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PROPOSED AMENDMENTS TO CERTAIN PROVISIONS OF THE PENSION  
SCHEME REGULATIONS OF THE INTERNATIONAL COURT OF JUSTICE

Report by the Secretary-General

1. A pension scheme for the International Court of Justice was adopted by the General Assembly at its first session by resolution 86 (I). By a letter dated 22 June 1959,<sup>1/</sup> signed by the Deputy Registrar, the Court proposed that this scheme should be amended in three respects:

(a) The pension of a judge who found it necessary to resign before the completion of his term of office should, provided he had completed five years' service, be awarded as of right instead of (as provided by resolution 86 (I)) at the discretion of the Court. The amount of such pension should be determined under the Pension Regulations instead of being fixed by the Court, subject to its not exceeding the amount which would have been payable under the Regulations.

(b) The amount of the pension of any judge should be calculated at the rate of one-twentieth of his salary for each year of service, instead of one-thirtieth.

(c) The maximum pension should be one-half of the salary, instead of one-third.

2. The Secretary-General stated<sup>1/</sup> that he agreed with proposal (a), but suggested that proposals (b) and (c) should be further studied by an "appropriate body" after comprehensive comparative data had been assembled, and that the matter should be considered at the fifteenth session.

1/ Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 63, document A/4241.

3. At the request of the Fifth Committee, the Sixth Committee tendered certain advice<sup>2/</sup> on the non-budgetary aspects of the proposals. It agreed with (a), and as regards (b) and (c) it expressed its confidence that any eventual recommendations of the Fifth Committee would "attach full weight to the circumstances of the election of members of the Court and the character and requirements of their office as expressed in the Statute, inter alia, the high degree of independence and moral character and outstanding professional qualifications expected from the judges, the duration of their term of office and the prohibition to engage while in office in any occupation of a professional nature", and to "the importance of making the conditions of service with the principal judicial organ of the United Nations appropriate in the case of persons of the highest recognized competence".

4. The report of the Fifth Committee<sup>3/</sup> recommended that consideration of all the proposals should be deferred until the fifteenth session, and that the Secretary-General should be requested "to continue the study of these matters, in consultation with the International Court of Justice, and to submit a further report thereon".

5. The General Assembly, however, by resolution 1408 (XIV) approved proposal (a), leaving proposals (b) and (c) for further study by the Secretary-General in consultation with the Court. Annex 1 to the present report sets out the current Pension Regulations for members of the Court, i.e. the provisions of resolution 86 (I) as amended by resolution 1408 (XIV).

6. The Secretary-General has accordingly, in consultation with the Court, examined the pension provisions for the judges of high courts in two Member States and the Court of Justice of the European Communities. Since it is difficult usefully to compare any one benefit in several pension schemes without having regard to all the conditions of the schemes, his examination has covered all the provisions of the schemes, and his proposals are correspondingly wider than those originally made by the Court.

7. In the national systems examined, there is either no compulsory retiring age, or a very high one, for judges, and the pensions are high in relation to the

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<sup>2/</sup> Ibid., document A/C.6/L.454.

<sup>3/</sup> Ibid., document A/4297.

salary and length of service. In one system, a judge who elects to retire at the age of 70 after ten years' service receives a pension equal to his full pay. In the other, judges are compelled to retire at the age of 75, and may elect to do so at the age of 70; in either case the retirement pension then amounts to 25 per cent of salary for five years' service or less; 37-1/2 per cent for ten years; 50 per cent (maximum) for fifteen years. These pensions are, moreover, based on pensionable salaries which are higher than those of the judges of the International Court.

