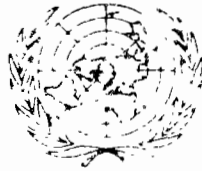


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PROGRAMME BUDGET FOR THE BIENNIUM 1980-1981

Emoluments of the members of the International Court of Justice

Report of the Secretary-General

A. Introduction

1. At its thirty-first session, the General Assembly, by resolution 31/204 of 22 December 1976, decided 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 A (XXX) of 17 December 1975, should next be reviewed at its thirty-fifth session and thereafter normally every five years (b) between such periodic reviews and with effect from 1 January 1977 the judges would receive an interim cost-of living supplement calculated in accordance with the procedure described in paragraph 8 below and (c) the allowances, compensation and pensions of the members of the Court should be reviewed concurrently with the periodic review of their annual salary, and the system of interim adjustments should not apply to them.

2. In response to a recommendation made the year before by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) 1/ the Secretary-General in his report, 2/ examined various options and formulated proposals aimed at ensuring adequate remuneration and eliminating the need for frequent reviews while preserving the sui generis nature of the judges' situation. In that study, the Secretary-General considered (a) the criteria to be applied on the occasion of full reviews to determine what would constitute adequate remuneration for a judge and (b) possible methods of maintaining the purchasing power of the judges' salary between reviews.

1/ Official Records of the General Assembly, Thirtieth Session, Supplement No. 3A, document A/10003/Add 12.

2/ A/C.5/31/13

3. As regards (a), the Secretary-General observed that

'because of the complexity of dealing with such matters and considering that the United Nations system forms, in a sense, a structure within which the interrelationship between the top posts is probably more important than comparisons with positions outside the United Nations, it has been a long-standing practice to take into account the level of remuneration of senior Secretariat officials in determining the appropriate remuneration for members of organs or subsidiary organs of the United Nations appointed by the General Assembly to service in their individual capacity on a full-time basis'.

He therefore suggested that, on the occasion of full reviews, which might take place at four- or five-year intervals:

'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 posts in certain national administrations. On the basis of the 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'.

4. In his report, the Secretary-General also examined eight alternative methods for providing, in between reviews, at least partial protection against the erosion of the judges' salaries as a result of inflation and monetary fluctuations. Those involved the use of four cost-of-living indices (the consumer price index at The Hague, the post adjustment index for The Hague, the weighted average of post adjustment classifications for the cities where the headquarters and regional offices of the organizations in the United Nations common system are located (i.e., the WAPA index) and the simple average of the same post adjustment classifications (referred to as the APA index) and three assumptions as to where the judges spend their salaries (all at The Hague, anywhere in the world, half at The Hague and the other half elsewhere).

5. After carefully considering all aspects of these methods, including the results each would yield, the Secretary-General suggested that the APA index would afford the most simple and straightforward means of adjusting the judges' salary between full reviews and would not compromise the sui generis nature of the judges' emoluments. In view of the provisions of Article 32, paragraph 5, of the Statute of the Court which stipulate that the salaries, allowances and compensation enumerated in paragraph 1 to 4 of the same article "shall be fixed by the General Assembly and may not be decreased during the term of office" the Secretary-General suggested that the emoluments of the judges should consist of two elements:

(a) A base salary which would be fixed by the General Assembly on the occasion of periodic reviews and could not be reduced

(b) A cost of living supplement which could increase or decrease according to the movement of the index selected for determining the amount of the supplement.

6. In its related report, <sup>3/</sup> the Advisory Committee agreed that the emoluments paid to staff in top echelon posts in the Secretariat and those related to the highest judicial posts in certain countries would be relevant reference points in assessing the adequacy of the remuneration of the judges. In that respect, the Committee further observed that:

"The fact that the salaries of the members of the Court are sui generis does not mean that they can be determined in a vacuum. What it does mean is that they should not be directly related or compared to those of senior Secretariat officials. Having obtained the necessary data of the type suggested by the Secretary General, the General Assembly applies to them an element of judgement which is independent of the considerations that enter into the determination of the salary scale of international officials. A corollary of the sui generis nature of the salaries of the members of the Court is that they cannot be used for purposes of comparison with or as reference points for other salaries or honoraria."

The Advisory Committee favoured a periodicity of five years for such reviews, subject to the possibility of an earlier review, if exceptional circumstances warranted it.

