

**Seventy-seventh session**

Agenda item 139

Proposed programme budget for 2023**Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and President and judges of the International Residual Mechanism for Criminal Tribunals****Report of the Secretary-General*****Part one****I. Introduction**

1. The General Assembly, in paragraph 10 of its resolution [65/258](#), decided to re-establish a three-year cycle for the review of the conditions of service and compensation for the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The most recent comprehensive review was conducted in 2019–2020 and presented in a report of the Secretary-General to the Assembly at its seventy-fourth session ([A/74/354](#)). In its resolution [75/253 B](#), the Assembly took note of the report of the Secretary General ([A/74/354](#)) and endorsed the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions ([A/74/7/Add.20](#)), subject to the provisions of its resolution. In addition, the Assembly requested the Secretary-General to further refine the review of the pension schemes and his proposed options and to report thereon at its seventy-seventh session, taking into account, among others, the following considerations:

- (a) The possibility of raising the normal retirement age of the members of the International Court of Justice to 65 years;
- (b) Focusing on defined benefit schemes;
- (c) The possibility of introducing into the schemes a contribution factor;
- (d) Scenarios incorporating grandfathering entitlements to current participants;

* It was not possible to meet the slot date of 31 August 2022 owing to unexpected additional consultations required with internal Secretariat offices and relevant external stakeholders.



(e) Other scenarios reflecting strict equal treatment of all members of the International Court of Justice;

(f) Possible modalities for a transition to the new scheme as proposed, if needed;

(g) Projected estimated costs to the Organization for each option, compared with the present pension scheme;

as well as the integrity of the Statute of the International Court of Justice and other relevant statutory provisions, the universal character of the Court, principles of independence and equality and the unique character of membership of the Court.

2. Part one of the present report does not refer to the judges and ad litem judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, given that the Tribunals closed on 31 December 2015 and 31 December 2017, respectively.

3. In order to facilitate consideration of the issues to be reviewed, the present report is structured as follows: part one, which is devoted to the remuneration of the members of the Court and the President and judges of the International Residual Mechanism for Criminal Tribunals (sect. II) and other conditions of service of those individuals (sect. III), contains the recommendations of the Secretary-General (sect. IV) and a statement on the financial implications in respect of those recommendations (sect. V), refers to the next comprehensive review (sect. VI) and suggests the action to be taken by the General Assembly (sect. VII); and part two, which focuses on the review of the pension schemes for the members of the Court, the President of the International Residual Mechanism for Criminal Tribunals and the former judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

II. Remuneration

A. Members of the International Court of Justice

4. Article 32 of the Statute of the International Court of Justice provides, among others, that each member of the Court shall receive an annual salary (para. 1) and that the salaries and allowances shall be fixed by the General Assembly and may not be decreased during the term of office (para. 5). The emoluments of the members of the Court are *sui generis*.

B. Ad hoc judges of the International Court of Justice

5. Under article 31 of the Statute of the Court, persons chosen by parties to cases before the Court to “take part in the decision on terms of complete equality with their colleagues” (para. 6) are known as ad hoc judges. Under article 32, paragraph 4, of the Statute, they “shall receive compensation for each day on which they exercise their functions”. The compensation of the ad hoc judges was first defined at the time when the original remuneration system of the Permanent Court of International Justice (the predecessor of the International Court of Justice) was established, in 1922; it was then composed of two elements described as a “fee” and a “subsistence payment” and applied pro rata to the days when service was provided to the Court. In order to maintain the requirement of “complete equality” expressed in article 31, paragraph 6, of the Statute, with regard to variances created by the “subsistence payment” element and the ad hoc judges’ place of residence, the General Assembly

decided, in 1980 (resolution [35/220](#)) and in 1985 (resolution [40/257](#)), to redefine the compensation package of the judges of the Court.

6. The Secretary-General recalls that, for the purpose of payments to ad hoc judges, annual salary had been last defined in paragraph 3 of General Assembly resolution [40/257](#) as follows: ad hoc judges were to be compensated, for each day they exercised their functions, one three-hundred-and-sixty-fifth of the sum of the annual base salary and interim cost-of-living supplement payable at the time to a member of the Court ([A/61/554](#), para. 84). Under that definition, the post adjustment system introduced in paragraph 7 of Assembly resolution [61/262](#) also applies to ad hoc judges.

7. Additional details on the historical background of the determination of the amount of the compensation of the ad hoc judges were presented in the report of the Secretary-General to the General Assembly at its fortieth session ([A/C.5/40/32](#), paras. 35–41).

C. International Residual Mechanism for Criminal Tribunals

8. The International Residual Mechanism for Criminal Tribunals was established by the Security Council in its resolution [1966 \(2010\)](#) to carry out a number of essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia after the completion of their mandates. The branch of the Residual Mechanism for the International Criminal Tribunal for Rwanda began to function on 1 July 2012 and that for the International Tribunal for the Former Yugoslavia on 1 July 2013.

9. The Security Council, in its resolution [1966 \(2010\)](#), requested the two Tribunals to take all possible measures to expeditiously complete all their remaining work, as provided in the resolution, no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Residual Mechanism, including through advance teams in each of the Tribunals. Annexes 1 and 2 to the resolution contain the Statute of the International Residual Mechanism for Criminal Tribunals and the transitional arrangements for the Tribunals. It is stipulated in article 8 of the Statute that the terms and conditions of service of the judges for each day on which they exercise their functions for the Mechanism shall be those of the ad hoc judges of the International Court of Justice. The terms and conditions of service of the President of the International Residual Mechanism for Criminal Tribunals shall be those of the judges of the Court. In the event that the President were to be elected from among the existing permanent judges of the Tribunals and were to be permitted to maintain his or her existing contractual relationship with the United Nations, his or her original conditions of service would continue to apply ([A/66/709](#), para. 17).

10. The judges of the Residual Mechanism will receive remuneration or benefits only after they are appointed to exercise their functions within the Mechanism. They will not receive any remuneration or benefits for being on the roster. For every trial and referral within the jurisdiction of the Mechanism, except for cases of contempt, the President of the Residual Mechanism will appoint three judges from the roster to compose a Trial Chamber. In all other circumstances, the President shall appoint a single judge from the roster.

D. Common historical background

11. The General Assembly has conducted periodic reviews of the emoluments of the members and ad hoc judges of the Court, the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal

Tribunal for Rwanda, and the President and judges of the Residual Mechanism, the most recent comprehensive review having been undertaken at its seventy-first session (see A/71/201), as requested by the Assembly in paragraph 10 of its resolution 65/258.

12. In paragraph 6 of its resolution 61/262, the General Assembly endorsed the proposal of the Secretary-General contained in his report of 2 November 2006 (A/61/554, para. 80), whereby the annual salaries of the members of the Court and the judges and ad litem judges of the two Tribunals would comprise an annual base salary with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which would be applied a post adjustment multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate.

13. The Secretary-General had also proposed that, on the occasion of future revisions to the base/floor salary scale applicable to staff in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base/floor salary scale with a corresponding readjustment in the post adjustment multipliers, the annual net base salary of the members of the Court and the judges and ad litem judges of the Tribunals also be adjusted by the same percentage and at the same time (A/61/554, para. 83).

14. Since the most recent comprehensive review of the matter, the General Assembly has revised the scale of gross and net salaries for staff in the Professional and higher categories in its resolutions 74/255 B, 75/245 and 76/240. Accordingly, the annual net base salary applicable to the members of the Court and the judges of the two Tribunals was revised from \$179,666 to \$181,840 effective 1 January 2020, from \$181,840 to \$185,295 effective 1 January 2021, and from \$185,295 to \$187,000 effective 1 January 2022.

15. For comparison purposes, table 1 sets out the salaries, including post adjustment, of the members of the International Court of Justice and the President of the Residual Mechanism, serving in The Hague, in euros, as well as the equivalent in United States dollars at the official United Nations operational rate of exchange for the month concerned.

Table 1
Salaries (including post adjustment) of the members of the International Court of Justice and the President of the International Residual Mechanism for Criminal Tribunals for the period from January 2019 to December 2021

<i>Month and year</i>	<i>Salary (euros)</i>	<i>Salary (United States dollars)</i>
January 2019	17 357	19 928
February 2019	17 759	20 272
March 2019	17 767	20 212
April 2019	17 782	20 048
May 2019	17 808	19 853
June 2019	17 821	19 823
July 2019	17 774	20 197
August 2019	17 802	19 913
September 2019	17 848	19 614
October 2019	18 885	20 662
November 2019	18 851	20 946
December 2019	18 877	20 766
Total, 2019	216 331	242 235

<i>Month and year</i>	<i>Salary (euros)</i>	<i>Salary (United States dollars)</i>
January 2020	18 845	21 033
February 2020	19 228	21 200
March 2020	19 169	21 684
April 2020	19 252	21 018
May 2020	19 260	20 912
June 2020	19 154	21 790
July 2020	19 162	21 775
August 2020	19 079	22 472
September 2020	19 069	22 594
October 2020	19 095	22 412
November 2020	19 085	22 427
December 2020	19 050	22 760
Total, 2020	229 449	262 077
January 2021	19 014	23 131
February 2021	19 009	23 069
March 2021	19 050	22 760
April 2021	19 085	22 374
May 2021	19 017	23 023
June 2021	19 005	23 177
July 2021	19 047	22 730
August 2021	19 064	22 668
September 2021	19 069	22 513
October 2021	19 109	22 220
November 2021	19 133	21 942
December 2021	19 183	21 602
Total, 2021	228 786	271 210

III. Other conditions of service

16. The other conditions of service of the members of the International Court of Justice include the special allowance of the President and of the Vice-President when acting as President, the compensation of ad hoc judges, education allowance, survivors' benefits, travel and subsistence regulations and retirement benefits (see annex I).

