# CONDITIONS OF ADMISSION OF A STATE TO MEMBERSHIP IN THE UNITED NATIONS

(Article 4 of the Charter)

International Court of Justice
May 28, 1948
General List No. 3

***57** Request for advisory opinion in virtue of Resolution of General Assembly of United Nations of November 17th, 1947. -Request does not refer to actual vote but to statements made by a Member concerning the vote. -Request limited to the question whether the conditions in Article 4, paragraph 1, of the Charter are exhaustive. -Legal or political character of the question. - Competence of the Court to deal with questions in abstract terms. -Competence of the Court to interpret Article 4 of the Charter. -Legal character of the rules in Article 4. -Interpretation based on the natural meaning of terms. - Considerations extraneous to the conditions of Article 4. Considerations capable of being connected with these conditions. -Procedural character of paragraph 2 of Article 4. -Subordination of political organs to treaty provisions which govern them. Article 24 of the Charter. -Demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants. -Individual consideration of every application for admission on its own merits.

ADVISORY OPINION.

Present: President GUERRERO; Vice-President BASDEVANT; Judges ALVAREZ, FABELA, HACKWORTH, WINIARSKI, ZORICIC, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, KRYLOV, READ, HSU MO, AZEVEDO.

***58** THE COURT,

composed as above,

gives the following advisory opinion:

On November 17th, 1947, the General Assembly of the United Nations adopted the following Resolution:

'The General Assembly,

Considering Article 4 of the Charter of the United Nations,

Considering the exchange of views which has taken place in the Security Council at its Two hundred and fourth, Two hundred and fifth and Two hundred and sixth Meetings, relating to the admission of certain States to membership in the United Nations,

Considering Article 96 of the Charter,

Requests the International Court of Justice to give an advisory opinion on the following question:

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?

Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council.'

By a note dated November 24th, 1947, and filed in the Registry on November 29th, the Secretary-General of the United Nations transmitted to the Registrar a copy of the Resolution of the General Assembly. In a telegram sent on December 10th, the Secretary-General informed the Registrar that the note of November 24th was to be regarded as the official notification and that certified true copies of the Resolution had been despatched. These copies reached the Registry on December 12th, and the question was then entered in the General List under No. 3.

The same day, the Registrar gave notice of the request for an opinion to all States entitled to appear before the Court, in accordance with paragraph 1 of Article 66 of the Statute. Furthermore, ***59** as the question put mentioned Article 4 of the Charter, the Registrar informed the Governments of Members of the United Nations, by means of a special and direct communication as provided in paragraph 2 of Article 66, that the Court was prepared to receive from them written statements on the question before February 9th, 1948, the date fixed by an Order made on December 12th, 1947, by the President, as the Court was not sitting.

By the date thus fixed, written statements were received from the following States: China, El Salvador, Guatemala, Honduras, India, Canada, United States of America, Greece, Yugoslavia, Belgium, Iraq, Ukraine, Union of Soviet Socialist Republics, and Australia. These statements were communicated to all Members of the United Nations, who were informed that the President had fixed April 15th, 1948, as the opening date of the oral proceedings. A statement from the Government of Siam, dated January 30th, 1948, which was received in the Registry on February 14th, i.e., after the expiration of the time-limit, was accepted by decision of the President and was also transmitted to the other Members of the United Nations.

By its Resolution the General Assembly instructed the Secretary-General to place at the disposal of the Court the records of certain meetings of the Security Council. In accordance with these instructions and with paragraph 2 of Article 65 of the Statute, where it is laid down that every question submitted for an opinion shall be

accompanied by all documents likely to throw light upon it, the Secretary-General sent to the Registry the documents which are enumerated in Section I of the list annexed to the present opinion [FN1]. A part of these documents reached the Registry on February 10th, 1948, and the remainder on March 20th. The Secretary-General also announced by a letter of February 12th, 1948, that he had designated a representative, authorized to present any written and oral statements which might facilitate the Court's task.

Furthermore, the Governments of the French Republic, of the Federal People's Republic of Yugoslavia, of the Kingdom of Belgium, of the Czechoslovak Republic, and of the Republic of Poland announced that they had designated representatives to present oral statements before the Court.

By decision of the Court, the opening of the oral proceedings was postponed from April 15th to April 22nd, 1948. In the course of public sittings held on April 22nd, 23rd and 24th, the Court heard the oral statements presented

-on behalf of the Secretary-General of the United Nations, by its representative, Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department;

***60** -on behalf of the Government of the French Republic, by its representative, M. Georges Scelle, Professor at the Faculty of Law of Paris;

-on behalf of the Government of the Federal People's Republic of Yugoslavia, by its representative, Mr. Milan Bartos, Minister Plenipotentiary;

-on behalf of the Government of the Kingdom of Belgium, by its representative, M. Georges Kaeckenbeeck, D.C.L., Minister Plenipotentiary, Head of the Division for Peace Conferences and International Organization at the Ministry for Foreign Affairs, Member of the Permanent Court of Arbitration;

-on behalf of the Government of the Republic of Czechoslovakia, by its representative, Mr. Vladimir Vochoc, Professor of International Law in Charles University at Prague;

-on behalf of the Government of the Republic of Poland, by its representative, Mr. Manfred Lachs, Professeur agrege of International Law at the University of Warsaw.

In the course of the hearings, new documents were filed by the representatives accredited to the Court. These documents are enumerated in Section II of the list annexed to the present opinion [FN2].

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Before examining the request for an opinion, the Court considers it necessary to make the following preliminary remarks:

The question put to the Court is divided into two parts, of which the second begins with the words 'In particular', and is presented as an application of a more general idea implicit in the first.

The request for an opinion does not refer to the actual vote. Although the Members are bound to conform to the requirements of Article 4 in giving their votes, the General Assembly can hardly be supposed to have intended to ask the Court's opinion as to the reasons which, in the mind of a Member, may prompt its vote. Such reasons, which enter into a mental process, are obviously subject to no control. Nor does the request concern a Member's freedom of expressing its opinion. Since it concerns a condition or conditions on which a Member 'makes its consent dependent', the question can only relate to the statements made by a Member concerning the vote it proposes to give.

It is clear from the General Assembly's Resolution of November 17th, 1947, that the Court is not called upon either to define the meaning and scope of the conditions on which admission is made dependent, or to specify the elements which may serve in a concrete case to verify the existence of the requisite conditions.

***61** The clause of the General Assembly's Resolution, referring to 'the exchange of views which has taken place....', is not understood as an invitation to the Court to say whether the views thus referred to are well founded or otherwise. The abstract form in which the question is stated precludes such an interpretation.

The question put is in effect confined to the following point only: are the conditions stated in paragraph 1 of Article 4 exhaustive in character in the sense that an affirmative reply would lead to the conclusion that a Member is not legally entitled to make admission dependent on conditions not expressly provided for in that Article, while a negative reply would, on the contrary, authorize a Member to make admission dependent also on other conditions.

* * *

Understood in this light, the question, in its two parts, is and can only be a purely legal one. To determine the meaning of a treaty provision-to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein-is a problem of interpretation and consequently a legal question.

It has nevertheless been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court. The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request, nor with the considerations which, in the concrete cases submitted for examination to the Security Council, formed the subject of the exchange of views which took place in that body. It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it; nothing which is said in the present opinion refers, either directly or indirectly, to concrete cases or to particular circumstances.

It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. Accord-

ing to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.

Lastly, it has also been maintained that the Court cannot reply to the question put because it involves an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, 'the principal judicial organ of the United Nations', to exercise in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers.

Accordingly, the Court holds that it is competent, on the basis of Article 96 of the Charter and Article 65 of the Statute, and ***62** considers that there are no reasons why it should decline to answer the question put to it.

In framing this answer, it is necessary first to recall the 'conditions' required, under paragraph 1 of Article 4, of an applicant for admission. This provision reads as follows:

'Membership in the United Nations is open to all other peaceloving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.'

The requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.

All these conditions are subject to the judgment of the Organization. The judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4, and, in the last analysis, that of its Members. The question put is concerned with the individual attitude of each Member called upon to pronounce itself on the question of admission.

Having been asked to determine the character, exhaustive or otherwise, of the conditions stated in Article 4, the Court must in the first place consider the text of that Article. The English and French texts of paragraph 1 of Article 4 have the same meaning, and it is impossible to find any conflict between them. The text of this paragraph, by the enumeration which it contains and the choice of its terms, clearly demonstrates the intention of its authors to establish a legal rule which, while it fixes the conditions of admission, determines also the reasons for which admission may be refused; for the text does not differentiate between these two cases and any attempt to restrict it to one of them would be purely arbitrary.

The terms 'Membership in the United Nations is open to all other peace-loving States which....' and 'Peuvent devenir Membres des Nations unies tous autres Etats pacifiques', indicate that States which fulfil the conditions stated have the qualifications requisite for admission. The natural meaning of the words used leads to the conclusion that these conditions constitute an exhaustive enumeration and are not merely stated by way of guidance or example. The provision would lose its significance and weight, if other conditions, unconnected with those laid down, could

be demanded. The conditions stated in paragraph 1 of Article 4 must therefore be regarded not merely as the necessary conditions, but also as the conditions which suffice.

Nor can it be argued that the conditions enumerated represent only an indispensable minimum, in the sense that political considerations could be superimposed upon them, and prevent the admission of an applicant which fulfils them. Such an interpretation ***63** would be inconsistent with the terms of paragraph 2 of Article 4, which provide for the admission of 'tout Etat remplissant cesconditions'-'any such State'. It would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions. Such a power would be inconsistent with the very character of paragraph 1 of Article 4 which, by reason of the close connexion which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States. To warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established.

Moreover, the spirit as well as the terms of the paragraph preclude the idea that considerations extraneous to these principles and obl gations can prevent the admission of a State which complies with them. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording.

The Court considers that the text is sufficiently clear; consequently, it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself.

The Court furthermore observes that Rule 60 of the Provisional Rules of Procedure of the Security Council is based on this interpretation. The first paragraph of this Rule reads as follows:

'The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.'

It does not, however, follow from the exhaustive character of paragraph 1 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.

Article 4 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 in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor-that is to say, none connected with the conditions of admission-is excluded.

***64** It has been sought to deduce either from the second paragraph of Article 4, or from the political character of the organ recommending or deciding upon admission, arguments in favour of an interpretation of paragraph 1 of Article 4, to the effect that the fulfilment of the conditions provided for in that Article is necessary before the admission of a State can be recommended or decided upon, but that it does not preclude the Members of the Organization from advancing considerations of political expediency, extraneous to the conditions of Article 4.

But paragraph 2 is concerned only with the procedure for admission, while the preceding paragraph lays down the substantive law. This procedural character is clearly indicated by the words 'will be effected', which, by linking admission to the decision, point clearly to the fact that the paragraph is solely concerned with the manner in which admission is effected, and not with the subject of the judgment of the Organization, nor with the nature of the appreciation involved in that judgment, these two questions being dealt with in the preceding paragraph. Moreover, this paragraph, in referring to the 'recommendation' of the Security Council and the 'decision' of the General Assembly, is designed only to determine the respective functions of these two organs which consist in pronouncing upon the question whether or not the applicant State shall be admitted to membership after having established whether or not the prescribed conditions are fulfilled.

The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, the limits of this freedom are fixed by Article 4 and allow for a wide liberty of appreciation. There is therefore no conflict between the functions of the political organs, on the one hand, and the exhaustive character of the prescribed conditions, on the other.

It has been sought to base on the political responsibilities assumed by the Security Council, in virtue of Article 24 of the Charter, an argument justifying the necessity for according to the Security Council as well as to the General Assembly complete freedom of appreciation in connexion with the admission of new Members. But Article 24, owing to the very general nature of its terms, cannot, in the absence of any provision, affect the special rules for admission which emerge from Article 4.

The foregoing considerations establish the exhaustive character of the conditions prescribed in Article 4.

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The second part of the question concerns a demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.

***65** Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand clearly constitutes a new condition, since it is en-

tirely unconnected with those prescribed in Article 4. It is also in an entirely different category from those conditions, since it makes admission dependent, not on the conditions required of applicants, qualifications which are supposed to be fulfilled, but on an extraneous consideration concerning States other than the applicant State.

The provisions of Article 4 necessarily imply that every application for admission should be examined and voted on separately and on its own merits; otherwise it would be impossible to determine whether a particular applicant fulfils the necessary conditions. To subject an affirmative vote for the admission of an applicant State to the condition that other States be admitted with that State would prevent Members from exercising their judgment in each case with complete liberty, within the scope of the prescribed conditions. Such a demand is incompatible with the letter and spirit of Article 4 of the Charter.

FOR THESE REASONS,

THE COURT,

by nine votes to six,

is of opinion that 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, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article;

and that, in particular, a Member of the Organization cannot, 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 present opinion has been drawn up in French and in English, the French text being authoritative.

