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**Report on the Conditions of Service and Compensation of the Prosecutor
and the Deputy Prosecutors pursuant to paragraph 26 of resolution
ICC-ASP/3/Res. 3**

1. This Report on the conditions of service and compensation of the Prosecutor and Deputy Prosecutors is provided pursuant to paragraph 26 of resolution ICC-ASP/3/Res. 3 adopted by the Assembly on its third session.

Introduction

2. On its third session the Assembly decided as follows:

“The Assembly of States Parties,

...

Takes note of the proposal regarding the conditions of service and compensation of the Prosecutor and the Deputy Prosecutors 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;”¹

3. The decision referred to reads:

“The Assembly of States Parties,

...

1. *Recommends* that the International Criminal Court participate in the United Nations Joint Staff Pension Fund in accordance with the Regulations of the Fund and accept, as appropriate, the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of such regulations;

2. *Requests* the Registrar to take the necessary steps in order for the International Criminal Court to apply for membership in the United Nations Joint Staff Pension Fund and to

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third session, The Hague, 6-10 September 2004 (International Criminal Court publication), Part III, ICC-ASP/3/Res.3, operative paragraph 26.*

conclude with the United Nations Joint Staff Pension Board an agreement as referred to in article 3, paragraph (c), of the Regulations of the Fund.”²

Decision according to article 49 of the Rome Statute

4. According to article 49 of the Rome Statute, the salaries, allowances and expenses for the Prosecutor and the Deputy Prosecutors – as for the Judges, the Registrar and the Deputy Registrar – shall be decided upon by the Assembly of States Parties. So far, no decision under article 49 has been taken by the Assembly regarding the Prosecutor and the Deputy Prosecutors.

5. Neither the resolution of the Assembly nor the decision by the Assembly referred to above includes a decision according to article 49 of the Rome Statute, or a direct decision or any *obiter dictum* on this matter. Moreover the Assembly was silent thus far as to whether the Prosecutor and the Deputy Prosecutors should participate in the United Nations Joint Staff Pension Fund (UNJSPF).

6. The draft budget for the first financial period of the Court states with regard to the Prosecutor and his or her remuneration:

“Immediate Office of the Prosecutor. This Office would include the Prosecutor,¹⁴ at the Under-Secretary-General level, one Deputy Prosecutor, at the Assistant-Secretary-General level, ...”³

7. Footnote 14 reads:

“This level of the Prosecutor is shown for illustration purposes and without prejudice to the future discussion thereon.”⁴

8. The budget was adopted by consensus. The footnote already indicates that the adoption of this budget does not – and should not – replace a proper decision regarding the terms and conditions of service for the Prosecutor and the Deputy Prosecutors by the Assembly of States Parties in accordance with article 49 of the Rome Statute.

The purpose and construction of the United Nations Joint Staff Pension Fund (UNJSPF)

9. The UNJSPF is based on a long-term contribution system. According to article 28 of the Regulations of the UNJSPF, a period of 35 years of contributory service leads to a pension of 66.25 per cent of the final average remuneration, whereas short periods of service lead to no benefits (service below five years) or only to a small pension.

Adequacy of accrued pension under the UNJSPF terms

10. The following table shows the pension that would be accrued if the Prosecutor and the Deputy Prosecutors were participating in the Pension Fund (all figures are in US dollars and based on the current values for final average remuneration).

Level	Final average remuneration (FAR)	Years of service	Accumulation factor	Projected annual pension (at age 62)
USG	\$246 944.00	9	14.50%	\$35 806.88
ASG	\$228 244.00	9	14.50%	\$33 095.38
ASG	\$228 244.00	5	7.50%	\$17 118.30

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2), part IV, ICC-ASP/1/Decision 3.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2), part III, paragraph 55.

⁴ *Ibid.*

11. For the Prosecutor, this means that the pension will be 35,806.88 US dollars, equivalent to €29,683 (based on the United Nations exchange rate of July 2005). This projected annual pension amounts to only 19.66 per cent of the Prosecutor's current salary (USG level at the dependency rate, in euros). The Committee on Budget and Finance may consider, and the Assembly may decide whether this is adequate in light of the functions, powers and status of the Prosecutor of the International Criminal Court and his or her Deputies, taking into account the fact that the Statute calls for the complete independence of the Prosecutor and the Deputy Prosecutors. It is advanced that such independence necessarily also requires economic independence, as reflected in article 42 (5) of the Rome Statute.