17. Background on other conditions of service of the members of the Court is provided in the report of the Secretary-General submitted to the General Assembly at its forty-eighth session.¹

18. In section VIII, paragraph 4, of its resolution 53/214, the General Assembly approved the recommendations of the Advisory Committee on Administrative and Budgetary Questions on, inter alia, the other conditions of service of the judges of the Tribunals. Background on other conditions of service of the judges of the Tribunals

¹ See A/C.5/48/66, paras. 16–21, on special allowances of the President and of the Vice-President when acting as President; paras. 22 and 23, on compensation of ad hoc judges; and paras. 24–31, on the costs of educating children.

is provided in the report of the Secretary-General to the Assembly at its fifty-second session (A/52/520, paras. 19–21). The other conditions of service include the special allowance of the President and of the Vice-President when acting as President, the education allowance, survivors' benefits, travel and subsistence regulations and retirement benefits (see annex II).

19. In its resolution 56/285, the General Assembly endorsed the recommendations and observations of the Advisory Committee on Administrative and Budgetary Questions on the other conditions of service (A/56/7/Add.2, para. 8), in which the Committee reiterated its view that the members of the International Court of Justice should cover the total cost of their participation in the health insurance plans and that the Organization should not have to contribute at all to the cost of their participation.

A. Special allowance of the President and of the Vice-President when acting as President

International Court of Justice

20. Article 32 of the Statute of the Court provides that the President shall receive a special annual allowance (para. 2) and that the Vice-President shall receive a special allowance for each day on which he or she acts as President (para. 3). As is the case with remuneration, the allowances “shall be fixed by the General Assembly” and “may not be decreased during the term of office” (para. 5).

21. In its resolution 65/258, the General Assembly, noting that the workload of the President of the Court and that of the Vice-President when acting as President, had increased since 1987 (the last time the allowance was adjusted), decided to increase their special allowance from \$15,000 to \$25,000 per year and from \$94 to \$156 per day, respectively.

International Residual Mechanism for Criminal Tribunals

22. The amount of the special allowance for the President of the International Residual Mechanism for Criminal Tribunals is the same as that established for the President of the International Court of Justice.

B. Assistance with education costs

23. The General Assembly, in paragraph 12 of its resolution 61/262, decided to extend its decision on the level of education grant for the members of the International Court of Justice and the judges of the two Tribunals. The International Civil Service Commission last reviewed the level of the education grant in 2012 (see A/67/30).

24. Background information on the genesis and evolution of the issue of assistance with education costs for members of the International Court of Justice and judges of the Tribunals is provided in reports of the Secretary-General submitted to the General Assembly at its forty-eighth and sixty-fifth sessions (A/C.5/48/66, paras. 24–29, and A/65/134, paras. 19–20 and 74–79).

25. The General Assembly, in section VI, paragraph 2, of its resolution 71/272 A, decided to extend the revised education grant scheme for staff members in the Professional and higher categories, which was adopted by the Assembly in its resolution 70/244 and introduced as of the school year in progress on 1 January 2018, to the members of the International Court of Justice and the President of the Residual Mechanism.

C. Survivors' benefit

26. With regard to the establishment of a survivors' lump-sum benefit in the event of the death of serving members of the International Court of Justice, the General Assembly, in its resolution [40/257 C](#), approved the recommendation of the Advisory Committee on Administrative and Budgetary Questions to establish, in addition to the existing pension scheme, a death-benefit scheme for the members of the Court. Under the provisions adopted by the Assembly, survivors of members of the Court who die while in office are compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of three months and a maximum of nine months of base salary. The lump-sum benefit is distinct from the applicable survivors' pension benefits.

D. Travel and subsistence regulations

27. In its resolution [37/240](#), the General Assembly approved the travel and subsistence regulations of the International Court of Justice. In section VIII, paragraph 5, of its resolution [53/214](#), the Assembly also approved the travel and subsistence regulations for the judges of the International Tribunal for the Former Yugoslavia contained in annex III to the report of the Secretary-General ([A/52/520](#)).

28. More historical background information on the issues of travel and subsistence allowances for members of the International Court of Justice and judges of the Tribunals is provided in the report of the Secretary-General submitted to the General Assembly at its sixty-fifth session ([A/65/134](#), paras. 26–28, 80 and 81).

29. In its resolution [71/272 A](#), the General Assembly endorsed the recommendation of the Advisory Committee on Administrative and Budgetary Questions that the language of the travel and subsistence regulations applicable to the members of the International Court of Justice and the President of the Residual Mechanism be updated in line with the new relocation package for staff in the Professional and higher categories, which was adopted by the Assembly in its resolution [70/244](#) and took effect on 1 July 2016, and that the reference to “assignment grant” be revised to make reference to the “settling-in grant” provisions applicable to senior officials of the Secretariat of the United Nations, and confirmed the changes to the entitlement for relocation shipment under the new relocation package approved by the Assembly in its resolution [70/244](#).

30. In its resolution [74/262](#), the General Assembly decided that only the Secretary-General, the President of the General Assembly, the President of the International Court of Justice and heads of delegations of least developed countries should be entitled to first-class accommodation for air travel. The Assembly also decided to modify the travel and subsistence regulations of the Court contained in the annex to its resolution [37/240](#) by replacing “first-class accommodation” with “accommodation in the class immediately below first class” in article 1, paragraph 2 (a).

E. Relocation allowance

31. Background information on the genesis and evolution of the relocation allowance payable to members of the International Court of Justice and judges of the two Tribunals is provided in the report of the Secretary-General submitted to the General Assembly at its sixty-fifth session ([A/65/134](#) and [A/65/134/Corr.1](#)).

F. Retirement benefits

32. The current pension arrangements for the members of the International Court of Justice, the President of the Residual Mechanism and the judges of the two Tribunals are detailed in paragraph 29 of part two of the present report.

IV. Recommendations

Remuneration and other conditions of service

33. The Secretary-General proposes no changes in the current remuneration system and other conditions of service of the members of the International Court of Justice and the President and judges of the International Residual Mechanism for Criminal Tribunals on the occasion of the present periodic review.

V. Financial implications

34. The recommendation of the Secretary-General contained in paragraph 33 above involve no budgetary implications under the programme budget for 2023.

35. The estimates of financial implications regarding the proposals of the Secretary-General on a pension scheme for the members of the International Court of Justice, the President of the Residual Mechanism and the former judges of the two Tribunals are provided in section VIII of part two of the present report.

VI. Next comprehensive review

36. In accordance with the three-year review cycle established in paragraph 10 of General Assembly resolution [65/258](#), the next comprehensive review of the conditions of service and compensation for the members of the International Court of Justice and the President and the judges of the International Residual Mechanism for Criminal Tribunals will be undertaken at the eightieth session of the Assembly.

VII. Conclusions

37. The General Assembly is invited to take note of the present report.

Part two

Review of the pension schemes for the members of the International Court of Justice, former judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the President of the International Residual Mechanism for Criminal Tribunals

I. Introduction

1. The General Assembly, in section II of its resolution [75/253](#) B, requested the Secretary-General to submit to its seventy-seventh session further refinement on options for a pension scheme for officials other than Secretariat officials: members of the International Court of Justice and the President of the International Residual Mechanism for Criminal Tribunals. In addition, the Assembly requested that the proposal take into account, among others, the following considerations:

- (a) The possibility of raising the normal retirement age of the members of the International Court of Justice to 65 years;
- (b) Focusing on defined benefit schemes;
- (c) The possibility of introducing into the schemes a contribution factor;
- (d) Scenarios incorporating grandfathering entitlements to current participants;
- (e) Other scenarios reflecting strict equal treatment of all members of the International Court of Justice;
- (f) Possible modalities for a transition to the new scheme as proposed, if needed;
- (g) Projected estimated costs to the Organization for each option compared with the present pension scheme;

as well as the integrity of the Statute of the International Court of Justice and other relevant statutory provisions, the universal character of the Court, principles of independence and equality and the unique character of membership of the Court.

2. Part two of the present report is submitted in compliance with the above request. In order to facilitate consideration of the issues, part two has been divided into the following sections: background; review methodology; analysis of current retirement benefits; pension benefit design options; comparison with other judicial positions; analysis of design options; financial implications; and conclusions.

