

[Distributed to the Council, the
Members of the League and the
Delegates at the Assembly.]

Official No.: **A. 45.** 1930. V.

Geneva, September 12th, 1930.

LEAGUE OF NATIONS

**ORGANISATION OF THE PERMANENT COURT
OF INTERNATIONAL JUSTICE.**

REPORT ADOPTED BY THE COUNCIL ON SEPTEMBER 12th, 1930.

NOTE BY THE SECRETARY-GENERAL.

Article 4 of the Protocol of September 14th, 1929, on the revision of the Statute of the Permanent Court of International Justice, provides as follows :

“ The present Protocol shall enter into force on September 1st, 1930, provided that the Council of the League of Nations has satisfied itself that those Members of the League of Nations and States mentioned in the Annex to the Covenant which have ratified the Protocol of December 16th, 1920, and whose ratification of the present Protocol has not been received by that date, have no objection to the coming into force of the amendments to the Statute of the Court which are annexed to the present Protocol. ”

On September 9th, 1930, the Council of the League, having noted that the conditions stipulated by the foregoing provision for the coming into force of the said Protocol had not been fulfilled, instructed a Committee of three members to make proposals concerning the measures to be adopted in view of this situation.

This Committee, consisting of M. BASDEVANT, M. GAUS and M. PILOTTI, submitted a report, which was adopted by the Council on September 12th, 1930 ; the Council also approved the report submitted to it on this occasion by the representative of Italy.

The Secretary-General has the honour to communicate herewith to the Assembly the above-mentioned report by His Excellency M. SCIALOJA, as also that by the Committee to which it refers.

REPORT BY THE REPRESENTATIVE OF ITALY.

In a resolution dated September 9th last, the Council of the League of Nations, referring to the Protocol of September 14th, 1929, on the amendments to be made in the Statute of the Permanent Court of International Justice, instructed a Committee consisting of M. BASDEVANT, M. GAUS and M. PILOTTI to take the necessary steps to enable it to submit definite proposals to the Assembly in regard to the situation.

In a report dated September 10th, the said Committee, in performance of its task, indicated the measures which it thought could be taken in this connection.

This report, which has already been submitted to the Members of the Council, outlines the motives which led the Committee to put forward its suggestions and notably the three draft resolutions which it submits to the Council.

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V. LEGAL

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On the basis of the same considerations, I have the honour to propose to my colleagues the following decision :

“ The Council adopts the report submitted to it on September 10th, 1930, by M. BASDEVANT, M. GAUS and M. PILOTTI. It decides to forward this report to the Assembly and further adopts the following resolutions :

“ *Resolution No. 1.*

“ The Council of the League of Nations has the honour to propose to the Assembly, in accordance with Article 3 of the Statute of the Permanent Court of International Justice, the adoption of the following resolution :

“ ‘ The Assembly,

“ ‘ Having regard to the proposal formulated by the Council on September 12th, 1930, in conformity with Article 3 of the Statute of the Permanent Court of International Justice,

“ ‘ Decides as follows :

“ ‘ The number of Judges for which provision is made in Article 3 of the Statute of the Permanent Court of International Justice is increased from eleven to fifteen. The number of Deputy Judges remains as fixed. ’

“ *Resolution No. 2.*

“ The Council of the League of Nations has the honour to propose to the Assembly, in accordance with Article 32 of the Statute of the Permanent Court of International Justice, the adoption of the following resolution :

“ ‘ The Assembly,

“ ‘ Having regard to the proposal formulated by the Council on September 12th, 1930, in conformity with Article 32 of the Statute of the Permanent Court of International Justice,

“ ‘ Decides as follows :

“ ‘ The salaries and allowances of the members of the Court are fixed as follows as from January 1st, 1931 :

“ ‘ *President :*

	<i>Dutch Florins</i>
‘ Annual salary	35,000
‘ Special allowance.....	25,000

“ ‘ *Vice-President :*

‘ Annual salary.....	35,000
‘ Allowance of 50 florins for each day of duty as Judge up to a maximum of	10,000
‘ Allowance of 50 florins for each day on which he acts as President up to a maximum of.....	10,000

“ ‘ *Judges :*

‘ Annual salary.....	35,000
‘ Allowance of 50 florins for each day of duty up to a maximum of.....	10,000

“ ‘ *Deputy and National Judges :*

‘ Allowance of 150 florins for each day of duty up to a maximum of.....	30,000
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“ ‘ The allowances for each day of duty run from the day of the recipient’s departure to the day of his return.

