

Resolution ICC-ASP/3/Res.3

Adopted at the 6th plenary meeting, on 10 September 2004, by consensus

ICC-ASP/3/Res.3

Strengthening the International Criminal Court and the Assembly of States Parties

The Assembly of States Parties,

Mindful that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world and that the need to prevent the most serious crimes of concern to the international community, and to put an end to the impunity of the perpetrators of such crimes, is now widely acknowledged,

Convinced that the International Criminal Court is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security, in accordance with the purposes and principles of the Charter of the United Nations,

Convinced also that justice and the fight against impunity are, and must remain, indivisible, and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

Welcoming the progress that has been achieved thus far, owing, not least, to the dedication of the Court staff in making the Court fully operational and taking note of important milestones such as the adoption of the Regulations of the Court, the entry into force of the Agreement on the Privileges and Immunities of the Court, the opening of the first investigations by the Prosecutor, the constitution of the Pre-Trial Chambers of the Court and the adoption of the Relationship Agreement between the Court and the United Nations by the Assembly of States Parties,

Recognizing that the Court continues to rely on sustained and undiminished support by States, international organizations and civil society,

Taking note of the statements presented to the Assembly of States Parties by the senior representatives of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims and the Chairperson of the Committee on Budget and Finance,

Taking note of the External Auditor's report on the financial statements of the Court,

Desirous of assisting the Court and its organs, notably through management oversight and other appropriate action, in performing the duties assigned to them,

A. Rome Statute of the International Criminal Court and other agreements

1. *Welcomes* the fact that the number of States Parties to the Rome Statute of the International Criminal Court has continued to rise, the number having now reached ninety-four;
2. *Invites* States that are not yet parties to the Rome Statute to become so as soon as possible;

3. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of penal law and judicial cooperation with the Court, and in this regard encourages States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;
4. *Decides*, without prejudice to the functions of the Secretary-General of the United Nations in his capacity as depositary of the Rome Statute, to keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;
5. *Stresses* that the integrity of the Rome Statute must be preserved and that treaty obligations emanating therefrom must be fully adhered to, and encourages States Parties to the Rome Statute to exchange information and to support and assist each other to that end, particularly in situations where its integrity is being challenged;
6. *Welcomes* the entry into force of the Agreement on the Privileges and Immunities of the International Criminal Court on 22 July 2004 and calls upon those States that have not yet done so to become parties to the Agreement as a matter of priority and to incorporate it in their national legislation;
7. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and calls upon States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;
8. *Requests* the Registrar, in consultation with the Prosecutor, to take steps to conclude bilateral tax reimbursement agreements with States, where this is appropriate and in the operational interests of the Court¹;

B. Institution-building

1. General

9. *Takes note* of the report on the activities of the Court to the Assembly of States Parties, 2004²;
10. *Welcomes* the extensive consultation process undertaken by the Registrar with regard to questions pertaining to the defence and the legal participation of victims, and takes note of the report of the Registrar on this issue³;
11. *Takes note* of the proposal for a draft Code of Professional Conduct for counsel before the International Criminal Court⁴, decides that the provisions of the draft Code shall be applied provisionally until the end of the fourth session of the Assembly of States Parties, requests, in view of the urgency of the matter, the Bureau of the Assembly of States Parties to prepare an amended draft Code for adoption by the Assembly of States Parties at its fourth session, and invites States Parties to submit their comments on the current draft Code to the Bureau by 31 December 2004;

¹ See staff regulation 3.5 (ICC-ASP/2/10, p. 211).

² See document ICC-ASP/3/10.

³ See document ICC-ASP/3/7.

⁴ See document ICC-ASP/3/11/Rev.1.

