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PROGRAMME BUDGET FOR THE BIENNIUM 1980-1981

Emoluments of the members of the International Court of Justice

Eleventh report of the Advisory Committee on Administrative
and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the emoluments of the members of the International Court of Justice (ICJ) (A/C.5/35/33). The report has been submitted in accordance with General Assembly resolution 31/204 of 22 December 1976, which reads as follows:

"The General Assembly,

Recalling its decision in resolution 3537 B (XXX) of 17 December 1975 to fix the annual salary of the members of the International Court of Justice at \$US 50,000 with effect from 1 January 1976,

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

1. Decides 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;

2. Decides further, with effect from 1 January 1977, that in between such periodic reviews the members of the International Court of Justice may also receive, in addition to their annual salary as defined in Article 32, paragraphs 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;

3. Decides 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, and that the system of interim adjustments shall not apply to them."

Annual salaries of members of the ICJ

2. Paragraph 17 of the report of the Advisory Committee which is referred to in paragraph 2 of General Assembly resolution 31/204 lays down the conditions under which an interim cost-of-living supplement becomes payable to a member of ICJ. 1/

3. The Secretary-General reports that the total emoluments of the judges over the five-year period 1976-1980 have moved as follows:

	<u>January 1976</u>	<u>January 1977</u>	<u>January 1978</u>	<u>January 1979</u>	<u>January 1980</u>
Annual base salary (\$US)	50,000	50,000	50,000	50,000	50,000
APA (average of post adjustment) index	100	106.0	117.8	132.8	149.1
Cost-of-living supplement (\$US)	-	3,000	9,000	16,500	24,500
Total emoluments (\$US) <u>a/</u>	<u>50,000</u>	<u>53,000</u>	<u>59,000</u>	<u>66,500</u>	<u>74,500</u>

a/ In addition, the President of the Court receives a special allowance of \$12,200 per year, and the Vice-President an allowance of \$76 for every day on which he acts as President, subject to an annual maximum of \$7,600 (General Assembly resolution 3537 B (XXX) of 17 December 1975).

4. The representatives of the Secretary-General informed the Advisory Committee that in September 1980 the APA index reached 162. Assuming no further movement of the index in October-December 1980, a cost-of-living supplement amounting to \$31,000 (i.e. 62 per cent of the annual base salary of \$50,000) will become payable as of 1 January 1981, thereby increasing the total emoluments payable to a member of the Court from \$74,500 to \$81,000.

5. In table 2 of document A/C.5/35/33, the Secretary-General provides comparative data on the movement between January 1976 and January 1980 in the remuneration of the members of the Court, senior United Nations officials and full-time members of subsidiary organs. In response to inquiries, the representatives of the Secretary-General informed the Advisory Committee that the amounts shown for senior Secretariat officials corresponded to the net salary (i.e., after deduction of the staff

1/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 8 (A/31/8 and Add.1-26), document A/31/8/Add.3.

assessment and before subtracting the 7 per cent pension contribution) plus the post adjustment at the dependency rate. The amounts did not include the representation allowance, which amounted to \$4,000 a year for an Under-Secretary-General (USG) and to \$3,000 a year for an Assistant Secretary-General (ASG), regardless of the duty station. The Advisory Committee was also informed that, because of increases in the post adjustment since January 1980, the emoluments of senior officials at New York, Geneva and The Hague were now as follows:

	November 1980		
	Salary and post adjustment	Representation allowance	Total
	\$	\$	\$
ASG at The Hague	82,126	3,000	85,126
USG at Geneva	95,276	4,000	99,276
ASG at Geneva	87,441	3,000	90,441
USG at New York	66,678	4,000	70,678
ASG at New York	61,198	3,000	64,198

The Advisory Committee has been informed that the post adjustment classification of New York is expected to be raised in February 1981. The post adjustment classification of The Hague and Geneva may vary from month to month because of exchange fluctuations.

6. In table 3 the Secretary-General gives the salaries in 1975 and 1980 payable to members of the highest national courts in the United States, the United Kingdom and Canada. As the Secretary-General says in paragraph 12, those salaries are gross, before taxes.