8. In the purely actuarial sense, the pensions payable to judges of the International Court have a relatively higher value than their nominal value would suggest, because in principle they are payable from age 60. This is an abnormally low pension age for a judiciary, and examination of the relevant United Nations files of 1946 suggests that the age of 60 was proposed because it had been adopted as the normal retiring age for the Secretariat. That particular circumstance, in the opinion of the Secretary-General, should have had no bearing on the matter. A more relevant consideration is the fact that the judges are elected for a fixed term and have therefore, in theory, no assurance that they will still be in office after the age of 60. In practice, however, the great majority of judges, both of the former Permanent Court of International Justice and of the International Court, have been over 65 when they ceased to hold office. In the International Court, the actual retirement ages have been 86, 69, 67, 69, 64, 69 and 73. In the earlier Permanent Court, nineteen judges became eligible for pensions, of whom five were under 65 when they left the Court. Three of these five cases arose, however, when the Permanent Court of International Justice ceased to function in 1946. Of the fourteen judges over 65 on leaving office, seven were over 75, two between 70 and 75 and five between 65 and 70. In these circumstances, it appears to the Secretary-General that - except perhaps in the case of judges who may in future resign and, under the terms of resolution 1408 (XIV), become entitled to a pension - the theoretical pension age of 60 has little actuarial significance. The pensions payable under the pension scheme for the Court can therefore be compared directly with those under the schemes referred to in paragraph 6 above without placing undue weight on the difference in retiring ages of the various schemes.

9. On this basis, the Secretary-General believes that there can be no doubt that the present pension provisions for the International Court are inadequate. In his view, a pension scheme which yields a maximum pension of one-third of the annual remuneration after ten years' service is unattractive by comparison with the other schemes referred to, and falls short of what is appropriate to the character and requirements of the office of Member of the Court.

10. Having regard to the foregoing, and giving weight, as suggested by the Sixth Committee, to the considerations referred to in paragraph 3 above, the Secretary-General suggests that the basic retirement pension for a judge of the International Court who serves a full term of office of nine years<sup>4/</sup> should be \$10,000 a year, no distinction being made between those who have held the offices of President or Vice-President and those who have not. In the case of a judge who is re-elected, each additional year of service<sup>4/</sup> over nine should earn an increase in the pension of one-fiftieth of the annual rate of salary up to a maximum pension of two-thirds of the annual salary (which would be reached after approximately 17-1/2 years' service). This suggested maximum, after such a period of service, appears reasonable in relation to those permitted in the two national schemes referred to above, one of which provides a pension equal to full gross pay after ten years' service at age 70 and the other a pension of 50 per cent after 15 years' service.

11. The pension would be payable from the age of 65, but a judge who left office before that age should be permitted to take his pension by way of an immediate annuity, subject to appropriate actuarial reduction in relation to his age. A judge who leaves office before the completion of a full term, but after the completion of five years' service, should be entitled to a pension calculated on the number of months of actual service pro rata to the pension for a full term. This, too, should be payable from age 65, the judge having the option to start the annuity at an earlier age subject to appropriate actuarial reduction. In the case of a judge who elected to begin drawing his pension at 60, this option would have the effect of leaving the pension not greatly different from the amount payable under the present scheme.

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<sup>4/</sup> It is suggested that in the Regulations, as at present, the entitlement should be related to completed months of service, rather than years.

### Death and disability benefits

12. The Court, in its letter of 22 June 1959, made no proposals for amendment of the provisions of resolution 86 (I) concerning death and disability benefits. The present review has, however, disclosed that those provisions are unfavourable when judged by the best outside practice.

### Disability benefit

13. The existing pension scheme makes no direct provision for entitlement to disability benefit. On the other hand, and rightly, a judge cannot be required to give up his appointment for reasons of health except by a decision of the Court. In other words, a judge who is incapacitated has the choice of voluntary resignation or of remaining in office unless the Court requires him to relinquish his office. If he has completed five years' service, then on leaving office for health reasons he will (since resolution 1408 (XIV) was adopted) be entitled to a pension calculated in the same way, and payable from the same age, as a retirement pension. Only by a decision of the Court, under paragraph 5 of the Regulations (resolution 86 (I)), could the pension be paid from an earlier age than 60. If an incapacitated judge had not completed five years' service, then only as provided in paragraph 3 "by a special decision of the Court based on the fact that... he is in a precarious state of health and has insufficient means" may he receive "financial assistance not exceeding the pension to which he would have been entitled had he completed five years' service".