***66** Done at the Peace Palace, The Hague, this twenty-eighth day of May, one thousand nine hundred and forty-eight, in two copies, one of which shall be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) J. G. GUERRERO, President.

(Signed) E. HAMBRO, Registrar.

Judges ALVAREZ and AZEVEDO, whilst concurring in the opinion of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the opinion a statement of their individual opinion.

Judges BASDEVANT, WINIARSKI, MCNAIR, READ, ZORICIC and KRYLOV, declaring that they are unable to concur in the opinion of the Court, have availed themselves of the

right conferred on them by Article 57 of the Statute and appended to the opinion a statement of their dissenting opinion.

(Initialled) J. G. G.
(Initialled) E. H.

FN1 See page 116.

FN2 See page 119.

***67** 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 role 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; ***68** 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 ***69** 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 ***70** 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 ***71** 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.

***72** 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 address to the Court:

1 degrees 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 degrees 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 role 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 role emerge from the domain of doctrine and become applicable in practice.

(Signed) ALVAREZ.

***73** INDIVIDUAL OPINION BY M. AZEVEDO.

[Translation.]

1.-I agree with the findings of the Court, and the purpose of the following remarks is merely to explain certain reasons which I should like to add to the opinion.

I would begin by referring to my previous view, that I am convinced that a radical change was made by the Charter in the matter of advisory opinions. I also have in mind the revision of Article 82 and the abolition of Article 83 of the Rules of Court, to prevent any request disguised as an opinion.

If the function of advisor given to a Court of Justice offends certain deep-rooted convictions, there is something even stranger in my view; it is the tertium genus which has always impeded the clear application of the rule laid down in Article 14 of the 1919 Covenant, as may be seen by reading the commentaries of those who studied the problem (Bassett Moore, Hudson, De Visscher, Negulesco, Tenekides, Dauvergne, Beuve-Mery, Remlinger, etc.).

The expressions 'any dispute or any point' have given rise to the anomaly of settling a dispute without having the authority of a judgment and sometimes without the consent of the interested parties; in this way, the principle of voluntary jurisdiction, which was at the basis of the system, ran the risk of disappearing as the result of a diversion which was easy to undertake.

In order to forestall such consequences, the Charter substituted for these expres-

sions simply the terms 'any legal question' (in English no change was necessary, because the word question already corresponded with the French point).

In my view, this strange notion which has been called 'advisory arbitration' has now disappeared, as well as the participation of judges ad hoc in advisory opinions. The disturbing element having been removed, the advisory function of the Court will assume great importance, and the Court will not have to settle genuine disputes by a strange and indirect method, a sort of travesty of contentious procedure.

Grant Gilmore, in emphasizing the reduction of jurisdiction brought about by the Charter, has observed that the contentious cases decided by the old Court, being more or less linked to the consent of the parties, generally had only secondary importance, while those matters which were decided by advisory opinion were ***74** much more interesting. (Yale Law Journal, August 1946. The International Court of Justice, pp. 1053, 1054 and 1064.)

That a Court should be asked for an opinion on theoretical questions may seem strange. But it must not be forgotten that the International Court of Justice has a double character: that of tribunal, and that of counsellor. And it is quite fitting for an advisory body to give an answer in abstracto which may eventually be applied to several de facto situations: minima circumstantia facti magnam diversitatem juris.

It is true that Manley Hudson made the point that the Permanent Court never deviated from the facts (The Permanent Court of International Justice, 1933, para. 470, pp. 495-496, and note 69), but he admits too that in Advisory Opinion No. 1 the question had already been decided by the International Labour Office, and that the request for the opinion had as its sole purpose the establishment of a criterion for the future (Hudson, op. cit., p. 497, P.C.I.J., Series B., No. 1, p. 14).

Any request-apart from a quite artificial attitude, which cannot be presumed-always arises from or is influenced by facts, but it is also possible to eliminate the concrete elements, so as to reveal an isolated point of doctrine.

In the original report by Lapradelle, in 1920, an abstract request was already contemplated in connexion with the distinction between a 'point', on the one hand, which was always limited to a question of pure, theoretical law, and, on the other hand, a 'dispute', which had arisen from a concrete disagreement, already in existence.

Such a distinction therefore corresponds to the idea held by the founders of the Court, and it was clearly indicated in the plan proposed in 1920 by the Brazilian jurist Clovis Bevilacqua. It is for all these reason that the Permanent Court could say:

> 'There seems to be no reason why States should not be able to ask the Court to give an abstract interpretation of a treaty; rather would it appear that this is one of the most important functions which it can fulfil.' (P.C.I.J., Series A., No. 7, pp. 18-19; Series B., No. 1, p. 24.)

It is even preferable that the Court should ignore disputes that have given rise to any particular question. The Court would not then be led to incur responsibility by departing from its normal duty; the Court would thus leave a wider field of appreciation open to the body which would have to apply the convention without slighting the prestige of the tribunal.

2.-I am glad to note that the first opinion for which the Court is asked affords a perfect example of the manner in which I would ***75** wish questions always to be put. The Court has not even had above all to 'consider whether the request for the advisory opinion relates to a legal question actually pending between two or more States', as required by Article 82 of the Rules.

It is true that one of the recitals at the head of the resolution adopted by the General Assembly refers in precise terms to what happened in certain meetings of the Security Council, but if the questions asked are clear enough to make a complete answer possible, the Court is not bound by mere recitals.

On the other hand, if the Court chose to know the facts, it would not be limited, and would be free to inform itself not partially, but completely. That is why the Secretary-General did not send to the Court only the minutes of the three meetings referred to, but sent copious documentation, which the Assistant Secretary-General in charge of the Legal Department used in his oral statement.

Thus, the examination of these documents, as of all other elements which we have been able to examine for the purpose of investigation, convinces us even further that we should make a purely theoretical study of the question, so as to enable the Court without the assistance of any individual or State, to give an opinion of which the effects would be applicable to all Members of the Organization.

In fact, it can be seen, by examining the whole history of the Security Council and of the General Assembly, since the United Nations was founded two years ago, that almost the same arguments have been used and the same criticism reproduced alternatively by the representatives of certain States who found themselves, by the force of circumstances, in similar, though opposite, situations.

The discussion which began in the Security Council at the end of August 1946 might even be compared to that which had already taken place in the same body in January 1946; this made it possible for John Hazard to write about the idea of bargaining in the admission of Members even before the question really came up in the United Nations. (Yale Law Journal, cit., p. 1031.)

3.-By applying an objective criterion faithfully, any legal question can be examined without considering the political elements which may, in some proportion, be involved.

Objection to the political aspect of a case is familiar to domestic tribunals in cases arising from the discretionary action of governments, but the Courts always have a sure means of rejecting the non liquet and of acting in the penumbra which separates the legal and the political, in the endeavour to protect individual

rights.

***76** In my country, an eminent jurist who was also a member of this Court, Ruy Barbosa, examined the problem fully in the light of comparative law (Direito do Amazonas ao Acre, Rio de Janeiro, 1910); it is particularly interesting to see in his work how, for instance, the history of the Washington Court from the beginning of the country's autonomous existence, through the war of Secession, until 1937, and the adoption of the New Deal by Franklin Roosevelt, affords useful information.

The decisions known as the 'Insular Cases' have been ably commented on. C. F. Randolph, for instance, states that 'these may be momentous political questions without the precincts of the Court; within, they are simple judicial questions' (The Law and Polices of Annexation, p. 105.)

But the possibility of a separation of the two aspects is still admitted in other countries, whose juridical systems are quite different from those of America. In this connexion, the activity of the French Council of State might be mentioned; its jurisprudence embraces a constantly widening field.

If we move into the field of international law, we observe that, outside the general wishes expressed in the Preamble, the Charter of the United Nations reminds us that the adjustment or settlement of international disputes or situations which might lead to a breach of the peace is to be brought about by peaceful means, and in conformity with the principles of justice and international law (Article 1, para. 1).

The good faith in which the obligations assumed in accordance with the Charter shall be fulfilled is also mentioned (Article 2, para. 2), as well as the duty of the Security Council to act in accordance with the purposes and principles of the United Nations (Article 24, para. 2).

Consequently, it cannot be denied that the United Nations rests essentially on legal foundations; the sovereign equality of States is restricted, in order to promote harmony among peoples (P.C.I.J., Series B., No. 13, p. 22), and it must be admitted that all nations, large or small, have had to limit their international activities.

The most typically political acts, such as the declaration of war, are subject to ingeniously linked 'abortive' measures; on the other hand, the power to conclude treaties is regulated (Article 103).

In such conditions, the discretionary powers which are expressly granted, or which can filter through numerous flexible provisions, always come up against limitations and must, in addition, be exercised with a view to the aims of this legal order.

***77** This is why the legal examination of questions can be extended to the frontiers of political action, although (as certain great minds would wish) the abolition of non-justiciable disputes has not yet been attained.

In the present case, the legal question is clearly apparent, and the Court can decide it without enquiring whether hidden political motives have been introduced or

not, in the same way as the old Court has done in the Opinion No. 23:

'The Court .... is called upon to perform a judicial function, and .... there appears to be no room for the discussion and application of political principles or social theories....' (Series B., No. 13, p. 23.)

4.-Passing to the examination of the particular case, and dismissing the notion of the universality of the United Nations, an ideal which has not yet become a guiding rule for the admission of new Members, the following question must first be considered: whether there exists, or not, a subjective right to be admitted to this international society.

In favour of an affirmative answer, it has been suggested that the notion of an obligation in favour of third parties should be applied by analogy; such a notion has been adopted in several treaties, and also by various international groups, such as the Industrial Property Group, to which each country is free to adhere, such adherence being sufficient for the country to begin to enjoy its rights and assume its obligations.

But here the act involved is not unilateral, but manifestly bilateral; and it is complete only when the request for admission has been accepted by the principal organs of the United Nations.

Such a request is binding only on the applicant, and even if it is founded on the existence of the qualifications required by the Charter, the candidate cannot himself judge whether the conditions are fulfilled in conformity with Article 4. This is the task of the Organization, which may, or may not, accept the proposal by a judgment which it alone can render.

Therefore it is not a question of right, but simply of interest, which may, however, be transformed later by the judgment in question.

The conditions for admission, as deliberately laid down, are so broad and flexible that the recommendations and decisions relating thereto necessarily contain a strong arbitrary element.

It would be difficult to say that any one of the required conditions has a purely objective character, and that it could be appraised algebraically; and despite the place allotted to the word 'judgment', it is precisely in the matter of the peace-loving nature of ***78** a State that a wide scope has been given to the political views of those who are called upon to pronounce themselves.

Motives of all kinds, tending to unite or separate men and countries, will slip through the remaining loopholes; all kinds of prejudices, and even physical repugnance will find a way of influencing the decision, either by an act of the will or even through the action of the subconscious. Each appraisal will be psychologically determined according to the criterion applied by each voter.

It would be vain to require in practice that the representatives of States should act exclusively according to ideal and abstract considerations, seeing that at the

basis of every social organization, there are only men, whose virtues and faults, individually or collectively, are almost the same.

The philosophical quarrel of the 'universals' has not succeeded, through the centuries, in giving any other basis to human groups, in spite of the effect of nominalist, realist and conceptualist doctrines on legal personality, or on the institutional organism.

In short, all political considerations may intervene in determining the judgment of the organs of the United Nations regarding the qualifications laid down in Article 4 of the Charter. Hence, objections that have been raised regarding the protection of the rights of man, the attitude of countries during the last war, the extent of diplomatic relations, etc., may, in principle, justify the rejection of an application.

The idea arose in the San Francisco Conference itself, which approved, by acclamation, a proposal that countries whose governments had been established with the aid of the military force of countries that had fought against the United Nations, should be held not to fulfil the required conditions.

A direct reference to democratic institutions was avoided, roughly in the terms adopted at the Teheran Conference of 1943 (Goodrich and Hambro, Charter of the United Nations, p. 80), in order not to intervene in or even meddle with the domestic affairs of a country; but the report itself, which expressed such fears, did not fail to stress that such an appraisal might be made when judgment as to the required qualifications was given. (U.N.C.I.O., Committee I/2, Doc. 1160, Vol. VII, p. 316.)

5.-On the other hand, it must be admitted that the examination of candidatures has been limited by determining all the requirements that a candidate was obliged to fulfil; this was the minimum considered necessary to prevent arbitrary acts.

Consequently, the draft adopted differs essentially from that of the League of Nations, wherein no qualifications were required, ***79** nor was previous enquiry made into the candidate's past. The candidate was merely invited to enter into an engagement for the future by giving ('provided that') effective guarantees of its sincere intention to observe its international obligations. A more restrictive and less discretionary regime was better suited to the rule of law which the world was desirous of re-establishing after the Moscow declaration of the Four Powers in 1943, and after the Atlantic Charter.

