COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

COMPÉTENCE DE L'ASSEMBLÉE GÉNÉRALE POUR L'ADMISSION D'UN ÉTAT AUX NATIONS UNIES

AVIS CONSULTATIF DU 3 MARS 1950

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

COMPETENCE OF THE GENERAL ASSEMBLY FOR THE ADMISSION OF A STATE TO THE UNITED NATIONS

ADVISORY OPINION OF MARCH 3rd, 1950

TABLE DES MATIÈRES — CONTENTS

PREMIÈRE PARTIE. — REQUÊTE POUR AVIS CONSULTATIF ET PIÈCES DE LA PROCÉDURE ÉCRITE

PART I.—REQUEST FOR ADVISORY OPINION AND DOCUMENTS OF THE WRITTEN PROCEEDINGS

SECTION A. — REQUÊTE POUR AVIS CONSULTATIF

SECTION A.—REQUEST FOR ADVISORY OPINION

SECTION B. — DOCUMENTS TRANSMIS AVEC LA REQUÊTE

SECTION B.—DOCUMENTS TRANSMITTED WITH THE REQUEST

SECTION C. — EXPOSÉS ÉCRITS

SECTION C.—WRITTEN STATEMENTS

DEUXIÈME PARTIE. — SÉANCES PUBLIQUES ET PLAIDOIRIES

PART II.—PUBLIC SITTINGS AND PLEADINGS

ANNEXE AUX PROCÈS-VERBAUX

ANNEX TO THE MINUTES

TROISIÈME PARTIE. — CORRESPONDANCE

PART III.—CORRESPONDENCE

1. WRITTEN STATEMENT SUBMITTED BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

TABLE OF CONTENTS

Annexes

I. INTRODUCTION

The General Assembly of the United Nations at its 252nd Meeting on 22 November, 1949, adopted the following Resolution (296 (IV) J) requesting from the International Court of Justice an advisory opinion concerning the competence of the General Assembly for the admission of new Members to the United Nations:

> *The General Assembly,*
>
> *Keeping in mind* the discussion concerning the admission of new Members in the *Ad hoc* Political Committee at its fourth regular session,
>
> *Requests* the International Court of Justice to give an advisory opinion on the following question:
>
> "Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?"

Thus for the second time in two years the question of admission of new Members to the United Nations is placed before the Court. Whereas the first request concerned the interpretation of Article 4, paragraph 1, of the Charter of the United Nations—the conditions of admission of a State to membership in the United Nations, the present request concerns the interpretation of Article 4, paragraph 2, of the Charter—the procedures by which the admission of a State may be effected or more specifically the competence of the General Assembly for the admission of new Members to the United Nations.

The Secretary-General has considered that it is his duty to furnish the Court with information which may facilitate the consideration of the present question. He is, therefore, submitting this written Statement which it is hoped will be of interest to the Court in giving the historical background of the question. It is also hoped that it may be of some assistance in the use of the extensive documentation which has been transmitted to the Court.

The Statement will also present the relevant records of the United Nations Conference on International Organization dealing with the drafting of Article 4, paragraph 2, of the Charter. These records are submitted since they may possibly be of assistance to the Court and also in view of the fact that there has been frequent reference to these records in the consideration of this question by the General Assembly and by the Security Council.

Finally, it should be pointed out that this Statement is limited to the presentation of the background of this particular question, and makes no attempt to present related material which might

be of interest. Thus it contains no consideration of analogous or related articles of the Charter, although several representatives have referred to such articles in the discussion of this question.

II. Discussion by Organs of the United Nations

A. *Discussion and request for advisory opinion by Fourth Session of the General Assembly.*

The Fourth Session of the General Assembly of the United Nations received three special reports from the Security Council on the admission of new Members (Folder 18, A/968, A/974, A/982) [1]. These reports were referred by the Assembly at its 224th Meeting (Folder 17) to the *Ad hoc* Political Committee and were considered by the Committee at its 25th to 29th Meetings (Folder 19). During the consideration of these reports at the 25th Meeting of the Committee on 21 October, 1949, a number of draft resolutions were submitted including one by the representative of Argentina [2]

[1] A note of explanation is necessary concerning the citations to United Nations documents in this Statement. It will be noted that the dossier transmitted to the Court covers only that documentation for 1948 and 1949, as documents for 1946 and 1947 were made available in connexion with the first request for an advisory opinion on the admission of new Members. For documents for the years 1948 and 1949 the citation is to the dossier. Pagination is in most cases the same as in the published Official Records of the United Nations. Citation to documents bearing a date prior to 1 January, 1948, is to the published official records only.

It must also be pointed out that the only Official Records of the Committees of the General Assembly are the Summary Records which have been furnished to the Court. These Summary Records have been subject to examination and correction by the various delegations. Verbatim records of the First Committee and the *Ad hoc* Political Committee do exist, however, in the Archives of the United Nations in the form either of stenographic records or of sound recordings which may be made into transcripts upon request. These verbatim records have not been examined and corrected by the representatives concerned but they do constitute a more complete record of what was actually said. If it should be desired to consult any of these verbatim records, the Secretary-General will hold himself at the disposal of the Court to make these records available.

[2] The text of the draft resolution submitted by Argentina is as follows:

Whereas Committee 1 of Commission II of the San Francisco Conference approved the following interpretation of the powers of the Assembly with regard to the admission of new Members and directed that it should be included in its minutes as the only interpretation which should be given of that power:

> "*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 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, or a recommendation to the effect that a given State should not be admitted to the United Nations.
>
> 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,

(Folder 20, A/AC.31/L.18), which proposed that certain questions concerning the admission of new Members should be submitted to the International Court of Justice for an advisory opinion. At the 27th Meeting, the representative of Belgium, who was also the Rapporteur of the Committee, suggested that a drafting sub-committee might be appointed to deal with the Argentine draft resolution (Folder 19, 27th Meeting, p. 139). The Chairman suggested that instead of appointing a sub-committee the representative of Argentina and the Rapporteur should consult with other delegations and present a revised text to the Committee. In conformity with this request, the Argentine representative and the Rapporteur studied the various proposals submitted to them by the delegations desiring a modification of the draft resolution submitted by the Argentine Delegation. This study resulted in the submission at the 28th Meeting on 3 November, 1949, of a new

---

and on this basis approved the text as suggested by the Co-ordination Committee."

Whereas Commission II and later the Conference approved the decision of Committee II/1,

The General Assembly

Decides to submit the following questions to the International Court of Justice for an advisory opinion:

I. Does the last part of the second paragraph of the interpretation of the powers of the Assembly as approved by Committee II/1, by Commission II and finally by the Conference in plenary session and reading "or a recommendation to the effect that a given State should not be admitted to the United Nations" refer to a *recommendation* by the Security Council to the effect that a given State should not be admitted to the United Nations?

If the reply to the foregoing question is in the affirmative, does this mean that the Security Council can make a recommendation *against* admission?

II. The third paragraph of the interpretation of the powers of the Assembly quoted above reads: "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."

Is this interpretation the only authentic interpretation that can be given to the above-mentioned provision of the Charter?

III. If this interpretation is not the only authentic interpretation, is there any provision *in the Charter* which affords legal support for the view that the recommendation to which Article 4 refers must always be positive?

IV. Must the decision to which Article 4, paragraph 2, refers be to the same effect as the Security Council's recommendation—positive or negative—or is the General Assembly completely free to decide?

V. If the reply to the foregoing question is in the affirmative, is it absolutely essential that the Security Council should adopt a resolution in the form of a positive or negative recommendation, or is it sufficient that the Security Council should have taken cognizance of the request and should have had an opportunity to express its opinion, even if for any reason it has not expressed such opinion?

VI. Is the admission of new Members a purely legal question or may the General Assembly be guided by political considerations in exercising its powers of decision?

text [3] (Folder 20, A/AC.31/L.20) of the Argentine resolution.

At the 29th Meeting on 4 November, 1949, the representative of the Netherlands submitted an amendment (Folder 20, A/AC. 31/L.22) proposing to replace paragraph 2 of the Argentine revised draft resolution by the following :

> "*Keeping in mind* the discussion concerning the admission of new Members in the *Ad hoc* Political Committee of its fourth regular session."

The representative of Argentina accepted the Netherlands amendment provided that it should also replace paragraph 1 of the Argentine draft resolution. (Folder 19, 29th meeting, p. 161.)

At the same meeting the Committee voted on the various draft resolutions and amendments. The draft resolution proposed by Argentina (Folder 20, A/AC.31/L.20) as amended was adopted by a roll-call vote of 37 in favour to 9 against, with 8 abstentions. (Folder 19, 29th meeting, p. 162.)

This draft resolution was included as resolution J in the Report of the *Ad hoc* Political Committee on admission of new Members (Folder 20, A/1066), with the recommendation that it be adopted by the General Assembly. The General Assembly considered the report at its 251st and 252nd Meetings (Folder 21) on 22 November,

[3] This text is as follows :

The General Assembly,

Considering Article 4 of the Charter of the United Nations,

Considering the following passage of the second report of the Committee II/1 (document 1092, of 19 June, 1945) of the San Francisco Conference which has been invoked before the General Assembly at its Fourth regular Session :

> "*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 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, or a recommendation to the effect that a given State should not be admitted to the United Nations.
>
> 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."

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

> Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend ?

1949. Resolution 296 (IV) J (Folder 23) was adopted by 42 votes to 9, with 6 abstentions. Its text is as follows :

The General Assembly,

Keeping in mind the discussion concerning the admission of new members in the *Ad hoc* Political Committee at its fourth regular session,

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

"Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend ?"

Attention may be directed to the following statements made in the course of discussion in the *Ad hoc* Political Committee and in the Plenary Meetings of the Assembly which may be likely to throw light on the question under consideration by the Court :

Statement by the representative of Argentina (Folder 19, 26th Meeting, *Ad hoc* Political Committee, pp. 125-126, paras. 31-53).

Statement by the representative of Australia (Folder 19, 26th Meeting, *Ad hoc* Political Committee, pp. 127-128, paras. 58 and 62).

Statement by the representative of the Netherlands (Folder 19, 26th Meeting, *Ad hoc* Political Committee, p. 130, paras. 89-91).

Statement by the representative of Iraq (Folder 19, 26th Meeting, *Ad hoc* Political Committee, p. 131, para. 100).

Statement by the representative of Uruguay (Folder 19, 26th Meeting, *Ad hoc* Political Committee, p. 132, paras. 106-109).

Statement by the representative of Cuba (Folder 19, 26th Meeting, *Ad hoc* Political Committee, p. 133, para. 116).

Statement by the representative of the Union of South Africa (Folder 19, 26th Meeting, *Ad hoc* Political Committee, pp. 133-134, paras. 120-121).

Statement by the representative of Norway (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 137, para. 7).

Statement by the representative of Guatemala (Folder 19, 27th Meeting, *Ad hoc* Political Committee, pp. 138-139, paras. 13-21).

Statement by the representative of Belgium (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 139, paras. 22-24).

Statement by the Chairman (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 139, para. 25).

Statement by the representative of Argentina (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 139, para. 26).

Statement by the representative of Venezuela (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 141, paras. 48-55).

Statement by the representative of Saudi Arabia (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 143, para. 77).

Statement by the representative of Sweden (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 143, para. 80).

Statement by the representative of China (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 144, para. 89).

Statement by the representative of Peru (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 145, para. 106).

Statement by the representative of Mexico (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 145, para. 109).

Statement by the representative of Lebanon (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 146, paras. 122-125).

Statement by the representative of Iraq (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 147, para. 128).

Statement by the representative of Poland (Folder 19, 27th Meeting, *Ad hoc* Political Committee, pp. 147-148, paras. 132-139).

Statement by the representative of Argentina (Folder 19, 27th Meeting, *Ad hoc* Political Committee, p. 148, para. 145).

Statement by the representative of the Union of Soviet Socialist Republics (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 149-150, paras. 10-13).

Statement by the representative of Nicaragua (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 150, para. 17).

Statement by the representative of France (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 150-152, paras. 18-30).

Statement by the representative of Australia (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 152-153, paras. 40-43).

Statement by the Chairman (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 153, para. 44).

Statement by the representative of Belgium (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 153, paras. 45-49).

Statement by the representative of Argentina (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 153-154, paras. 50-76).

Statement by the representative of Canada (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 155, paras. 80-82).

Statement by the representative of Bolivia (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 155, paras. 86-87).

Statement by the representative of El Salvador (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 155-156, paras. 88-96).

Statement by the representative of Chile (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 156, paras. 97-101).

Statement by the representative of the Philippine Republic (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 156-157, paras. 108-113).

Statement by the representative of New Zealand (Folder 19, 28th Meeting, *Ad hoc* Political Committee, pp. 157-158, para. 119).

Statement by the representative of Colombia (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 158, paras. 123-125).

Statement by the representative of Iraq (Folder 19, 28th Meeting, *Ad hoc* Political Committee, p. 159, para. 135).

Statement by the representative of the Netherlands (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 161, paras. 16-21).

Statement by the representative of Argentina (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 161, para. 23).

Statement by the representative of Haiti (Folder 19, 29th Meeting, *Ad hoc* Political Committee, pp. 161-162, paras. 24-31).

Statement by the representative of Belgium (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 162, para. 32).

Statement by the representative of the Netherlands (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 162, paras. 33-34).

Statement by the representative of Argentina (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 162, para. 35).

Statement by the representative of France (Folder 19, 29th Meeting, *Ad hoc* Political Committee, p. 162, para. 37).

Statement by the representative of Belgium (Folder 21, 251st Plenary Meeting of the General Assembly, p. 1, para. 3).

Statement by the representative of Poland (Folder 21, 251st Plenary Meeting of the General Assembly, p. 2, paras. 22-24).

Statement by the representative of Cuba (Folder 21, 251st Plenary Meeting of the General Assembly, p. 2, paras. 27-28).

Statement by the representative of Czechoslovakia (Folder 21, 251st Plenary Meeting of the General Assembly, p. 4, para. 48).

Statement by the representative of France (Folder 21, 251st Plenary Meeting of the General Assembly, p. 5, paras. 63-64).

Statement by the representative of Iraq (Folder 21, 251st Plenary Meeting of the General Assembly, pp. 8-9, paras. 106-107).

Statement by the representative of Argentina (Folder 21, 251st Plenary Meeting of the General Assembly, pp. 9-11, paras. 113-144).

Statement by the representative of the Union of Soviet Socialist Republics (Folder 21, 252nd Plenary Meeting of the General Assembly, pp. 14-15, paras. 24-36).

Statement by the representative of the United States (Folder 21, 252nd Plenary Meeting of the General Assembly, p. 17, para. 67).

B. *Discussion prior to the Fourth Session of the General Assembly.*

Although in the preamble of the General Assembly Resolution requesting an advisory opinion from the Court there is specific reference only to the discussion concerning the admission of new Members in the *Ad hoc* Political Committee at the fourth regular session, this was not the first time that the issue of the General Assembly's competence for the admission of new Members was

discussed before organs of the United Nations. The discussion in connexion with the establishment of the rules of procedure will be dealt with in Section C of this Chapter. Here it is desired to direct the attention of the Court to the discussions in the General Assembly and in the Security Council prior to the Fourth Session of the General Assembly in which the issues raised by the Argentine Delegation have been discussed.

1. First Session of the General Assembly—1946.

The issues implicit in the present question were not directly raised during the First Session of the General Assembly in 1946. However, during the second part of its First Session, following the General Assembly's decision to admit Afghanistan, Iceland and Sweden upon the recommendation of the Security Council, a discussion ensued concerning the right of the Assembly to discuss those applications rejected by the Security Council with the view to returning them to the Council for re-examination. This question was resolved in the affirmative and General Assembly Resolution 35 (I) (Resolutions, Second Part, First Session, p. 61) was adopted on 17 November, 1946, recommending re-examination by the Council of the applications of Albania, Mongolian People's Republic, Transjordan, Ireland and Portugal.

During the course of this discussion in the 12th Meeting of the First Committee, the representative of Argentina stated his position as follows:

> The General Assembly was sovereign in the examination of all questions regarding admission or non-admission of new Members. The Argentine vote was cast on this understanding. He expressed the view that no speaker had intended to attack the Security Council, but only to defend the Assembly's ultimate right, under Article 10, to discuss and make a final decision on membership applications by a two-thirds vote. In his opinion, the General Assembly was not bound to accept the Security Council's recommendations since Article 4 of the Charter left no doubt as to the Assembly's sovereign powers. Any other interpretation would allow one State to bar an applicant. (*Official Records*, Second Part, First Session, First Committee, p. 40.)

The representative of Argentina also expressed a reservation at the 49th Plenary Meeting of the General Assembly (*Official Records*, Second Part, First Session, Plenary Meetings, p. 993).

During the course of this same discussion, a number of representatives stated their view that the General Assembly had no authority to approve an application for membership without a recommendation from the Security Council. For example, the representative of the Union of Soviet Socialist Republics stated that:

> No Charter provision nor anyone at San Francisco mentioned primary and secondary responsibilities. The Council's role was

not secondary, any more than the Assembly's was primary, or vice versa. The Charter protected in this case the prestige of both these principal organs of the United Nations and assigned neither primary nor secondary roles. (*Official Records*, Second Part, First Session, First Committee, p. 78.)

For other statements supporting the view that a Security Council recommendation is a prerequisite for a decision by the General Assembly, see the following:

Statement by the representative of Egypt—12th Meeting of the First Committee (*Official Records*, Second Part, First Session, First Committee, pp. 37-38).

Statement by the representative of the United States—12th Meeting of the First Committee (*Official Records*, Second Part, First Session, First Committee, p. 40).

Statement by the representative of the Philippine Republic—12th Meeting of the First Committee (*Official Records*, Second Part, First Session, First Committee, p. 41).

Statement by the representative of Australia—15th and 17th Meetings of the First Committee (*Official Records*, Second Part, First Session, First Committee, pp. 57 and 73).

Statement by the representative of the Ukrainian Soviet Socialist Republic—16th Meeting of the First Committee (*Official Records*, Second Part, First Session, First Committee, p. 63).

Statement by the representative of Yugoslavia—17th meeting of the First Committee (*Official Records*, Second Part, First Session, First Committee, p. 75).

2. Second Session of the General Assembly—1947.

The first full debate involving the issues raised in the present question occurred in the First Committee of the General Assembly during the Second Session in 1947. The representative of Argentina proposed the admission of Transjordan, Ireland, Portugal, Italy and Austria, States which had received 7 or more votes in the Security Council. (See A/C.1/184, A/C.1/185 and A/C.1/222, *Official Records*, Second Session, First Committee, pp. 580, 583.)

These Argentine draft resolutions were discussed together with other proposals at the 98th to the 103rd Meetings of the First Committee from 7 to 10 November, 1947. (*Official Records*, Second Session, First Committee, pp. 338-398.) At the 103rd Meeting following the conclusion of the general debate on admission of new Members, the representative of Argentina stated that he would not insist upon a vote on the Argentine draft resolutions. A joint draft resolution (A/C.1/243, *Official Records*, Second Session, First Committee, p. 584) presented by Argentina, Brazil and Chile proposed that the General Assembly should declare that in its judgment Ireland, Portugal, Transjordan, Austria, Italy and Finland were peace-loving countries, were able and willing to

carry out the obligations contained in the Charter and should, therefore, be admitted for membership in the United Nations. It was pointed out by the representative of Chile that this joint resolution called for a statement and not for a decision from the Assembly. In consequence of a revision of a series of draft resolutions presented by Australia which incorporated a determination similar to the declaration in the joint resolution, Argentina, Brazil and Chile withdrew their resolution. The First Committee adopted a series of eight draft resolutions including those proposed by Australia, and also the Belgian draft resolution requesting an advisory opinion of the Court on the conditions of admission of a State to membership in the United Nations. The report of the First Committee was considered by the General Assembly at its 117th and 118th Meetings (*Official Records*, Second Session, Plenary Meetings, Vol. II, pp. 1043-1080), and the resolutions contained in the report were adopted. (See General Assembly Resolution 113 (II) A to H, Resolutions adopted at the Second Session, pp. 18-21.)

The attention of the Court is particularly directed to the following statements in which issues pertinent to the present question are discussed :

Statement by the representative of Argentina—98th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 338-342).

Statement by the representative of Canada—98th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 342).

Statement by the representative of Iraq—98th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 343).

Statement by the representative of Poland—99th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 343-345).

Statement by the representative of Australia—99th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 348-349).

Statement by the representative of Lebanon—99th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 352).

Statement by the representative of the United States—99th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 354).

Statement by the representative of the Union of Soviet Socialist Republics—99th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 358-360).

Statement by the representative of Pakistan—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 360-362).

Statement by the representative of India—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 363).

Statement by the representative of Iraq—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 364).

Statement by the representative of Venezuela—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 365-366).

Statement by the representative of Paraguay—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 366-368).

Statement by the representative of Argentina—100th Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 368-370).

Statement by the representative of China—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 372).

Statement by the representative of Mexico—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 376).

Statement by the representative of the United Kingdom—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 378).

Statement by the representative of Yugoslavia—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 379).

Statement by the representative of Brazil—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 381).

Statement by the representative of Norway—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 381).

Statement by the representative of Panama—101st Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 382).

Statement by the representative of Czechoslovakia—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 383-384).

Statement by the representative of France—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 384).

Statement by the representative of the Ukrainian Soviet Socialist Republic—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 385).

Statement by the representative of Ecuador—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 387).

Statement by the representative of Poland—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 387).

Statement by the representative of the Philippine Republic—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 387-388).

Statement by the representative of the Union of Soviet Socialist Republics—102nd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 388-390).

Statement by the representative of the United States—103rd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 391).

Statement by the representative of Canada—103rd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 394).

Statement by the representative of India—103rd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, pp. 394-395).

Statement by the representative of Chile—103rd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 395).

