I.C.J.

Communiqué No. 33.
Unofficial

The following information, emanating from the Registry of the International Court of Justice, has been communicated to the Press:

The International Court of Justice to-day, May 28th, 1948, in a public sitting, gave its advisory opinion on the conditions of admission of a State to membership in the United Nations (Article 4 of the Charter). This question was asked of the Court by the General Assembly of the United Nations. The question is as follows (General Assembly's Resolution of November 17th, 1947):

> "Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?"

The Court answered this question in the negative by nine votes to six. The six dissenting judges joined to it a statement of the reasons for their dissent. Two other Members of the Court who agreed with the Opinion added a further statement of their views.

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The Opinion begins by giving an account of the procedure. The request for an Opinion was notified to all signatories of the Charter, i.e., to all Members of the United Nations, who were informed that the Court was prepared to receive information from them. Accordingly, written statements were sent in on behalf of the Governments of the following States: China, El Salvador, Guatemala, Honduras, India, Canada, U.S.A., Greece, Yugoslavia, Belgium, Iraq, Ukraine, U.S.S.R., Australia and Siam. Oral statements were made by the representative of the Secretary-General of the United Nations and by representatives of the French, Yugoslav, Belgian, Czechoslovak and Polish Governments.

The Court then makes a few preliminary observations on the question itself. Although the Members are bound to conform to the requirements of Article 4 in giving their votes, the question does not relate to the actual vote, the reasons for which are a matter of individual judgment and are clearly subject to no control, but to the statements made by a Member concerning the vote it proposes to give. The Court is not called upon to define the meaning and scope of the conditions in Article 4 of the Charter, on which admission is made dependent. It must merely state whether these conditions are exhaustive. If they are, a Member is not legally entitled to make admission depend on conditions not expressly provided in the article. The meaning of a treaty provision has thus to be determined, which is a problem of interpretation.

It was nevertheless contended that the question was not legal, but political. The Court was unable to attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task by entrusting it with the interpretation of a treaty provision. It is not concerned with the motives which may have

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inspired the request, nor has it to deal with the views expressed in the Security Council on the various cases with which the Council dealt. Consequently, the Court holds itself to be competent even to interpret Article 4 of the Charter; for nowhere is any provision to be found forbidding it to exercise, in regard to this clause in a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers.

The Court then analyses Article 4, paragraph 1, of the Charter. The conditions therein enumerated are five: a candidate must be (1) a State; (2) peace-loving; (3) must accept the obligations of the Charter; (4) must be able to carry out these obligations; (5) must be willing to do so. All these conditions are subject to the judgment of the Organization, i.e., of the Security Council and of the General Assembly and, in the last resort, of the Members of the Organization. As the question relates, not to the vote, but to the reasons which a Member gives before voting, it is concerned with the individual attitude of each Member called upon to pronounce itself on the question of admission.

Are these conditions exhaustive? The English and French texts of the provision have the same meaning: to establish a legal rule which, while it fixes the conditions of admission, determines also the reasons for which admission may be refused. The term "Membership in the United Nations is open to all other peace-loving States" indicates that States which fulfil the conditions stated have the qualifications requisite for admission. The provision would lose its significance if other conditions could be demanded. These conditions are exhaustive, and are not merely stated by way of information or example. They are not merely the necessary conditions, but also the conditions which suffice.

It was argued that these conditions represented an indispensable minimum in the sense that political considerations could be superimposed on them, and form an obstacle to admission. This interpretation is inconsistent with paragraph 2 of the Article, which provides for "the admission of any <u>such</u> State." It would lead to conferring on Members an indefinite and practically unlimited power to impose new conditions; such a power could not be reconciled with the character of a rule which establishes a close connection between membership and the observance of the principles and obligations of the Charter, and thus clearly constitutes a legal regulation of the question of admission. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the principles and obligations of the Charter, they would undoubtedly have adopted a different wording. The Court considers the provision sufficiently clear; consequently, it follows the constant practice of the Permanent Court of International Justice and holds that there is no occasion to resort to preparatory work to interpret its meaning. Moreover, the interpretation given by the Court had already been adopted by the Security Council, as is shown in Article 60 of the Council's Rules of Procedure.

It does not, however, follow from the exhaustive character of Article 4 that an appreciation is precluded of such circumstances of fact as would enable the existence of the requisite conditions to be verified. The Article does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down. The taking into account of such factors is implied in the very wide and elastic nature of the conditions. No relevant political factor, that is to say, none connected with the conditions of admission, is excluded.

The conditions in Article 4 are exhaustive and no argument to the contrary can be drawn from paragraph 2 of the Article which is only concerned with the procedure for admission. Nor can an argument be

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drawn from the political character of the organs of the United Nations dealing with admission. For this character cannot release them from observance of the treaty provisions by which they are governed, when these provisions constitute limitations on their power; this shows that there is no conflict between the functions of the political organs and the exhaustive character of the prescribed conditions.

The Court then passes to the second part of the question, namely, whether a State, while it recognizes that the conditions set forth in Article 4 are fulfilled by a candidate, can subordinate its affirmative vote to the simultaneous admission of other States.

Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand constitutes a new condition; for it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category; since it makes admission dependent not on the conditions required of applicants, but on extraneous considerations concerning other States. It would, moreover, prevent each application for admission from being examined and voted on separately and on its own merits. This would be contrary to the letter and spirit of the Charter.

For these reasons, the Court answered the question put to it in the negative.

The Hague, 28th May, 1948.