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Proposed programme budget for 2020

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

Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2020

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the 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 (A/74/354). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses dated 14 November 2019.

2. The report of the Secretary-General is submitted pursuant to General Assembly resolution 71/272 A, by which the Assembly decided to undertake at its seventy-fourth session the next comprehensive review of the conditions of service and compensation for members of the International Court of Justice and President and judges of the International Residual Mechanism for Criminal Tribunals (see section II below), and also requested the Secretary-General to submit a comprehensive proposal on options for a pension scheme (see section III below).

II. Compensation and other conditions of service

3. In the report, it is indicated that Article 32 of the Statute of the International Court of Justice provides that each member of the Court shall receive an annual salary, and that the salaries and allowances shall be fixed by the General Assembly and may not be decreased during the term of office. Article 32 also provides that ad hoc judges



of the Court shall receive compensation for each day on which they exercise their functions, defined as 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/74/354, part one, paras. 4, 6 and 7).

4. With respect to the International Residual Mechanism for Criminal Tribunals, article 8 of its Statute stipulates 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 Mechanism shall be those of the judges of the International Court of Justice (A/74/354, part one, para. 10).

5. In paragraph 15 of part one of the report, it is indicated that since the last comprehensive review, the General Assembly has revised the scale of gross and net salaries for staff in the Professional and higher categories. Accordingly, the annual base salary applicable to the members of the International Court of Justice and the judges of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia was revised from \$172,978 to \$174,742 effective 1 January 2017, from \$174,742 to \$176,437 effective 1 January 2018, and from \$176,437 to \$179,666 effective 1 January 2019.

6. 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, as well as retirement benefits, which are discussed in section III below. By its resolution 65/258, the General Assembly decided to increase the special allowance of the President from \$15,000 to \$25,000 per year and that of the Vice-President when acting as President from \$94 to \$156 per day (A/74/354, part one, paras. 17 and 22).

7. Regarding education allowance, the General Assembly, in 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. By its resolution 71/272 A, the General Assembly decided to extend the revised education grant scheme for staff members in the Professional and higher categories, which had been 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 International Residual Mechanism for Criminal Tribunals (A/74/354, part one, paras. 24 and 26).

8. In relation to survivors' benefits for the members of the International Court of Justice, the General Assembly, in resolution 40/257 C, approved a death-benefit scheme by which 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 salary for each year of service, subject to a minimum of three months and a maximum of nine months of salary. By its resolution 54/240 A, the General Assembly established a lump-sum benefit for the judges of the Tribunals, whereby survivors of the judges would be compensated in the form of a lump-sum equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of four months (A/74/354, part one, paras. 27 and 28).

9. Regarding travel and subsistence regulations, in its resolution 71/272 A, the General Assembly decided that the language of the travel and subsistence regulations applicable to the members of the International Court of Justice and the President of the International Residual Mechanism for Criminal Tribunals be updated in line with the new relocation package for staff in the Professional and higher categories; and that the reference to "assignment grant" be revised to refer to the "settling-in grant" provisions applicable to senior officials of the Secretariat of the United Nations. The

Assembly also confirmed the changes to the entitlement for relocation shipment under the new relocation package approved by the Assembly in its resolution 70/244 (A/74/354, part one, para. 31).

Action to be taken by the General Assembly

10. 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. Should the General Assembly approve the recommendation of the Secretary-General, no budgetary implications would arise under the programme budget for 2020. It is also indicated in the report that the next comprehensive review would be undertaken at the seventy-seventh session of the Assembly (A/74/354, part one, paras. 34, 35 and 37). **The Advisory Committee recommends the approval of the Secretary-General's proposal.**

III. Pension scheme

11. Paragraphs 3 to 23 of part two of the report provide background information on the judges' pension scheme. Members of the International Court of Justice are entitled to retirement pensions in accordance with Article 32 of the Statute of the International Court of Justice. With regard to the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the General Assembly, in its resolution 53/214, approved the pension scheme regulations for the judges based on those applicable to the members of the International Court of Justice, prorated to account for the difference in length in the terms of appointment, namely, nine years for the members of the Court versus four years for the judges of the two Tribunals. With the closure of the two Tribunals, residual functions have been taken over by the International Residual Mechanism for Criminal Tribunals, which has also taken over the function of making monthly pension payments to retired judges and beneficiaries of the two Tribunals. Finally, article 8 of the Statute of the Mechanism stipulates that the terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice.

12. Pursuant to the request of the General Assembly in resolution 71/272 A for a comprehensive proposal on options for a pension scheme, the Secretary-General collaborated and consulted with the United Nations Joint Staff Pension Fund, the Office of Human Resources and the Office of Programme Planning, Finance and Budget, and took into account the views and comments of the International Court of Justice and the Residual Mechanism. An actuarial study was conducted to consider the liabilities and costs of the current and alternative schemes (A/74/354, part two, paras. 24 and 25).