II. Background

A. International Court of Justice

3. The members of the International Court of Justice are entitled to retirement pensions in accordance with article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly. From 11 December 1963 to 1 January 1991, pensions constituted one half of the annual salary of judges who completed a full nine-year term, with a proportional reduction for judges who did not complete a full term. Judges who were

re-elected received one six-hundredth of their annual salary for each further month of service, up to a maximum pension of two thirds of their annual salary.

4. With the adoption of General Assembly resolution [45/250 B](#), the pension entitlement was changed to a fixed amount. As from 1 January 1991, members of the Court who had ceased to hold office, had reached the age of 60 and had served a full term of nine years were entitled to an annual pension benefit of \$50,000, with a proportional reduction for judges who had not completed a full term. For members of the Court who were re-elected, the pension entitlement was increased by an additional \$250 per month for each further month of service, up to a maximum pension of \$75,000 a year.

5. A review of the pension benefits and the corollary aspects of the pension scheme for the members of the Court was presented in the reports of the Secretary-General to the General Assembly at its forty-eighth, forty-ninth, fiftieth and fifty-third sessions (see [A/C.5/48/66](#), [A/C.5/49/8](#), [A/C.5/50/18](#) and [A/C.5/53/11](#)).

6. During its fifty-third session, in compliance with the request of the General Assembly (see resolution [50/216](#)), the Secretary-General provided an actuarial analysis covering the design of the pension scheme for the members of the Court, the methodology used to determine pensionable remuneration, contributory participation and retirement benefits, including early retirement and surviving spouse pension benefits (see [A/C.5/53/11](#)).

7. On the basis of the analysis and findings of a report undertaken by an actuarial consultant, the Secretary-General believed that the pension scheme for the members of the Court should provide adequate after-service benefits to judges having met the requisite eligibility criteria relating to retirement age and period of service based on the premise that the pension benefit maintains a standard of living as replacement income.

8. At the same session, the Advisory Committee on Administrative and Budgetary Questions agreed with the recommendations made by the Secretary-General in paragraphs 40 (a), (c), (d) and (f) of his report ([A/C.5/53/11](#)), concerning revisions to the pension scheme regulations of the members of the Court ([A/53/7/Add.6](#), paras. 15–17). Those revisions related to the level of the retirement pension, the fact that the pension scheme should be non-contributory and the introduction of an actuarial reduction factor at a rate of one half of 1 per cent per month being applied in the case of early retirement. However, in paragraph 18 of its report, the Advisory Committee pointed out that the pension benefit would be based on half of the then annual salary of \$160,000, that is, \$80,000. Under the circumstances, the Committee did not believe it was necessary to continue to increase pension benefits for judicial service in excess of nine years, especially because the Court pension scheme was non-contributory. Therefore, in paragraph 19 of its report, the Committee recommended that henceforth there no longer be an increase in pension benefits for re-elected judges. The Committee also recommended that pensions in payment be automatically revised by the same percentage and at the same date as salary adjustments (*ibid.*, para. 20).

9. In section VIII, paragraph 1, of its resolution [53/214](#), the General Assembly approved the recommendations of the Advisory Committee on Administrative and Budgetary Questions on the emoluments, pensions and other conditions of service of members of the Court.

10. In the 2001 review of the conditions of service, the Registrar of the Court provided the Secretariat with a table listing pension payments and observed that pensions were disproportionate for retired members of the Court and/or surviving spouses. In order to rectify that inequity and to have all former members of the Court

treated equally, the Court advanced its position that pensions in payment should ideally be aligned with pensions under the present regime. However, the Advisory Committee on Administrative and Budgetary Questions, in its 1998 report (A/53/7/Add.6), considered that such an alignment would not be advisable because it would entail considerable expense for the United Nations. In view of this, the Court did not ask for alignment of pension *stricto sensu*. However, concerned as it was by the level of pension payments to former members, the Court suggested that steps could be taken to remedy the disparity in payments by an increase, to the extent possible, in pension payments to its former members.

11. In that regard, it was the view of the Secretary-General that, given that the General Assembly was the sole authority determining the conditions of service and pension benefits of the members of the Court, the issue of pension payments should be brought to the attention of the Assembly for its consideration. In its report (A/56/7/Add.2, para. 10), the Advisory Committee on Administrative and Budgetary Questions pointed out that a pension entitlement was established at the time of retirement and under the conditions of service in effect at that time. Moreover, the Committee recalled that it had recommended and the Assembly had approved a recommendation that pensions in payment be automatically revised by the same percentage and at the same date as salary adjustments. The Committee was of the view that the recommendation continued to provide the necessary protection for pensions in payment against an increase in the cost of living.

12. In his report (A/C.5/59/2 and A/C.5/59/2/Corr.1, paras. 94–95), the Secretary-General, following his recommendation that emoluments of the members of the Court and the judges of the Tribunals be increased from \$160,000 to \$177,000, stated that, on the basis of the decision of the General Assembly contained in section VIII of its resolution 53/214 to set the retirement pension for the members of the Court at half the annual salary, the annual retirement benefit of a member of the Court retiring in 2005 would increase from \$80,000 per annum to \$88,500 with effect from 1 January 2005 and that, on the basis of the proposed increase in the base salary of the members of the Court, it was recommended that pensions in payment be increased by 10.6 per cent, effective 1 January 2005. He also mentioned that, because the Court was concerned by the effect of the devaluation of the United States dollar vis-à-vis the euro on the level of pension payments to former members, the Court would appreciate it if steps could be taken to remedy the disparity in payments by an increase, to the extent possible, in pension payments to former members. It was the view of the Secretary-General that consideration should be given to applying the floor/ceiling mechanism to pensions in payment to former judges and their survivors who resided in the eurozone countries to protect the level of pensions from further erosion.

13. In section III of its resolution 59/282, the General Assembly decided, with retroactive effect from 1 January 2005, to increase the annual value of all pensions in payment by 6.3 per cent as an interim measure and pending a decision at its sixty-first session based on a comprehensive report on the conditions of service and compensation for members of the Court and judges of the two International Tribunals.

14. In compliance with the request of the General Assembly contained in paragraph 11 of its resolution 61/262, the Secretary-General commissioned a study by a consulting firm on options for designing pension schemes, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office. The report was presented to the Assembly on 16 April 2008 (A/62/538/Add.2).

15. The Advisory Committee on Administrative and Budgetary Questions, having reviewed the report, made a series of recommendations (see A/63/570). It endorsed

the proposals of the Secretary-General, in particular the proposal that the level of pension should be determined by reference to years of service rather than term of office. However, it did not endorse the proposal of the Secretary-General that the retirement benefit of the members of the Court should be increased from 50 to 55 per cent of the annual net base salary (excluding post adjustment) by reference to nine years of service, and recommended that members of the Court who are re-elected should receive one three-hundredth of their retirement benefit for each further month of service beyond nine years, up to a maximum pension of two thirds of annual net base salary (excluding post adjustment).

16. The General Assembly, in its resolution [63/259](#), endorsed the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions. At the same time, it recalled paragraph 11 of its resolution [61/262](#), in which it had requested the Secretary-General to report on options for designing pension schemes and noted that the Secretary-General had proposed essentially only one option and that, rather than seeking the expertise available within the Organization, had relied on the services of a consultant. Accordingly, the Assembly decided that the emoluments, pensions and other conditions of service for the members of the Court and the judges of the Tribunals should next be reviewed at its sixty-fifth session, including options for defined-benefit and defined-contribution pension schemes, and in that regard requested the Secretary-General to ensure that, in that review, he take full advantage of the expertise available within the United Nations.

17. In compliance with paragraph 8 of General Assembly resolution [63/259](#), the Secretary-General engaged the expertise of the United Nations Joint Staff Pension Fund. The Fund, while lacking the staff and resources to undertake such a study on its own, collaborated with the Office of Human Resources Management of the Secretariat in conducting a thorough study of retirement plan alternatives.

18. The General Assembly, in paragraph 5 of its resolution [65/258](#), decided to review at its sixty-sixth session the pension schemes for the members of the Court and the judges of the two Tribunals. The Assembly also stipulated that the review should include options for defined-benefit and defined-contribution pension schemes, as well as a proposal for a mechanism that might be used to determine retirement pension benefits, taking into account acquired pension benefit rights accrued prior to serving in the Court or the Tribunals. The Secretary-General, in compliance with that request, submitted his report to the Assembly on 16 December 2011 ([A/66/617](#)).

19. In the above-mentioned report, the Secretary-General proposed four design options for a pension scheme: defined-benefit, defined-contribution, cash lump-sum through hybrid defined-benefit/defined-contribution, and defined-benefit with a two-tiered system of accumulation (the pension scheme currently applied to the members of the Court and the judges of the two Tribunals). The comments and concerns of the Court regarding the compatibility with its Statute of certain aspects of the proposal were brought to the attention of the President of the General Assembly in a letter dated 1 February 2012 from the President of the International Court of Justice ([A/66/726](#)).

