



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/31/8/Add.3
11 October 1976

ORIGINAL: ENGLISH

Thirty-first session
Agenda item 92

PROGRAMME BUDGET FOR THE BIENNIUM 1976-1977

Emoluments of the members of the International Court of Justice

Fourth report of the Advisory Committee on Administrative and
Budgetary Questions to the General Assembly at its
thirty-first session

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report on the emoluments of the members of the International Court of Justice (A/C.5/31/13) which the Secretary-General has submitted in response to the recommendation made by the Committee last year 1/ that he explore various options and formulate proposals which would assure adequate remuneration for the members of the Court and eliminate the need for frequent review while preserving the sui generis nature of the judges' situation.

2. In his report the Secretary-General provides background information on the seven reviews of judicial emoluments carried out by the General Assembly (in 1950, 1961, 1967, 1971, 1972, 1973 and 1975), and recommends an approach to the future determination of those emoluments that includes the following elements:

(a) The emoluments will henceforth consist of (i) a base salary, and (ii) a cost-of-living adjustment;

(b) The base salary will be reviewed by the General Assembly every four or five years; the base salary will be subject to the provisions of Article 32, paragraph 5, of the Statute of the Court;

(c) The cost-of-living adjustment will be reviewed annually and will be liable to both upward and downward movements;

1/ Official Records of the General Assembly, Thirtieth Session, Supplement No. 8A (A/10008/Add.1-28), document A/10008/Add.12, para. 4.

(d) The allowances, compensation and pension benefits of the judges will not be affected by the interim cost-of-living adjustments.

3. In paragraphs 16 to 25 of his report, the Secretary-General discusses eight alternative methods of calculating the cost-of-living adjustment, using four indices (the consumer price index at The Hague; the post adjustment index for The Hague; the weighted average of post adjustment classifications; and the simple arithmetic average of post adjustment classifications) and three assumptions as to where judges spend their salaries (at The Hague; anywhere in the world; partly at The Hague and partly elsewhere).

4. Although the Secretary-General does not exclude other possibilities, he suggests in paragraph 26 of his report that the use of the arithmetic average of post adjustment classifications would afford a simple and straightforward means of adjusting the judges' salary between full reviews. In paragraph 27 he suggests that the cost-of-living adjustments be calculated as of January of each year, and that proportionate upward or downward changes be made in the amount of the adjustment if the index has moved 5 per cent or more (in other words, the amount of the adjustment would not be affected by movements of less than 5 per cent). In paragraph 28 the Secretary-General suggests that the salary of \$50,000 established by the General Assembly by resolution 3537 (XXX) of 17 December 1975 be taken as the base salary, that the interim adjustment formula be applied from 1 January 1977, and that the next full review of the emoluments of the judges be undertaken not later than four years from now.

Observations and conclusions of the Advisory Committee

5. As the Secretary-General recalls in paragraph 11 of the annex to his report, the Fifth Committee, at the sixteenth session of the General Assembly, expressed the view that judicial salaries should not be subject to frequent review. If that view remains valid - and the Advisory Committee believes that it does - there is need in a period of inflation and sudden monetary fluctuations for a mechanism which would provide, in between reviews, at least partial protection against erosion of the purchasing power of judges' salaries.

6. Such a mechanism must be consistent with the provisions of Article 32, paragraph 5, of the Statute of the International Court of Justice that the salaries, allowances and compensation enumerated in paragraphs 1 to 4 of the same Article "shall be fixed by the General Assembly" and "may not be decreased during the term of office".

7. Bearing in mind, in particular, the view of the President of the Court, which is referred to in paragraph 27 of the Secretary-General's report, that downward adjustments of cost-of-living supplement payments would not be contrary to the provisions of the Statute of the Court, the Advisory Committee accepts the Secretary-General's suggestion that the General Assembly approve a system of interim cost-of-living adjustments in the judges' salaries in between the periodic full reviews.

