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ENGLISH

Forty-second session

GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE SIXTY-FIFTH MEETING

Held at Headquarters, New York,
on Wednesday, 11 November 1987, at 5.45 p.m.

President: Mr. FLORIN (German Democratic Republic)

- Elections to fill vacancies in principal organs [15]
 - (c) Election of five members of the International Court of Justice
 - (i) Memorandum by the Secretary-General
 - (ii) List of candidates
 - (iii) Curricula vitae

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The meeting was called to order at 5.55 p.m.

AGENDA ITEM 15 (continued)

ELECTIONS TO FILL VACANCIES IN PRINCIPAL ORGANS

(c) ELECTION OF FIVE MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

- (i) MEMORANDUM BY THE SECRETARY-GENERAL (A/42/588-S/19155)
- (ii) LIST OF CANDIDATES (A/42/589/Rev.1-S/19156/Rev.1)
- (iii) CURRICULA VITAE (A/42/591-S/19158)

The PRESIDENT (interpretation from Russian): As members are aware, there is still one vacancy on the Court. The Assembly will therefore proceed to another ballot to fill the remaining vacancy. Ballot papers are being distributed. All candidates whose names appear on the ballot paper are eligible. The names of those who have already obtained an absolute majority in the Assembly, that is to say, Mr. Roberto Ago, Mr. Mohammed Bedjaoui, Mr. Nikolai Tarassov and Mr. Stephen Schwebel, have been deleted from the ballot paper. I remind delegations that the name of only one candidate should be marked with a cross. Any ballot paper on which more than one name is marked will be declared invalid.

At the invitation of the President, Mr. Brown (Australia), Mrs. de Incera (Costa Rica), Mr. Prodjowarsito (Indonesia) and Mr. Sanyaolu (Nigeria) acted as tellers.

A vote was taken by secret ballot.

The meeting was suspended at 6.05 and resumed at 7.30 p.m.

The PRESIDENT (interpretation from Russian): The result of the voting is as follows:

<u>Number of ballot papers:</u>	148
<u>Number of invalid ballots:</u>	0
<u>Number of valid ballots:</u>	148
<u>Abstentions:</u>	1
<u>Number of Members voting:</u>	147
<u>Required majority:</u>	82
<u>Number of votes obtained:</u>	
Mr. Mohamed Shahabuddeen	92
Mr. Jose Sette-Camara	42
Mr. Laurel B. Francis	7
Mr. Erik Suy	4
Mr. Willem Riphagen	2

The PRESIDENT (interpretation from Russian): Mr. Mohamed Shahabuddeen has received the required absolute majority in the General Assembly. I have communicated this result to the President of the Security Council, and I shall now read out a letter from the President of the Security Council which contains the results of the vote in the Council:

"I have the honour to inform you that at the 2761st meeting of the Security Council, held today in order to elect a member of the International Court of Justice, an absolute majority of ballots was received by the following candidate: Mr. Jose Sette-Camara."

(The President)

Since an absolute majority of votes in the General Assembly and in the Security Council were received by different candidates, we shall have to hold another ballot.

I have held consultations with the President of the Security Council and, in the light of the lateness of the hour, we jointly propose that this meeting be deferred until 10 o'clock on Friday morning, 13 November.

I call on the representative of Vanuatu on a point of order.

Mr. VAN LIEROP (Vanuatu): With your indulgence, Mr. President, and that of our colleagues who have spent the better part of a very long day here in the Hall, we should like to propose that, because so much time and effort have already been invested in the process and bearing in mind the current financial situation of the Organization, the Assembly should, with your permission, consider holding another ballot this evening. We feel that with the time invested so far our interest might best be served by spending a few more minutes to see if we can come to a conclusion on this matter this evening.

The PRESIDENT (interpretation from Russian): I have already said that we have held consultations on two occasions with the President of the Security Council. The General Assembly and the Security Council must meet concurrently, that is, the third meeting must be held jointly, and that is why we made this joint proposal to defer the next meeting until 10 o'clock on Friday, 13 November.

I ask the General Assembly to agree to this.

I call on the representative of Jamaica on a point of order.

Mr. BARNETT (Jamaica): It is clearly not the business of the Assembly to try to go against the ruling of the President of the Assembly after consultation with the President of the Security Council. Clearly the Assembly cannot meet if the Council decides not to meet; procedures do not allow it.

(Mr. Barnett, Jamaica)

However, we are in sympathy with the suggestion made by the representative of Vanuatu, for the reasons he has given. We say no more on that point.

