48, 51 1/ and 52 of part II above, the financial implications are estimated at \$375,000 for the biennium 1986-1987, broken down as follows:

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Part I

(a)	Emoluments (para. 21)	90 000
(b)	President's and Vice-President's special allowance (para. 26) <u>2/</u>	9 200
(c)	Pensions (para. 34)	232 000
(d)	Emoluments of <u>ad hoc</u> Judges (paras. 21 and 41)	5 800

Part II

(e)	Reimbursement of education costs and related travel (paras. 47, 48)	<u>38 000</u>
	<u>Total</u>	<u>375 000</u>

Notes

- 1/ No relocation is expected in 1986 or 1987.
- 2/ In addition an amount of \$4,600 would be incurred in 1985.
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ANNEX 20a

Report by the Secretary-General on pensions of the judges and staff of the International Court of Justice

[Document A/110]
[Original text: English]

At its twenty-third plenary meeting, held on 6 February 1946, the General Assembly, being "desirous of assuring that adequate and reasonable pensions be assured to the judges and the Registrar and the staff of the International Court of Justice", directed the Secretary-General, "in consultation with the Registrar of the Court, to develop a pension plan for the judges and Registrar and staff for submission to the second part of the first session of the General Assembly".¹

Proposals for a pension plan for the Registrar and the staff of the Court were, with the agreement of the Registrar, included in the scheme prepared by the working party established by the Secretary-General to consider the question of a permanent staff retirement scheme, in accordance with the resolution of the General Assembly adopted at its thirty-first plenary meeting on 13 February 1946. The present document relates only to the question of a pension plan for the judges of the Court.²

At the request of the Secretary-General, the Registrar forwarded, on 13 June 1946, a memorandum in which he expressed his views on the subject (see Appendix A).

This memorandum was transmitted to the working party on the retirement scheme, to whom the question had been previously referred. The views of the working party were stated in a letter dated 20 August 1946 from their chairman to the Assistant Secretary-General for Administrative and Financial Services (see Appendix B).

Having regard to the considerations presented in the memorandum, and to the comments in the above letter, the Secretary-General presents for the consideration of the General Assembly the following plan, developed from the pension plan of the Permanent Court of International Justice.

APPENDIX A

The following points appear to be of special importance.

In the first place there seems to be a certain analogy as regards pensions between the judges and the Secretary-General of the United Nations. The Secretary-General enters on his office after having been in another profession, and it is regarded as exceptional, and hardly desirable, that he should have to take up a profession again when he ceases to be Secretary-General. In the same way, the judges can come to the Court only if they abandon a career which they will not be able easily to resume when they cease to be judges. It would therefore seem reasonable and in accord-

¹ See Resolutions adopted by the General Assembly during the first part of its first session, page 24.

² The proposals regarding the pension plan for members of the International Court of Justice were later amended by the Joint Sub-Committee of the Fifth and Sixth Committees. See Annex 20.

ANNEXE 20a

Rapport du Secrétaire général relatif aux pensions des juges et du personnel de la Cour internationale de Justice

[Document A/110]
[Texte original en anglais]

A sa vingt-troisième séance plénière, qui s'est tenue le 6 février 1946, l'Assemblée générale, "désireuse d'assurer aux juges, au Greffier et au personnel de la Cour internationale de Justice des pensions suffisantes et raisonnables" a chargé le Secrétaire général "d'établir en consultation avec le Greffier de la Cour un projet de pensions pour les juges, le Greffier et le personnel de la Cour qu'il soumettra à la deuxième partie de la première session de l'Assemblée générale".¹

Les propositions relatives à un régime de pensions pour le Greffier et le personnel de la Cour ont été incluses, d'accord avec le Greffier, dans le projet préparé par le groupe de travail créé par le Secrétaire général pour examiner la question d'un régime permanent de retraite pour le personnel, conformément à la résolution de l'Assemblée générale adoptée à sa trente et unième séance plénière, le 13 février 1946. Le présent document se rapporte exclusivement à la question du régime des pensions pour les juges de la Cour.²

A la demande du Secrétaire général, le Greffier a présenté, le 13 juin 1946, un mémoire exposant ses vues sur la question (Voir Appendice A)

Ce mémoire a été transmis au groupe de travail chargé d'élaborer un régime de retraite, auquel la question avait été renvoyée antérieurement. Les vues du groupe de travail ont été exposées dans une lettre en date du 20 août 1946 adressée par son président au Secrétaire général adjoint chargé des Services administratifs et financiers (voir Appendice B).

Tenant compte des considérations présentées dans le mémoire et des observations formulées dans la lettre ci-dessus, le Secrétaire général soumet à l'examen de l'Assemblée générale le plan suivant, établi en s'inspirant du régime des pensions de la Cour permanente de Justice internationale.

APPENDICE A

Les points suivants semblent revêtir une importance particulière.

Il est apparu en premier lieu qu'une certaine analogie pouvait être établie, au point de vue de la pension, entre le cas des juges et celui du Secrétaire général des Nations Unies. En effet, de même que le Secrétaire général n'accède à ses fonctions qu'après avoir fait une autre carrière, et que l'on tient pour exceptionnel et peu désirable qu'il ait à en entreprendre une lorsqu'il cesse d'être Secrétaire général, de même les juges n'entrent à la Cour qu'en abandonnant une carrière qu'ils ne pourront pas reprendre aisément en quittant leurs fonctions. Il paraîtrait donc raison-

¹ Voir les Résolutions adoptées par l'Assemblée générale, pendant la première partie de sa première session, page 24.

² Les propositions relatives au régime des pensions des membres de la Cour internationale de Justice ont été amendées ultérieurement par la Sous-Commission mixte des Cinquième et Sixième Commissions. Voir Annexe 20.

ance with the Assembly's views to adopt a similar plan for judges' pensions as for that of the Secretary-General, save for details.

If this principle is admitted, the plan for judges' pensions might take the following form:

(a) The cost of judges' pensions would be borne by the United Nations, which would decide on the method to be employed in covering it, whether a pension fund, or the provision of a credit in the annual budget, or any other method that might seem suitable.

(b) As the budget of the United Nations is drawn up in dollars, the payment of pensions would be based on that currency.

(c) As has been decided in the case of the Secretary-General, the pension would be half of the net salary.

(d) As in the case of the Secretary-General, the right to the pension would be acquired on completion of the years of service for which the judge was elected. No difference in this respect should be made between judges selected by lot to sit for nine years and those who, though elected under the same conditions as the above, were selected by lot to serve for only three or six years.

(e) If a judge ceased to hold office before the end of his term, no doubt a smaller pension would be provided for him; for instance the amount would be proportional to the number of years of service he had completed.

On the other hand, a judge's right to a pension might be conditional on his sitting for five years, save however for those who, in the ballot taken after the election of 6 February 1946, were allotted a term of three or six years. But if such a condition were imposed, the Court should have the right to award a pension to a judge not fulfilling that condition if, for instance, he resigned on grounds of health.

(f) Lastly, as in the case of the Secretary-General, payment of the pension would not be subject to the attainment of any age.

If the principle be not admitted that the judges' pensions should be fixed on the same basis as that to be decided on for the Secretary-General, the system might be similar to that which was in existence for members of the Permanent Court in virtue of the League of Nations Assembly's Resolution of 14 September 1929, with the following changes:

1. The pensions should be charged to the budget of the United Nations and their amount fixed in dollars.

2. They should be based on the length of service. Each judge would be entitled to an annual pension of one-thirtieth of his annual salary for each period of twelve months completed in the service of the Court. It may also be mentioned that, under article 3 of the above-mentioned resolution of 14 September 1929, in the case of the President

nable et conforme à l'esprit dont s'est inspirée l'Assemblée générale de régler les pensions des juges sur la même base que celle du Secrétaire général, sauf ajustements de détail.

Si ce principe était admis, le régime des pensions des juges pourrait s'analyser dans les termes suivants:

a) Les pensions des juges seraient à la charge des finances de l'Organisation des Nations Unies, celle-ci réglant les modalités d'application de ce principe (caisse des pensions ou inscription d'un crédit au budget annuel ou toute autre méthode qui lui semblerait appropriée).

b) Le budget de l'Organisation des Nations Unies étant établi en dollars, le service de ces pensions serait assuré sur la base de cette monnaie.

c) Conformément à ce qui a été décidé pour le Secrétaire général, la pension serait égale à la moitié du traitement net.

d) Conformément à ce qui a été décidé pour le Secrétaire général, le droit à ladite pension serait acquis après accomplissement des années de service pour lesquelles le juge a été élu. A cet égard, il ne devrait être fait aucune différence entre les juges qui ont été désignés par le sort pour siéger pendant neuf ans et ceux qui, élus dans les mêmes conditions que ceux-là, ont été désignés par le sort pour ne siéger que pendant trois ou six ans.

e) Dans le cas où un juge cesserait ses fonctions avant l'expiration de son mandat, il y aurait sans doute lieu de prévoir une pension diminuée dont le montant par exemple serait proportionnel au nombre d'années de service accomplies par ce juge.

D'autre part, le droit à pension d'un juge pourrait être subordonné à l'accomplissement de ses fonctions pendant cinq ans, exception devant toutefois être prévue dans le cas des juges auquel le tirage au sort qui a suivi l'élection du 6 février 1946 a assigné un mandat de trois ou six ans. Mais, si une telle condition était requise, elle devrait être tempérée par la faculté laissée à la Cour d'accorder une pension à un juge qui ne remplit pas cette condition, par exemple si sa démission a été motivée par son état de santé.

f) Enfin, l'assimilation au Secrétaire général aurait pour conséquence que le service de la pension ne serait subordonné à aucune condition d'âge.

Dans le cas où le principe que la pension des juges doit être fixée sur la même base que pour le Secrétaire général ne serait pas admis, le régime à instituer pour la pension des juges pourrait s'inspirer de celui qui a existé pour les membres de la Cour permanente en vertu de la résolution de l'Assemblée générale de la Société des Nations du 14 septembre 1929, avec les modifications suivantes:

1. Les pensions des juges seraient à la charge du budget de l'Organisation des Nations Unies et leur montant fixé en dollars.

2. Les pensions seraient fixées sur la base de la durée des services. Chaque juge aurait droit, pour chaque période de douze mois accomplie au service de la Cour et à titre de pension annuelle, au paiement d'un trentième de son traitement pour cette période. Il y a lieu, en outre, de rappeler qu'aux termes de l'article 3 de la résolution du 14 septem-

the pension was calculated on his annual salary and on his special allowance, and for the Vice-President on his annual salary and his daily allowance.

3. The maximum pension would be 7,000 dollars.

4. In cases of resignation, no pension rights would be acquired till after five years of service.

5. Under the rules for the grant of pensions to judges of the Permanent Court (resolution of 14 September 1929, article 1, last paragraph), a pension did not become payable until the person entitled had reached the age of sixty-five; but in certain cases and by a decision of the Court, a pension might be granted to a claimant before that age. To avoid the difficult situation mentioned above if a judge had to leave the Court prematurely, the age limit might be lowered, for example to sixty years.

6. As an exception to the above provisions, the Court might be authorized to award a pension by a special decision to a judge on grounds of health, even if he resigned before the expiration of five years' period; or it might authorize the grant of a pension before the age of sixty.

7. The question of granting a pension to a judge's widow or to his children while under age should be considered.

Further, owing to the transitory provision contained in Article 13 of the Statute, for the purpose of enabling the system of partial renewal to be introduced, a special problem arises in regard to judges' pensions. On 6 February 1946, the fifteen judges were elected under the same conditions, and subsequently it was decided by lot which of them should remain in office only for six or for three years. This situation will not recur; but it necessitates the study of a transitory regime for those judges who, at the end of three or six years, are not re-elected. The application of this regime will depend on the result of the elections to be held for the first two partial renewals; at most it will affect only a very small number of persons.

The fairest method would be to fix the amount of the pension of judges who thus remain in office only for three or for six years, as equal to the amount they would have received at the end of nine years, if they had been selected by lot to sit for the full nine years. For a judge who has held office for only three or six years has none the less abandoned in his own country a situation which he will not be able to recover when he leaves the Court.

Considerations of fairness towards judges who were all elected under the same conditions, and among whom a distinction has only been made by the casting of lots, and also considerations of the Court's own dignity, would point to the adoption of this transitory regime, which would moreover relieve the General Assembly and the Security Council from any secondary issues, when they are carrying out the first partial renewals of the Court.

bre 1929 citée plus haut, la pension était calculée, dans le cas du Président, sur son traitement annuel et sur son indemnité spéciale et, dans le cas du Vice-Président, sur son traitement annuel et sur son allocation quotidienne.

3. Le maximum de la pension serait fixé à 7.000 dollars.

4. En cas de démission, le droit à pension ne serait acquis qu'après cinq ans de service.

5. Selon le règlement qui régissait l'octroi de pensions aux juges de la Cour permanente (résolution du 14 septembre 1929, art. 1, dernier alinéa), la pension ne commençait à être servie qu'à partir du moment où les ayants droit avaient atteint l'âge de soixante-cinq ans, tout ou partie de la pension pouvant cependant dans certains cas exceptionnels être, par décision de la Cour, servi aux ayants droit avant cet âge. Afin d'éviter les inconvénients signalés ci-dessus au cas où un juge serait amené à quitter prématurément la Cour, il y aurait lieu d'abaisser cette limite d'âge, par exemple à soixante ans.

6. Par dérogation aux dispositions ci-dessus, la Cour devrait avoir la faculté, par décision spéciale, motivée notamment par l'état de santé de l'intéressé, d'accorder à celui-ci une pension, même si sa démission était intervenue avant l'expiration des cinq ans ci-dessus prévus ou d'autoriser le service de la pension avant soixante ans.

7. Il y aurait lieu de prendre en considération la question d'une pension au bénéfice de la veuve d'un juge ou de ses enfants.

D'autre part, l'Article 13 du Statut, en raison de la disposition transitoire qu'il contient en vue de permettre l'introduction du régime du renouvellement partiel, soulève un problème particulier dans le cas des pensions des juges, les quinze juges ayant été, le 6 février 1946, élus dans les mêmes conditions et le sort ayant ensuite désigné ceux d'entre eux qui ne resteraient en fonctions que pendant trois ou six ans. Cette situation, qui ne se renouvellera pas, devrait amener l'étude d'un régime transitoire pour ceux de ces juges qui, au bout de trois ou de six ans, ne seraient pas réélus. Ce régime, dont l'application dépendra du résultat des élections à effectuer pour les deux premiers renouvellements partiels, n'affectera d'ailleurs au maximum qu'un très petit nombre de personnes.

Il serait équitable de régler cette situation en fixant le montant de la pension des juges qui n'auront été ainsi en fonctions que pendant trois ou six ans, à un montant égal au montant de la pension qu'ils auraient reçue au bout de neuf ans si le sort les avait désignés pour siéger pendant toute cette période: en effet le juge qui n'est resté ainsi en fonctions que pendant trois ou six ans n'en a pas moins, pour entrer à la Cour, quitté dans son pays une situation qu'il ne pourra pas retrouver à sa sortie de la Cour.