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8. The Advisory Committee discussed with the representatives of the Secretary-General the modalities of the application of the proposed adjustments as set out in paragraphs 27 and 28 of his report, namely, that the formula be applied from 1 January 1977, that the adjustments be reviewed as of January of each year; that - provided the index has moved at least 5 per cent upwards or downwards - the amount of the adjustment be changed in proportion to the movement; and that the introduction of and changes in the interim cost-of-living adjustment not affect the pension benefit of the judges.

9. It is the Advisory Committee's understanding that, if approved by the General Assembly, the scheme suggested by the Secretary-General will operate as follows:

(a) In January 1977 the Secretary-General will review the movement of the index between 1 January 1976 and 1 January 1977;

- (i) If the index will have risen in the intervening period by at least 5 per cent, an interim cost-of-living adjustment proportionate to the increase will become payable for the calendar year 1977;
- (ii) If the increase is less than 5 per cent, no adjustment will be payable.

(b) In January 1978 the index will again be reviewed:

- (i) If it will have increased by at least 5 per cent over the level as at 1 January 1977, an increased adjustment will become payable;
- (ii) If no adjustment was made on 1 January 1977 and the index will have increased by at least 5 per cent since 1 January 1976, a corresponding adjustment will be payable for the calendar year 1978;
- (iii) If an adjustment was made in January 1977 and the index has risen by less than 5 per cent between 1 January 1977 and 1 January 1978, the 1977 adjustment **will** again be payable in 1978;
- (iv) If an adjustment was made in January 1977 and the index has dropped by less than 5 per cent over the ensuing 12 months, the 1977 adjustment will again be payable in 1978; if the drop has been of 5 per cent or more, the amount of adjustment payable in 1978 will be reduced accordingly or the adjustment will be eliminated, as the case may be.

(c) The reviews in January 1979 and subsequent years until the next periodic review will be as in (b) above; on each occasion the rate of the adjustment, upwards or downwards, will correspond to the percentage by which the index has moved, up or down, since the January of the year in which the amount of the adjustment was last changed.

(d) If, in the period before the next periodic review, the index drops below the level as at 1 January 1976, no adjustment will be payable but the amount of the base annual salary will not be reduced.

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10. In the scheme as suggested by the Secretary-General, adjustments in the second and subsequent years would be proportionate to the sum of the annual salary and whatever interim adjustment had already been granted. In other words, no distinction would be made, for purposes of subsequent adjustments, between the annual salary (i.e. the base, as approved by the General Assembly) and an interim cost-of-living adjustment. In the Advisory Committee's opinion, it would be undesirable to confuse what is clearly intended to be two distinct elements of remuneration. Accordingly, the Committee recommends that the amount of the adjustment should be a function of the annual salary only. If the General Assembly agrees with that recommendation, there will be need to relate adjustments to movements of 5 points or more in the average calculated as of the date of entry into effect of the latest General Assembly decision on the annual salary of the Members of the Court, for otherwise the rate of adjustment would lag behind the movement in the average.

11. Subject to the above recommendation, the Advisory Committee has no objection to the procedures suggested by the Secretary-General or to the suggestion that interim cost-of-living adjustments should not be pensionable. The Committee is also of the view that the system of interim adjustments should not apply to the allowance payable to the President and to the Vice-President when acting as President, or to the compensation paid to judges chosen under Article 31 of the Statute.

12. As for the selection of the most appropriate index for the interim adjustments in question, the Advisory Committee believes that it must not disregard (a) that the Members of the Court come from all the geographical regions, and (b) that only the President of the Court is required to reside at the seat of the Court (Article 22, paragraph 2, of the Statute). Consequently, an index which tries to reflect world-wide movements in prices is more appropriate than the consumer price index or the post adjustment index for The Hague.

