



Seventeenth session

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**Report of the Working Group on
the Revision of the Judges' Remuneration**

I.	Introduction	2
II.	Views of States Parties	2
A.	Frequency of a mechanism for review	2
B.	Who should undertake a review?	2
C.	Which elements should be considered during a review?	3
D.	On what criteria should a review be undertaken?	3
III.	General comments	4
IV.	Conclusion	4
Annex:	[Draft] Resolution on the remuneration of the judges of the International Criminal Court	5

I. Introduction

1. At its sixteenth session in December 2017 the Assembly of States Parties (“the Assembly”) requested the Bureau to “establish a working group, based in The Hague and open only to States Parties, to discuss a mechanism to consider a revision of the judges’ remuneration in implementation of resolution ICC-ASP/3/Res.3 and to report thereon to the Assembly at its seventeenth session.”¹
2. On 4 March 2018, the Bureau appointed Ambassador Fernando Bucheli (Ecuador) as Chair of the Working Group on the Revision of the Judges’ Remuneration.
3. Consistent with the mandate for the working group, meetings were held in The Hague and open only to States Parties. A total of 8 meetings were held, on 12 April, 28 May, 5 July, 18 July, 10 September, 2 October, 30 October, and 6 November.

II. Views of States Parties

4. The working group’s meetings throughout 2018 provided a forum for States Parties to discuss the issues associated with a mechanism to consider a revision of the judges’ remuneration.
5. To assist these discussions, the Chair collected and presented information from the Court regarding the current package of remuneration and benefits for judges, as well as information regarding the judges of other international courts and tribunals and other elected officials at the Court. Based on the discussions, the Chair presented a non-paper, dated 20 September 2018, which provided possible options for a mechanism for review. The non-paper focused on the following elements:
 - (a) The frequency of a mechanism for review;
 - (b) Who should undertake a review;
 - (c) What elements should be considered during a review; and
 - (d) On what criteria a review should be undertaken.
6. The Chair also arranged for the working group to hold a conference call, on 2 October 2018, with an expert on the topic of judicial compensation. The expert provided a general outline of the issues involved in determining and reviewing judicial remuneration levels, and also provided some comments on the elements in the non-paper.

A. Frequency of a mechanism for review

7. Regarding the frequency of a mechanism for review, there was general support for a three-year timetable, linked to the triennial judicial election cycle, as a working basis for discussions. It was noted that this issue would need to be revisited during consideration of the terms of reference of a mechanism.

B. Who should undertake a review?

8. In relation to the issue of who should undertake a review, two general options were posed: utilizing an existing body, or establishing a new body.
9. Some States expressed their preference for utilizing an existing body, such as the Bureau, so as to avoid unnecessary bureaucracy. It was suggested by some that the Committee on Budget and Finance (“the Committee”) might be an appropriate body. On the other hand, the point was made that the issue should be kept separate from the budget negotiations, and that the Committee was already over-burdened. In addition, the expertise required was different to the expertise required for the Committee.

¹ *Official Records ... Sixteenth session ... 2017*(ICC-ASP/16/20), ICC-ASP/16/Res.1, section N., paragraph 1.

10. Some States indicated a general preference for an independent panel of experts who could make a non-binding recommendation to the Assembly. It was noted that one possibility for selecting and appointing such experts would be to replicate the process for appointing members of an existing subsidiary body of the Assembly, such as the Committee on Budget and Finance or the Advisory Committee on Nominations of Judges. On the other hand, the point was made that it would be inefficient to create an entirely new organ, with a procedure of elected members, in order to undertake a review. It was proposed that a review should be led by experts, who could receive and consider written representations by States Parties and a representative of the judges. Support was also expressed for the idea of having a combination of States Parties' representatives and subject-matter experts. Some considered that the judges (either current or former) should play a role.

11. A third alternative was also suggested, whereby the Assembly could draw on a standardized mechanism for a simple and straightforward review, possibly utilizing statistics on cost of living in the Netherlands. Information was provided about the practice at the United Nations, where once every three years experts on Human Resources prepared a paper on behalf of the Secretary-General which was then considered by the Fifth Committee before being referred to the General Assembly.

C. Which elements should be considered during a review?

12. As regards what should be considered during a review, there was general agreement that all elements of the judicial terms and conditions should be considered, not just salaries. However it was also noted that a review of all elements every three years would be inefficient, and had the potential to overcomplicate the process. It was therefore suggested that while salaries could be reviewed every three years, pensions and other allowances could be reviewed less regularly, perhaps every six or nine years. It was noted that changes to the base salary could affect other elements, including pension payments and allowances, which might have a financial implication.

D. On what criteria should a review be undertaken?

13. Regarding the criteria on which a review should be undertaken, various options were discussed. The Chair provided information regarding the criteria used by other courts and tribunals, in particular the recommendations made by the International Civil Service Commission (ICSC), an independent expert body established by the United Nations General Assembly to regulate and coordinate the conditions of service of staff in the United Nations common system. It was noted that States had consistently reiterated the position that the judges' salaries should not be directly compared to those of other courts and tribunals because of differences in their respective roles and governance arrangements. In particular, the point was made that the International Court of Justice was different in structure and function and was therefore not the best comparison. The different membership of the Court and the United Nations was also a factor. The point was made that the Assembly had specifically decided not to extend the United Nations common system to the judges of the International Criminal Court. At the same time the point was made that it might be appropriate to consider comparisons with national judiciaries.