If we look at their method of construction, we shall find that the builders of the San Francisco Charter, in order to avoid increasing the number of articles, decided to provide for express faculties in certain cases; thus, exceptions were made in regard to the important questions subject to a two-thirds majority (Charter, Article 18, para. 3), to territories to be brought under the trusteeship system (Article 77, para. 2), to non-member States which may become parties to the Statute (Article 93, para. 2), and to decisions ex aequo et bono (Statute, Article 38, para. 2).

But Article 4 forms no exception to conditions definitely laid down; as regards the absence of the word 'condition' in the English text, this does not change the

system, if it be remembered that, on several occasions, the same word, taken in the same sense, corresponds in English sometimes to condition (Charter, Article 93, and Statute, Article 4, paras. 2 and 3, and Articles 18 and 35), and sometimes to qualification (Statute, Articles 2 and 9).

The examination of all the documents leads to the conclusion that exhaustive interpretation has been current in the practice of the organs of the United Nations, the Members of which have reciprocally made complaints on the subject of requirements lying outside the scope fixed by Article 4. It has never been asserted that a country fulfilling all the legal conditions might nevertheless not be admitted, because other conditions were not fulfilled; on the other hand, it has always been stated that the absence of such qualifications prevented the fulfilment of the conditions prescribed by a provision that it was desired not to infringe.

And if I were not faced with an abstract question, and, consequently, if I had to take facts into account, I should consider that allegations which might be the basis of the first question asked have not been proved.

6.-Having established that the required conditions are fixed, it might still be possible-having regard to the doctrine of the relativity of rights already accepted in international law (P.C.I.J., Series A., No. 7, p. 30; and No. 24, p. 2; Series A./B., No. 46, p. 167)-to admit a kind of censorship for all cases in which there has been a misuse or, at any rate, abnormal use of power in the ***80** appreciation of the exhaustive list of qualities-even granting a wide scope to political considerations.

Any legal system involves limitations and is founded on definite rules which are always ready to reappear as the constant element of the construction, whenever the field of action of discretionary principles, adopted in exceptional circumstances, is overstepped.

This is a long-established principle, and has served, during centuries, to limit the scope of the principle qui suo jure utitur neminem laedit.

The concept of the misuse of rights has now been freed from the classical notions of dolus and culpa; in the last stage of the problem an enquiry into intention may be discarded, and attention may be given solely to the objective aspect; i.e., it may be presumed that the right in question must be exercised in accordance with standards of what is normal, having in view the social purpose of the law. (Cf. Swiss Civil Code, Art. 2; Soviet, Art. 1; and Brazilian, Art. 160.)

There are even restrictions on arbitrary decision. It would, no doubt, be difficult to fix limits a priori, though examples might easily be given; e.g., could Switzerland be regarded as a nonpeace-loving country? Could policy override the law to such an extent?

In another field, it might also be asked how the United Nations could continue to function if the reservation in the Charter regarding domestic jurisdiction was subject to no control.

But here there would be no need to seek for reasons; for the Court has before it a theoretical opinion. In any case, it would be a very difficult task to perform, because the Members voting are not bound to state their reasons.

Of course, if they choose to express their motives, they themselves would open the way to the examination of the restrictions, by transforming an abstract act into a causal act (as sometimes happens in private law in the case of certain forms of bonds), in such a way that an enquiry would be possible into the existence and authenticity of a particular cause. The falsa demonstratio may thus vitiate the act when it is subordinated to a certain motive.

It is true that it has been maintained that the statement of reasons is not merely an act of courtesy, but the fulfilment of a duty which enables the Assembly to know the reasons for a refusal. But if the great majority of the Members of the United Nations hold that the Security Council's recommendation is a condition sine qua non for the admission of a Member by the Assembly, it would be useless for the latter to verify the reasons ***81** that the Council might have had for not reporting favourably on the application.

7.-The request for an opinion is not confined to a general point. It also contains a particular question, namely, the hypothetical case in which an affirmative vote is made subject to simultaneous admission of other States. Such an attitude has been alleged directly or indirectly, clearly or in a disguised manner, on several occasions.

But there is no question of a simple example or corollary, which would make a special reply superfluous; on the contrary, the second question is, from its nature, not wholly included in the first. There is a change of plane from the individual to the collective, and this is not legally justified, if arbitrary action is excluded; there is a change from the consideration of the qualities inherent in a certain candidate, to circumstances foreign to that candidate and concerned with the interests of third parties.

Once it is admitted that a State has proved that it has all the required qualifications, a refusal to accept its application might be considered tantamount to a violation, not only of an interest, but of a right already established, the acceptance of the State having been recognized, by final judgment, to be fully justified.

The most weighty reasons, such as the validity of a prior international undertaking, even if that undertaking bound all the Members of the United Nations, could not, in any case, justify the abandonment of a rule of law as an act of retortion. It would, in law, be equally abnormal to refuse admission in order to avoid acting unjustly towards a third party, or to defend oneself against action considered to be arbitrary, as it would be to demand compensatory advantages from a candidate.

8.-Having completely covered the question in its true limits, a judge will have fulfilled his duty if he gives a legal answer as to the law, independent of facts and without commenting on the attitude of any particular State (P.C.I.J., Series B., No. 13, p. 24).

If he does so, he will not hinder the political activity of the organs that are responsible for the maintenance of peace; for elements of expediency, manifest or hidden, can always be considered when reasonable use is made of the wide possibilities opened by Article 4 of the Charter. Respect for law must never constitute a reason for disturbing international harmony, nor cause an upheaval in the life of any society.

(Signed) PHILADELPHO AZEVEDO.

***82** DISSENTING OPINION OF JUDGES BASDEVANT, WINIARSKI, SIR ARNOLD McNAIR AND READ.

1. We regret that, while we concur in the opinion of the majority of the members of the Court as to the legal character of the first question, as to the power of the Court to answer it and the desirability of doing so, and as to the competence of the Court to give any interpretation of the Charter thereby involved, we are unable to concur in the answer given by the majority to either question, and we wish to state our reasons for not doing so.

2. The request made to the Court for an advisory opinion is as follows:

'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?'

There are two questions and we shall begin by examining the first.

3. In our opinion, it is impossible to regard the first question as one which relates solely to the statements or the arguments which a Member of the United Nations may make or put forward in the Security Council or in the General Assembly when those organs are considering a request for admission, and not to the reasons on which that Member bases its vote. The Court is asked whether a Member is 'juridically entitled to make its consent to the admission' dependent on conditions not provided for by paragraph 1 of Article 4. Its consent to admission is expressed by its vote. It is therefore the vote that is in question, as is confirmed by the expression 'subject its affirmative vote' used in the second question, which is complementary to the first. But it would be a strange interpretation which gave a Member freedom to base its vote upon a certain consideration and at the same time forbade it to invoke that consideration in the discussion preceding the vote. Such a result would not conduce to that frank exchange ***83** of views which is an essential condition of the healthy functioning of an international organization. It is true that it is not possible to fathom the hidden reasons for a vote and there exists no legal machinery for rectifying a vote which may be cast contrary to the Charter in

the Security Council or the General Assembly. But that does not mean that there are no rules of law governing Members of the United Nations in voting in either of these organs; an example is to be found in paragraph 1 of Article 4 prohibiting the admission of a new Member which does not fulfil the qualifications specified therein. This distinction, which it has been attempted to introduce between the actual vote and the discussion preceding it, cannot be accepted; it would be inconsistent with the actual terms of the question submitted to the Court, and its recognition would involve the risk of undermining that respect for good faith which must govern the discharge of the obligations contained in the Charter (Article 2, paragraph 2).

4. The question submitted to us is whether, apart from the qualifications expressly specified in paragraph 1 of Article 4, a Member of the United Nations is at liberty to choose the reasons on which it may base its vote or which it may invoke in the Security Council or the General Assembly in the course of the proceedings relating to an application for admission, or whether, on the other hand, that Member is forbidden to rely on considerations which are foreign to the qualifications specified in paragraph 1 of Article 4. The question has been put to us in terms of the conduct of a member of the United Nations in the Security Council or in the General Assembly; the Member is envisaged in its capacity as a member of these organs, that is to say, in the discharge of its duty to contribute to the making of a recommendation by the Security Council or of a decision by the General Assembly on that recommendation. The freedom of that Member in this respect cannot be either more or less than that of the organ as a member of which he is called upon to give his vote. Accordingly, in order to answer the question put with regard to the conduct of a member, we are compelled to begin by deciding what the answer should be in relation to the organ, be it the Security Council or the General Assembly.

5. The reason why the question stated has been submitted to the Court is that the relevant provisions did not seem to be clear enough to provide a simple and unambiguous answer to the question. Such, at any rate, was the view of the General Assembly and we share it. Accordingly, in our opinion, we are confronted with a question of interpretation and therefore we must apply the rules generally recognized in regard to the interpretation of treaties.

6. The relevant article of the Charter is No. 4, which is as follows:

***84** '1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.'

Although the terms of the question as put to the Court by the General Assembly are confined to mentioning the first paragraph of this Article, its second paragraph is equally relevant, because it deals with the discussion and the voting in the Security Council and the General Assembly when examining a request for admission, and because it is the second paragraph which fixes the respective spheres of the Security

Council and the General Assembly in this matter.

Moreover, it is a rule of interpretation which was well recognized and constantly applied by the Permanent Court of International Justice that a treaty provision should be read in its entirety.

Again, it must be placed in its legal context as supplied by the other provisions of the Charter and the principles of international law.

7. The first conclusion that emerges from a reading of Article 4 in its entirety is that the Charter does not follow the model of the multilateral treaties which create international unions and frequently contain an accession clause by virtue of which a declaration of accession made by a third State involves automatically the acquisition of membership of the union by that State. On the contrary, the Charter, following the example of the Covenant of the League of Nations and having due regard to the fact that it is designed to create a political international organization, has adopted a different and more complex system, namely, the system of admission. Assuming that a request is made by a State desiring to be admitted, the system involves a decision by the General Assembly whereby admission 'will be effected'; this decision is taken upon a recommendation made by the Security Council; that recommendation cannot be made, and that decision cannot be taken, unless certain qualifications specified in paragraph 1 of Article 4 are possessed by the applicant State.

8. The essential feature of this system is the decision of the General Assembly whereby the admission 'will be effected'. The provisions of paragraph 2 of Article 4, which fix the respective powers of the General Assembly and the Security Council in this matter, do not treat the admission of new Members as a mere matter of the routine application of rules of admission. It would only be possible to attribute such a meaning to this Article if it had adopted a system of accession and not of admission; and if accession had been the system adopted it would have been better to have placed the Secretary-General in control of the procedure. This ***85** Article does not create a system of accession, but the entirely different system of admission. In the working of this system the Charter requires the intervention of the two principal political organs of the United Nations, one for the purpose of making a recommendation and then the other for the purpose of effecting the admission. It is impossible by means of interpretation to regard these organs as mere pieces of procedural machinery like the Committee for Admissions established by the Security Council. In the system adopted by the Charter, admission is effected by the decision of the General Assembly, which can only act upon a recommendation of the Security Council, and after both these organs are satisfied that the applicant State possesses the qualifications required by paragraph 1 of Article 4.

9. The resolutions which embody either a recommendation or a decision in regard to admission are decisions of a political character; they emanate from political organs; by general consent they involve the examination of political factors, with a view to deciding whether the applicant State possesses the qualifications prescribed by paragraph 1 of Article 4; they produce a political effect by changing the condi-

tion of the applicant State in making it a Member of the United Nations. Upon the Security Council, whose duty it is to make the recommendation, there rests by the provisions of Article 24 of the Charter 'primary responsibility for the maintenance of international peace and security'-a purpose inscribed in Article 1 of the Charter as the first of the Purposes of the United Nations. The admission of a new Member is pre-eminently a political act, and a political act of the greatest importance.

The main function of a political organ is to examine questions in their political aspect, which means examining them from every point of view. It follows that the Members of such an organ who are responsible for forming its decisions must consider questions from every aspect, and, in consequence, are legally entitled to base their arguments and their vote upon political considerations. That is the position of a member of the Security Council or of the General Assembly who raises an objection based upon reasons other than the lack of one of the qualifications expressly required by paragraph 1 of Article 4.

That does not mean that no legal restriction is placed upon this liberty. We do not claim that a political organ and those who contribute to the formation of its decisions are emancipated from all duty to respect the law. The Security Council, the General Assembly and the Members who contribute by their votes to the decisions of these bodies are clearly bound to respect paragraph 1 of Article 4, and, in consequence, bound not to admit a State which fails to possess the conditions required in this paragraph.

But is there any other legal restriction upon the freedom which in principle these organs enjoy in the choice of the reasons for their decisions, that is to say, upon the liberty which in principle a State ***86** enjoys in choosing the reasons for its decisions, and in this case, for its vote? Is there in this case a restriction consisting in a prohibition to oppose an application for admission on grounds foreign to the qualifications required by paragraph 1 of Article 4?