20. In its decisions [66/556 B](#), [68/549 A](#), and [69/553 A](#), the General Assembly deferred ultimately to the seventy-first session its consideration of the recommendations on the pension schemes for the members of the Court and the judges of the two Tribunals, as proposed in the reports of the Secretary-General ([A/66/617](#)) and the Advisory Committee on Administrative and Budgetary Questions ([A/66/709](#)) and in the letter from the President of the International Court of Justice addressed to the President of the General Assembly ([A/66/726](#)).

21. By its resolution 71/272, the General Assembly, among others, took note of the report of the Secretary-General (A/66/617) and the letter from the President of the International Court of Justice addressed to the President of the General Assembly (A/66/726), endorsed the conclusions and recommendations contained in the reports of the Advisory Committee on Administrative and Budgetary Questions (A/66/709, A/68/515 and A/68/515/Corr.1 and A/71/552), subject to the provisions of its resolution, and requested the Secretary-General to submit for its consideration at the main part of its seventy-fourth session, a comprehensive proposal on options for a pension scheme. The Secretary-General, in compliance with that request, submitted to the Assembly his report (A/74/354), providing updated information on the comprehensive review of the pension scheme. The Advisory Committee, in its related report (A/74/7/Add.20), recommended that the current pension scheme of the judges be maintained.

22. By its resolution 75/253 B, the General Assembly took note of the report of the Secretary-General (A/74/354) and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/74/7/Add.20). The Assembly requested the Secretary-General to further refine the review of the pension scheme and proposed options and report to its seventy-seventh session, taking into account the considerations indicated in resolution 75/253 B, section II, paragraph 4.

B. The International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

23. With regard to the pension benefits of the judges of the two former International Tribunals, it may be recalled that the General Assembly, in section VIII, paragraph 6, of its resolution 53/214, approved the pension scheme regulations for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Assembly approved a pension scheme for the judges of the Tribunals on the basis of the recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/53/7/Add.6, para. 29), wherein the Committee recommended that the pension benefit for the judges of the two Tribunals be based on that applicable to the members of the International Court of Justice, prorated to account for the difference in length in the terms of appointment, that is to say, nine years for the members of the Court versus four years for the judges of the two Tribunals.

24. The General Assembly is reminded that these two Tribunals have closed and that any residual functions have been taken over by the International Residual Mechanism for Criminal Tribunals pursuant to Security Council resolution 1966 (2010). Given that there are no longer any active judges serving from either Tribunal, the Residual Mechanism has taken over the function of making monthly pension payments to retired judges and beneficiaries these two Tribunals. It is stipulated in article 8 of the Statute of the Mechanism that the terms and conditions of service of the President of the Mechanism shall be those of the judges of the Court.

III. Review

25. In compliance with the request of the General Assembly contained in its resolution 75/253 B, the Secretary-General has again taken advantage of the expertise available within the United Nations to review and refine options for the pension schemes for the members of the International Court of Justice and the President of the International Residual Mechanism for Criminal Tribunals. Given the importance

and scope of the review, the findings of the study were shared with the Court and the Residual Mechanism. The present document is therefore the outcome of collaborations between the United Nations Joint Staff Pension Fund and the Office of Human Resources, with views and comments of the Court and the Residual Mechanism also taken into account. The Office of Programme Planning, Finance and Budget was also consulted.

Methodology

26. The present study was completed in the following phases:

(a) The benefits provided to judges in comparable positions around the world (see annex II) were compared;

(b) As with the prior study, benefit design options were developed, including income replacement comparisons. The options presented respond to the request to focus on defined benefit schemes, for consideration by the General Assembly. The financial implications of the current scheme and the alternatives were estimated. The advantages and disadvantages of each alternative are discussed. Furthermore, the Court's comments regarding the alternatives are also incorporated into the present report.

27. It is anticipated that any changes that may be adopted by the General Assembly further to the present review will not affect the pensions of serving or retired judges, if those changes are less favourable than current arrangements. Serving and retired judges will, it is expected, be "grandfathered in" on the basis of their existing conditions of service in order to adhere to article 32, paragraph 5, of the Statue of the Court, which provides that the salaries, allowances and compensation of the members of the Court shall be fixed by the Assembly and may not be decreased during their term of office. This applies equally to the retirees and beneficiaries under the Residual Mechanism.

IV. Analysis of current retirement benefits provided to the members of the International Court of Justice, former judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the President of the International Residual Mechanism for Criminal Tribunals

28. There are currently 15 serving judges in the International Court of Justice, plus the President of the International Residual Mechanism for Criminal Tribunals. As of the end of 2021, there were 80 retirees and beneficiaries receiving monthly payments, 32 from the Court and 48 from the Residual Mechanism.

29. The pension benefits provided to current judges are summarized in table 1.

Table 1
Summary of current retirement benefit provisions

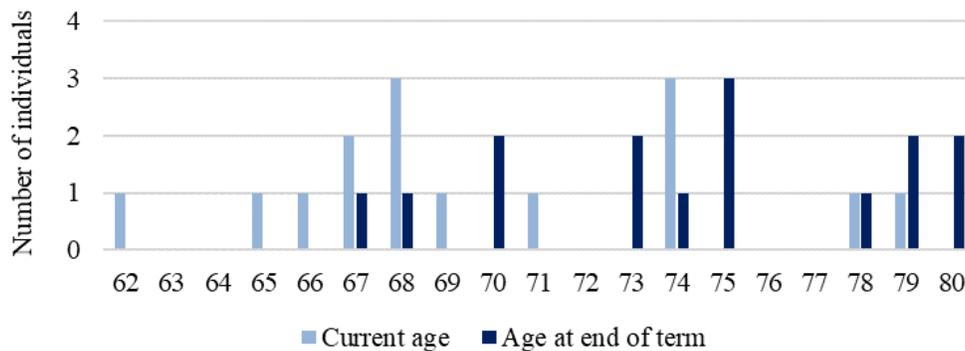
Normal retirement age	60
Amount of retirement benefit	50 per cent of judge's annual net base salary (excluding post adjustment) prorated for fewer than 9 years of service (or approximately 0.463 per cent times net base salary for each of the first 108 completed months) plus 0.154 per cent times net base salary for each additional month of service in excess of 108. Maximum 66.67 per cent of final salary
Earliest retirement age	Age at end of term
Early retirement reduction	0.5 per cent per month applied in the case of early retirement prior to age 60
Frequency and amount of post retirement cost-of-living adjustment	At the same time as the base salary is revised. Benefits are adjusted by the same percentage as base salary changes
Amount of benefit for surviving spouse	Surviving spouse pension: In the event a judge predeceases his/her spouse, such spouse shall be entitled to immediate commencement of 50 per cent of the pension otherwise payable to the judge at the time of death
Earliest start date of surviving spouse benefit	The date an eligible judge passes away
Early retirement reduction for surviving spouse benefit	Actuarial reduction factor of 0.5 per cent per month up to 50 per cent, applied in the case payment commences prior to the date the judge would have been age 60
Dependent child benefit	Each unmarried child under the age of 21 shall be entitled to receive 10 per cent of the member's pension, unreduced for early payment
Earliest start date of child benefit	Immediately from the date an eligible judge retires or dies in service
Vesting	After 3 years of completed service
Amount of disability benefit	Accrued benefit reduced by 0.5 per cent per month benefit commences prior to age 60, up to a maximum 50 per cent reduction (based on service projected to end of current term)
Earliest start date of disability benefit	Immediately from the date of disability
Contributions by judges	Non-contributory

30. On the basis of the provisions set out in table 1, assuming a nine-year term of office, a retiring judge would receive approximately 50 per cent of his/her final salary at retirement age 60 or above. Should the participant wish to start his/her pension earlier than age 60, the pension benefit would be reduced by 0.5 per cent for each month that the benefit begins before age 60. A surviving spouse of a deceased judge would receive one half of the benefit that the participant would have received or was receiving at the time of death. Surviving dependent children are also eligible to

receive a death benefit from the current scheme. Participants who become disabled while in office are eligible to have income continued for life, commencing immediately upon disability.

31. In general, members of the Court are hired late in their careers. The current active judges are expected to complete an average of 14 years of service. The average age that the current retired judges commenced their pension was 72. Most judges are married and one or two still have dependent children. The figure below illustrates the age distribution of current serving judges, with a skewing to older ages for when they would become eligible to draw a full pension.

Age distribution of active judge at the International Court of Justice as at 31 December 2021



32. On the basis of the age profile illustrated in the figure above, raising the normal retirement age for members of the International Court of Justice from 60 to 65 would not have any financial impact for the current judges but could have an impact in the future, depending on the age of the judges concerned. It would also not be expected to give rise to issues of inequality among different cohorts of judges, given that all recent judges have retired or would be expected to retire beyond age 65. It should also be noted that, according to the previous decisions of the General Assembly, the normal age of retirement was set at 60 between 1946 and 1960, changed to 65 pursuant to resolution [1562\(XV\)](#) and lowered again to 60 effective 1 January 1984, in accordance with the decision contained in part VII of Assembly resolution [38/239](#).