7. The Advisory Committee also agreed that there was a need for a mechanism to provide cost-of-living adjustments in between reviews. Since members of the Court come from all the geographical regions, with only the President of the Court being required to reside at the seat of the Court (art. 22 para. 2 of the Statute) the Advisory Committee felt that an index which tried to reflect world-wide movements in prices was more appropriate than the consumer price index or the post adjustment index of The Hague. Of the two world-wide indices considered, WAPA and APA, the Advisory Committee concurred with the conclusion of the Secretary-General that the APA index was the most suitable, since the weighted average was affected by an element extraneous to the emoluments of the members of the Court namely, the number of international staff in a given locality. The Committee also agreed that the interim cost-of-living adjustment should not be pensionable.

8. On the basis of discussions with the representatives of the Secretary-General the Advisory Committee recommended the following procedures for applying the APA index to determine the amount of the cost-of-living supplement. Taking 1 January 1976 as the starting point and \$50,000 as the base annual salary, the initial cost-of-living payment was to be made on 1 January of the calendar year

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<sup>3/</sup> A/31/8/Add.3

in which the APA index increased by 5 per cent or more above the level on 1 January 1976, with the amount of the supplement being equal to the corresponding percentage of the annual salary. Thereafter, and until the next periodic review of the annual salary, the APA was to be recalculated as of 1 January of each year, and the cost-of-living supplement adjusted proportionately, upward or downward if the APA index had moved by 5 per cent or more in either direction since the amount of the supplement was last determined.

B. Assessment of present level of emoluments of the judges

9. Table 1 shows the movement of the judges' total emoluments in dollar and guilder terms over the period 1 January 1976 to 1 January 1980 in relation to the movement of the APA index, as well as the post adjustment index at The Hague and the Netherlands consumer price index.

Table 1

	<u>January</u> <u>1976</u>	<u>January</u> <u>1977</u>	<u>January</u> <u>1978</u>	<u>January</u> <u>1979</u>	<u>January</u> <u>1980</u>
Net base salary (\$US)	50 000	50 000	50 000	50 000	50 000
COL supplement (\$US)	-	3 000	9 000	16 500	24 500
Total (\$US)	50 000	53 000	59 000	66 500	74 500
Guilder equivalent (exchange rate)	133.500 (2.67)	131 440 (2.48)	135.700 (2.30)	131 670 (1.98)	141.550 (1.90)
<u>Index of emoluments movement</u> <u>(January 1976 = 100)</u>					
US dollars	100	106.0	118.0	133.0	149.0
Guilders	100	98.5	101.6	98.6	106.0
<u>Cost-of-living indices</u> <u>(January 1976 = 100)</u>					
APA index	100	106.0	117.8	132.8	149.1
FA index for The Hague	100	115.2	122.3	146.9	160.7
Netherlands CPI	100	107.4	113.2	117.8	124.2

10. In addition to the remuneration of \$74,500 payable to each judge, 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, up to an annual maximum of \$7,600. The amounts were last revised on 1 January 1976, when the current annual salary rate of \$50,000 was established. As indicated earlier in the present report, the General Assembly decided in 1976 that the system of interim adjustments would not apply to those allowances.

11. The table below compares the changes which have 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 other subsidiary organs of the United Nations (the Chairman of ACABQ, Chairman and Vice Chairman of the International Civil Service Commission (ICSC) and members of the Joint Inspection Unit (JIU)). These changes should be assessed in relationship to the change in the post adjustment index at each of the locations which is shown in the last column of table 2.