We wish to seek clarification of what you said, Mr. President. In the first instance you suggested that "this meeting" be deferred until tomorrow, and then you said you would defer "the next meeting" until tomorrow. The point is important, as you will realize, because deferral of this meeting would mean that this meeting would continue tomorrow, that is the second meeting would continue tomorrow. Deferral of the next meeting would mean that tomorrow the third meeting would begin.

We wish to be clear what you are referring to: deferral of the second meeting or the convening of the next meeting, namely, the third meeting.

The PRESIDENT (interpretation from Russian): Under the rules of procedure we have to hold the third meeting, so I am suggesting that we adjourn this meeting today and hold a third meeting at 10 o'clock on Friday morning. This was decided in consultation with the President of the Security Council. That is my proposal, and if I have understood correctly, it has not been challenged. We are talking about the third meeting, not this meeting, which we have to adjourn. The third meeting must be held; the only question is when it will be held.

Since it is already late, and since we have consulted the President of the Security Council on this matter, we suggest that the third meeting be held on Friday, 13 November, at 10 o'clock in the morning.

I call on the representative of Barbados on a point of order.

Dame Nita BARROW (Barbados): Mr. President, I crave your indulgence, but for the second time you have said that you have made a joint proposal. I understood that that was what the representative of Vanuatu was questioning, and I wonder whether at this stage the feelings of the Assembly should not be sought as to whether representatives wish this meeting to be adjourned now and the further meeting, the third, to be held immediately afterwards, or whether they wish it to be postponed until Friday morning, which means a difference of over 24 hours.

On reading the rules also, it appears to me that it says that the Security Council and the General Assembly hold their elections "independently". I did not see the word "concurrently".

The PRESIDENT (interpretation from Russian): The second meeting has to be adjourned after we have held the vote. I have given members the results of the vote and those results have been given to the Security Council. Therefore, under the rules of procedure, the second meeting is virtually adjourned. Now we have to hold the third meeting, at which once again elections will take place and we have to co-ordinate that with the Security Council. We have twice consulted the President of the Security Council and have reached the view that we should allow delegations an opportunity to consult, and, given the lateness of the hour, we suggest that we hold the third meeting at 10 o'clock in the morning of Friday, 13 November, that is, the day after tomorrow.

I call on the representative of Jamaica, who has asked to speak on a point of order.

Mr. BARNETT (Jamaica): Mr. President, I hope that I was not correct in understanding you to say that the meeting has to be adjourned after the voting is completed, because, if that is what you said or implied, I must humbly submit that you are mistaken. There can be more than one vote at a meeting. The number of

(Mr. Barnett, Jamaica)

votes taken can be infinite. It depends solely on the physical capacity of the participants. We would not wish the impression to be given that the meeting has to be adjourned merely because a ballot has been taken.

PRESIDENT (interpretation from Russian): It is true that we have to hold the third meeting after the difference between the General Assembly and the Security Council has emerged. If Members wish to hear from someone who has accurate knowledge of these matters, I will ask the Legal Counsel to answer this question.

I call on the representative of Saint Lucia who has asked to speak on a point of order.

Mr. FLEMMING (Saint Lucia): I have asked to speak to support what I see as an emerging mood, if not a consensus, initiated by the representative of Vanuatu and supported by the representatives of Barbados and Jamaica. I do not think that we need a ruling here; I think it is a matter of a misunderstanding.

In support of your position, Mr. President, I have no problem with adjournment of the present meeting. However, I believe that the gist of what is being proposed by Vanuatu, Barbados and Jamaica, and is now supported by myself, is that the third meeting should be held today, immediately after the adjournment of this meeting, and not on Friday. Since there is now an emerging consensus on this, I should like to appeal to you to have further discussions with the President of the Security Council to see if you cannot persuade him, in the light of the emerging mood here, to hold the third round of balloting today rather than on Friday morning.

The PRESIDENT (interpretation from Russian): I call on the Legal Counsel to explain to us whether we have to adjourn this meeting and whether we need a third meeting.

Mr. FLEISCHHAUER (Legal Counsel): If I have understood the representative of Jamaica correctly, he wants to know whether we have to go to a third meeting in order to continue the Court election, or whether we can in the present meeting, the second meeting, continue to vote until all the five places under consideration are filled.

Now, the rules on the Court elections are in part contained in the Statute of the Court itself and in part in the rules of procedure of the General Assembly, which deal with the Court elections in rules 150 and 151. Rule 151 reads as follows:

"Any meeting of the General Assembly held in pursuance of the Statute of the International Court of Justice for the purpose of electing members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes."

So that means that in these meetings several ballots are conducted until candidates for all the places have received the required majority.

