



Fourteenth session
Agenda item 63

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

Report of the Fifth Committee

Rapporteur: Mr. Niaz A. NAIK (Pakistan)

1. The Fifth Committee considered agenda item 63 at its 744th meeting on 16 November 1959. Two documents were before the Committee:
 - (a) A note by the Secretary-General (A/4241) to which was annexed a report submitted at the direction of the International Court of Justice;
 - (b) A resolution adopted by the Sixth Committee on 11 November 1959 (A/C.6/L.454) tendering advice to the Fifth Committee, at the latter Committee's request (A/C.6/360), on the questions of policy (other than those of a budgetary nature) that arose under the two points involved in the present agenda item.
2. The first question was whether to amend the Regulations governing the pensions of members of the International Court of Justice (General Assembly resolution 86 (I) of 11 December 1946) in such a manner that the award of a pension to a member who resigns from the Court after five years of service shall not depend on a discretionary decision of the Court,^{1/} and that, instead, a member resigning in such circumstances shall be entitled to a pension as a matter of right.

^{1/} Paragraph 4 of the Pension Scheme Regulations reads: "If a member resigns after having completed at least five years of service, the Court may, by special decision, grant him such pension as seems equitable, but not exceeding an amount calculated as in regulation 6".

3. The second question concerned the amount of, and the method of computing, the pensions of members of the Court who retire in the ordinary course. Under existing provisions, the pension is the equivalent of one-thirtieth of salary for each year of service, subject to a maximum of one-third of salary (Regulations, paras. 6 and 7).

4. On the first question, the opinion expressed on behalf of the Court, the Sixth Committee and the Secretary-General^{2/} coincided: paragraphs 1 and 4 of the Regulations should be so amended as to remove the restrictive conditions concerning a "special decision" of the Court. In that way a pension would be payable in every case to a member of the Court who resigns after five years of service. A special decision of the Court would not be required.

5. On the second question, the Fifth Committee took note of the following opinion and comments:^{3/}

(a) The communication from the International Court of Justice considered it desirable to secure to retiring members a pension equivalent to one-twentieth of salary for each year of service, subject to a maximum of one-half of salary;

(b) The Secretary-General suggested (A/4241, para. 4) that, as comprehensive data on which to base a full appraisal of the proposed change had not yet been assembled, the matter should be deferred until the next session of the General Assembly, "pending the completion of the study of the relevant part of the Court's report by such appropriate body as the Assembly may determine";

(c) The Sixth Committee, having taken note of the Secretary-General's suggestion, expressed confidence that, apart from the financial implications, the recommendations of the Fifth Committee would take due account of considerations related to "the circumstances of the election of the members of the Court and the character and requirements of their office as well as the importance of making the conditions of service with the principal judicial organ of the United Nations appropriate in the case of persons of the highest recognized competence".

^{2/} The reasons supporting the opinions are set forth in the following documents: A/4241, pp. 3 and 4; A/C.6/L.454, para. 4; A/4241, para. 3.

^{3/} For the supporting considerations, see A/4241, pp. 5 and 6; A/C.6/L.454, para. 5.

Financial implications

6. Based upon the pension already being paid, the addition to the budget resulting from the proposed change in pension rate (para. 5 (a) above) was estimated for 1960 at about \$17,000. No estimate, however approximate, is possible for subsequent years in view of the nature of the determining factors (such as the composition of the Court, and the mortality rate among its pensioned members).

Discussion in the Committee

7. Representatives were agreed that both the provisions of the Pension Scheme for members of the Court and the general conditions of their service should befit the eminence of the members and the outstanding professional qualities and moral attributes which they brought to their office. Due weight should be given to the circumstances under which the members were elected, as well as to the fact that appointment to the Court often entailed the abandonment of a lucrative career.

8. Some of the speakers recognized that, where the first question was concerned, it would be desirable in principle to amend paragraph 4 of the Regulations, even though - as the representative of the Court confirmed to the Committee - no difficulty had arisen in connexion with the existing text. Some members found difficulty, however, in concurring in one of the arguments advanced, to the effect that a member might "hesitate to resign and to rely on the discretionary decision of the Court" (A/4241, p. 4).

9. As regards the second question, the representative of Iraq considered it premature to designate the "appropriate body" referred to in the Secretary-General's suggestion (see para. 5 (b) above). In view of the procedural difficulty to which that suggestion might give rise, he proposed, as an alternative, that the Secretary-General should be requested to continue in 1960 his study of the matter, in consultation with the Advisory Committee on Administrative and Budgetary Questions.

10. The representative of the Soviet Union was of the opinion that somewhat fuller justification should be presented for a revision of paragraph 4 of the Regulations, to which, he stated, as had been demonstrated, no urgency attached. Similar considerations applied to the study of the second question, which might

perhaps be of a detailed character. He proposed that both questions should be carried over to the next session and that the Secretary-General should in the meanwhile study them in consultation with the International Court of Justice.

Decision and recommendation of the Committee

11. The Fifth Committee approved without objection the proposal of the representative of the USSR and, accordingly, recommends that the General Assembly should: (a) defer to its fifteenth session the consideration of the two matters raised under agenda item 63; and (b) request the Secretary-General to continue the study of these matters, in consultation with the International Court of Justice, and to submit a further report thereon.