12. *Emphasizes* the importance of endowing the Court with the necessary financial resources, urges all States Parties to the Rome Statute to transfer as soon as possible and in full their assessed contributions in accordance with relevant decisions taken by the Assembly of States Parties, and recalls that pursuant to article 112, paragraph 8, of the Statute, a State Party which is in arrears in the payment of its financial contributions towards the costs of the Court may lose its vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years;

13. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court and expresses its appreciation to those that have done so this year;

14. *Welcomes* the establishment of the Secretariat of the Assembly of States Parties and the commencement of its functioning;

15. *Reiterates* that the relations between the Secretariat and other sections of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3;

16. *Welcomes* the steps undertaken by the President, the Prosecutor and the Registrar to coordinate activities at all appropriate levels on management and budgetary issues, encourages those involved to continue and improve this practice and recommends that the Director of the Secretariat of the Assembly of States Parties be invited to the meetings of the Coordination Council, when matters of mutual concern are considered;

17. *Recommends* that the International Criminal Court continue to seek equitable geographical representation, gender balance and the highest standards of efficiency, competency and integrity in the recruitment of staff members;

2. Protection of the official name and abbreviation of the Court

18. *Invites* the Court and the States Parties to take such measures as may be necessary to prevent or to enable the Court to prevent the use, by private persons or by societies other than those upon which the Assembly or the Court confers the right thereto, of the name “International Criminal Court” and of the abbreviation of that name through the use of its initial letters (“ICC-CPI”) for commercial purposes by means of trade marks, labels, domain names or any other such means;

19. *Recommends* that such measures be similarly undertaken in respect of any emblem, logo, seal, flag or insignia adopted by the Assembly or the Court;

3. Administration

20. *Takes note* of the important work done by the Committee on Budget and Finance and reaffirms the independence of the members of the Committee;

21. *Takes note* of the report of the Registrar on the establishment of a staff representative body, disciplinary measures, appeals, and amendments and implementation of the staff rules⁵;

4. Conditions of service and compensation

22. *Adopts* the draft conditions of service and compensation of judges contained in the annex to the present resolution, including the draft travel and subsistence regulations for judges (appendix 1) and the draft pension scheme regulations for judges (appendix 2);

⁵ See document ICC-ASP/3/13.

23. *Decides* that the first judges of the Court elected for a three- or six-year term shall be entitled to the same disability pension as the judges elected for a full nine-year term, in accordance with article II of appendix 2 to the conditions of service and compensation of judges of the International Criminal Court;

24. *Further decides* that the first judges of the Court elected for a three-year term who have not served on a full-time basis during their entire term and who are not re-elected shall be entitled to receive a retirement pension at the end of their term of office, prorated to the length of time that they have served on a full-time basis, in accordance with article I of appendix 2 to the conditions of service and compensation of judges of the International Criminal Court;

25. *Requests* the Committee on Budget and Finance to consider the long-term budgetary consequences of the pension scheme regulations for judges as adopted by the Assembly at its first session⁶, as revised at its second session⁷, and as clarified and amended in the annex (appendix 2) to the present resolution, and to report thereon before the fourth session of the Assembly of States Parties with a view to ensuring that appropriate budgetary provisions may be made;

26. *Takes note* of the proposal regarding conditions of service and compensation of the Prosecutor and Deputy Prosecutors⁸ and, while reaffirming the provisions of ICC-ASP/1/Decision 3, requests the Committee on Budget and Finance to consider that proposal as well as any other appropriate alternative options and to report thereon before the fourth session of the Assembly of States Parties;

27. *Reaffirms* that the conditions of service and compensation of the Registrar shall be the same as those of an Assistant Secretary-General in the United Nations common system;

5. Staff pension committee

28. *Takes note* of the background paper prepared by the Registrar on the establishment of an ICC staff pension committee⁹ and decides to establish a staff pension committee of the International Criminal Court;

29. *Decides* also that the Staff Pension Committee of the International Criminal Court shall be composed of two members and two alternate members to be appointed by the Bureau of the Assembly of States Parties for a term of two years; two members and two alternate members to be appointed by the Registrar for a term of two years; and two members and two alternate members who shall themselves be staff members of the International Criminal Court and participants in the United Nations Joint Staff Pension Fund to be elected by secret ballot by the staff who are participants in the United Nations Joint Staff Pension Fund;

6. Judges

30. *Notes* that the judges adopted the Regulations of the Court on 26 May 2004¹⁰ and that the Regulations have been circulated to States Parties for comment in accordance with article 52, paragraph 3, of the Rome Statute;

7. Office of the Prosecutor

31. *Notes* that the Office of the Prosecutor has begun investigations in two situations and calls upon States to cooperate with and render all necessary assistance to the Office of the Prosecutor;

⁶ See document ICC-ASP/1/3, annex VI.