13. In his report the Secretary-General discusses two world-wide indices - one for the weighted average of post adjustment classifications, and the other for a simple arithmetical average of such classifications. In the Committee's view, a short-coming of both these indices is that they are based on the system of post adjustments which was devised to reflect the patterns of expenditure of expatriate international civil servants. But as it would be cumbersome to devise a separate index solely for the interim adjustments to be paid to the Members of the Court, there is no alternative but to use an index based on movements in post adjustment classifications. Of the two alternatives the Advisory Committee prefers the simple arithmetic averaging of those movements because the weighted average is affected by a factor that is extraneous to the emoluments of the Members of the Court, namely the number of international staff in a given locality. For this reason, and bearing in mind the conclusion in paragraph 12 above, the Committee believes that of the six alternatives listed in paragraph 24 of document A/C.5/31/13, Method H is to be preferred.

14. As for the base to which the adjustments are to be applied, the Secretary-General suggests that it be the salary of \$50,000 a year, with effect from

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1 January 1976, fixed by the General Assembly in its resolution 3537 B (XXX). The Advisory Committee agrees with this suggestion.

15. At the same time the Advisory Committee notes the Secretary-General's observations in paragraphs 12 and 13 of his report on the reference points that might be used in future periodic reviews of judicial salaries, including the emoluments paid to staff in top echelon posts in the Secretariat and those related to the highest judicial posts in certain countries. The Committee agrees that such reference points may be relevant. 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 scales 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.

16. In paragraph 28 the Secretary-General suggests that the next full review be undertaken "not later than four years from now". The Advisory Committee believes that, as between a four-year cycle and a five-year cycle, the latter would be more consistent with the Fifth Committee's view referred to in paragraph 5 above. Inasmuch as the current salary has been in effect since 1 January 1976, the base salary would next be discussed by the General Assembly in 1980 and any revisions to the existing salary would become effective as of 1 January 1981. Naturally, the Assembly would always retain the option to conduct an earlier review if exceptional circumstances warrant it.

Recommendation

17. On the basis of the considerations set out above, the Advisory Committee recommends that the General Assembly approve, with effect from 1 January 1977, the payment to the members of the International Court of Justice of an interim cost-of-living supplement, to be governed by the following provisions: the supplement shall become payable as of 1 January of the calendar year in which the simple arithmetic average of the post adjustment classifications for the cities where the headquarters and the regional offices of the organizations in the United Nations common system are located will have exceeded by 5 points or more the corresponding average calculated for the date of entry into effect of the latest previous decision of the General Assembly on the amount of the annual salary payable to members of the Court; the amount of the supplement shall be equal to the corresponding percentage of the said annual salary. Thereafter, and until the next periodic review of the annual salary, the amount of the supplement shall be recalculated as of 1 January of each year, and shall be adjusted proportionately, upwards or downwards, in the manner described in paragraphs 9 and 10 of this report, if the aforesaid arithmetic average has moved by 5 points or more in either direction since the amount of the supplement was last determined.

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18. Accordingly, the Committee submits to the General Assembly for its consideration the draft resolution in the annex to this report.

19. The Committee has been informed by the Secretary-General that the data currently available to him indicate that approval by the General Assembly of the proposed system of interim adjustments to the salaries of the Members of the Court will have no financial implications in the biennium 1976-1977.

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ANNEX

Draft resolution

Emoluments of the members of the International Court of Justice

The General Assembly,

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

Having considered the report of the Secretary-General 2/ and the related report of the Advisory Committee on Administrative and Budgetary Questions, 3/

1. Decides that the annual salaries of members of the International Court of Justice shall next be reviewed at its thirty-fifth session and thereafter normally every five years;

2. Decides further, with effect from 1 January 1977, that in between such periodic reviews, the members of the International Court of Justice may receive, in addition to their annual salary, as defined in Article 32, paragraphs 1 and 5, of the Statute of the Court, also an interim cost-of-living supplement which shall not be deemed to form part of the said salary and the amount of which shall be governed by the provisions set out in paragraph 17 of the report of the Advisory Committee;

3. Decides that the allowances and compensation provided for in Article 32, paragraphs 2 to 4, of the Statute of the International Court of Justice and the retirement pensions given to members of the Court shall be reviewed concurrently with the review of their annual salary, and that the system of interim adjustments shall not apply to them.

2/ A/C.5/31/13.

3/ A/31/8/Add.3.