10. We must therefore decide whether there exists such a restriction upon the principle of law stated above.

There is a rule of interpretation frequently applied by the Permanent Court of International Justice, when confronted with a rule or principle of law, to the effect that no restriction upon this rule or principle can be presumed unless it has been clearly established, and that in case of doubt it is the rule or principle of law which must prevail. In the present case, before acknowledging the existence of any restriction upon the principle of the widest examination of requests for admission by the Security Council, the General Assembly and their members, it is necessary to show that such a restriction has been established beyond a doubt.

Can it therefore be said that the application of this principle is subject to a clearly established restriction precluding the putting forward, in the course of the examination of requests for admission, of considerations not expressly specified in paragraph 1 of Article 4?

11. There is no treaty provision which establishes such a restriction.

The effect of paragraph 1 of Article 4-the only relevant text in this connexion-is that certain qualifications therein enumerated are required for admission, and that these qualifications are essential; but there is no express and direct statement that these qualifications are sufficient and that once they are fulfilled admission must of necessity follow.

Not only does the paragraph not say this, but it does not even imply any such restriction; indeed quite the contrary is the case.

The language of Article 4-'Membership is open', 'Peuvent devenir Membres', 'admission will be effected', 'se fait'-is permissive in tone, not obligatory. So far as we understand, the Chinese, Russian and Spanish texts contain nothing which contradicts this view. Paragraph 1 of Article 4 enacts that States which fulfil the conditions therein enumerated possess the qualifications required for admission; this enumeration is exhaustive in the sense that no other condition is required by the Charter; this provision, which prohibits the admission of a State not fulfilling these conditions, fully carries out the intentions of the drafters of the Charter and is entitled to complete legal effect. But this provision contains no evidence of any definite intention to deprive the Security Council or the General Assembly or their members of the legal right possessed by them of giving effect to other considerations.

Indeed, so far from depriving them of this power, Article 4 lends support to its existence.

***87** 12. This view accords with the intentions of the framers of the Charter.

Without wishing to embark upon a general examination and assessment of the value of resorting to travaux preparatoires in the interpretation of treaties, it must be admitted that if ever there is a case in which this practice is justified it is when those who negotiated the treaty have embodied in an interpretative resolution or some similar provision their precise intentions regarding the meaning attached by them to a particular article of the treaty. This is exactly what was done with respect to paragraph 2 of Article 4.

13. Before dealing with this point we may begin by stating that while the Minutes of the San Francisco Conference show clearly the importance attached to the qualifications for admission therein set out and also to the respective roles of the General Assembly and the Security Council in regard to admission, and while they make it clear that the above-mentioned qualifications are regarded as essential, they contain no indication of any intention to regard them as sufficient to impose upon the Organization a legal obligation to admit the State which possesses them.

14. Without describing in detail the drafting of Article 4, we shall mention the following points:

The Dumbarton Oaks Proposals (Chapter III, Membership, and Chapter V, General Assembly) contained the two following sentences:

'Membership of the Organization should be open to all peace-loving States.'

'The General Assembly should be empowered to admit new Members to the Organization upon recommendation of the Security Council.'

(It will be remembered that these were proposals and not draft articles.)

At San Francisco, the first of these sentences was dealt with by Committee 2 of Commission I, and finally emerged as paragraph 1 of Article 4 of the Charter. The Minutes of this Committee are to be found in Volume VII of the Conference Records. On page 306 will be found the report of the Rapporteur of Committee I/2 submitting the text of paragraph 1 of Article 4 in substantially the form adopted. After dealing with the rejection of the proposal in favour of universal membership, it referred to the 'two principal tendencies .... manifested in the discussion', one in favour of 'inserting in the Charter specific conditions which new Members should be required to fulfil, especially in matters concerning the character and policies of governments', while the other view was that 'the Charter should not needlessly limit the Organization in its decisions concerning ***88** requests for admission and asserted that the Organization itself would be in a better position to judge the character of candidates for admission'.

'It was clearly stated that the admission of a new Member would be subject to study, but the Committee did not feel it should recommend the enumeration of the elements which were to be taken into consideration. It considered the difficulties which would arise in evaluating the political institutions of States and feared that the mention in the Charter of a study of such a nature would be a breach of the principle of non-intervention, or if preferred, of non-interference. This does not imply, however, that in passing upon the admission of a new Member, considerations of all kinds cannot be brought into account.' (Vol. VII, p. 308).

It will be noted that this passage calls upon the Organization, that is to say, the Security Council and the General Assembly, to conduct the most extensive investigation. No doubt it might be argued that the final sentence quoted relates solely to the investigation which the Organization must make regarding the qualifications specified in paragraph 1 of Article 4. This interpretation is in no way self-evident; it is purely conjectural and is inconsistent with the French text of this report, which states the duty of the Organization to be 'de se former un jugement sur l'opportunite de l'admission d'un membre nouveau'. Judgment upon the expediency of an admission is not a mere declaration that the conditions specified in paragraph 1 of Article 4 are satisfied; it goes much further than that.

A little further on (p. 309), the same report, commenting upon the future paragraph 1 of Article 4, in a sentence the significance of which is reinforced by the fact that this sentence was substituted for an earlier and less precise text (p. 290), declares that 'the text adopted sets forth more clearly than the Dumbarton Oaks Proposals those qualifications for membership which the delegates deem fundamental, and provides a more definite guide to the General Assembly and Security Council on the admission of new members'. The statement that the qualifications required by paragraph 1 of Article 4 are considered as fundamental in no way excludes, but, on the

contrary, implies, the possibility of further requirements, upon grounds which are different and more discretionary.

The second sentence of the Dumbarton Oaks Proposals quoted above was dealt with at San Francisco by Committee I of Commission II (General Assembly), whose proceedings are recorded in Volume VIII of the Records of that Conference. The report of the Rapporteur of this Committee, as approved by the Committee on May 28th, 1945, contains the following paragraph (VIII, p. 451):

'The Committee recommends that new members be admitted by the General Assembly upon recommendation of the Security ***89** Council. (See attached Annex, Item 2.) In supporting the acceptance of this principle, several delegates emphasized that the purpose of the Charter is primarily to provide security against a repetition of the present war and that, therefore, the Security Council should assume the initial responsibility of suggesting new participating states.' (The italics are ours.)

Annex, Item 2, Vol. VIII (p. 456), is as follows:

'The General Assembly may admit new Members to the Organization upon the recommendation of the Security Council.'

Language more discretionary, more permissive, than 'may admit', 'a le pouvoir d'admettre', it would be difficult to find.

The Summary Report of the 15th Meeting of the same Committee, held on June 18th, 1945, contains the following passage (Vol. VIII, p. 487):

'Admission of New Members.

The Committee considered the following texts of Chapter V, Section B, paragraph 2, of the Dumbarton Oaks Proposals, which were under consideration by the Co-ordination Committee:

'The admission of any State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.'

'L'admission de tout Etat comme membre des Nations unies est prononcee par l'Assemblee generale sur la recommandation du Conseil de Securite.'

The Secretary reported that he had been advised by the Secretary of the Advisory Committee of Jurists that that Committee felt these texts would not in any way weaken the original text adopted by the Committee. In the light of this interpretation, the Committee approved the texts.' (The italics are ours.)

The Second Report of the Rapporteur of Committee II/1, which was circulated to the Members for their approval on June 19th, 1945, contains the following passage (Vol. VIII, p. 495):

'Admission of New Members (Chapter V, Section B, paragraph 2, of the Dumbarton

Oaks Proposals).

The Committee considered a revision of the text of this paragraph which was under consideration by the Co-ordination Committee in order to determine whether the power of the Assembly to admit new Members on recommendation of the Security Council was in no way weakened by the proposed text.

The Committee was advised that the new text did not in the view of the Advisory Committee of Jurists, weaken the right of the Assembly to accept or reject a recommendation for the admission of a new member....

The Committee agreed that this interpretation should be included in its minutes as the one that should be given to this provision of the Charter, and on this basis approved the text as suggested by the Co-ordination Committee.' (Italics ours.)

***90** These passages show that the text thus worked out which ultimately became paragraph 2 of Article 4, was regarded as conferring very wide powers upon the General Assembly.

Finally, M. Delgado, the Rapporteur of Commission I, said, both in his Report to the Conference (Vol. VI, p. 248) and in his speech at the plenary session on the 25th June: 'New Members will be admitted only if they are recognized as peace-loving, accept the obligations contained in the Charter, and, upon scrutiny by the Organization, are adjudged able and ready to carry out those obligations.' (Vol. I, p. 615.)

He thus stated very clearly that the qualifications specified in paragraph 1 of Article 4 are essential qualifications. Had he considered them also as sufficient, he would not have failed to say so.

15. Nor can the significance of the word 'recommendation', in paragraph 2 of Article 4, be overlooked. It is the function of the Security Council to reject an applicant or to recommend its admission. On the one hand, this fact indicates the discretionary nature of this function of the Security Council, while, on the other hand, the freedom of the General Assembly either to accept the recommendation and admit the applicant or to reject the application indicates that the function of the General Assembly in this matter is also discretionary.

16. So far as particularly concerns the freedom of a Member of the United Nations to put forward, in the course of the examination of an application for admission, this or that consideration foreign to the qualifications specified by paragraph 1 of Article 4, we may add that the General Assembly and the Security Council possess, by virtue of Articles 21 and 30 of the Charter, the right to regulate their own procedure. We can find nothing else which could restrict the freedom of discussion and, consequently, subject to the general control exercised by each organ, a Member enjoys the right of expressing its views in the course of the debates.

17. In our opinion it follows from these considerations that a Member of the United Nations remains legally entitled, either in the Security Council or in the General

Assembly, during the discussion upon the admission of a new Member, to put forward considerations foreign to the qualifications specified in paragraph 1 of Article 4, and, assuming these qualifications to be fulfilled, to base its vote upon such considerations.

18. In our opinion, while the Charter makes the qualifications specified in paragraph 1 of Article 4 essential, it does not make them sufficient. If it had regarded them as sufficient, it would not have failed to say so. The point was one of too great importance to be left in obscurity.

It is easy to understand why the authors of the Charter, after having rejected the principle of universality, should deem it ***91** undesirable to exclude the consideration of the very diverse political factors which the question of admission can in certain cases involve. When one considers the variety in the political conditions of the States which were not original Members of the United Nations-some ex-enemy, some ex-neutral, one permanently neutral by treaty, some with empires and some without, some unitary and some consisting of federal or other unions of States-and when one considers the political repercussions attending the union of existing States, or the emergence of new States and their entry into the United Nations-perhaps, the framers of the Charter, after having decided in this connexion to entrust a special mission to the Security Council, were wise in their generation in taking the view (as we submit they did) that it was impossible to do more than to prescribe certain preliminary and essential qualifications for membership and to leave the question of admission to the good faith and the good sense of the Security Council and the General Assembly, and particularly the former by reason of the special responsibilities laid upon it. For the authors of the Charter had to look beyond the year 1945 and endeavour to provide for events which the future had in store. A little reflection upon the changes in the map of the world during the short period which has elapsed since June 1945 suggests to us that they were prescient and prudent in the plan wich they adopted.

19. When a Member of the United Nations imports into the examination of an application for admission a consideration which is foreign to the qualifications of paragraph 1 of Article 4, what he does is not the same thing as it would be if the Charter made such a consideration a qualification additional to those already required. That would involve amending the Charter, and there can be no question of that. The Member is merely introducing into the discussion, as he has a right to do, a political factor which he considers of importance and on which he is entitled to rely but which the other Members are equally entitled to consider and decide whether to accept or reject, without being legally bound to attach any weight to it; whereas on the other hand they would be legally bound to give effect to an objection based on the duly established lack of one of the qualifications specified in paragraph 1 of Article 4.

20. While the Members of the United Nations have thus the right and the duty to take into account all the political considerations which are in their opinion relevant to a decision whether or not to admit an applicant for membership or to postpone its admission, it must be remembered that there is an overriding legal obligation

resting upon every Member of the United Nations to act in good faith (an obligation which moreover is enjoined by paragraph 2 of Article 2 of the Charter) and with a view to carrying out the ***92** Purposes and Principles of the United Nations, while at the same time the members of the Security Council, in whatever capacity they may be there, are participating in the action of an organ which in the discharge of its primary responsibility for the maintenance of international peace and security is acting on behalf of all the Members of the United Nations.

That does not mean the freedom thus entrusted to the Members of the United Nations is unlimited or that their discretion is arbitrary.