Aux considérations d'équité à l'égard de juges élus tous dans les mêmes conditions et distingués seulement par la voie du sort, et de dignité pour la Cour qui militent en faveur de ce régime transitoire, s'ajoute celle de libérer l'Assemblée générale et le Conseil de sécurité de préoccupations secondaires lors des premiers renouvellements partiels de la Cour.

APPENDIX B

Your letter dated 31 May 1946 asked the Working Party to prepare recommendations upon the question of a pension fund for the judges of the International Court of Justice at The Hague. We were asked to consider the question in conjunction with the Registrar of the International Court. We were also aware that at its thirty-first plenary meeting, the General Assembly resolved that:

"The General Assembly is desirous of assuring that adequate and reasonable pensions be assured to the judges and the Registrar and the staff of the International Court of Justice, and therefore directs the Secretary-General, in consultation with the Registrar of the Court, to develop a pension plan for judges and the Registrar and staff for submission to the second part of the first session of the General Assembly."

So far as the staff of the International Court is concerned, we have included these people in the proposed United Nations Pension Fund. We have also continued the provision which existed in the regulations of the League of Nations Pension Fund, whereby the Registrar of the International Court may attend the meetings of the body managing the Pension Fund, should the interests of his staff be particularly affected.

As regards the Registrar, we assume that he would be placed in a similar position to the assistant secretaries-general, and therefore the remarks we make in our main report in respect of these senior officials are also relevant to the pension arrangements for the Registrar.

So far as the pensions for the judges are concerned, one thing is quite clear. Their number is so small and their period of office so limited that no normal pension fund could cover them. Any arrangement for pension in their case, therefore, must be in the nature of a continued salary payment at a lower rate, charged to the general revenues of the United Nations. This being the case, the question is largely one as to what general policy the General Assembly would like to adopt in respect of the judges of the International Court, which will depend on the pension status to be accorded to the judges, the policy to be adopted in respect of appointment and period of office, etc. The Working Party did not feel competent to express any final judgment having regard to the very general issues involved.

The judges of the previous International Court were entitled to an annual pension equal to one-thirtieth of their salary multiplied by the number of years of service in the office of judge. The pension was payable in Dutch florins and a maximum of 15,000 Dutch florins per annum was fixed. Save for exceptional reasons, the pension was not payable until the beneficiary had attained the age of sixty-five. A judge who was removed from office on the ground of failure to satisfy the conditions of high moral character required by Article 2 of the Statute of the Court forfeited his rights to a pension. No pension was payable in the case of resignation before serving five years nor in respect of a widow or dependents.

We have had the advantage of seeing a memorandum transmitted by the Registrar of the

APPENDICE B

Par lettre en date du 31 mai 1946 vous avez demandé au groupe de travail de présenter des recommandations sur la question d'une caisse de retraite pour les juges de la Cour internationale de Justice de La Haye. Nous avons été invités à examiner la question en liaison avec le Greffier de la Cour internationale. Nous avons également pris en considération la résolution suivante, votée par l'Assemblée générale, au cours de sa trente et unième séance plénière:

"L'Assemblée générale, désireuse d'assurer aux juges, au Greffier et au personnel de la Cour internationale de Justice des pensions suffisantes et raisonnables, charge le Secrétaire général d'établir, en consultation avec le Greffier de la Cour, un projet de pensions pour les juges, le Greffier et le personnel de la Cour qu'il soumettra à la deuxième partie de la première session de l'Assemblée générale."

En ce qui concerne le personnel de la Cour internationale, nous avons compris les intéressés dans le projet de Caisse de retraite des Nations Unies. Nous avons également repris les dispositions du règlement de la Caisse des pensions de la Société des Nations aux termes duquel le Greffier de la Cour internationale pouvait assister aux réunions de l'organisme directeur de la Caisse des pensions, lorsque les intérêts de son personnel étaient particulièrement affectés.

En ce qui concerne le Greffier, nous présumons qu'il serait placé dans une situation comparable à celle des Secrétaires généraux adjoints. Les remarques figurant dans notre rapport principal, concernant ces fonctionnaires supérieurs, s'appliquent donc également à la retraite du Greffier.

En ce qui concerne les pensions des juges, il est évident que leur nombre est si réduit et la durée de leur mandat si limitée qu'aucune caisse de retraite normale ne peut les couvrir. En conséquence, tout arrangement de pension les concernant doit être de la même nature qu'une prolongation de traitement à un taux inférieur, prélevé sur l'ensemble des revenus des Nations Unies. Ceci étant, il s'agit avant tout de savoir quelle politique générale l'Assemblée générale entend adopter à l'égard des juges de la Cour internationale, ce qui dépendra du régime de pensions envisagé, de la politique adoptée eu égard à leur désignation et à la durée de leur mandat, etc. Le groupe de travail n'a pas considéré qu'il avait compétence pour exprimer une opinion définitive sur ces questions d'ordre très général.

Les juges de l'ancienne Cour internationale avaient droit à une pension annuelle égale au trentième de leur traitement, multiplié par le nombre d'années de service de l'intéressé en qualité de juge. La retraite était payable en florins néerlandais, avec un maximum annuel de 15.000 florins néerlandais. Sauf pour raisons exceptionnelles, les retraites n'étaient pas payables avant que l'intéressé eût atteint l'âge de soixante-cinq ans. Le juge relevé de ses fonctions faute d'avoir répondu aux conditions de moralité supérieure requises par l'Article 2 du Statut de la Cour, perdait ses droits à la retraite. Aucune retraite n'était payable en cas de démission avant une période de cinq ans ou en faveur de la veuve ou des personnes à charge.

Il nous a été donné de prendre connaissance d'un mémoire transmis par le Greffier de la Cour sous

Court under a letter dated 21 June, containing points which he thinks should be borne in mind in formulating fresh proposals. We have not had any opportunity, however, of talking to the President of the Court or to the Registrar.

This memorandum suggests certain important changes from the old scheme, principally as follows. (a) The pension should be paid in United States dollars and not in Dutch florins; (b) the pension should be half of the net salary payable on completion of the years of service for which the judge was elected, and should not vary according to the length of service; (c) payment of the pension should not be subject to the attainment of any minimum age.

These proposals were based on the principle that judges of the Court should be accorded substantially the same pension rights as the Secretary-General of the United Nations. We are not competent to say whether the General Assembly would accept this proposed principle. We can only point out that the new proposals would involve a substantial liberalization of the pension rights available under the pension scheme of the former Court.

The memorandum then goes on to say that if the principle of according to the judges the same pension rights as the Secretary-General is not accepted, then a scheme on the old lines, subject to certain amendments, might be adopted. Without venturing to express any final opinion on the broad basis of the scheme, which being non-contributory must be a direct charge on the budget of the United Nations, we thought it might be useful if we commented upon the proposed changes in the light of the general principles upon which the Pension Fund for the United Nations staff is based.

First, the memorandum recommends that the pension should be paid in United States dollars. For the general pension plan, we recommend that as a guiding principle the pension should be payable in the first instance in the currency of the country in which the employee's salary scale is calculated, with the employee having the right when he retires to obtain a conversion into the currency of the country in which he decides to reside. We understand that the salaries of the judges of the International Court have been fixed by the General Assembly in Dutch florins, and therefore, if the general principle of the Pension Fund for ordinary staff were followed, the judges' pensions would be calculated on the same basis. If on retirement, however, they chose to live in the United States, then they would have the option of having their pension transferred into American dollars at the rate of exchange prevailing at the time of their retirement.

Second, the memorandum proposes that the retirement pension should be payable at the age of sixty if the judge retires at or before that age. Under the former pension scheme covering the judges, the retiring age below which they could not obtain a pension as of right was fixed at sixty-five years. It would be consistent with the provisions of the Staff Pension Plan if that age were lowered to sixty.

Third, in the case of resignation, the memorandum recommends that no pension rights would

couverturé d'une lettre en date du 21 juin, exposant les points que les membres de la Cour estiment devoir être pris en considération pour l'élaboration des nouvelles propositions. Il ne nous a cependant pas été possible d'en discuter avec le Président de la Cour, ni avec le Greffier.

Ce mémoire suggère certaines modifications importantes à l'ancien système, notamment les suivantes: a) La pension devrait être payée en dollars des Etats-Unis et non en florins néerlandais; b) la pension devrait être de la moitié du traitement net payable à l'expiration du mandat pour lequel l'intéressé a été élu et ne pas varier suivant la durée des services; c) le paiement de la pension ne devrait pas être soumis à une limite d'âge minimum.

Ces propositions reposent sur le principe que les juges de la Cour devraient avoir sensiblement les mêmes droits à pension que le Secrétaire général des Nations Unies. Nous n'avons pas compétence pour dire si l'Assemblée générale acceptera le principe. Nous nous bornerons à signaler que les nouvelles propositions entraîneraient une amélioration appréciable des droits à pension par rapport au régime de pensions de l'ancienne Cour.

Le mémoire poursuit en précisant que dans le cas où le principe accordant aux juges les mêmes droits à pension qu'au Secrétaire général serait rejeté, il conviendrait alors d'adopter un régime, du genre du régime antérieur, sous réserve de certaines modifications. Sans vouloir avancer une opinion définitive sur les bases générales du régime qui, ne comportant pas une participation des intéressés, constitue une charge directe du budget des Nations Unies, nous avons cru utile de présenter des commentaires sur les changements proposés, à la lumière des principes généraux sur lesquels la Caisse de retraite du personnel des Nations Unies est établie.

En premier lieu, le mémoire recommande que la pension soit payée en dollars des Etats-Unis. Pour le régime général de retraite, nous recommandons comme principe directeur que la retraite soit payable au premier chef en la monnaie du pays en laquelle le salaire de l'intéressé est calculé, laissant à celui-ci le droit, lorsqu'il prend sa retraite, d'en obtenir la conversion en la monnaie du pays où il décide de fixer sa résidence. Nous sommes informés que les traitements des juges de la Cour internationale ont été fixés par l'Assemblée générale en florins néerlandais. En conséquence, si le principe général de la Caisse de retraite du personnel ordinaire était adopté, les pensions des juges devraient être calculées sur la même base. Toutefois, si les juges prenant leur retraite décidaient de vivre aux Etats-Unis, ils auraient alors la faculté de faire convertir leur pension en dollars des Etats-Unis au cours du change applicable le jour de leur mise à la retraite.

Deuxièmement, le mémoire propose que la pension soit payable à l'âge de soixante ans, si le juge prend sa retraite à cet âge ou antérieurement. D'après l'ancien régime de retraite concernant les juges, l'âge au-dessous duquel ils ne pouvaient obtenir de pension de plein droit était fixé à soixante-cinq ans. En ramenant cet âge à soixante ans on mettrait ces dispositions en harmonie avec celles du régime de retraite du personnel.

Troisièmement, le mémoire recommande qu'en cas de démission aucun droit à la retraite ne soit acquis

be acquired until after five years' service. This is the same arrangement as existed under the former Court and would be consistent with the proposal for the United Nations Pension Plan.

Fourth, the memorandum recommends that consideration be given both to some form of disability benefit (if resignation on the ground of ill health occurs before the expiration of the five-year period) and a death benefit payable to the judge's widow or to his children. There was no provision for this under the former Court's pension regulations, but it would be consistent with the proposed United Nations pension regulations if a disability and death benefit were provided for under the judges' scheme and possibly on a basis similar to that proposed in the Pension Fund regulations.

It should be pointed out, however, that disability and death benefits are not available under the proposed United Nations pension regulations until after the expiry of five years in the case of entrants who do not pass a satisfactory medical examination. Consideration would have to be given as to whether this proviso should be waived in the case of the judges, for its main purpose in the case of the Pension Fund is to maintain the Fund on a sound insurance basis, a consideration which does not apply with the same force when the money is being found entirely out of the general revenues of the United Nations.

We are sorry that we have not found it possible to present a report on this aspect of our work containing a series of precise proposals. We trust, however, that our comments will be of some value to you in the discussions which we understand will take place during the time of the next session of the General Assembly, between the Administration and representatives of the International Court.

ANNEX 20b

Report of the International Court of Justice concerning the salary of the Registrar of the Court

[Document A/111]
[Original text: English]

Article 32 (6) of the Statute of the International Court of Justice provides that the salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

Accordingly, the Court considered this question at its meeting held on 11 April 1936, and adopted the following report.

Precedents. In 1922, at its preliminary session, the Permanent Court of International Justice, in adopting a proposal with regard to the Registrar's salary for submission to the Assembly of the League of Nations, decided in this respect to assimilate the registrarship to a directorship in the League Secretariat, and the proposed salary was fixed accordingly.

Subsequently, in 1930, a Committee — the Committee of Thirteen — appointed by the Tenth Assembly of the League of Nations to

avant cinq années de service. Cette disposition est la même que celle qui régissait l'ancienne Cour. Elle est conforme à la proposition concernant le régime de retraite des Nations Unies.

Quatrièmement, le mémoire recommande de prendre en considération l'attribution à la fois d'une pension d'invalidité (si la démission pour raison de santé survient avant l'expiration d'une période de cinq ans) et d'une pension payable à la veuve ou aux enfants au décès de l'intéressé. Le régime de retraite de l'ancienne Cour ne contenait pas de dispositions à cet égard, mais il serait conforme au projet de Caisse de retraite des Nations Unies, de prévoir, pour les Juges de la Cour internationale de Justice, une pension en cas d'invalidité ou de décès. Ces indemnités pourraient être calculées éventuellement sur la même base que celles qui sont prévues dans le règlement de la Caisse de retraite.

Toutefois, nous croyons devoir signaler que les pensions en cas d'invalidité ou de décès ne peuvent être attribuées, d'après le projet de règlement de la Caisse de retraite des Nations Unies, avant l'expiration d'une période de cinq ans, au personnel dont l'examen médical d'admission n'a pas été satisfaisant. Il conviendrait d'examiner si cette disposition ne devrait pas être écartée dans le cas des juges, attendu que son objet principal, en ce qui concerne la Caisse de retraites, est de maintenir celle-ci sur la base d'un système d'assurances sain et que cette considération ne s'applique pas avec la même force lorsque les fonds proviennent entièrement des revenus généraux des Nations Unies.

Neus regrettons de n'avoir pas cru possible de présenter sur cet aspect de notre travail un rapport contenant une série de propositions précises. Nous espérons toutefois que nos observations vous seront de quelque utilité dans la discussion qui doit avoir lieu, au cours de la prochaine session de l'Assemblée générale, entre l'Administration et les représentants de la Cour internationale.

ANNEXE 20b

Rapport de la Cour internationale de Justice sur les émoluments du Greffier de la Cour internationale de Justice

[Document A/111]
[Texte original en anglais]

Aux termes de l'alinéa 6 de l'Article 32 du Statut de la Cour internationale de Justice, il appartient à l'Assemblée générale de fixer, sur proposition de la Cour, le traitement du Greffier.