7. In paragraph 13 of his report, the Secretary-General states that, on the basis of an examination of the indicators in tables 2 and 3, he is of the view that the arrangements for interim cost-of-living adjustments introduced with effect from 1 January 1977 have since then provided reasonable protection of the value of the judges' emoluments and have increased the absolute levels of those 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 where they serve. Accordingly, the Secretary-General recommends continuation of the present arrangements of periodic reviews and interim adjustments of the judges' emoluments as set out in General Assembly resolution 31/204 of 22 December 1976 (see para. 1). 2/

2/ The reference in paragraph 13 of document A/C.5/35/33 to General Assembly resolution "3537 B (XXX)" is an error.

8. The average of post adjustment (APA) index now covers 31 cities and The Hague. In paragraph 18 of his report, the Secretary-General recalls that, whereas at the time resolution 31/204 was adopted the weighted average of post adjustment (WAPA) index covered 31 locations, it has since been extended by the International Civil Service Commission to cover 51 locations. In the circumstances, the Secretary-General suggests that the coverage of the APA index be extended to 51 cities and The Hague. The change would be made in such a way as to ensure no loss or gain in the total emoluments of the judges. In response to inquiries, the representatives of the Secretary-General informed the Advisory Committee that currently the APA for 51 locations is slightly ahead of the APA for 31 locations. The Committee was also informed that in recent years the two indices have not shown any significant divergencies.

9. In paragraph 17, the Secretary-General suggests that, effective from 1 January 1981, the annual base salary of the members of the Court be increased from \$50,000 to \$70,000, by consolidating into the base salary \$20,000 now payable as part of the cost-of-living supplement, with a corresponding reduction in the amount of the cost-of-living supplement. In paragraph 16, the Secretary-General states that the proposed consolidation is needed in order to correct the current imbalance between the two components of the judges' emoluments and also between the level of the total emoluments and the pension of a retired judge (see paras. 14-16).

10. The Secretary-General's suggestion can be expressed in tabular form as follows (on the assumption that the APA index of 162 reached in September 1980 will remain unchanged on 1 January 1981):

	<u>January 1980</u>	<u>January 1981</u>		<u>Increase (decrease)</u>
		<u>Current arrangement</u>	<u>Proposed arrangement</u>	
	\$	\$	\$	\$
Annual base salary	50,000	50,000	70,000	20,000
Cost-of-living supplement	<u>24,500</u>	<u>31,000</u>	<u>11,000</u>	<u>(20,000)</u>
Total emoluments	74,500	81,000	81,000	-
APA index	149.1	162	115.7 <u>a/</u>	

a/ The APA index would be rebased by dividing the current index (162) by 140 to reflect the increase in the base salary. Future changes in the supplement would be calculated in relation to the new base annual salary of \$70,000 and would be tied to movements of at least 5 points, upwards or downwards, of the rebased APA index.

11. In its examination of the Secretary-General's recommendation, the Advisory Committee recalled that in resolution 31/204 the General Assembly decided that the cost-of-living supplement payable to the members of the Court was an interim

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supplement in between the periodic reviews of the annual salaries of the members, the first of which was to take place at the thirty-fifth session; future reviews were to be made normally every five years. The intention of the Assembly was to avoid the need for a more frequent review of judicial salaries in a period of inflation and sudden monetary fluctuations. On the occasion of each review there was need to consider whether developments since the previous review warranted an increase in the annual salary and a corresponding reduction in the amount of the interim supplement. Some developments since 1976 are tabulated by the Secretary-General in tables 2 and 3 of his report. The Advisory Committee has obtained from the representatives of the Secretary-General the following additional information on the emoluments of members of national and international judiciaries:

Supreme Court of the Netherlands

	1975		1980	
	<u>President</u>	<u>Member</u>	<u>President</u>	<u>Member</u>
Guilder	125,280	96,864	191,800	152,600
\$US	47,635	36,830	98,359	78,256

Japanese Supreme Court

	1975		1980	
	<u>Chief Justice</u>	<u>Other Justices</u>	<u>Chief Justice</u>	<u>Other Justices</u>
Yen	22,850,000	16,452,000	28,039,500	20,441,700
\$US	76,167	54,840	132,262	96,423

European Communities Court

	1975	1980
	<u>Judge</u>	<u>Judge</u>
Belgian franc	2,404,922 (net)	3,180,000 (net)
\$US	60,125	111,579

12. In the light of the information provided to it and bearing in mind that the Secretary-General's suggestion to consolidate part of the cost-of-living supplement into the annual salary implies no real increase in the total emoluments of the judges, the Advisory Committee has no objection to the annual salaries of the members of the Court being increased from \$50,000 to \$70,000, effective from 1 January 1981, with a corresponding reduction in the amount of the interim cost-of-living supplement.