Statement by the representative of Argentina—103rd Meeting of the First Committee (*Official Records of the Second Session of the General Assembly*, First Committee, p. 396).

Statement by the representative of Poland—117th Meeting of the General Assembly (*Official Records of the Second Session of the General Assembly*, Plenary Meetings, p. 1044).

Statement by the representative of Argentina—118th Meeting of the General Assembly (*Official Records of the Second Session of the General Assembly*, Plenary Meetings, pp. 1071-1074).

3. First Part of Third Session of the General Assembly—1948.

In a letter to the Secretary-General dated 21 July, 1948, Argentina requested the inclusion in the provisional agenda of the Third Session of the General Assembly of an item entitled: "Admission to the Organization of Italy and all those States whose applications for membership have obtained seven votes in the Security Council" (Folder 5, A/586—Item 14 *c* of Provisional Agenda). During the discussion of the provisional agenda at the 43rd Meeting of the General Committee on 22 September, 1948, the representatives of the Union of Soviet Socialist Republics and Belgium suggested the deletion of this item as contrary to the Charter of the United Nations. The Chairman and other members of the Committee thought it preferable to leave the question to the appropriate committee. A Belgian proposal to recommend the deletion of this item was rejected by 6 votes to 5, with 3 abstentions, and it was decided by 6 votes to 2 to recommend its inclusion in the agenda. (Folder 4, General Committee, 43rd Meeting, pp. 2-6.)

During the consideration of the agenda at the 142nd Plenary Meeting on 24 September, 1948, the deletion of this item (14 *c*) was proposed by several Members of the Assembly but was rejected by 29 votes to 16, with 10 abstentions. (Folder 4, 142nd Plenary Meeting, pp. 98-104.)

The agenda item on admission of new Members was originally referred to the First Committee, but because of the heavy work load of that Committee it was decided at the 158th Plenary Meeting of the Assembly (Folder 4, 158th Plenary Meeting) to refer this item to the *Ad hoc* Political Committee for consideration and report. The *Ad hoc* Political Committee considered this item at its 6th to 16th, 22nd and 23rd Meetings (Folder 6).

The representative of Argentina submitted to the *Ad hoc* Political Committee a draft resolution (Folder 7, A/AC.24/15) as follows :

> *Whereas* the admission of new Members into the United Nations should be governed strictly by the terms of the Charter, which provides that the decision will be effected by the General Assembly, upon the recommendation of the Security Council, and
>
> *Whereas*, irrespective of whether such recommendation is favourable or not, the application for membership should be considered by the Assembly so that it may adopt a suitable resolution,
>
> *Now therefore the General Assembly decides as follows :*
>
> 1. Applications for membership shall be submitted to the consideration of the Assembly when the Security Council has reached its decision ; and the Security Council's decision shall be deemed to be a recommendation in favour of admission if the application has received seven or more affirmative votes, even if one or more permanent Members have cast a negative vote ;
>
> 2. The General Assembly may both reject an application for admission with a favourable recommendation and grant an application with an unfavourable recommendation, always provided that such a decision is supported by a two-thirds majority of its Members present and voting.

This draft resolution, together with a number of other draft resolutions, was considered in the general debate in the Committee at its 6th to 11th Meetings from 22 to 24 November, 1948. (Folder 6, 6th-11th Meetings, pp. 52-130.) At the 12th Meeting on 25 November, 1948, a motion of the Delegation of the Union of Soviet Socialist Republics that the Argentine draft resolution should be put to vote first was adopted by 26 votes to 21, with 5 abstentions. (Folder 6, 12th Meeting, p. 139.) The Argentine draft resolution was considered by the Committee at its 13th and 14th Meetings (Folder 6, 13th and 14th Meetings, pp. 145-160). The representative of Yugoslavia moved, in accordance with Rule 110

of the Rules of procedure [4], that a vote be taken first on the question of the competence of the General Assembly to adopt the Argentine proposal. The Yugoslav motion that the General Assembly was not competent to adopt the Argentine draft resolution was rejected at the 14th Meeting by a roll-call vote of 28 to 10, with 11 abstentions (Folder 6, 14th Meeting, p. 155). The representative of Argentina then withdrew his draft resolution, and the representative of the Union of Soviet Socialist Republics proposed that the vote on the Yugoslav proposal should, therefore, be declared null and void. This proposal was rejected by 34 votes to 8, with 5 abstentions (Folder 6, 14th Meeting, p. 160).

The *Ad hoc* Political Committee recommended to the General Assembly in its report the adoption of ten draft resolutions on the subject of admission of new Members. The General Assembly considered this report at its 175th, 176th and 177th Meetings on 8 December, 1948 (Folder 8, Plenary Meetings, pp. 767-801). It adopted with amendments nine of the resolutions (Folder 10, General Assembly Resolution 197 (III), A to I).

The attention of the Court is particularly directed to the following statements in which legal issues pertinent to the present question are discussed at length:

Statement by the representative of Argentina—6th Meeting of the *Ad hoc* Political Committee (Folder 6, 6th Meeting, pp. 59-63).

Statement by the representative of Uruguay—6th Meeting of the *Ad hoc* Political Committee (Folder 6, 6th Meeting, pp. 63-64).

Statement by the representative of the Union of Soviet Socialist Republics—7th Meeting of the *Ad hoc* Political Committee (Folder 6, 7th Meeting, pp. 65-67).

Statement by the representative of Argentina—11th Meeting of the *Ad hoc* Political Committee (Folder 6, 11th Meeting, pp. 118-122).

Statement by the representative of the Union of Soviet Socialist Republics—11th Meeting of the *Ad hoc* Political Committee (Folder 6, 11th Meeting, pp. 122-124).

The attention of the Court is also directed to briefer statements concerning these issues by the representatives of the following States:

Statement by the representative of Australia—6th Meeting of the *Ad hoc* Political Committee (Folder 6, 6th Meeting, p. 56).

Statement by the representative of the Netherlands—6th Meeting of the *Ad hoc* Political Committee (Folder 6, 6th Meeting, pp. 58-59).

---

[4] Rule 110. Decisions on competence:

"Subject to Rule 108, any motion calling for a decision on the competence of the General Assembly to adopt a proposal submitted to it shall be put to the vote immediately before a vote is taken on the proposal in question."

Statement by the representative of the United States—7th Meeting of the *Ad hoc* Political Committee (Folder 6, 7th Meeting, pp. 77-78).

Statement by the representative of Belgium—8th Meeting of the *Ad hoc* Political Committee (Folder 6, 8th Meeting, p. 80).

Statement by the representative of Egypt—8th Meeting of the *Ad hoc* Political Committee (Folder 6, 8th Meeting, pp. 81-82).

Statement by the representative of Poland—8th Meeting of the *Ad hoc* Political Committee (Folder 6, 8th Meeting, pp. 84-85).

Statement by the representative of Venezuela—8th Meeting of the *Ad hoc* Political Committee (Folder 6, 8th Meeting, pp. 87-88).

Statement by the representative of India—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 90).

Statement by the representative of Greece—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 91).

Statement by the representative of Pakistan—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 91).

Statement by the representative of the United Kingdom—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 95).

Statement by the representative of Ecuador—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, pp. 95, 97-98).

Statement by the representative of Colombia—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 98).

Statement by the representative of China—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, p. 99).

Statement by the representative of Norway—9th Meeting of the *Ad hoc* Political Committee (Folder 6, 9th Meeting, pp. 100-101).

Statement by the representative of Brazil—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, pp. 102-103).

Statement by the representative of Iraq—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 106).

Statement by the representative of Lebanon—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 107).

Statement by the representative of the Ukrainian Soviet Socialist Republic—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 108).

Statement by the representative of Paraguay—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 109).

Statement by the representative of the Union of South Africa—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 110).

Statement by the representative of Bolivia—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, pp. 111-112).

Statement by the representative of the Byelorussian Soviet Socialist Republic—10th Meeting of the *Ad hoc* Political Committee (Folder 6, 10th Meeting, p. 113).

Statement by the representative of Denmark—11th Meeting of the *Ad hoc* Political Committee (Folder 6, 11th Meeting, p. 115).

Statement by the representative of Ethiopia—11th Meeting of the *Ad hoc* Political Committee (Folder 6, 11th Meeting, p. 116).

Statement by the representative of France—11th Meeting of the *Ad hoc* Political Committee (Folder 6, 11th Meeting, p. 118).

Statement by the representative of Canada—12th Meeting of the *Ad hoc* Political Committee (Folder 6, 12th Meeting, p. 134).

Statement by the representative of France—176th Meeting of the General Assembly (Folder 8, 176th Plenary Meeting, p. 786).

Statement by the representative of the Union of Soviet Socialist Republics—176th Meeting of the General Assembly (Folder 8, 176th Plenary Meeting, pp. 793-795).

Statement by the representative of the United Kingdom—177th Meeting of the General Assembly (Folder 8, 177th Plenary Meeting, p. 797).

4. Second Part of the Third Session of the General Assembly—1949.

At the second part of the Third Session of the General Assembly, the question concerning the relative powers of the General Assembly and the Security Council was raised indirectly by a draft resolution submitted by the representative of Iraq (Folder 14, A/AC.24/64). When the recommendation for the admission of Israel was voted in the Security Council, it had been approved by a vote of 9 to 1, with 1 abstention. The member abstaining was a permanent Member of the Security Council, but in accordance with the established practice of the Council, the President ruled that the recommendation had been approved. When the *Ad hoc* Political Committee of the General Assembly considered this recommendation, the representative of Pakistan raised a preliminary question whether, in view of the abstention of a permanent Member, there was a valid recommendation from the Security Council and stated that the General Assembly could take no decision until it had dispelled all doubt concerning the regularity of the Council's recommendation (Folder 13, 42nd Meeting, pp. 181-183). The representative of Iraq submitted his draft resolution asking that an inquiry be sent to the Security Council "seeking further explanation for the validity of the vote taken with regard to the application of Israel to membership in the United Nations", in view of the abstention of one of the permanent Members, and, "without prejudice to the discussion of the merits of the case", that an advisory opinion be sought from the International Court of Justice upon the nature of this vote.

This position was challenged by the Chairman of the Committee and by several representatives, who thought that the Council's recommendation was in order and that in any case the Assembly was not competent to question the regularity of a vote in the

Security Council. The representative of Argentina again called attention to the position of his delegation that the veto did not apply to the admission of new Members (Folder 13, 42nd Meeting, p. 185). In the 44th Meeting of the *Ad hoc* Political Committee, the representative of Iraq declared that, taking note of the general tone of discussion, he would not press for a vote on his draft resolution. However, he again raised the point when the question was considered at the 207th Plenary Meeting of the General Assembly on 11 May, 1949 (Folder 15, 207th Plenary Meeting, p. 310). The President of the General Assembly ruled that the manner in which the recommendation of the Security Council had been adopted concerned the internal government and procedure of the Security Council and must be accepted by the General Assembly as a recommendation of the Security Council within the meaning of the Charter (Folder 15, 207th Plenary Meeting, p. 330). The following statements may be of interest:

Statement by the representative of Pakistan—42nd Meeting of the *Ad hoc* Political Committee (Folder 13, 42nd Meeting, pp. 181-183).

Statement by the Chairman—42nd Meeting of the *Ad hoc* Political Committee (Folder 13, 42nd Meeting, p. 183).

Statement by the representative of Iraq—42nd Meeting of the *Ad hoc* Political Committee (Folder 13, 42nd Meeting, pp. 183-184, 188).

Statement by the representative of Argentina—42nd Meeting of the *Ad hoc* Political Committee (Folder 13, 42nd Meeting, p. 185).

Statement by the representative of Egypt—43rd Meeting of the *Ad hoc* Political Committee (Folder 13, 43rd Meeting, p. 191).

Statement by the representative of Australia—43rd Meeting of the *Ad hoc* Political Committee (Folder 13, 43rd Meeting, p. 194).

Statement by the representative of the Union of Soviet Socialist Republics—43rd Meeting of the *Ad hoc* Political Committee (Folder 13, 43rd Meeting, p. 199).

Statement by the representative of the United Kingdom—43rd Meeting of the *Ad hoc* Political Committee (Folder 13, 43rd Meeting, p. 201).

Statement by the representative of Ecuador—43rd Meeting of the *Ad hoc* Political Committee (Folder 13, 43rd Meeting, p. 202).

Statement by the Chairman—44th Meeting of the *Ad hoc* Political Committee (Folder 13, 44th Meeting, pp. 203 and 209).

Statement by the representative of Iraq—44th Meeting of the *Ad hoc* Political Committee (Folder 13, 44th Meeting, p. 204).

Statement by the representative of Cuba—44th Meeting of the *Ad hoc* Political Committee (Folder 13, 44th Meeting, p. 207).

Statement by the representative of Pakistan—44th Meeting of the *Ad hoc* Political Committee (Folder 13, 44th Meeting, p. 211).

Statement by the representative of Lebanon—50th Meeting of the *Ad hoc* Political Committee (Folder 13, 50th Meeting, p. 330).

Statement by the representative of Norway—51st Meeting of the *Ad hoc* Political Committee (Folder 13, 51st Meeting, p. 341).

Statement by the representative of Iraq—207th Plenary Meeting of the General Assembly (Folder 15, p. 310).

Statement by the representative of Cuba—207th Plenary Meeting of the General Assembly (Folder 15, pp. 326-327).

Statement by the President—207th Plenary Meeting of the General Assembly (Folder 15, p. 330).

5. Security Council 1946-1949.

There is little material touching directly on the issues raised by the present question in the documents of the Security Council prior to its fourth year. There was, of course, discussion of the relative position of the General Assembly and the Security Council in connexion with the establishment of rules of procedure during the first and second years. This material is dealt with in Section C of this Chapter. During the discussion of the question of admission of new Members, a few representatives made statements pertinent to the present question. Thus, at the 54th Meeting of the Security Council, the representative of Mexico stated that the admission of any State to membership cannot be effected without the recommendation of the Security Council (*Security Council Official Records*, First Year, Second Series, No. 4, p. 46). At the 132nd Meeting of the Security Council, the representative of China stated that the Assembly will take a decision only on the recommendation of the Security Council (*Security Council Official Records*, Second Year, No. 38, p. 815).

In the second year, resolutions which may have some indirect interest to the question were introduced by the representatives of Australia and the United States. The resolutions introduced by the representative of Australia would have recommended that Italy and Austria "be admitted to membership at such time and under such conditions as the General Assembly may deem appropriate". (*Security Council Official Records*, Second Year, No. 81, pp. 2127, 2130.) These resolutions were not adopted because of a negative vote of a permanent Member of the Council. The draft resolution of the United States would have requested the General Assembly to consider the qualifications of the above-mentioned applicants and would have pledged the Security Council to immediately recommend to the General Assembly the admission of any of the applicants which the General Assembly should have considered qualified for admission. (*Security Council Official Records*, Second Year, No. 81, p. 2134.) This resolution was withdrawn before it was put to the vote.

In the third year, during the first discussion of the admission of new Members after Argentina became a Member of the Security Council, the representative of Argentina stated that he desired to reserve the position of his delegation concerning the general question of the procedure with regard to the admission of new Members. (Folder 25, S/706, p. 2, and Folder 26, 24th Meeting, p. 3.) The representative of Argentina also stated that his delegation did not consider paragraph 3 of Article 27 of the Charter as applicable to votes on the admission of new Members. (Folder 24, 279th Meeting, pp. 8, 9; 351st Meeting, p. 22.) The contrary position has been maintained by the other Members of the Security Council. At the 279th Meeting of the Security Council, on 10 April, 1948, the representative of the United States suggested that it might be desirable for attention to be paid to the possibility of devising means whereby a State such as Italy would be able to have a voice in the General Assembly of the United Nations. (Folder 24, 279th Meeting, p. 17.) This suggestion was challenged at the same meeting by the representative of the Union of Soviet Socialist Republics, who stated that a search for a formula such as that suggested by the United States representative would always be in vain. (Folder 24, 279th Meeting, p. 18.)

It was not until the fourth year, however, that the issues pertinent to the present question were discussed at length in the Security Council. At the 427th Meeting of 16 June, 1949, the representative of Argentina submitted a series of seven draft resolutions (Folder 25, S/1331—S/1337) for the approval of the Security Council, recommending the admission of Portugal, Jordan, Italy, Finland, Ireland, Austria and Ceylon. In submitting these resolutions, the representative of Argentina stated:

> "The Council has to decide whether it is going to make favourable or unfavourable recommendations regarding the applications of certain countries—there are twelve of them—for admission to the United Nations. In this connexion it is to be understood that those which obtain seven or more affirmative votes will be considered to be favourably recommended, while, on the other hand, those which do not obtain such support, will be considered to be unfavourably recommended; and it is to be further understood that all applications, whether they have received favourable or unfavourable recommendation, will be brought before the next session of the General Assembly for consideration and for the decision which the Assembly deems appropriate in accordance with Articles 4 and 18 of the Charter." (Folder 24, 427th Meeting, p. 14.)

The United States representative, at the 428th Meeting on 21 June, 1949, characterized the vote which the United States would cast on the Argentine resolutions as being free from the commitment to the understanding stated by the representative of Argentina with regard to the procedure which should be followed

in arriving at a recommendation by the Security Council or at a decision by the General Assembly. (Folder 24, 428th Meeting, p. 8.) At the same meeting, the representative of the Union of Soviet Socialist Republics stated that the Argentine proposals were in effect an attempt at revision of the Charter. (Folder 24, 428th Meeting, p. '9.) This view was also expressed by the representative of the Ukrainian Soviet Socialist Republic. (Folder 24, 428th Meeting, p. 16.) The Argentine draft resolutions were voted on by the Security Council at its 443rd Meeting on 13 September, 1949. (Folder 24, 443rd Meeting, pp. 29-31.) The result of a vote on the first resolution was 9 in favour and 2 against. The Chairman declared that the resolution was not adopted as one of the votes against was that of a permanent Member of the Council. The representative of Argentina entered a reservation concerning this ruling of the President.

The arguments of the representative of Argentina were developed at length during the 427th Meeting of the Security Council (Folder 24, 427th Meeting, pp. 10-30.) Other statements made in the course of the debate on these Argentine draft resolutions which have some relevancy to the question before the Court are as follows:

Statement by the representative of Argentina (Folder 24, 423rd Meeting, pp. 13-14).

Statement by the representative of Cuba (Folder 24, 428th Meeting, pp. 3, 4).

Statement by the representative of the United States (Folder 24, 428th Meeting, pp. 5-6, 8).

Statement by the representative of the Union of Soviet Socialist Republics (Folder 24, 428th Meeting, pp. 8-10).

Statement by the representative of Argentina (Folder 24, 428th Meeting, p. 14).

Statement by the representative of the Ukrainian Soviet Socialist Republic (Folder 24, 428th Meeting, pp. 16-17).

Statement by the representative of the United Kingdom (Folder 24, 429th Meeting, p. 4).

Statement by the representative of the Ukrainian Soviet Socialist Republic (Folder 24, 429th Meeting, pp. 4-6).

Statement by the representative of Argentina (Folder 24, 429th Meeting, pp. 12-13).

Statement by the representative of Argentina (Folder 24, 431st Meeting, pp. 9-10).

Statement by the representative of Argentina (Folder 24, 439th Meeting, pp. 15-16).

Statement by the representative of Argentina (Folder 24, 440th Meeting, p. 7).

C. *Rules of procedure governing the admission of new Members.*

In the Statement of the Representative of the Secretary-General of the United Nations before the Court in the question concerning the conditions of admission of a State to membership in the United Nations, he had occasion to indicate briefly the procedure actually followed in the Security Council and the General Assembly with respect to applications for admission to membership in the United Nations [5]. In connexion with the present question before the Court, it may be pertinent to state the Rules of procedure of the two principal organs governing the admission of new Members. It is thought that the deliberations on some of the issues in the several stages of elaboration of these rules may help to throw some light upon the question under consideration.

1. Earlier Rules of procedure governing the admission of new Members.

(*a*) The Provisional Rules of procedure of the General Assembly.

The Provisional Rules of procedure of the General Assembly were first drawn up by the Executive Committee of the Preparatory Commission of the United Nations in 1945 [6]. Rules 119 to 123, inclusive, concerned the admission of new Members. The draft Provisional Rules were revised and approved by the Preparatory Commission. The rules governing the admission of new Members were adopted, with minor drafting changes, and figured as Rules 104 to 107, inclusive [7]. Upon the recommendation of the Preparatory Commission, the Provisional Rules of procedure were adopted provisionally by the General Assembly at the Second Plenary Meeting, during the First Part of the First Session, on 11 January, 1946 [8]. In the course of the First Part of the First Session of the General Assembly, the Provisional Rules were revised [9]. The rules on the admission of new Members remained the same but were renumbered. These were as follows :

> *Rule 113.*—Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.
>
> *Rule 114.*—If the applicant State so requests, the Secretary-General shall inform the General Assembly, or the Members of the United Nations if the General Assembly is not in session, of the application.

---

[5] International Court of Justice: Conditions of admission of a State to membership in the United Nations, Pleadings, Oral Arguments, Documents, pp. 47, 48.

[6] Report of Executive Committee, Doc. PC/EX/113/Rev. 1, pp. 18-29.

[7] Report of the Preparatory Commission, Doc. PC/20, p. 18.

[8] Doc. A/71. General Assembly, *Official Records*, First Part of First Session, Plenary Meetings, pp. 50-66.

[9] Doc. A/71.

Rule 115.—If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership.

Rule 116.—The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the applicant State presents to the Secretary-General an instrument of adherence.

(*b*) The Provisional Rules of procedure of the Security Council.

The Provisional Rules of procedure of the Security Council were also prepared first by the Executive Committee of the Preparatory Commission of the United Nations in 1945 [10]. Rules 25 to 27 inclusive concerned the admission of new Members. The draft Provisional Rules were revised and approved by the Preparatory Commission. The rules governing the admission of new Members were adopted without modification and figured as Rules 25 to 27 inclusive [11]. Upon the recommendation of the Preparatory Commission, the Provisional Rules of procedure were adopted by the Security Council at its first meeting on 17 January, 1946 [12]. The rules governing the admission of new Members read as follows:

Rule 25.—Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.