La Cour a donc examiné cette question, à son audience du 11 avril 1946, et a adopté le rapport ci-après.

Précédents. Lorsqu'en 1922, au cours de son audience d'ouverture la Cour permanente de Justice internationale a adopté, au sujet du traitement du Greffier, une proposition destinée à être soumise à l'Assemblée générale de la Société des Nations, elle a décidé d'assimiler, à ce point de vue, le poste de Greffier à celui de Directeur dans le Secrétariat de la Société des Nations et le traitement proposé a été fixé en conséquence.

Par la suite, en 1930, une Commission — dite "Commission des Treize" — instituée par la dixième Assemblée de la Société des Nations pour

conduct an enquiry into "administrative results" in the various League organizations, made the following recommendation in that part of its report relating to the Registry of the Court:

"The Committee considers that the Registrar should receive a salary equivalent to that of an Under-Secretary-General. . . . To this should be added, on the principle of assimilation, an entertainment allowance equivalent to that of an Under-Secretary-General. . . . if the Court should express a wish to that effect."

Another committee — known as the New Committee of Thirteen — was set up by the Eleventh Assembly to study certain questions referred to it by the Assembly arising out of the report of the first Committee of Thirteen. Among these questions was that of the salaries of the Registrar and Deputy-Registrar of the Court. The New Committee of Thirteen met in 1931 and its report contained the following on this subject:

"By a resolution dated 10 September 1929, the Permanent Court of International Justice made a proposal with a view to fixing the salary of the Registrar of the Court for the seven years' period beginning on 1 January 1930. This proposal was to take as a basis the present salary of the holder of the office (27,000 florins) and to increase it during the new period by the same amount (1,250 florins) and at the same intervals (annually for four years) as during the first period of service; the maximum salary would thus be raised from 27,000 to 32,000 florins.

"Having regard to the provisional character of its recommendations in connexion with the Under-Secretaries-General, the Committee thought it better not to adhere to the proposal made by the Committee of Thirteen last year to the effect that the Registrar should be assimilated as regards salary to the Under-Secretaries-General. On the other hand, it agreed to the resolution adopted by the Court in 1929 and advises the competent bodies of the League to adopt it."

Proposal. Having regard to the foregoing precedents, the International Court of Justice proposes that, as regards salary, the Registrar should be assimilated to a Director in the Secretariat of the United Nations and that his salary should be fixed at 25,000 florins per annum, augmented by the sum of 10,000 florins per annum in view of the depreciation of the Dutch florin, which, since May 1940, has fallen in value by forty per cent as compared with the United States dollar and the pound sterling, and in view of the rise in the cost of living, which, as compared with May 1940 has risen by forty-five per cent. The total emoluments of the Registrar would thus be 35,000 florins.¹ The Court, however, would suggest that from the point of view of his duties and relative standing

¹ The salaries of the judges of the Court are at present fixed in terms of Dutch florins, by resolution of the General Assembly at its twenty-third plenary meeting on 6 February 1946. The President of the Court has however requested (see Annex 20 d) that the salaries should be fixed in terms of United States dollars. Should the General Assembly accede to this request it is proposed that the figure of 35,000 florins quoted above for the salary of the Registrar should be replaced by the figure of 13,250 United States dollars.

procéder à une enquête sur le "rendement de l'administration" des diverses organisations de la Société, a fait dans la partie de son rapport qui avait trait au Greffe de la Cour, les recommandations suivantes:

"La Commission estime qu'il y a lieu de prévoir pour le Greffier un traitement égal à celui d'un Sous-Secrétaire général. . . . Afin qu'il y ait assimilation il conviendrait d'y ajouter des frais de représentation équivalents à ceux qui sont alloués à un Sous-Secrétaire général. . . . au cas où la Cour en exprimerait le désir."

La onzième Assemblée a créé une autre commission — désignée sous le nom de "nouvelle Commission des Treize" — et l'a chargée d'étudier certaines questions soulevées par le rapport de la première Commission des Treize. Au nombre de ces questions figurait celle des traitements du Greffier et du Greffier adjoint de la Cour. La nouvelle Commission des Treize s'est réunie en 1931 et son rapport contenait sur ce point les observations suivantes:

"Par une résolution en date du 10 septembre 1929, la Cour permanente de Justice internationale a formulé une proposition tendant à fixer le traitement du Greffier pour une durée de sept ans à dater du 1er janvier 1930. Cette proposition visait à prendre pour base le traitement actuel du titulaire (27.000 florins) et à l'augmenter durant la nouvelle période, de la même somme (1250 florins) et aux mêmes intervalles (annuellement pendant quatre ans) que durant la première période d'exercice des fonctions; le traitement maximum se trouvait ainsi porté de 27.000 à 32.000 florins.

"Etant donné le caractère provisoire de ses recommandations en ce qui concerne le Sous-Secrétaire général, la Commission n'a pas jugé opportun de se conformer à la proposition faite l'an dernier par la Commission des Treize et tendant à assimiler, pour ce qui est des traitements, le Greffier aux Sous-Secrétaires généraux. Par contre elle s'est ralliée à la résolution adoptée par la Cour en 1929 et elle recommande aux organes compétents de la Société des Nations d'agir de même."

Proposition. Etant donné les précédents rappelés ci-dessus, la Cour internationale de Justice propose qu'en matière de traitement, le Greffier soit assimilé à un Directeur du Secrétariat des Nations Unies et que son traitement soit fixé à 25.000 florins par an auxquels viendra s'ajouter une somme de 10.000 florins par an en raison, d'une part, de la dépréciation subie par le florin des Pays-Bas, qui depuis le mois de mai 1940 a perdu 40 pour 100 de sa valeur par rapport au dollar des Etats-Unis et à la livre sterling, et, d'autre part, de la hausse du coût de la vie qui, par rapport au mois de mai 1940, a atteint 45 pour 100. Le Greffier percevrait ainsi des émoluments s'élevant au total à 35.000 florins¹. En raison, toutefois, des fonctions du Greffier et de l'import-

¹ En vertu d'une résolution adoptée le 6 février 1946 par l'Assemblée générale, au cours de sa vingt-troisième séance plénière, les traitements que touchent les juges de la Cour, sont actuellement fixés en florins. Le Président de la Cour a toutefois demandé (voir Annexe 20 d) que ces traitements soient désormais fixés en dollars des Etats-Unis. Il est proposé de remplacer, si l'Assemblée générale accède à cette demande, la somme de 35.000 florins prévue précédemment pour le traitement du Greffier, par celle de 13.250 dollars des Etats-Unis.

the Registrar should be assimilated to an assistant secretary-general of the United Nations.

The Secretary-General has the honour to submit to the General Assembly the proposal of the Court for fixing the salary of the Registrar in accordance with paragraph 6, Article 32 of the Statute.

ANNEX 20c

Conditions under which members of the International Court of Justice and the Registrar shall have their travel expenses refunded

[Document A/112]
[Original text: English]

Article 32 (7) of the Statute of the International Court of Justice provides, *inter alia*, that the General Assembly shall fix the conditions under which members of the International Court of Justice and the Registrar shall have their travelling expenses refunded.

The following draft regulations, drawn up after consultation between the Registrar and the Secretary-General, are based upon the same principles as those governing the provisional travel rules for the Secretariat, which were drafted in accordance with the rules proposed by the Advisory Group of Experts in their first report on Administrative Personnel and Budgetary Questions to the Secretary-General. The regulations are submitted for the consideration and approval of the General Assembly.¹

ANNEX 20d

Currency in which the emoluments of the judges and the Registrar of the International Court of Justice should be fixed

[Document A/113]
[Original text: English]

Article 32 of the Statute of the International Court of Justice provides, *inter alia*, that the salaries of the judges and the Registrar of the Court shall be fixed by the General Assembly.

At its twenty-third plenary meeting, on 6 February 1946, the General Assembly resolved that:

"The emoluments of the judges of the International Court of Justice shall be fixed according to the following scale:

	Netherlands florins
President	
Annual salary	54,000
Special Allowance	15,000
Vice-President	
Annual salary	54,000
Allowance of 100 florins for every day on which he acts as President, up to a maximum of	10,000
Members	
Annual salary	54,000

¹ The proposals regarding the travelling expenses of the members of the International Court of Justice were later amended by the Joint Sub-Committee of the Fifth and Sixth Committees. See Annex 20.

tance de son poste, la Cour suggère de l'assimiler à un Sous-Secrétaire général de l'Organisation des Nations Unies.

Le Secrétaire général a l'honneur de soumettre à l'Assemblée générale la proposition que la Cour a formulée, en vertu de l'alinéa 6 de l'Article 32 de son Statut, concernant le traitement à attribuer au Greffier.

ANNEXE 20c

Conditions auxquelles les membres de la Cour internationale de Justice et le Greffier pourront se faire rembourser leurs frais de déplacement

[Document A/112]
[Texte original en anglais]

Aux termes de l'alinéa 7 de l'Article 32 du Statut de la Cour internationale de justice, il appartient à l'Assemblée générale de fixer les conditions auxquelles les membres de la Cour et le Greffier reçoivent le remboursement de leurs frais de voyage.

Les principes qui inspirent les propositions suivantes, présentées après consultation entre le Greffier et le Secrétaire général, sont de même nature que ceux qui ont inspiré les règles provisoires prévues pour les déplacements du personnel du Secrétariat, elles-mêmes rédigées conformément aux propositions adressées au Secrétaire général par le Comité consultatif d'experts dans son premier rapport sur les questions administratives, budgétaires et relatives au personnel. L'Assemblée générale est priée d'examiner ces propositions et de se prononcer sur elles¹.

ANNEXE 20d

Monnaie dans laquelle devront être payés les émoluments des juges et du Greffier de la Cour internationale de Justice

[Document A/113]
[Texte original en anglais]

L'Article 32 du Statut de la Cour internationale de Justice prévoit, entre autres, que le traitement des juges et du Greffier de la Cour seront fixés par l'Assemblée générale.

Lors de sa vingt-troisième séance plénière, tenue le 6 février 1946, l'Assemblée générale a décidé que:

"Les émoluments des juges de la Cour Internationale de Justice seront fixés conformément au barème suivant:

	Florins des Pays-Bas
Président	
Traitement annuel	54.000
Allocation spéciale	15.000
Vice-Président	
Traitement annuel	54.000
Allocation de 100 florins par jour lorsqu'il remplit les fonctions de Président, jusqu'à concurrence d'un maximum de	10.000
Membres	
Traitement annuel	54.000

¹ Les propositions relatives aux frais de voyage des membres de la Cour internationale de Justice ont été amendées ultérieurement par la Sous-Commission mixte des Cinquième et Sixième Commissions. Voir Annexe 20.

Judges referred to in Article 31 of the Statute

Allowance of 120 florins for each day on which they exercise their functions, plus a daily subsistence allowance of 60 florins."

On 13 April 1946, the President of the Court wrote to the Secretary-General as follows:

"Sir,

"I have the honour to lay before you the following question:

"At a recent meeting concerned with financial questions, the Court came to the conclusion that it would be desirable to draw up its budget estimates in terms of U. S. dollars instead of in Dutch florins. It was observed that this course would present the following advantages: (1) The adoption of a stable currency would protect the salaries of judges and officials from any undesirable fluctuations in value; and (2) the Court's budget would thus be in the same currency as that of the United Nations Organization.

"I should be greatly obliged if you would inform me whether the competent authorities of the United Nations Organization would sanction this arrangement; I assume that, under Article II, Section 5(b) of the Draft Convention on the Privileges and Immunities of the United Nations, and under Article II, Section 5, of Appendix II to the Draft Convention between the United Nations and the United States of America, it would always be possible to transfer funds as and when required, either in the currency of the United States to Holland or to other countries where, for instance, the judges might wish to have their emoluments paid. If the United Nations gave their approval, the Court would keep some of its funds in America and transfer to The Hague or elsewhere only the sums actually required.

"It is suggested that the salaries of judges, as fixed in florins, should be converted once and for all into United States dollars at the rate of the day on which they were appointed, namely, 6 February 1946. The salaries of the Registrar and of the other officials would at once be fixed in dollars.

"I should be grateful if you could let me have your reply as soon as possible in order to enable the Court's budget to be prepared. In that connection, the documents at my disposal do not appear to indicate any precise date by which the budget must be submitted, or whether it is to be addressed to the Assembly itself or to some other authority. I should be much obliged if you would let me know these particulars."

After further correspondence between the Court and the Secretary-General, the Court's budgets for 1946 and 1947 were prescribed in both florins and dollars. Arrangements have also been made to transfer funds from United Nations headquarters to The Hague as and when needed by the Court. The remaining proposal put forward by the President of the Court, that the salaries of the judges and officials of the Court shall be fixed in terms

Juges visés à l'Article 31 du Statut

Allocation de 120 florins par jour lorsqu'ils exercent leurs fonctions, plus une indemnité journalière de 60 florins."

Le 13 avril 1946, le Président de la Cour a adressé au Secrétaire général la lettre suivante:

"Monsieur le Secrétaire Général,

J'ai l'honneur de vous soumettre la question suivante.

"Lors d'une récente audience, consacrée aux questions financières, la Cour a conclu qu'il serait souhaitable d'établir ses prévisions budgétaires en dollars des Etats-Unis et non pas en florins des Pays Bas. On a fait remarquer que cette mesure présenterait les avantages suivants: 1) l'adoption d'une unité monétaire stable éviterait aux traitements des juges et des autres fonctionnaires des subir des fluctuations inopportunes; 2) le budget de la Cour serait ainsi présenté dans la même monnaie que celui de l'Organisation des Nations Unies.

"Je vous serais très obligé de vouloir bien me faire connaître si les autorités compétentes des Nations Unies approuveraient cette mesure; je présume qu'aux termes de l'article II, section 5, b) du projet de convention relatif aux privilèges et immunités des Nations Unies ainsi qu'aux termes de l'article II, section 5, de l'appendice II du projet de convention entre les Nations Unies et les Etats-Unis d'Amérique, il serait toujours possible, au moment et de la manière jugés nécessaires, de transférer des fonds en dollars des Etats-Unis, soit en Hollande, soit, par exemple, dans d'autres pays où les juges désireraient se faire verser leurs émoluments. Dans le cas où les Nations Unies donneraient leur approbation, la Cour conserverait une partie de ses fonds aux Etats-Unis et ne transférerait à La Haye ou ailleurs que les sommes réellement nécessaires.

"On propose de convertir, une fois pour toutes, en dollars des Etats-Unis, les traitements des juges tels qu'ils ont été fixés en florins; cette conversion se fera au taux du jour où les juges ont été désignés c'est-à-dire le 6 février 1946. Les traitements du Greffier et des autres fonctionnaires seraient immédiatement fixés en dollars.

