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ELECTION OF FIVE MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE*

Memorandum by the Secretary-General

I. INTRODUCTION

1. On 5 February 1970 the terms of office of the following five members of the International Court of Justice will expire:

- Mr. J.L. Bustamante y Rivero (Peru);
- Mr. V.M. Koretsky (Union of Soviet Socialist Republics);
- Mr. K. Tanaka (Japan);
- Mr. Ph. C. Jessup (United States of America);
- Mr. G. Morelli (Italy)

It is, therefore, necessary for the General Assembly and the Security Council, during the twenty-fourth regular session of the Assembly, to elect five judges for a term of office of nine years beginning on 6 February 1970.

2. The Secretary-General has requested nominations from the national groups of States parties to the Statute of the Court by 1 August 1969. The nominations which he receives by that date and the curricula vitae of the candidates will be transmitted separately to the General Assembly and to the Security Council.^{1/} Furthermore, the list of candidates will be printed in the Journal of the United Nations on the day of the election and the names of the candidates will appear on the ballot papers distributed during these elections. The object of this memorandum is to set out the present composition of the International Court of

* Item 18 of the provisional agenda.

^{1/} To be issued as A/7570, S/9354.

Justice, and to describe the procedure in the General Assembly and the Security Council with regard to the elections.

II. COMPOSITION OF THE INTERNATIONAL COURT OF JUSTICE

3. 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 (in the order of precedence)</u>	<u>Nationality</u>	<u>Expiration of present term</u> <u>(on 5 February)</u>
J.L. Bustamante y Rivero, President	Peru	1970
V.M. Koretsky, Vice-President	Union of Soviet Socialist Republics	1970
Sir Gerald Fitzmaurice	United Kingdom of Great Britain and Northern Ireland	1973
K. Tanaka	Japan	1970
Ph. C. Jessup	United States of America	1970
G. Morelli	Italy	1970
Sir Muhammad Zafrullah Khan	Pakistan	1973
L. Padilla Nervo	Mexico	1973
I. Forster	Senegal	1973
A. Gros	France	1973
F. Ammoun	Lebanon	1976
C. Bengzon	Philippines	1976
S. Petré	Sweden	1976
M. Lachs	Poland	1976
C.D. Onyeama	Nigeria	1976

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

4. The elections will take place in accordance with the following:
- (a) The Statute of the Court, in particular Articles 2 to 4 and 7 to 12;
 - (b) Rules 151 and 152 of the rules of procedure of the General Assembly;
 - (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, 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 in the same manner as the Members of the United Nations.

6. On the date of the elections, the General Assembly and the Security Council will proceed, independently of one another, to elect five members of the Court (Article 8 of the Statute).

7. 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 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.

8. Those candidates who obtain an absolute majority of votes both in the General Assembly and in the Security Council will be considered as elected (Article 10, paragraph 1, of the Statute).

9. 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 5 above which are parties to the Statute of the Court.

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

11. The electors in the General Assembly and in the Security Council will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote for not more than five candidates on the first ballot, and on later ballots for five less the number who have already received absolute majorities. 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 (see paragraph 17 below).

12. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion took place as to whether rule 96 of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. This rule lays down a procedure for restricted ballots in the event that after the first ballot the requisite number of candidates do not obtain the required majority. By 47 votes to 27, with 25 abstentions, the Assembly decided that the rule did not apply to elections to the Court and it proceeded to elect the requisite number of candidates by a series of unrestricted ballots.

13. If in the first ballot in either the General Assembly or the Security Council less than five candidates receive an absolute majority, a second ballot will be held and balloting will continue in the same meeting until five candidates have received the required majority. When this occurs in either organ (and not until that time), the President of that organ will notify the President of the other organ of the names of the five candidates. Such notification is not communicated by the President to the members of an organ until that organ has itself given five candidates the required majority of votes.

14. Cases have arisen in the Security Council in which more than the required number of candidates have received an absolute majority on the same ballot. The practice followed by the Council on 6 December 1951, 7 October 1954 and 21 October 1963, when this occurred, was to hold a new vote on all the candidates and the President of the Security Council made no notification to the President of the General Assembly until only the required number of candidates, and no more, had received an absolute majority in the Council.^{2/}

15. If, upon comparison of the lists of the General Assembly and of the Security Council, less than five candidates have been thus elected, the Assembly and the Council will proceed, again independently of one another, in a second meeting, and

^{2/} The practice followed on 21 October 1963 (1071st meeting of the Security Council) was subsequently the subject of certain reservations by a Member State, which suggested that reconsideration might be given to that practice (see S/5445, S/5449 and S/5461).

if necessary a third meeting, to elect candidates by further ballots for the remaining vacancies (Article 11 of the Statute), the results again being compared after the required number of candidates has received an absolute majority in each organ.

16. The above procedure will be continued until the two bodies have elected five candidates. If, however, after the third of these meetings one or more seats are still unfilled, 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. This joint conference may, by an absolute majority, agree upon one candidate for each seat still vacant and submit his name for the approval of the Assembly and the Council. If unanimously agreed, the joint conference may submit the name of a candidate not included in the list of nominations, provided that candidate fulfils the required conditions (Article 12 of the Statute).

17. 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 seats 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.
