

**Nineteenth session**

New York, 7-17 December 2020

Report of the Judicial Remuneration Panel**I. Introduction**

1. This report of the Judicial Remuneration Panel (“the Panel”) is submitted to the Bureau of the Assembly of States Parties pursuant to the mandate set out in the Terms of Reference for the Review of the Judges’ Remuneration (“Terms of Reference”) adopted by the Assembly at its eighteenth session in December 2019.¹

2. The Assembly established the Panel to facilitate its consideration of possible adjustments to the remuneration of the judges of the International Criminal Court, in accordance with article 49 of the Rome Statute.²

3. In 2020, the Panel was composed of: Vice-President and Coordinator of The Hague Working Group, Ambassador Jens-Otto Horslund (Denmark); facilitator for the budget, Ambassador Andrés Terán Parral (Ecuador); and Mr. Peter Lovell (United Kingdom), a former member of the Committee on Budget and Finance.³ At its meeting on 8 April 2020 the Panel decided to designate Ambassador Horslund as its Chair.

4. The Panel met on eleven occasions in 2020.⁴ The majority of the meetings took place by remote link as a result of the restrictions imposed by the COVID-19 pandemic.

II. Mandate of the Panel

5. As set out in the Terms of Reference,⁵ the Panel is mandated to submit a report containing a recommendation for possible adjustment of the remuneration of the judges of the International Criminal Court. In making that recommendation the Panel shall, in particular, take into account:

- a) The ability of the Court to attract highly qualified candidates to the position as judges;
- b) The cost of living in the Netherlands; and

¹ Resolution ICC-ASP/18/Res.2, annex I. The Panel was requested to report by the end of May, however the complications caused by the COVID-19 pandemic prevented the Panel from meeting this timeline.

² ICC-ASP/18/Res.2, annex I, para. 1.

³ According to paragraph 1 of the Terms of Reference, the Panel shall consist of the Vice-President and Coordinator of The Hague Working Group, the facilitator on the budget, and one outgoing or former member of the Committee on Budget and Finance, to be appointed by the Bureau. Ambassador Horslund was elected as Vice-President of the Assembly at its seventeenth session in December 2018. Ambassador Teran was appointed by the Bureau as facilitator for the budget on 24 January 2020. Mr. Lovell was appointed by the Bureau as the third member of the Panel on 26 February 2020.

⁴ On 8 April, 7 and 14 May, 3 June, 23 July, 3 and 15 September, 22 and 30 October, 11 and 20 November.

⁵ Resolution ICC-ASP/18/Res.2, annex I, para. 2.

c) The financial situation of the Court.

6. The Panel carefully reviewed the current conditions of service and compensation of the judges,⁶ including as regards pension, taking into account the criteria identified by the Assembly. The Panel requested and received information from the Registry to assist with its review. In addition, the Panel invited written submissions from the judges of the Court, and also invited the judges to participate in its meetings on 14 May and 23 October 2020. The Panel held consultations with States Parties on 15 September, 11 November and 20 November.

7. The Panel had the benefit of the prior work done by the Working Group on the Revision of the Judges' Remuneration in 2018⁷ and 2019,⁸ as well as the reports of the two expert institutions engaged in 2019: the Institute for Employment Studies (IES) and the International Service for Remunerations and Pensions (ISRP).

III. Deliberations and consultations

8. The first mandatory criterion listed in the Terms of Reference was the ability of the Court to attract highly qualified candidates to the position as judges of the Court. The Panel noted that the inclusion of this criterion required it to consider whether the remuneration package was sufficient to attract candidates who meet the criteria set out in article 36 of the Rome Statute. The Panel reviewed the records of recent elections and noted that in all cases there were more candidates for election than positions available.

9. The second mandatory criterion set out in the Terms of Reference was the cost of living in the Netherlands. The Panel noted that the remuneration of the judges was a fixed amount of €180,000 per year, which had originally been set by the Assembly in 2002. The Panel reviewed statistics on the cost of living in the Netherlands.⁹ The Panel noted that the cost of living in the Netherlands was a factor which was automatically taken into consideration in the United Nations Common System packages for remuneration paid to staff members of the Court and other elected officials.

10. The third mandatory criterion set out in the Terms of Reference was the financial situation of the Court. The Panel reviewed the financial situation of the Court as reflected in the proposed and approved budgets and reports of the Committee on Budget and Finance.