21. For these reasons, our view is that the first question should be answered as follows:

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 which possesses the qualifications specified in paragraph 1 of that Article, is participating in a political decision and is therefore legally entitled to make its consent to the admission dependent on any political considerations which seem to it to be relevant. In the exercise of this power the Member is legally bound to have regard to the principle of good faith, to give effect to the Purposes and Principles of the United Nations and to act in such a manner as not to involve any breach of the Charter.

22. Having now replied to the first question, we shall proceed to the second, which is as follows:

'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 practice of the General Assembly and of the Security Council in regard to the admission of new Members recognizes an affirmative vote, a negative vote, or an abstention, but not a vote subject to a condition; so the second question put must be understood as asking the Court to decide whether a Member of the Organization is legally entitled, while admitting that the qualifications prescribed in Article 4, paragraph 1, are fulfilled by the applicant State, to vote against its admission unless the Member is assured that other States will be admitted to membership in the United Nations contemporaneously with that State.

This question is put in general terms, and without making any distinction according to the importance possessed by the vote of any particular Member in the attainment of the majority required in the Security Council or in the General Assembly.

23. If it is agreed (as we have already submitted) that a Member of the United Nations is legally entitled to refuse to vote in favour ***93** of admission by reason of considerations foreign to the qualifications expressly laid down in Article 4, paragraph 1, this interpretation applies equally to the second question.

A consideration based on the desire that the admission of the State should involve the contemporaneous admission of other States is clearly foreign to the process of ascertaining that the first State possesses the qualifications laid down in Article 4, paragraph 1; it is a political consideration. If a Member of the United Nations is legally entitled to make its refusal to admit depend on political considerations, that is exactly what the Member would be doing in this case.

24. If the request for an opinion involved the Court in approving or disapproving the desire thus expressed by a Member of the United Nations to procure the admission of other States at the same time as the applicant State, it would only be possible to assess this political consideration from a political point of view. But such an assessment is not within the province of the Court. An opinion on this subject would not be an opinion on a legal question within the meaning of Article 96 of the Charter and Article 65 of the Statute. It is one thing to ask the Court whether a Member is legally entitled to rely on political considerations in voting upon the admission of new Members; that is a legal question and we have answered it. It is quite another thing to ask the Court to assess the validity of any particular political consideration upon which a Member relies; that is a political question and must not be answered.

25. Nevertheless, as we have said, a Member of the United Nations does not enjoy unlimited freedom in the choice of the political considerations that may induce it to refuse or postpone its vote in favour of the admission of a State to membership in the United Nations. It must use this power in good faith, in accordance with the Purposes and Principles of the Organization and in such a manner as not to involve any breach of the Charter. But no concrete case has been submitted to the Court which calls into question the fulfilment of the duty to keep within these limits; so the Court need not consider what it would have to do if a concrete case of this kind were submitted to it.

(Signed) J. BASDEVANT.

(Signed) WINIARSKI.

(Signed) ARNOLD D. MCNAIR.

(Signed) JOHN E. READ.

***94** DISSENTING OPINION BY M. ZORICIC.

[Translation.]

I agree with the Court's opinion as regards its competence to interpret the Charter, but I am sorry I cannot support the opinion, firstly because I consider that the Court should have refrained from answering the question put, and secondly because I cannot accept the conclusions of the reply

I.

The Court's competence in advisory opinions is derived from Article 65 of the Statute, which says that: 'The Court may give an advisory opinion on any legal question.' It follows from this that the Court is not obliged to give opinions for which it is asked, but on the contrary has a discretionary power in the matter.

The above interpretation is the same as that adopted by the Permanent Court of International Justice on March 10th, 1922. Judge J. B. Moore had written a memorandum on the question of advisory opinions (Acts and Documents concerning the Organization of the Court, Series 2, Annex 58 a, p. 383), in which he emphasized that the advisory powers were derived from Article 14 of the Covenant of the League of Nations. The French text of Article 14 ('La Cour donnera aussi des avis....') differed from the English text 'The Court may also give....'), the word 'may' in the English text implying a permission, i.e. a discretion. After careful study of the preparatory work and of the nature of the Court's duties, Judge Moore reached the conclusion that it was for the Court itself 'to determine in each instance whether .... it would undertake to give advice' (l. c., p. 384), and that 'if an application for such an opinion should be presented, the Court should then deal with the application according to what should be found to be the nature and the merits of the case' (p. 398).

In 1935, Judge Anzilotti relied on this interpretation and added that 'there is no reason to suppose that the Court has ever meant to modify its attitude' (Series A./B., No. 65, p. 61).

It remains to be seen whether the powers of the present Court are not more restricted on this subject than were those of the old Court. I do not think so; for there can be no doubt that Article 65 of the present Statute, in which the French text ('peut donner') corresponds entirely with the English text ('may give'), implies that the ***95** authors of the Statute had the question in mind, and that they deliberately adapted the French text to the English, thus giving the Court a discretion to decide whether, in a particular case, it should give an opinion on a question put, even if it were a legal question.

The need for such a discretionary power is derived also from the purposes for which the Court was created, and from its nature as an essentially judicial body, with the task of encouraging and developing between nations the principle and methods of judicial decisions, and of contributing thereby to the peaceful settlement of disputes between States. The Court can only fulfil this important task in complete independence.

Neither the Charter nor the Statute of the Court contain any provision to the effect that the Court, even if it considered itself competent, would be obliged to give an opinion; Article 65, on the contrary, reserves for the Court a right to take such action as it thinks fit, on a request for an opinion. I therefore think that the Court should have abstained from replying to the present question, for the reasons that I will set out briefly below:

The Assembly resolution and the documents submitted to the Court by the Secretary-General show that the request for an opinion had its origin in a divergence of views

that arose in the Security Council as to the attitudes adopted by Members of the Council during the discussion on the admission of certain States. These were views expressed in a political body relating essentially to political acts, and based on arguments and appreciations of a political nature. Moreover, I feel bound to conclude from the circumstances that the request was made to the Court for a definitely political purpose.

It is true that the request submits the question in an abstract form, but it is no less true, and is beyond doubt, that the Court's answer lends itself to a different interpretation, namely that it relates to the above-mentioned discussions. And although the Court has stated that it only considers the question in the abstract, the reply will, in my view, be interpreted as containing a judgment on the action of members of the Security Council. The Court is thus drawn on to the slippery ground of politics, and its reply may well become an instrument in political disputes between States. This may do considerable harm to the Court's prestige and to the confidence that the Court should inspire in all nations if it is to fulfil its important duties as guardian of the law and principal judicial organ of the United Nations.

II.

As however the Court has decided to give an opinion, I must state the reasons for which I am not in agreement with that opinion.

***96** I would begin by saying that, in substance, I agree with what is said in the joint opinion of the Vice-President and of Judges Winiarski, Sir Arnold McNair and Read. My chief reason for writing a separate opinion is that I look at the question put to the Court from a somewhat different angle, having in view the concrete cases which gave rise to the request for an opinion.

Before examining the question before the Court, I have the following observations to make:

The Preamble to the General Assembly's Resolution of November 17th, 1947, runs as follows:

'Considering the exchange of views which has taken place in the Security Council at its 204th, 205th, and 206th Meetings, relating to the admission of certain States to membership in the United Nations....'

This Resolution ends with the following provision:

'Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned Meetings of the Security Council.'

There seems to me to be no possible doubt as to the Assembly's intention; the Assembly states the origin and nature of the request for an opinion in order that the opinion may be given in the light of the facts and circumstances from which it arose.

It may be said that the question itself is in an abstract form. This does not seem to be decisive, for it does not remove the fact that the Resolution of November 17th, 1947, is a whole in which the abstract question is closely connected with the recital which precedes it and explains its meaning and scope. The Secretary-General supplied the Court with a large number of documents, and also instructed his representative to make an oral statement to the Court on the history of the question. It follows from all these facts that the Court is expressly asked in the Assembly Resolution to give an opinion, taking account of the facts in which the request originated.

Nothing could be more natural. In human life, all activity is based on concrete considerations or facts. To attempt to judge and explain such acts in the abstract would be to misconstrue the intentions, to work in a vacuum, and to misunderstand the meaning of real life. This is still more evident in the case of a Court of Justice whose first duty is to decide whether certain acts are in accordance with law.

* * *

The request for an opinion is presented as one single question, but there are in reality two, on different planes:

***97** (1) Is a Member called upon to vote juridically entitled to make its consent to the admission of a State to the United Nations dependent on conditions not expressly provided by paragraph I of Article 4 of the Charter, and

(2) Can such a Member, while it recognizes that 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?

It is quite clear that the word 'conditions' in the first question has a different meaning from that which it has in the second. Article 4, paragraph I, mentions certain conditions that are to be fulfilled by a State desirous of admission. Thus, it is solely a question of the qualities that must exist at the moment of considering the admission.

In the second question, the word 'conditions' has a very different meaning. It is used in its habitual legal sense: the condition mentioned in this part of the application relates to a future and uncertain event, namely, that the other members of the Council would accept the obligation to vote for the admission of other States. This condition concerns the members of the Security Council, who alone could fulfil it, whereas the candidate cannot, in any way, contribute to its fulfilment.

III.

The first part of the question calls on the Court to decide whether a Member called upon to vote is jurisdically entitled to make its consent to admission dependent on conditions not expressly provided by paragraph I of Article 4 of the Charter.

The legal foundation for a certain method of procedure can only be examined in the light of the rules of law that govern it. On the subject of voting in the Council and the Assembly, there are no provisions. Neither the Charter nor the Rules of procedure of the Council or the Assembly contain anything as to what a Member may or should do when it votes and-a point of great importance-there is no obligation on the part of Members to give a reason for their vote. All that is said on the subject is that each Member has one vote (Articles 18 and 27 of the Charter); the exercise of the right to vote is left entirely to their discretion.

As a Member who votes is entitled to do so without giving any reasons for his vote, he may act in accordance with his own view of the case; and it is the question of any possible limits to this view that leads to a consideration of the nature of the provisions of Article 4 of the Charter.

***98** For a State to be admitted to the United Nations the required conditions, or rather qualities, are, according to Article 4, paragraph 1, that it shall be peace-loving, that it shall accept the obligations contained in the Charter, and that it shall be able and willing to carry out these obligations. It is quite clear that the actual appreciation of these qualities, and therefore their existence, may depend on elements of all kinds. But, apart from that, there is nothing in Article 4, paragraph 1, to prevent a Member who votes and thus exercises a political discretion, from taking into consideration elements of a political nature, not contained in Article 4. Thus, while, on the one hand, it is endeavoured to interpret this provision as exhaustive, it is, on the other hand, possible to interpret it as imposing only the minimum of qualities, i.e., the fundamental qualities without which no State can be admitted to the United Nations.

As the provision is capable of various interpretations, it follows that, in the first place, the preparatory work must be looked at, in order to discover the exact scope of Article 4, in the minds of its authors.

The preparatory work was submitted to the Court, and it appears that the two paragraphs of Article 4 of the Charter were, in San Francisco, each drafted by a different Committee: paragraph 1 by Committee 1/2 , and paragraph 2 by Committee 1 1/1.

The Rapporteur to Committee 1/2 submitted to the First Commission a report on the admission of new Members (San Francisco Conference, Document No. 1160 1/2/76 (1), Vol. VII, p. 308), in which it was said that the Committee had to consider the fundamental problem:

'The extent to which it was desirable to establish the limits within which the Organization would exercise its discretionary power with respect to the admission of new Members.' (Italics mine.)

Observing that adherence to the principles of the Charter and complete acceptance of the obligations arising therefrom were essential conditions to participation by States, the report explains that:

'Nevertheless, two principal tendencies were manifested in the discussions. On

the one hand, there were some that declared themselves in favour of inserting in the Charter specific conditions which new Members should be required to fulfil especially in matters concerning the character and policies of governments. On the other hand, others maintain that the Charter should not needlessly limit the Organization in its decisions concerning requests for admission, and asserted that the Organization itself would be in a better position to judge the character of candidates for admission.'

***99** Then, mentioning the conditions, or rather the qualities agreed on, which are those of Article 4, the Report continues:

'It was clearly stated that the admission of a new Member would be subject to study, but the Committee did not feel it should recommend the enumeration of the elements which were to be taken into consideration. It considered the difficulties which would arise in evaluating the political institutions of States and feared that the mention in the Charter of a study of such a nature would be a breach of the principle of non-intervention, or if preferred, of non-interference. This does not imply, however, that in passing upon the admission of a new Member, considerations of all kinds cannot be brought into account.' (Italics mine.)

And the report ends with these words:

'The text adopted sets forth more clearly than the Dumbarton Oaks proposals those qualifications for membership which the delegates deemed fundamental, and provides a more definite guide to the General Assembly and Security Council on the admission of new Members.' (Italics mine.)

This report was approved by Commission I (Report of Rapporteur of Commission I, Conference Doc. No. 1142. 1/9 , Vol. VI, p. 229).