33. Pension benefits provided by the Court and the Residual Mechanism are not pre-funded. Retirees and beneficiaries are paid from the assessed budget of each organ on a pay-as-you-go basis.

34. The obligations in respect of pension benefits accrued as at 31 December 2021 are subject to an actuarial valuation and reported under the requirements of International Public Sector Accounting Standard 39: Employee benefits. Table 2 outlines the results of the most recent valuation of the obligations of the Court and the Residual Mechanism.

Table 2
Actuarial valuation of benefits accrued and reported under International Public Sector Accounting Standard 39: Employee benefits, as at 31 December 2021

(Thousands of United States dollars)

	<i>International Court of Justice</i>	<i>International Residual Mechanism for Criminal Tribunals</i>
Value of benefit obligations to current active judges and retired judges/beneficiaries	50 645	47 334

35. A broad estimate of 40-year cash flows by entity for current retirees/beneficiaries, active judges (assuming retirement at the end of their projected term of office) and prospective judges who are yet to join the Court are shown in annex III to the present report. This represents the estimated pay-as-you-go costs for the scheme.

V. Pension benefits: design options

Plan design considerations

36. When retirement schemes are designed, multiple concepts are considered, including the amount and sufficiency of the benefit, the cost and financial reporting of the scheme, administration requirements, communication and employee appreciation of the benefits.

37. From an employer perspective, retirement income sufficiency considers not only continuation of income, but also the competitiveness of the scheme in the context of staffing needs. From a social perspective, many countries provide a national social security benefit that serves as either a minimum or main source of retirement income.

38. The amount and sufficiency of various plan design alternatives can be compared using a replacement ratio, which is the amount of final salary replaced by the periodic pension income. Irrespective of the plan design, using actuarial principles, benefits can be converted to comparable monthly amounts using replacement ratios. Another method to compare and understand how benefits are earned under different schemes is to review the rate at which benefits are earned (accrued) from year to year of service. These accrual rates help to establish ways to design an effective benefit formula to reach replacement ratio targets at separation.

39. From a design perspective, given that the members of the International Court of Justice are hired late in their careers, other sources of retirement income could be recognized by the General Assembly when considering the adequacy of the retirement income being provided through the Court's scheme. For example, starting with an overall replacement ratio target from all sources, and subtracting an allowance for social insurance benefits, the remaining retirement income would be considered as earned by the employee throughout his or her career, which could include personal savings. However, previously accrued benefits will vary among individuals, depending on the arrangements offered by their own country, and could therefore be discriminatory, which may potentially undermine the independence of the Court. This specific issue was raised in the letter from the President of the International Court of Justice addressed to the President of the General Assembly ([A/66/726](#)).

40. The General Assembly, in its resolution [63/259](#), believed that the pension scheme for the members of the Court should provide adequate after-service benefits to judges who met the requisite eligibility criteria relating to retirement age and period of service, on the basis of the premise that the pension benefit maintains a standard of living in the form of replacement income. It is also considered reasonable that some form of indexed adjustment be applied to pension incomes to account for changes in the cost of living after retirement.

41. The competitiveness of the benefits when considering the appointment and retention of Court judges is difficult to quantify owing to the limited comparative data available. However, the concept of a judge not accepting an appointment to the Court owing to insufficient retirement benefits has not and cannot practicably be studied. Benefits of various other international courts are compared later in the present document.

42. An additional variant in pension plan design is to consider requiring that the judges contribute to the scheme. However, with respect to the Court, it would need to

be borne in mind that the members of the Court do not contribute to their pensions. The non-contributory nature of the pensions of the members of the Court is a long-standing principle, which was already firmly established at the time of the League of Nations in respect of the Permanent Court of International Justice and which has consistently been reaffirmed since that time by the General Assembly. Thus, in its resolution 86 (I) of 11 December 1946, the Assembly reaffirmed that the costs of the pensions of members of the International Court of Justice were to be borne entirely by the United Nations and to be regarded as expenses of the Court, that is to say, members of the Court would not have to contribute to the pension fund for the Court. Further to this, if future judges were to be asked to contribute, then this could be deemed inequitable among different generations of judges. In addition, if a contributory arrangement were to be introduced while the pension scheme is still not pre-funded, in effect the active judges' contributions would be paying for the retired judges' pensions (akin to a national taxation system in which those of working age pay taxes to cover the cost of old age social security).

43. The cost and financial reporting requirements are also important considerations when considering the design of a retirement scheme. Given that the pension benefits provided by the Court and the Residual Mechanism are not pre-funded, the actual cost of benefits paid each year is reflected in the budget and the liabilities of the entire scheme are reported on the United Nations balance sheet.

44. The current scheme for judges is a defined-benefit scheme, which promises a specified benefit on retirement that is predetermined by a formula based on the employee's earnings history, length of service and age, rather than depending on investment returns. It is "defined" in the sense that the formula for computing the benefit is known in advance. Three scheme design options have been considered in this review and are summarized below. Under A/74/354, a fourth scheme design was considered in the form of a defined contribution arrangement. On the basis that the General Assembly requested a focus on defined-benefit schemes, this has not been presented as an option at this time.

Option A

Defined-benefit scheme with alternative level of benefits

45. Under this option, maintaining the defined-benefit scheme but considering an alternative level of benefits for newly appointed judges is proposed.

Option B

Cash lump-sum through hybrid defined-benefit and defined-contribution schemes

46. Another alternative is to consider making a lump-sum payments from payroll to a retiring judge in lieu of providing any pension benefits. In essence, this single sum would represent what may be considered a full and fair amount for forgoing the rights to a pension.

Option C

Maintaining the current pension benefit scheme

47. This option is to keep the existing defined-benefit scheme of the members of the Court.

VI. Comparison with other supreme courts

48. In comparing the schemes of other supreme courts and other international courts around the world, it was found that most were using the defined-benefit pension approach. The most common type of formula used is based on the employee's final

earnings. Since the last review (see A/74/354), there have been two notable changes among the other schemes:

(a) The judges of the International Criminal Court are now contracted under the conditions of service of a Under-Secretary General of the United Nations common system. This includes participation in the United Nations Joint Staff Pension Fund in the same manner as any other Under-Secretary General of the United Nations.² Immediately prior to this change, the pension available to the judges of the International Criminal Court offered lower benefits compared with the Fund. Therefore, the change in the Fund was an improvement in benefits. This would not be the case for the judges of the International Court of Justice, where the pension is higher than that offered under the plan of the Fund;

(b) The Supreme Court of the United Kingdom of Great Britain and Northern Ireland has made the transition to a scheme based on career average revalued earnings, which is a common approach for schemes moving away from the more traditional final salary arrangement but wishing to still offer a defined-benefit plan.

49. Table 3 compares the replacement ratios of various supreme and international courts for a retiring judge, with the current situation at the International Court of Justice. It is noted that the level of benefits for nine years of service varies widely and that the benefit for members of the Court is above the average, at 50 per cent of final salary.

Table 3
Comparative replacement ratios after nine years of service

<i>Court</i>	<i>Replacement ratio (Percentage)</i>
International Court of Justice	50.00
United States Supreme Court	90.00
Supreme Court of Canada	60.00
Supreme Court of the United Kingdom of Great Britain and Northern Ireland	22.50
High Court of Australia	54.00
Supreme Court of Japan	11.39
European Court of Justice	38.48
European Court of Human Rights	18.00
International Criminal Court	14.50
Average	39.87

50. The rate at which benefits are earned for each year of service under each scheme studied is shown in table 4, along with the contributions payable by the participant. It is particularly instructive to compare the benefit level earned after 10 years when considering each court. For example, at the European Court of Justice, 42.75 per cent of average salary is provided after 10 years of service, compared with only 20 per cent at the European Court of Human Rights. However, after a full career both plans provide 70 per cent of final average salary. This demonstrates that it is possible to

² See resolution of the Assembly of the States Parties to the Rome Statute of the International Criminal Court on the remuneration of judges of the International Criminal Court (ICC-ASP/19/Res.3, 16 December 2020). Available at: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/ICC-ASP-19-Res3-ENG.pdf.

design schemes to meet the specific goals of the plan sponsor for retention and retirement income.

Table 4
Current pension accrual rates and participant contribution rates

<i>Court</i>	<i>Annual accrual rate for initial term</i>	<i>Maximum benefit (percentage)</i>	<i>Benefit after 10 years (percentage)</i>	<i>Participant contribution</i>
International Court of Justice	5.56 per cent for first 9 years, 1.85 per cent thereafter	66.67	52	–
United States Supreme Court	10 per cent	100	100	2.2 per cent of salary
European Court of Justice	4.275 per cent	70	42.75	10.25 per cent of basic salary
European Court of Human Rights	2 per cent	70	20	–
International Criminal Court	1.5 per cent for first 5 years; 1.75 per cent for the next 5 years; 2 per cent thereafter up to 20 years	70	16.25	7.90 per cent of pensionable remuneration
High Court of Australia	6 per cent	60	60	–
Supreme Court of Canada	6.67 per cent	66.67	66.67	1 per cent of salary
Supreme Court of Japan	1.266 per cent	–	12.66	15.508 per cent of salary
Supreme Court of the United Kingdom of Great Britain and Northern Ireland	2.32 per cent	–	23.2	4.26 per cent of salary
United Nations Joint Staff Pension Fund	1.5 per cent for first 5 years; 1.75 per cent for the next 5 years; 2 per cent thereafter up to 20 years	70	16.25	7.90 per cent of pensionable remuneration

51. A more detailed summary of key provisions for each court is included in the comparison in annex II to the present report.