11. Having considered the relevant criteria and the information available to it, the Panel was of the view that the current remuneration level for the judges, a fixed amount of €180,000, was reasonable and compared well with other senior judicial positions across Europe, especially in light of the tax position.¹⁰ At the same time, the Panel noted that the remuneration of the judges had not been adjusted since being established, and that there was no formal mechanism for adjustment to reflect increases in the cost of living. The Panel noted that if this situation continued, it could potentially deter future judicial candidates from applying.

12. Furthermore, the Panel noted that the pension scheme for the judges had been amended by the Assembly of States Parties in 2007 to provide a scheme that was affordable for the Court. With the decline in defined benefit pension schemes, the current scheme was expensive in terms of cost and administrative time for the Court, while offering only modest benefits. The Panel also noted that the contract with the pension scheme provider would expire in 2025 and there was a clear risk that providers would view the type of scheme as obsolete and no longer be prepared to administer it. There was also a risk that the already high premiums paid by the Court would increase further under a future provider. Overall the

⁶ The conditions of service and compensation of judges of the International Criminal Court were adopted on 10 September 2004 via resolution ICC-ASP/3/Res.3, and amended by resolution ICC-ASP/6/Res.6 and resolution ICC-ASP/18/Res.2.

⁷ ICC-ASP/17/28.

⁸ ICC-ASP/18/33.

⁹ These included the outcomes of the cost of living surveys undertaken by the International Civil Service Commission (ICSC), as well as the consumer price index year-on-year percentage change as recorded by Statistics Netherlands (Het Centraal Bureau voor de Statistiek).

¹⁰ The Panel considered, in this regard, the information contained in the report of the Institute for Employment Studies which was submitted to the Working Group on the Revision of the Judges' Remuneration in 2019.

Panel considered that the pension scheme was no longer fit for purpose as concerns its financial sustainability, and that it provided poor value for money.

13. The Panel considered a range of options to address the issues identified above. These included uprating by an agreed annual percentage, or linking the salary to one of the cost of living indexes in the Netherlands. The Panel also considered other pension options, including offering a direct pension contribution instead of a defined benefit scheme. However, none of these options provided a sustainable solution to the issues.

14. The Panel was of the view that the Assembly should consider moving to a more sustainable structure for the remuneration package as a whole: aligning the judges' remuneration with the Under-Secretary General package in the United Nations Common System (UNCS), including participation in the United Nations Joint Staff Pension Fund (UNJSPF). Based on the information provided by the Registry in response to queries raised by the Panel, such a package would be broadly cost neutral (see annex I for a comparison of estimated costs). At the same time, there would be a number of short, medium and long-term benefits of such a package for the Court, the Assembly, and the judges. The Panel considered that the proposed solution would provide an attractive package to well-motivated judicial candidates, taking into account the financial situation of the Court. Specifically, the proposed solution would:

- a) address the issue of no formal cost of living mechanism by linking the remuneration to the most appropriate index;
- b) offer future judicial candidates a universally recognized terms and conditions package;
- c) provide a sustainable package that would reduce the need for the Assembly to re-consider the issue in the future;
- d) provide a significantly better pension for the judges, which would be more cost effective, easier for the Court to manage, and remove the risk of there being no suitable provider in the future;
- e) provide all judges with a comprehensive level of healthcare; and
- f) at 2020 values, be broadly cost neutral.

15. The Panel decided to undertake consultations in relation to this proposal in order to better inform its eventual recommendation and report. At a meeting with States Parties on 15 September, the Panel presented the proposed solution and responded to queries raised. The Panel also provided an update to the judges at a meeting on 22 October. Further meetings were held with States Parties on 11 and 20 November.

16. The Chair of the Panel also submitted an outline of the proposal to the Chair of the Committee on Budget and Finance, and invited the views of the Committee thereon. In the report of the Committee on the work of its thirty-fifth session,¹¹ the Committee took note of the discussions taking place within the Judicial Remuneration Panel and observed that a more sustainable structure for the remuneration package, taking into account the financial situation of the Court, was being considered. The Committee reiterated its understanding that this was a policy matter ultimately to be decided by the Assembly.

17. The Panel noted that transitional arrangements would be required for the current judges. The Panel was of the view that the Court could be invited to make the necessary arrangements with the affected judges for their transition to the new package. The Panel noted, however, that judges with six or three years left to serve would not receive the full benefit of a move to the UNJSPF pension. The Panel therefore considered that the judges could instead be offered a direct pension contribution, equivalent to the amount that the Court would otherwise pay to the UNJSPF, thereby keeping the overall costs at the same level while limiting the additional administrative burden.