14. These provisions compare unfavourably with those of the schemes referred to in paragraph 6 above. Thus:

(a) In the first national scheme, a judge who is certified by the Chief Justice to be incapacitated is entitled, after ten years' service, to a disability pension equal to his full salary. If he has had less than ten years' service, the pension is 50 per cent of his salary. These pensions are payable from the date of disability.

(b) In the second national scheme, a judge who retires on grounds of permanent ill-health is entitled to a pension of a fixed amount which equals 40 to 50 per cent of the salary of the various offices concerned, payable from the date of disability.

(c) In the European Community scheme, a judge who leaves office because of ill-health receives, for three years, an annual transitory allowance equal to half his salary; thereafter, if the incapacity is permanent, he receives a life pension equal to the earned retirement pension, but with a minimum of 25 per cent of salary.

15. In the light of these comparisons, the Secretary-General suggests that it would be appropriate to include in the pension scheme for the International Court a provision that, where the Court is satisfied that a judge is unable to continue in his office by reason of permanent ill-health, the judge shall be entitled to an immediate disability pension equal to the retirement pension earned by his length of service, with a minimum of 25 per cent of his salary.

#### Widows' and children's benefits

16. Paragraph 9 of the Regulations provides that on the death of a member of the International Court his widow may be granted, by decision of the Court, a widow's pension of not less than one-twelfth of the annual salary but not more than one-half of the retirement pension which would have been payable to the judge had he qualified for it at the time of his death.

17. "Upon the death of a former member who was in receipt of a retirement pension"<sup>5/</sup> the widow (provided she was his wife at the time of retirement) may similarly be granted, by decision of the Court, a pension of not less than one-twelfth of the former salary but not more than one-half of the retirement pension.

18. Under the schemes referred to in paragraph 6 the position is that:

(a) The first national scheme makes no provision for widows' pensions.

(b) The second national scheme provides for the payment of widows' pensions in respect of both death in service and death after retirement. The amount of the pension is one-third of the pension paid, or which would have been paid, to the judge. However, a judge who retires is required to make a contribution towards the cost of these widows' pensions; the formula for determining the contribution is rather complicated, but over the whole judiciary the effect appears roughly to be a reduction in the amount of the retirement pension by one-eighth.

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<sup>5/</sup> The Regulations make no provision for the widow of a former member who dies before he begins to receive his retirement pension.

(c) In the European Community scheme, the widow's pension is 50 per cent of the retirement pension of the judge. If the latter dies in service the "retirement pension" is reckoned at 50 per cent of salary.

19. Having regard to the fact that (a) the proposals in paragraph 10 above regarding retirement pensions are perhaps slightly more favourable than those in two of the three outside schemes referred to, but less favourable than the third (which, however, provides no widows' benefit), and (b) the United Nations Joint Staff Pension Fund provides widows' pensions for the staff of the Secretariat, the Secretary-General suggests that the International Court Regulations should provide for the payment of widows' pensions automatically in the event of the death of a judge while in service, or after he had left the Court with entitlement to a retirement pension.

20. He suggests further that the amount of the pension should be:

(a) In case of death in service, one-third of the pension which the judge would have received had he become entitled to a disability pension on the date of death, subject to a minimum of one-sixth of the annual salary.

(b) In case of death after leaving his office:

(i) Where the judge is in receipt of a retirement or disability pension, one-third of that pension, subject to a minimum of one-sixth of the annual salary,

(ii) Where the judge is entitled to a pension but has not yet reached the age at which the pension payments commence, one-third of such smaller amount of pension as the judge would have received had payment commenced on the date of death, subject to a minimum of one-twelfth of the annual salary.

21. The pension should cease on the widow's remarriage.

#### Children's benefit

22. Under the existing Regulations, children's benefits are payable only if a judge or former judge dies leaving no widow eligible for a widow's pension. In that event, there may be paid, by decision of the Court, a pension to each dependent child under 21, provided that the total child's benefit shall not exceed the amount which would have been payable as a widow's pension.