"Je vous serais reconnaissant de vouloir bien me faire tenir votre réponse aussitôt que possible, afin de permettre l'établissement du budget de la Cour. Les documents que je possède à cet égard ne semblent pas assigner de date précise à la présentation du budget, ni décider s'il doit être soumis à l'Assemblée même, ou bien à un autre organe. Je vous serais très obligé de vouloir bien me donner des précisions sur ces points."

Après un nouvel échange de lettres entre la Cour et le Secrétaire général, on a prévu d'établir le budget de la Cour pour les années 1946 et 1947 en florins et en dollars. On a également pris des dispositions en vue de transférer les fonds du siège des Nations Unies à La Haye, au fur et à mesure des besoins de la Cour. On ne pourra adopter la partie de la proposition présentée par le Président de la Cour tendant à fixer les traitements des juges et des fonctionnaires de la Cour

of United States dollars, can be adopted only with the approval of the General Assembly.

During the first session of the General Assembly, the Chairman of the Joint Sub-Committee of the Fifth and Sixth Committees on the Emoluments of the Judges of the International Court of Justice submitted the following report:

"The Sub-Committee examined first the question of the currency in which the emoluments of the judges should be fixed. They considered whether it should be in United States dollars, according to the recommendation of the Preparatory Commission that the contribution of Members should be assessed and paid in the currency of the State in which the United Nations had its headquarters, or whether it should be in Netherlands florins, as the seat of the International Court of Justice will be established at The Hague. The Sub-Committee decided by a majority to fix the emoluments of the judges in Netherlands florins (six votes in favour)."

The Secretary-General has the honour to submit the request of the Court on this matter to the General Assembly for sympathetic consideration.

ANNEX 21

Joint report of the Secretary-General and the Negotiating Committee on the Agreement concerning the premises of the Peace Palace at The Hague

[Document A/109]
[Original text: English]

The General Assembly at its twenty-eighth plenary meeting, held on 10 February 1946, instructed the Secretary-General to conduct preliminary negotiations with the Board of Directors of the Carnegie Foundation at The Hague or other convenient place in order to fix the conditions on which the premises in the Peace Palace at The Hague, which are required by the International Court of Justice, could be placed at its disposal, the conditions being embodied in an agreement subject to the approval of the General Assembly. The General Assembly at its twenty-ninth plenary meeting, held on 12 February 1946, approved of the setting up of a small negotiating committee, consisting of one representative designated by the delegation for Chile, China, France, Poland, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, to assist the Secretary-General in negotiating agreements in connection with the premises in the Peace Palace at The Hague.

The Secretary-General has the honour to submit for approval of the General Assembly the following agreement between the United Nations and the Carnegie Foundation concerning the use of the Peace Palace and the agreement between the United Nations and the Carnegie Foundation concerning refund of loans.¹ The report on the

¹ These agreements were approved by the General Assembly at its fifty-fifth plenary meeting. See *Resolutions adopted by the General Assembly* during the second part of its first session, page 165.

en dollars des Etats-Unis, qu'après approbation par l'Assemblée générale.

Au cours de la première session de l'Assemblée générale, le Président de la Sous-Commission mixte des Cinquième et Sixième Commissions, chargée d'étudier la question des émoluments des juges de la Cour internationale de Justice, a présenté le rapport suivant:

"La Sous-Commission s'est occupée en premier lieu de la question de la monnaie dans laquelle les émoluments des juges devaient être fixés. Elle a examiné si cette monnaie devait être le dollar des Etats-Unis, conformément à la recommandation de la Commission préparatoire tendant à ce que les contributions des Membres soient fixées et payées dans la monnaie de l'Etat où l'Organisation a son siège, ou si ce devait être le florin des Pays-Bas, puisque la Cour internationale de Justice aura son siège à La Haye. La Sous-Commission a décidé à la majorité (six membres ayant voté pour) de fixer les émoluments des juges en florins des Pays-Bas."

Le Secrétaire général a l'honneur de soumettre la demande de la Cour relative à cette question à la bienveillante attention de l'Assemblée générale.

ANNEXE 21

Rapport conjoint du Secrétaire général et du Comité de négociation sur l'accord concernant l'usage du Palais de la Paix à La Haye

[Document A/109]
[Texte original en anglais]

L'Assemblée générale, au cours de sa vingt-huitième séance plénière, tenue le 10 février 1946, a chargé le Secrétaire général d'engager des négociations préliminaires avec le Conseil d'administration de la Fondation Carnegie, à La Haye, ou en un autre lieu approprié, en vue de fixer les conditions auxquelles les locaux du Palais de la Paix à La Haye qui sont nécessaires à la Cour internationale de Justice, pourront être mis à la disposition de celle-ci, ces conditions devant faire l'objet d'un accord qui sera soumis à l'approbation de l'Assemblée générale. L'Assemblée générale, au cours de sa vingt-neuvième séance plénière, tenue le 12 février 1946, a approuvé la création d'un petit comité de négociation chargé d'assister le Secrétaire général dans la négociation d'accords relatifs aux locaux du Palais de la Paix à La Haye. Ce Comité se composera de représentants que désigneront les délégations du Chili, de la Chine, des Etats-Unis d'Amérique, de la France, de la Pologne, du Royaume-Uni, de l'Union des Républiques socialistes soviétiques et de l'Union Sud-Africaine.

Le Secrétaire général a l'honneur de soumettre à l'approbation de l'Assemblée générale l'accord suivant entre les Nations Unies et la Fondation Carnegie relatif à l'utilisation du Palais de la Paix ainsi que l'accord entre les Nations Unies et la Fondation Carnegie relatif au remboursement des emprunts¹. On trouvera ci-joint (Appendice A) le

¹ Ces accords ont été approuvés par l'Assemblée générale, lors de sa cinquante-cinquième séance plénière. Voir les *Résolutions adoptées par l'Assemblée générale*, pendant la seconde partie de sa première session, page 165.

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FIFTH COMMITTEE
Agenda item 116

PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Conditions of service and compensation for officials
other than Secretariat officialsMembers of the International Court of JusticeReport of the Secretary-General

I. INTRODUCTION

1. The General Assembly, in paragraph 6 of resolution 48/252 A of 26 May 1994, decided that the emoluments and other conditions of service for the members of the International Court of Justice (ICJ) should next be reviewed at its fiftieth session in the light of the recommendations contained in the report of the Secretary-General (A/C.5/48/66). It further decided that the periodicity of review should be determined at the fiftieth session (*ibid.*, para. 7).

2. In order to facilitate consideration of the various issues regarding the compensation and conditions of service of members of the Court, the present report is divided into the following sections: remuneration, including adjustment for currency fluctuation and cost of living; other conditions of service; pensions; analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of ICJ; financial implications; and the next comprehensive review.

II. REMUNERATION

3. Article 32 of the Statute of ICJ provides, *inter alia*, that each member of the Court shall receive an annual salary (para. 1), that these salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office" (para. 5).

4. Since 1976, the General Assembly has conducted a number of reviews of the emoluments of the members of the Court, most notably at its thirty-first, thirty-fifth, thirty-eighth, fortieth, forty-fifth and forty-eighth sessions. ^{1/} By paragraph 1 of resolution 45/250 A of 21 December 1990, the General Assembly decided that, with effect from 1 January 1991, the annual salary of the members of ICJ would be US\$ 145,000. On the occasion of the 1994 review, the General Assembly, by paragraph 2 of resolution 48/252 A, maintained the annual salary of the members of ICJ at US\$ 145,000.

5. The emoluments of the members of the Court are sui generis. However, on the occasion of previous reviews, a number of reference points have been used for assessment purposes: the net remuneration of senior Secretariat officials, of the Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), of the Chairman and Vice-Chairman of the International Civil Service Commission (ICSC), and of the members of the Joint Inspection Unit (JIU), as well as the gross emoluments of the president and members of the highest courts in national judiciaries from various regions of the world.

6. Tables 1 and 2 provide updated information concerning the evolution of emoluments from January 1993 to June 1995. Table 1 compares the movement of the Judges' total emoluments with changes in the remuneration of senior Secretariat officials and that of full-time members of other subsidiary bodies of the United Nations. Table 2 provides information obtained, with the assistance of Permanent Missions to the United Nations, on the movement in gross emoluments of the president and members of the highest courts in national judiciaries. The table also presents information on the movement in emoluments of the President and members of the Court of Justice of the European Communities in Luxembourg and of the Islamic Republic of Iran-United States Claims Tribunal in The Hague.

Table 1

Changes in net remuneration of members of the Court, Secretariat
officials and members of United Nations bodies, 1993-1995

(In United States dollars, dependency rate)

	January 1993	January 1994	January 1995	June 1995
<u>International Court of Justice</u>				
President <u>a/</u>	160 000	160 000	160 000	160 000
Index	100.0	100.0	100.0	100.0
Members of the Court	145 000	145 000	145 000	145 000
Index	100.0	100.0	100.0	100.0
<u>Senior Secretariat officials</u>				
<u>The Hague</u>				
ASG <u>b/</u> (dep. rate)	116 944	109 341	121 098	136 600
Index (dep. rate)	100.0	93.5	103.6	116.8
ASG <u>b/</u> (single rate)	106 042	99 164	109 851	123 844
Index (single rate)	100.0	93.5	103.6	116.8
<u>Geneva</u>				
USG <u>c/</u>	150 185	158 707	173 461	193 907
Index	100.0	105.7	115.5	129.1
ASG <u>b/</u>	137 079	144 894	158 427	177 179
Index	100.0	105.7	115.6	129.3
<u>New York</u>				
USG <u>c/</u>	127 257	129 504	129 520	132 979
Index	100.0	101.8	101.8	104.5
ASG <u>b/</u>	116 050	118 110	118 125	121 297
Index	100.0	101.8	101.8	104.5
<u>Full-time members of subsidiary bodies</u>				
Chairman, ICSC/ACABQ <u>d/</u>	128 776	128 776	128 776	128 776
Index	100.0	100.0	100.0	100.0
Vice-Chairman, ICSC	120 776	120 776	120 776	120 776
Index	100.0	100.0	100.0	100.0
Members of JIU, Geneva	118 767	125 691	137 678	154 288
Index	100.0	105.8	115.9	129.9

- a/ Includes special allowance of \$15,000.
b/ Includes representation allowance of \$3,000 a year.
c/ Includes representation allowance of \$4,000 a year.
d/ Includes special allowance of \$8,000 a year.

/...

Table 2

Movement in gross emoluments of officers of national judiciaries,
the Court of the European Communities and the Islamic Republic of
Iran-United States Claims Tribunal, 1993-1995

	1993	1994	1995
1. <u>United States Supreme Court</u>			
Chief Justice (US\$)	171 500	171 500	171 500
Index	100.0	100.0	
Associate Justice (US\$)	164 100	164 000	164 100
Index	100.0	100.0	100.0
2. <u>Supreme Court of Canada</u>			
Chief Justice			
(Can\$ a/, b/)	199 900	199 900	199 000
(US\$)	157 402	151 439	142 786
Index	100.0	96.2	90.7
Puisne judge			
(Can\$ b/, c/)	185 200	185 200	185 200
(US\$)	145 827	140 303	132 286
Index	100.0	96.2	90.7
3. <u>United Kingdom of Great Britain and Northern Ireland</u>			
Lord Chief Justice			
(£ stg.)	112 083	112 083	118 179
(US\$)	171 906	167 288	184 655
Index	100.0	97.3	107.4
Master of the Rolls			
(£ stg.)	103 790	103 790	109 435
(US\$)	159 187	154 910	170 992
Index	100.0	97.3	107.4
4. <u>Australia</u>			
Chief Justice			
(\$A)	185 251	195 381	211 871
(US\$)	127 759	132 014	164 241
Index	100.0	103.3	128.6
Justice			
(\$A)	168 397	177 604	192 604
(US\$)	116 136	120 003	149 305
Index	100.0	103.3	128.6

/...

	1993	1994	1995
5. <u>Japan</u>			
Chief Justice			
(¥)	43 732 089	44 268 943	44 268 943
(US\$)	352 678	395 258	444 021
Index	100.0	112.1	125.9
Associate Judge			
(¥)	31 907 778	32 300 080	32 300 080
(US\$)	257 321	288 394	323 973
Index	100.0	120.1	125.9
6. <u>Democratic Socialist Republic of Sri Lanka</u>			
Chief Justice			
(SL Rs)	--	349 200	349 200
(US\$)	--	7 127	7 055
Index	--	100.0	99.0
Other Judge			
(SL Rs)	--	330 000	330 000
(US\$)	--	6 735	6 667
Index	--	100.0	99.0
7. <u>France</u>			
President of Court of Cassation			
(FF)	--	463 271	470 702
(US\$)	--	78 123	97 413
Index	--	100.0	124.7
8. <u>Italy</u>			
First President of the Court of Cassation			
(Lit d/)	--	96 369 006	99 355 481
(US\$)	--	57 363	60 583
Index	--	100.0	105.6
9. <u>Court of the European Communities</u>			
President			
(BF e/)	8 559 119	8 559 119	8 679 311
(US\$)	259 367	241 102	271 228
Index	100.0	93.0	104.6
Member			
(BF)	6 977 543	6 977 543	7 075 526
(US\$)	211 441	196 551	221 110
Index	100.0	93.0	104.6

/...

	1993	1994	1995
10. <u>Iran-United States Claims Tribunal</u>			
President (US\$)	245 000	245 000	245 000
Index	100.0	100.0	100.0
United States-Iranian Judge (US\$)	210 000	210 000	210 000
Index	100.0	100.0	100.0
Third country judge (US\$)	235 000	235 000	235 000
Index	100.0	100.0	100.0

- a/ Also entitled to a representation allowance of Can\$ 10,000.
- b/ Also entitled to an incidental allowance of Can\$ 2,500.
- c/ Also entitled to a representation allowance of Can\$ 5,000.
- d/ Also entitled to an allowance of Lit 14,523,180 in 1994 and Lit 14,973,253 in 1995.
- e/ Also entitled to a residential allowance of BF 70,661.

7. In April 1987, ICSC introduced the concept of a local currency floor and ceiling at a number of duty stations, including The Hague, to protect staff against the weakening of the dollar. The background and the functioning of the floor/ceiling system, as applied to the emoluments of the members of the Court, are discussed in paragraphs 11 through 15 of the Secretary-General's report to the General Assembly at its forty-eighth session (A/C.5/48/66).

8. In paragraph 4 of its resolution 48/252 A, the General Assembly decided to continue the system of floor/ceiling measures introduced for members of the Court pursuant to section VI of Assembly resolution 43/217. Further to the information presented in paragraphs 13 and 14 of document A/C.5/48/66, the 1994 floor/ceiling exchange rates were derived by applying the previous formula of 4 per cent above and 4 per cent below the average exchange rate to the year 1993. The average exchange rate in 1994 was 1.82 guilders to the dollar and yielded revised floor/ceiling exchange rates of 1.75 and 1.89 guilders, respectively. The floor exchange rate of 1.75 guilders to the dollar resulted in a revised currency floor of 21,145 guilders per month and the ceiling exchange rate of 1.89 guilders to the dollar resulted in a revised currency ceiling of 22,837 guilders per month.