VII. Analysis of design options

Option A

Defined-benefit scheme with alternative level of benefits

52. If some form of social insurance benefits were included, it could be assumed that retirement income from all other sources earned during a career could provide 60 to 85 per cent of final salary in order to maintain the same standard of living as right before retirement. The 60 to 85 per cent of final salary would be provided by benefits earned with employers over the judges' careers, as well as personal savings. Assuming a 35-year career (the career basis for Social Security in the United States of America), under a defined benefit plan, this would mean that the theoretical benefit formula

would be between 1.71 and 2.43 per cent for each year of service (times final salary). This compares with the current accrual rate for the International Court of Justice of 5.56 per cent for the first nine years of service and 1.85 per cent for the next nine years of service.

53. Some accommodation in accrual rates could be envisaged to account for the loss in benefits that judges may experience by leaving prior employment without full reflection of the highest career salary levels in the determination of pension benefits from prior employers. The current members of the Court assumed office at an average age of 60 and are expected to have served, on average, 14 years at the time that their terms end. If a judge could have remained at his or her prior employer accruing a pension right during that 14-year period and if that employer provided a defined-benefit pension on the basis of final or final average pay, then the loss of improvements applied to the salary multiplier for the benefit at the prior employer could affect the pension paid from that employer by as much as 50 per cent (assuming a range of annual salary increases of 3 per cent). Applying a 30 per cent load to the theoretical accrual rates of 2.43 to 1.71 per cent to adjust for the effect of some of the lost salary increases the accrual rates to 3.16 to 2.22 per cent per year of service. Table 5 compares the current scheme to this alternative range. Under alternative 3 (see table 5) is a 3.70 per cent level formula, which is designed to match the long-term accrual of the existing formula and the recommended formula from a previous comprehensive study (see [A/66/617](#)).

Table 5
Alternative defined benefit plan formulas – replacement ratios

(Percentage)

	<i>Current scheme</i>	<i>Alternative 1 3.16 per cent per year of service accrual</i>	<i>Alternative 2 2.22 per cent per year of service accrual</i>	<i>Alternative 3 3.70 per cent per year of service accrual</i>
Benefit after 9 years of service	50.00	28.44	19.98	33.33
Benefit after 18 years of service	66.67	56.88	39.96	66.67

54. Because of the variety in type and level of benefits provided by former employers of existing judges and by social insurance programmes, achieving a uniform and appropriate replacement ratio is difficult. Thus, an alternative defined benefit plan design must be based on theoretical considerations. The actual replacement ratio for an individual judge from all sources earned during a career will ultimately depend on the level of pension accrual earned.

55. In considering the approach proposed above, it is important to note that membership on the Court is a unique elective position, which has always been treated as an autonomous career. Taking into account the previous employment histories of the members and the benefits accruing therefrom could be considered inconsistent with this long-standing approach. A pension scheme that was designed to take into consideration the prior employment of the existing members of the Court might also face legal and practical difficulties in its administration.

56. Furthermore, it might be assumed that the terms of office of members of the Court are continuous with a previous career with pension rights that could be utilized at any time without restriction or penalty. Hence, it could be argued that any approach that is based on assumptions regarding the prior employment of members of the Court and the benefits accruing therefrom would inevitably favour judges from countries offering a good pension entitlement and other social security benefits over those from countries unable to provide comparable benefits, or indeed any benefit at all. Thus,

this approach may be considered discriminatory and objectionable on that basis alone. It might also have adverse consequences on the Court's universal character, inasmuch as it could dissuade candidates from certain countries that do not offer the level of benefits assumed from standing for election to the Court.

57. In addition, it has been argued that the absolute independence that is expected of the members of the Court implies that their previous professional careers cannot be linked directly to their mandate at the Court. A pension scheme that took into account prior national income and corresponding national pensions could jeopardize the Court's independence directly.

58. In this connection, it may be recalled that, in 1995, it was the considered view of the then Secretary-General that the prior employment of the members of the Court should not be taken into consideration in establishing the level of income replacement for their pensions. A similar view was also expressed by the members of the Court in the letter from the President of the International Court of Justice addressed to the President of the General Assembly (A/66/726).

Option B

Cash lump-sum through hybrid defined-benefit and defined-contribution schemes

59. Another alternative is to consider making a lump-sum payment from payroll to a retiring judge in lieu of providing any pension benefits. In essence, this single sum would represent what may be considered a full and fair amount for forgoing the rights to a pension. There are many ways to develop the amount of an appropriate lump-sum payment. In general, sample formulas would be similar to what are known as hybrid retirement plans, as follows:

(a) Cash balance design: a theoretical account balance would be maintained under the assumption that the employer would set aside a percentage of an employee's salary each period and the balance set aside would earn interest at a guaranteed set rate. At retirement or termination, the theoretical account balance would be paid;

(b) Pension equity design: a single sum is developed at retirement on the basis of a given percentage of the employees' final average or final salary for each year of service. Some plans use percentages that increase as service increases.

60. An example of the alternative outlined in paragraph 59 (b) above is to develop a formula that would duplicate the amount that the employer might contribute to a defined-benefit plan on behalf of an employee. For example, under the United Nations Joint Staff Pension Fund, a staff member contributes one third of the cost of the pension benefit, or 7.9 per cent of pensionable remuneration for each year of employment. The Organization contributes the remaining two thirds of the cost, or 15.8 per cent of pensionable remuneration. Hence, a simplified estimated benefit provided by the employer could be determined by multiplying 15.8 per cent across service years to the final salary to reach a lump-sum payment. For the average judge with 10 years of service, this would equate to a single payment of 1.58 times final salary or 0.176 times years of service times final salary. By comparison, this same average judge, retiring at the average age of 67, would, under the current scheme, receive a pension with an estimated value of almost seven times final salary. This specific example can be converted to an annual accrual rate, using the actuarial assumptions, in order to compare it with the rates set out in table 4. The comparative annual accrual rate is 1.15 per cent per year and the benefit percentage after 10 years is 11.5 per cent.

61. The cash-balance design acts much like a defined-contribution scheme in that it is difficult to accrue meaningful benefits during short periods of service. The pension equity design can be more easily designed to meet specific benefit-level goals. It

should be kept in mind that a lump-sum design would require an immediate cash outlay by the Organization, rather than spreading the pension payments out over the lifetime of the participant, as with the current scheme.

62. As noted above, this option would involve payment of a lump-sum amount in lieu of a pension. It would therefore amount to the abolition of the current judge's pension in return for a payment. It would seem difficult to reconcile the adoption of such a scheme with article 32, paragraph 7, of the Statute of the Court, which, as has already been observed, confers on members of the Court a right to a pension. It is also not viewed as an attractive option by members of the Court.

63. A variation to this option would be for the lump sum to be used to purchase an annuity in the open market from a life insurer. Rather than the lump sum being paid to the retiring member, the lump sum would be used to secure the required pension payments at the same level as the current arrangement. This would have the benefit of paying a pension for life and also de-risking the balance sheet of the Court, given that it is a liability that would no longer reside with the Court.

Option C

Maintaining the current pension benefit scheme

64. This option is to keep the pension benefit scheme of the members of the Court as is. Currently, the pension plan is a two-tiered system of accumulation, with a 5.56 per cent annual accrual rate in the first nine years of service, followed by a 1.85 per cent annual accrual rate thereafter, not to exceed a maximum benefit percentage of 66.67 per cent (replacement ratio).

VIII. Financial considerations

65. There are two separate financial considerations that are relevant to the plan design alternatives: annual costs and the overall liabilities as reported in the United Nations financial statements.

66. As previously noted, the current pension scheme is not pre-funded and retirees and beneficiaries are paid from the budgets of the International Court of Justice and the Residual Mechanism for Criminal Tribunals. Given that no change is being proposed for existing and retired judges, the liabilities for existing plan members remain unchanged, irrespective of any changes in future benefits for new judges.

67. In order to demonstrate the differences in the options studied from a financial perspective, table 6 outlines the various financial scenarios for the optional design alternatives for a new judge appointed on 1 January 2023 being paid a \$187,000 annual net base salary and who will retire in nine years.

