

PENSIONS OF THE JUDGES AND STAFF
OF THE INTERNATIONAL COURT OF JUSTICE

(Item 18 of the Provisional Agenda for the Second Part of the First Session)

REPORT OF THE SECRETARY-GENERAL

1. 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."

2. 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.

3. 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 Annex A.)

4. 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 Annex B.)

5. 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.

PROPOSED PENSION PLAN FOR MEMBERS OF THE INTERNATIONAL COURT

The Judges of the Court who have ceased to hold office shall be entitled retiring pensions provided that the Judges concerned:

- (a) have not resigned;
- (b) have not been dismissed for reasons other than the state of their health; and
- (c) have completed a period of five years' service.

1^a Notwithstanding the provisions of 1 (c) above, Judges elected at the First Part of the First Session of the General Assembly for a period of three years only, shall, on retirement after completion of that period of service, and provided they are not subsequently re-elected, be entitled to pension as though five years' service had been completed.

3. Except as provided in Regulation 2, a Judge who retires before the completion of five years' service shall not be entitled to a pension: provided that the Court, may, by a special decision based on the fact that the Judge concerned is in a precarious state of health and has insufficient means, grant him a pension equivalent to that to which he would have been entitled had he completed five years' service.

4. If a Judge resigns after having completed not less than five years' service, the Court may, by special decision, grant him such pension as seems equitable, but not exceeding an amount calculated as in Regulation 6.

5. The payment of a pension shall not begin until the Judge concerned has reached the age of sixty. In an exceptional case, however, the pension may, by a decision of the Court, be made payable in whole or in part to the person entitled thereto before he reaches that age.

6. Subject to the provisions above, a Judge shall be entitled to the payment of a pension equivalent to one three hundred and sixtieth of his salary in respect of each complete month passed in the service of the Court, the amount being calculated:

- (a) for the President, on his annual salary and special allowance,

(b) for the Vice-President and the other Judges, on their annual salary.

If a person entitled to a pension is re-elected to office, the pension shall cease to be payable during his new term of office. At the end of the period, however, the amount of this pension shall be determined as provided for above, on the basis of the total period during which he discharged his duties.

7. No retiring pension payable under these Regulations shall exceed one-third of the annual salary excluding any allowances.

8. Pensions shall be calculated in terms of the currency in which the salary of the Judge concerned is fixed by the General Assembly. At the time his pension becomes payable, however, each Judge shall decide whether to receive his pension in that currency or in the currency of the country where he intends to reside. Should he decide to receive such other currency, the pension (assessed in the currency of the salary) shall be converted into the other currency at the rate of exchange in effect on the day of his retirement.

9. Upon the death of a Judge his widow may be granted, by decision of the Court, a widow benefit of not less than one-twelfth of the annual salary (excluding allowances) of the Judge and not more than one-half of the benefit which would have been payable to the Judge had he qualified for a retirement pension at the time of his death. This benefit shall cease on the widow's re-marriage.

10. If a former Judge in receipt of a retirement pension under the above regulations dies, his widow, provided she was his wife at the time of his retirement from the Court, may be granted, by decision of the Court a widow benefit of not less than one-twelfth of the annual salary (excluding allowances) of the Judge and not more than one-half of that being paid to the deceased at the time of his death; or where a partial pension is being paid under Regulation above, a widow benefit of one-half of such large amount as the Judge would have been entitled to had pension commenced at the age of sixty.

11. Upon the death of a Judge, or a former Judge while in receipt of a retirement pension granted under these regulations, who leaves no widow, there may be paid, by a decision of the Court for such period as they may determine, a dependents benefit to each dependent child of the deceased, who is under the age of twenty-one, provided that the total amount of benefit so payable shall not exceed the amount which would have been payable to a widow under Regulation 9 or 10 above.

12. Retiring pensions of Judges and other benefits provided for above shall be regarded as expenses of the Court, within the meaning of Article 33 of the Statute of the Court.

ANNEX A

(Test of Memorandum 13 June 1946 in which the Registrar put Forward Certain Suggestions Concerning Pension Schemes for Members of the Court)

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 only come to the Court if they abandon a career which they would not be able easily to resume when they cease to be judges. It would therefore seem reasonable and in accordance 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 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 (page 1) 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 a 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 again; but it should necessitate 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

ANNEX B

(Text of Letter dated 20 August 1946 from Chairman of Working Party on Staff Retirement and Insurance Funds to the Assistant Secretary-General for Administrative and Financial Services)

"Our letter dated 31st 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 their 31st 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 to 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 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 Court under letter dated 21st 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 not to 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 be accorded substantially the same pension rights as the Secretary-General of the United Nations. We are not competent to say whether the General would accept this proposed principle. We can only point out that the proposals would involve a substantial liberalisation 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 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 seen 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 meeting of the General Assembly, between the Administration and representatives of the International Court."