9. Table 3 below indicates the official exchange rate for the guilder against the dollar for the period January 1994-September 1995. Over the period, the floor amount has been payable for 11 months and the ceiling amount for three months. The 1996 floor/ceiling exchange rates will again be based on the average exchange rate for the previous year. Should the exchange rate remain at the same level of 1.65 guilders to the dollar for the remainder of 1995, the new

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floor/ceiling rates would be 1.68 and 1.56 guilders, respectively. In that case, the currency floor would be 18,849 guilders per month and the currency ceiling 20,299 guilders per month.

Table 3

Exchange rate of the guilder to the dollar,
January 1994-September 1995

	<u>1994</u>	<u>1995</u>
January	1.92	1.74
February	1.95	1.70
March	1.92	1.64
April	1.88	1.57
May	1.88	1.54
June	1.85	1.54
July	1.78	1.56
August	1.76	1.56
September	1.74	1.65
October	1.76	
November	1.69	
December	1.75	

10. The Secretary-General recalls that, while agreeing to an increase in the annual salary of the members of the Court from \$101,750 to \$145,000, ACABQ, in its eleventh report on the programme budget for the biennium 1990-1991, recommended that "there would be no cost-of-living adjustment or supplement as is currently the case. Nor would there be a post adjustment factor ...". 2/ The Secretary-General also notes the view of the Advisory Committee three years later that, under the existing system of adjustment for currency fluctuations and cost-of-living, the strengthening of the United States dollar vis-à-vis the guilder had more than offset the increases in the local cost-of-living. 3/

11. However, in 1994 and 1995, unlike the situation during the previous period, the United States dollar has weakened against the guilder. According to the United Nations Monthly Bulletin of Statistics, the consumer price index from January 1991 to August 1993 for the Netherlands increased by 6.5 per cent, and for the period from September 1993 to June 1995 it rose by an additional 3.4 per cent. Over the period January 1991 to June 1995, the United States dollar lost 11 per cent of its value against the guilder. Thus, in real terms, the emoluments of the members of ICJ have been eroded by some 20 per cent, both by increases in cost-of-living locally and by the downwards movement of the United States dollar against the guilder (i.e., in real terms emoluments now are \$121,000 rather than \$145,000). As indicated above, if current trends continue, the 1995 ceiling will be 20,299 guilders and floor will be 18,849 guilders. This in itself represents a 13.5 per cent decrease from 1991.

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12. At this time, the Secretary-General is of the opinion that the annual emoluments of members of the Court should be maintained at their current level of \$145,000. He notes that no retroactive adjustment is made to the salaries of members of the International Court of Justice to offset fluctuations in the value of the United States dollar against the guilder. He would also note that the mechanism used to regulate emoluments against the weakening/strengthening of the dollar has not continued to provide adequate protection for the Judges over the period since the beginning of 1994. Although he would propose that the same mechanism continue to be applied, he would draw the attention of ACABQ to the serious diminution in the real level of emoluments as a result of the use of the United States dollar as a reference currency; action could be taken to restore the real 1991 value of these emoluments, in line with the spirit of Article 32 of the Statute of the Court.

III. OTHER CONDITIONS OF SERVICE

13. The background of other conditions of service of the members of ICJ is provided in paragraphs 16-21 of the report of the Secretary-General to the General Assembly at its forty-eighth session (A/C.5/48/66) concerning the special allowances of the President and of the Vice-President when acting as President; in paragraphs 22 and 23 relating to compensation of ad hoc judges; in paragraphs 24-31 pertaining to the costs of educating children; and in paragraph 42 concerning participation of members of ICJ in the health plan of the Organization.

14. Article 32 of the Statute of the Court provides that the President shall receive a special annual allowance (para. 2) and that the Vice-President shall receive a special allowance for every day on which he acts as President (para. 3). As is the case with remuneration, these allowances "shall be fixed by the General Assembly" and "may not be decreased during the term of office" (para. 5). General Assembly resolution 31/204 of 22 December 1976 provided, in paragraph 3, that the allowances given to members of the Court "shall be reviewed concurrently with the periodic review of their annual salary".

15. The General Assembly, by paragraph 5 of its resolution 48/252 A, decided that the President's special allowance should remain at \$15,000 per year and that the special daily allowance paid to the Vice-President when acting as President should remain at \$94 per day, up to a maximum of \$9,400 per year.

16. Accordingly, the Secretary-General recommends no change in the current level of the special allowances of the President of the Court and the Vice-President when acting as President.

17. Turning to the issue of compensation of ad hoc judges, under Article 31, paragraph 6 of the Statute of the Court, persons whom parties to cases before the Court choose to "take part in the decision on terms of complete equality with their colleagues" are known as ad hoc judges. Further to Article 32, paragraph 4, of the Statute, they "shall receive compensation for each day on which they exercise their functions". The historical background to the determination of the amount of that compensation was presented in the report of

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the Secretary-General to the General Assembly at its fortieth session (A/C.5/40/32, paras. 35-41).

18. The General Assembly, in paragraph 3 of its resolution 48/252 A, decided that, with effect from 1 January 1994, the ad hoc judges referred to in Article 31 of the Statute of ICJ should continue to receive for each day they exercise their functions one three-hundred-and-sixty-fifth of the annual salary payable at the time to a member of the Court. The Secretary-General proposes that no change be made in these arrangements.

19. The background to the issue of costs of educating children, as applied to the members of the Court, is provided in paragraphs 24 through 29 of document A/C.5/48/66. By paragraphs 1 and 2 of its resolution 48/252 C, the General Assembly decided that, with effect from 1 January 1994, the President and the members of ICJ who have taken up residence at The Hague should be reimbursed, up to a ceiling of \$9,750, for the actual cost of educating their children and up to a ceiling of \$13,000, for the actual cost of educating their disabled children, in respect of each child each year up to the award of the first recognized degree and that provision should be made for one related return journey per year in respect of each child from the place of scholastic attendance, when outside the Netherlands, to The Hague.

20. Subsequent to the 1994 review of the level of the education grant by the International Civil Service Commission, the General Assembly, by section V of its resolution 49/223 of 23 December 1994, approved the following increases in the maximum reimbursement levels in seven currency areas, as well as other adjustments to the management of the reimbursement of expenses under the education grant, as recommended by ICSC in paragraph 273 of its report to the Assembly at its forty-ninth session: 4/

Table 4

Education grant

<u>Currency</u>	<u>Maximum admissible educational expenses</u> (local currency) <u>a/</u>	<u>Maximum grant</u> (local currency)	<u>Ceiling for boarding costs</u> (local currency)
Swiss franc	20 097	15 070	4 466
Italian lire	19 800 000	14 850 000	4 400 000
Deutsche mark	29 035	21 775	6 454
Spanish peseta	1 572 710	1 179 530	349 556
Pound sterling	11 250	8 438	2 500
Swedish krona	83 250	62 438	18 500
United States dollar	16 900	12 675	3 770

a/ The amount of the special education grant for each disabled child is equal to 100 per cent of the revised amount of maximum admissible educational expenses for the regular education grant. In areas where education-related expenses are reimbursed in other currencies, the amounts remained unchanged.

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21. The Secretary-General would propose that, further to resolution 45/250 C, the increase in the level of the education grant (including that for disabled children) applicable to staff in the Professional and higher categories approved by the General Assembly in resolution 49/223 should be extended, under the same conditions, to the members of the Court, as from the school year in progress on 1 January 1995. The additional requirement for 1995 would be reported in the second performance report for the biennium 1994-1995. With respect to the biennium 1996-1997, the programme budget implications of the proposed change are discussed in paragraph 34 below.

22. ICSC will next review the education grant in 1996. In accordance with paragraph 7 of the seventh report of the Advisory Committee to the General Assembly at its forty-eighth session, 5/ the next review of the costs of educating children of the members of ICJ will be conducted at the time of the next comprehensive review of conditions of service.

23. The Secretary-General has noted that, in its 1994 review of the conditions of service of the members of ICJ, the Advisory Committee did not comment on the request of the Court regarding participation in the Organization's health plan and the Organization's contribution to the charges to sustain participation therein in a manner comparable to the health contributions made by the United Nations for other senior officials. In this connection, the Secretary-General reiterates the view expressed in paragraph 42 of document A/C.5/48/66 that, while the Secretary-General and the two full-time members of ICSC and the Chairman of ACABQ are participants in the Headquarters health plan, the Organization does not contribute to the cost of participation. Members of the Court, in addition to their current option of joining The Hague Nuts-Aegon health insurance plan of the United Nations system, retain the option of joining the Van Breda plan, or the Headquarters health plan if they choose to retire in the United States, upon payment of the full cost of the premium.

24. No change is proposed with regard to other conditions of service of the members of ICJ.

IV. PENSIONS

25. The members of ICJ are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly. The Assembly, in paragraph 1 of its resolution 48/252 B, invited the Secretary-General to undertake a study of the pension scheme for the members of ICJ and to report thereon to the Assembly at its forty-ninth session.

26. A review of the pension benefits and the corollary aspects of the current pension scheme was presented in the reports of the Secretary-General to the General Assembly at its forty-eighth and forty-ninth sessions (A/C.5/48/66, paras. 32-41 and A/C.5/49/8, paras. 6-16). In reviewing the latter report, the Advisory Committee reiterated its 1994 recommendation that it was not necessary to recommend a change in the pension benefits of the members of the Court. The Advisory Committee expressed its view that the request by the Assembly for a study of the pension scheme for the members of ICJ had not been fully addressed.

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It recommended that the Secretary-General include a comprehensive review of the pension scheme for the members of the Court in his report to be submitted to the Assembly at its fiftieth session. The report should include, on the advice of qualified actuaries, a review of benefit provisions, including those of retirement age, minimum period of service, rate of accumulation of pension benefits, early retirement benefits, contributory participation, cost-of-living adjustments and retroactive rights of pensioners. 6/

27. Pursuant to the request of the Advisory Committee, the Secretary-General has sought the advice of a consulting actuary on the pension scheme of the members of ICJ. The text of the comprehensive review is annexed to the present report. The Secretary-General would note that the review conducted by the consulting actuary corroborates in technical terms most of the recommendations he presented to the General Assembly at its forty-eighth session (A/C.5/48/66, paras. 32-41). He recommends, in the light of the conclusions of the actuarial review, that:

(a) The pensionable remuneration of a Judge should be defined as being equal to half the annual salary;

(b) The pension should constitute the pensionable remuneration of a Judge who completes a nine-year term, with a proportional reduction for a Judge who has not completed a full term. A judge who is re-elected should receive 1/300th of his pensionable remuneration for each further month of service, up to a maximum pension of two thirds of annual salary;

(c) The pension scheme should be non-contributory;

(d) An actuarial reduction factor at a rate of one half a per cent per month should be applied in a case of early retirement;

(e) Surviving spouses should receive a pension equal to 60 per cent of a Judge's pension; alternatively, Judges could opt to increase a spouse's pension up to a maximum of a further 50 per cent by means of an actuarial reduction in their pension;

(f) Upon remarriage, a surviving spouse should be granted a lump sum equal to twice the amount of the spouse's current annual benefit as a final settlement.

28. Should the proposals above with regard to pensions be found acceptable, the Secretary-General would propose that the Registrar of the Court amend the pension scheme regulations accordingly.

V. ANALYSIS OF THE PRACTICE OF THE COURT WITH RESPECT TO ARTICLE 16, PARAGRAPH 1, OF THE STATUTE OF ICJ

29. In paragraph 8 of its twelfth report to the General Assembly at its forty-ninth session, 7/ the Advisory Committee expressed its view that the broader review of the conditions of service of the Judges should include an analysis of

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the practice of the Court with respect to Article 16 of the Statute of ICJ.
That Article provides as follows:

"1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

"2. Any doubt on this point shall be settled by the decision of the Court."

30. In keeping with Article 16, paragraph 2, of its Statute, the Secretary-General requested the Court to provide clarification on the matters raised by the Advisory Committee. The Court interprets the provisions of the Article as prohibiting the Judges of the Court from exercising or maintaining any political or administrative function, whether international, national or local, whether commercial or otherwise; engaging in any other occupation of a professional nature, *inter alia*, holding a position in a commercial concern, engaging in the practice of law, maintaining membership in a law firm or rendering legal or expert opinions; or holding a permanent teaching or administrative position in a university or faculty of law.

31. Under the authority vested in the Court under Article 16, paragraph 2, of its Statute, ICJ has, in view of the judicial character of the activities involved, interpreted the bar to the members of the Court engaging in other occupations of a professional nature as not debarring a limited participation of Judges in other judicial or quasi-judicial activities of an occasional nature, as well as scholarly pursuits in the sphere of international law as members of learned societies or as occasional lecturers. The Judges accepting such occasional activities give the fullest precedence to their supervening duties as members of the Court. Based on a long-standing tradition of the Permanent Court of International Justice founded in 1922, as well as the recorded intention of the United Nations Conference on International Organization that adopted the text of Article 16 of the Statute, the Court further interpreted Article 16 as permitting the members to accept occasional appointments as arbitrators. In doing so, the Court referred to a similar practice existing in the courts of a number of Member States, such as Australia, Canada, Denmark, France, Germany, India, the Libyan Arab Jamahiriya, the Netherlands, Norway, Sweden and Tunisia, as well as some states of the United States of America.

32. The Court has consistently taken the position that contributions by its members to third-party settlement of disputes by legal processes in other forums, as by occasional service as arbitrators, are compatible with the Judges' functions as members of the Court. These activities are subject, however, to two conditions: the first is that the Judges must give absolute precedence to their obligations as members of the Court; and the second is that they should not accept appointment in an arbitral case, which, in another phase, is subject to being submitted to the Court.

33. The Court will continue to keep under review any questions that may arise of the compatibility of the functions of judges with the Statute of ICJ and with their supervening obligations.

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VI. FINANCIAL IMPLICATIONS

34. Should the General Assembly approve the proposals contained in paragraphs 21 and 27 above, the programme budget implications of the changes proposed in the pension scheme for members of ICJ and costs of educating children of its members are estimated at \$760,500 for the biennium 1996-1997 as reflected in table 5 below. The Secretary-General concurs with the recommendations of the consulting actuary with regard to the pension regime of the Court and therefore reiterates his proposals set out in his report to the General Assembly at its forty-eighth session (A/C.5/48/66). No changes are proposed to the emoluments and other conditions of service of the members of the Court.

Table 5

Programme budget implications, 1996-1997

	US\$
1. Education grant increase (para. 21)	11 700
2. Pensions (para. 27)	<u>748 800</u>
Total	<u>760 500</u>

35. As indicated above, the cost of educating children of members of the Court is estimated at \$11,700. Should the proposals of the Secretary-General in that respect be approved by the General Assembly, no additional appropriation is proposed at this time, under section 5, International Court of Justice, of the proposed programme budget for the biennium 1996-1997. It is proposed instead to absorb the requirements to the extent possible, within resources proposed for such purpose, in paragraph 5.12 (b) of the 1996-1997 proposed programme budget, since revision to the level of resources might be warranted as the term of office of five Judges comes to an end during the biennium 1996-1997.