Table 2

	January 1976	January 1977	January 1978	January 1979	January 1980	PA index movement (Jan. 1976 = 100)
(In United States dollars)						
<u>Members of ICJ a/</u>	50,000	53,000	59,000	66,500	74,500	
Index	100	106.0	118.0	133.0	149.0	
<u>Senior Secretariat officials</u>						
ASG at The Hague	53,560	61,862	67,842	76,147	81,462	
Index	100	115.5	126.7	142.2	152.1	160.7
USC at Geneva	61,838	66,316	78,624	95,638	100,344	
ASG at Geneva	56,750	60,865	72,160	87,774	92,092	
Index	100	107.2	127.2	154.7	162.3	171.0
USG at New York	49,666	52,560	54,732	56,542	61,248	
ASG at New York	45,586	48,242	50,235	51,896	56,215	
Index	100	105.8	110.2	113.8	123.3	128.0
<u>Full time members of subsidiary organs</u>						
Chairman ACABQ b/			50,000	60,000	64,000	
Index			100	120	128	128.0
Chairman ICSC c/	50,000	50,000	50,000	60,000	64,000	
Index	100	100	100	120	128	128.0
Vice-Chairman ICSC	45,000	45,000	45,000	55,000	59,000	
Index	100	100	100	122.2	131.1	128.0
Members JIU (serving in Geneva and receiving remuneration of official at level D-2, step IV)	50,360	54,016	64,039	77,894	81,727	
Index	100	107.2	127.2	154.7	162.3	171.0

a/ In addition, President of the Court receives a special allowance of \$12,200 per year.

b/ During the period 1 January 1976 to 1 January 1978, the Chairman of ACABQ received an honorarium of \$25,000 per year.

c/ Includes an "additional allowance" of \$5,000.

12. Table 3 provides information received with the assistance of the Permanent Missions of the countries concerned on the gross emoluments of the President and members of the highest courts in three national judiciaries.

Table 3

<u>United States</u> <u>Supreme Court</u>	<u>1975</u>		<u>1980</u>	
	<u>Chief Justice</u>	<u>Assoc. Justice</u>	<u>Chief Justice</u>	<u>Assoc. Justice</u>
\$US	65 600	63 000	75 000	72 000
Pension.	non-contributory scheme amount of pension equal full 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.			

<u>Supreme Court</u> <u>of Canada</u>	<u>1975</u>		<u>1980</u>	
	<u>Chief Justice</u>	<u>Member</u>	<u>Chief Justice</u>	<u>Member</u>
\$CAN	65 000	60 000	72 000	67 000
\$US a/	66 327	61 224	61 538 <sup>a</sup>	57 265
Pension.	contributions prior to 1976 at 1.5 per cent of salary, after 1976 at 7.5 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.			

<u>United Kingdom</u>	<u>1975</u>		<u>1980</u>	
	<u>Lord Chief Justice</u>	<u>Master of the Rolls</u>	<u>Lord Chief Justice</u>	<u>Master of the Rolls</u>
£	23 050	21 175	37 000	34 000
\$US a/	53 480	49 130	82 405	75 724
Pension	non-contributory scheme amount of pension equal 50 per cent of final salary after minimum of 15 years' service			

a/ Exchange rates in effect on 1 January 1975 and 1 January 1980 were used to convert the local currency amounts into United States dollars.

13. On the basis of an examination of the above indicators, the Secretary-General is of the view that the arrangements 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, he would recommend continuation of the present arrangements of periodic reviews and interim adjustments as set out in General Assembly resolution 3537 B (XXX). At the same time as explained in paragraphs 14 to 18 below, a substantial part of the cost-of-living supplement should be consolidated into the base annual salary, so as to obtain a more balanced relationship between these two elements and thereby provide for an adjustment in pensions.

C. Consolidation of part of the cost-of-living supplement into the annual salary

14. At present, the amount of the cost-of-living supplement is \$24,500, or 49 per cent of the annual salary. On the basis of the September 1980 reading of the APA index, it is expected that the amount of the supplement will increase to approximately \$31,000 or \$32,000 on 1 January 1981. As indicated earlier, the system of interim adjustments does not apply to pensions, the special allowance of the President of the Court or the fee payable to ad hoc judges under article 31 of the Statute of the Court. Therefore, these amounts have remained unchanged since 1 January 1976.

Pensions of retired judges and their survivors

15. A judge at age 65 after nine years of service, receives a pension equivalent to one half of his annual salary. The pension plan is non-contributory. The amount of the pension at the date of the retirement is based on the last annual salary and therefore is related to the cost of living at the time that salary level was established. There exists no automatic arrangements for adjusting the pension to changes in the cost of living. When the present annual salary of \$50,000 was established with effect from 1 January 1976, the General Assembly approved an increase in the annual value of all pensions in course of payment at 31 December 1975 (both to judges and their survivors) by the same percentage amount as the increase in the salary, i.e. 11.11 per cent. The maximum child's benefit was also increased by the same factor, i.e., from \$770 to \$860 per year.