23. These provisions also seem less favourable than those in two of the three schemes referred to in paragraph 6; the third scheme, although providing retirement pensions equal to full pay, makes no provision for any survivor benefits. Of the two more favourable schemes:

(a) The European Community scheme provides a pension for each fatherless child of 10 per cent of the pension paid, or which would have been paid, to the deceased judge or former judge; if the child has no surviving parent the pension is 20 per cent of the basic sum. The total survivor's pensions (widow's and children's) may not, however, exceed the basic pension of the judge himself. The children's pensions continue to age 21, or, if later, the end of the period of education (maximum age 24 years).

(b) The national scheme provides children's benefits to children (other than female married children) under the age of 21 on the following scale:

|                       | <u>Where there is a widow</u> | <u>Where there is no widow</u> |
|-----------------------|-------------------------------|--------------------------------|
| One child             | 1/12th of the basic pension   | 1/6th of the basic pension     |
| Two children          | 1/6th " " " "                 | 1/4th " " " "                  |
| Three "               | 1/4th " " " "                 | 1/3rd " " " "                  |
| Four or more children | 1/3rd " " " "                 | 1/3rd " " " "                  |

24. The Secretary-General suggests, therefore, that the scheme for the International Court should provide that, where a judge or former judge dies, children's benefit should be payable to any unmarried child or adopted child of the judge who is under the age of 21 on the following scale:

(a) Where there is a widow eligible for a widow's pension

For each entitled child - 10 per cent of the pension which the judge was receiving, or would have received, at the date of death, subject to a maximum of \$600 per child.

(b) Where there is no widow eligible for a widow's pension

The total amount of children's benefit should be calculated as follows:

(i) If there is only one eligible child, the benefit calculated as in (a) above should be increased by 50 per cent of the amount of the widow's benefit which was or would have been paid to an eligible widow.



- (ii) If there are two or more eligible children, the benefit calculated under (a) should be increased by 100 per cent of the amount of the widow's benefit which was or would have been paid. The resulting total benefit should be divided equally among all the children. The total payable should be recalculated as each child ceases to be eligible for reasons of age etc.
25. Widow's and children's benefits should be subject to an over-all limitation that their total should not exceed the amount of the judge's own pension.

#### Application to present judges or former judges

26. Each present judge or former judge of the International Court and each judge elected at the fifteenth session should within a period of three months elect whether to have his entitlement based on the provisions of the existing scheme or the new scheme. In the latter event, the pension of an existing pensioner would be recalculated and paid at the new rate from 1 January 1961.
27. The effective date of the scheme for existing judges who elect to go under it and for judges elected at the fifteenth session who so elect should be 1 January 1961.

#### Financial implications

28. Since all existing pensioners were over 65 when they commenced to draw their pensions, it will be to their advantage to opt for the new scheme. Assuming that they do so, and that the pensions of the three widows in receipt of widows' pensions are also adjusted, the additional cost on their account will be \$25,000 in the first year, and would be expected to decrease thereafter.
29. As regards present and future members of the Court, no precise estimate can be made of the financial implications of the proposals, since the cost will depend upon future changes in the composition of the Court. Judging by the experience of the last fourteen years, however, it seems unlikely that the extra annual cost will ever greatly exceed \$30,000-\$40,000. In other words, the extra cost arising with respect to present members, when they retire, will in due course be offset by reductions in the extra cost for existing pensions.

#### Draft regulations

30. Draft Regulations to give effect to the above proposals are contained in annex 2.

Annex 1

PRESENT PENSION SCHEME REGULATIONS FOR MEMBERS OF THE  
INTERNATIONAL COURT OF JUSTICE

General Assembly resolution 86 (I) of 11 December 1946 as amended by  
resolution 1408 (XIV) of 1 December 1959

1. The members of the Court who have ceased to hold office shall be entitled to retiring pensions provided that the members concerned:
  - (a) Have not been required to relinquish their appointment for reasons other than the state of their health;
  - (b) Have completed at least five years of service.
2. Notwithstanding the provisions of regulations 1 (b) above and 5 below, members 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 the same pension as though five years' service had been completed.
3. Except as provided in regulation 2, a member 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 member concerned is in a precarious state of health and has insufficient means, grant him financial assistance not exceeding the pension to which he would have been entitled had he completed five years' service.
4. The payment of a pension shall not begin until the member 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.
5. Subject to the provisions above, a member 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 members who have held the office of President, on their annual salary and special annual allowance;

(b) For members who have held the office of Vice-President, on their annual salary and special allowances;

(c) For other members, on their annual salary;

Averaged in each case over the whole period of service.