18. The Panel noted that arrangements would also need to be made with the current pension provider regarding termination and/or variation of the contract. Those arrangements would need to be formalized by the Registry once a decision had been taken by the Assembly.

¹¹ ICC-ASP/19/15/AV, paras 50-51.

19. The Panel also reviewed the conditions of service and compensation for non-full-time judges of the Court.¹² The Panel considered that it would be appropriate to make adjustments to the conditions of service and compensation for non-full-time judges to reflect the changes to the conditions of service and compensation for full-time judges.

IV. Recommendations

20. Based on its deliberations and consultations, the Panel decided to make the following recommendations:

- a) That the Assembly amend the conditions of service and compensation of full-time judges of the Court to align them with the Under-Secretary General package in the UNCS, including participation in the UNJSPF, with an effective date of 11 March 2021 (i.e. the date on which the next group of six judges will take office); and
- b) That the Assembly amend the conditions of service and compensation of non-full-time judges of the Court in line with the recommended changes to the conditions for full-time judges.

21. Should the Assembly wish to adopt the above recommendations, annex II contains the text of a draft resolution prepared by the Panel in consultation with the Registry.

¹² The conditions of service and compensation of non-full-time judges of the International Criminal Court were adopted by the Assembly during its first session in September 2002 (ICC-ASP/1/3, Part III, annex VI) and revised and reissued in Part III.A of document ICC-ASP/2/10, adopted by the Assembly during its second session in September 2003. Under those conditions, non-full-time judges of the Court receive an annual allowance (payable monthly) of €20,000, equivalent to one-ninth of the remuneration level for full-time judges. In addition, a judge who declares, on an annual basis, that his or her net annual income (including the allowance) is less than the equivalent of €60,000, or one-third of the remuneration level for full-time judges, will receive an allowance to supplement his or her declared net income up to €60,000. A special allowance is also payable for each day that a judge is engaged on the business of the Court.

Annex I

Comparison of the estimated costs of the current and proposed new scheme for the remuneration of judges (in thousands of euros)

	<u>2020</u>	<u>2021</u> (18 -> 14 full-time judges)	<u>2022</u> (14 full- time judges)	<u>2022</u> (18 full- time judges)
Salaries	3,240	3,038	2,931	3,460
President's Allowance	20	20	20	20
Service Incurred	13	16	17	21
Pension premiums	1,221 ¹	242		
Pension contributions		547	679	873
Dependency Allowance		91	113	158
Medical Insurance		13	16	49
Accruals for annual leave	126	126	98	98
Accruals for relocation	225	225	135	135
Home leave and education grant expenses	242	242	242	242
Cost of appointment		185		
Total	5,087	4,745	4,252	5,057

Key assumptions:

1. All 18 current judges will be under the current scheme until 10 March 2021.
2. As of 11 March 2021, 12 current judges will move to the new scheme.
3. Two of the six incoming judges will assume full-time duty on 11 March 2021, and will be under the new scheme.
4. The demographic data of the incoming judges is unknown. The estimates are based on the assumption that each of the six incoming judges will have one dependent.

To be noted:

- It is unknown how many judges will be called to full-time service in 2022, and this estimate does not indicate the Court's projection on this matter.
- There may be an additional charge by the current pension insurer, subject to negotiation. No projected additional cost is included in this estimate.

¹ This figure is the premiums and administration fees due to AXA Vie France for the coverage of the current judges. This does not include the administration fees relating to the past accruals for the transition period in the amount of €100.8 thousand to Allianz Nederland Levensverzekering B.V.