16. In order to correct the current imbalance both between the two components of the judges' emoluments and between the level of the total emoluments (\$74,500) and the pension of a retired judge of \$25,000 (one half of the annual salary of \$50,000), the Secretary-General believes that a significant portion of the cost-of-living supplement should be consolidated into the annual salary. In determining the amount, two considerations are relevant:

(a) The annual salary and the pension entitlements have remained unchanged for five years, and whatever new level is established will remain in effect until the next review in 1985,

(b) While the cost-of-living supplement may be adjusted both upward and downward, according to the movement of the APA index, the Statute of the Court prohibits any reduction in the annual salary of the judges.

17. Taking into account both the current amount of the supplement and the level it is expected to reach on 1 January 1981, the Secretary-General would suggest the consolidation of \$20,000, which would raise the annual base salary from \$50,000 to \$70,000, with a corresponding decrease in the amount of the supplement. The effect of this proposal, if approved, would be to maintain the current level of the emoluments received by the judges until changed on the basis of the movement of the APA index. It would, at the same time, increase the prospective pension entitlements of the judges from \$25,000 to \$35,000. In accordance with the practice followed in the past, the pension benefits of retired judges and their survivors, as well as the maximum child's benefit, would also be increased by an amount proportionate to the salary increase, with the maximum child's benefit increasing from \$800 to \$1,200.

18. If such a consolidation were to be approved, the APA indices would be rebased by dividing the current indices by 140. Future increases in the supplement would be calculated in relation to the new revised annual salary of \$70,000 and would be based on movements of 5 per cent or more, upward or downward, of the revised APA index. Furthermore, consideration should be given to extending the coverage of the APA index. At the time the present arrangements were introduced, the APA index was based on the post adjustment classifications at the same 31 cities used in calculating the WAPA index to which The Hague was added. Since then, ICSC has increased the coverage of the WAPA index to 51 locations. The Secretary-General would therefore suggest that, in future, APA be calculated on the basis of the same 51 locations and The Hague. This change, together with the technical aspects of the consolidation, would be made in such a way as to ensure no loss or gain in the total emoluments of the judges on 1 January 1981 over the level which would have been payable had no consolidation taken place.

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

19. Considering that no increase is being proposed in the total remuneration of the members of the Court and that there is no significant difference between the movement since January 1976 of the judges' emoluments (149.0) and that of the remuneration of senior officials serving in The Hague (152.1), with the latter being based on the post adjustment index for that location (see para. 11), the Secretary-General believes that the special allowance of the President and the allowance payable to the Vice-President when he acts as President could be maintained at their current levels.

#### Allowances and fees of ad hoc judges

20. In 1961, the General Assembly decided that the daily fee for an ad hoc judge, together with the subsistence allowance payable to those who do not normally live in The Hague, should be 1/365th of their salary. The current total amount of the allowance is 1/365th of \$50,000, or \$137, which was broken down into a basic daily fee of \$84 and a subsistence allowance of \$53, with the latter having been based on the amount of the daily subsistence allowance established for United Nations officials of comparable rank on travel to The Hague.

/...



21. The Secretary-General believes that the basic daily fee should continue to be calculated in relation to the annual salary, but that the daily subsistence allowance should not be fixed at a specific amount but be subject to variation, as is the case with the subsistence allowance payable to United Nations officials and eligible members of subsidiary organs of the United Nations. Accordingly the Secretary-General would suggest that the basic daily fee be increased proportionate to the increase in the annual salary from \$84 to \$118. In addition, a subsistence allowance would be payable to those ad hoc judges who do not normally live in The Hague at the rate in effect for United Nations senior officials of comparable rank.

#### D Financial implications.

22. Should the General Assembly approve the proposals contained herein the financial implications would be as follows:

	<u>Annual increase (decrease)</u>
Salaries of members of the Court	300,000
Cost of living supplement of members of the Court	(300,000)
Subtotal	
Pensions of retired judges and their survivors	
An upward adjustment of 40 per cent in pensions payable to retired judges and their survivors (\$521,500)	<u>208,600</u>
Total	<u>208,600</u>

23. As the effective date of the above proposals is 1 January 1981 the resulting financial implication for the 1980-1981 biennium is \$208,600 under section 25 of the programme budget.