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 this period, however, the amount of the pension shall be redetermined as provided for above, on the basis of the total period during which he discharged his duties.

6. No pension payable under these regulations shall exceed one-third of the annual salary, excluding any allowances.

7. Pensions shall be calculated in terms of the currency in which the salary of the member concerned is fixed by the General Assembly.

8. Upon the death of a member, his widow may be granted, by decision of the Court, a widow's pension of not less than one-twelfth of the annual salary (excluding allowances) of the member, but amounting to not more than one-half of the pension which would have been payable to the member had he qualified for it at the time of his death. This pension shall cease on the widow's remarriage.

9. Upon the death of a former member who was in receipt of a retirement pension under these regulations, 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's pension of not less than one-twelfth of the annual salary (excluding allowances) of the former member, but 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 4 above, a widow's pension of one-half of such larger amount as the member would have been entitled to had his pension commenced at the age of sixty. This pension shall cease on the widow's remarriage.

10. Upon the death of a member or a former member while in receipt of a pension granted under these regulations, who leaves no widow eligible for a pension under regulation 8 or 9 above, there may be paid, by a decision of the Court, for such period as it may determine, a dependant's pension to each dependent child of the deceased, provided that the total amount of pensions so payable shall not exceed

the amount which would have been payable to the widow under regulation 8 or 9 above. No payment shall be made to a child over the age of twenty-one, or after the date of marriage, whichever is earlier.

11. All pensions provided for above shall be regarded as expenses of the Court, within the meaning of Article 33 of the Statute of the Court.

Annex 2

DRAFT PENSION SCHEME REGULATIONS FOR MEMBERS OF THE  
INTERNATIONAL COURT OF JUSTICE

ARTICLE I

Retirement pension

1. A member who has ceased to hold office and who has reached the age of sixty-five years shall be entitled during the remainder of his life, subject to paragraph 4 below, to a retirement pension, payable monthly, provided that he has:
  - (a) Completed at least five years of service;
  - (b) Not been required to relinquish his appointment under Article 18 of the Statute of the International Court of Justice for reasons other than the state of his health.
2. The amount of the retirement pension shall be determined as follows:
  - (a) If the member has served a full term of nine years, the amount of the pension shall be \$10,000 a year;
  - (b) If he has served for more than nine years, the amount of the pension shall be increased by \$33.33 a year for each month of service in excess of nine years, provided that the maximum retirement pension shall not exceed two-thirds of his annual salary;
  - (c) If he has served for less than a full term of nine years, the amount of the retirement pension shall be that proportion of \$10,000 which the number of months of his actual service bears to one hundred and eight.
3. A member who ceases to hold office before the age of sixty-five and who would be entitled to a retirement pension when he reached that age, may elect to receive a pension from any date after the date he ceases to hold office. Should he so elect, the amount of such pension shall be that amount which has the same actuarial value as the retirement pension which would have been paid to him at age sixty-five.
4. No retirement pension shall be payable to a former member who has been re-elected to office until he again ceases to hold office. At that time, the

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amount of his pension shall be calculated in accordance with paragraph 2 above on the basis of his total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him before he reached the age of sixty-five.

## ARTICLE II

### Disability pension

1. A member found by the Court to be unable to perform his duties because of permanent ill-health or disability, shall be entitled upon leaving office to a disability pension payable monthly.
2. The amount of the disability pension shall be determined as in article I, paragraph 2, provided that it shall not be less than \$5,000 a year.