“ ‘ Allowances and salaries shall be free of all taxes. ’

“ *Resolution No. 3.*

“ The Council of the League of Nations has the honour to propose to the Assembly, in accordance with Article 32 of the Statute of the Permanent Court of International Justice, the adoption of the following resolution :

“ ‘ The Assembly,

“ ‘ Having regard to the proposal formulated by the Council on September 12th, 1930, in accordance with Article 32 of the Statute of the Permanent Court of International Justice,

“ ‘ Decides as follows :

“ ‘ Pensions will be allowed subject to the conditions hereinafter stated to the personnel of the Court holding office on January 1st, 1931, or subsequently entering on office :

“ ‘ *Article 1.*

“ ‘ The Judges and the Registrar of the Court who have, for any reason whatever, ceased to hold office shall be entitled to retiring pensions.

“ ‘ This right, however, shall not be recognised if the persons concerned have been dismissed for reasons other than the state of their health.

“ ‘ In the case of resignation, Judges of the Court will not be entitled to pensions unless they have completed a period of five years’ service, and the Registrar shall not be entitled to a pension unless he has completed a period of seven years’ service, but the Court shall have power, by a special decision, based on the fact that the person concerned is in a precarious state of health and has insufficient means, to grant him a pension equivalent to that to which he would have been entitled had he completed the minimum period of service laid down above.

“ ‘ The payment of a pension shall not begin until the person entitled to such pension has reached the age of 65. In certain exceptional cases, however, the pension may, by a decision of the Court, be made payable, in whole or part, to persons entitled thereto before they reach that age.

“ ‘ Article 2.

“ ‘ No retiring pension payable under the present Regulations shall exceed 15,000 Dutch florins per annum in the case of Judges of the Court and 10,000 Dutch florins per annum in the case of the Registrar.

“ ‘ Article 3.

“ ‘ Subject to the provisions of Article 2, Judges shall be entitled to the payment of a pension equivalent to one-thirtieth of their salary in respect of each period of twelve months passed in the service of the Court, the amount being calculated :

“ ‘ For the President, on his annual salary and special allowance ;

“ ‘ For the Vice-President and the other Judges, on their annual salary and duty allowance.

“ ‘ The Registrar shall be entitled to the payment of a pension equivalent to one-fortieth of his salary in respect of each period of twelve months passed in the service of the Court.

“ ‘ If a person entitled to a pension is re-elected to office, the pension shall cease to be payable during his new term of office ; at the end of this period, however, the amount of this pension shall be determined as provided for above, on the basis of the total period during which he discharged his duties.

“ ‘ Article 4.

“ ‘ Subject to the provisions of Article 3, retiring pensions shall be payable monthly in arrears during the lifetime of the beneficiary.

“ ‘ Article 5.

“ ‘ Retiring pensions shall be regarded as coming under the “ expenses of the Court ” within the meaning of Article 33 of the Statute of the Court.

“ ‘ Article 6.

“ ‘ The Assembly of the League of Nations may, on the proposal of the Council, amend the present Regulations.

“ ‘ Nevertheless, any amendment so made shall not apply to persons elected before the amendment in question was adopted unless they give their consent thereto. ’ ”

REPORT OF THE COMMITTEE.

I.

[Translation.]

By a resolution of September 9th, 1930, the Council of the League of Nations, referring to the Protocol of September 14th, 1929, on the amendments to be made in the Statute of the Permanent Court of International Justice, instructed a Committee of jurists, consisting of M. BASDEVANT, M. GAUS and M. PILOTTI, to take the necessary steps to enable it to submit definite proposals to the Assembly in regard to the situation.

The Committee appointed M. PILOTTI as Rapporteur. It also heard M. HAMMARSKJÖLD, Registrar of the Court.

With a view to carrying out its instructions, the Committee enquired into the essential object of the revision of the Statute of the Court which the Protocol in question was designed to achieve. In doing so, it noted that the revision was mainly intended to remove a certain instability in the composition of the Court in three different ways — namely, (1) by the abolition of the Deputy Judges, their place being taken by an equal number of Judges ; (2) by the adoption of the principle of the permanent functioning of the Court ; and, (3) as a consequence of the foregoing, by a stabilisation of the salaries of the Judges.

II.

1. The proposals for the revision of the Statute had as their starting-point the circumstance that the composition of the Court in practice varies considerably at different times of the year. The Judges sit regularly during the ordinary sessions, which are held in the summer, while the Deputy Judges almost constantly replace certain Judges, particularly Judges coming from overseas, during the extraordinary sessions convened in the winter.

By abolishing the Deputy Judges and raising the number of Judges from eleven to fifteen (the number of Judges required to constitute the full Court remaining at eleven), the revised Statute arranged for a constant composition of the Court except in the case of leave or unavoidable absence.

The same result might, it seems, be obtained by applying Article 3 of the Statute of 1920 so as to increase the number of Judges from eleven to fifteen.

Article 25 of the 1920 Statute provides that the full Court is validly constituted if eleven Judges are present. There is reason to hold that the proposed increase would not affect this rule. Thus the practical effect of the increase would be to make it unnecessary, save in entirely exceptional cases, to have recourse to the Deputy Judges, who are not affected by the disabilities under which Article 16 of the Statute places the Judges.