Rule 26.—The application for membership in the United Nations shall be placed by the Secretary-General before the Security Council, which 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.

Rule 27.—Should the Security Council decide to recommend the applicant State for membership in the United Nations, this recommendation shall be placed before the General Assembly by the Secretary-General.

The foregoing rules were revised by the Committee of Experts. The Security Council considered the report [13] of the Committee of Experts at its Forty-first and Forty-second Meetings on 16 and 17 May, 1946. At the latter meeting, it adopted, by 10 votes to 1, the following rules governing the admission of new Members [14]:

[10] Report of the Executive Committee, Doc. PC/EX/113/Rev. 1, p. 44.

[11] Report of the Preparatory Commission, Doc. PC/20, p. 27.

[12] Doc. S/28. *Security Council Official Records*, First Year, First Series, No. 1, p. 11.

[13] Doc. S/57.

[14] *Security Council Official Records*, First Year, First Series, No. 2, p. 277; for text of the rules, see Doc. S/62.

Rule 55.—Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall be accompanied by a declaration of its readiness to accept the obligations contained in the Charter.

Rule 56.—The Secretary-General shall immediately place the application for membership before the representatives on the Security Council. Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each Member of the Security Council shall be represented. The committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly, or, if a special session of the General Assembly is called, not less than fourteen days in advance of such session.

Rule 57.—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.

In order to assure the consideration of its recommendation at the next session of the General Assembly following the receipt of the application, the Security Council shall make its recommendations not less than twenty-five days in advance of a regular session of the General Assembly, nor less than four days in advance of a special session.

In special circumstances, the Security Council may decide to make a recommendation to the General Assembly concerning an application for membership subsequent to the expiration of the time-limits set forth in the preceding paragraph.

(*c*) The Australian view and its discussion.

In the course of the discussions [15] of the Report of the Committee of Experts, the representative of Australia advanced for the first time a thesis which was to be oft repeated by his Delegation in connexion with the Rules of procedure on the admission of new Members. He contended that the General Assembly was the only body which, acting on behalf of the Organization, could make the final and binding decision on the subject of admission ; that the General Assembly, before it makes its decision to admit a candidate to membership, has to satisfy itself that the candidate is not only able to carry out its obligations in respect to security, but is able and willing to carry out the obligations contained in all parts of the Charter ; and that the recommendation which the Security Council could make on the admission of a new Member could concern only matters relating to security. He further asserted that, in spite of the recommendation of the Security Council, the General Assembly was not bound to admit the applicant, although

[15] *Security Council Official Records*, First Year, No. 2, pp. 261-277.

it was quite true that the General Assembly could not admit an applicant without receiving the Security Council's recommendation.

On the basis of these observations, the representative of Australia suggested that a more appropriate procedure for the admission of Members would be as follows: The applicant State would address a communication to the Secretary-General, and the Secretary-General would inform all Members of the United Nations, or, if the General Assembly was in session at the time, would transmit the application to the President of the General Assembly. The General Assembly would then decide whether the application should be entertained and, having made that decision, it would immediately remit it to the Security Council. The Security Council would consider it and prepare its report on the admissibility of the applicant. The General Assembly would give consideration to such a report and, in the light of other factors which it might have to weigh, would decide whether or not to admit the applicant.

The representative of Australia, accordingly, proposed that the Security Council defer the consideration of the Rules of procedure governing the admission of new Members recommended by the Committee of Experts, and that the Security Council request its President "to discuss with the President of the General Assembly the best method of consultation between the appropriate representatives of the General Assembly and the Security Council with a view to bringing about the adoption by both the General Assembly and the Security Council, early in September 1946, of rules appropriate to each organ regarding the admission of new Members".

The representative of the United Kingdom spoke in favour of the rules submitted by the Committee of Experts. With reference to the contention of the representative of Australia, he pointed out that the Security Council had a special responsibility in regard to the admission of new Members, laid upon it clearly by the terms of the Charter. "The Assembly", he said, "plainly cannot admit a new Member unless that Member has been proposed by the Council. That is to say, the admission cannot be granted except upon the recommendation of the Council." He therefore questioned the view of the Australian representative that any recommendation the Security Council might make on the subject of the admission of new Members could concern only the effect of such admission on security. The representative of the United Kingdom cited Article 97 of the Charter, which provided that "the Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council", and pointed out that "obviously in making that recommendation the Council cannot have had in mind security interests alone, because the Secretary-General has duties in regard to all the activities of the United Nations".

The representative of the United Kingdom further referred to Article 6 of the Charter, which provided that "a Member of the United Nations which has persistently violated the principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council". He pointed out that the Security Council was not limited to recommending expulsion solely on security grounds. As to the procedure for the admission of new Members, suggested by the representative of Australia, the representative of the United Kingdom stated that it was impracticable that applications for admission should be referred in the first instance to the General Assembly, since the decision of the Security Council to recommend the application was an indispensable condition to the admission of a candidate.

The representative of the Union of Soviet Socialist Republics spoke in favour of the recommendation of the Committee of Experts. He said that the Charter left no doubt that the decision to admit a new Member to the Organization could be taken only if corresponding decisions were taken by the Security Council and the General Assembly. Moreover, there was no doubt as to the procedure to be followed in considering applications for the admission of new Members. He stressed that the words "upon the recommendation of the Security Council" in Article 4, paragraph 2, of the Charter meant that the General Assembly could not take a decision without the recommendation of the Security Council. He therefore thought that it was "purposeless" for the General Assembly to consider an application for admission before a recommendation had been made by the Security Council.

The representative of China declared himself in full accord with the observations of the representative of the United Kingdom and expressed the view that the decision of the General Assembly regarding the admission of a proposed Member should be subsequent to a recommendation by the Security Council.

The representative of Mexico also expressed objection to the position of the representative of Australia. He felt that, although the General Assembly was given the power to decide on the question of admission of new Members, this power was dependent upon the recommendation of the Security Council. "This may not have been our wish", he added, "but that is the text of the Charter as it was finally adopted".

The representative of the United States of America spoke in favour of adopting the rules submitted by the Committee of Experts.

The draft resolution of Australia was put to the vote and was rejected by 10 votes to 1.

2. Rules of procedure in force at the time of the Fourth Session of the General Assembly.

(*a*) Resolution 36 (I) of the General Assembly.

In the course of the Second Part of the First Session of the General Assembly, on 2 November, 1946, the representative of Australia submitted to the First Committee a draft resolution regarding the rules of procedure governing the admission of new Members [16]. This draft resolution provided:

> "The General Assembly, recognizing that the admission of new Members to the United Nations is a corporate act of the whole Organization, requests the Security Council to appoint a committee to confer with a Committee on Procedures of the General Assembly, with a view to preparing rules governing the admission of new Members which will be acceptable both to the General Assembly and to the Security Council.
>
> In the preparation of such rules, regard should be paid to the following principles:
>
> (*a*) The admission of new Members is a corporate act.
> (*b*) The General Assembly has primary and final responsibility in the process of admission.
> (*c*) The Security Council, not having been given any general power covering all matters within the scope of the Charter, its recommendation for the admission of an applicant to membership should be based solely on the judgment of the Council that the applicant State is able and willing to carry out its obligations under those sections of the Charter which come within the competence of the Security Council."

The draft resolution was discussed at the 17th and 18th Meetings of the First Committee on 11 and 12 November, 1946 [17].

In explaining his draft resolution, the representative of Australia suggested that the procedure for the admission of new Members should be on the following lines:

(1) Applications for admission would first be submitted to the General Assembly, which would be competent to judge of their receivability;
(2) The General Assembly would refer to the Security Council those applications which it deemed receivable and the Security Council would then see whether the applicant States fulfilled the conditions laid down in Article 4 of the Charter;
(3) The Security Council would make its report to the General Assembly, with positive or negative recommendations;
(4) The General Assembly would receive the Security Council's report and decide to accept or reject the Security Council's recommendations.

---

[16] Doc. A/C.1/23/Rev. 1.

[17] *General Assembly Official Records*, Second Part of the First Session. Summary Records of the First Committee, pp. 72-83.

In this connexion, the representative of Australia stressed that, although the General Assembly could not admit any candidate to membership in the United Nations without a favourable recommendation from the Council, it was authorized to reject a favourable recommendation of the Council or refer back for further consideration such applications as had not received its recommendation.

While some representatives expressed approval of the proposal contained in the Australian draft resolution to request the Security Council to appoint a committee to confer with a Committee on Procedures of the General Assembly with a view to preparing rules governing the admission of new Members which would be acceptable to both of the principal organs, many members of the First Committee took exception to the three principles set forth in the draft resolution. It was pointed out, for instance, by the representative of China, that if the "corporate act" mentioned in Principle (*a*) meant that under Article 4 of the Charter the phrase "in the judgment of the Organization" should be given special importance and that the word "Organization" was intended to refer to the General Assembly, he doubted the soundness of such an interpretation. His Delegation likewise rejected the thesis of Principle (*b*). Responsibility for the admission of new Members was shared between the General Assembly and the Security Council. Since the Charter required the General Assembly to act upon the recommendation of the Security Council, the General Assembly could not be said to have primary responsibility, even though it might reject a Council recommendation. He further said that Principle (*c*) raised even greater doubts, since it appeared to add something to the Charter and to interpret the Security Council's powers in a very restricted sense. The Security Council's duty was to reach decisions on the basis of the whole Charter.

The representative of Australia finally requested that the second part of his resolution, which contained the three principles, be suppressed and the first part amended to read as follows:

> "The General Assembly requests the Security Council to appoint a committee to confer with a Committee on Procedures of the General Assembly with a view to preparing rules governing the admission of new Members which will be acceptable both to the General Assembly and to the Security Council."

The draft resolution, so amended, was adopted by the First Committee, by roll-call vote, with 29 votes in favour, 9 against, with 6 abstentions.

The draft resolution was submitted to the General Assembly by the First Committee at the Forty-ninth Plenary Meeting on 9 November, 1946. It was adopted by 32 votes to 9, with 1 absten-

tion [18]. At the Sixty-seventh Plenary Meeting, on 15 December, 1946, the General Assembly appointed the following Members to serve on its Committee on Procedures: Australia, Cuba, India, Norway and the Soviet Union.

(*b*) Appointment of a Sub-Committee of the Committee of Experts of the Security Council.

In pursuance of the request of the General Assembly, the Security Council, at its Eighty-first Meeting on 29 November, 1946, decided to "instruct the Committee of Experts to name a small Sub-Committee from among its own number to meet with and listen to the proposals which the Committee appointed by the Assembly might have to make and to report on those proposals to the Council for further instructions". Representatives of the following Members were appointed to serve on this Sub-Committee: China (Chairman), Brazil and Poland.

(*c*) Joint meetings of the Committees of the General Assembly and of the Security Council.

The General Assembly Committee was convened on 26 May, 1947. It held four joint meetings with the Sub-Committee of the Committee of Experts of the Security Council.

The representative of Australia submitted to the two Committees a set of nine draft rules governing the admission of new Members, to serve as a basis for discussion [19]. The main points of these draft rules, insofar as they might bear upon the question before the Court, were the following:

> 4. The General Assembly shall consider the application, and if it finds that the application has been submitted in due form by the appropriate authority of the applicant State and that the applicant State has shown its willingness to carry out the obligations of the Charter, shall refer the application to the Security Council for its recommendation.
>
> 5. The Security Council shall examine the application and shall send its recommendation thereon to the General Assembly, together with a complete record of the discussion in the Council and the evidence submitted to it. This recommendation shall be based on the consideration of:
>
> (*a*) The ability of the applicant State to carry out the obligations contained in the Charter of the United Nations so far as such obligations relate to matters within the jurisdiction of the Security Council.
>
> (*b*) Consideration of the question whether the applicant is a peace-loving State.
>
> 6. Upon receipt of the recommendation of the Security Council, the General Assembly shall consider whether the applicant is a

[18] *General Assembly Official Records*, Second Part of the First Session, Plenary Meetings, pp. 994-996.

[19] Doc. A/AC.11/W.2.

peace-loving State and is able and willing to carry out the obligations contained in the Charter. In its consideration the General Assembly shall take into account the evidence transmitted by the Security Council.

7. If the Security Council recommends the applicant State for membership, the General Assembly shall decide by a two-thirds majority of the Members present and voting upon its application for membership.

8. If the Security Council recommends the non-admittance of an applicant State, the General Assembly may, after full consideration, in terms of Rule 6 refer the application together with a full report of the discussion in the General Assembly back to the Security Council for further consideration.

In introducing his draft rules, the representative of Australia reiterated, in substantially the same terms, the three principles contained in the Australian resolution presented to the First Committee of the General Assembly, quoted above [20]. These principles were refuted by various Members, and notably the representative of Poland [21]. With regard to the Australian thesis that "admission of new Members is a corporate act of the whole Organization", the representative of Poland pointed out that the phrase "in the judgment of the Organization" in Article 4 of the Charter could only mean in the concurrent judgment of the Security Council and the General Assembly, which represented the Organization for the purpose of admitting new Members. Since only two of the Organization's organs were involved, the corporate act could not mean the judgment of the whole Organization.

As to the Australian contention that the General Assembly had primary and final responsibility in the process of admitting applicants and was not bound by any Security Council recommendation, the representative of Poland urged that the General Assembly had final responsibility, but initial responsibility was vested in the Security Council by Article 4, paragraph 2, of the Charter. He further argued that there were also other cases where action may be taken by the General Assembly "upon the recommendation of the Security Council" : Articles 5, 6, 93 (2) and 97 of the Charter and Articles 4 (3) and 69 of the Statute of the International Court of Justice. It was claimed that in all these cases the General Assembly could not act without a positive and specific recommendation from the Security Council. The General Assembly could reject the recommendation of the Security Council, but the initiative belonged to the Security Council and the General Assembly had no primary responsibility.

The representative of Poland also took exception to the third principle advocated by the Delegation of Australia. This principle stated that the "Security Council could consider an applicant

[20] Doc. A/AC.11/SR.3/Rev. 1, pp. 2, 3.
[21] Doc. A/AC.11/SR.4, pp. 2-4.

in the light of Article 4 (1) only insofar as the obligations mentioned therein related to those sections of the Charter which came within the competence of the Security Council". It was maintained that it would be illogical, for instance, for the Security Council, in considering the appointment of a Secretary-General under Article 97, to consider his qualifications only in relation to "the maintenance of international peace and security" and not to economic and social affairs, etc. It would be equally illogical, he added, to bar the Security Council from examining racial discrimination, if a question of expulsion of a Member on that issue should arise under Article 6.

In reply to the foregoing criticisms, the representative of Australia [22] explained that the Australian concept of a "corporate act" was that full weight and effect should be given to the principle spelled out in the phrase "in the judgment of the Organization". The Australian Delegation, he continued, believed that the General Assembly had primary and final responsibility in admitting new Members. His Delegation recognized the clear fact that under Article 4 there could be no admission without a positive Council recommendation. The Australian draft rules nowhere suggested that the Assembly could admit an applicant without such a recommendation, but nowhere in Article 4 was it specifically stated whether the Assembly or the Council should take the first formal steps in the process of admission of new Members.

With reference to the Articles of the Charter cited by the representative of Poland in which the phrase "upon the recommendation of the Security Council" had occurred, the representative of Australia contended that the fact that a recommendation of the Security Council was requested and that final approval devolved on the General Assembly did not necessarily determine which organ should first consider the matter. The nature of the particular case should be the deciding factor. In the admission of new Members, his Delegation thought it fitting for the General Assembly to consider the applications first. With regard to the question of the jurisdiction of the Security Council, the representative of Australia argued that the citation of special Articles authorizing action by the Security Council in economic and social matters showed that, as a general rule, the Security Council had no authority in the economic and social spheres.

The representative of the Union of Soviet Socialist Republics [23] stated that the main aim of the Australian draft rules was to revise the Charter. In particular, the intention of Rule 4 was that no proper attention should be paid by the General Assembly to the primary importance of a positive recommendation from the Security Council, which was required by Article 4 (2) of the

[22] Doc. A/AC.11/SR.4, pp. 6-8.
[23] Doc. A/AC.11/SR.4, p. 5.

Charter. The same rule also "clearly meant a preliminary consideration by the Assembly before any Council action, and in this respect too it revised the Charter". He further pointed out that the Security Council adopted its rules governing admission of new Members when the General Assembly already had its present Rule 115, which was known at that time as Rule 106. This, he said, proved the General Assembly's recognition of the principle that it should examine an application only subsequent to a positive recommendation of the Security Council.

After the joint meetings [24] with the Sub-Committee of the Committee of Experts of the Security Council, the Committee of the General Assembly decided by 3 votes (India, Norway, Soviet Union) to 2 (Australia, Cuba) that it was the Security Council and not the General Assembly which was entitled to consider the application first. In consequence, the Committee rejected draft Rule 4. It also rejected draft Rule 5 (*a*) by 3 votes (India, Norway, Soviet Union) to 2 (Australia, Cuba). The Committee of the General Assembly further decided to include in its report a statement that the General Assembly was not entitled under Article 4 (2) of the Charter to decide on the application of a State except upon a recommendation in the affirmative by the Security Council. The representative of Cuba reserved the position of his Government on this point [25].

Moreover, it was agreed by a majority (India, Norway and the Soviet Union voting for, and Australia and Cuba voting against): (*a*) that the Committee could not suggest any procedural rules which would have the effect of defining or limiting the powers and jurisdiction of the Security Council in relation to the admission of new Members; and (*b*) that the Security Council was entitled to consider the application first.

The Committee next decided to recommend the addition of a new Rule 116 to the General Assembly Rules of procedure and the addition of two new paragraphs to Rule 60 of the Security Council Rules of procedure. According to new Rule 60, the Security Council would be required to forward to the General Assembly a complete record of its discussion when it recommends an applicant State for membership, and to submit in addition a special report to the Assembly if it does not recommend admission or postpones the consideration of the application. In new Rule 116, the General Assembly asserted the right to send back to the Council for further consideration and recommendation or report applications which have not been the object of a recommendation by the Council. What was requested of the Council in the proposed Rule 60 was what the Council did voluntarily the year before, and what was

---

[24] For records of proceedings of the joint meetings, see Docs. A/AC.11/SR.2/Rev.1; SR.3/Rev.1; SR.4 and SR.5.

[25] Doc. A/AC.11/SR.6, p.1. Report of the Committee, Doc. A/384, p.2.

asserted in the proposed Rule 116 was what the Council actually acquiesced in when it accepted the five non-recommended applications referred back to it by the Assembly.

The majority of the Committee also proposed two minor changes : the word "decide" should be changed to "consider" in the first paragraph of Rule 60, and Rule 114 should be redrafted to make it obligatory for the Secretary-General to send a copy of the application to the Members of the United Nations.

The text of the proposed rules was forwarded by the Chairman of the General Assembly Committee to the Chairman of the Security Council Committee with an explanatory letter dated 30 June, 1947 [26].

(*d*) Decisions of the Security Council and its Committee of Experts.

After consideration of the draft of the General Assembly Committee, the Committee of Experts amended the rules proposed and submitted for approval to the Security Council a revised text, together with an explanatory report [27].

At its 197th Meeting, on 27 August, 1947 [28], the Security Council adopted this report and a resolution summing up its essential points. By this resolution [29], the Security Council accepted (1) the proposed change in Rule 114 and the addition of a new Rule 116 (General Assembly rules), and (2) the addition of two paragraphs to Rule 60 (Security Council rules) as proposed by the General Assembly Committee. The change from the word "decide" to "consider" in the first paragraph of Rule 60 was not accepted.

In addition, the Security Council proposed an amendment to new Rule 58. It was pointed out that an applicant State becomes a Member of the United Nations immediately upon a favourable decision by the General Assembly (Article 4 (2) of the Charter) and immediately assumes the obligations and acquires the rights of Members of the United Nations, for example, the right to take part in the decisions of the Organization. The Security Council believed, therefore, that it would be preferable that an instrument should not be submitted after the decision had been taken by the Assembly, as was provided in Rule 116 of the then existing Rules of procedure of the General Assembly ; such an instrument should, on the contrary, accompany the application. New Rule 58 was therefore amended as follows :

> "Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter."

[26] Doc. S/520, annex.
[27] Doc. S/520.
[28] *Security Council Official Records*, Second Year, No. 85, pp. 2256-2267.
[29] Doc. S/528.

As a consequence, Rule 113 had to be changed to make it conform to the new text of Rule 58, and Rule 117 had to be amended. The Security Council suggested the following text for the latter:

> "The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the General Assembly takes its decision on the application."

Amendments were introduced to the proposed rules by the representative of Australia mainly providing for the prior consideration by the General Assembly of an application for membership and for restricting the powers of the Security Council. These amendments were all rejected.

Upon the invitation of the Chairman of the Security Council Sub-Committee, the General Assembly Committee held a joint meeting with the Sub-Committee of the Committee of Experts of the Security Council, on 2 September, 1947 [30]. The Chairman of the former explained to the conference the reasons for which the Security Council had modified the proposals made by the Assembly Committee.

(*e*) Decisions of the General Assembly Committee.

The General Assembly Committee met immediately after this conference and, following a short discussion, accepted the changes made by the Security Council [31].

The Australian and Cuban representatives reserved the rights of their Delegations to raise in the General Assembly the questions of principle which they had advocated but which had not been accepted by the General Assembly Committee and the Security Council.

The redrafted Rules of procedure governing the admission of new Members which the majority of the Committee on Procedure of the General Assembly recommended were as follows:

General Assembly Rules.

> *New Rule 113.*—Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. This application shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter.
>
> *New Rule 114.*—The Secretary-General shall send for information a copy of the application to the General Assembly, or to the Members of the United Nations if the General Assembly is not in session.