At this second meeting that we have held one place was still to be filled, and a ballot was held. In that ballot one candidate obtained the required majority, therefore the purpose of the meeting was fulfilled. The continuation of the process, since the Security Council did not reach agreement on the same candidate, has to be at a third meeting.

I hope that this clarifies the situation.

The PRESIDENT (interpretation from Russian): I call upon the representative of Vanuatu on a point of order.

Mr. VAN LIEROP (Vanuatu): I should like to thank the Legal Counsel, through you, Sir, for his help to the General Assembly on this question. But now the question remains, whether that third meeting must be convened on Friday morning at 10 o'clock or could be convened now, immediately after this second meeting has been adjourned.

The PRESIDENT (interpretation from Russian): I call on the Legal Counsel to answer that question.

Mr. FLEISCHHAUER (Legal Counsel): The sequence in which the Court election has to be held is determined by the Statute of the International Court of Justice, and here it is Article 11 to which I would draw attention. That article reads as follows:

"If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place."

That, by the way, is an additional clarification to that which I gave in my previous answer.

Article 11 of the Statute says nothing about the period of time in which those elections are to be held. That is a question which is mainly in the hands of the Presidents of the two bodies concerned, the Security Council and the General Assembly - it goes without saying, in agreement with the membership of the two bodies.

The PRESIDENT (interpretation from Russian): I call upon the representative of Zambia on a point of order.

Mr. KAPAMBWE (Zambia): I wish to add the voice of my delegation in support of the sentiments already expressed by those who have spoken before me in calling for continuation in a third meeting immediately after this one. I foresee a situation in which we shall continue to debate this issue and thus add to the time we have already wasted. In this regard I suggest that we proceed to determine the opinion of the Assembly and proceed to vote on this issue.

The CHAIRMAN (interpretation from Russian): I call on the representative of Jamaica on a point of order.

Mr. BARNETT (Jamaica): I am indeed grateful to the Legal Counsel for clarifying the point raised by my delegation. However, I wish to test his skills a little further.

Rule 151, to which he referred the Assembly, speaks of "electing members of the Court". The election of members of the Court is not confined to one body: it is the joint responsibility of the Security Council and the General Assembly. Consequently, it does not appear to me tenable to argue that a candidate who has obtained the required majority in one body of the two involved in the election is thereby elected and falls within the meaning of the term "electing" as used in rule 151 of the rules of procedure.

In other words, a person who has received the requisite number of votes in this body, the voting having been properly concluded, but who has not yet received the appropriate number of votes in the other body, has not yet been elected; he has merely received a certain number of votes in one body.

So in the phrase

"for the purpose of electing members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes" means, as we suggested earlier,

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that the meeting is not necessarily over because one ballot has been completed and a person has received the appropriate majority, for that person has not yet been elected since the election procedures have not been completed; he has merely received the appropriate number of votes. The election procedure will have been completed if he receives the required number of votes in both bodies acting independently.

The PRESIDENT (interpretation from Russian): I call again upon the Legal Counsel.

Mr. FLEISCHHAUER (Legal Counsel): With all due deference to the representative of Jamaica, I am not in a position to confirm that his reading of rule 151 of the rules of procedure is correct. If he will go with me through the words of the rule he will see what I mean. It says:

"Any meeting of the General Assembly held in pursuance of the Statute of the International Court of Justice for the purpose of electing members of the Court ..."

Now the Assembly holds a meeting "for the purpose of electing" even if it does not achieve that purpose.

The rule goes on

"shall continue until as many candidates as are required for all the seats to be filled" - that was five this morning when we started and is one in the present situation - "have obtained in one or more ballots an absolute majority of votes."

It says "an absolute majority of votes"; it does not say what majority that is, and rule 151 is totally silent on what happens in the other body concerned, the Security Council. If there is a divergence between the two, then that is solved in

(Mr. Fleischhauer)

the manner stipulated in Articles 11 and 12 of the Statute. Rule 151 merely states that the meeting of the General Assembly has to continue until the required number of persons have received "an absolute majority"; it does not say that that absolute majority amounts to election.

The PRESIDENT (interpretation from Russian): I suggest that we have a short suspension for further consultations with the President of the Security Council.

If there is no objection, we shall proceed accordingly.

The meeting was suspended at 8 p.m. and resumed at 8.40 p.m.

The PRESIDENT (interpretation from Russian): The representative of Vanuatu has proposed that a third meeting be held this evening to conduct another ballot for the remaining vacancy. I have held further consultations with the President of the Security Council, who has informed me that, if the Assembly adopts the proposal, the Council is ready to hold a third meeting this evening.

Since no one has objected to Vanuatu's proposal, may I take it that the Assembly agrees to it?

It was so decided.

The meeting rose at 8.45 p.m.