As a remedy for the serious disadvantages inevitably arising from the presence on the Bench of so large a number of Judges (fifteen), the revised Statute (Article 25) laid down that the Rules of Court might provide for allowing one or more Judges, according to circumstances and in rotation, to be dispensed from sitting.

A similar solution might be adopted under the terms of the present Statute. It would be desirable to call the attention of the Court to the possibilities in regard to determining the conditions and duration of the leave to be accorded to its members which are offered by the power to regulate its procedure conferred on it by Article 30 of the 1920 Statute. If applied in this manner, the Court's power to regulate its procedure also enables it to take account of the generally accepted principle that persons from distant countries are granted long leave at regular intervals.

Finally, it should be pointed out that the Court has sometimes been prevented from sitting owing to inability to secure the necessary quorum. The revised Statute avoided such a contingency by laying down that Judges are bound to hold themselves permanently at the disposal of the Court. The increase in the number of Judges would avoid this drawback so far as is possible under the 1920 Statute.

2. As regards the permanent functioning of the Court, the Committee considered that Article 23 of the 1920 Statute, according to which, unless otherwise provided by Rules of Court, the annual session begins on June 15th, is capable of giving the Court itself a means of largely achieving the object of Article 23 of the revised Statute, which laid down that the Court shall remain permanently in session except during the judicial vacations.

Article 23 of the 1920 Statute in no way prevents the Court from itself adopting, by the enactment of appropriate rules, the system of permanent sessions. The Assembly and the Council might express a desire that the Court would incorporate this solution in its Rules of Court. In any case, it would be perfectly permissible for the Court to bring the opening of its annual session into relation with the system of annual leave for the Judges so as to make the functioning of the Court possible during the whole period necessitated by the amount of work to be performed.

3. The measures suggested above, with a view to stabilising the personnel of the Court and ensuring its permanent functioning, necessarily involve a revision of the system of remunerating the Judges. The salaries of Judges (apart from that of the President) consist at present of three component parts : a fixed salary of 15,000 florins ; a salary varying according to the number of days of duty (the maximum being 20,000 florins) ; and subsistence allowance of 50 florins per day. This system was fully justified at a time when the work which the members of the Court would be called upon to perform could not be foreseen, and when there was reason to think that Judges would be able, subject to the rules regarding their disabilities, to continue to fill official positions in their own countries.

On the other hand, the system is no longer justifiable at present. At its tenth session, the Assembly expressed the opinion that the work of the Court would continue to increase and, in point of fact, the Court's work has become so heavy that the Judges are bound to remain at The Hague for six to eight months every year, under circumstances which make it impossible for members of the Court to continue to hold office in their own countries.

The Committee considers that the easiest way to attain the object in view would be for the Council to submit to the Assembly a proposal under Article 32 of the 1920 Statute for the radical modification of the ratio between the fixed and variable portions of the Judges' salaries. For instance, there might be added to the fixed salary of 15,000 florins the maximum amount which, according to the resolution at present in force, the allowances for days of duty are capable of attaining — namely, 20,000 florins. The fixed salary would thus amount to 35,000 florins. To this could be added, by way of a special indemnity, the 50 florins per diem provided for in the present resolution, under the heading "Subsistence allowance". This latter allowance, for which no express provision is made in Article 32 of the 1920 Statute, might be discontinued.

This proposal will not increase the cost of the Court. Indeed, if the hypothesis on which the Assembly acted when, at its tenth session, it approved the scheme for the revision of the Statute is correct, it is certain that the members of the Court will, even according to the resolution at present in force, attain to salaries substantially equal to those now suggested by the Committee.

Moreover, the stabilisation of the salaries is the logical outcome of the recommendation that the Court should take the necessary steps to ensure its permanent functioning, since that course destroys all connection between the length of the Court's sessions and the amount of the Judges' salaries.

Modification of the system of Judges' salaries entails a few minor amendments in the Regulations for the granting of pensions to the "personnel" of the Court. The present Regulations were adopted in 1924. A new draft set of rules intended to come into force at the same time as the revised Statute was adopted by the Assembly in 1929. It might be desirable to propose to the Assembly the adoption of rules essentially similar to this draft, which is a considerable improvement on the 1924 text.

III.

The Committee has borne in mind the problem which would arise if the ratifications referred to in Article 3 of the Protocol of Revision of September 14th, 1929, which had not been secured by September 1930, were obtained subsequently. It thought, however, that this problem did not call for consideration at present.

* * *

Accordingly, the Committee feels that it is able to propose that the Council should adopt the following resolutions.

[Here follow Resolutions Nos. 1, 2 and 3, which were afterwards adopted by the Council. They are not reproduced here, as they are already included in the Report by the Representative of Italy adopted by the Council on September 12th, 1930. — See pages 1 to 3.]