⁷ See document ICC-ASP/2/10.

⁸ See document ICC-ASP/3/12, annex II.

⁹ See document ICC-ASP/3/3.

¹⁰ See document ICC-BD/01-01-04.

8. Host country

32. *Takes note* with appreciation of the welcome given by the Minister for Foreign Affairs of the Netherlands on 6 September 2004 and of the statement made by another representative of the host country on that day on arrangements for the interim and permanent premises of the Court, and appreciates the progress in the negotiations on the headquarters agreement between the Court and the host country;

33. *Takes note* of the report regarding discussions on the permanent premises of the Court¹¹;

C. Assembly of States Parties

34. *Takes note* of the report of the Special Working Group on the Crime of Aggression, expresses its appreciation to the Liechtenstein Institute on Self-Determination at Princeton University for hosting an informal intersessional meeting of the Special Working Group, and reaffirms that the Special Working Group shall continue to hold two to three meetings during regular sessions of the Assembly of States Parties, as necessary, as well as intersessional meetings, as appropriate;

35. *Welcomes* the establishment of the Trust Fund for the participation of the least developed countries in the activities of the Assembly of States Parties, calls upon States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Fund, and expresses its appreciation to those that have done so this year;

36. *Decides* that the Committee on Budget and Finance will hold its sessions in The Hague, from 4 to 6 April 2005 and for a further five-day session to be determined by the Committee;

37. *Decides also*, whilst recalling article 112, paragraph 6, of the Rome Statute, that it will hold its next regular session for six days, of which at least one full day is reserved for the Special Working Group on the Crime of Aggression, in November 2005 in The Hague, with the exception that the election of judges and the elections to the Committee on Budget and Finance will be held in New York during a separate two-day meeting, with both exact dates to be determined by the Bureau of the Assembly.

Annex

Conditions of service and compensation of judges of the International Criminal Court

The present draft conditions of service and compensation of judges embody the fundamental conditions of service of judges of the International Criminal Court (hereinafter: the “Court”), in accordance with articles 35 and 49 of the Rome Statute, annex VI of the budget for the first financial period of the Court (ICC-ASP/1/3, Part III, annex VI) adopted by the Assembly of States Parties (hereinafter: the “Assembly”) during its first session in September 2002 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.

I. Use of terms

1. “A judge” shall mean a judge of the Court within the meaning of article 35 of the Rome Statute who serves on a full-time basis.

¹¹ See document ICC-ASP/3/17.

2. “Annual salary” shall mean, for the purpose of calculating the pension entitlement, the annual remuneration, exclusive of any allowances, fixed by the Assembly and received by a judge at the time he or she ceases to hold office.

3. “Spouse” shall be a partner by marriage recognized as valid under the law of the country of nationality of a judge or by legally recognized domestic partnership contracted by a judge under the law of the country of his or her nationality.

II. Residence of judges

1. Judges shall take up residence in the Netherlands within sufficient proximity to the seat of the Court to be available to attend the Court at short notice in order to discharge their duties under the Rome Statute and the Rules of Procedure and Evidence.

2. Residence status is defined as the establishment, through acquisition or long-term lease, of a permanent residence, coupled with the declaration by the judge concerned of resident status.

III. Emoluments

1. The annual remuneration of a judge shall be €180,000 net.

2. The President shall receive a special allowance paid at the rate of ten (10) per cent of the President’s annual remuneration. Based on the remuneration above of €180,000 net, the special annual allowance shall be €18,000 net.

3. 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.

IV. Travel costs and subsistence benefits

A judge shall be entitled to payment of travel expenses and subsistence benefits as set forth in the travel and subsistence regulations for judges of the International Criminal Court, attached as appendix 1 hereto.

V. Pension scheme

1. A judge shall, upon retirement, be entitled to receive a pension as set forth in the pension scheme regulations for judges of the International Criminal Court, attached as appendix 2 hereto.

2. Pensions in payment shall be automatically revised by the same percentage and at the same date as remuneration adjustments.