[30] For proceedings of this joint meeting, see doc. A/AC.11/SR.9.

[31] Doc. A/AC.11/SR.10.

Rule 115.—If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership.

New Rule 116.—If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send back the application to the Security Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.

New Rule (116) 117.—The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership will become effective on the date on which the General Assembly takes its decision on the application.

Security Council Rules.

New Rule 58.—Any State which desires to become a Member of the United Nations shall submit an application to the Secretary General. This application shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter.

Rule 59.—The Secretary-General shall immediately place the application for membership before the representatives on the Security Council. Unless the Security Council decides otherwise, the application shall be referred by the President to a committee of the Security Council upon which each Member of the Security Council shall be represented. The committee shall examine any application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly or, if a special session of the General Assembly is called, not less than fourteen days in advance of such session.

Rule 60.—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.

If the Security Council recommends the applicant State for membership, it shall forward to the General Assembly the recommendation with a complete record of the discussion.

If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, it shall submit a special report to the General Assembly with a complete record of the discussion.

In order to ensure the consideration of its recommendation at the next session of the General Assembly following the receipt

of the application, the Security Council shall make its recommendation not less than twenty-five days in advance of a regular session of the General Assembly, nor less than four days in advance of a special session.

In special circumstances, the Security Council may decide to make a recommendation to the General Assembly concerning an application for membership subsequent to the expiration of the time-limits set forth in the preceding paragraph.

(*f*) Consideration in the General Assembly and its First Committee.

The report of the General Assembly Committee on procedure for the admission of new Members [32] was considered at the 116th Meeting of the First Committee on 19 November, 1947. The amendments recommended therein to the Rules of procedure of the General Assembly were adopted [33].

The report [34] of the First Committee recommending the amended Rules of procedure governing the admission of new Members was considered, and the amended rules were adopted by the General Assembly at the 122nd Plenary Meeting on 21 November, 1947 [35]. These rules have not since undergone any revision and remained in force during the Fourth Session of the General Assembly [36].

(*g*) Adoption of the amended Rules by the Security Council.

The revised Rules of procedure of the Security Council governing the admission of new Members adopted by the Committee of Experts were transmitted to the Security Council by a letter dated 2 December, 1947, from the Assistant Secretary-General in charge of Security Council affairs, addressed to the President of the Security Council [37]. They were adopted at the 222nd Meeting of the Security Council on 9 December, 1947 [38]. These rules have not since been revised and remained in force at the time of the consideration by the General Assembly of the question which led to the decision to request the Court to give an advisory opinion [39].

[32] Doc. A/384.

[33] *General Assembly Official Records*, Second Session, First Committee, pp. 523-527.

[34] Doc. A/502.

[35] *General Assembly Official Records*, Second Session, Plenary Meetings, pp. 1216-1218.

[36] These rules were included in the Rules of procedure of the General Assembly and were renumbered therein 123 to 127 inclusive. Doc. A/520. During its Fourth Session, at the 236th Plenary Meeting on 22 October, 1949, the General Assembly adopted a number of amendments and additions to its Rules of procedure, and decided that they should enter into force on 1 January, 1950. The rules governing the admission of new Members, however, remained unchanged.

[37] Doc. S/612.

[38] *Security Council Official Records*, Second Year, No. 106, p. 2771.

[39] These rules were included in the Provisional Rules of procedure of the Security Council, Doc. S/96/Rev.3.

III. Records of the United Nations Conference on International Organization (travaux préparatoires of Article 4, paragraph 2, of the Charter of the United Nations)

A. *Dumbarton Oaks Proposals.*

The paragraph in the Dumbarton Oaks Proposals dealing with the procedure for admission of new Members to the Organization is paragraph 2 of Chapter V, Section B, on the *Functions and Powers of the General Assembly*. This paragraph is as follows:

> "2. The General Assembly should be empowered to admit new Members to the Organization upon recommendation of the Security Council." (Doc. 1, G/1, p. 4, U.N.I.O., Vol. 3, p. 5.)

B. *Suggested amendments and comments to Dumbarton Oaks Proposals.*

Amendments and comments to this paragraph of the Dumbarton Oaks Proposals were suggested by the Delegations of Egypt (Doc. 2, G/7 (q) (1), p. 4; U.N.I.O., Vol. 3, p. 456); Brazil (Doc. 2, G/7 (e), pp. 6-7; U.N.I.O., Vol. 3, pp. 237-238); Guatemala (Doc. 2, G/7 (f) (1), p. 1; U.N.I.O., Vol. 3, p. 257); Australia (Doc. 204, II/1/5, and Doc. 239, II/1/4 (a); U.N.I.O., Vol. 8, pp. 299 and 307); Paraguay (Doc. 2, G/7 (1), p. 2; U.N.I.O., Vol. 3, p. 346); Venezuela (Doc. 2, G/7 (d) (1), p. 9; U.N.I.O., Vol. 3, p. 197); Ecuador (Doc. 2, G/7 (p), p. 12; U.N.I.O., Vol. 3, p. 405); Uruguay (Doc. 2, G/7 (a) (1), p. 5; U.N.I.O., Vol. 3, p. 38). These amendments were collected by the Secretariat and submitted as annexes to the agenda for the Second and Third Meetings of Committee II/1 (Doc. 161, II/1/3, U.N.I.O., Vol. 8, pp. 289-291; Doc. 204, II/1/5, U.N.I.O., Vol. 8, p. 299; Doc. 201, II/1/4, U.N.I.O., Vol. 8, pp. 301-303; Doc. 239, II/1/4 (a), U.N.I.O., Vol. 8, p. 307). The proposed amendments as listed by the Secretariat were as follows:

> The Egyptian Delegation proposes that paragraph 2 should read:
>
> "The General Assembly shall be empowered, after taking the advice of the Security Council, to admit new Members to the Organization."
>
> The Brazilian Delegation suggests that Chapter III of the Dumbarton Oaks Proposals be replaced by the following:
>
> "1. The International Organization shall be composed of all sovereign States that now exist or which in the future may exist under their own independent conditions of life.
>
> 2. No State may be expelled from the Organization or voluntarily withdraw from it."

The Guatemalan Delegation has made the following comment:

"This Delegation thinks that the Organization contemplated would stand on a firmer basis if it were given absolute universality, in such wise that every State should by the very fact of its being such be included as a Member. The Organization would thereby embrace the whole international community."

The Australian Delegation proposes the following revised amendment for Section B, paragraph 2:

"The General Assembly may admit new Members to the United Nations: Provided that the General Assembly shall not, without the recommendation of the Security Council, admit to membership a State which, at any time since 1st September, 1939, has been at war with any Member of the United Nations, or a State which since that date has given military assistance to any such State."

The Paraguayan Delegation comments as follows on Section B, paragraph 2:

"The Assembly, in which representatives of all peace-loving nations of the world may have seats, is not competent even to admit to its membership another nation without the recommendation of the Council. This unbalance of powers could be corrected in such a way as to satisfy the feelings and the authority of the nations represented in the Assembly with the preferential status accorded to the Council."

The Venezuelan Delegation comments on Section B, paragraph 2, as follows:

"This number of the draft establishes that the admission of new Members of the institution shall be made by the Assembly, by a special 2/3 majority and recommendation of the Council. The Assembly is thus deprived of any initiative for admitting new Members and, apparently, it would have left only the power to veto the proposal of a new Member recommended by that body. The traditional and invariable rule in this kind of organization has been that the admission of Members belongs exclusively to the deliberative body or General Assembly and this is natural and logical. This was done in the League of Nations. The suppression of the initiative of the Assembly and its subordination to the recommendation of the Security Council seems, consequently, an unnecessary or unsuitable mutilation of the powers of the former."

The Ecuadoran Delegation makes the following proposal relevant to Section B, paragraph 2:

"The General Assembly shall determine, at a time which it may consider proper, the qualifications and conditions to be required of sovereign States which are not members of the Organization for admission to membership, and it is empowered to pass on such admissions, requiring in either case a majority of two-thirds of the votes of the Assembly."

The Uruguayan Delegation proposes that Chapter V, Section B, paragraph 2, should be worded as follows:

"The General Assembly shall be empowered to admit new Members to the Organization upon recommendation of the Security Council and to support such recommendations [40]."

C. *First consideration by Committee 1 of Commission II.*

It was determined that the conditions under which a State might be admitted to membership in the Organization should be discussed by Committee I/2, but the procedure by which Members should be admitted should be discussed by Committee II/1. (See Summary Report, Second Meeting, of Committee II/1, 9 May, 1945 (Doc. 211, II/1/6, U.N.I.O., Vol. 8, p. 295).) Committee II/1 first discussed the procedures for admission of new Members during its second meeting on 9 May, 1945. The Summary Report of this discussion is as follows [41]:

Discussion of Chapter 6, Section B, paragraph 2 (admission of new Members).

The Committee discussed the text of this paragraph and the amendments and comments submitted by the Delegations of Egypt, Brazil, Australia, Paraguay, Venezuela, and Ecuador. The Secretary reported that amendments and comments by Guatemala and Uruguay had been received too late for inclusion in the documentation.

The Delegate of Egypt proposed that the Assembly should admit new Members, not upon recommendation of the Security Council, but after taking its advice. He indicated that the main responsibility of the Security Council is to maintain peace and guarantee security and said that the admission of new Members was not a question of this character. The Egyptian amendment, therefore, was intended to give the Assembly initiative in the admission of new Members. The Australian Delegate expressed the view that only if a real question of security were involved should the Assembly be required to act on the recommendation of the Security Council in the admission of new Members. He advanced as a compromise, between the text of the Dumbarton Oaks Proposals, on the one hand, and the suggestions of other governments that the Assembly should have full authority in this matter, on the other, the proposal that the recommendation of the Security Council should be necessary for the admission of

[40] It appears from the Verbatim Minutes of the Third Meeting of Committee II/1 (Running Numbers 26 and 42, U.N. Archives, Vol. 59) that the Delegate of Uruguay desired the last phrase of this proposed amendment to read "and to promote such a recommendation".

[41] For pertinent abstracts from the Verbatim Minutes, see Annex I. It should be pointed out that the official documents of the Conference are the Summary Reports quoted in the text of this Statement. The Verbatim Minutes are stenographic reports which are for the most part uncorrected by the Delegates concerned. They do however constitute a more complete record of what was actually said.

countries which have been at war with any of the United Nations at any time since September 1939.

The Delegate of the United States emphasized the predominant importance of security considerations in the Charter being written, and expressed the opinion that the Members of the new Organization must have unquestioned confidence in their associates in the future.

The Delegate of the United States also emphasized the necessity of having the exact text of amendments before the Committee before action could be taken. (Doc. 211, II/1/6, p. 2; U.N.I.O., Vol. 8, p. 296.)

At the Third Meeting of Committee II/1 on 10 May, 1945, this paragraph was again considered. The Committee rejected all of the proposed amendments, and approved in substance paragraph 2, Section B, Chapter V, of the Dumbarton Oaks Proposals by a vote of 22-9. The Summary Report of this discussion is as follows [42]:

2. *Discussion of paragraph 2 of Section B, Chapter V (admission of Members).* The Chairman ruled that the Brazilian suggestion for universal membership in the Organization should be discussed in Committee I/2.

The Committee discussed the revised Australian amendment on Section B, paragraph 2 (Doc. 204). It was urged that the Australian amendment represented a compromise between the Dumbarton Oaks Proposals, which require a Security Council recommendation for admission of Members of the Organization, and the position reflected in several amendments submitted to the Conference which would give the General Assembly final or sole authority on the admission of Members. It was pointed out that the Australian amendment provided that no State which had been at war with any Member of the United Nations since September 1, 1939, or had given military assistance to such a State, could be admitted without the recommendation of the Security Council. The United States Delegate stressed the dangers to be found in admitting to the Organization those who hypocritically professed sympathy with the United Nations. Several delegates emphasized that the primary concern of the Conference was the writing of a Charter which would provide security against a repetition of the present war. It was urged that the Security Council should have predominant authority and that no provision be written into the Charter which might invite a dispute between the General Assembly and the Security Council. The Delegate of China suggested that if a date were written into the Charter as a criterion for admission of a Member at war with the United Nations, it should be September 1931, when Manchuria was invaded. It was pointed out that the Australian amendment made it necessary to determine in every case whether the proposed new Members had rendered military assistance to the enemies of

[42] For pertinent abstracts from the Verbatim Minutes, see Annex II.

the United Nations. This made clear the necessity for the Security Council to assume responsibility for admission of Members.

Decision: The Committee rejected the proposed amendments of Egypt, Australia, Brazil, Paraguay, Venezuela, and Uruguay (see Doc. 201).

The Committee approved paragraph 2, Section B, Chapter V, of the Dumbarton Oaks Proposals by a vote of 22-9. (Doc. 236, II/1/7, pp. 1-2; U.N.I.O., Vol. 8, pp. 309-310.)

At this same meeting, a drafting Sub-Committee was established by Committee II/1 to prepare texts based upon the decisions taken by the full committee. (Doc. 236, II/1/7, p. 1; U.N.I.O., Vol. 8, p. 309.) The Sub-Committee, at a meeting on 19 May, 1945, considered drafts submitted by the Belgian and Canadian Delegates on the sections which had been passed by Committee II/1. The Sub-Committee approved the suggested draft for Chapter V, Section B, paragraph 2, without discussion. (Minutes of Drafting Sub-Committee, Doc. 471, II/1/A. 1, p. 1; U.N.I.O., Vol. 8, p. 531.) This text, submitted to the full committee in the Report of the Drafting Sub-Committee of 25 May, 1945, is as follows [43]:

Section B. Functions and Powers.

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

Section B. Fonctions et pouvoirs.

2. L'Assemblée générale a le pouvoir d'admettre de nouveaux Membres dans l'Organisation sur la recommandation du Conseil de Sécurité. (Doc. 560, II/1/A/2, p. 2; U.N.I.O., Vol. 8, p. 540.)

Committee II/1 at its 11th Meeting on 24 May, 1945, approved the above text without discussion by a vote of 28-0. (Doc. 594, II/1/28, p. 1; U.N.I.O., Vol. 8, p. 398.)

A draft report was prepared by the Rapporteur of Committee II/1 covering *inter alia* the text on admission of new Members as approved by the Committee (Doc. 570, II/1/26, pp. 1-2; U.N.I.O., Vol. 8, pp. 407-408). This draft report was discussed in general terms and then considered paragraph by paragraph by Committee II/1 at its 12th Meeting on 26 May, 1945 (Doc. 631, II/1/30, p. 4; U.N.I.O., Vol. 8, p. 421) [44]. A revised Draft Report [45] (Doc. 636,

[43] It will be noted that words deleted from the text of the Dumbarton Oaks Proposals are defaced, whereas additions are underlined.

[44] For pertinent statements from the Verbatim Records of this meeting, see Annex III.

[45] It may be noted that the only change in the paragraph concerning admission of new Members is that the phrase "many delegates" in the original draft is changed to "several delegates" in the revised draft. The text of this paragraph appears in the Verbatim Minutes of Commission II, which are quoted in Section D following.

II/1/26 (1); U.N.I.O., Vol. 8, pp. 426-427) of the Rapporteur was considered and approved at the 13th Meeting of Committee II/1 on 28 May, 1945 (Doc. 660, II/1/32, p. 1; U.N.I.O., Vol. 8, p. 444, and Doc. 666, II/1/26 (1) (a), pp. 1-2; U.N.I.O., Vol. 8, pp. 451-452).

D. *First consideration by Commission II.*

Commission II had its first meeting on 30 May, 1945, and considered this report. The pertinent passages from the Verbatim Minutes of this meeting are as follows:

> *Admission of new Members.*
>
> Will the Rapporteur please read the corresponding paragraph in the Report.
>
> *Rapporteur* (speaking in Russian; English version delivered by interpreter follows): "Admission of new Members (Chapter V, Section B, paragraph 2). The Committee recommends that new Members be admitted by the General Assembly upon recommendation of the Security Council. 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."
>
> *President:* Any desire, Gentlemen, to discuss this item?
>
> No desire.
>
> It is agreed to. (Doc. 719, II/8, p. 4; U.N.I.O., Vol. 8, p. 30.)

E. *First consideration by Co-ordination Committee.*

Meanwhile, the Co-ordination Committee, after considering suggestions regarding the arrangements of the Charter, decided to incorporate Chapter V, Section B, paragraph 2, of the Dumbarton Oaks Proposals into Chapter II on membership. (See Doc. CO/3, CO/10, CO/13, U.N. Archives, Vol. 31, and the Summary Reports of the Fourth and Fifth Meetings of the Co-ordination Committee (WD 23, CO/14, and WD 32, CO/16, U.N. Archives, Vol. 27).) In the arrangement originally agreed upon, this paragraph appeared as Article 5 of the Draft Charter. However, at the Third and Fourth Meetings of the Advisory Committee of Jurists on 5 and 9 June, 1945, it was decided to present this paragraph as paragraph 2 of Article 4 of the Charter (Summary Reports of the Third and Fourth Meetings of Advisory Committee of Jurists, WD 207, CO/96, and WD 268, CO/110, U.N. Archives, Vol. 28).

The text of this paragraph first submitted to the Co-ordination Committee was the original text from the Dumbarton Oaks Proposals as approved by Committee II/1 on 10 May, 1945. It was as follows:

2. The General Assembly should be empowered to admit new Members to the Organization upon recommendation of the Security Council. (Doc. 431, CO/5, Drafting Paper 3, U.N.I.O., Vol. 15, p. 34.)

The Secretariat, in submitting this text to the Co-ordination Committee, suggested that it should be modified as follows:

Article 2.—New Members of the United Nations shall be admitted by the General Assembly on the recommendation of the Security Council. (For this paragraph, see Drafting Paper 3.) (Doc. 431, CO/5, p. 2; Drafting Paper 1, U.N.I.O., Vol. 15, p. 32.)

However, before these texts were examined by the Co-ordination Committee, the new text adopted by Committee II/1 on 25 May, 1945, was received. This text read as follows:

2. The General Assembly *may* admit new Members to the Organization upon the recommendation of the Security Council. (WD 44, CO/18, p. 8; U.N. Archives, Vol. 30.)

The Secretariat suggested the following:

New Members of the Organization may be admitted by the General Assembly upon the recommendation of the Security Council. (*Ibid.*, p. 3, Drafting Paper 27.)

At its 8th Meeting on 30 May, 1945, the Co-ordination Committee took up the consideration of this last text suggested by the Secretariat. The Summary Report of the discussion is as follows:

Article 5.—Mr. Robertson stated that Article 5 was deficient in two respects: (1) it fails to lay down a procedure for the submission and approval of applications for membership; (2) it fails to make clear the manner in which a State accepts the obligations contained in the Charter. The Secretary stated that this was intended to be covered by Article 4, which envisaged that the Organization would work out its own procedure for admission. The Chairman suggested that the words "upon their acceptance of the obligations contained in the Charter" might be added to Article 5.

Mr. Jebb stated that Mr. Robertson's proposal was logical but had never been found necessary under the League. He felt that, as a practical matter, new Members would, of course, accept the Charter obligations, whether by ratification or some other procedure.

The Chairman referred to the previous discussion of whether new Members would sign the original agreement. Mr. de Freitas Valle stated that only original Members should sign. Mr. Robertson pointed out that interim arrangements were being made to keep the Charter open for signature following the San Francisco Conference for those not possessing full powers to sign here. The Secretary was asked to explore this question further and report to the Committee at a later date. (WD 60, CO/29, p. 3; U.N. Archives, Vol. 27.)

The Co-ordination Committee again considered this text at the 9th Meeting on 1 June, 1945. It tentatively agreed on a new wording but decided to refer this point to the Advisory Committee of Jurists. The pertinent passages from the Summary Report of this meeting are as follows:

> *Article 5. Skeleton Charter.*
>
> This article had been approved by the Co-ordination Committee, but the Secretary pointed out that in the first line the words "new Members may be admitted" were not entirely satisfactory, grammatically speaking, since States did not become Members until after admission to the Organization. He suggested instead the words: "States may be admitted to membership in the Organization". Mr. Golunsky thought there would be some difficulty in translating this thought into Russian.
>
> *The Committee agreed to refer the point to the Jurists Committee.* (Summary Report of 9th Meeting of Co-ordination Committee, WD 158, CO/79, p. 3; U.N. Archives, Vol. 27.)

F. *Consideration by Advisory Committee of Jurists.*

Following this meeting, the Secretariat transmitted to the Advisory Committee of Jurists the following document (WD 109, CO/33 (1), U.N. Archives, Vol. 29):

> *Text as approved, at first reading, by the Co-ordination Committee at its Ninth Meeting, June 1, 1945.*
>
> *Article 5.*—States may be admitted to membership in the Organization by the General Assembly upon the recommendation of the Security Council.
>
> Note by the Secretariat: There appears to be some question as to whether the above article in its present form is susceptible of accurate translation into Russian and possibly other languages. The article has therefore been referred to the Advisory Committee of Jurists for consideration of this matter.

The Advisory Committee of Jurists considered this question at its Third Meeting on 5 June, 1945, and at its Fourth Meeting on 9 June, 1945, approved the following text:

> 2. 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. (WD 255, CO/32 (2), p. 1; U.N. Archives, Vol. 29.)

At the Ninth Meeting on 16 June, 1945, the Advisory Committee of Jurists again considered the chapter on membership and approved the text in both French and English as follows (WD 315, CO/127, p. 1; U.N. Archives, Vol. 30):

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 État comme Membre des Nations Unies est prononcée par l'Assemblée générale sur la recommandation du Conseil de Sécurité.

The Summary Reports of the above meetings of the Advisory Committee of Jurists on this paragraph are as follows [46]:

Summary Report of Third Meeting of Advisory Committee of Jurists (WD 207, CO/96, pp. 2-4, U.N. Archives, Vol. 28).