36. In respect of the estimated requirements of \$748,800, arising from the Secretary-General's proposals, relating to additional pension payments that would be approved by the General Assembly for former Judges and widows of Judges, for the 1996-1997 biennium, the requirements are seen as relating to inflation and should be treated outside the procedures related to the contingency fund, as provided for in paragraph 11 of annex I to Assembly resolution 41/213 of 19 December 1986.

VII. NEXT COMPREHENSIVE REVIEW

37. By paragraph 7 of its resolution 48/252 A, the General Assembly decided that the periodicity of review of the conditions of service of the members of ICJ should be determined at its fiftieth session.

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38. In paragraph 1 of its resolution 31/204 of 22 December 1976, the General Assembly decided that the annual salaries of members of ICJ should normally be reviewed every five years. Should this option be upheld by the Assembly, the next comprehensive review would be undertaken at its fifty-fifth session in the year 2000.

39. Should the General Assembly decide to continue the three-year review cycle established at its forty-fifth session (resolution 45/250 A, para. 4), the next comprehensive review by the Assembly would be undertaken at its fifty-third session in 1998.

40. Should the General Assembly decide to approve the recommendation of the Advisory Committee made in paragraph 4 of its seventh report to the Assembly at its forty-eighth session 5/ that the reviews be carried out on a biennial basis, the next comprehensive review would take place in the year 1997.

41. The Secretary-General would note that the longer, five-year cycle of review has posed difficulties in the past in terms of keeping up to date the emoluments and conditions of service of members of the Court. At the same time, biennial reviews would appear to be too frequent to enable significant trends or new elements in conditions of service to be discerned.

42. Accordingly, the Secretary-General would favour the three-year cycle of review established by the General Assembly in its resolution 45/250 A.

Notes

1/ See A/C.5/35/33, A/C.5/38/27, A/C.5/40/32 and Corr.1, A/C.5/45/44 and A/C.5/48/66, as well as General Assembly resolutions 35/220 of 17 December 1980, 38/239 of 20 December 1983, 40/257 of 18 December 1985, 45/250 of 21 December 1990 and 48/252 A of 26 May 1994.

2/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 7 (A/45/7 and Add.1-14), document A/45/7/Add.10, para. 13.

3/ A/48/7/Add.6, para. 4.

4/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 30 (A/49/30).

5/ A/48/7/Add.6.

6/ A/49/7/Add.11, paras. 6-8.

7/ A/49/7/Add.11.

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ANNEX

Review of benefit provisions under the pension scheme
for the members of the International Court of Justice
by the Consulting Actuary

I. SUMMARY

Introduction

- 1.1 In document A/49/7/Add.11, which was submitted to the General Assembly at its forty-ninth session, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) discussed certain aspects of the pension scheme for the members of the International Court of Justice. In paragraph 8 of that document, the Advisory Committee recommended that "... the Secretary-General include a comprehensive review of the pension scheme for the members of the International Court of Justice in his report to be submitted to the General Assembly at its fiftieth session. That report should include, on the advice of qualified actuaries, a review of benefit provisions, including those of retirement age, minimum period of service, rate of accumulation of pension benefits, early retirement benefits, contributory participation, cost-of-living adjustments and retroactive rights of pensioners ...".
- 1.2 At the request of the Secretariat, Buck Consultants have completed a review of the benefit provisions of the pension scheme for members of the International Court of Justice pursuant to the recommendation set forth in document A/49/7/Add.11. Our report is contained herein.
- 1.3 Our review is based in part on documents furnished by the Secretariat and Court, which provide information on the past and current provisions of the scheme and on various discussions that have taken place relating to scheme benefits. A summary of the documents that were furnished is given in the Schedule to this report. In addition, we met with the Vice-President of the Court and representatives of the Secretariat in a joint meeting at United Nations Headquarters in New York for an exchange of views on the scheme. Following that meeting, the Court provided demographic data on all current and former members of the Court; these data have also been considered in our review.
- 1.4 Given the unusual nature of employment and retirement patterns in the Court and the absence of a large body of comparative data on the benefit provisions of schemes in other high courts, we necessarily have had to rely also on general principles regarding the construction of pension schemes, in order to form an opinion as regards the appropriateness of the benefit provisions of the scheme.

Analyses performed

- 1.5 The analysis, which is presented in detail in section II of this report, was in two main parts. First, while recognizing that the benefits of the scheme should be treated as sui generis as judicial pensions are generally treated, we examined whether the provisions of the scheme were reasonable based solely on general pension design principles and the demographic data for members of the Court. Our objective in this part of the analysis was to obtain an independent opinion from that provided by the somewhat limited data available on the provisions of comparative schemes. Second, we examined each benefit provision separately in terms of appropriateness when measured against good design practices, and against the corresponding provisions of the comparator schemes where such information was available.
- 1.6 It must be emphasized that pension schemes generally reflect a compromise between what the sponsor would wish to provide if there were no cost considerations and what the sponsor is in a position to offer. Our analysis assumes that cost is not a factor in providing pensions to members of the Court to the extent that cost constraints would modify the benefit provisions that would be found in an appropriate pension scheme design. Clearly, it would not be possible to consider the extent to which cost constraints might affect the provision of benefits without engaging in discussions with the United Nations on this matter.

Findings

- 1.7 Our key findings are as follows:
- (i) We are of the opinion that the pre-1 January 1991 pension regime is reasonable and appropriate, in all respects, on the basis of general principles of pension design and the benefits provided by comparator courts.
 - (ii) We believe that the adoption of fixed pension amounts has the appearance of being arbitrary. A return to the prior scheme formula coupled with the introduction of an appropriate definition of pensionable remuneration would, we believe, lead to a better understanding of the scheme.
 - (iii) We are of the opinion, if pensionable remuneration is defined to be equal to annual salary, that there would not be a need to introduce a local currency provision. However, if pensionable remuneration is defined as annual salary less the cost-of-living allowance for The Hague, consideration should be given to introducing a system of initial pension adjustments and subsequent payment in local currency (i.e., a two-track system) to protect those who have retired or will eventually retire to high-cost countries.

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- (iv) We believe the plan should remain non-contributory.
- (v) A small number of minor changes should be made to the plan, as follows:
 - Actuarial reduction factors at the rate of $\frac{1}{2}$ per cent per month should be introduced into the scheme rules to simplify the calculation of actuarial equivalence in future early retirement cases.
 - A lump sum of twice the pension should be paid as a settlement to surviving spouses who remarry.
 - The surviving spouse's pension multiplier could be increased to 60 per cent or, alternatively, members could be offered the option of electing increased spouses coverage, up to a maximum of a further 50 per cent, by means of an actuarial reduction in their pension.

II. ANALYSIS

General principles

- 2.1 Assume that we are attempting to develop an appropriate pension design for members of the Court based solely on general principles and the demographic characteristics of newly elected and retiring members. We believe that such an exercise would provide a valuable independent measure of the appropriateness of the benefit provisions. We also expect that the data used in this analysis would be of interest to the reader of this report.
- 2.2 The modern view on pension scheme design is that an acceptable scheme should provide a reasonable replacement income, after allowing for social security and personal savings, following a full career with the employer. A "reasonable replacement income" is generally held to be an income sufficient to maintain a standard of living after retirement equivalent to that enjoyed in the immediate years prior to retirement. A "full career" is usually defined as a career assuming entry age for a typical new entrant at the start of his or her career and continued employment until normal retirement age.
- 2.3 It has been found for most industrialized countries that a reasonable replacement income is in the range of 60 per cent to 70 per cent of pre-retirement final pay; less than 100 per cent is required because expenses in retirement are usually lower than those incurred while working. A higher range of replacement income would be warranted for the lower paid and also where cost-of-living adjustments are not paid.
- 2.4 The definition of full career varies by employer hiring patterns and category of employment. For example, in white collar undertakings such as banking, a full career might be in the range of 30 to

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40 years. By way of another example, some of the international organizations hire seasoned Professional staff at their mid-career and here a full career would be in the neighbourhood of 20 to 25 years.

- 2.5 It is also held that a sound modern pension design should provide proportionate benefits for those retiring with less than a full career, and adequate benefits for death in service and disability. Finally, a sound modern design for a civil service scheme (which we believe is the appropriate model for the Court) should provide reasonable survivor pensions on death after retirement and provision for cost-of-living adjustments.
- 2.6 Based on our professional knowledge of sound pension scheme design, we are of the opinion that the provisions of the scheme for members of the Court as regards disability, death in service and death after retirement are generally reasonable. We are also of the opinion that the practice of providing cost-of-living adjustments by virtue of conferring retroactive rights to pensioners when members' salaries are updated is in keeping with modern thinking for civil service schemes, although the practice of providing these somewhat infrequently when remuneration is adjusted is below par.
- 2.7 The most difficult issue in terms of the design concerns the rate of accrual of benefits. This difficulty arises because of the unusual nature of service in the Court and the relatively advanced age at which members are elected and subsequently serve. However, it is clear, if one takes the view that a "full career" in the service of the Court is two full terms (i.e., 18 years), that the pension regime in effect prior to 1 January 1991 would by definition satisfy the principles of sound design, since it would provide a pension of two thirds of final pay after two terms.
- 2.8 The data provided by the Court would also appear to confirm the view that the rate of accrual of the pre-1 January 1991 pension regime is indeed reasonable. Various statistics derived from these data are presented in the table below.

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Table

SUMMARY OF DEMOGRAPHIC DATA FOR THE INTERNATIONAL
COURT OF JUSTICE

Item	Number	Average	Median	Lowest	Highest
<u>Justices in service</u>	15				
Age at entry		58	58	48	67
Current age (31/12/95)		64	65	52	71
Age at expiration of current term		68	68	57	78
Service at expiration of current term		10	9	2	27
<u>Retired Judges</u>	9				
Age at entry		60	58	50	79
Age at retirement		70	72	58	88
Service at retirement		10	9	4	21
<u>Former retired Judges (now deceased)</u>	28				
Age at entry		64	62/63	55	78
Age at retirement		73	73/74	58	87
Service at retirement		9	9	2	21
Age at death		86	88	67	96
Years of pension		12	13	2	23
<u>Justices who died in service</u>	8				
Age at entry		60	57/59		
Age at death		71	67/77	57	87

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- 2.9 Table A.1 indicates that the average age at entry for all cohorts is around age 60, although there is a tendency in the modern era for the entry age to be somewhat lower (i.e., around age 58). It also indicates an average service of 10 years' duration, and an average retirement age in the range of 70 to 72.
- 2.10 It can be seen that the highest recorded service was 21 years, that the average duration of pension for a retired member is 12 years and that 8 out of the 36 deceased Judges, or approximately 22 per cent, died in service and therefore prior to receipt of a pension payment.
- 2.11 Since a "full career" would fall mathematically between an "average" career and the maximum attained, one can deduce that a full career would be somewhere in the range of 10 to 21 years. Although it is difficult to be precise owing to the limited nature of the data, and the fact that there is no mandatory retirement age, we believe that these data provide support to the view that a full career can reasonably be taken to mean two full terms by the common yardsticks applied to the more usual pension schemes.
- 2.12 We believe that the analysis presented above confirms, absent any other considerations pertaining to the nature of judicial service in the high court, and based solely on general principles as applied to pension scheme construction, that the overall design of the scheme in force prior to 1 January 1991 is not unreasonable.

Additional considerations

- 2.13 It could be argued, in establishing an appropriate level of replacement income, that consideration should be taken of sources of income from prior employment. We have difficulty with this argument, for several reasons. First, some members of the Court begin service at an age when they would not typically be entitled to full retirement benefits from their previous employment and, indeed, at an age when there could be a significant loss of the benefits that would otherwise accrue if they had not agreed to serve on the Court. Second, even if one were to assume that an adequate source of income from prior employment existed because a member joined the Court while in receipt of a full pension from a former employer, there would be practical difficulties - in addition to questions of equity between members - in attempting to modify the accrual rate to take account of such income. Third, if one subscribes to the view that an adequate replacement income should be provided by the scheme, it follows that one must either choose to ignore other sources of income in measuring pre-retirement and post-retirement income or choose to include both sources when measuring pre-retirement and post-retirement income; in either case, we arrive at the same general conclusion that it is appropriate to provide pension benefits that replace a reasonable proportion of the income earned while serving as a member of the Court.

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- 2.14 It could be argued that "social security" and "personal savings" should be taken into account, leading to a lower accrual rate. Social security benefits are generally taken into account in arriving at an appropriate replacement income in the design of pension schemes. However, we do not believe it would be appropriate to attempt to include recognition of this element for the members of the Court given that it would be difficult to arrive at a simple formula in view of the diverse nationalities of the members. Moreover, it would be usual to offset only that portion of the social security benefits earned while in the employ of the plan sponsor. We expect that members will earn little in the way of social security benefits while serving on the Court. With regard to whether "personal savings" should be a factor, this is addressed later in the report under the topic, Contributory participation (paras. 2.36 and 2.37).
- 2.15 We believe that the central question regarding the appropriateness of the scheme from the viewpoint of general principles is related to the question of the definition of pensionable remuneration. As we understand it, remuneration prior to 1991 consisted of a base element coupled with a cost-of-living allowance to reflect the additional cost of living in The Hague and with various other allowances such as those for children's education. In 1991, the cost-of-living allowance was "rolled" into the base pay element. It can be argued that pensionable remuneration should not include full recognition of the cost-of-living adjustment for The Hague given that the majority of retired and retiring members of the Court will choose or be obliged to retire outside the Netherlands. We expect that this view formed the basis for ACABQ in its recommendation to move to a fixed dollar pension approach in 1991 rather than to apply the revised salary structure to the pension scheme design then in force.
- 2.16 We are of the opinion that the question of which elements to include in pensionable remuneration lies at the heart of the difference in views between the Court and ACABQ. This matter is therefore discussed in some detail later in this report in the discussion on pensionable remuneration.

Comparative data

- 2.17 As an alternative to looking to general principles in order to assess the reasonability of a particular pension scheme design, one can also look to comparative schemes. While only somewhat limited data are available to us from the documentation, it is instructive to compare the key provisions of the scheme for members of the International Court of Justice with those of other courts. The relevant data are set forth in paragraph 11 of document A/C.5/49/8. These data confirm that the pension regime in existence prior to 1 January 1991 is reasonable when compared against the schemes of other high courts.

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Review of benefit provisions

- 2.18 The review in this section of the report is based on the pension regime in effect prior to 1 January 1991, since we understand that this is the formal scheme and was modified only to the extent that fixed pension amounts were adopted effective 1 January 1991.