VI. Surviving spouse’s pension

Upon the death of a judge or a former judge, the surviving spouse shall be entitled to a surviving spouse’s pension as set forth in the pension scheme regulations for judges of the International Criminal Court, attached as appendix 2 hereto.

VII. Child benefit

Upon the death of a judge or a former judge, his or her natural or legally adopted child shall be entitled to a child benefit as set forth in the pension scheme regulations for judges of the International Criminal Court, attached as appendix 2 hereto.

VIII. Survivor's benefit

1. In the event of the death of a judge, eligible survivor(s), as defined in paragraph 2 below, shall be compensated in the form of a lump-sum payment equivalent to one month of base remuneration for each year of service, subject to a minimum payment equivalent to one month of base remuneration and a maximum of nine months of base remuneration.

2. For the purposes of paragraph 1 above, eligible survivor shall include the surviving spouse of the judge, provided that the spouse was married to the judge at the date of the judge's death, and natural or legally adopted children of a deceased judge who are unmarried and who have not reached the age of twenty-one (21) years as of the date of the judge's death.

IX. Education allowance

Judges shall be entitled to an education grant for the benefit of their children equivalent to that applicable to United Nations officials.

X. Health insurance

Judges shall be responsible for their own health insurance arrangements.

XI. Leave

1. Annual leave shall accrue to judges at the rate of eight (8) weeks a year. Leave may be taken in accordance with a procedure to be agreed upon by the judges and in accordance with a yearly decision taken by the plenary meeting of the judges concerning the days the Court will be in recess.

2. Annual leave may be accumulated, provided that not more than eighteen (18) weeks of such leave shall be carried forward to the following year.

XII. Entry into force

1. The conditions of service and compensation of judges of the International Criminal Court embodying the fundamental conditions of service of judges as set forth in this document, including its appendices, shall enter into force upon the adoption of this document by the Assembly.

2. Upon adoption by the Assembly, this document shall supersede the conditions of service and compensation of full-time judges set forth in Part III.A of document ICC-ASP/2/10.

XIII. Revisions

The conditions of service and compensation of judges of the International Criminal Court shall be reviewed by the Assembly as soon as practicable following the review of the conditions of service of the judges of the International Court of Justice by the General Assembly of the United Nations.

Appendix 1

Travel and subsistence regulations for judges of the International Criminal Court

Article I

Travel expenses

1. The Court shall pay, subject to the conditions of these regulations, the travel expenses of judges necessarily incurred on duly authorized journeys. The following shall be deemed to be duly authorized journeys by judges:

- (a) A trip from his or her declared home, at the time of appointment, to the seat of the Court, in connection with the transfer of his or her residence;
- (b) A round trip every second calendar year after the year of appointment from the seat of the Court to his or her declared home at the time of appointment;
- (c) Upon termination of his or her appointment, a trip from the seat of the Court to his or her declared home at the time of appointment, or to any other place provided that the cost of the journey is not greater than the cost of the trip to his or her declared home at the time of appointment;

Where the spouse and/or dependent children of a judge reside with him or her at the seat of the Court, the Court shall reimburse the travel expenses for trips undertaken in conjunction with (a), (b) and (c) of this paragraph;

- (d) Other journeys on official business undertaken under the authority of the President of the Court.

2. In all cases, payment by the Court of travel expenses shall comprise the cost of trips actually undertaken, subject to the following maximum entitlements:

- (a) The cost of business-class travel, including the expenses normally associated with travel. The cost of transportation of baggage in excess of the weight or size carried free by transportation companies will not be allowable as an expense unless the excess is necessarily carried for official business reasons;
- (b) Travel shall be by the most cost-effective and time-efficient means and route. Other arrangements may be authorized by the President of the Court for special reasons.

Article II

Subsistence allowances

1. A daily subsistence allowance shall be paid to a judge while on official travel under article I, paragraph 1, subparagraphs (a), (c) and (d) of this appendix. The allowance will be regarded as covering all charges for meals, lodging, local transportation costs and gratuities, and other personal expenses.