12. The figures mentioned above would change significantly if a Prosecutor were to be elected who, prior to his or her election, had served in an organization which participates in the UNJSPF.⁵ In this case, the previous years of service would be recognized and would lead to an increased pension. If the person had participated in the UNJSPF for, say, 20 years, the pension would be as follows:

Level	Final average remuneration (FAR)	Years of service	Accumulation factor	Projected annual pension (at age 62)
USG	\$246 944.00	29 (20 + 9)	54.25%	\$133 967.12

13. This amount is equivalent to €111,058.64, which is 73.57 per cent of the current USG level salary (dependency rate). For this amount, the level of service prior to the election would be irrelevant.

14. This difference (19.66 per cent versus 73.57 per cent) leads potentially to unequal treatment and should be avoided by separating the remuneration and the pension scheme of the Prosecutor and the Deputy Prosecutors from any other remuneration system, in order to avoid any influences or monetary advantages. Like the Judges of the Court, the Prosecutor and his or her Deputies are elected officials; similarly they are elected on the basis of their qualifications and professional experience and the highest moral standards (articles 36 (3) and 42 (3) of the Rome Statute).

15. To ensure neutrality and independence, any – direct or indirect – influence on the compensation of the Prosecutor and his or her Deputies must be avoided. In our opinion, this can best be achieved by separating their remuneration and social benefits from existing systems like the UNJSPF.

Inconsistency in benefits

16. The rather arbitrary looking results of the different calculations above are reflected further in the benefits that a surviving spouse would receive if the Prosecutor or one of his or her Deputies were to die in service. In such a case, according to articles 33 and 34 of the Regulations of the UNJSPF, not only the years of participation, but also the remaining years of potential contributory service determine the accumulation factor. This is a necessary consequence of the construction of the UNJSPF as a social security system that covers the participant through his or her entire professional service: either the years are accrued prior to death or disability or they could have been accrued potentially after the incident. In both cases, the calculation of the surviving spouse's benefit leads (and should lead) to the same result.

17. In other words, the younger a participant dies or becomes unable to continue his or her service, the higher the benefit payable (to the surviving spouse, in the case of death). This gives rise to a direct correlation between the age of the official at the date of his or her election and the amount of the benefit. Although neither the Prosecutor nor his or her Deputies are eligible for re-election, the

⁵ A complete list of all UNJSPF member organizations can be found at <http://www.unjspf.org/eng/members.html>

principle of the potential contributory service up to the age of 62 remains. The following table shows the actual results for the Prosecutor and the two Deputy Prosecutors, based on their ages and the terms of service for which they are elected:

Level	Final average remuneration (FAR)	Years of service	Accumulation factor	Projected annual pension (at age 62)	Potential contributory service	Potential accumulation factor	Potential annual pension (at age 62)	Surviving Spouse's benefit
USG	\$246 944.00	9	14.50%	\$35 806.88	11	18.25%	\$45 067.28	\$22 533.64
ASG	\$228 244.00	9	14.50%	\$33 095.38	19	34.25%	\$78 173.57	\$39 086.79
ASG	\$228 244.00	5	7.50%	\$17 118.30	21	38.25%	\$87 303.33	\$43 651.67

18. As the figures above show, the surviving spouse of a Deputy Prosecutor elected at the age of 41 would be entitled to almost double the amount to which the surviving spouse of a Prosecutor elected at the age of 51 would be entitled, although the remuneration of the Prosecutor is higher. It is difficult to explain or justify the fact that the social security of the Prosecutor or one of the Deputies changes for each newly elected incumbent.

19. Again, the consequence should be a system of social security that is not connected to a pension scheme created to cover a lifetime's employment. To avoid any arbitrary discrepancies, the terms and conditions for all officials elected by the Assembly of States Parties should be aligned, since the framework for all of them is equal (maximum term of service of nine years, no eligibility for re-election). The proposal submitted to the Assembly of States Parties⁶ takes that into consideration.

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⁶ ICC/ASP/3/12 Annex II