Article 5.—There was general agreement that Article 5 is not clear as to when an applicant becomes a Member of the Organization. Mr. Golunsky pointed out that two courses are open: (1) the government of a State may apply for membership, such membership may be voted by the General Assembly upon recommendation of the Security Council, and then the government of the State may seek ratification by its parliament; or (2) the government may secure ratification by its parliament before it applies to the Organization for membership. If the first course is followed, the parliament of a State might place the Organization in the embarrassing position of refusing ratification of admission which had already been approved by the General Assembly.

Sir William Malkin and Mr. Golunsky declared that it should be made plain that admission to membership does not depend upon action by a State subsequent to the affirmative vote of the General Assembly.

Mr. Hackworth stated that ratification by a State should precede its application for membership, and that when the General Assembly votes approval, the State should enter the Organization immediately. He suggested that the provision of Article 4 that membership is open to States which are *ready and able*, etc., covers this situation. The General Assembly, he pointed out, would not admit a State unless the parliament of that State had already ratified membership according to its constitutional processes.

At the opening of the meeting, the Secretary explained that Article 4 was being referred to Committee I/2 upon the instructions of the Co-ordination Committee, and that accordingly this article was not now before the Advisory Committee. The members of the Committee felt, however, that Articles 3, 4 and 5 were so closely related that discussion of Article 4 could not be altogether avoided at this time.

Mr. Basdevant suggested that if Article 5 were altered to the effect that the admission of new Members is decided by the General Assembly upon the recommendation of the Security Council, it would be quite clear that the action by the General Assembly was final.

[46] For pertinent abstracts from the Verbatim Minutes of the Third and Fourth Meetings, see Annexes IV and V. Verbatim minutes were not transcribed for other meetings of the Advisory Committee of Jurists.

Mr. García Robles proposed that Article 4 be altered to provide for admission of States *which according to their internal legislation* are able and ready, etc. Mr. Hsu Mo suggested that the Security Council and the General Assembly would be competent to determine in each case if a State was fully prepared, according to its constitutional processes, to enter upon membership.

It was suggested by several Members that Article 4 be altered to make it plain that a State which had applied for membership would not be considered to be able and ready to carry out the obligations of membership unless it had completed all requirements of its own constitutional processes for admission. It was agreed that a phrase to this effect would be inserted in Article 4.

Mr. Golunsky stated that Article 5 might contain two paragraphs, the first providing that application for membership could be made when a State, in accordance with its constitutional processes, had taken all steps necessary for admission, and second, that a State would be admitted by the General Assembly upon the recommendation of the Security Council. It was pointed out that the first of these two paragraphs might be covered in Article 4.

Mr. Hackworth suggested that Articles 4 and 5 might be combined to form a single article with two paragraphs. Mr. Basdevant pointed out that the present sequence of Articles 3, 4 and 5 is logical, since 3 deals with the original Members, 4 deals with the conditions for admission of new Members, and 5 with the procedure for admission of new Members.

Several revisions of Article 5 were suggested by members of the Committee. After some discussion, the Committee reached tentative agreement on the following draft:

> "The admission of such States shall be effected by a decision of the General Assembly upon the recommendation of the Security Council."

It was agreed that at its next meeting the Committee would give further consideration to this draft of Article 5.

Summary Report of Fourth Meeting of Advisory Committee of Jurists (WD 268, CO/110, pp. 1 and 2; U.N. Archives, Vol. 28).

Articles 3, 4, and 5.

The Secretary, Mr. Darlington, presented for the consideration of the Committee draft texts of Articles 3 and 4, as tentatively revised by the Advisory Committee of Jurists at its Third Meeting on June 4, and additional drafts prepared by the Secretariat. The draft text of Article 4 in the Jurists text included as paragraph 2 the substance of Article 5.

. . . . . .

Article 4.

Article 4 was approved as drafted by the Secretariat.

Summary Report of Ninth Meeting of Advisory Committee of Jurists (WD 386, CO/158, p. 1; U.N. Archives, Vol. 28).

Chapter II—Membership (*Doc. WD 315, CO/127*).

The Committee approved Articles 3, 4, and 5 in both English and French.

It should be pointed out that the material which follows deals with that part of the San Francisco proceedings with regard to Article 4, paragraph 2, to which frequent reference has been made by the representative of Argentina.

The Summary Report of the 14th Meeting of the Advisory Committee of Jurists on 18 June, 1945, contains the following statement:

> A question from the Co-ordination Committee as to whether paragraph 2 of Article 4 made it clear that the Assembly might accept or reject a recommendation of the Security Council was answered in the sense that the text was clear in this respect. (WD 404, CO/166, p. 1; U.N. Archives, Vol. 28.)

No verbatim minutes were kept of this meeting [47].

G. *Secretariat Memoranda.*

The official documents of the Conference do not reveal the exact background for the putting of this question to the Advisory Committee of Jurists. However, it appears from memoranda of the Secretariat of the Conference now in the Archives of the United Nations that on the morning of 18 June, 1945, Mr. William A. Brown, Jr., Secretary of Committee II/1, telephoned to Mr. James F. Green, Special Assistant to the Secretary-General of the Conference, requesting the latest papers relating to Article 4 on membership. Mr. Brown pointed out that the draft of Article 4 dated 14 June did not make clear that the General Assembly should have power to accept or reject a recommendation of the Security Council. Mr. Brown said that, unless this provision is clarified in the draft now being considered by the Advisory Committee of Jurists, it would be necessary for him to consult his Committee. He said that since his Committee was meeting for the last time that night, he needed the latest draft urgently.

[47] It may be noted that the members of the Advisory Committee of Jurists present at the 14th Meeting were:

Chairman	Green H. Hackworth
China	Hsu Mo
Union of Soviet Socialist Republics	S. B. Krylov
United Kingdom	Sir William Malkin
France	Jules Basdevant

This request was communicated to Mr. Norman J. Padelford, Secretary of the Advisory Committee of Jurists, in a memorandum [48] from Mr. Green.

Following the 14th Meeting of the Advisory Committee of Jurists referred to above, Mr. Padelford, in a memorandum to Mr. Brown, stated [49]:

> Reference is made to the concern which you expressed to me and to Mr. Green whether the text of Article 4, paragraph 2, as approved by the Co-ordination Committee (CO/127) makes clear that the General Assembly has power to accept or reject a recommendation of the Security Council.
>
> The matter was discussed by the Committee of Jurists at its meeting this morning. The Committee believes that the word "decision" leaves no doubt that the General Assembly may accept or reject a recommendation from the Security Council. That is to say, the General Assembly might accept or reject a recommendation for the admission of a new Member, or it might accept or reject a recommendation to the effect that a given State should not be admitted to the United Nations.
>
> Note was taken of the language employed in Article 20 concerning the general powers of the Assembly and voting therein.

H. *Second consideration by Committee II/1.*

This memorandum was read by Mr. Brown to Committee II/1 at its 15th and final Meeting on the same day, 18 June, 1945. Following the reading of this memorandum, the Chairman stated:

> *Chairman* (translation from French): After the explanation which we have heard given as to the decision taken by the Committee of Jurists, I do not think that we need be afraid that the Committee of Jurists has changed our decision or has reduced the scope of our former text. Our text, the meaning of our text, remains intact. (Verbatim Minutes of 15th Meeting of Committee II/1, Running Number 6; U.N. Archives, Vol. 60.)

The following exchange of remarks between the Delegate of Greece and the Chairman may also be noted:

> *Delegate of Greece:* Mr. President, I want to find out whether the explanation given by the Honorable Secretary regarding the Jurists' interpretation, if this interpretation will be authoritative for the future functions of the Assembly. I want to find out whether this interpretation is the interpretation that will be accepted, or will it be that we will have another interpretation in the future.
>
> *Chairman* (translation from French): We can insert this interpretation in our minutes. Is that sufficient for you, Mr. Delegate?

---

[48] A copy of this memorandum will be found in Annex VI.
[49] A copy of this memorandum will be found in Annex VII.

Delegate of Greece: Yes, Mr. Chairman. (Verbatim Minutes of 15th Meeting of Committee II/1, Running Numbers 6-7; U.N. Archives, Vol. 60.)

The Summary Report of the 15th Meeting of Committee II/1, which is the official record, contains the following passage [50]:

2. *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 État comme Membre des Nations Unies est prononcée par l'Assemblée générale sur la recommandation du Conseil de Sécurité."

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. (Doc. 1094, II/1/40, pp. 1-2; U.N.I.O., Vol. 8, pp. 487-488; see also Doc. WD 383, II/1/38, U.N.I.O., Vol. 8, p. 481.)

The above incident was included in the Second Report of the Rapporteur of Committee II/1 as follows:

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, or a recommendation to the effect that a given State should not be admitted to the United Nations.

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. (Doc. 1092, II/1/39, p. 2; U.N.I.O., Vol. 8, p. 495.)

This Report was revised and circulated to the members of the Committee for their approval on 19 June, 1945.

[50] The Verbatim Minutes are set out in Annex VIII.

I. *Second consideration by Commission II.*

The Second Report of the Rapporteur of Committee II/1 was considered by Commission II at its 4th Meeting on 21 June, 1945. The Verbatim Minutes contain the following paragraph in a statement of the President which was pertinent to this question :

> The next point, the admission of new Members, does not call for any action. The matter to be clarified was whether the text as adopted weakened the position of the Assembly, and the Committee of Jurists advised that it did not. Committee 1 therefore recommends that the Jurists' opinion should be included in the minutes. That will be done, so that no action need be taken by us. (Doc. 1151, II/17, p. 4 ; U.N.I.O., Vol. 8, p. 193.)

At the close of the meeting, the President stated :

> *President :* The debate is closed now, Ladies and Gentlemen, and we proceed to finalize our work. Is there any objection to this report and the recommendations being adopted ?
>
> No objection ?
>
> Adopted. (Doc. 1151, II/17, p. 28 ; U.N.I.O., Vol. 8, p. 217.)

The Report of the Rapporteur of Commission II contains only the following brief reference to admission of new Members :

> The Assembly will have the right, upon recommendation of the Security Council, to admit new Members, to suspend the rights and privileges of Members against which preventive or enforcement action is taken by the Security Council, and to expel Members which persistently violate the principles contained in the Charter. It will have important functions in electing Members of the Security Council and the Trusteeship Council, and the Members of the Economic and Social Council and the judges of the International Court of Justice. On recommendation of the Security Council, it will elect the Secretary-General. (Doc. 1180, II/18 (1), p. 2 ; U.N.I.O., Vol. 8, p. 266. See also Doc. 1177, II/18, p. 2 ; U.N.I.O., Vol. 8, p. 250, for preliminary draft of this Report.)

However, the Rapporteur, in delivering his Report to the 9th Plenary Session of the Conference, stated :

> Each of the committees reported the results of its labours in its rapporteur's report, and each report was considered and approved by the Commission. The reports of the rapporteurs of the four technical committees constitute integral parts of the report of the Rapporteur of Commission II, which has been circulated to you and which I have the honour hereby to submit to the plenary session for its consideration and approval. (Doc. 1210, P/20, p. 12 ; U.N.I.O., Vol. 1, p. 623.)

The Rapporteur's Report concludes with the following formal recommendation to the plenary session :

Commission II proposes to the plenary session that this report be approved and that the draft articles which give effect to the recommendations of the Commission and which will be received by the plenary session directly from the Co-ordination Committee be inserted in the Charter of the United Nations. (Doc. 1180, II/18 (1), p. 8 ; U.N.I.O., Vol. 8, p. 272.)

J. *Second consideration by Co-ordination Committee.*

Meanwhile, the Co-ordination Committee at its 32nd Meeting on 19 June, 1945, had again considered Article 4. The Summary Report is as follows :

Article 4.—There was considerable discussion as to whether or not some procedure should be prescribed for completing the admission of a State to membership in the Organization. It was pointed out that the jurists had already agreed there was no necessity for such a provision and that paragraph 2 made it clear that the decision of the Assembly was the moment when the State became a Member. The significant words in the paragraph were "States which *accept* the obligations". The General Assembly, upon recommendation by the Security Council, would judge whether or not "acceptance" had been expressed. In making an application, each State must act in accordance with its respective internal procedures. No provision for adherence, before or after action by the General Assembly, is necessary. (WD 432, CO/196, p. 4 ; U.N. Archives, Vol. 28.)

Finally, at its 36th Meeting on 20 June, 1945, the Co-ordination Committee again considered Article 4 and confirmed the text with the insertion of the word "such" between the words "any" and "State", thus making a reference to States in paragraph 1 of Article 4. The Summary Report of the consideration of Article 4 is as follows :

Article 4.—The Committee had before it Doc. WD 402, CO/164[51]. *The reading "any such State" was confirmed.* (WD 436, CO/200, p. 11 ; U.N. Archives, Vol. 28.)

K. *Consideration by Plenary Session of the Conference.*

The Conference considered the Report of Commission II at its 9th Plenary Session on 25 June, 1945. Following the reading of the Report, by the Rapporteur, it was approved by the Conference without comment or objection. (Verbatim Minutes of 9th Plenary Session (Doc. 1210, P/20, p. 12 ; U.N.I.O., Vol. 1, p. 623).) The final text of the Charter including Article 4, paragraph 2, as confirmed by the Co-ordination Committee, was unanimously approved

[51] The text of Article 4, para. 2, contained in Doc. WD 402, CO/164, is as follows :

"2. 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."

by the Conference at this same session. (Doc. 1210, P/20, p. 20; U.N.I.O., Vol. 1, p. 631.)

The final text of paragraph 2 of Article 4 is as follows:

> 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.

20 January, 1950.

(*Signed*) Dr. IVAN S. KERNO,
Representative of the Secretary-General.

ANNEXES

The materials in the following Annexes are from the United Nations Archives. Annexes I to V and VIII contain abstracts from the Verbatim Minutes of Committee II/1 and the Advisory Committee of Jurists which may have some relevancy to the present question. If the Court should desire, the full Verbatim Minutes may be made available. Annexes VI and VII contain copies of Secretariat Memoranda which are on file in the Archives.

It is pointed out that the materials in these Annexes are not official documents of the Conference and have not been subject to examination or correction by the representatives of governments concerned. They do, however, present a fuller picture of the proceedings of the Conference.

Annex I.

COMMITTEE II/1
VERBATIM MINUTES OF SECOND MEETING[1]
9 MAY, 1945; 8.30 P.M.

Mr. Saka (Turkey), Chairman (speaking in French; translation as delivered by the interpreter follows):

. . . . . .

What we are dealing with, in fact, is simply a question of the admission of Members, how they are to be admitted, whether this is to be done on the recommendation of the Security Council or by the General Assembly on the recommendation of the Security Council, or otherwise.

. . . . . .

Delegate from Egypt (speaking in French; English version as delivered by interpreter follows): Mr. Chairman, I wish to speak on the amendment that has been proposed by the Egyptian Delegation. We are proposing that the text before us be modified so as to make it possible for the General Assembly to initiate action on the admission of membership. Now I think that this proposal is in accord with the spirit of several of the other amendments. It is our understanding of the functioning of the Security Council that its main responsibility is to maintain the peace and to guarantee security. Now it does not seem to us that the admission of a new Member is, in any direct sense, a threat to peace or security; and it seems to us that this might well come under the powers of the General Assembly; that is, the initiation of the proposal of membership for a new nation.

Now this requires, perhaps, a remark on the amendment of the Australian Delegation which concerns specifically the possibility of admission of countries which, since the first of September, 1939, may

[1] Running Numbers 7, 24-25, 25-28, 29-31; U.N. Archives, Vol. 59.

at any moment have been in a state of war with a Member of the United Nations. Now, there I can see perfectly well that a question of delicacy might be involved, and that possible considerations of security might enter into the consideration of admission.

I therefore make for our amendment the reservation which is expressed in this amendment of the Australian Delegation.

. . . . . .

Delegate from Australia : I don't want to take anybody else's place. I just want to explain, Mr. President, the purpose of this amendment. As it is at present, no new Member could be admitted without the approval of the Security Council. We have an amendment—dealt with elsewhere in the document—restricting the veto power to cases under Section B of Chapter 8.

But this recommendation of the Security Council is, of course, necessary to new Members. Well, the delegate who has just spoken—from Egypt—stated in a sentence what I think is the point in regard to the admission of new Members. If there is a real question of security involved in their admission, we think that the matter should be cleared through the Security Council ; and therefore we are prepared to modify the present text requiring the Security Council's recommendation to give the Assembly the power, providing that that doesn't extend to States which have been the enemies of the United Nations in this war. And I think that there too should be added : Nations which have given military assistance to the Axis in this war, too. That is to say, they might not have been openly at war—which is by declaration—with us. That does not refer to the members of this Conference. Everyone comes here with a clean slate, so to speak. We are not examining the past. We are looking ahead. But I think that it is only right that first of all countries that were at war since 1939 should run the gauntlet of the Security Council ; and in those countries should be included any country which has given military assistance to the enemies of the United Nations during the war. It wouldn't mean any country represented by anybody in this room.

Delegate from Egypt : Just to be clear, what kind of assistance ?

Delegate from Australia : Military assistance. Now that might involve some philosophical or metaphysical analysis of what is "assistance" or "indirect assistance". I don't want to get into anything caused by the indirect, but something tangible. Military assistance to our enemies during the war. That isn't a fair thing. Such a country should have to have its case looked at by the Security Council before jurisdiction is given to the Assembly to admit such a country.

I think that is a reasonable compromise between the present proposals which give the Security Council authority in either case, and it gives the Security Council the right of saying "no" in every case, and the opposite view which would give the Assembly the right to say "yes" without any reference to the Security Council.

That is our proposal, Mr. President, and I submit it to the Committee as something which is justified in principle. And again I thank the representative of Egypt for putting the position in principle so precisely. It is exactly the view we take.

. . . . . .

Delegate from Venezuela (speaking in French; English version as delivered by interpreter follows): Mr. Chairman, I wish to make a brief explanation of the purpose of our amendment. The reasons why we have proposed that the General Assembly should have the power of admitting new Members is that this procedure seems to us more democratic than the other.

Now, as to the second part of the Australian amendment which touches on this, I wish to make the following statement; that is, on the part recommending that countries or States which at any time since September 1, 1939, have been at war with any Member of the United Nations, should not be admitted without the recommendation of the Security Council.

On this point, in a Committee this afternoon, Mr. Rolin, who had wide experience at the League of Nations in Geneva, explained in considerable detail, and with great persuasiveness, the enormous difficulties which the League of Nations had encountered with this same kind of provision. The League of Nations, in fact, discovered, after a certain length of time, that Germany created more difficulty by remaining outside the League than it would have had it been admitted; and eventually an invitation—practically—was extended to Germany to come into the League.

We do favour giving the General Assembly the power to admit Members, with the reservation, however, that they should duly examine the qualifications of any nations that might be candidates for admission.

Delegate from the United States: Before you are ready to vote, Mr. President, I'd like to say a few words. I hope the delegates will forgive me for getting to my feet so often, but you know members of Congress must talk, and that is all there is to it.

But I'd like to impress on the delegates here that we are framing a Charter here for security; and in answer to the gentleman from Venezuela I don't think it would have made very much difference if Germany had been left out of the League of Nations or not. She would have created the same disturbance some time or other.

Now, Mr. President, the thing that we want to do here is to be sure that our associates—that Members that we are going to bring in to our fold—the people with whom we are going to sit in consultation, are they the people that we want to associate with, and talk with, and get their counsel?

Mr. President, I have been through three wars. I have been in this war since 1935, since the very beginning, and I know what it is to have the right kind of associate, to have that word "SECURITY" burned into our hearts.

You are not here writing just a piece of paper that can be torn up. We are going to live up to the provisions that we have in this Charter, and we must be careful who our associates are going to be in the future.

I agree with the delegate from Australia with reference to the Members before September 1st; but I also agree, Mr. President, that we have got to be careful of the other people, and I know what I am talking about. I have been through this thing, and these are not just idle words. We have got to be very careful, and we've got to write something into

this Charter—not things said on this floor—but we've got to have it in some concrete form before us, and we've got to see the loopholes. That is the thing we have got to consider. We are considering security.

Annex II.

COMMITTEE II/1
VERBATIM MINUTES OF THIRD MEETING [1]
10 MAY, 1945; 5 P.M.

Delegate of Belgium (speaking in French; English version as delivered by interpreter follows):

. . . . . .

I don't think we should deny the Security Council the right to speak a word in that very important matter. On one hand it will be understood that the admission of new Members will always, or nearly always, be linked with the question of security. On the other side, all confidence in the wisdom of the Security Council not to change things too much and not to propose people or nations who have been at war with us, and to make a very clear distinction, so we might admit that in its wisdom the Security Council will only propose Members who are clearly admissible to the Organization. In that case I propose that we just stick to the Dumbarton Oaks Proposals.

. . . . . .

Delegate of the U.S.S.R. (speaking in French; English version as delivered by interpreter follows):

. . . . . .

It has been very ably pointed out by both the Delegates of the United States and Belgium that the main point of our association is security. Now let us go back to the Dumbarton Oaks Proposals. Chapter V, Section B, first paragraph, reads: "In order to insure prompt and effective action by the Organization, Members of the Organization should by the Charter confer on the Security Council primary responsibility for the maintenance of international peace and security and should agree that in the carrying out of these duties and these responsibilities it should act on their behalf". Now there is a very little doubt that the admission of new Members is strictly within the meaning of the word "security", and that it should be the duty of the Security Council to act upon it. What do we want—a strong effective elastic Organization. Now if we should admit for one second that there could be a dissent of opinion between the Assembly and the Council, so far as admission of new Members is concerned, we might create a dispute which would be rather lengthy, which would certainly be to the disadvantage of both of these, and the power and elasticity of the new Organization. But why provide in this Charter occasions of having

[1] Running Numbers 22, 23-25, 25, 27-28, 28-29, 36; U.N. Archives, Vol. 59.

quarrels between the two bodies of the Organization? We should on the contrary do our utmost to avoid the instances where those clashes are possible. On the other hand, we must have within our Organization a body which is strong enough, with authority that is strong enough, as to bind the whole Organization in the right channels, and that is the reason why, taking into consideration what has been said, the delegation of the Soviets is very much in favour of what has been stated both by the Delegates of the United States and Belgium.