Annex II

Draft resolution on the remuneration of judges of the International Criminal Court

The Assembly of States Parties,

Recalling its resolution ICC-ASP/18/Res.2, by which it adopted the Terms of Reference for the Review of the Judges' Remuneration,¹

Welcoming the report of the Judicial Remuneration Panel² submitted to the Bureau of the Assembly of States Parties in accordance with those Terms of Reference,

Bearing in mind the recommendations³ of the Judicial Remuneration Panel regarding the remuneration package as a whole,

1. *Decides* to amend the conditions of service and compensation of full-time⁴ judges of the International Criminal Court by replacing them with those of the Under-Secretary General of the United Nations common system, including participation in the United Nations Joint Staff Pension Fund, in addition to the allowances established in appendix I to the present resolution. The alignment of the new conditions of service and compensation with the United Nations common system standards, and any subsequent amendments thereto, is subject to article 49 of the Rome Statute of the International Criminal Court;
2. *Decides also* to amend the conditions of service and compensation of non-full-time judges⁵ of the International Criminal Court as set out in appendix II to the present resolution;
3. *Decides further* that the new conditions of service and compensation for full-time judges and non-full-time judges, as provided for in paragraphs 1 and 2 above, shall enter into force on 11 March 2021;
4. *Decides* to give sitting judges the possibility to opt, for the remainder of their terms of office, to be subject either to (a) the current conditions of service and compensation,⁶ or (b) the new conditions of service and compensation, as provided for in paragraph 1 above;
5. *Decides also* that the judges elected during the nineteenth session of the Assembly, and subsequent sessions, shall be subject during their terms of office exclusively to the new conditions of service and compensation, as provided for in paragraphs 1 and 2 above, as applicable;
6. *Requests* the Court, in consultation with the Judicial Remuneration Panel, to adopt the transitional measures deemed necessary, including to ensure compliance with article 49 of the Rome Statute of the International Criminal Court, in relation to the sitting judges who opt for the new conditions of service and compensation, pursuant to paragraph 4(b) above;
7. *Invites* the Court to make any necessary operational arrangements, in consultation with the sitting judges as per paragraph 4(b) above, for their transition to the new conditions of service and compensation as of 11 March 2021; and
8. *Notes* that the costs of the new conditions of service and compensation in 2021 shall be met from within the approved budget of the Court.

¹ Resolution ICC-ASP/18/Res.2, annex I.

² ICC-ASP/19/18.

³ ICC-ASP/19/18, para. 20.

⁴ As adopted by the Assembly in resolution ICC-ASP/3/Res.3 and amended by resolution ICC-ASP/6/Res.6 and resolution ICC-ASP/18/Res.2.

⁵ As adopted by the Assembly during its first session in September 2002 and revised and reissued in Part III.A of document ICC-ASP/2/10.

⁶ As adopted by the Assembly in resolution ICC-ASP/3/Res.3 and amended by resolution ICC-ASP/6/Res.6 and resolution ICC-ASP/18/Res.2.

Appendix I

Additional allowances

1. The President shall receive a special annual allowance in the amount of €18,000 net.
2. The First or Second Vice-President, or, in exceptional circumstances, any other judge assigned to act as President, shall be entitled to a special allowance of €100 net per day for each working day acting as President, up to a maximum of €10,000 per year.

Appendix II

Conditions of service and compensation of non-full-time judges of the International Criminal Court

These conditions of service and compensation of non-full-time judges of the International Criminal Court replace those which were adopted by the Assembly during its first session in September 2002 and revised and reissued in Part III.A of document ICC-ASP/2/10.

A. Allowances

Annual allowance

1. An annual allowance, payable monthly, equivalent to one-ninth of the net salary (comprising both base salary and post adjustment) of the Under-Secretary General in the United Nations common system.
2. In addition to an annual allowance, a judge who declares, on an annual basis to the President of the Court, that his or her net income, including the annual allowance referred to in paragraph 1 above, is less per annum than the equivalent of one-third of the net salary (comprising both base salary and post adjustment) of the Under-Secretary General in the United Nations common system, will receive an allowance, payable monthly, to supplement his or her declared net income up to one-third of the net salary of the Under-Secretary General in the United Nations common system.

Special allowance when engaged on the business of the Court

3. A special allowance of 270 euros for each day that a judge is engaged on the business of the Court, as certified by the Presidency.

Subsistence allowance

4. A subsistence allowance, at the United Nations rate in euros, applicable to the Under-Secretary General in the United Nations common system, for each day that a judge attends meetings of the Court.

B. Benefits

Pension

5. The judges on non-full-time status are not entitled to a pension benefit. Once they are called to serve as a full-time judge, the pension benefit regime of a full-time judge will be applicable.

Health insurance

6. The judges on non-full-time status will be responsible for their own health insurance. Once they are called to serve as a full-time judge, the health insurance regime of a full-time judge will be applicable.

Travel costs

7. Travel to official meetings of the Court. All travel shall be by business-class travel between the declared home and the seat of the Court by the most direct route.