It would seem that any doubt as to the nature of Article 4 is dispelled by such a clear provision. The authors did not feel they should 'recommend the enumeration of the elements which were to be taken into consideration'; they desired that 'considerations of all kinds' should 'be brought into account' when it was necessary 'to pass upon the admission of a new Member', and finally they stated that the text set forth the conditions 'which the delegates deemed fundamental' and constituted a guide for determining elegibility.

The above-mentioned text thus shows that Article 4 does not contain exhaustive provisions, but on the contrary is a guide on admissions, containing only the fundamental and indispensable qualities required of a candidate. In other words, the conditions of Article 4 are minimum conditions that must be fulfilled by new Members, and without which Members cannot be admitted; but these are not the only conditions to be taken into account when a judgment is formed as to the desirability of admission; for a judgment as to desirability cannot be limited or deemed to be a judgment relating exclusively to the fulfilment of the conditions of Article 4.

The work of Committee 1 1/1 and its Report, relating to Article 4, paragraph 2, confirmed this interpretation. The Committee had ***100** drafted a provision giving

the General Assembly a discretionary power as to the admission of new Members. Certain changes were made by the Co-ordination Committee, and Committee 1 1/1 became anxious, as is seen in the minutes of its Fifteenth Meeting:

'The Secretary reported that he had been advised by the Secretary of the Advisory Committee of Jurists that that Committee felt these texts would not in any way weaken the original text adopted by the Committee. In the light of this interpretation, the Committee approved the text.' (Vol. VIII, pp. 487-488.)

The report of the Rapporteur to Committee 1 1/1 is categorical. It states briefly that the Committee considered a revision of the text 'in order to determine whether the power of the Assembly .... was in no way weakened by the proposed text', and that 'the Committee was advised that the new text did not .... weaken the right of the Assembly'. It goes on as follows:

'The Committee agreed that this interpretation should be included in its minutes as the one that should be given to this provision of the Charter, and on this basis approved the text as suggested by the Co-ordination Committee.' (Vol. VIII, p. 495.)

It is quite clear that the Committee took special care that the Assembly should have a discretionary power at the moment when it decides, on the recommendation of the Council, whether a new Member shall be admitted or not.

The two reports of the Committees were approved by the respective Commissions, and it is difficult to suppose that the carefully chosen wording of these reports, considered first in the Committees, and then by the Commissions, does not express their thoughts and true intentions. On the contrary, I believe that these reports are to be taken as agreements on the interpretation of the provisions in question, and that consequently their terms must be understood and applied in their normal meaning as forming the surest means of interpreting Article 4 of the Charter. In my view, the reports quoted indicate the intention of the authors of the Charter not to limit either the Security Council or the Assembly by the provisions of Article 4, but to give them full freedom in the exercise of their political duties, always with the exception that they should not admit a State which, in their judgment, did not satisfy the minimum conditions of Article 4, paragraph 1.

From what is said, it follows that the argument to the effect that the terms of Article 4: 'any such State', would prohibit any account being taken of political considerations not provided for in Article 4, paragraph 1, is not convincing. The interpretation of paragraph 2 cannot be based on a few isolated words, but depends on the whole paragraph. The paragraph says that the admission 'of ***101** any such State will be effected by a decision of the General Assembly upon the recommendation of the Security Council'. Consequently, it is not sufficient to be 'such' a State; it is also necessary for the Council to decide to make a recommendation, and for the Assembly to decide whether it is willing to accept this recommendation or not. The Charter therefore does not provide for the automatic admission of 'any such State'; it subordinates submission to the decisions of political organs with a discretionary power to base their decisions (as has been shown) on any kind of considerations.

In any case, it would seem difficult to assert, on the one hand, that the words 'any such State' in paragraph 2 of Article 4, prohibit the introduction of political considerations which could be superimposed on the conditions of paragraph 1 and, on the other hand, to maintain that paragraph 2 is concerned only with the procedure for admission.

An interpretation to the effect that decisions on admission are governed by political considerations notwithstanding Article 4, appears to have been given by the General Assembly itself, as is seen in the first Resolution adopted by it on November 17th, 1947, by 46 votes against 1, with 6 abstentions. The Resolution recommends the permanent Members of the Security Council to consult together with a view to reaching an agreement on the admission of candidates whose admission has not yet been recommended, and to submit their conclusions to the Security Council. (Journal of the General Assembly, No. 56, November 19th, 1947, p. 4.) Can it be suggested that the only purpose of this Resolution was to invite the permanent Members to agree solely on the question whether the conditions of Article 4 were fulfilled or not? I do not think it can be contested that the Assembly here had in view a political agreement based on quite general political considerations.

* * *

Apart from the preparatory work, the general structure of the Charter shows the conclusions drawn from the preparatory work to be exact. This will be seen from a study of (1) the powers and duties of the Security Council, and (2) the method of admission of States to the United Nations.

(1) Article 24 of the Charter places on the Security Council 'Primary responsibility for the maintenance of international peace and security'. This duty comes before all others, and, failing an express provision, I do not think that the powers and duties of the Council under Article 24, a fundamental article of the Charter, can be limited merely by a restrictive interpretation of Article 4; particularly as, in my opinion, such an interpretation would be quite ***102** contrary to the intentions of the authors of these provisions, as expressed in the reports quoted above. Moreover, there can be no doubt that it is because of this duty that Article 4, paragraph 2, only gives to the Assembly the right to decide on the admission of new Members subject to the previous recommendation of the Security Council. This constitutes an exception to the general rule contained in Article 10 as to the rights of the Assembly; this exception can only be understood by bearing in mind the task entrusted to the Council by Article 24. As the report of the Rapporteur of Committee 1 1/1 shows, the principle whereby the Assembly must admit new Members on the recommendation of the Security Council only, is derived from the idea that 'the purpose of the Charter is primarily to provide security against a repetition of the present war and that, therefore, the Security Council should assume the initial responsibility of suggesting new participating States'. (Doc. 666, 11/1/2 6/1 (a), San Francisco Conference, Vol. VII, p. 451.)

How could the Council fulfil its duties if it was strictly limited by the criteria mentioned in Article 4, paragraph 1? Such a limitation on the Council would prevent

it from declaring against the admission of a State even if it thought that such admission would have serious consequences for general international stability and consequently for the maintenance of peace. Such a case may well arise even though the candidate fulfils all the conditions of Article 4; for the admission of a State might create tension with other Members or non-Members of the Organization, and might give rise to expressions of mistrust, discontent and injustice; whilst, on the other hand, its admission might be held undesirable from the point of view of harmonious co-operation within the Organization. These are essentially political considerations that could not be, and are not, limited by Article 4. Evidently the authors of the Charter could not impose such extensive duties on the Council (Article 24) and, at the same time, limit its powers in such a way as to prevent it from carrying out properly its main task.

In the supreme interests of the Organization, the members of the Council must therefore have a wide discretion. They can and must take account of every kind of political considerations, even if these do not fall within Article 4.

(2) It has already been said that nothing obliges a Member to give a reason for its vote. The vote is by 'yes' or 'no', unless the Member abstains. Consequently, at the moment of voting, there is no possibility of imposing a condition. A condition could only be expressed in the discussion that takes place in the competent organs before the vote. The documents placed before the Court show that, during these discussions, Members have adopted very ***103** different positions, according to the political requirements of the case under discussion. Not only have some delegations adopted differing points of view, but the same delegations have often put forward one argument in one case, and a contrary argument in another.

There is nothing surprising in this. It is a question of policy. The Council is an essentially political organ and not a Court of Justice. How then could freedom of speech in this political organ be limited? If a Member was not legally entitled to take account of political considerations in the statements made by him on the subject of the vote which takes place at the end of discussions, these latter would become particularly difficult. The result would be to encourage hypocrisy and mental reservations. Moreover, discussion and political reasons of any kind may no doubt decide a vote, but they do not necessarily do so. It is possible that a Member may state certain views and that then, convinced by the arguments of others, or for a political reason, he may, when voting, be influenced by considerations quite different from those he had put forward during the discussion.

Consequently, it is quite impossible to determine the reasons on which a Member's vote depends, for they are the subject of a mental process that cannot be controlled. As a result, seeing that there is no rule of law obliging a Member to give reasons for his vote, he is jurisdically entitled to vote according to his own opinion, subject to what follows:

If the exercise of the right to vote is left to the discretion of Members of the Council and of the Assembly, it must be emphasized that this cannot upon any pretext authorize them to act arbitrarily. Any organization, and especially that of the

United Nations, is, as a general principle, founded on good faith. This rule, which all States have bound themselves to observe when signing the Charter (Article 2/2 ), requires that a Member shall fulfil its obligations in accordance with the purposes of and in the interests of the Organization. This rule is assumed to have been observed, failing proof to the contrary.

The work of a Court of Justice involves primarily the application of rules of law to concrete cases. It follows that the first task of the Court is to consider what are the concrete cases from which the application for an opinion arises. That this should be the Court's procedure is the more evident from the fact that concrete examples have been drawn to its attention in the documents supplied by the Secretariat of the United Nations. These documents show that there was only one case in which a Member expressly made his vote dependent on the realization of a condition. It was in regard to the admission of ex-enemy States. I shall come to this later. In no other case was there a question of any conditions to ***104** which a vote was made subject, but rather of various elements of appreciation such as might all, moreover, come within the class of qualities required in Article 4, paragraph 1.

In the light of the foregoing, I arrive at the following reply to the first part of the question:

A Member of the United Nations, which is called upon to vote, is jurisdically entitled to make its vote depend on conditions not expressly provided by paragraph 1 of Article 4 of the Charter. This right is derived from:

(1) the supreme duty of the Security Council, i.e. the main responsibility for the maintenance of peace and security. This responsibility rests in particular on the permanent Members of the Council, and the exercise of their political prerogatives is not limited by Article 4, but only by the legal obligation to act in good faith and in the interest of the Organization;

(2) the discretionary right to vote without giving reasons for the vote, and

(3) the nature of Article 4 of the Charter, which cannot be considered as exhaustive, but on the contrary as only indicating the minimum conditions, without the fulfilment of which a State cannot be admitted.

IV.

I now come to the second part of the question put to the Court, which is, in substance, whether a Member may subject its affirmative vote on the admission of a State to the condition that other States be admitted together with that State.

As I have already said, there is nothing in common between the conditions in Article 4 and the condition that several States should be admitted together. Article 4 only concerns the qualities required of a State for admission, whilst the candidate State has no influence on the result of an application made to other Members of the Security Council. The condition of simultaneous admission has nothing to do with Article 4 of the Charter, but is a political matter for States.

The Court has decided to give an answer to this question, and to give it in an abstract way. This leads me to make the following remarks:

Although the second question is an abstract one, it must evidently relate to the only concrete case of this nature that has arisen, namely to the discussion on the admission of ex-enemy States. This discussion took place in the Security Council during the meetings referred to in the recitals to the General Assembly's Resolution of ***105** November 17th, 1947. Consequently, however abstract the Court's reply may be, it will necessarily be understood as relating to this case and will be interpreted as an indirect judgment on the action of certain members of the Council. Moreover, this interpretation will be given in complete ignorance of the exceptional circumstances of the case and of the arguments then put forward.

It follows, in my view, that, having decided to give an answer, the Court should have done so by dealing with the concrete case from which the question arose; especially as there are legal elements in that case which, when separated from the political elements, would permit of the giving of a reply based on law. The facts were as follows:

A permanent member of the Security Conncil had declared that he would only vote for the admission of two ex-enemy States on condition that the other members of the Council would undertake to vote for the admission of the three other ex-enemy States. This was truly a condition, the only one that has ever been laid down; a previous proposal made by another permanent member, for the simultaneous admission of several other States, contained no condition and, in particular, did not make the admission of one group depend on the admission of the other. The admission of the ex-enemy States is thus the only case to which the request for an opinion can refer.

The declaration of the member in question was founded on legal arguments drawn from the Declaration of Potsdam and from the peace treaties with the five ex-enemy States. These instruments have been invoked on the ground that they contain an obligation by the Signatory Powers to support the application for admission, and it has been maintained that the Potsdam Declaration makes a very clear distinction between the admission of the five ex-enemy States and all other States.

The Court has not been asked to consider or interpret the provisions in question, but I consider that the above facts cannot be disregarded; for the whole question depends on them. The following considerations will serve to show the importance of these facts:

(1) They show that the question relates to a special unprecedented case, and one that cannot recur; it follows that the question raised by this case cannot be treated in the abstract; and

(2) they are decisive on the point whether, in the particular case, the member who asked for the simultaneous admission of all ex-enemy States was legally entitled to introduce this condition into the debate, and to make his vote depend on it.

***106** The permanent member in question, rightly or wrongly, maintained its inter-

pretation of the Declaration of Potsdam and of the peace treaties. For that member, these instruments involved an obligation on signatory States to support applications for admission. The Declaration of Potsdam and the treaties of peace were subsequent to the Charter, and as such an obligation does not conflict with those arising from the Charter (Art. 103 of Charter), the member in question was entitled to rely on them.