2. The daily subsistence allowance will be payable under the conditions and at rates equivalent to the standard travel subsistence allowance rates for United Nations officials, plus forty (40) per cent resulting in one hundred and forty (140) per cent, as set forth in the Administrative Instruction regarding official travel for the Court. This rate will be reduced in the event that board and/or lodging are provided for. The allowance shall normally be payable in euros.

3. After an extended period of time in any one location, the daily subsistence allowance will be reduced in accordance with the United Nations common system.

4. Where a judge, undertaking an official journey under article I, paragraph 1, subparagraph (a), (b) or (c) of this appendix, is accompanied by a spouse and/or dependent children, a subsistence allowance of one half of the appropriate rate payable to judges concerned in respect of that journey will be payable for each dependant; where these dependants are travelling unaccompanied on an authorized journey, the full rate of subsistence allowance will be payable in respect of one adult and one half of that rate in respect of each other dependant.

Article III

Removal and assignment

Judges residing in the Netherlands in accordance with article II of the conditions of service and compensation of judges of the International Criminal Court shall be entitled to the following:

(a) Removal costs of household goods and personal effects to the seat of the Court from his or her home equivalent to those applicable to United Nations officials at the Under-Secretary-General (USG) level;

(b) An assignment grant to cover relocation expenses, in accordance with terms and conditions equivalent to those applicable to United Nations officials at the USG level;

(c) Upon termination of appointment, removal costs of household goods and personal effects from the seat of the Court to his or her declared home at the time of appointment (or any other country where he or she may choose to have his or her residence if less expenditure is entailed).

Article IV

Relocation upon completion of service

A judge who has taken up and maintained residence at the seat of the Court for at least five (5) continuous years during service with the Court shall receive a lump sum equivalent to eighteen (18) weeks of annual net base remuneration upon completion of appointment and relocation outside the Netherlands. A judge who has taken up and maintained residence at the seat of the Court for nine (9) continuous years or more during service with the Court shall receive the equivalent of twenty-four (24) weeks of annual net base remuneration upon completion of appointment and relocation outside the Netherlands.

Article V

Submission and payment of accounts

A detailed expense account must be rendered in support of each claim for reimbursement of travel expenses or subsistence allowance as soon as possible after completion of the travel or removal. The claims should show every item of expense, except where such expenses are covered by a subsistence allowance, and every advance drawn from any source of the Court, and must, as far as possible, be supported by receipts showing the service to which the payment is related. All expenses must be shown in the actual currency in which they were made and must be certified as having been necessarily and solely incurred in the discharge of the official business of the Court. Reimbursement shall be made following certification by the President.

Appendix 2

Pension scheme regulations for judges of the International Criminal Court

Article I

Retirement pension

1. A judge who has ceased to hold office and who has reached the age of sixty (60) shall be entitled during the remainder of his or her life, subject to paragraph 6 below, to a retirement pension payable monthly provided that he or she:

(a) Has completed at least three (3) years of service;

(b) Has not been required to relinquish his or her appointment for reasons other than the state of his or her health.

2. A judge who has completed a full nine-year term shall be entitled to a retirement pension equal to half the annual salary.

3. A proportional reduction shall be applied if a judge has not completed a full nine-year term, provided that the judge has served for at least three (3) years.

4. No additional pension shall be paid if the judge has completed more than a full nine-year term.

5. A judge who ceased to hold office before attaining the age of sixty (60) and who would be entitled to a retirement pension when he or she reached that age may elect to receive a pension from any date after the date on which he or she ceases to hold office. Should he or she so elect, the amount of such pension shall be that amount which has the same actuarial value as the retirement pension that would have been paid to him or her at the age of sixty (60).

6. No retirement pension shall be payable to a former judge who has been re-elected to office until he or she again ceases to hold office. At that time, the amount of his or her pension shall be calculated on the basis of his or her total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him or her before he or she reached the age of sixty (60).

Article II

Disability pension

1. A judge found by the Court to be unable to perform his or her duties because of permanent ill-health or disability shall be entitled upon leaving office to a disability pension payable monthly.

2. The Court's decision whether a judge is unable to perform his or her duties because of permanent ill-health or disability shall be based on two medical opinions, one issued by a medical doctor designated by the Court and the other issued by a medical doctor of the judge's choice. In the event that the two opinions differ, a third medical opinion shall be obtained through a medical doctor mutually agreed upon by the Court and the judge.

