## INDIVIDUAL OPINION BY M. ALVAREZ.

[*Translation.*]

### I.

I do not agree with the method adopted by the Court in giving the opinion for which it has been asked by the General Assembly of the United Nations.

The Court has inferred from the enumeration of the conditions prescribed in Article 4, paragraph 1, of the Charter for the admission of a State to membership in the United Nations, that nothing else can be adduced to justify a negative vote. This question cannot be answered merely by a clarification of the texts, nor by a study of the preparatory work ; another method must be adopted and, in particular, recourse must be had to the great principles of the new international law.

More changes have taken place in international life since the last great social cataclysm than would normally occur in a century. Moreover, this life is evolving at a vertiginous speed : inter-State relations are becoming more and more various and complex. The fundamental principles of international law are passing through a serious crisis, and this necessitates its reconstruction. A new international law is developing, which embodies not only this reconstruction, but also some entirely new elements.

For a long time past I have insisted on the rôle which the Court must play in the renewal and development of international law. A recent event supports my opinion. The General Assembly of the United Nations in its Resolution No. 171 of November 14th, 1947, declares that it is of paramount importance, in the first place, that the interpretation of the Charter should be based on recognized principles of international law and, in the second place, that the Court should be utilized, to the greatest practicable extent, in the progressive development of this law, both in regard to legal issues between States and in regard to constitutional interpretation or to questions of a general nature submitted to it for its opinion.

I hold that in this connexion the Court has a free hand to allow scope to the new spirit which is evolving in contact with the new conditions of international life : there must be a renewal of international law corresponding to the renewal of this life.

With regard to the interpretation of legal texts, it is to be observed that, while in some cases preparatory work plays an important part, as a rule this is not the case. The reason lies in the fact that delegates, in discussing a subject, express the most varied views on certain matters and often without a sufficient knowledge of them ;

sometimes also they change their views without expressly saying so. The preparatory work on the constitution of the United Nations Organization is of but little value. Moreover, the fact should be stressed that an institution, once established, acquires a life of its own, independent of the elements which have given birth to it, and it must develop, not in accordance with the views of those who created it, but in accordance with the requirements of international life.

## II.

As the question put to the Court concerns the admission of new States to the United Nations Organization, the character of the international community and the place in it occupied by the Organization must be borne in mind.

As a result of the increasingly closer relations between States, which has led to their ever greater interdependence, the old *community* of nations has been transformed into a veritable international *society*, though it has neither an executive power, nor a legislative power, nor yet a judicial power, which are the characteristics of a national society, but not of international society. This society comprises all States throughout the world, without there being any need for consent on their part or on that of other States; it has aims and interests of its own ; States no longer have an absolute sovereignty but are interdependent ; they have not only rights, but also *duties* towards each other and towards this society ; finally, the latter is organized and governed, to an ever increasing extent, by a law of a character quite different from that of customary law.

The foregoing indicates the place occupied by the United Nations Organization in the universal international society. The creation of the League of Nations constituted a great effort to organize this society, particularly from the standpoint of the maintenance of peace. The present United Nations Organization, which is destined to replace it and has the same aims, is therefore merely an institution within the universal international society.

The aims of this Organization are not confined to certain States or to a great number of States, but are of a world-wide nature. They are concerned with the maintenance of peace and the development of co-operation among all States of the world ; it will suffice to read the Preamble and Chapter I of the Charter to appreciate this.

But to become a Member of this Organization, a State must apply for admission, must fulfil certain conditions and must be admitted by the Organization. States which are not yet Members of the Organization have not the rights and duties which it has laid down, but they have these conferred or imposed upon them as members of the universal society of nations. Moreover, such

States may enter into relations of every kind with those which belong to the United Nations Organization, and these relations are governed by international law.

## III.

Before giving the opinion asked of it by the General Assembly of the United Nations, the Court has had to make up its mind as to the legal or political character of the question put.

The traditional distinction between what is legal and what is political, and between law and politics, has to-day been profoundly modified. Formerly, everything dependent on precepts of law was regarded as legal and anything left to the free will of States was regarded as political.

Relations between States have become multiple and complex. As a result, they present a variety of aspects : legal, political, economic, social, etc. ; there are, therefore, no more strictly legal issues. Moreover, many questions regarded as essentially legal, such as the interpretation of a treaty, may, in certain cases, assume a political character, especially in the case of a peace treaty. Again, many questions have both a legal and a political character, notably those relating to international organization.

A new conception of law in general, and particularly of international law, has also emerged. The traditionally *juridical* and *individualistic* conception of law is being progressively superseded by the following conception : in the first place, international law is not strictly juridical ; it is also political, economic, social and psychological ; hence, all the fundamental elements of traditional individualistic law are profoundly modified, a fact which necessitates their reconstruction. In the next place, strictly individualistic international law is being more and more superseded by what may be termed the *law of social interdependence*. The latter is the outcome, not of theory, but of the realities of international life and of the juridical conscience of the nations. The Court is the most authoritative organ for the expression of this juridical conscience, which also finds expression in certain treaties, in the most recent national legislative measures and in certain resolutions of associations devoted to the study of international law.

This *law of social interdependence* has certain characteristics of which the following are the most essential : (*a*) it is concerned not only with the delimitation of the rights of States, but also with harmonizing them ; (*b*) in every question it takes into account all its various aspects ; (*c*) it takes the general interest fully into account ; (*d*) it emphasizes the notion of the *duties* of States, not only towards each other but also towards the international society ; (*e*) it condemns the abuse of right ; (*f*) it adjusts itself to the

necessities of international life and evolves together with it; accordingly, it is in harmony with policy; (g) to the rights conferred by strictly juridical law it adds that which States possess to belong to the international organization which is being set up.