13. The Advisory Committee agrees with the Secretary-General's recommendations that the current arrangements of periodic reviews and interim adjustments of the judges' emoluments be continued and that the adjustment be based on movements of a broader based APA index (see paras. 7 and 8).

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Pensions of retired judges and their survivors

14. Pensions of retired members of ICJ are determined by the General Assembly. The judges have a non-contributory pension scheme outside the United Nations Joint Staff Pension Fund. Their full pension entitlements, at age 65 after nine years of service on the Court, have been established at 50 per cent of the annual base salary. As decided by the General Assembly in resolution 31/204, the retirement pensions given to the judges are not subject to interim adjustments and are to be reviewed concurrently with the periodic review of the annual base salary. Consequently, the pensions of retired judges and their survivors have not been adjusted since 1976, despite the inflation and monetary fluctuations in the intervening years. The Secretary-General's suggestion to raise the annual base salary from \$50,000 to \$70,000 with effect from 1 January 1981, if approved by the General Assembly, would result in a proportionate increase in the amount of the full pension from \$25,000 to \$35,000.

15. In paragraph 17 of his report, the Secretary-General recalls that, in accordance with past practice, proportionate increases would also be applied to the benefits of the survivors of retired judges, including the maximum child's benefit, which would be increased from \$860 to \$1,200 (i.e., by 40 per cent).

16. The Advisory Committee notes that the increases in the benefits of the retired judges and their survivors will follow automatically from the increase in base salaries, if the latter is approved by the General Assembly.

Allowances of the President and the Vice-President acting as President

17. Under the existing arrangements, the President receives a special allowance of \$12,200 a year and the Vice-President a special allowance of \$76 for every day on which he acts as President, subject to an annual maximum of \$7,600. In paragraph 19 of his report, the Secretary-General expresses the view that these allowances should be maintained at their current level. The Advisory Committee concurs with the Secretary-General's view.

Allowances and fees of ad hoc judges

18. Article 32, paragraph 4 of the Statute of the Court provides that the judges chosen under Article 31, other than members of the Court (i.e., the judges customarily referred to as ad hoc judges) "shall receive compensation for each day on which they exercise their functions". Pursuant to Article 32, paragraph 5, the compensation is fixed by the General Assembly. In paragraph 3 of resolution 31/204, the General Assembly decided, inter alia, that the compensation provided for in Article 32, paragraph 4, would be reviewed concurrently with the periodic review of the annual salary and that the system of interim adjustments would not apply to it.

19. By resolution 3537 B (XXX) of 17 December 1975, the General Assembly set the emoluments of the ad hoc judges, with effect from 1 January 1976, at a "fee of \$84 for each day on which they exercise their functions, plus, as appropriate, a daily subsistence allowance of \$53". As the Secretary-General indicates in paragraph 20

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of his report, the two components of the emoluments add up to \$137, which corresponds to 1/365th of the base salary of a member of the Court (\$50,000). The amounts of the fee and of the subsistence allowance have remained unchanged since 1 January 1976.

20. In paragraph 21 of his report, the Secretary-General suggests that the basic daily fee be increased by 40 per cent, i.e., by the same percentage as the annual base salary, from \$84 to \$118. This rate would remain unchanged until the next periodic review. In addition, the ad hoc judges who do not normally live in The Hague would be entitled to a subsistence allowance at the rate payable to senior Secretariat officials (i.e., the basic rate plus 40 per cent). The Advisory Committee understands that the latter rate is currently \$102 a day.

21. In response to inquiries, the representatives of the Secretary-General informed the Advisory Committee that ad hoc judges have received a basic fee and a subsistence allowance since 1946. Since 1 January 1962, the two elements combined have amounted to 1/365th of the annual salary payable to a member of the Court. Initially, the first step was to determine the amount of the basic fee by increasing the earlier amount by the same percentage as was being applied to increase the annual salary; thereafter the amount of the daily subsistence allowance was determined by subtracting the amount of the basic fee so calculated from 1/365th of the annual salary of a member of the Court. Since 1 January 1972, however, the calculation has been made in the reverse order, namely by subtracting from 1/365th of the annual salary an amount equal to the United Nations subsistence rate for The Hague for senior officials, and calling the balance the basic fee.