It goes without saying that the co-signatories of these instruments were free to accept this interpretation or not. What is decisive, for the question before the Court, is not the correctness of the interpretation made by that State, but the right of that State to rely on it, in the same way as the other signatory States were entitled to rely on their interpretation. This right is guaranteed by the principle of the sovereign equality of States which underlies the organization of the United Nations (Art. 2 of Charter). It follows that the member in question was jurisdically entitled to maintain its interpretation and therefore to call for the simultaneous admission of the ex-enemy States.

(Signed) ZORICIC.

***107** DISSENTING OPINION BY M. KRYLOV.

[Translation.]

To my regret, I am unable for the following reasons to concur in the opinion of the Court.

I.

1. From a legal standpoint, the drafting of the question put to the Court gives rise to some criticism: the word 'conditions' is used in this question with different meanings; the words 'consent' and 'vote' are used, but in fact the reasons for a vote are meant. These errors of drafting are characteristic. They reveal the secret of the origin of the Resolution of November 17th, 1947. It was not framed in a legal atmosphere.

Appearances are deceptive: though framed in a legal form, it is a question put with a definitely political purpose; it is political in conception; though abstract in form, it is a concrete question which expressly refers in one of its paragraphs to the 'exchange of views which has taken place in the Security Council at its 204th, 205th and 206th Meetings'; though impersonal in form, it is a question designed to censure the reasons given by a permanent member of the Security Council.

It has been suggested that the request couched in abstract terms is not of a political character, that the Court is not called upon to consider the reasons which may underly the request and, lastly, that the Court is bound only to envisage the question in the abstract form in which it has been presented by the General Assembly.

I cannot share this view. I hold that it is impossible to eliminate the political elements from the question put to the Court and only to consider it as presented in

an abstract form. The reply to the question should refer to concrete cases which have been considered by the Security Council and General Assembly. The legal criteria should be examined in the light of the political grounds on which, in actual fact, the attitude of Members of the United Nations was based.

Clearly to indicate the political character of the question put to the Court, it will suffice to quote the Resolution of the General Assembly dated November 17th, 1947, which contains a passage which is quite conclusive on the point. The Resolution says in particular: 'The General Assembly .... decides to recommend to the permanent members of the Security Council to consult with a view ***108** to reaching agreement on the admission to membership of the applicants which have not been recommended hitherto, and to submit their conclusions to the Security Council.'

'Reaching agreement' regarding the admission of States to membership in the United Nations means: to settle the dispute by political means within the Security Council itself, a political organ of the United Nations. On this organ rests the primary responsibility for the maintenance of international peace and security (Art. 24 of the Charter). This organ bears the initial responsibility as regards the admission of new Members (U.N.C.I.O., Vol. 8, p. 461).

In view of the fact that the admission of new Members is dependent on political decisions of the Security Council and General Assembly, I should have preferred that the Court should have abstained from giving a reply which might, in the nature of things, be utilized in the political dispute which has been going on for a year and a half in the Security Council and General Assembly and have refused to give an advisory opinion.

2. My view would seem to be borne out by the fact that, during the eighteen years of its activities, the Permanent Court of International Justice was never once asked to give an advisory opinion regarding any article of the Covenant of the League of Nations in abstracto. It may be noted, by way of example, that in three of its opinions, the Permanent Court had to deal with articles of the Covenant, but in each of these opinions-(1) Nationality Decrees in Tunis and Morocco; (2) the Status of Eastern Carelia, and (3) the Frontier between Turkey and Iraq-the Court was considering concrete situations. The interpretation of Articles 5, 15 and 17 of the Covenant was in close connexion, in all these opinions, with the concrete situation.

It is easy to explain why this was so. Quite obviously, it was not desired to involve the Permanent Court in political disputes.

I must even go further: not once did the Permanent Court adjudge any case ex oequo et bono, that is to say, it always kept within the limits of existing law, of strict legality.

In the present case, the question put to the Court is couched in abstract form. The Court's opinion will have a quasi-legislative effect, and this, as will be shown later (para. 3), is in no way desirable. From the standpoint under consideration, the practice of the Permanent Court should be taken into account by the Court: the interpretation of the Charter in abstracto is not desirable.

3. Whereas the Permanent Court, in interpreting the Covenant of the League of Nations, sought to consider concrete situations, or existing disputes, the Court, in the present case, is about to ***109** make a pronouncement, with quasi-legislative effect, concerning decisions to be taken by the political organs of the United Nations. The Court's answer will amount to a definition of the competence of the organs of the United Nations which decide the question of the admission of a new State to membership in the United Nations. In practice, the terms of opinions of the Permanent Court have always been complied with. But the Permanent Court never had before it a question of such importance formulated in abstracto. In the present case, it may be asked whether the political organs of the United Nations, acting under conditions which cannot even be foreseen at the present time, might not one day depart from the precepts of the Court's opinion. International justice must keep within the framework of international law and must not encroach on the political sphere.

I would refer, in this connexion, to the last article by Professor Manley Hudson, a former judge of the Permanent Court, in the first number of the American Journal of International Law for 1948. This distinguished author says in this article (pp. 15-19) that it must be borne in mind that in some cases it may be a disservice to the Court to urge that it shall deal with disputes in which legal relations between the parties are subordinated to political considerations involved. Speaking of requests for advisory opinions, Professor Hudson suggests that caution must be exercised in cases where a request for an opinion has to do with questions relating to the powers of organs of the United Nations. I think as he does that in this case the Charter should be interpreted rather by the political organs themselves than by opinions of the Court. The Court's activity must not be 'artificially stimulated'.

Thus I conclude that it would be better if the Court were to assert its right not to answer the question put, and to state its grounds for so doing (Article 65 of the Statute says: 'the Court may give an advisory opinion....').

II.

1. Since the Court has decided to give an opinion and is content to answer the question in the artificially narrow form in which it has been framed, I find myself obliged to avail myself of my right to extend the scope of the question and to express my opinion on the legal import of Article 4 of the Charter.

In the first place, I substantially concur in the arguments put forward in the dissenting opinion of M. Basdevant, Vice-President of the Court, and of Judges Winiarski, McNair and Read, and in that of Judge Zoricic. I would, however, in my opinion, emphasize the following ideas which I feel it my duty to formulate and, above all, analyse the practice of the Security ***110** Council and General Assembly with regard to the admission of new Members.

2. In its opinion, the Court declares positively that the criteria prescribed in paragraph 1 of Article 4 of the Charter are subjected to the judgment of the Organization, i.e., of the Security Council and General Assembly. But, as I shall show

later, a State which, in the judgment of the Organization, possesses all these qualifications is not ipso facto entitled to be admitted to membership in the United Nations. The political organs of the United Nations must still decide whether or not they wish to recommend and to admit it. Their decision is a discretionary one. Accordingly, these criteria are not exhaustive. This clearly appears from the text of Article 4 and from the preparatory work.

The authoritative texts of Article 4 of the Charter show some differences of wording. The English text, and the Russian text, which closely follows it, say that membership in the United Nations is open to States which have the qualifications required by Article 4. The French, Spanish and Chinese [FN1] texts better express the general principle of the constitution of the United Nations, a principle which is not purely and simply that of universality ('peuvent devenir Membres des Nations unies....') ('Podran ser Miembros de las Naciones Unidas....'). It is true that all (applicant) States may become Members of the United Nations ('peuvent devenir Membres des Nations unies tous Etats....' candidats) but only if they satisfy the criteria of Article 4 of the Charter. Certainly the five texts all express the same idea, namely, that the qualifications required by Article 4 are necessary in order to become a Member of the United Nations. But these texts by no means imply that the presence of these requisite qualifications necessarily leads to the admission of the applicant State to the United Nations.

3. The same conclusion emerges from an analysis of the report of the Rapporteur of Committee 1/2 of the San Francisco Conference. According to this report (U.N.C.I.O., Vol. 7, p. 315), the admission of a new Member must be submitted for examination by the Organization. The Committee did not enumerate the elements to be considered in this examination. It only mentioned the main criteria. This means that the enumeration of criteria in Article 4 of the Charter is not exhaustive. In forming a judgment as to the desirability of admitting a new Member-that is to say, in exercising its discretionary powers with regard to such admission-the Organization may be guided by considerations 'of any nature', i.e., not merely legal but also political considerations. This demonstrates the true legal meaning of paragraph 1 of Article 4 of the Charter.

***111** 4. The affirmation that the qualifications required by Article 4 of the Charter are exhaustive in character, implies that Members of the United Nations taking part in the vote in the Security Council and General Assembly must be exclusively guided by considerations which can be 'connected' with the five conditions enumerated in Article 4. But this is definitely contrary to the interpretation given by the Report of Committee I/2.

Again, this requirement does not to my mind appear to serve any purpose. A member of the United Nations, called upon to vote on the admission of a State, is legally entitled to vote according to its own appreciation of the situation. It is not obliged to give reasons for its vote; it may vote without giving any reasons and such a vote is not subject to any control. What purpose then would be served by a censure of the reasons invoked by Member States in the Security Council or General Assembly? The recommendation to the effect that the real reasons for a vote must be

'connected' with the allegedly exhaustive criteria of Article 4 might result in hypocritical declarations being made by some Members of the United Nations Organization.

5. The Court, in its opinion, declares that it does not follow from the exhaustive character of paragraph 1 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 opinion states that in this connexion no relevant political factor is excluded. This means that, in a concrete case, Members have a right of discretionary and political appreciation. But in that case, one is forced to the, in my view, inevitable conclusion that this right of discretionary appreciation is implicitly sanctioned by Article 4 of the Charter and that the enumeration of criteria in that Article is not exhaustive. Otherwise, this right of appreciation would have no basis.

I have already said that I accept the interpretation quoted above, given by the Report of Committee I/2. I hold, therefore, that the Charter allows every Member of the Organization the right to appreciate whether a particular State can be admitted to membership, such appreciation to be based on the presence or absence of the qualifications required by Article 4 of the Charter and on considerations of a political nature.

III.

I have sought to elucidate the general import of Article 4 of the Charter on the basis of an analysis of the text of this Article and of the preparatory work.

It still remains for me to consider the practice followed by the political organs of the United Nations with regard to the admission of new Members.

***112** In the course of the discussions in the Security Council, at its 204th, 205th and 206th Meetings, as well as at meetings of the General Assembly and of its First Commission, both political and legal considerations have been put forward and a variety of arguments have been adduced to show that some particular State should or should not be admitted to membership in the United Nations.

It is not my intention to follow out all the legal arguments advanced in the course of these numerous meetings of which the records have been placed by the Secretary-General of the United Nations at the Court's disposal. I shall confine myself to considering a few of them, by way of example, in order to clarify my standpoint.

1. The delegate of the U.S.S.R. stated in the Security Council that two applicant States, Portugal and Eire, not having taken part in the second world war alongside the democratic countries, could not be admitted to membership in the United Nations. The Soviet delegate's argument was legally based on the criterion of 'a peaceloving State' - or, in French 'Etat pacifique' - (I would emphasize that the French word pacifique has a more passive sense, whereas the English word 'peace-loving', as also the Russian, Spanish-amantes de la paz-and Chinese [FN2] equivalents possess a more active sense). Relying more particularly on the latter texts and declaring that the

two States above mentioned had made no effort to combat the Nazi danger, the delegate for the U.S.S.R. was legally justified, at that moment, in maintaining his point of view which was that these States were not 'peace-loving'. The argument of the U.S.S.R. delegate regarding the value as a criterion of participation in the world war has met with the support of the eminent jurist of Panama M. Ricardo Alfaro. As regards the concrete question of the admission of Portugal, the attitude of the delegate of the U.S.S.R. was frequently shared by other States, such as Australia, India and the Philippines.

2. The same delegate, in refusing membership of the Organization to these States, added, as a supplementary argument, that they did not maintain diplomatic relations with the U.S.S.R. Was he legally entitled to do this? His argument was based on the legal precepts of the Charter. The latter, in paragraph 2 of Article 1, says that one of the purposes of the United Nations is to develop friendly relations among nations. The absence of diplomatic relations, i.e., normal bonds between States, due to a decision deliberately and obstinately taken by an applicant State, is surely inconsistent with the criteria stated in Article 4 of the Charter, particularly that which provides that an applicant ***113** State must be 'willing' to carry out the principles and purposes of the Charter.

It may be noted that the other members of the Security Council (China, the U.S.A., the United Kingdom and others) also took into account-rightly or wrongly in concreto-the fact of the absence of diplomatic relations.