. . . . . .

Delegate of China (speaking in Chinese; English version as delivered by interpreter follows): Mr. Chairman, and fellow delegates, the Chinese delegation mentions views very similar to those heard by the United States and Belgium.

. . . . . .

Delegate of Australia: . . . . . .

The real position is that under the Dumbarton Oaks Proposals, Members cannot be admitted except on the recommendation of the Security Council. There are a great many delegates who have suggested the widening of that. One of the difficulties, of course, is that a proposal to admit membership might be vetoed by one of the great Powers on the Security Council, and many members of the Conference think that that is not right.

But the Australian amendment is designed to achieve a compromise, that is to say on security matters the Security Council should have *full power, and those security matters* are the admission of enemy States and admission of States who have given assistance to the enemy. It seems to me to be a reasonable proposition, but I will leave it to the meeting.

. . . . . .

Delegate of the United Kingdom: Mr. President, it seems to me that about the Australian amendment—we are really coming back to the same thing that there must be a recommendation from the Security Council, and I think that has been the difficulty when many Members have not thought—maybe we could get away from it. I think the very amendment put forward shows the difficulty, for, after all, who is to decide that a State has given military assistance to any such State? Well, I presume the Security Council would have to be asked to decide, for no other organ of the Organization would, I think, take that responsibility. Therefore, any new State coming in, it seems, under this amendment, the Security Council would have to be the one to examine the credentials, the one which would decide whether they had given military assistance, and it seems to me now that the Australian delegation has added that last sentence, it has rather proved that the Security Council must have the responsibility because they—*that Council would have to decide this matter, look into the matter* to see if they had given assistance and then recommend to the Assembly, and it seems to me by this discussion we have really brought out afresh the need for the Security Council to have a say, because, as the Delegate of the United States has said so ably, this is an Organization for security.

. . . . . .

Delegate of Cuba (speaking in Spanish ; English version as delivered by interpreter follows) : I think that the proposals submitted by Australia amount to a compromise between the two sides which we have here in our discussions, that is between the delegates who want to give more powers to the Assembly and the delegates who want to give more powers to the Council.

Annex III.

COMMITTEE II/1
VERBATIM MINUTES OF TWELFTH MEETING [1]
26 MAY, 1945 ; 3.35 P.M.

Rapporteur (speaking in Russian ; English version as delivered by interpreter follows) (presenting report covering activities of the Committee) :

. . . . . .

"*Admission of new Members* (Chapter V, Section B, paragraph 2). "The Committee recommends that new Members be admitted by the General Assembly upon recommendation of the Security Council. In supporting the acceptance of this principle, many 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."

Delegate of Russia (speaking in French ; English version as delivered by interpreter follows) : I presume we will discuss this question later ?

. . . . . .

Delegate of Netherlands (speaking in French ; English version as delivered by interpreter follows) : Mr. Chairman, I should like first of all to congratulate the Rapporteur on the excellent report he has submitted to us. The observations I wish to make are on points of minor importance. First, on page 2, the first word of the English text, which is "many delegates", that corresponds with the French text, but not with the minutes of our second sitting in which the word used was "several". The Chairman says that will be put in agreement in the minutes.

. . . . . .

Chairman (speaking in French ; English version as delivered by interpreter follows) : No objection. Next paragraph, "Admission of new Members", "The Committee recommends", etc., down to "participating States". Any recommendations ?

Delegate of Netherlands (speaking in French ; English version as delivered by interpreter follows) : At the top of page 2, substitute the word "several" . . . . . .

---

[1] Running Numbers 20, 27-28, 37 ; U.N. Archives, Vol. 60.

Delegate of U.S. A.: Mr. Chairman, I only know one word in French, and that is the word "même chose".

Chairman (speaking in French; English version as delivered by interpreter follows): That is agreed.

Annex IV.

ADVISORY COMMITTEE OF JURISTS
VERBATIM MINUTES OF THIRD MEETING [1]
5 JUNE, 1945; 3.40 P.M.

Delegate of China: As to your point, I think there could be no organization in existence until the original Members, at least 28, had ratified, and there could be no question of States being admitted to membership until the General Assembly comes into existence.

Delegate of the U.S.S.R.: Of course.

Delegate of the United Kingdom: And the Security Council.

Delegate of the U.S.S.R.: That is obvious.

. . . . . .

Delegate of the United Kingdom: All I want to do is to make it quite plain that admission is not contingent for its effect on some subsequent action by the State concerned or its Parliament or any other power.

. . . . . .

Delegate of France (speaking in French; English version as delivered by interpreter follows): The Delegate says that the difficulty is due to the fact that you start with saying, "The States may be admitted to membership", etc., but if you start with "The Assembly" and say that the "admission of new Members is decided upon by the Assembly, upon the recommendation of the Security Council", then that makes it quite final, makes it quite clear that that is the final step.

Chairman: The text which we had before this Committee was that "New Members may be admitted to the Organization...." That was objected to on the ground that they were not new Members until they had been admitted.

Delegate of France (speaking in French; English version as delivered by interpreter follows): But that is taken care of if you say that the Assembly decides on the admission of new Members.

Chairman: What was the suggestion again?

Delegate of France (speaking in French; English version as delivered by interpreter follows): The Assembly decides on the admission of new Members on the recommendation of the Security Council.

---

[1] Running Numbers 20, 23, 24-25, 31-32, 42-43, 47, 47-49; U.N. Archives, Vol. 100.

Delegate of the United Kingdom: That is the same thought—"The admission of new Members is effected by the General Assembly, upon the recommendation of the Security Council." If you say "effected", that takes care of it.

Chairman: You are raising the same question we had with this article before. When you talk about admitting new Members, you must realize that they are not Members until they are admitted. Therefore, you don't admit new Members.

Delegate of China: It should be the admission of States as Members.

Delegate of the United Kingdom: Would you rather say, "The admission of States to membership is effected...." ?

Chairman: That will take care of it.

. . . . . .

Chairman: I want to raise a question on the word "Organization". When we say, "In the judgment of the Organization", we are thinking in terms of the Council and the Assembly.

Delegate of the U.S.S.R.: Of course.

Chairman: But they do not constitute the Organization. The Organization is made up of these two organs, plus these other things, the Secretariat for example. But the Secretariat and these other organs do not have anything to do with admission. I think that Article 4 needs to be doctored up a little. I think you have got to carry in this more specifically what you mean by "Organization". Perhaps it would be better to say, "which in the judgment of the Security Council and the General Assembly are able and willing to carry out the obligations". The same idea is conveyed in Article 5, but it seems to me that Article 4 is a little loosely drawn. The Organization as such does not pass upon the matter, only component parts of the Organization.

Delegate of the U.S.S.R.: I think that when the Assembly or the Security Council acts on behalf of the Organization, we can say that the Organization acts.

Chairman: I know, but why don't we spell it out ? "In the judgment of the Organization, acting through the Security Council and the General Assembly."

. . . . . .

Chairman: That is right. Now, carrying out Professor Golunsky's idea, what would you think of taking alternative Article 4, with the changes already suggested, as paragraph 1, and as paragraph 2 have the following: "The admission of such States shall be effected upon the recommendation of the Security Council and the approval of the General Assembly."

Delegate of the U.S.S.R.: Why can't you say, "will be effected by the General Assembly on the recommendation of the Security Council" ?

. . . . . .

Chairman: "The admission of such States shall be effected by the approval of the General Assembly upon the recommendation of the

Security Council." I must say I think the word "effected" is an awkward word, but that was in both these drafts.

. . . . . .

Delegate of the United Kingdom: Shouldn't we say "by a decision of the Assembly"?

Delegate of Russia: Yes, I think we had better.

Delegate of the United Kingdom: I am not sure what it will approve.

Delegate of the U.S.S.R.: It should be understood that the Assembly approves of the statement.

Chairman: You don't need to say "approve". You could say "be admitted on the approval of the General Assembly". You have got it fine now.

Secretary: As it stands now, do we say it like this: "Such States shall be admitted by the General Assembly, upon recommendation by the Security Council"?

Delegate of China: That is exactly the same wording on the original Article 5.

Chairman: We are just putting into a separate paragraph in 4.

Delegate of China: No, the idea of starting the sentence with the word "admission" and following with "effected" is to show at what moment the admission takes place.

Chairman: I thought that was all right. Is it all right with you?

Delegate of the U.S.S.R.: It is all right in Russian.

Secretary: What is the decision—"shall be effected by a decision of the General Assembly"?

Chairman: The reason I said "approval" is because a decision of the General Assembly might be contrary. The decision of the General Assembly might be one way or the other.

Delegate of the U.S.S.R.: It implies....

Chairman: Well, I think that is all right. We can have another draft.

Annex V.

ADVISORY COMMITTEE OF JURISTS
VERBATIM MINUTES OF FOURTH MEETING [1]
9 JUNE, 1945; 3.40 P.M.

Chairman: Why couldn't we make short work of this by combining Articles 4 and 5 of this second draft, making Article 5 paragraph 2, and having it read somewhat as follows: "The admission of any such State", that is, these other peace-loving States, you see, "the admission of any such State to membership in the Organization

[1] Running Numbers 6, 8-9, 9-11; U.N. Archives, Vol. 100.

shall be by the General Assembly upon the recommendation of the Security Council."

Delegate of China: Why don't you say, "by decision" ?

Chairman: All right, "by decision". "By decision of the General Assembly."

Secretary: Leaving the word "effected" in ?

Chairman: No, I am taking your last draft.

. . . . . .

Delegate of China: Now the subject is "admission", we have to have a verb.

Delegate of the U.S.S.R.: You could not do without a verb.

Delegate of China: In Chinese, too.

Chairman: "Shall be effected", like we said before.

Delegate of the U.S.S.R.: I don't mind in English. In English it could be like this, but in Russian, it must have a verb.

Delegate of the United Kingdom: If you don't like it, we could change it—"such State shall be admitted to membership in the Organization by decision of the Assembly".

. . . . . .

Delegate of the U.S.S.R.: I don't know why you don't like the word "effected".

Chairman: I don't object. We had it the other day. It is in one of the drafts here.

Delegate of the United Kingdom: I think I suggested it ; I don't know who else did.

Chairman: Yes, I think it was you.

Delegate of the United Kingdom: I think "will" will be better than "shall". Don't you ?

Chairman: Want to change "shall" to "will" ?

Delegate of the United Kingdom: I think it would be better.

Chairman: Are we all agreed on that ?

Delegate of the U.S.S.R.: There will be a difference. "Shall" is imperative, "will" is exclusive.

Delegate of China: If you say "will", the emphasis is laid on "admission", that is the mode of admission, the method of admission. It is only in such cases that States must be admitted.

Delegate of the United Kingdom: That is exclusive.

Delegate of the U.S.S.R.: No, imperative.

Delegate of China: That is why "will" was suggested.

Chairman: I don't object to "will". They are both imperative. It will be done that way.

Delegate of the United Kingdom: "Will" is future, too.

Chairman: But what is "shall" if not future ?

Delegate of the United Kingdom: It is imperative.

Chairman: But here "it shall be done" is future. It hasn't been done, it shall be done in the future.

Delegate of United Kingdom: That is what I think. I would rather say "will" for that, rather than....

Chairman: It is just a choice of words, and either one suits me. "Will be effected" then. "Will be effected by a decision of the....".

. . . . . .

Annex VI.

MEMORANDUM FROM MR. JAMES F. GREEN, SPECIAL ASSISTANT TO THE SECRETARY-GENERAL OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, TO MR. NORMAN J. PADELFORD, SECRETARY OF THE ADVISORY COMMITTEE OF JURISTS[1]

June 18, 1945.

MEMORANDUM

To: Mr. Padelford.

From: Mr. Green.

Mr. Brown telephoned this morning to ask for the latest papers relating to Article 4 on membership. Mr. Brown points out that the draft of Article 4 dated June 14 (CO/127) does not make clear that the General Assembly should have power to accept or reject a recommendation of the Security Council. Mr. Brown says that, unless this provision is clarified in the draft now being considered by the Advisory Committee of Jurists, it will be necessary for him to consult his committee. Since his committee is meeting for the last time to-night, he needs the latest draft urgently.

---

[1] This memorandum is on file in the Archives of the United Nations.

Annex VII.

MEMORANDUM FROM MR. NORMAN J. PADELFORD, SECRETARY OF THE ADVISORY COMMITTEE OF JURISTS, TO MR. WILLIAM A. BROWN, JR., SECRETARY OF COMMITTEE II/1 [1]

THE UNITED NATIONS CONFERENCE
ON INTERNATIONAL ORGANIZATION

To: Mr. William A. Brown, Jr.—Secretary II/1.

From: Norman J. Padelford.

Reference is made to the concern which you expressed to me and to Mr. Green whether the text of Article 4, paragraph 2, as approved by the Co-ordination Committee (CO/127), makes clear that the General Assembly has power to accept or reject a recommendation of the Security Council.

The matter was discussed by the Committee of Jurists at its meeting this morning. The Committee believes that the word "decision" leaves no doubt that the General Assembly may accept or reject a recommendation from the Security Council. That is to say, the General Assembly might accept or reject a recommendation for the admission of a new Member, or it might accept or reject a recommendation to the effect that a given State should not be admitted to the United Nations.

Note was taken of the language employed in Article 20 concerning the general powers of the Assembly and voting therein.

(*Signed*) NORMAN J. PADELFORD,
Secretary, Committee
of Jurists.

Annex VIII.

COMMITTEE II/1
VERBATIM MINUTES OF FIFTEENTH MEETING [2]
18 JUNE, 1945; 8.30 P.M.

The Secretary is going to make a statement.

Secretary: I have distributed Document No. 383, WD 383, which shows a change in the wording of Chapter 5, Section B, paragraph 2, with regard to the authority of the Assembly to admit new Members to the Organization upon the recommendation of the Security Council.

His Excellency, our Chairman, was not present when the Co-ordination Committee reached this article which is now put in another

[1] This memorandum is on file in the Archives of the United Nations.
[2] Runnin; Numbers 4-8, U.N. Archives, Vol. 60.

chapter in the new order of articles in the Charter. And as Secretary of this Committee, it seems to me it would be desirable to call your attention to a change in the wording which, at first sight, it seems to me might possibly raise some question as to whether it limits the authority of the Assembly to reject the recommendation. Clearly it means "act on the recommendation of the Security Council"—whether it then had full liberty to use its own judgment in the matter, I thought might possibly not be clear from the new text which is found at the bottom of this document. I am perhaps a little over-cautious, but I thought the Committee would like to see that text and be assured that it didn't change our meaning. I call the attention of this to the Committee of Jurists and I have received a letter from the Secretary of the Committee of Jurists which I will read to you.

"Reference is made to the concern which you expressed as to whether the text—text of the new article—the text of Chapter 5, Section B, paragraph 2, as approved by the Co-ordination Committee, makes clear that the General Assembly has power to accept or reject a recommendation of the Security Council. The matter was discussed by the Committee of Jurists at its meeting this morning—that was the day before yesterday—the Committee believed that the word "decision" leaves no doubt that the General Assembly may accept or reject a recommendation from the Security Council. That is to say the General Assembly might accept or reject a recommendation for the admission of a new Member or it might accept or reject a recommendation to the effect that a given State should not be admitted to the United Nations. Notice is taken of the language employed in what is now Article 20 concerning the general power of the Assembly and voting therein. That is the paragraph 2, Section C, Chapter 5, which states that a "two-thirds majority of the Assembly is required to admit a Member". So that the Committee of Jurists advises us that the language is not weakened by the new form.

I merely thought that the form having been considerably changed, some question might possibly arise, and I therefore wanted to report on it to our Committee.

Chairman (translation from French): After the explanation which we have heard given as to the decision taken by the Committee of Jurists, I do not think that we need be afraid that the Committee of Jurists has changed our decision or has reduced the scope of our former text. Our text, the meaning of our text, remains intact.

Delegate of France (interpretation from French): I only want to point out a very small difference between the English and the French texts. In English we say "the admission of any State will be effected". That is future. And in the French we say: "L'admission de tout État est prononcée"—the admission of any State *is* effected. It is in the present. The two tenses of the verb are different in English and French.

Delegate of India: Mr. Chairman, may I suggest that that is merely the normal difference in the methods of drafting documents in the English as opposed to the French. In English, the imperative is normally expressed in future form—such and such a thing shall be done or, as here, will be done; whereas to the French editions are in the present.

Delegate of Greece: Mr. President, I want to find out whether the explanation given by the Honorable Secretary regarding the Jurists' interpretation, if this interpretation will be authoritative for the future functions of the Assembly. I want to find out whether this interpretation is the interpretation that will be accepted, or will it be that we will have another interpretation in the future.

Chairman (translation from French): We can insert this interpretation in our minutes. Is that sufficient for you, Mr. Delegate?

Delegate of Greece: Yes, Mr. Chairman.

Chairman (translation from French): As regards the slight difference to which reference was made by the Delegate of France, the Chairman says that the Secretary will do what is necessary so that both texts will coincide.

We now pass to the third question in our agenda, namely....

Delegate of the United States (interposing): Before putting in another question I think, as a matter of record, you ought to have a vote to find out what the Committee did with reference to the matter before the Committee at the time, because the record will show that there has been no vote taken. We haven't decided on anything, and I think as a matter of procedure we ought to have a vote on it.

Chairman (translation from French): You want this question voted?

Delegate of the United States: Oh, you must have a vote, Mr. Chairman, because the record will show that nothing has been done on it at all.

Chairman (translation from French): We put to the vote point 2. Those who agree, please raise the hand.

Against? Adopted.

2. LETTER FROM THE CHARGÉ D'AFFAIRES A.I. OF THE U.S.S.R. IN THE NETHERLANDS

[*Unofficial translation*]

The Hague, January 16th, 1950.

Sir,

In reply to your letter No. 9226 of the 2nd of December, 1949, about the question of the forthcoming consultative decision of the Court on the acceptance of new Members by the U.N.O., I have the honour to inform you that the Soviet Government confirm their position in this matter as stated by the Soviet Delegation on the 4th Session of the General Assembly on the 22nd of November 1949.

The provisions of the Charter of the U.N.O. dealing with the acceptance of new Members are not subject to interpretation by the International Court of Justice as the Soviet Delegation, when discussing this question at the 2nd and 4th Sessions of the General Assembly, has pointed out. The decision of the General Assembly about submitting this question to a consultative decision of the International Court of Justice is unjustified because the question is quite clear and the corresponding provisions of the Charter do not need any interpretation. The procedure of the acceptance of new Members into the U.N.O. is defined by Article 4, paragraph 2, of the Charter of the U.N.O. That article directly provides for the necessity of a recommendation of the Security Council for the acceptance as a Member of the U.N.O. This procedure, as it is established by the Charter, is one of the basic principles of the Charter and absolutely no derogation on this procedure can be admitted.

Moreover, it must be kept in mind that in general the interp etation of the Charter cannot be subject to the consideration of the International Court of Justice whose functions are defined by the Statute of the Court, and, in particular, by Article 36 of the Statute dealing with the interpretation of treaties in connexion with a legal dispute that has arisen and not about the interpretation of such a quite peculiar document as the Charter of the U.N.O.

Article 96 of the Charter of the U.N.O. that confers the right to the General Assembly to refer all juridical questions to the International Court of Justice, for consultative decisions, can also not serve as a basis for the consideration, by the International Court of Justice, of the question of the procedure of the admission of new Members into the U.N.O. The whole content of the discussions about this question at the sessions of the General Assembly shows that this is a political question and therefore that it does

not belong to the category of questions that are provided for by Article 96 of the Charter.

In addition, it must be pointed out that the question of the interpretation of the Charter was specially discussed at the Conference of San Francisco. That conference rejected a Belgian proposal stipulating that: "As a rule, all matters about which differences are arising between the various organs of the U.N.O. as to the understanding of the Charter, must be submitted, for interpretation, to the International Court of Justice." (Document 873, June 9th, 1945.)

The Conference recognized that "all the organs of the U.N.O. must have the right to interpret, in the course of their daily work, those parts of the Charter that are put into practice by these organs" (Document No. 933, June 12th, 1945).

As the acceptance of new Members of the U.N.O. is a question that belongs to the competence of the General Assembly and the Security Council, it is just these organs that are to interpret the provisions of the Charter related to this question.

I remain, etc.

(*Signed*) M. VETROV.

3. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA R. S. S. D'UKRAINE

Kiev, 7009 369/366 17 2315, via Belradio État.

