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Elections to fill vacancies in principal organs: election of a member of the International Court of Justice

Election of a member of the International Court of Justice

Memorandum by the Secretary-General

I. Introduction

1. By a letter dated 31 May 2021, the Registrar of the International Court of Justice informed the Secretary-General of the death of Judge James Richard Crawford (Australia) on that date and of the resulting occurrence of a vacancy in the Court.
2. According to Article 14 of the Statute of the Court, the vacancy shall be filled by the same method as that laid down for the regular elections and the Secretary-General shall, within one month of the occurrence of the vacancy, issue the invitations for nominations provided for in Article 5 of the Statute. According to Article 5, paragraph 1, of the Statute, the invitations for nominations shall be made at least three months before the date of the election, which, pursuant to Article 14, shall be fixed by the Security Council.
3. By a note dated 21 June 2021 addressed to the Security Council ([S/2021/586](#)), the Secretary-General informed the Council of the death of Judge Crawford and drew its attention to Article 14 of the Statute with regard to the fixing of the date of the election. Pursuant that Article, the Council decided, by its resolution [2583 \(2021\)](#) adopted at its 8808th meeting on 29 June 2021, that the election to fill the vacancy would take place on 5 November 2021 at a meeting of the Council and at a meeting of the General Assembly at its seventy-sixth session.
4. On 29 June 2021, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, on behalf of the Secretary-General, invited the national groups of States parties to the Statute to undertake the nomination of persons in a position to accept the duties of a member of the Court. The Legal Counsel further requested that nominations be received no later than 15 September 2021. The nominations received by that date and the curricula vitae of the candidates are contained in separate notes by the Secretary-General, issued as documents of the General Assembly and the Security Council ([A/76/338-S/2021/822](#) and [A/76/339-](#)



[S/2021/823](#), respectively). The names of candidates thus nominated will appear on the ballot papers to be distributed during the election in both organs.

5. Judge Crawford had been a member of the Court since 6 February 2015. His term of office would have expired on 5 February 2024.

6. Article 15 of the Statute of the Court 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 the predecessor's term. Thus, the member elected to replace Judge Crawford will serve until 5 February 2024. The term of the newly elected judge will commence on the date on which the individual is elected by the General Assembly and the Security Council.

7. The purpose of the present memorandum is to set out the current composition of the International Court of Justice and to describe the procedure in the General Assembly and the Security Council with regard to the election.

II. Composition of the International Court of Justice

8. The present composition of the International Court of Justice is as follows:

President:

Joan E. Donoghue (United States of America)*

Vice-President:

Kirill Gevorgian (Russian Federation)*

Judges:

Peter Tomka (Slovakia)***

Ronny Abraham (France)**

Mohamed Bennouna (Morocco)*

Antônio Augusto Cançado Trindade (Brazil)**

Abdulqawi Ahmed Yusuf (Somalia)**

Xue Hanqin (China)***

Julia Sebutinde (Uganda)***

Dalveer Bhandari (India)**

Patrick Lipton Robinson (Jamaica)*

Nawaf Salam (Lebanon)**

Iwasawa Yuji (Japan)***

Georg Nolte (Germany)***

* Term of office expires on 5 February 2024.

** Term of office expires on 5 February 2027.

*** Term of office expires on 5 February 2030.

III. Procedure in the General Assembly and in the Security Council

9. The election will be held in accordance with the following provisions:

- (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.

10. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect one member of the Court to fill the vacancy (Article 8 of the Statute).
11. According to Article 2 of the Statute, members of the Court 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 person 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.
12. The candidate who obtains an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected (Article 10, paragraph 1, of the Statute).
13. The consistent practice of the United Nations has been to interpret the words “absolute majority” as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly are all 193 Member States. Accordingly, as at the date of the present memorandum, 97 votes constitute an absolute majority in the Assembly for the purpose of the present election.
14. 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).
15. Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly and in the Security Council may indicate the candidate for whom they wish to vote by placing a cross against the name on the ballot paper. Each elector may vote for only one candidate. In accordance with Articles 5 and 7 of the Statute, no additional candidates may be nominated on the day of the election.
16. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion was held as to whether rule 94 (then rule 96) of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. That rule lays down a procedure for restricted ballots in the event that, after the first ballot, the requisite number of candidates have not obtained 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 proceeded to elect the requisite number of candidates by a series of unrestricted ballots. That decision has been followed consistently.
17. Accordingly, if, in the first ballot in either the General Assembly or the Security Council, no candidate receives an absolute majority, a second ballot will be held and balloting will continue at the same meeting until a candidate has obtained the required majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).
18. When a candidate has obtained the absolute majority in one of the organs, the President of that organ will notify the President of the other organ accordingly. The President of the latter should not communicate the candidate’s name to the members of that organ, until that organ has itself given one candidate the required majority of votes.
19. If, upon comparison of the name of the candidate so selected by the General Assembly and the Security Council, it is found that a candidate has not been thus elected pursuant to paragraph 11 above, the Assembly and the Council will proceed,

again independently of one another, at a second meeting and, if necessary, a third meeting to elect a candidate (Article 11 of the Statute), the results again being compared after a candidate has obtained an absolute majority in each organ.

20. If, however, after the third meeting, the vacancy still remains unfilled, the procedure set out in Article 12 of the Statute may be resorted to at the request of either the General Assembly or the Security Council.
