



## 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

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.

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</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>
<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)

Index of emoluments

Movement: January 1981=100

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

Cost-of-living indices

January 1981 = 100

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

Table 2

(In United States dollars)

<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>
President <u>a/</u>	94 200	94 200	94 200	94 200	94 200	94 200
Index	100.0	100.0	100.0	100.0	100.0	100.0
Members of the Court	82 000	82 000	82 000	82 000	82 000	82 000
Index	100.0	100.0	100.0	100.0	100.0	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

Table 3

United 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.



Table 3 (continued)

Court of the European  
Communities

1 January 1985

President of the Court

Member of the Court

Belgian francs  
\$US e/

5 990 088  
95 081

4 883 232  
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

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.

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.

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

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.

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.

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;

(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

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



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:

\$

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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