[*Traduction*]

Sur instructions du Gouvernement de la R. S. S. d'Ukraine, en réponse à votre lettre n° 9226 du 2 décembre 1949, relative à la question soumise à la Cour à fin d'avis consultatif au sujet de l'admission de nouveaux Membres à l'O. N. U., j'ai l'honneur de vous communiquer ce qui suit : Le Gouvernement de la R. S. S. d'Ukraine maintient actuellement la position prise, à l'égard de cette question, par sa délégation, lors de la Deuxième Session ainsi qu'au cours de la 251me séance de la Quatrième Session de l'Assemblée générale (22 novembre 1949). La délégation de l'U. R. S. S. a indiqué que l'ordre d'admission d'un État comme Membre de l'O. N. U. est réglé par le paragraphe 2 de l'article 4 de la Charte, qui prévoit, pour l'admission d'un État comme Membre de l'O. N. U., une recommandation obligatoire du Conseil de Sécurité. Les dispositions de la Charte, ainsi que la question elle-même relative à l'admission des nouveaux Membres, sont absolument claires et n'exigent aucune interprétation complémentaire. En conséquence, la décision, prise lors de sa Quatrième Session, par l'Assemblée générale, de demander à la Cour internationale un avis consultatif sur cette question paraît être insoutenable : cette décision se trouve en contradiction directe avec la Charte des Nations Unies. Il est également nécessaire d'indiquer que la Cour internationale, dont l'activité est régie par un Statut spécial, n'est pas autorisée à interpréter la Charte. L'article 36 du Statut de la Cour parle seulement de l'interprétation des traités, lorsqu'il surgit des contestations d'ordre juridique, et il ne peut certainement pas servir de fondement à l'interprétation de la Charte des Nations Unies. La question relative à l'admission des nouveaux Membres, ainsi que l'ont démontré les débats devant l'Assemblée générale, paraît être une question politique : c'est pourquoi l'article 96 de la Charte des Nations Unies ne fournit pas de base en vue de l'examen, par la Cour internationale, de la question relative à l'ordre d'admission de nouveaux Membres à l'O. N. U., parce que cet article ne permet à l'Assemblée générale de demander un avis consultatif à la Cour internationale que sur des questions juridiques. Il y a lieu de rappeler que la Conférence de San-Francisco, quand la question relative à l'interprétation de la Charte a été débattue devant elle, a rejeté une proposition belge qui tendait à renvoyer à la Cour, à titre de procédure établie et constante, l'interprétation des divergences existant entre les

3. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE UKRAINIAN S.S.R.

Kiev, 7009 369/366 17 2315, via State Belradio.

[*Translation*]

In reply to your letter No. 9226 of December 2nd, 1949, on the question submitted to the Court for advisory opinion on the admission of new Members to the U.N., and upon instructions of the Government of the Ukrainian S.S.R., I have the honour to submit to you the following : The Government of the Ukrainian S.S.R. maintains the position taken on the matter by its Delegation at the IInd Session and during the 251st Meeting of the IVth Session of the General Assembly (November 22nd, 1949). The U.S.S.R. Delegation declared that the procedure for admission of a State to membership in the U.N. was determined by paragraph 2 of Article 4 of the Charter, which requires imperatively the recommendation of the Security Council for admission of a State to membership. The provisions of the Charter and the question itself of admission of new Members are perfectly clear and require no additional interpretation. Therefore, the decision taken at its IVth Session by the General Assembly to request the advisory opinion of the Court on the matter is not justified. This decision is contrary to the Charter of the U.N. It is also necessary to point out that the functions of the International Court are determined by a special Statute, which does not permit interpretation of the Charter. Article 36 of the Statute of the Court deals exclusively with interpretation of treaties in case of legal disputes and certainly cannot justify interpretation of the Charter of the U.N. The question of admission of new Members, as shown by the discussions in the General Assembly, is a political matter. Therefore, Article 96 of the Charter does not justify consideration of the matter of the procedure for admission of new Members in the U.N. by the International Court, because under this article the General Assembly can ask the Court for an advisory opinion only on legal questions. It must be remembered that when the question of interpretation of the Charter was discussed at the San Francisco Conference, the latter rejected a Belgian proposal to refer to the Court as an established and permanent procedure the interpretation of disagreements between the various organs of the U.N. regarding the text of the Charter (Doc. 873, of June 9, 1945). A resolution was there adopted giving the right to the various organs of the U.N. to interpret, in the course of their activity, the provisions of the Charter dealing with their respective functions (Doc. 933, June 12,

divers organes de l'O. N. U. sur le texte de la Charte (doc. 873, du 9 juin 1945). A ce moment a été adoptée une résolution selon laquelle les divers organes des Nations Unies doivent avoir le droit, dans le cours de leur fonctionnement, d'interpréter les parties de la Charte qui s'appliquent à leurs fonctions particulières (doc. 933, du 12 juin 1945). Sur la base de ce qui précède, on voit que l'admission de nouveaux Membres à l'O. N. U. ressortit à la compétence du Conseil de Sécurité et de l'Assemblée générale, et cela signifie que le droit d'interpréter les dispositions de la Charte qui ont trait à la présente question appartient seulement à ces organes.

(*Signé*) D. MANUILSKI,
Ministre des Affaires étrangères
de la R. S. S. d'Ukraine.

1945). For these reasons, the admission of new Members in the U.N. is under the jurisdiction of the Security Council and the General Assembly, which means that these organs alone have the right to interpret the provisions of the Charter on the present matter.

(*Signed*) D. MANUILSKI,
Minister for Foreign Affairs
of the Ukrainian S.S.R.

4. TÉLÉGRAMME DU MINISTRE DES AFFAIRES ÉTRANGÈRES DE LA R. S. S. DE BIÉLORUSSIE

Minsk, 7018 427/425 18 0105, via Belradio.

[*Traduction*]

Sur instructions du Gouvernement de la R. S. S. de Biélorussie, en réponse à votre lettre n° 9226, du 2 décembre 1949, relative à la question soumise pour avis consultatif à la Cour internationale au sujet de l'admission de nouveaux Membres, j'ai l'honneur de vous communiquer ce qui suit : Le Gouvernement de la R. S. S. de Biélorussie confirme de nouveau son point de vue sur cette question, point de vue qui a déjà été exprimé par la délégation biélorussienne à la Commission politique spéciale, lors de la Quatrième Session de l'Assemblée générale, le 2 novembre 1949, ainsi qu'au cours de la Deuxième et de la Quatrième Session de l'Assemblée générale, quand cette question a été examinée.

La délégation biélorussienne a indiqué que la disposition de la Charte de l'O. N. U. relative à l'admission des nouveaux Membres ne peut être soumise à l'interprétation de la Cour internationale et que, par conséquent, la décision, prise par l'Assemblée générale, de soumettre la présente affaire à la Cour internationale à fin d'avis consultatif, ne paraît pas juste ; la question elle-même et les dispositions de la Charte qui y ont trait paraissent si claires qu'elles n'exigent aucune interprétation. Le paragraphe 2 de l'article 4 de la Charte des Nations Unies précise, de manière absolument nette et sans équivoque, l'ordre d'admission à l'O. N. U., lequel prévoit directement la nécessité de la recommandation du Conseil de Sécurité pour admettre un État comme Membre des Nations Unies. Cet ordre, établi par la Charte, paraît être un principe de base de celle-ci et, par conséquent, aucune déviation de cet ordre n'est admissible. Les limites de l'activité de la Cour internationale sont fixées par le Statut de la Cour, et, en particulier, par l'article 36, qui offre la possibilité d'interpréter les traités à propos des contestations juridiques qui surgissent, mais n'autorise pas l'interprétation d'un document de caractère aussi particulier que la Charte des Nations Unies. En conséquence, l'interprétation de la Charte des Nations Unies ne peut, en général, faire l'objet d'un examen par la Cour internationale. L'article 96 de la Charte, qui accorde à l'Assemblée générale le droit de demander des avis consultatifs à la Cour sur toute question juridique, ne fournit aucune base en vue de l'examen, par la Cour internationale, de la question relative à l'admission de nouveaux Membres à l'O. N. U. Ainsi qu'il ressort du débat qui a eu lieu devant l'Assemblée générale, la question relative à l'admission des nouveaux Membres paraît

4. TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS OF THE BYELO-RUSSIAN S.S.R.

Minsk, 7018 427/425 18 0105, via Belradio.

[*Translation*]

In reply to your letter No. 9226 of December 2nd, 1949, dealing with the question submitted to the Court for advisory opinion on the admission of new Members, and upon instructions from the Government of the S.S.R. of Byelo-Russia, I have the honour to state: The Government of the Byelo-Russian S.S.R. reasserts the views on the matter already stated by the Byelo-Russian Delegation to the *Ad hoc* Political Commission during the IVth Session of the General Assembly on November 2nd, 1949, and during the IInd and IVth Sessions of the General Assembly when the question was examined.

The Byelo-Russian Delegation declared that the provision of the Charter dealing with the admission of new Members is not subject to interpretation by the International Court and therefore the decision taken by the General Assembly to refer the present matter to the International Court for advisory opinion is incorrect. The question itself and the relevant provisions of the Charter seem so clear that they need no interpretation. Paragraph 2 of Article 4 of the Charter states perfectly clearly and without ambiguity the procedure of admission to membership in the United Nations. It provides directly for the necessity of a recommendation of the Security Council to admit a State to membership in the United Nations. The procedure laid down by the Charter seems to be a basic principle thereof, and therefore no deviation of this kind is admissible. The scope of the Court's jurisdiction is determined by the Statute of the Court, and in particular by Article 36, which permits interpretation of treaties in connexion with legal disputes but does not permit interpretation of a document of such a special character as the Charter of the U.N. Therefore, as a general rule, interpretation of the Charter of the U.N. cannot be submitted to the International Court of Justice. Article 96 of the Charter, which allows the Assembly to request the advisory opinion of the Court on any legal question, does not justify consideration by the Court of the question concerning the admission of new Members in the U.N. The discussion before the General Assembly showed that the matter of admission of new Members is political and not legal. Therefore, it does not come within the scope of Article 96 of the Charter. Furthermore, it is necessary to point out that the matter of

être de caractère politique et non juridique, et, par conséquent, elle ne rentre pas dans la catégorie de celles que prévoit l'article 96 de la Charte. En outre, il faut indiquer que la question de l'interprétation de la Charte a été spécialement débattue à la Conférence de San-Francisco. Celle-ci a rejeté une proposition belge qui tendait à renvoyer à la Cour, à titre de procédure établie et constante, l'interprétation des divergences existant entre les divers organismes des Nations Unies sur le texte de la Charte (doc. 873, du 9 juin 1945). La Conférence a admis que chacun des organes de l'O. N. U. doit avoir le droit, dans le cours de son fonctionnement, d'interpréter les parties de la Charte qui s'appliquent à ses fonctions particulières (doc. 933, du 12 juin 1945). Par conséquent, la question de l'admission de nouveaux Membres à l'O. N. U. ressortit à la compétence de l'Assemblée générale et du Conseil de Sécurité, et ce sont précisément ces organes qui doivent interpréter les dispositions de la Charte relatives à cette question.

(*Signé*) K. KISELEV,
Ministre des Affaires étrangères
de la R. S. S. de Biélorussie.

interpretation of the Charter was specially discussed at the San Francisco Conference. A Belgian proposal referring the interpretation of disagreements between the various organs of the U.N. regarding the text of the Charter to the Court as an established and permanent procedure was rejected (Doc. 873, of June 9, 1945). The Conference decided that each organ of the U.N. has the right, in the course of its activity, to interpret the clauses of the Charter dealing with its particular functions (Doc. 933, of June 12, 1945). Therefore, the question of the admission of new Members in the U.N. belongs to the jurisdiction of the General Assembly and the Security Council, as the particular organs competent to interpret the provisions of the Charter on the matter.

(*Signed*) K. KISELEV,
Minister for Foreign Affairs
of the S.S.R. of Byelo-Russia.

5. EXPOSÉ DU GOUVERNEMENT ÉGYPTIEN

DÉPARTEMENT DES CONFÉRENCES
DES ORGANISATIONS INTERNATIONALES
ET DES TRAITÉS
LE CAIRE

Le Gouvernement égyptien est d'avis qu'aux termes de l'article 4, alinéa 2, de la Charte des Nations Unies, l'admission d'un nouveau Membre au sein des Nations Unies est l'œuvre de la volonté concordante du Conseil de Sécurité et de l'Assemblée générale, sous forme d'une recommandation pour l'un de ses deux organes, et d'une décision pour l'autre.

2. L'Assemblée générale ne peut être appelée à se prononcer sur l'admission d'un nouveau Membre qu'en présence d'une recommandation formelle du Conseil de Sécurité, c'est-à-dire, qu'après que le Conseil aurait épuisé la compétence à lui confiée par l'alinéa 2 de l'article 4 précité de la Charte.

Cette manière de voir ressort clairement de la lecture des termes mêmes dudit article, ainsi conçus :

« l'admission .... se fait par une décision de l'Assemblée générale SUR recommandation du Conseil de Sécurité ».

En anglais : « .... upon the recommendation of the Security Council ».

3. Cette recommandation du Conseil qui, par ailleurs, ne lie pas l'Assemblée générale, n'est pas un simple avis mais une décision au sens propre du mot qui doit répondre aux conditions prévues par l'article 27 de la Charte ; le terme « recommandation » impliquant nécessairement le sens « d'avis favorable », c'est-à-dire l'accord explicite du Conseil de Sécurité quant à l'admission du Membre nouveau.

S'agissant d'une question d'importance qui ne saurait être qualifiée de question de procédure, le Conseil de Sécurité doit formuler cette « recommandation » par une décision comprenant les votes des cinq Membres permanents, ou du moins à laquelle ne s'oppose pas expressément l'un d'entre eux.

4. La volonté concordante, en cette matière, de ces deux organes : le Conseil et l'Assemblée, est inévitable pour formuler « le jugement de l'Organisation » (the judgment of the Organization), dont parle le 1er alinéa de l'article 4 de la Charte.

En voulant ignorer la volonté de l'un de ces deux organes ou y passer outre, l'autre organe ne pourrait émettre une décision

régulière et valable. Il n'exprimerait, pour ainsi dire, que la « moitié du jugement de l'Organisation ».

Pour les motifs brièvement rappelés ci-dessus, le Gouvernement égyptien est d'avis qu'un État ne peut être admis comme Membre des Nations Unies en exécution de l'alinéa 2 de l'article 4 de la Charte, par décision de l'Assemblée générale, si, pour un motif quelconque, le Conseil de Sécurité n'a pas recommandé son admission.

Pour copie conforme.

[*Transmis par lettre du 23 janvier 1950*]

6. LETTRE DE L'ENVOYÉ EXTRAORDINAIRE ET MINISTRE PLÉNIPOTENTIAIRE DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE

LÉGATION DE LA RÉPUBLIQUE TCHÉCOSLOVAQUE
LA HAYE

N° 697/50 La Haye, le 24 janvier 1950.

Monsieur le Greffier,

J'ai l'honneur d'accuser réception de vos lettres en date du 2 décembre et du 2 janvier derniers, numéros 9226 et 9461, au sujet de la résolution de l'Assemblée générale des Nations Unies du 22 novembre 1949, concernant la compétence de l'Assemblée générale pour l'admission de nouveaux Membres des Nations Unies.

Faisant suite à votre invitation, j'ai l'honneur, d'ordre du Gouvernement tchécoslovaque, conformément à ce qui a été dit par sa délégation au cours de la discussion à la 4me Assemblée générale des Nations Unies, de soumettre à la Cour ce qui suit :

D'après le paragraphe 2 de l'article 4 de la Charte, l'admission de nouveaux Membres des Nations Unies se fait par décision de l'Assemblée générale sur recommandation du Conseil de Sécurité. Ainsi, conformément au texte qui, par sa clarté, ne laisse aucun doute, les deux principaux organes de l'Organisation doivent intervenir aux fins de l'admission d'un nouveau Membre. Comme il a déjà été constaté à San-Francisco, « The Security Council should assume the initial responsibility of suggesting new participating States ».

La Charte prévoit à plusieurs reprises, et toujours pour les questions importantes, une pareille coopération entre l'Assemblée générale qui décide sur une recommandation préalable du Conseil de Sécurité. Pour être valable, la recommandation doit évidemment répondre aux prescriptions requises par la Charte, donc être prise — conformément à son article 27, par. 3 — par un vote affirmatif des sept Membres du Conseil de Sécurité dans lequel sont comprises les voix de tous les Membres permanents.

Aucune disposition de la Charte ne permet de dévier de ces prescriptions, qui sont d'ailleurs dans le système de la Charte d'importance fondamentale. Lorsque le Conseil de Sécurité n'a pas recommandé l'admission d'un nouveau Membre, l'Assemblée ne peut prendre aucune décision, car une recommandation négative n'est aucune recommandation.

A la lumière de ce qui précède, il semble bien que ce n'était pas l'aspect juridique de la question qui avait motivé la soumission à la Cour de la demande pour l'avis consultatif présent, mais certaines tendances politiques en vue d'arriver par une voie détournée, et sous l'autorité de la Cour, à amender la Charte. La Cour n'a évidemment aucune qualité à cet effet, de même qu'elle n'est pas, de l'avis du Gouvernement tchécoslovaque, appelée à interpréter les dispositions de la Charte dans l'affaire consultative présente, celle-ci étant, en plus, d'ordre politique.

Veuillez agréer, etc.

(*Signé*) Dr J. MARTINIC,
Envoyé extraordinaire et Ministre plénipotentiaire de Tchécoslovaquie.

7. WRITTEN STATEMENT OF THE GOVERNMENT OF THE UNITED STATES ON QUESTION CONTAINED IN GENERAL ASSEMBLY RESOLUTION OF NOVEMBER 22, 1949

I. Question before the Court

A. *Resolution of the General Assembly.*

On November 22, 1949, the General Assembly of the United Nations adopted a Resolution deciding to submit the following question to the International Court of Justice, with a request for an advisory opinion :

> "Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend ?"

B. *Issues raised by the Assembly's question.*

The question submitted to the Court by the General Assembly deals with a situation where the Security Council has considered and voted upon a membership application and where the vote has not resulted in a recommendation to the General Assembly in favor of admitting the applicant. As the Assembly's question shows, the situation contemplated is one where no affirmative recommendation resulted from the voting because (*a*) the applicant failed to obtain the requisite majority, or (*b*) a negative vote was cast by a permanent Member.

The question does not raise the issue of whether the negative vote of a permanent Member is effective to defeat an affirmative recommendation by the Security Council when seven or more Members of the Council have voted in favor of admitting an applicant. The question assumes that no affirmative recommendation has been made by the Council when an applicant has failed to obtain the requisite majority of votes or when a permanent Member has cast a negative vote.

The issue raised by the question which the General Assembly has submitted to the Court may thus be stated simply : Can the General Assembly admit a State to membership in the United Nations if the Security Council has considered and voted on the application and has not made an affirmative recommendation ?

II. View of the Government of the United States

The Government of the United States believes that the General Assembly is not empowered to admit a State to membership in the United Nations in the absence of an affirmative recommendation by the Security Council. In the view of this Government, the question submitted to the Court by the General Assembly does not involve serious difficulty.

The provision of the Charter concerned, Article 4, paragraph 2, seems clear in its purport. The practice of the United Nations organs having responsibility for admissions to membership has been uniform. Both the Security Council and the General Assembly have proceeded on the theory that the Assembly could not admit an applicant without the Council having recommended affirmatively. This is evident from the deliberations in both bodies, from their action on membership applications, and from their Rules of procedure. While a certain portion of the legislative history of Article 4, paragraph 2, of the Charter has sometimes been cited in organs of the United Nations to support the view that the General Assembly may admit an applicant for membership in the absence of an affirmative Security Council recommendation, examination of the context—and of the legislative history as a whole—discloses that the legislative history fails to support the thesis for which it has sometimes been cited. Indeed, the history makes quite clear that Article 4, paragraph 2, was designed to require an affirmative recommendation of the Security Council before the General Assembly could admit an applicant to membership in the United Nations.

The following statement is submitted to the Court by the Government of the United States in explanation of its view concerning the question referred to the Court by the General Assembly.

A. *The Charter text.*

Article 4 of the United Nations Charter provides:

> "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."

It is obvious from this provision that some recommendation of the Security Council is required before a "decision of the General Assembly" can effect the admission of a new State. The decision is to be made "upon the recommendation of the Security Council", not "after having received the recommendation of the Security Council". The language used thus indicates that the Security

Council's role in admission to membership is not merely consultative. The word "recommendation" in Article 4, paragraph 2, has the same meaning as if it read "favorable recommendation" or "affirmative recommendation".

B. *Construction of Article 4, paragraph 2, by the General Assembly and the Security Council.*

It is believed that the Court will wish to give great weight to the construction which has in practice been placed on Article 4, paragraph 2, by the organs of the United Nations which have the responsibility for giving effect to this provision. As will be shown below, the interpretation given to Article 4, paragraph 2, by the General Assembly and the Security Council has been uniformly in accord with that which has been set forth above. An affirmative recommendation by the Security Council has always been considered necessary. The practice in which such construction has been registered may be briefly summarized as follows:

(1) *General Assembly discussion of Argentine proposals.*

At the Second and Third Regular Sessions of the General Assembly in 1947 and 1948, the Argentine Delegation presented proposals embodying the view, *inter alia*, that an affirmative recommendation by the Security Council is not necessary. In 1947, in the First Committee, it proposed resolutions to admit the applicants on which the Security Council had made no affirmative recommendations because of Soviet vetoes [1]. In the debate in the Committee, these resolutions were opposed by nearly all of the speakers on the subject [2]. At the conclusion of the debate, the Argentine representative stated that he would not insist upon a vote on his proposals [3].

In 1948, the Argentine Delegation submitted in the *Ad hoc* Political Committee a proposal with the following operative paragraphs:

> "1. Applications for membership shall be submitted to the consideration of the Assembly when the Security Council has reached its decision; and the Security Council's decision shall be deemed to be a recommendation in favour of admission if the application has received seven or more affirmative votes, even if one or more permanent Members have cast a negative vote.

---

[1] General Assembly Documents A/C.1/184 and 185, Official Records of the Second Session of the General Assembly, First Committee, Summary Record, Annexes 14 *b* and 14 *c*, p. 580 f.

[2] As indicated in the Summary Record of meetings, at least 15 delegations expressed opposition: Poland (*ibid.*, p. 343 f.), Australia (p. 349), United States (p. 354), U.S.S.R. (p. 358), Pakistan (p. 360 f.), India (p. 363), Venezuela (p. 365 f.), China (p. 372), United Kingdom (p. 378), Yugoslavia (p. 379), Brazil (p. 381), Norway (p. 381), Czechoslovakia (p. 383), France (p. 384), Philippines (p. 388). Iraq indicated support (pp. 343, 364).