13. In the report, it is indicated that the study compared the benefits provided to judges in comparable positions throughout the world, and four retirement benefit design options were developed, including income replacement comparisons. It is anticipated that any changes that may be adopted by the General Assembly as a result of the present review will not have an impact on the pensions of serving or retired judges if those changes are less favourable than current arrangements (A/74/354, part two, paras. 26 and 27).

14. The current pension benefits are set out in table 1 of part two of the report. It is stated that, assuming a nine-year term of office, a retiring judge would receive approximately 50 per cent of his or her final salary at retirement age 60 or above. If a judge retires before age 60, the pension benefit would be reduced by 0.5 per cent for each month that the benefit begins before age 60. It is indicated that, in general,

members of the Court are hired late in their careers and complete approximately 9 to 10 years of service, retiring at approximately 68 years of age. Retirees and beneficiaries are paid from the assessed budget of each organ on a pay-as-you-go basis (A/74/354, part two, paras. 30–32).

15. Four options for a pension scheme are described in the report. Option A 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. Under this option, assuming a 35-year career (the career basis for United States Social Security), the theoretical benefit formula would be between 2.43 and 1.71 per cent for each year of service (times final salary), as compared 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. 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 the lost salary increases the accrual rates to 3.16 to 2.22 per cent per year of service, while an accrual rate of 3.7 per cent would match the long-term accrual rates of the existing formula and the recommended formula from the previous comprehensive study (A/74/354, part two, paras. 43, 50 and 51).

16. Option B, a defined-contribution scheme, provides an account balance, where interest accrues both before and after retirement, based on the actual earnings of underlying investments. Individual accounts are set up for participants and benefits based on the amounts credited to such accounts through employer contributions and, if applicable, employee contributions, plus any investment earnings on the money in the account. Only employer contributions to the account are guaranteed, not the future benefits; therefore, future benefits would fluctuate on the basis of investment earnings (A/74/354, part two, para. 44).

17. Option C would provide a cash lump sum, in lieu of pension benefits, through a hybrid defined-benefit and defined-contribution scheme, representing what may be considered as a full and fair amount for forgoing the right to a pension. In the report, it is noted, however, that the right of the members of the International Court of Justice to a pension in the form of a regular income has been recognized since the inception of the Court, and such a scheme would amount to the abolition of the current judges' pension and may be difficult to reconcile with Article 32 of the Statute of the Court (A/74/354, part two, paras. 45 and 66).

18. Option D is to keep the pension benefit scheme of the members of the Court as is, which is a defined-benefit scheme with 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). In the report, it is explained that, in comparing the schemes of other supreme courts and other international courts around the world, it was found that most use the defined-benefit approach (A/74/354, part two, paras. 46, 47 and 67).

19. The Secretary-General states that the most favoured application of the defined-benefit option would 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 3.7 per cent per year for 18 years and nothing thereafter (see also A/66/617). It is stated that this would reduce the front load and overall liability of Member States, as well as encourage longer periods of service, thereby reducing the term of payout of the benefits and estimated liability for new judges. In the report, it is indicated that any change to the pension system that is premised on members serving more than one term may be inconsistent with the Statute of the Court, which stipulates that nine years constitutes a career at the Court, and could have adverse consequences for the rotation

of the bench and the universal character of the Court. It is also indicated that any change to the current pension scheme that results in new members of the Court receiving benefits that are substantially different from those enjoyed by sitting members of the Court would be inconsistent with the principle of equality between judges. It is further stated that, for those reasons, the option of retaining the current pension benefit scheme may be considered (A/74/354, part two, paras. 76–78).

20. In the report, it is indicated that 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 which underpin it (A/74/354, part two, para. 79). Upon enquiry, the Advisory Committee was informed that the position of the Court remains the same as that contained in the letter dated 1 February 2012 from the President of the International Court of Justice addressed to the President of the General Assembly (A/66/726), which was subsequently confirmed by the Registrar of the International Court of Justice in his letter of 2 August of 2019 to the Assistant Secretary-General for Human Resources.

Action to be taken by the General Assembly

21. According to paragraph 80 of part two of the report, the General Assembly is invited to take note of the report of the Secretary-General. Upon enquiry, the Advisory Committee was informed that, in accordance with General Assembly decision 55/488 of 7 September 2001, for the reports of the Secretary-General, the terms “takes note of” and “notes” are neutral terms that constitute neither approval nor disapproval. The Committee was further informed that the current pension scheme of the judges was approved by the General Assembly at the time of the establishment of the Court, and the General Assembly neither took a decision to change that scheme nor sought recommendations from the Secretary-General. Therefore, the Secretary-General, while submitting a number of possible options for consideration, as requested by the General Assembly, was not in a position to recommend any particular option as that could be viewed by some stakeholders as prejudging the decision of the General Assembly.

22. The Advisory Committee recommends that the current pension scheme of the judges be maintained.