22. While the new methodology suggested by the Secretary-General has merit in times when the daily subsistence allowance expressed in dollars may change quite frequently, it would lead to the abandonment of the principle, which has been applied for nearly 20 years, that the total daily remuneration payable to an ad hoc judge should be equal to 1/365th of the annual remuneration of a member of the Court. In the circumstances, the Advisory Committee recommends that the emoluments of ad hoc judges should consist of a fee of \$102 (which is equal to 1/365th of the basic annual salary) and, in the case of ad hoc judges who do not normally live in The Hague, of an additional subsistence payment equal to 1/365th of the interim cost-of-living supplement payable to a member of the Court at the time when an ad hoc judge exercises his functions. On that basis, the amount of the basic fee would remain unchanged in between the five-year reviews, while the amount of the daily subsistence allowance would fluctuate in accordance with the movement of APA.

Financial implications

23. The Secretary-General's suggestions that the salaries of the members of the Court be increased by \$20,000, with a corresponding reduction in the amount of the interim cost-of-living adjustment, has no financial implications for, as the Secretary-General indicates in paragraph 22 of his report, the two amounts cancel out one another.

24. The Secretary-General estimates the financial implications of the changes in retirement benefits of former members of the Court and their survivors at \$208,600

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for 1981. This estimate corresponds to 40 per cent of the entitlements payable at the current rates.

25. The proposed increase in the emoluments of ad hoc judges, if approved by the General Assembly, will not require an additional appropriation inasmuch as any commitments related to the designation of ad hoc judges will be entered into initially under the terms of paragraph 1 (b) (i) of General Assembly resolution 34/231 of 20 December 1979 on unforeseen and extraordinary expenses for the biennium 1980-1981. In this connexion, the representatives of the Secretary-General informed the Advisory Committee that, during the eight-year period 1973-1980, the number of days on which ad hoc judges exercised their functions was as follows:

1973:	83 days
1974:	117 days
1975:	137 days
1976:	22 days
1977:	None
1978:	74 days
1979:	None
1980:	None

Recapitulation

26. The attached draft resolution embodies the Secretary-General's suggestions in document A/C.5/35/33, as amended by the Advisory Committee's recommendations in this report.

27. Should the General Assembly approve the proposed changes in the emoluments of the members of the Court and the benefits of retired members and their survivors, there would be need for an additional appropriation of \$208,600 under section 25 of the programme budget for the biennium 1980-1981.

ANNEX

Draft resolution

Emoluments and pension scheme of the members of the
International Court of Justice

A

Emoluments

The General Assembly,

Recalling its resolutions 3537 (XXX) of 17 December 1975 and 31/204 of 22 December 1976 on the emoluments of the members of the International Court of Justice,

Having considered the report of the Secretary-General a/ and the related report of the Advisory Committee on Administrative and Budgetary Questions, b/

1. Decides that, with effect from 1 January 1981, the annual salary of the members of the International Court of Justice shall be \$70,000;

2. Decides to continue the system of interim cost-of-living supplements introduced pursuant to paragraph 2 of General Assembly resolution 31/204 of 22 December 1976, subject to rebasing and modifying the index used for this purpose in accordance with the suggestion in paragraph 18 of the report of the Secretary-General;

3. Decides further that 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, with those ad hoc judges who do not normally live in The Hague receiving an additional subsistence payment equal to one-three-hundred-and-sixty-fifth of the interim cost-of-living supplement payable at the time to a member of the Court.

a/ A/C.5/35/33.

b/ A/35/7/Add.10.

B

Pension scheme

The General Assembly,

Recalling its resolutions 1562 (XV) of 18 December 1960, 1925 (XVIII) of 11 December 1963, 2367 (XXII) of 19 December 1967, 2890 A (XXVI) of 22 December 1971, 3193 A (XXVIII) of 18 December 1973 and 3537 (XXX) of 17 December 1975 on the pension scheme for members of the International Court of Justice,

Having considered the report of the Secretary-General c/ and the related report of the Advisory Committee on Administrative and Budgetary Questions, d/

Decides that, with effect from 1 January 1981 and notwithstanding any provision to the contrary contained in the Pension Scheme Regulations for members of the International Court of Justice, the annual value of all pensions in course of payment as at 31 December 1980, including the pensions of any members of the Court who retire on or before that date, shall be increased by 40 per cent, and that the maximum child's benefit payable under article IV, paragraph 1 (a), of the Regulations shall be increased from \$860 to \$1,200.

c/ A/C.5/35/33.

d/ A/35/7/Add.10.