## ARTICLE III

### Widow's pension

1. Upon the death of a married member, his widow shall be entitled to a widow's pension amounting to one-third of the pension which he would have received had he become entitled to disability pension at the time of his death, provided that the widow's pension shall not be less than one-sixth of the annual salary.
2. Upon the death of a married former member who was in receipt of a disability pension, his widow, provided she was his wife at the date his service ceased, shall be entitled to a widow's pension amounting to one-third of the pension which her husband was receiving, provided that the widow's pension shall not be less than one-sixth of the annual salary.
3. Upon the death of a married former member who was entitled to a retirement pension his widow, provided she was his wife at the date his service ceased, shall be entitled to a widow's pension calculated as follows:
  - (a) If the former member had not begun, at the date of his death, to receive his retirement pension, the widow's pension shall amount to one-third of the pension which would have been payable to him under article I, paragraph 3, had he commenced to receive such pension

on the date of his death, provided that the widow's pension shall not be less than one-twelfth of the annual salary;

- (b) If the former member had begun to receive his retirement pension before he reached the age of sixty-five, under article I, paragraph 3, the widow's pension shall amount to one-third of the amount of such pension, but shall not be less than one-twelfth of the annual salary;
- (c) If the former member had reached the age of sixty-five when he began to receive his retirement pension, the widow's pension shall amount to one-third of his retirement pension, but shall not be less than one-sixth of the annual salary.

4. A widow's pension shall cease on her remarriage.

#### ARTICLE IV

##### Child's benefit

1. Each child or legally adopted child of a member or former member who dies shall be entitled, while unmarried and under the age of twenty-one, to a benefit calculated as follows:

- (a) Where there is a widow entitled to a pension under article III, the annual amount of the child's benefit shall be 10 per cent of the pension which the former member was receiving, or which the member would have received had he qualified for disability pension at the date of his death, provided that the amount of the child's benefit shall not exceed \$600;
- (b) Where there is no widow entitled to a pension under article III, or where the widow dies, the total amount of the children's benefits payable under (a) shall be increased by the following amount:
  - (i) If there is only one eligible child - by one-half of the amount of the pension which was being paid, or would have been paid, to the widow;
  - (ii) If there are two or more eligible children - by the amount of the pension which was being paid, or would have been paid, to the widow;

- (c) The total children's benefits payable under sub-paragraph (b) above shall be divided equally among all the eligible children to determine the amount of any one child's benefit. As and when a child ceases to be eligible, the total benefit payable to the remainder shall be recalculated in accordance with sub-paragraph (b).
2. The total amount of children's benefit, when added to the amount of any widow's benefit in payment, shall not exceed the pension which the former member or member received or would have received.

## ARTICLE V

### Definitions

1. "Member" means either the President, Vice-President or a member of the Court in Office.
2. "Annual salary" means the annual salary, exclusive of any allowances, fixed by the General Assembly and received by the member at the time he ceased to hold office.

## ARTICLE VI

### Miscellaneous provisions

1. Pensions provided for by these Regulations shall be calculated in terms of the currency in which the salary of the member concerned has been fixed by the General Assembly.
2. All pensions provided for by these Regulations shall be regarded as expenses of the Court, within the meaning of Article 33 of the Statute of the Court.
3. The President of the Court and the Secretary-General shall establish a table of actuarial reduction factors on the advice of a qualified actuary or actuaries.

## ARTICLE VII

### Application and effective date

1. These Regulations shall be applicable as from 1 January 1961 to all who are members on or after that date, except that members elected at the fifteenth session



or earlier may within a period of three months from the date of adoption of these Regulations elect to have their entitlements determined in accordance with the Regulations in force<sup>a/</sup> immediately prior to the adoption of these Regulations.

2. Former members who left office prior to 1 January 1961 may elect within 3 months of the adoption of these Regulations to have their entitlements governed by these Regulations. Any former member who does so elect shall have such pension payments as are due to him on or after 1 January 1961 calculated in accordance with these Regulations.

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<sup>a/</sup> Resolution 86 (I) as amended by 1408 (XIV).