Normal retirement age

- 2.19 The scheme provides for normal retirement upon attainment of age 60 provided, inter alia, the member of the Court has completed three years of service. Normal retirement age and service requirements in the scheme of the comparator courts generally are higher. For example, the United States Supreme Court has a normal retirement age of 65 after 15 years of service or 70 years of age after 10 years of service. Notwithstanding the comparative data, we find the normal retirement age provisions in the scheme to be reasonable, for the following reasons:
- In practice, relatively few members of the Court have chosen to retire at or before age 60; this is not surprising given the average age at entry. Bearing in mind that the average age at retirement is age 70, it is clear that the age at which members typically take retirement is close to the normal retirement age found in the comparator schemes.
 - A liberal normal retirement age provides a necessary mechanism for the orderly retirement of members.
 - The comparative data may not be appropriate for determining normal retirement age for members of the Court, given that the terms of service and other conditions are quite different between the Court and the other high courts.

Minimum period of service

- 2.20 The minimum period of service under the present scheme is three years. A member retiring with three or more years of service, but after completing less than a full term of nine years, receives a proportionate benefit.
- 2.21 We believe that it is appropriate to require only a small period of service before granting a right to a pension, in accordance with modern thinking and indeed the trend in national legislation on this subject. In our view, the present requirement of three years of service is not unreasonable.
- 2.22 We note that the requirement in an earlier scheme for members of the Court was a minimum of five years of service. Such a minimum would also, we believe, be reasonable on general grounds. However, it would be unusual in a modern pension scheme to increase a minimum service requirement and we would recommend against it in this instance unless

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the General Assembly had other reasons to want to see an increase in the minimum period of service. In this regard, we would note that the application of proration to the pension of members retiring with less than a full term greatly moderates the cost of providing pensions to these members.

Rate of accumulation of benefits

- 2.23 Under the pension regime in effect prior to 1 January 1991, the scheme provided a pension of 50 per cent of annual salary after completion of nine years of service with an additional one three hundredth of that amount for each additional month in service, subject to a maximum pension of two thirds of annual salary. Under the regime enacted effective 1 January 1991, the pension was fixed at US\$ 50,000 after nine years of service, with a proportionate amount for service less than nine years and an additional US\$ 250 per month for service in excess of nine years to a maximum of US\$ 75,000 after 18 years of service.
- 2.24 We are of the opinion that a soundly designed pension scheme should relate pension benefits directly to pay at or near retirement by formula rather than by fixed amount, since this provides an automatic link between pre-retirement and post-retirement income. This view is supported by the analysis presented earlier and also by the comparative data. We therefore have sympathy with the views expressed by the Court, and the Secretary-General in document A/C.5/49/8, as regards a request to return to the prior pension regime.
- 2.25 While we believe that the accrual rate in the pension regime in effect prior to 1 January 1991 is reasonable and, indeed, appropriate, we would note that usual practice is to apply an accrual rate to an appropriate definition of pensionable remuneration rather than annual salary. While pensionable remuneration is often defined as annual salary, this is not always the case. Indeed, it is common to exclude special allowances, such as those for education, travel and so forth and, in the case of schemes covering employees who serve overseas, cost-of-living allowances. We expect that the intent of ACABQ in arriving at fixed pension amounts was, in fact, to apply the existing accrual rates to a measure of pensionable remuneration that was lower than annual salary. The rationale for not using the full annual salary was, presumably, that the revised salaries now included cost-of-living adjustments for service at The Hague. We believe that the establishment of an appropriate definition of pensionable remuneration is connected to whether payment should be made in local currency. These questions are discussed together, later in this report.
- 2.26 In summary, we would recommend that the pension formula relating to the accrual rate revert to that in effect immediately prior to 1 January 1991, subject to a review of the definition of pensionable remuneration. Such a change would make clear the relationship between pre-retirement and post-retirement income and thus facilitate direct

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comparison with other schemes. The present regime of fixed pensions has the appearance of being arbitrary.

Early retirement benefits

- 2.27 The scheme provides that members of the Court retiring before age 60 may elect to receive an immediate pension of equivalent actuarial value to the pension which would have been paid at age 60. The actuarial basis for determining actuarial equivalence is not defined in the scheme rules. We believe that these early retirement provisions as set forth in the scheme rules are reasonable and in keeping with sound, modern pension design.
- 2.28 We would recommend that actuarial tables or, preferably, actuarial pension reduction factors be adopted as part of the scheme rules; this would provide both the members of Court and the Secretariat with a readily available basis for determining early retirement pensions. To provide further guidance in this matter, we have performed calculations to determine an appropriate set of actuarial factors, based on the latest United Nations mortality tables (the 1993 United Nations tables) and economic assumptions adopted for the regular valuation of the United Nations Joint Staff Pension Fund as of 31 December 1995. The calculations indicated that the actuarial equivalencies can be approximated very closely by a standard reduction of $\frac{1}{4}$ per cent per month by which the pension commencement date precedes age 60. We would recommend that these factors be adopted as part of the scheme rules.
- 2.29 We would note that many pension schemes apply lower or "subsidized" early reduction factors than those determined under strict actuarial equivalence. We would see no merit in adopting "subsidized" factors unless the Secretariat is of the view that early retirement benefits should be improved slightly, rather than being left as a neutral matter from an actuarial viewpoint. If the Secretariat is of the view that lower early retirement factors are appropriate, these could be set at $\frac{1}{3}$ per cent or $\frac{1}{4}$ per cent per month of early retirement.

Disability benefits

- 2.30 The scheme provides a disability pension equal to the amount of the retirement pension that would have been payable to the member had he or she at the time of leaving office completed the current term of election, subject to a minimum pension of US\$ 25,000. We find these provisions to be reasonable and would recommend that they be retained.

Surviving spouse's pensions

- 2.31 The scheme provides the following surviving spouse's pensions, subject to certain minimum benefits:

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- On death-in-service, a pension of one half of the disability pension that would have been payable to the member if he or she had become disabled immediately preceding death.
 - On death following disability retirement, normal retirement, or early retirement with receipt of pension, a pension of one half of the member's pension.
 - On death following early retirement but before receipt of pension, one half of the early pension that would have been payable had payment commenced at the date of death.
- 2.32. It was noted in document A/C.5/49/8 that the Court requested an increase in the surviving spouse's pension to 60 per cent of the member's pension, and that a lump sum payment be paid upon remarriage of the surviving spouse as settlement for the spouse's pension. The Secretary-General concurred with the Court's view on these matters. In this regard, we would note that pension schemes in several European countries, such as Germany and the Netherlands, commonly provide surviving spouses' pensions at the rate of 60 per cent rather than the rate of 50 per cent more commonly found in the United States and within the United States-based international organizations.
- 2.33. We are of the view that a rate of 60 per cent for surviving spouses pensions is not unreasonable. We also are of the view that a lump sum settlement of twice the annual pension upon the remarriage of the surviving spouse is reasonable.
- 2.34. We would note that an alternative to increasing the rate for a surviving spouse's pension to 60 per cent would be to provide retiring members of the Court with an option to elect an increased survivor pension, financed by an actuarial reduction in the pension otherwise payable. This approach is that adopted by all of the United States-based international organizations, where the first 50 per cent is provided at no cost but increases above this level (usually in 10 per cent increments to a maximum of 50 per cent) are financed by the retiree through an actuarial reduction in pension. The Secretariat may wish to consider this alternative approach, which is actuarially neutral to the sponsor, if cost is an issue.

Children's benefits

- 2.35. We find the present scheme provisions to be reasonable.

Contributory participation

- 2.36. While it may appear to be reasonable to ask members of the Court to contribute to their pensions, we believe there are sound arguments against such an approach. These arguments are as follows:
- In the more usual pension schemes where members join at an early age and may remain members for 40 years, it is not unreasonable

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or impractical to establish a contribution requirement. For members of the Court, however, anticipated service is much lower, which leads us to believe that meaningful cost-sharing could not occur without the members' contributions being set at inordinately high levels.

- In the more usual pension schemes, members' contributions are made on the expectation that they will be returned as part of the pension payments over many years of retirement. This is not the case for members of the Court, who often serve beyond the age when most employed persons retire and who have a more limited expectation of return. Moreover, those members who choose to serve longer will be treated inequitably in comparison with those who serve the Court for a limited period, because they will be required to contribute over a longer period while expecting to receive pension payments over a shorter number of years. This issue does not arise in the more usual pension arrangement because the vast majority of members retire either before or at normal retirement age with the result that the expected length of pension payments is relatively similar for all retirees.
- It would not seem appropriate to require contributions if the scheme is not funded.
- We expect that in those cases where the comparator data indicate a requirement for the members to make contributions, service in the Court would be preceded by service within the court system in general in the country in question. Under these circumstances, contributory participation is not unreasonable. However, this does not lead to a conclusion that contributory participation should be required for members of the International Court of Justice, where the circumstances are quite different.

2.37 In view of the above comments, we would recommend that the scheme remain non-contributory.

Pensionable remuneration

2.38 It was indicated earlier in this report that we are of the opinion that pensions for members of the Court should be determined by formula rather than by fixed amount. In this connection, we observed that the pension regime in existence prior to 1 January 1991 provided a reasonable formula based on general pension design principles and on comparative data regarding the schemes of other high courts. We made clear, however, that the accrual rate formula under a pension scheme was only one element and that an appropriate definition of pensionable remuneration should also be contained in scheme rules. We believe that it is differences in views on the definition of pensionable remuneration that have led to a difference of views between the Court and ACABQ on the pension amounts that became payable on 1 January 1991, although this probably has not been recognized by the parties concerned.

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- 2.39 While recognizing the unusual nature of international judicial service, we believe there are parallels, in the commercial field and in the international organizations, that are helpful in illustrating the main issues and their typical resolution.
- 2.40 In the commercial field, multinational corporations have long faced the problem of providing appropriate pensions for employees who serve overseas for some of their career. A difficulty arises for multinationals in determining pensionable remuneration in the case of employees who serve in high-cost countries. Usually, such employees will receive special allowances above their base pay (which normally reflects pay for an equivalent job in the home country) to compensate for the cost-of-living in such countries; however, it is not usual to include these allowances in the definition of pensionable remuneration where it is clear that the employee in question will return to his or her home country, since to do otherwise would lead to a replacement income for those who served overseas greater than that received by similar employees who had not served overseas.
- 2.41 International organizations face even greater problems because employees retire to home countries all over the world. Because the United Nations remuneration system for Professional staff is based on the United States dollar with cost-of-living adjustments for service in high-cost countries, pensions based on the United States dollar component only would not be adequate to those retiring in high-cost countries. The United Nations has chosen to handle this problem by means of a pension adjustment system, part of which provides adjustment in the initial amount and part of which provides for ensuing payment in local currency.
- 2.42 With regard to the pension scheme for members of the International Court of Justice, the key question is whether pensionable remuneration should be defined as annual salary or as annual salary less a component to reflect that portion of salary attributable to cost-of-living adjustments for service in The Hague. We believe that either view could be supported, as follows:

- (i) It could be argued, in support of including the full amount of salary in the definition of pensionable remuneration, that the full annual salary reflects the exceptional nature of the qualifications and experience required to serve on the Court, and the fact that it reflects the high cost of serving at The Hague is not relevant.

We believe that, under this argument, there would not be such a strong case for seeking adjustments to pensions for those who retire to "high-cost" countries because the Netherlands would fall into this category. Thus, although the United States dollar may be weak against the currencies in certain high-cost countries, this presumably is reflected in the cost-of-living component of annual salary.

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We also believe that, under this approach, full retroactivity should be accorded to pensioners and their beneficiaries since not to do so would lead to structural inequities over time between different cohorts of pensioners.

Of course, one could argue that this definition is overly generous to those who retire to "low-cost" countries and the United States of America. However, if one were to attempt to adjust pensions downwards for such retirees, one would presumably be prepared to adjust pensions upwards for certain retirees who retire to countries with particularly high costs (e.g., Japan), with the result that a common definition of pensionable remuneration would no longer apply.

- (ii) It could be argued that the portion of annual salary excluding cost-of-living allowances is the appropriate salary for pension purposes. This is equivalent to arguing that remuneration should reflect only that which would be paid in the United States for similar service.

It seems to us that under the view expressed in (ii) above, a reasonable replacement income will be realized only for those members of the Court who are retired in the United States or low-cost countries. Clearly, an inadequate replacement income could result for retirees in high-cost countries. Indeed, the Court has already expressed a view that certain retirees in such countries have an inadequate pension as a result of the weakening of the United States dollar vis-à-vis local currency.

We believe that if one subscribes to argument (ii), one must also logically consider introducing a pension adjustment system to protect those who retire to high-cost countries. Such a system would conceivably operate in a similar fashion to that employed within the United Nations Joint Staff Pension Fund (UNJSPF). Thus, it would include an adjustment to the initial pension in high-cost countries together with a mechanism to convert pensions to local currency and adjust them thereafter based on local inflation. It would also follow that the principle of full retroactivity to pensions would no longer apply, because pensions would no longer be correlated to the annual salaries of serving members. Such pensions would now take on a life of their own, being adjusted in the future only by the cost-of-living adjustment pertaining to that country.

Although we recognize that the pension scheme for members of the Court should neither follow from nor establish a precedent for the UNJSPF, we believe that the mechanisms that have been employed by the Fund to derive the initial adjustments, subsequent currency conversion and cost-of-living adjustments could be employed for the scheme.

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- 2.43 In summary, we would conclude that pensionable remuneration could be defined as full annual salary or the portion of such salary that does not reflect the cost-of-living in The Hague. In the former case, there would be less need for a local currency provision with attendant initial adjustment in pension for high-cost countries, and the principle of full retroactivity for pensioners would be maintained. In the latter case, retirees in high-cost countries will not achieve the levels of replacement income envisaged in the scheme design during periods where the United States dollar is weak; this would therefore suggest a need for a two-track pension adjustment system along the lines of that employed within the UNJSPF.
- 2.44 In practical terms, the choice would appear to be between simplicity with some inequity on the one hand and complexity with equity on the other hand. If the full annual salary were applied to the pension regime in force prior to 1 January 1991, simplicity would result but there would be some inequity as regards those who retire to particularly high-cost countries. If only a portion of the full annual salary were applied to pensionable remuneration with the introduction of a local currency pension adjustment system, there would be a larger degree of equity coupled with more complexity in administration.
- 2.45 On balance, we would tend to favour the simple approach given the size of the group in question. It follows therefore that we would favour a return to the 1 January 1991 pension regime but with application of the revised annual salaries that became effective on that date. We would also find acceptable the proposal of the Secretary-General to "phase in" the increases during a transition period.

III. SUMMARY AND CONCLUSIONS

- 3.1 Buck Consultants have reviewed the benefit provisions of the pension scheme for members of the International Court of Justice. One principal conclusion is that the pension regime in effect prior to 1 January 1991 is reasonable and appropriate based on general principles of pension scheme construction and comparative data. However, in our opinion, a return to the earlier pension regime should be coupled with a review by the Secretariat of the definition of pensionable remuneration. Our report presents an argument for either (a) including all annual salary in the definition or (b) including only the equivalent United States dollar portion in conjunction with the introduction of a two-track adjustment system.
- 3.2 We are also of the opinion that several, relatively minor, changes could be made to the scheme provisions. These include the adoption of early retirement reduction factors, the payment of a lump sum equal to two years' pension payments for surviving spouses who remarry and a change in the surviving spouse's pension multiplier to 60 per cent or, alternatively, the introduction of an option to elect additional spouse's coverage through a reduction in the member's pension.