Table 6
Comparison of actual cash outlay on a pay-as-you-go basis

	<i>United Nations payments prior to separation</i>	<i>United Nations payments at separation after 9 years of service</i>	<i>United Nations payments at separation after 18 years of service</i>
Current scheme (option C)	\$0	\$93,500 per year for life	\$124,667 per year for life
Option A1	\$0	\$53,183 per year for life	\$106,366 per year for life
Option A2	\$0	\$37,363 per year for life	\$74,725 per year for life
Option A3	\$0	\$62,327 per year for life	\$124,667 per year for life
Option B – 0.176 times service times final salary	\$0	One-time payment of \$296,208	One-time payment of 592,416

68. The relative projected costs of each of these schemes would simply be in proportion to the level of payments outlined in table 6, notably option A2, being some 40 per cent of the cost of the current arrangements after 9 years and approximately 60 per cent of the cost of the current arrangements after 18 years.

69. It should also be noted that the small population of this scheme can expose the sponsor to a higher degree of variation in payments, both as an upside and a downside risk. There is less opportunity to pool risk in the same way as larger pension schemes. For example, if a few additional judges lived longer than expected or had a significantly younger spouse, then this could have a disproportionately high impact on the level of future cash flows. Conversely, if a couple of additional judges decided to serve for 18 rather than 9 years, this could result in a lower-than-expected level of cash flows.

70. Spouse's and children's benefits can also be a high-cost proposition in any retirement scheme, as the age of a participant increases in defined-benefit schemes. However, 50 per cent in spouse's benefits are not uncommon in the court systems. Given the higher age of the judges, children's benefits are less likely to be utilized and would not add a significant cost. The cost of disability benefits is also expected to be quite low. However, because relatively few judges are covered by these benefits, adverse experience with regard to disability or other ancillary benefits could produce unexpectedly high costs.

IX. Conclusions

71. The General Assembly has repeatedly affirmed that the conditions of service and compensation for officials other than Secretariat officials of the United Nations shall be separate and distinct from those for officials of the Secretariat. The defined-benefit options may continue to be considered appropriate retirement benefit schemes for members of the International Court of Justice. The comparator schemes (with mainly final salary defined-benefit schemes) may be taken as an important indicator for this purpose.

72. Option B is the easiest to administer but might be the least appreciated by the judges, who may consider it a severance payment rather than an accommodation for a retirement benefit. It is also possible that a similar arrangement to option B could be used to purchase an annuity on behalf of the judge, providing them with an income

for life. In addition to taking the pension liability off the Court balance sheet, this may also offer better value for money in the long term because annuity providers bring the benefit of pooling longevity risk and investing the upfront payment, both of which benefit the annuity purchaser. A spouse's benefit can usually be incorporated into an annuity purchase for this purpose. While children's benefits are less common in the annuity market, they are so few in number that this could continue to be offered directly from the Court's payroll.

73. As was noted in the previous review of the pension schemes, one application of the defined benefit option could be to change the current two-tiered system of accumulation from 5.56 per cent in the first 9 years of service, followed by 1.85 per cent thereafter, not exceeding a maximum of 66.67 per cent, to a linear system of accumulation of 3.70 per cent per year for 18 years and nothing thereafter. This would have the effect of reducing the front load, with future members of the Court receiving less pension for the first nine years of their service (noting that the average term of office is expected to be 14 years for the current cohort of active judges). It also might be thought to encourage longer periods of service (by re-election) and thereby reduce the term of payout of the benefits, assuming that the average age of recruitment remains as it is currently, at approximately 60 years of age.

74. Against this, it might be argued that, by encouraging members of the Court to stand for re-election, a change to a linear system of accumulation could have adverse consequences for the rotation of the bench and, with it, for the universal character of the Court. In accordance with article 13 of the Statute of the Court, nine years constitutes a career at the Court. Any change in the pension system that was premised on members serving more than that one term would, to that extent, be inconsistent with the Statute.

75. It may be argued that equality among the members of the Court, as well as among the principal legal systems of the world that they represent, is a fundamental principle underlying the Statute of the Court. Parties appearing before the Court are sovereign States, not individuals. It is therefore essential, it might be said, for the proper administration of international justice that sovereign States be assured that the judges before whom they appear are sitting on terms of complete equality with one other. The principle of equality among judges is therefore fundamental to ensure that the sovereign equality of States is guaranteed in judicial proceedings among them. Any pension scheme that involved members of the Court receiving different treatment in terms of their pensions would be inconsistent with this principle. The same would hold true of any change in the current pension scheme that resulted in new members of the Court receiving benefits that were substantially different from those enjoyed by sitting members of the Court. In this connection, it should be recalled that one third of the membership of the Court is renewed every three years. Thus, it may be contended that, were a new pension scheme to be adopted, it would need to offer benefits broadly comparable with those offered under the present scheme. Any other approach may not be in accordance with the Statute of the Court. Similarly, introducing a participant contribution for new judges would also lead to inequality of treatment among different cohorts of judges.

76. The Court has expressed a strong preference for the option of no change, stating that the current pension benefit scheme is satisfactory, for the most part, and that it is in accordance with its Statute and with the principles of equality and independence of the members of the Court that underpin it.

77. **The General Assembly is invited to take note of the present report.**

Annex I

Conditions of service and compensation for the members and ad hoc judges of the International Court of Justice and for the President and judges of the International Residual Mechanism for Criminal Tribunals

	<i>International Court of Justice</i>		<i>International Residual Mechanism for Criminal Tribunals</i>	
	<i>Members</i>	<i>Ad hoc judges</i>	<i>President</i>	<i>Judges</i>
Annual net salary as of January 2022	\$262,361 per annum, including post adjustment [January 2022 post adjustment multiplier for the Netherlands = 40.3]	1/365 of annual net salary per day worked	\$262,361 per annum, including post adjustment [January 2022 post adjustment multiplier for the Netherlands = 40.3]	1/365 of annual net salary per day worked
Special allowance	President: \$25,000 per annum Vice-President (when acting as President): \$156 per day	Not applicable	President: \$25,000 per annum	Not applicable
Travel expenses	<p>For resident judges: Journey for the judge, spouse and recognized dependant(s) upon appointment and termination to/from the seat of the Court from/to his/her home established at the time of appointment. Return journey for the judge, installed spouse and recognized dependant(s) every second calendar year</p> <p>For non-resident judges: A maximum of three return journeys for the judge and one close relative residing with him/her every year, from his/her home at the time of appointment to the seat of the Court to attend sessions of the Court</p>	Return journey of any ad hoc judge, and one close relative residing with him/her, from his/her home to the seat of the Court or the place where the session is held, when the presence of the ad hoc judge is certified by the President of the Court as necessary for official business	Journey for the President, spouse and recognized dependant(s) upon appointment and termination to/from the seat of the Tribunal from/to his/her home established at the time of appointment. Return journey for the President, installed spouse and recognized dependant(s) every second calendar year. Cost of excess baggage is not allowable as an expense unless the excess is necessarily carried for official business reasons	Same as ad hoc judges of the International Court of Justice

	<i>International Court of Justice</i>		<i>International Residual Mechanism for Criminal Tribunals</i>	
	<i>Members</i>	<i>Ad hoc judges</i>	<i>President</i>	<i>Judges</i>
	For all judges: Cost of excess baggage is not allowable as an expense unless the excess is necessarily carried for official business reasons			
Subsistence allowance	Payable under the conditions of standard rates applied to officials of the United Nations Secretariat plus 40 per cent	Not applicable	Payable under the conditions of standard rates applied to officials of the United Nations Secretariat plus 40 per cent	Not applicable
Removal expenses	For resident judges: Relocation shipment or unaccompanied shipment of personal effects and household goods applicable to senior officials of the United Nations	Not applicable	Relocation shipment or unaccompanied shipment of personal effects and household goods applicable to senior officials of the United Nations	Not applicable
	For non-resident judges: Unaccompanied shipment of personal effects and household goods applicable to senior officials of the United Nations, upon approval by the President of the Court			
Settling-in grant	For resident judges: Amount applicable to senior officials of the United Nations	Not applicable	Amount applicable to senior officials of the United Nations	Not applicable
	For non-resident judges: Up to one half of the amount applicable to senior officials of the United Nations, upon approval by the President of the Court			

	<i>International Court of Justice</i>		<i>International Residual Mechanism for Criminal Tribunals</i>	
	<i>Members</i>	<i>Ad hoc judges</i>	<i>President</i>	<i>Judges</i>
Relocation allowance	<p>For resident judges: 24 weeks of net base salary (for 9 years of continuous service or more) or 18 weeks of net base salary (for 5 years of continuous service), payable upon completion of service and resettlement outside the Netherlands. For fewer than 5 years of continuous service, the lump sum is prorated on the basis of the ceiling of 18 weeks of net base salary. For more than 5 but fewer than 9 years of continuous service, the lump sum is prorated on the basis of the ceiling of 24 weeks of net base salary</p> <p>Entitlement is not applicable to non-resident judges</p>	Not applicable	24 weeks of net base salary (for 9 years of continuous service or more) or 18 weeks of annual net base salary (for 5 years of continuous service), payable upon completion of service and resettlement outside the Netherlands. For fewer than 5 years of continuous service, the lump sum is prorated on the basis of the ceiling of 18 weeks of net base salary. For more than 5 but fewer than 9 years of continuous service, the lump sum is prorated on the basis of the ceiling of 24 weeks of net base salary	Not applicable
Pension	<p>The normal retirement age is 60. The amount of retirement benefit is 50 per cent of the judge's annual net base salary (excluding post adjustment) prorated for less than 9 years of service (or approximately 0.468 per cent times net base salary for each of the first 108 completed months) plus 0.154 per cent net base salary for each additional month of service in excess of 108. Maximum 66.67 per cent of final salary (Minimum of 3 years' service)</p>	Not applicable	Same as members of the International Court of Justice, prorated to account for the difference in length in terms of appointment (i.e., 9 years for the Court, 4 years for the International Tribunal for the Former Yugoslavia). (Minimum of 3 years' service). If the President were to be elected from among the existing permanent judges of the International Tribunal for the Former Yugoslavia and were permitted to maintain his/her existing contractual relationship with the United Nations, his/her original conditions of service would	Not applicable

