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ELECTION OF A MEMBER OF THE INTERNATIONAL COURT OF JUSTICE TO FILL THE VACANCY CAUSED BY THE DEATH OF JUDGE HSU MO

Memorandum by the Secretary-General

I. INTRODUCTION

1. The President of the International Court of Justice, by a communication dated 28 June 1956, informed the Secretary-General of the death on that date of Judge Hsu Mo. Thus there arose a vacancy in the Court for the remainder of the term of Judge Hsu Mo, which expires on 5 February 1958. The Secretary-General, by communications of 13 July 1956, invited the national groups of the States parties to the Statute of the Court to make nominations for the vacancy, and the nominations he has received have been submitted to the General Assembly and to the Security Council in documents A/3198 - S/3662 and A/3198/Add.1 - S/3662/Add.1.
2. The Security Council, at its 733rd meeting on 6 September 1956, adopted a resolution deciding that the election to fill the vacancy should take place during the eleventh session of the General Assembly; this resolution was transmitted to the General Assembly through the Secretary-General in document A/3185. The object of the present memorandum is to describe the procedure in the General Assembly and the Security Council in regard to the election.
3. The names and nationalities of the present members of the International Court of Justice, and the years in which their present terms are due to expire, are as follows:

<u>Name</u>	<u>Nationality</u>	<u>Expiration of present term (on 5 February)</u>
G.H. Hackworth, President	United States of America	1961
A.H. Badawi, Vice-President	Egypt	1958
J.G. Guerrero	El Salvador	1964
J. Basdevant	France	1964
B. Winiarski	Poland	1958
M. Zorićić	Yugoslavia	1958
H. Klaestad	Norway	1961
J.E. Read	Canada	1958
E.C. Armand-Ugon	Uruguay	1961
F.I. Kojevnikov	Union of Soviet Socialist Republics	1961
Sir Muhammad Zafrulla Khan	Pakistan	1961
Sir Hersch Lauterpacht	United Kingdom of Great Britain and Northern Ireland	1964
L.M. Moreno Quintana	Argentina	1964
R. Córdova	Mexico	1964

II. PROCEDURE IN THE GENERAL ASSEMBLY AND IN THE SECURITY COUNCIL

4. The election will take place in accordance with the following:
 - (a) The Statute of the Court, and in particular Articles 2 to 4, 8 to 12 and 14;
 - (b) Rules 151 and 152 of the rules of procedure of the General Assembly; and
 - (c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.
5. In accordance with General Assembly resolution 264(III) of 8 October 1948, Japan, Liechtenstein, San Marino and Switzerland, which are parties to the Statute of the Court but not Members of the United Nations, will participate, in the General Assembly, in the election in the same manner as the Members of the United Nations.
6. According to Article 2 of the Statute, the judges are to be elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body

as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

7. On the day of the election the General Assembly and the Security Council will proceed independently of one another to elect a member of the Court in the place of Judge Hsu Mo (Article 8 of the Statute). Election requires an absolute majority of votes in the General Assembly and in the Security Council (Article 10, paragraph 1, of the Statute). An absolute majority in the General Assembly consists of more than half of the total number of possible electors, whether or not they are actually present and voting. In the Security Council six votes constitute an absolute majority, and no distinction is to be made between permanent and non-permanent members of the Council (Article 10, paragraph 2, of the Statute).

8. The election will be held by secret ballot. Each elector in the General Assembly and in the Security Council may vote for only one candidate. The electors will indicate the candidate for whom they wish to vote by placing a cross against his name on the ballot paper. Under Article 7 of the Statute, only those candidates whose names appear in the list prepared by the Secretary-General are eligible for election, unless the special procedure outlined in Article 12, paragraph 2, is used.

9. Under rule 152 of the rules of procedure of the General Assembly and rule 61 of the provisional rules of procedure of the Security Council, successive ballots will be taken at the same meeting until in each body one candidate has obtained an absolute majority of votes. When this occurs, the Presidents of the General Assembly and of the Security Council will notify each other of the names of the candidates successful in their respective organs, and if the same candidate has received an absolute majority in both, the President of the General Assembly will announce his election.

10. If different candidates have received absolute majorities in the two bodies, the General Assembly and the Security Council, again independently of one another, will hold a second meeting and, if necessary, a third meeting, at which further ballots will be taken, the results being again compared after one candidate has received an absolute majority in each organ.

11. If after the third meeting the vacancy still remains unfilled, further meetings may be held in the same way as previously, or alternatively, the General Assembly and the Security Council may, at any time, at the request of either body, form a joint conference consisting of six members, three appointed by each body

(Article 12 of the Statute). Any vote of the Security Council for the appointment

of members of the conference will be taken without any distinction between permanent and non-permanent members (Article 10, paragraph 2, of the Statute). The joint conference may, by an absolute majority, agree upon a candidate and submit his name to the Assembly and to the Council for acceptance. If unanimously agreed, the joint conference may submit the name of a candidate not included in the list of nominations, provided that the candidate fulfils the required conditions (Article 12 of the Statute).

12. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected will, within a period to be fixed by the Security Council, proceed to fill the vacant seat by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council. In the event of an equality of votes among the judges, the eldest judge will have a casting vote (Article 12 of the Statute).

13. After the conclusion of the election the Secretary-General will inform the successful candidate of his election. His term of office will begin as of the date of the election.