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SCHEDULE

Documents reviewed

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| 1. | Communication from the Court enclosing demographic data | 24 July 1995 |
| 2. | A/49/7/Add.11 Twelfth report of the Advisory Committee on Administrative and Budgetary Questions | 8 March 1995 |
| 3. | A/C.5/49/8 Report of the Secretary-General | 10 October 1994 |
| 4. | Internal ICJ memorandum on pension entitlements of Judges of the Permanent Court of International Justice | 26 May 1994 |
| 5. | A/C.5/48/66 Report of the Secretary-General | 14 March 1994 |
| 6. | A/48/7/Add.6 Seventh report of the Advisory Committee on Administrative and Budgetary Questions | 31 March 1994 |
| 7. | A/45/7/Add.10 Eleventh report of the Advisory Committee on Administrative and Budgetary Questions | 6 December 1990 |
| 8. | A/43/7/Add.6 Seventh report of the Advisory Committee on Administrative and Budgetary Questions | 11 November 1988 |
| 9. | A/C.5/45/44 Report of the Secretary-General | 15 November 1990 |
| 10. | A/C.5/40/32 Report of the Secretary-General | 22 October 1985 |
| 11. | A/C.5/38/27 Report of the Secretary-General | 8 November 1983 |
| 12. | A/C.5/31/13 Report of the Secretary-General | 3 September 1976 |
| 13. | Other: Miscellaneous documents | |

Outline of the International Court of Justice's budget submission for the 2008-2009 biennium

The International Court of Justice is the principal judicial organ of the United Nations. The Court's independence and autonomy are recognized by the United Nations Charter and the Statute of the Court, which forms an integral part of the Charter. In order to implement the provisions of the Charter and achieve its goals, the Court must, at all times, be capable of carrying out the duties entrusted to it.

The function of the Court is to decide contentious cases submitted to it by States in accordance with the Statute of the Court. In so doing, it contributes to the maintenance of international peace and security by ensuring the peaceful settlement of disputes between States, as contemplated in Articles 1 and 2 of the Charter. It also responds to requests for advisory opinions submitted by duly authorized United Nations organs and specialized agencies. As a result of these statutory obligations, the Court does not have a "programme" that could be cut back, unlike some other United Nations organs where such possibilities may exist.

Pursuant to Article 97 of the Charter and Article 21, paragraph 2, of its Statute, the Court, as the principal judicial organ, enjoys a unique position of autonomy, not only judicial but also administrative. Thus, the Court is assisted by a Registry, answerable to the Court alone: the Court itself elects the Registrar and Deputy-Registrar, recruits Registry staff members and organizes the Registry. Under Article 12 of the Rules of Court, the President of the Court supervises the administration of the Court. Unlike the other judicial bodies in the system, the Court thus has significant administrative tasks in addition to its eminent judicial duties. This twofold nature of responsibilities also characterizes the Registry. The Registry serves important functions in the administration of justice, specifically bearing responsibility for the Court's external relations, for contacts with parties to cases, and for administrative and preparatory case management; it also advises and assists the Court in its processing of cases. At the same time the Registry assumes a number of administrative responsibilities usually borne by the secretariats of international organizations. The Court's uniqueness is further reflected in two other ways: first, unlike the other principal organs of the United Nations, the Court has only two official languages, in which it actually works at all times; secondly, unlike the other organs, it has its seat at The Hague.

In contentious proceedings alone, the Court handed down an impressive total of ninety-two (92) judgments and forty (40) orders in respect of the indication of provisional measures in its first 60 years (1946-2006). It is noteworthy that thirty-eight (38) of the ninety-two (92) judgments rendered by the Court were handed down in the first 30 years and fifty-four (54) in the next 30 years. The sharp increase over time in the Court's work, thus apparent straightaway, is even clearer over the last 20 years: between April 1986 and April 1996 thirteen (13) judgments were rendered and between April 1996 and April 2006 thirty (30), that is to say nearly three times as many. Moreover, judgments delivered in the last decade account for approximately one third of the total number of judgments handed down since the founding of the Court.

A similar observation can be made about the forty (40) orders in respect of the indication of provisional measures made by the Court since 1946. Ten (10) of these were made during the first 30 years and thirty (30) during the next 30 years. In the last 20 years nine (9) orders in respect of the indication of provisional measures were made between April 1986 and April 1996 and double that number, or eighteen (18), between April 1996 and April 2006. At the same time, nearly one half the total number of such orders since the founding of the Court were handed down in the last ten years.

As can be observed, the ten years leading up to its sixtieth anniversary saw the Court busier than ever before. It should be added that this activity obviously must not be measured solely by the number of decisions handed down; account must also be taken of the growing complexity, both factual and legal, of the cases involved. The unfailingly reaffirmed confidence which the international community has placed in the Court would indicate that the Court will remain very busy in years to come.

An examination of the Court's current activity confirms this trend.

During the four years of the 2002-2003 and 2004-2005 bienniums, the Court finally disposed of 18 pending cases¹ and two cases were removed from the List. Over the same period, eight new contentious cases were filed with the Court, along with one request for an advisory opinion². At 31 December 2005, 12 cases were pending before the Court.

Over the first year of the current biennium— 2006-2007 —, the Court finally disposed of one case³, held hearings in two others⁴ and deliberated in three cases⁵. Over the same period, three new contentious cases⁶ were filed with the Court, one of which was subsequently withdrawn. Two requests for the indication of provisional measures, which have priority over all other cases, were also filed, one in May and one in November 2006, and an order on provisional measures was promptly rendered with respect to the first

¹2002-2003 biennium (6 cases): (1) *Oil Platforms (Islamic Republic of Iran v. United States of America)*; (2) *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*; (3) *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; (4) *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*; (5) *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections (*Yugoslavia v. Bosnia and Herzegovina*); (6) *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (*El Salvador v. Honduras*).

2004-2005 biennium (12 cases, of which 11 contentious and one advisory): (1) *Avena and Other Mexican Nationals (Mexico v. United States of America)*; (2) *Legality of Use of Force (Serbia and Montenegro v. Belgium)*; (3) *Legality of Use of Force (Serbia and Montenegro v. Canada)*; (4) *Legality of Use of Force (Serbia and Montenegro v. France)*; (5) *Legality of Use of Force (Serbia and Montenegro v. Germany)*; (6) *Legality of Use of Force (Serbia and Montenegro v. Italy)*; (7) *Legality of Use of Force (Serbia and Montenegro v. Netherlands)*; (8) *Legality of Use of Force (Serbia and Montenegro v. Portugal)*; (9) *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)*; (10) *Certain Property (Liechtenstein v. Germany)*; (11) *Frontier Dispute (Benin/Niger)*; (12) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

²New contentious cases: (1) *Frontier Dispute (Benin/Niger)*; (2) *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*; (3) *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* (*El Salvador v. Honduras*); (4) *Avena and Other Mexican Nationals (Mexico v. United States of America)*; (5) *Certain Criminal Proceedings in France (Republic of the Congo v. France)*; (6) *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*; (7) *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*; (8) *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*.

Request for advisory opinion: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

³*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*.

⁴Hearings held in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (nine weeks) and in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (one week).

⁵(1) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; (2) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*; (3) *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.

⁶New contentious cases: (1) *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*; (2) *Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (Commonwealth of Dominica v. Switzerland)*, later withdrawn; (3) *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.

request⁷. In 2007, the Court has already handed down three decisions⁸ and held hearings in two other cases⁹, in which it is now deliberating. In addition, hearings will be held in the autumn in one more case. At present, 13 cases are pending before the Court.

Although these general indications give no idea of the factual and legal complexity of the cases brought before the Court, they attest to sustained judicial activity and the importance States attach to the Court in turning to it for the peaceful resolution of their disputes. These cases come from all over the world and involve all sorts of legal issues and disputes.

This sustained activity has been made possible by the great many measures taken by the Court to enhance its efficiency and enable itself to cope with the steady increase in its workload. Its procedures and working methods are under constant review. Thus, the Court has decided to set particularly demanding schedules for itself from now on, so as to deal with several cases at the same time. Moreover, the Court makes extensive use of new information technologies in various areas. All these measures have, of course, boosted the productivity of the institution but they are not by themselves enough to ensure that the Court will be able, in the near future, to perform its functions: that requires additional resources aimed at the core judicial work.

The Court, conscious of the budgetary constraints upon the Organization, has always limited its budgetary requests to the strict minimum. Its current budget accounts for less than one per cent of the total United Nations budget. The Court has submitted budget proposals for the forthcoming 2008-2009 biennium which are directed to enabling it further to increase its productivity. Essentially, these proposals are to cover the following:

- (1) the creation of nine P-2 law clerk posts to enable each Member of the Court to benefit from the personal assistance of a young lawyer. At present, the 14 Members of the Court other than the President, to whom a P-3 personal assistant is assigned, have available to them only a small team of five P-2 law clerks, who work as a pool within the Legal Department and whose time for research projects is split amongst not only those Members of the Court but also a large number of judges *ad hoc* (some 20 at present).

Individual assistance for each judge is proving to be greatly needed owing, first of all, to the growing number of complex fact-intensive cases raising numerous legal issues before the Court and the rising importance of the research, analysis and evaluation thus required in respect of not only the pleadings and documents submitted by the parties but also the legal literature and the burgeoning case law of other international courts and tribunals. Quite recently, in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Members of the Court had to examine an unprecedented number of documents and other sources representing thousands of pages of complex information of various types and had to do so with the utmost care and caution. This was also true, shortly before, in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. A number of cases now on the Court's List have characteristics like those of the cases just cited and there is every reason to

⁷Request for the indication of provisional measures filed by Argentina in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.

⁸(1) Request for the indication of provisional measures filed by Uruguay in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; (2) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; (3) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*.

⁹Hearings held in the case concerning *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (three weeks) and in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (one week).

believe that cases of this type will increase in the future. It is unrealistic to expect judges to continue to examine case records of this kind by themselves or with limited assistance, without incurring significant risks of error having potentially serious consequences.

Individual assistance is moreover crucial to enable the Court to render its judgments swiftly. The Court recently concluded that it had to take on particularly full hearing and deliberation schedules so that several cases could be in progress at the same time. When deliberations in different cases overlap, each Member of the Court must be able, contemporaneously and in respect of several cases, to study the pleadings and their annexes before hearings are held, to write Notes, to prepare for the deliberations through a great deal of extra reading and, possibly, to write opinions in highly varied cases. It is very clear that this pace, unavoidable if States wish to obtain justice without unacceptable delay, cannot be kept up in the future unless Members of the Court are given greater assistance.

The law clerks will be able *inter alia* to assist the Members of the Court to whom they are assigned by preparing document summaries and organizing documents according to their significance for the case or to the specific arguments involved; they will also be able to provide helpful assistance in carrying out the extensive research required, whether to ascertain facts or to identify judicial precedents or the views of legal scholars; clerks may also be asked to prepare papers on specific aspects of a case which the Members of the Court to whom they are assigned wish to study in greater detail. It is only with such assistance that the judges will be able efficiently to perform their judicial duties;

- (2) the creation of a P-5 legal officer post in the Registry's Department of Legal Matters to help further in maintaining a sustained tempo of work, with more than one case in progress at all times. At present, there are only seven posts in the Court's Department of Legal Matters (one D-1, one P-5, two P-4 and three P-3). If the Court is to be able to work during all phases of its proceedings in both its official languages, as intended by the Statute, the presence of two senior officials in grade P-5 is essential; this is absolutely necessary for the fulfilment, to the requisite standard of quality and within the applicable deadlines, of the Registry's numerous responsibilities in support of the administration of justice and for the supervision of the work and training of junior legal officers. The Principal Legal Secretary, who heads the Department of Legal Matters, can discharge his duties fully only if he receives assistance from two senior officials capable of managing cases and supervising other Department members. The two P-5 officials will thus be called upon to work closely with the Principal Legal Secretary to enable him to oversee the management of all cases on the List and also to support the Court when it is holding hearings or deliberating, and when drafting committees are simultaneously at work in different cases. Thus, with two P-5 officials, the Court will be able not only to overcome the difficulties recently occasioned by overlapping cases under deliberation but also at the same time to monitor other cases on the Court's List. The Court and the Legal Department staff have made ever-greater efforts to ensure that justice has been soundly administered without unreasonable delay. It has become clear that greater assistance for senior members of the Legal Department is essential from now on if the objectives which changed circumstances have set for the Court and its Registry are to be met;
- (3) the creation of a GS-5 temporary post for the biennium of Indexer/Bibliographer, required for the Court's Library, which has approximately 50,000 volumes and subscribes to 150 journals. The Library, whose main mission is to assist the Members of the Court and the various departments in the Registry, notably the Legal and Linguistic Departments, with their research, recently acquired new software for library management. The new Library catalogue, which will be accessible to all Members of the Court and Registry staff on line, will require intensive labour in inputting data to permit identification of books,

articles and official documents in the Court's collection. Unlike in other libraries in the United Nations system, the Court's catalogue has never benefited from any indexing (indexing a library's collection mainly consists of assigning keywords to all the works and titles in a catalogue). Without this tool, library users can only search for works by the author's name. As a result, Members of the Court and Registry staff have been using other institutions' catalogues for research, resulting in wasted time and energy. The development of its own databases by a specialized indexer would make the Court's Library more autonomous and more efficient in the assistance it provides;

- (4) the reclassification from P-4 to P-5 of the post of head of the new structure to arise from the envisaged merger of the Library Division and the Archives Division. At the recommendation of the Advisory Committee on Administrative & Budgetary Questions (ACABQ), the Court initiated an independent consultancy study in the 2004-2005 biennium on how to modernize proceedings and workflow in the Registry in order to rationalize the Court's administrative and work processes. Further to this study, the consultant was requested to perform a follow-up study focusing on the Archives, Indexing and Distribution Division and the Library Division. The consultant has proposed merging the two Divisions, bearing in mind that such a merger has successfully been carried out in other United Nations offices. Pooling the resources of the two Divisions would yield improved efficiency and a knowledge-management environment could be built. With a co-ordinated team and thanks to more coherent knowledge-sharing, the new department would be able to offer more efficient and superior help to users in obtaining the information they require. In addition, the new department would help to preserve the institutional memory of the Court in the long term, combining modern management with the most recent technologies. The increase in cost-effectiveness from the merger will not be immediate as the digitization of all documents available since the inception of the Court in 1946 will first have to be completed. The new structure will therefore require the retention of the current posts in the two existing Divisions, although reorganized in a dynamic way, and the reclassification from P-4 to P-5 of the professional post of Head of the new structure in view of the qualifications and skills required and the various tasks assigned.
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