3. The amount of the disability pension shall be equal to the amount of the retirement pension that would have been payable to the judge concerned had he or she, at the time of leaving office, completed the term for which he or she had been elected.

Article III

Surviving spouse's pension

1. Upon the death of a married judge who was entitled to a retirement pension, the surviving spouse, provided he or she was the spouse at the date that the former judge's service ended, shall be entitled to a surviving spouse's pension calculated as follows:

(a) If the judge had not begun, at the date of his or her death, to receive his or her retirement pension, the surviving spouse's pension shall amount to one half of the pension that would have been payable to the judge under article I, paragraph 5, above, had the judge commenced receiving such pension on the date of his or her death, provided that the surviving spouse's pension shall not be less than one twelfth of the annual salary;

(b) If the judge had begun to receive his or her retirement pension under article I, paragraph 5, above, before he or she reached the age of sixty (60), the surviving spouse's pension shall amount to one half of the amount of such pension, but shall not be less than one twelfth of the annual salary;

(c) If the judge had reached the age of sixty (60) when he or she began to receive his or her retirement pension, the surviving spouse's pension shall amount to one half of the judge's pension, but shall not be less than one sixth of the annual salary.

2. Upon the death of a married judge, his or her surviving spouse shall be entitled to a surviving spouse's pension amounting to one half of the pension which the judge would have received had the judge become entitled to a disability pension at the time of his or her death, provided that the surviving spouse's pension shall not be less than one sixth of the annual salary.

3. Upon the death of a married former judge who was in receipt of a disability pension, the surviving spouse, provided that he or she was the spouse at the date that the former judge's service ended, shall be entitled to a surviving spouse's pension amounting to one half of the pension which the former judge was receiving, provided that the surviving spouse's pension shall not be less than one sixth of the annual salary.

4. Upon remarriage, the surviving spouse's pension shall cease and the surviving spouse shall be granted a lump sum equal to twice the amount of his or her current annual benefit as final settlement.

Article IV

Child benefit

1. Upon the death of a judge or a former judge, his or her natural or legally adopted child shall be entitled, while unmarried and under the age of twenty-one (21), to a benefit calculated as follows:

(a) Where there is a surviving spouse entitled to a pension under article III above, the annual amount of the child benefit shall be:

(i) The equivalent of ten (10) per cent of the retirement pension that the judge was receiving; or,

(ii) If the judge had not begun, at the date of his or her death, to receive his or her retirement pension, ten (10) per cent of the pension that would have been payable to him or her under article I, paragraph 5, had he or she commenced to receive such pension at the date of his or her death; or,

(iii) In the case of the death of a judge in office, ten (10) per cent of the pension that the judge would have received had he or she qualified for a disability pension at the date of his or her death;

Provided, in all cases, that the amount of the child's benefit shall not exceed one thirty-sixth of the annual base salary;

(b) Where there is no surviving spouse entitled to a pension under article III, or upon the death of the surviving spouse, the total amount of the child benefit payable under subparagraph (a) above shall be increased by the following amount:

(i) If there is only one eligible child, by one half of the amount of the pension that was being paid or would have been paid to the surviving spouse;

(ii) If there are two or more eligible children, by the amount of the pension that was being paid or would have been paid to the surviving spouse.

c) The total child benefit payable under subparagraph (b) above shall be divided equally among all of the eligible children to determine the amount of any one child's benefit; as and when a child ceases to be eligible, the total benefit payable to the remainder shall be recalculated in accordance with subparagraph (b).

2. The total amount of child benefit, when added to the amount of any surviving spouse's benefit in payment, shall not exceed the pension that the judge or former judge received or would have received had he or she survived.

3. The age-limit noted in paragraph 1 above shall be waived if the child is incapacitated by illness or injury, and the benefit shall continue to be paid for as long as the child remains incapacitated.

Article V

Miscellaneous provisions

1. Pensions provided for by the present regulations shall be calculated in terms of the currency in which the Assembly has fixed the remuneration of the judge concerned, namely euros.

2. The pension scheme provided for by these regulations shall be non-contributory and shall be a direct charge to the budget of the Court.