14. Some States considered that the only relevant criteria were objective criteria, in particular those linked to cost of living, inflation and the exchange rate. It was noted that a simple means of adjusting the remuneration would be an application of the cost of living movement in the Netherlands. It was also suggested that other objective criteria could be part of the process, for example the ability to attract suitable candidates and the current and anticipated workload of the Court. At the same time it was noted that indicators of this kind were more difficult, and were not solely within the control of the judges. The point was made that the review should take into account the salaries of the Registrar and the Prosecutor.

15. The point was made that it would be useful to know how other institutions produced their data, as it could be an option to draw on existing information. States Parties could also consider utilizing the calculations made by other institutions, for example by adopting the same movement in base salary or post adjustment as that recommended by the ICSC. In this regard, one option was to adopt only a certain agreed percentage of any movement, for example 90%. It was also noted that States Parties could consider moving to a two component system, with a base salary and a specific cost of living supplement, and then reviewing only the supplement on the basis of changes in cost of living factors. An approach of that kind would reduce the impact on other factors, such as pension calculations. It was emphasized that a review would not necessarily lead to an increase or decrease in remuneration, and that the ultimate decision on any revision was for States Parties.

III. General comments

16. The Chair noted that there seemed to be general agreement only on two aspects: the frequency with which a mechanism for review should operate (every three years) and the elements to be considered by a mechanism for review (all elements of remuneration, i.e. pension as well as salary and other benefits, albeit not all elements every three years). Some support was expressed for the seventeenth session of the Assembly to agree to establish a mechanism. It was noted that the final decision on any increase or decrease would always be for the Assembly itself, and that establishing a mechanism at the upcoming Assembly did not bind the Assembly in any way.

17. The point was made that it would be preferable to have as light a mechanism as possible, perhaps standardized and based on fixed criteria, and a decision on whether to adjust – or not – every three years. Some States expressed their interest in the mechanism being as straightforward and simple as possible, and ideally drawing on pre-existing information or statistics regarding cost of living.

18. In the course of the discussion some States made the point that they wished to have additional expert advice before taking final decisions on what to recommend to the Assembly. The suggestion was made that an expert report could be commissioned through the Registrar's procurement process, as early as possible in 2019, which could then inform further discussions in the course of 2019. This would provide States Parties with the necessary technical expertise to develop a robust mechanism for review. The International Service for Remunerations and Pensions (ISRP) was mentioned as a possible option for providing such expert advice.

IV. Conclusion

19. At the seventh meeting of the working group, on 30 October 2018, the Chair presented draft resolution text based on the discussions held thus far and feedback received from States Parties. The Chair circulated a revised draft of the resolution text on 1 November 2018 and it was discussed further at the eighth meeting, held on 6 November 2018.

20. As a result of the extensive discussions throughout 2018, the working group recommended that the Assembly adopt the draft text for a resolution on the remuneration of the judges of the International Criminal Court as contained in the annex.

Annex

[Draft] Resolution on the remuneration of the judges of the International Criminal Court

The Assembly of States Parties,

Recalling its request to the Bureau to establish a working group, based in The Hague and open only to States Parties, to discuss a mechanism to consider a revision of the judges' remuneration in implementation of resolution ICC-ASP/3/Res.3 and to report thereon to the Assembly at its seventeenth session,¹

Noting the discussions held in the working group, and the identification of possible terms for a review mechanism,

1. *Welcomes* the report of the Working Group on the Revision of the Judges' Remuneration;²
2. *Decides* to extend the mandate of the Working Group on the Revision of the Judges' Remuneration for another year;
3. *Requests* the Registry to commission, in coordination with the Working Group on the Revision of the Judges' Remuneration, an expert in international remuneration systems to undertake a study on the judges' remuneration, including the salary structure and benefits package, and to consider the possible terms of reference for a mechanism to review the remuneration of judges, taking into account the cost implications and the suggestions put forward in the report of the Working Group on the Revision of the Judges' Remuneration;
4. *Requests* the expert to report to the Working Group on the Revision of the Judges' Remuneration no later than 1 July 2019 on the results of the study, including recommendations for the terms of reference for a mechanism to review the remuneration of judges;
5. *Further decides* that the Working Group on the Revision of the Judges' Remuneration shall, taking account of the recommendations of the expert, prepare the terms of reference for a mechanism to review the remuneration of judges, with a view to a decision on their adoption at the eighteenth session of the Assembly;
6. *Decides* to establish a mechanism for the review of the judges' remuneration, subject to the adoption of terms of reference by the Assembly;
7. *Encourages* the Registry to make all efforts to keep additional costs of the study referred to in paragraph 3 to a minimum; and *further encourages* the Registry to make all possible efforts to absorb any such costs within the approved budget of the Court for 2019.

¹ *Official Records ... Sixteenth session ... 2017* (ICC-ASP/16/20), ICC-ASP/16/Res.1, section N, para. 1.

² ICC-ASP/17/28.