	<i>International Court of Justice</i>		<i>International Residual Mechanism for Criminal Tribunals</i>	
	<i>Members</i>	<i>Ad hoc judges</i>	<i>President</i>	<i>Judges</i>
			continue to apply. Therefore, pursuant to article 32, paragraph 5, of the Statute of the Court, any changes to the pension scheme that would lead to a decrease in pension benefits would not apply	
Survivors' benefit	50 per cent of the pension benefit or a lump sum, as final settlement, of twice the yearly pension benefit otherwise payable at the time of death	Not applicable	50 per cent of the pension benefit or a lump sum, as final settlement, of twice the yearly pension benefit otherwise payable at the time of death	Not applicable
Education grant	For resident judges: Applicable under the same rules and regulations governing United Nations staff Not applicable to non-resident judges	Not applicable	Applicable under the same rules and regulations governing United Nations staff	Not applicable
Disability	Payment of salary during a period of ill-health or disability that would prevent a member from performing his/her duty during the service period. No liability beyond that point	Not applicable	Payment of salary during a period of ill-health or disability that would prevent the President from performing his/her duty during the service period. No liability beyond that point	Not applicable

Annex II

Comparison of the pension benefits of members of the International Court of Justice with the pension benefits of judges in comparable judicial positions

Court	Benefit formula	Normal retirement age	Early retirement		Participant contribution	Ancillary benefits		
			Age	Reduction		Disability	Survivor	Children
International Court of Justice	50 per cent of annual net base salary (excluding post adjustment), prorated for less than 9 years of service (or 108 completed months), plus, for members serving a new term after 31 December 1998, 0.154 per cent times final salary for each month of service past 9 years, to a maximum of 66.67 per cent	60 (3 years to vest)	As at the time of separation	0.5 per cent per month between retirement age and normal age of retirement	None	Yes	Yes	Yes
United States Supreme Court	Lifetime pension: 100 per cent of salary with a minimum of 10 years and age plus service = 80 (that is, age 65 with 15 years of service, 66 plus 14...70 plus 10)	Lifetime (from 65)			2.2 per cent of salary (including during retirement; covers survivor and children benefits)	Yes	Yes	Yes
European Court of Justice	4.275 per cent of final basic salary per year in office; maximum pension of 70 per cent of basic salary last received	65	From 60	Reduction coefficient applied that varies by age	10.25 per cent of basic salary	N/A	N/A	N/A

Court	Benefit formula	Normal retirement age	Early retirement		Participant contribution	Ancillary benefits		
			Age	Reduction		Disability	Survivor	Children
European Court of Human Rights	2 per cent of gross salary per year of service to a maximum of 70 per cent; may, alternatively, elect to receive a lump sum	63				No	Yes	No
International Criminal Court ^a	United Nations Joint Staff Pension Plan 1.5 per cent of final average pay for the first 5 years of service; 1.75 per cent for the next 5 years; and 2.0 per cent for the subsequent 20 years, with 1.0 per cent for service in excess of 30 years to a maximum of 65 per cent of final average pay after 38.75 years of service	60, hired prior to 1 January 1990 62, hired from 1 January 1990 but prior to 1 January 2014 65, hired from 1 January 2014	55, hired prior to 1 January 2014 with 5 years of service 58, hired from 1 January 2014 with 5 years of service	Varies on the basis of normal retirement age	Participants contribute 7.90 per cent of pensionable earnings; employer contributes 15.80 per cent of pensionable remuneration	Yes	Yes	Yes
High Court of Australia	Retire after minimum retirement age with 10 years of service: 60 per cent of current salary; retire at maximum retirement age with 6 to 10 years of service: 6 per cent of current salary service	Minimum 60 ^b Maximum 70				Yes	Yes	No
Supreme Court of Canada ^c	66.67 per cent final salary, prorated for fewer than 10 years	15 years of service and age plus service is at least 80; 10 years of service and age 70	55, with 10 years of service	Prorated benefit based on service earned compared with benefit that would have been earned at normal retirement age	1 per cent of salary	Yes	Yes	Yes
Supreme Court of Japan	1.266 per cent of indexed career average salary	60 rising to 65 by 2025	N/A	N/A	15.508 per cent of salary	Yes	Yes	Yes

<i>Court</i>	<i>Benefit formula</i>	<i>Normal retirement age</i>	<i>Early retirement</i>		<i>Participant contribution</i>	<i>Ancillary benefits</i>		
			<i>Age</i>	<i>Reduction</i>		<i>Disability</i>	<i>Survivor</i>	<i>Children</i>
Supreme Court of the United Kingdom of Great Britain and Northern Ireland	2.5 per cent of career average revalued earnings	Aligned to State pension age (varies by date of birth – rises to 68 by 2046)	55	Actuarially reduced	4.26 per cent of salary	Yes	Yes	Yes
Under-Secretary-General Assistant Secretary-General	United Nations Joint Staff Pension Plan 1.5 per cent of final average pensionable remuneration for the first 5 years of service; 1.75 per cent for the next 5 years; and 2.0 per cent for the subsequent 20 years, with 1.0 per cent for service in excess of 30 years to a maximum of 60 per cent of pensionable remuneration on the date of separation (art. 28 (d) of the Regulations of the United Nations Joint Staff Pension Fund)	60, hired prior to 1 January 1990 62, hired from 1 January 1990 but prior to 1 January 2014 65, hired from 1 January 2014	55, hired prior to 1 January 2014 with 5 years of service 58, hired from 1 January 2014 with 5 years of service	Varies on the basis of normal retirement age	Participants contribute 7.90 per cent of pensionable earnings; employer contributes 15.80 per cent of pensionable remuneration	Yes	Yes	Yes

^a From 11 March 2021, full-time judges of the International Criminal Court were contracted under the conditions of service of a Under-Secretary-General of the United Nations common system, including participation in the United Nations Joint Staff Pension Fund. See resolution of the Assembly of the States Parties to the Rome Statute of the International Criminal Court on the remuneration of judges of the International Criminal Court (ICC-ASP/19/Res.3, 16 December 2020).

^b If voluntary exit occurs (a) prior to reaching 60 years of age, (b) prior to reaching 70 years of age with fewer than 10 years of judicial service, or (c) at age 70 with fewer than 6 years of judicial service, no benefit is payable if the judge commenced office prior to 1 July 2006.

^c Employees of the Supreme Court of Canada participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. The benefits are integrated with Canada and Quebec Pension Plans.

Annex III

Projected annual pension benefit payments, including retired, active and prospective judges

(Thousands of United States dollars)

<i>Year</i>	<i>International Court of Justice</i>	<i>International Residual Mechanism for Criminal Tribunals</i>	<i>Total</i>
2022	2 780	2 955	5 735
2023	3 284	2 994	6 279
2024	3 235	3 013	6 248
2025	3 176	3 034	6 211
2026	3 756	3 042	6 798
2027	3 682	3 041	6 723
2028	3 602	3 032	6 634
2029	4 488	3 015	7 503
2030	4 408	2 989	7 397
2031	4 325	2 954	7 278
2032	4 256	2 908	7 164
2033	4 302	2 853	7 155
2034	4 406	2 787	7 193
2035	4 514	2 710	7 225
2036	4 627	2 624	7 251
2037	4 746	2 527	7 272
2038	4 869	2 420	7 289
2039	5 000	2 303	7 303
2040	5 137	2 178	7 315
2041	5 282	2 045	7 327
2042	5 434	1 906	7 340
2043	5 592	1 763	7 355
2044	5 757	1 616	7 373
2045	5 928	1 468	7 396
2046	6 104	1 321	7 425
2047	6 284	1 178	7 462
2048	6 468	1 040	7 508
2049	6 654	909	7 564
2050	6 843	787	7 630
2051	7 034	674	7 709
2052	7 228	573	7 800
2053	7 286	482	7 768
2054	7 341	403	7 744
2055	7 393	335	7 728
2056	7 319	277	7 596
2057	7 240	228	7 468
2058	7 158	188	7 345

<i>Year</i>	<i>International Court of Justice</i>	<i>International Residual Mechanism for Criminal Tribunals</i>	<i>Total</i>
2059	6 955	155	7 109
2060	6 867	118	6 985
2061	6 780	91	6 871
