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GENERAL ASSEMBLY Thirty-fifth session Agenda item 15 (c) ELECTION OF TWO MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL Thirty-fifth year

Memorandum by the Secretary-General

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I. INTRODUCTION

1. The President of the International Court of Justice, by a communication of 25 September 1980, informed the Secretary-General of the death, on 24 September, of Judge Richard R. Baxter (United States of America). Judge Baxter had been elected to the International Court of Justice by the General Assembly and the Security Council on 31 October 1978 for a term to expire on 5 February 1988. By a further communication, dated 4 October 1980, the President of the Court informed the Secretary-General of the death, on that date, of Judge Salah El Dine Tarazi (Syrian Arab Republic), who had been elected to the Court on 17 November 1975, for a term of office to expire on 5 February 1985.
2. In view of the foregoing, two vacancies have occurred in the Court which must be filled in accordance with the terms of the Statute of the International Court of Justice. Article 15 of the Statute provides that a member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term. The member elected to replace Judge Baxter will thus serve until 5 February 1988 and Judge Tarazi's successor will serve until 5 February 1985.
3. The vacancies referred to in paragraph 1 were brought to the attention of the Security Council by the Secretary-General (S/14246) and as required by Article 14 of the Statute of the Court, the Council decided at its 2255th meeting, by its resolution 480 (1980) of 12 November 1980, that elections to fill the two vacancies should take place on 15 January 1981, at a meeting of the Security Council and at a meeting of the resumed thirty-fifth session of the General Assembly. This decision was transmitted by the Secretary-General to the President of the General Assembly (A/35/244) with the suggestion that, in the circumstances, he might wish to propose to the Assembly that an additional subitem be included in the agenda of the thirty-fifth session of the Assembly under agenda item 15 (Elections to fill vacancies in principal organs). The General Assembly, at its 81st plenary meeting, on 4 December 1980, decided to include the following additional subitem under agenda item 15:
 - "(c) Election of two members of the International Court of Justice:
 - (i) Vacancy caused by the death of Judge Richard R. Baxter;
 - (ii) Vacancy caused by the death of Judge Salah El Dine Tarazi."
4. The Secretary-General invited nominations for the two vacancies from the national groups of States parties to the Statute of the Court in separate communications sent on 1 and 8 October 1980. It was initially requested that nominations for the vacancy caused by the death of Judge Baxter should be received by 1 December 1980. This deadline was extended to 10 December 1980 in a further communication from the Secretary-General of 25 November 1980. It was requested that nominations for the vacancy caused by the death of Judge Tarazi should also be received by 10 December 1980. The nominations received will be transmitted to the General Assembly and the Security Council in two separate lists, one for each vacancy, and will be accompanied by the curricula vitae of the candidates. Furthermore, the names of the candidates will appear on the ballot papers distributed during the elections.

5. The present composition of the International Court of Justice and the procedure in the General Assembly and the Security Council for filling the two vacancies are described below.

II. COMPOSITION OF THE INTERNATIONAL COURT OF JUSTICE

6. The names and nationalities of the present members of the International Court of Justice, and the years in which their present terms of office expire, are as follows:

<u>Name</u>	<u>Nationality</u>
(in order of precedence)	
Sir Humphrey Waldock, President*	United Kingdom of Great Britain and Northern Ireland
Mr. T. O. Elias, Vice-President**	Nigeria
Mr. I. Forster*	Senegal
Mr. A. Gros*	France
Mr. M. Lachs**	Poland
Mr. P. D. Morozov***	Union of Soviet Socialist Republics
Mr. Nagendra Singh*	India
Mr. J. M. Ruda	Argentina
Mr. H. Mosler**	Federal Republic of Germany
Mr. S. Oda**	Japan
Mr. R. Ago***	Italy
Mr. A. El-Erian***	Egypt
Mr. J. Sette-Camara***	Brazil

* Term of office expires on 5 February 1982.

** Term of office expires on 5 February 1985.

*** Term of office expires on 5 February 1988.

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

7. The elections will take place in accordance with the following:

(a) The Statute of the Court, in particular Articles 2 to 4, 7 to 12 and 14;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

8. In accordance with General Assembly resolution 264 (III) of 8 October 1948, 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 electing members of the Court to fill the two vacancies in the same manner as the Members of the United Nations.

9. On the day of the elections, the General Assembly and the Security Council will proceed, independently of one another, to elect two members of the Court in place of Judges Baxter and Tarazi (Art. 8 of the Statute). While it will be necessary, on the occasion of the elections, to ballot separately for each vacancy, the duration of the terms of office being different (see paras. 1 and 2), those ballots will be held at the same meetings of the General Assembly and the Security Council.

10. According to Article 2 of the Statute, 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 of the Statute 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.

11. The candidates who obtain an absolute majority of votes both in the General Assembly and in the Security Council will be considered as elected (Art. 10, para. 1, of the Statute).

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all the qualified electors, whether or not they vote. The qualified electors in the General Assembly are all the Members, together with the three non-member States mentioned in paragraph 8 which are parties to the Statute of the Court. With the present number of Members of the United Nations and non-members parties to the Statute, 79 votes constitute an absolute majority in the General Assembly.

13. In the Security Council, eight votes constitute an absolute majority and no distinction is made between permanent and non-permanent members of the Council (Art. 10, para. 2, of the Statute).

14. The electors in the General Assembly and in the Security Council will indicate the candidates for whom they wish to vote by placing a cross against their names on the ballot papers. Each elector may vote for only one candidate in respect of each vacancy. Under Article 7 of the Statute, only those candidates whose names appear in the lists prepared by the Secretary-General and the separate ballot papers for each vacancy are eligible for election, unless the special procedure outlined in Article 12, paragraph 2, is used (see para. 17).

15. If in the first ballot in either the General Assembly or the Security Council no candidate receives an absolute majority for either or both vacancies, a second ballot will be held, and balloting will continue in the same meeting until a candidate has obtained an absolute majority of votes. When this occurs in either organ in respect of either vacancy, the President of that organ will notify the President of the other organ of the name of that candidate. Such notification is not communicated by the President to the members of an organ until that organ has itself given a candidate the required majority of votes.

16. If, upon comparison of the names of the candidates so elected, it is found that different persons have received absolute majorities in the General Assembly, and in the Security Council, the Assembly and the Council will proceed, again independently of one another, in a second meeting and, if necessary, a third meeting, to elect candidates by further ballots, the results again being compared after one candidate has received an absolute majority in each organ.

17. The above procedure will be continued until the General Assembly and the Security Council have given an absolute majority of votes to the same candidate. If, however, after the third of these meetings any vacancy remains unfilled, the Assembly and the Council may at any time, at the request of either body, form a joint conference consisting of six members, three appointed by each body. This joint conference may, by an absolute majority, agree upon a candidate and submit his name for the approval of the Assembly and of the Council. If unanimously agreed, the joint conference may submit the name of a candidate not included in the list of nominations, provided that that candidate fulfils the required conditions (Art. 12 of the Statute).

18. 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 (Art. 12 of the Statute).