Far therefore from being in opposition to each other, law and policy are to-day closely linked together. The latter is not always the selfish and arbitrary policy of States; there is also a collective or individual policy inspired by the general interest. This policy now exercises a profound influence on international law; it either confirms it or endows it with new life, or even opposes it if it appears out of date. It is also one of the elements governing the relations between States when no legal precepts exist.

It is however always necessary to differentiate between juridical and political elements, particularly from the standpoint of the Court's jurisdiction.

The United Nations Charter makes the Court one of its organs (Art. 7), and Article 92 lays down that it is its principal judicial organ. The Statute of the present Court, like that of the old, indicates that its task is to hear and determine legal questions, and not political questions. The advisory opinions for which it may be asked must also relate to legal questions (Articles 36, No. 3, and 96 of the Charter; Article 65 of the Statute of the Court).

When a question is referred to the Court, the latter therefore must decide whether its dominant element is legal, and whether it should accordingly deal with it, or whether the political element is dominant and, in that case, it must declare that it has no jurisdiction.

In the questions which it is called upon to consider, the Court must, however, take into account all aspects of the matter, including the political aspect when it is closely bound up with the legal aspect. It would be a manifest mistake to seek to limit the Court to consideration of questions solely from their legal aspect, to the exclusion of other aspects; it would be inconsistent with the realities of international life.

It follows from the foregoing that the constitutional Charter cannot be interpreted according to a strictly legal criterion; another and broader criterion must be employed and room left, if need be, for political considerations.

The Court has decided that the question on which its advisory opinion has been asked is a legal one because it concerns the interpretation of the Charter of the United Nations, which is a treaty.

In reality, this question is both legal and political, but the legal element predominates, not so much because it is a matter of interpreting the Charter but because it is concerned with the problem whether States have a *right* to membership in the

United Nations Organization if they fulfil the conditions required by the Statute of the Organization. The question is at the same time a political one, because it is the States comprising the Security Council and those belonging to the General Assembly which determine whether these conditions are, or are not, fulfilled by the applicant.

## IV.

As regards the essential conditions to be fulfilled by every State desiring to be admitted to membership in the United Nations Organization, these are prescribed in Article 4, paragraph 1, of the Charter. These conditions are exhaustive because they are the only ones enumerated. If it had been intended to require others, this would have been expressly stated.

Moreover, having regard to the nature of the universal international society, the purposes of the United Nations Organization and its mission of universality, it must be held that all States fulfilling the conditions required by Article 4 of the Charter have a *right* to membership in that Organization. The exercise of this right cannot be blocked by the imposition of other conditions not expressly provided for by the Charter, by international law or by a convention, or on grounds of a political nature.

Nevertheless, it has to be judged in each case whether the conditions of admission required by the Charter are fulfilled. The units which may form this judgment are the States composing the Security Council and the members of the General Assembly. They must be guided solely by considerations of justice and good faith, i.e., they must confine themselves to considering whether the applicant fulfils the conditions required by Article 4, paragraph 1. In actual fact, however, these States are mainly guided by considerations of their own policy and, consequently, if not directly, at all events indirectly, they sometimes require of an applicant conditions other than those provided for in Article 4, since they vote against its admission if such other conditions are not fulfilled. That is an abuse of right which the Court must condemn; but at the present time no sanction attaches to it save the reprobation of public opinion.

Nevertheless, cases may arise in which the admission of a State is liable to disturb the international situation, or at all events the international organization, for instance, if such admission would give a very great influence to certain groups of States, or produce profound divergencies between them. Consequently, even if the conditions of admission are fulfilled by an applicant, admission may be refused. In such cases, the question is no longer a legal one; it becomes a political one and must be regarded as such. In a concrete case of this kind, the Court must declare that it has no jurisdiction.

A claim by a Member of the United Nations Organization, which recognizes the conditions of Article 4 of the Charter to be fulfilled by an applicant State, to subject its affirmative vote to the condition that other States be admitted to membership together with this applicant, would be an act contrary to the letter and spirit of the Charter. Nevertheless, such a claim may be justified in exceptional circumstances, for instance, in the case of applications for admission by two or more States simultaneously brought into existence as the result of the disappearance of the State or colony of which they formed part. It is natural in that case that their admission should be considered simultaneously.

## V.

Having regard to the foregoing, I consider that the following replies should be given to the actual questions put in the request for an advisory opinion addressed to the Court :

1° No State is *juridically* entitled to make its consent to the admission of a new Member to the United Nations Organization dependent on conditions not expressly provided for by Article 4, paragraph 1, of the Charter.

2° A State may not, while recognizing the conditions required by Article 4, paragraph 1, of the Charter, to be fulfilled by the applicant State, subject its affirmative vote to the condition that other States be admitted to membership in the United Nations together with that State. Nevertheless, in exceptional cases, such a claim may be justified.

To the above conclusions the following, which ensues from them, should be added :

If there are several simultaneous applications for admission, each must be considered separately, save in exceptional circumstances : there is no ground for establishing a connexion between them not contemplated by the Charter.

The foregoing statement clearly demonstrates the importance of the new method indicated above, and of the rôle which the Court is called upon to play in the development of international life and of international law. In consequence of Resolution 171 of November 14th, 1947, adopted by the General Assembly of the United Nations, this method and this rôle emerge from the domain of doctrine and become applicable in practice.

(*Signed*) ALVAREZ.