3. At the 92nd Meeting of the General Assembly on September 30th, 1947, the delegate of Afghanistan voted against the admission of Pakistan, on account, he declared, of a frontier dispute between these two States. Later, on October 20th, 1947, at the 96th Meeting, this delegate said that he no longer maintained his opposition, because the dispute was about to be settled through diplomatic channels. It would seem that such an argument is warranted, because the attitude of the State voting against admission may be justified by the precepts of Article 4 of the Charter. A similar attitude was adopted by the French delegate in the Security Council in the case of the admission of Siam.

4. I would also cite by way of example the arguments put forward in the Security Council which do not seem to me to accord with the general principles of the Charter. I hold that a Member of the United Nations is not justified in basing his opposition to the admission of a particular State on arguments which relate to matters falling essentially within the domestic jurisdiction of the applicant State. The United Nations Organization has been created by the original Member States which differ in extent, population, armed strength, political institutions, social conditions, etc. The clause in par graph 7 of Article 2 of the Charter (domestic jurisdiction) in principle excludes questions appertaining to the domestic jurisdiction of a State from the jurisdiction of the Organization itself. This rule must, I hold, also be applied in connexion with the admission of new Members. In support of my view, I may refer to the attitude adopted by many delegations, including that of the U.S.A., at the San Francisco Conference, not only in Committee I/1, which dealt with the purposes and principles of the Charter, but also in Committee II/3 which

studied economic and social questions and questions concerning fundamental human rights.

5. The admission of Austria and Transjordan encountered objections on the part of several States-the U.S.S.R., Australia, Canada, India, Pakistan and others. The question was raised whether, at the time of their application, these States were really independent States. The expression of such 'doubts' is not contrary to Article 4 of the Charter, for that is a consideration which would merely lead to a postponement of the vote.

***114** 6. Finally, I come to the question of the vote which has-wrongly, I think-been described as a 'conditional vote'. A vote may be affirmative or negative; or a Member may also abstain from voting. But a 'conditional vote' is meaningless in law. Obviously, as has already been said, the question put by the General Assembly refers not to the 'vote' but to the reasons for it.

The concrete case envisaged by the question put to the Court is the admission of five ex-enemy States which was discussed by the Security Council. The delegates of the majority of Members of the Council wished to admit two ex-enemy States (Italy and Finland) and were unwilling to admit three others (Bulgaria, Hungary and Roumania). The U.S.S.R. delegate in the Security Council postponed his affirmative vote in favour of Italy and Finland because he was not sure of the admission of the three others to membership. Was this delegate legally justified in so doing? The majority of the delegates in the Security Council, in interpreting Article 4, held that that Article did not warrant such a proceeding and even forbade it. It would not seem that there is anything to justify such an interpretation. No doubt, the application of each State must be considered separately on its own merits. But it is possible to imagine several applicant States being admitted together and such a vote is by no means precluded by Article 4 of the Charter.

Such a proceeding is especially warranted when it is a question of admitting States whose applications are presented in identical circumstances; for instance, in a case where several newly created States succeed to a State which has ceased to exist.

In the particular case, the applications for admission to the United Nations of the five ex-enemy States were considered to be worthy of support, after the conclusion of the Peace Treaties of Paris of 1947, not only by the participants in the Conference of Potsdam of 1945 but also by all parties to these peace treaties. All these applications should have been treated in the same manner, that is to say, that all these applicant States should have been admitted simultaneously. As I have stated above (under No. 4), there was no warrant for an unjustified discrimination between the five candidates on the ground of their domestic regime. In this specific, concrete, and even unique case-having regard to the Potsdam Agreement and to the above-mentioned peace treaties-the suggestion made by the delegate of the Soviet Union was not contrary to Article 4 of the Charter, and could not be regarded as illegal. As I have stated, a block vote is not forbidden by the Charter and accordingly it is legal; it is a legitimate proceeding. Accordingly, there is no need

for me to consider whether the clause approved at Potsdam and repeated in the Peace Treaties of 1947 is inconsistent with Article 103 of the Charter.

***115** IV.

It follows that the right of appreciation, sanctioned by Article 4 of the Charter, may be exercised by Members of the United Nations in various circumstances in connexion with the admission of new Members. It goes without saying that, in utilizing this right of appreciation in respect of an applicant State, each Member of the Organization must be guided by legal and political considerations which accord with the Purposes and Principles of the United Nations and that it must exercise its right in all good faith.

Accordingly, I give the following reply to the question (that is to say to two parts of the question) put by the General Assembly:

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, is entitled to declare, during the discussion and before the vote, that it takes into account in voting: (1) the legal criteria prescribed in paragraph 1 of the said Article, and (2) the political considerations consistent with the Purposes and Principles of the United Nations.

(Signed) S. KRYLOV.

FN1 Kindly communicated by Judge Hsu Mo.

FN2 Kindly communicated by Judge Hsu Mo.

***116** ANNEX.

LIST OF DOCUMENTS SUBMITTED TO THE COURT.

I.-DOCUMENTS SUBMITTED IN THE COURSE OF THE WRITTEN PROCEEDINGS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS.

1. Provisional Rules of Procedure of the Security Council (S/96/Rev. 3. January 27th, 1948) [FN1].

2. Rules of Procedure of the General Assembly (A/520. December 12th, 1947) [FN1].

3. Rules governing the admission of new Members (Report of the Committee of the General Assembly) (A/384, p. 4, September 12th, 1947) [FN1].

4. Report by the Executive Committee to the Preparatory Commission of the United Nations (PC/EX/113/Rev. I. November 12th, 1945) [FN1].

5. Report of the Preparatory Commission of the United Nations (PC/20. December

23rd, 1945) [FN1].

6. Records of the Security Council Committee of Experts Meetings concerning the Rules on the Admission of new Members [FN3]:

1946. S/Procedure 91.
S/Procedure 91, Corr. 1.
S/Procedure 92.
S/Procedure 93.
S/Procedure 93, Corr. 1.
S/Procedure 94.
S/Procedure 99.
S/Procedure 99, Corr. 1.
1947. S/C.1/SR.96.
S/C.1/SR.96, Corr. 1.
S/C.1/SR.101.
S/C.1/SR.102.
S/C.1/SR.103.
S/C.1/SR.104.

7. Records of the meetings of the Joint Committees appointed by the General Assembly and the Security Council on Rules governing the admission of new Members [FN4]:

***117** A./AC.11/SR.1.

A/AC.11/SR.1, Corr. 1.

A/AC.11/SR.2.

A/AC.11/SR.2, Rev. 1.

A/AC.11/SR.3.

A/AC.11/SR.3, Rev. 1.

A/AC.11/SR.4.

A/AC.11/SR.5.

A/AC.11/SR.6.

A/AC.11/SR.7.

A/AC.11/SR.8.

A/AC.11/SR.8, Corr.

A/AC.11/SR.9.

A/AC.11/SR.10.

A/AC.11/SR.11.

8. Report of the Security Council Committee on the admission of new Members, 1946 (Security Council Official Records, First Year, Second Series, Supplement No. 4, p. 53) [FN1].

9. Report of the Security Council to the General Assembly on the admission of new Members, 1946 (A/108. October 15th, 1946) [FN5].

10. Records of the Security Council Meetings concerning the admission of new Members, 1946.

Security Council Official Records, First Year, Second Series [FN6]:

No. 1.

No. 2.

No. 3.

No. 4.

No. 5.

No. 18.

No. 23.

No. 24.

No. 25.

Security Council Journal, First year, No. 35.

11. Records of the First Committee Meetings of the Second Part of the First Session of the General Assembly concerning the admission of new Members, 1946 [FN2]:

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|---|---|
| Journal 22, Suppl. No. | 1A/C. 1/22. |
| Journal 24, Supp. No. | 1A/C. 1/31. |
| Journal 25, Supp. No. | 1A/C. 1/37. |
| Journal 26, Suppl. No. | 3A/C. 3/43. |
| Journal 27, Suppl. No. | 1A/C. 1/39. |
| Journal 28, Suppl. No. | 1A/C. 1/41. |
| Journal 29, Suppl. | AA/P.V.47. |
| Journal 31, Suppl. No. | 1A/C. 1/45. |
| Journal 32, Suppl. | A/C. 1/47. |
| Journal 37, Suppl. | AA/P.V.48. |
| Journal 38, Suppl. | AA/P.V.49. |

***118** 12. Records of the Plenary Meetings of the Second Part of the First Session of the General Assembly concerning the admission of new Members, 1946 [FN7]. (Journal No. 66, Supplement A-A/P.V. 67.)

13. Report of the Security Council Committee on the admission of new Members, 1947. Security Council Official Records, Second Year, Special Supplement No. 3, Lake Success, New York, 1947 [FN1].

14. Reports of the Security Council to the General Assembly on the admission of new Members, 1947 (A/406. October 9th, 1947.-A/515. November 22nd, 1947) [FN1].

15. Records of the Security Council Meetings concerning the admission of new Members, 1947.

Security Council Official Records, Second Year, No. 38 [FN8]:

S/P.V.136. S/P.V.186.
S/P.V.137. S/P.V.190.
S/P.V.151. S/P.V.197.
S/P.V.152. S/P.V.204.
S/P.V.154. S/P.V.205.
S/P.V.161. S/P.V.206.
S/P.V.168. S/P.V.221.
S/P.V.178. S/P.V.222.

16. Records of the First Committee Meetings of the Second Regular Session of the General Assembly concerning the admission of new Members, 1947 [FN2]:

A/C.1/SR. 59.

A/C.1/SR. 59, Corr. 1.

A/C.1/SR. 59, Corr. 2.

A/C.1/SR. 97.

A/C.1/SR. 98.

A/C.1/SR. 99.

A/C.1/SR. 100.

A/C.1/SR. 101.

A/C.1/SR. 102.

A/C.1/SR. 102, Corr. 1.

A/C.1/SR. 102, Corr. 2.

A/C.1/SR. 103.

17. Records of the meetings of the Second Regular Session of the General Assembly concerning the admission of new Members, 1947 [FN1]:

A/P.V.83. A/P.V.89.
A/P.V.84. A/P.V.90.
A/P.V.85. A/P.V.92.
A/P.V.86. A/P.V.96.
A/P.V.87. A/P.V.117.
A/P.V.88. A/P.V.118.

***119** II.-DOCUMENTS REFERRED TO DURING THE ORAL PROCEEDINGS.

A.-List of annexes mentioned in the statement by Mr. Kerno, Assistant Secretary-General of the United Nations:

Annex 1. First Committee. Verbatim record of the 98th Meeting (Nov. 7th, 1947). Statement by the representative of Belgium (pp. 72-81).

Annex 2. Ibidem. 99th Meeting (Nov. 7th, 1947). Statement by the representative of Poland (pp. 41, 42).

Annex 3. Ibidem. Remarks by the representative of Australia (pp. 74, 93).

Annex 4. Ibidem. Remarks by the representative of the U.S.S.R. (pp. 242-250, 251).

Annex 5. Ibidem. 100th Meeting (Nov. 8th, 1947). Remarks by the representative of India (pp. 52-53).

Annex 6. Ibidem. Remarks by the representative of Argentina (p. 161).

Annex 7. Ibidem. Remarks by the representative of China (pp. 14-20).

Annex 8. Ibidem. 101st Meeting (Nov. 8th, 1947). Remarks by the representative of the United Kingdom (pp. 103, 104-110).

Annex 9. Ibidem. 102nd Meeting (Nov. 10th, 1947). Remarks by the representative of Greece (p. 6).

Annex 10. Ibidem. 103rd Meeting (Nov. 10th, 1947). Remarks by the representative of El Salvador (p. 41).

Annex 11. Facts relating to the admission of new Members provided by documents of the United Nations Conference on International Organization (U.N.C.I.O.).

Annex 12. Admission of new Members.

B.-List of annexes mentioned in the statement by M. Kaeckenbeeck,

representative of the Belgian Government:

Extract from the book by Dr. Dietrich Schindler, DieSchiedsgerichtbarkeit seit 1914 (Entwicklung und heutiger Stand).

Extract from the book by H. Lauterpacht, The Function of Law in the International Community.

United Nations. General Assembly. Doc. A/474 (Nov. 13th, 1947).

Idem. Doc. A/P.V.113 (Nov. 14th, 1947).

Idem. Doc. A/459 (Nov. 11th, 1947).

Idem. Doc. A/459, Corr. 1 (Nov. 13th, 1947).

FN3 These documents arrived at the Registry on February 10th, 1948.

FN4 These documents arrived at the Registry, partly on February 10th, partly on March 20th, 1948.

FN5 These documents arrived at the Registry on February 10th, 1948.

FN6 These documents arrived at the Registry, partly on February 10th, partly on March 20th, 1948.

FN7 These documents arrived at the Registry on February 10th, 1948.

FN8 These documents arrived at the Registry, partly on February 10th, partly on March 20th, 1948.

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CONDITIONS OF ADMISSION OF A STATE TO MEMBERSHIP IN THE UNITED NATIONS (Article 4 of the Charter)

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