[3] *Ibid.*, p. 396.

2. The General Assembly may both reject an application for admission with a favourable recommendation and grant an application with an unfavourable recommendation, always provided that such a decision is supported by a two-thirds majority of its Members present and voting [4]".

After a large majority of speakers had stated their inability to accept the proposal [5], the Committee rejected a motion by Yugoslavia to the effect that the Assembly was incompetent to adopt the proposal. The representative of Argentina then withdrew his proposal; a motion to declare null and void the vote on the Yugoslav motion was, however, rejected. Thus the Assembly's proceedings on the 1947 and 1948 Argentine proposals may fairly be summarized by the statement that the proposals received the express support of very few States and were opposed, on Charter grounds, by a large majority of speakers.

(2) *Adoption of Rules of procedure of the General Assembly and Security Council.*

Rule 115 of the Provisional Rules of procedure of the General Assembly, adopted in January 1946, provided for Assembly consideration of an application only in case of an affirmative recommendation by the Security Council. It stated: "*If the Security Council recommends the applicant State for membership*, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and shall decide, by a two-thirds majority of the Members present and voting, upon its application for membership." (Italics supplied.) Otherwise, the rules made no provision for Assembly action.

(3) *Discussion of new General Assembly and Security Council Rules of procedure on admission of new Members.*

In 1946, the Australian Delegation at the second part of the First Regular Session of the General Assembly proposed a resolution setting forth principles concerning the respective powers of the General Assembly and the Security Council in the admission of new Members and providing for the appointment of an Assembly

---

[4] General Assembly Document A/AC.24/15.

[5] Over twenty speakers expressed opposition to the proposal. See statements of the following delegations, Official Records of the Third Session of the General Assembly, Part I, *Ad hoc* Political Committee Summary Record: Netherlands (p. 58), Uruguay (p. 63 f.), U.S.S.R. (p. 65 ff.), United States (p. 77 f.), Egypt (p. 81 f.), Poland (p. 84 f.), Venezuela (p. 87 f.), India (p. 90), Pakistan (p. 91), United Kingdom (p. 95), Ecuador (p. 97 f.), Colombia (p. 98), China (p. 99), Dominican Republic (p. 99 f.), Norway (p. 100), Brazil (p. 102 f.), Yugoslavia (p. 103), South Africa (p. 110), Denmark (p. 115), Ethiopia (p. 116), France (p. 118) and Canada (p. 134).

Four speakers indicated support or commented favorably on the proposal: Lebanon (p. 107), Iraq (p. 106), Paraguay (p. 109) and Bolivia (p. 112).

committee to meet with a similar committee of the Security Council to draw up joint rules embodying these principles [6]. In view of opposition to the proposed statement of principles, expressed in the Committee debate, the Australian delegation withdrew all of the resolution except the provision for the appointment of a committee to draw up rules acceptable to the General Assembly and the Security Council, and the resolution was adopted in this form [7]. The General Assembly Committee, appointed pursuant to the resolution, decided as a basis for its work as follows:

> "It was agreed that the General Assembly was not entitled under Article 4, 2, of the Charter to decide to admit a new Member except upon an affirmative recommendation by the Security Council. The representative of Cuba reserved the position of his Government on this point.... [8]"

No rule authorizing the Assembly to act without an affirmative recommendation was suggested. The rules agreed upon by the Committees and adopted by the Security Council and General Assembly merely make explicit the right of the Assembly to request the Security Council to *reconsider* applications in cases where "the Security Council does not recommend the applicant State for membership or postpones the consideration of the application [9]".

(4) *Action on membership applications.*

In 1946, the Assembly was faced with a situation in which the Security Council had made no affirmative recommendations with respect to five applicant States, the admission of three of these States being held up by Soviet vetoes. At its Second, Third and Fourth Regular Sessions, in 1947, 1948 and 1949, the same problem continued to face the General Assembly. However, despite the general resentment expressed concerning this situation, the General Assembly did not go beyond declaring its view concerning the action of one permanent Member of the Security Council and requesting that the Security Council reconsider these applications.

It may fairly be said that the conception that an affirmative recommendation by the Security Council is necessary for the admission of any application has been implicit in every important action on the subject that has been taken by the Assembly and Council—in the adoption of Rules of procedure by the General Assembly and Security Council; the consideration of membership applications by the Security Council; the action of the Assembly in requesting the Security Council to reconsider rejected applic-

---

[6] Official Records of the Second Part of the First Session of the General Assembly, First Committee, Summary Record, p. 318.

[7] *Ibid.*, p. 82 f.

[8] Report of Committee on Procedure for the admission of new Members, General Assembly Document A/384, p. 2.

[9] Security Council Rules 58 to 60; General Assembly Rules of procedure 123 to 127.

ations; and in the consideration given by the Assembly to resolutions embodying the conception that an affirmative recommendation by the Security Council is not needed.

C. *Legislative history of Article 4, paragraph 2.*

(1) *Dumbarton Oaks Proposals; comments and suggested amendments thereto by governments.*

The relevant section of the Dumbarton Oaks Proposals states that "the General Assembly should be empowered to admit new Members to the Organization upon the recommendation of the Security Council [10]".

This paragraph was generally understood to mean that no State could be admitted to membership without a favorable recommendation from the Security Council.

This understanding is very clearly reflected in the comments on, and amendments to, the paragraph which were submitted by governments prior to the San Francisco Conference for consideration by the Conference. One of these proposals provided that the concurrence of the Security Council should be necessary for the admission of only such States as had been at war with any Member of the United Nations; others were designed to make the Security Council's recommendation purely advisory in character; still others called for eliminating altogether the participation of the Security Council in the admission of new Members.

The Government of Australia proposed that paragraph 2 of Chapter V, Section B, be amended to read as follows:

> "The General Assembly may admit new Members to the United Nations: Provided that the General Assembly shall not, without recommendation of the Security Council, admit to membership a State which at any time since first September 1939 has been at war with any Member of the United Nations [11]."

The Ecuadoran Government proposed the following:

> "All of the present sovereign States of the world or those which may subsequently become so, shall have the power to apply for admission as Members of the Organization and shall be admitted in effect if they possess the qualifications and fill the requirements which shall be determined in due course by a vote of two-thirds of the General Assembly [12]."

The Government of Egypt suggested the following text:

> "The General Assembly shall be empowered, after taking the advice of the Security Council, to admit new Members to the Organization [13]."

---

[10] Dumbarton Oaks Proposals, Chapter V, Section B (2).
[11] Doc. 2, G/14 (l), U.N.C.I.O. Documents, Vol. 3, p. 545.
[12] Doc. 2, G. 7 (p), *ibid.*, p. 401.
[13] Doc. 2, G/7 (q), *ibid.*, p. 456.

The text proposed by the Government of Mexico read :

"The General Assembly should be empowered to admit new Members to the Organization upon its own initiative or upon the recommendation of the Security Council, although, in the former case, the Security Council would, during the first eight years of the Organization, be empowered to veto the admission of a new Member by a unanimous vote of its semi-permanent Members [14]."

The Government of Paraguay made the following comment :

"The Assembly, in which representatives of all peace-loving nations of the world may have seats, is not competent even to admit to its membership another nation without the recommendation of the Council.... [15]"

The Government of Uruguay suggested the following text :

"The General Assembly shall be empowered to admit new Members to the Organization upon recommendation of the Security Council and to support such recommendations [16]."

The Venezuelan Government commented as follows :

"This number of the draft establishes that the admission of new Members of the Institution shall be made by the Assembly by a special two-thirds majority and recommendation of the Council. The Assembly is thus deprived of any initiative for admitting new Members and, apparently, it would have left only the power to veto the proposal of a new Member recommended by that body. The traditional and invariable rule in this kind of organization has been that the admission of Members belongs exclusively to the deliberative body or General Assembly, and this is natural and logical. This was done in the League of Nations. The suppression of the initiative of the Assembly and its subordination to the recommendation of the Security Council seems, consequently, an unnecessary or unsuitable mutilation of the powers of the former [17]."

(2) *San Francisco Conference.*

The procedure for the admission of new Members was one of the matters considered by Committee II/1 of the San Francisco Conference. This Committee had before it the Dumbarton Oaks proposal and all the related comments and amendments set forth in the preceding section. The discussion in the Committee reflects clearly the understanding that the Dumbarton Oaks proposal would make the approval of the Security Council as well as of the General Assembly necessary for the admission of a Member. The Egyptian delegate spoke in favor of his Government's proposal, which would have limited the Security Council's role in admissions

---

[14] Doc. 2, G/7 (c) (1), *ibid.*, pp. 181-182.

[15] Doc. 2, G/7 (l), *ibid.*, p. 346.

[16] Doc. 2, G/7 (a) (1), *ibid.*, p. 38.

In the discussion in Committee II/1, the Uruguayan delegate pointed out that the word "support" should be replaced by the word "promote".

[17] Doc. 2, G/7 (d) (1), *ibid.*, p. 197.

to that of being consulted by the Assembly. In explaining his Government's proposal, the Australian delegate said in part: "As it is at present, no new Member could be admitted without the approval of the Security Council...." In support of his suggestion to limit the number of cases in which Security Council approval would be required, he said: "I think that it is only right that first of all countries that were at war since 1939 should run the gauntlet of the Security Council...." The verbatim minutes contain no suggestion of a contrary interpretation. The whole assumption of the discussions was that under the Dumbarton Oaks proposal the assent of the Security Council to each admission was required.

The summary report of the second meeting of Committee II/1—the first meeting at which the membership problem was discussed—on May 9, 1945, reads as follows:

> "The Delegate of Egypt proposed that the Assembly should admit new Members, not upon recommendation of the Security Council, but after taking its advice. He indicated that the main responsibility of the Security Council is to maintain peace and guarantee security and said that the admission of new Members was not a question of this character. The Egyptian amendment, therefore, was intended to give the Assembly initiative in the admission of new Members. The Australian Delegate expressed the view that only if a real question of security were involved should the Assembly be required to act on the recommendation of the Security Council in the admission of new Members. He advanced as a compromise, between the text of the Dumbarton Oaks Proposals, on the one hand, and the suggestions of the other governments that the Assembly should have full authority in this matter, on the other, the proposal that the recommendation of the Security Council should be necessary for the admission of countries which have been at war with any of the United Nations at any time since September 1939.
>
> The Delegate of the United States emphasized the predominant importance of security considerations in the Charter being written, and expressed the opinion that the Members of the new Organization must have unquestioned confidence in their associates in the future.
>
> The Delegate of the United States also emphasized the necessity of having the exact text of amendments before the Committee before action could be taken [18]."

Before the third meeting, the Australian delegation revised its amendment so as to read as follows:

> "The General Assembly will admit new Members to the United Nations: Provided that the General Assembly shall not, without the recommendation of the Security Council, admit to membership a State which, at any time since 1st September, 1939, has been at war with any Member of the United Nations, or a State which since that date has given military assistance to any such State [19]."

---

[18] Doc. 211, U.N.C.I.O. Documents, Vol. 8, p. 296.

[19] Doc. 204, *ibid.*, p. 299.

The Ecuadoran delegation proposed substitution of the following text :

> "The General Assembly shall determine, at a time which it may consider proper, the qualifications and conditions to be required of sovereign States, which are not members of the Organization, for admission to membership, and it is empowered to pass on such admissions, requiring in either case a majority of two-thirds of the votes of the Assembly [20]."

The summary report of the third meeting of Committee 1 of Commission II on May 10, 1945, recorded the discussion on paragraph 2 (of Dumbarton Oaks Proposals, Chapter V, Section B) as follows :

> "The Committee discussed the revised Australian amendment on Section B, paragraph 2 (Doc. 204). It was urged that the Australian amendment represented a compromise between the Dumbarton Oaks Proposals, which require a Security Council recommendation for admission of Members to the Organization, and the position reflected in several amendments submitted to the Conference which would give the General Assembly final or sole authority on the admission of Members. It was pointed out that the Australian amendment provided that no State which had been at war with any Member of the United Nations since September 1, 1949, or had given military assistance to such a State, could be admitted without recommendation of the Security Council. The United States Delegate stressed the dangers to be found in admitting to the Organization those who hypocritically professed sympathy with the United Nations. Several delegates emphasized that the primary concern of the Conference was the writing of a Charter which would provide security against a repetition of the present war. It was urged that the Security Council should have predominant authority and that no provision be written into the Charter which might invite a dispute between the General Assembly and the Security Council. The Delegate of China suggested that if a date were written into the Charter as a criterion for admission of a Member at war with the United Nations, it should be September 1931, when Manchuria was invaded. It was pointed out that the Australian amendment made it necessary to determine in every case whether the proposed new Members had rendered military assistance to the enemies of the United Nations. This made clear the necessity for the Security Council to assume responsibility for admission of Members [21]."

At this meeting, following prolonged discussion of the voting procedure to be followed in this question, all of the suggested amendments were defeated and the Dumbarton Oaks proposal was adopted by 22 votes to 9.

The Committee authorized its Chairman to appoint a drafting sub-committee to prepare drafts of a final Charter [22].

---

[20] Doc. 239, *ibid.*, p. 307.
[21] Doc. 236, *ibid.*, p. 309.
[22] Doc. 236, *ibid.*, p. 309.

Committee II/1 at its 11th Meeting on May 25 approved by a vote of 28 to 0 and without discussion the following revised text reported to it by its drafting sub-committee. "The General Assembly may admit new Members to the Organization upon recommendation of the Security Council [23]."

This text is the same as that of the Dumbarton Oaks proposal, except that the Dumbarton Oaks language "shall be empowered to" is replaced by the word "may".

The report of the Rapporteur of Committee 1, Commission II, approved by Committee II/1 as Doc. 636, May 28, 1945, states :

> "The Committee recommends that new Members be admitted by the General Assembly upon recommendation of the Security Council.... 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 [24]."

This report completed the initial and—so far as the question here under discussion is concerned—only substantive phase of the consideration of this provision. The changes which were subsequently considered and adopted were of a drafting character.

These changes arose in the Co-ordination Committee and the Advisory Committee of Jurists. Each of these bodies was created under a plan approved by the Steering Committee on May 10, which established the Conference procedure in drafting the final Charter [25]. Under this plan, the Co-ordination Committee had the responsibility of recommending to the Executive Committee the final draft of the Charter as a whole or in parts, and, to that end, of examining the drafts received from the technical committees with a view to eliminating inconsistencies between them, in consultation if necessary with the committees concerned or by reference to the Executive Committee. The Advisory Committee of Jurists had the responsibility for reviewing the texts prepared by the Co-ordination Committee, and eventually the whole text, from the point of view of terminology. In practice, both bodies adhered to their function of ascertaining whether the substantive decisions of the technical committees (such as Committee II/1) were embodied in satisfactory language, of refraining from substantive decisions, and of referring back to the technical committees sections of the Charter in which the meaning intended by the technical committee concerned was unclear. The changes which these committees made in the provision under consideration here should be appraised in the light of the general function of these committees. As will be seen below, these changes were, and were intended to be, of a purely drafting character.

---

[23] Doc. 594, *ibid.*, p. 398.
[24] Doc. 636, *ibid.*, pp. 444, 451.
[25] Doc. 243, *ibid.*, Vol. 5, p. 222.

(a) *Redraft by Co-ordination Committee.*

At its Eighth and Ninth Meetings, on May 30 and June 1, the Co-ordination Committee considered the text reported by Committee II/1. It was noted that the text contained a logical difficulty in that it authorized the General Assembly to "admit" new "Members", although actually a State could become a "Member" only through this process of being admitted. Accordingly, the Committee approved the following substitute draft :

> "States may be admitted to membership in the Organization by the General Assembly upon the recommendation of the Security Council."

However, because the Soviet representative foresaw difficulty in translating this new language into an acceptable Russian version, the text was referred to the Advisory Committee of Jurists.

(b) *Redraft by Advisory Committee of Jurists.*

The Advisory Committee of Jurists considered this text at its Third and Fourth Meetings, on June 4 and 9. After considering mainly the question whether, in the procedure of admission, an applicant should accept the Charter before or after the action of the Assembly, the Committee adopted a new text which is the final form of Article 4, paragraph 2 :

> "The admission of any such State to membership will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

(c) *Interpretative statements on new text.*

The question was raised in the Co-ordination Committee whether the new language had made it clear that the Assembly might accept or reject a recommendation of the Security Council. The text previously adopted by the Co-ordination Committee clearly left some discretion to the General Assembly—"States *may* be admitted to membership by the General Assembly upon the recommendation of the Security Council." The new language of the Advisory Committee of Jurists—"the admission .... *will* be effected by a decision of the General Assembly upon the recommendation of the Security Council"—might possibl · be understood to require the General Assembly to admit a State if recommended by the Security Council.

The Committee of Jurists included in the report of its 14th Meeting on June 18 this statement :

> "A question from the Co-ordination Committee as to whether paragraph 2 of Article 4 made it clear that the Assembly might accept or reject a recommendation of the Security Council was answered in the sense that the text was clear in this respect [26]."

[26] U.N.C.I.O. Document WD 404, CO/166.

During the discussion of the Jurists' text by Committee II/1 at its 15th Meeting on June 18, the secretary of that Committee read a letter which he had received from the secretary of the Advisory Committee of Jurists, as follows (verbatim minutes):

> "Reference is made to the concern which you expressed as to whether the text of Chapter V, Section B, paragraph 2, as approved by the Co-ordination Committee makes clear that the General Assembly had power to accept or reject a recommendation by the Security Council. The matter was discussed by the Committee of Jurists at its meeting this morning (June 16). The Committee believes that the word 'decision' leaves no doubt that the General Assembly may accept or reject a recommendation from the Security Council. That is to say the General Assembly may accept or reject a recommendation for the admission of a new Member or it might accept or reject a recommendation to the effect that a given State should not be admitted to the United Nations. Notice is taken of the language employed in what is now Article 20 concerning the general power of the Assembly and voting therein. That is the paragraph 2, Section C, Chapter V, which states that a two-thirds majority of the Assembly is required to admit a Member."

The Summary Report of that same meeting of Committee II/1 contained the observation:

> "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 [27]."

The second report of the Rapporteur of Committee II/1 for submission to Committee II, revised and circulated to the Members of the Committee for their approval June 19, 1945, included the following:

> "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, or a recommendation to the effect that a given State should not be admitted to the United Nations.
>
> 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 [28]."

Taken as a whole, therefore, the legislative history of Article 4, paragraph 2, clearly supports the conclusion that an affirmative

[27] Doc. 1094, U.N.C.I.O. Documents, Vol. 8, pp. 487-488.
[28] Doc. 1092, *ibid.*, Vol. 8, p. 495.

recommendation of the Security Council is necessary for the admission of any State to membership. The question before the Court was squarely before Committee II/1 in the form of the Egyptian amendment and, to a certain extent, in the Australian amendment. The purposes of these amendments were made fully clear, and the amendments were rejected. Their rejection reflects clearly the Committee's understanding of the text which it then adopted.

The two changes subsequently made in the Committee II/1 text had nothing to do with the question before the Court. They were made for the drafting purposes set forth above. The inclusion, by the Secretary of the Advisory Committee of Jurists, of the clause "or reject a recommendation to the effect that a given State should not be admitted to the United Nations" in his letter explaining that the Advisory Committee of Jurists did not consider the Assembly's rights weakened by the new text, and the inclusion of this language in the interpretative statement accepted by Committee II/1, cannot be taken as showing a design to make the Security Council's function purely consultative.

It should be noted that the statement gives no indication concerning the nature of "the right to reject" an unfavorable recommendation of the Security Council; it does not suggest that this right constitutes a power to admit a State in those circumstances. The right should probably be construed as merely the power to refer the application back to the Security Council for reconsideration. The surrounding circumstances make it impossible to accept the thesis that the right to reject constituted a power to admit an applicant without a favorable Security Council recommendation. For, if the new text indeed authorized the General Assembly to admit applicants without Security Council approval, it reversed all of the previous decisions on the main question that had arisen concerning the provision up to that time. Committee II/1 had, after the issue was presented to it by the Egyptian and Australian amendments, adopted a text which called for an affirmative Security Council recommendation. The new text was proposed for drafting reasons, and the only question raised was whether or not it had weakened the Assembly's right. If it authorized the Assembly to act without a Security Council recommendation, it not only did not weaken the Assembly's right under the previous text; it vastly broadened that right, granting everything sought to be covered by the Egyptian amendment and more than the Australian amendment was designed to accomplish. It is not reasonable to conclude that so complete a change was adopted without any explanation or discussion of its real scope but rather with explanations showing a far more limited purpose and character.

8. STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA

The Argentine Government, on behalf of whom I am presenting this paper, is especially interested in the advisory opinion which the General Assembly of the United Nations requested in the following terms from the International Court of Justice with reference to the admission of new Members :

> *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.

During its period as a non-permanent Member of the Security Council (1948-1949) and at each session of the General Assembly, the Argentine Delegation has, upon special instructions from its Government, insisted that the United Nations give the widest interpretation to paragraph 2 of Article 4 of the Charter.

Nine applications for membership which obtained seven or more favourable votes in the Security Council have not gone through the stages as required by the provisions of the Charter, because in the Security Council and in the General Assembly, some doubt has arisen with regard to the juridical implications of the use of the "veto" in connexion with the admission of new Members.

The Argentine Delegation considers that the above-mentioned privilege cannot be invoked in the case of applications for admissions of new Members. Moreover, we have maintained that even

though one or more of the permanent Members of the Council cast a negative vote, such negative votes would logically carry weight in the minds of the Members of the General Assembly when these are called upon to vote, but cannot hold up procedures or prevent a final *decision* of the Assembly.

The Argentine Delegation has maintained that, when the Security Council examines applications for membership, any seven or more favourable votes constitute a *favourable recommendation*.

Such recommendations, whether favourable or not, must be referred to the General Assembly, and it is for that body to *decide* regarding the admission, as it can either ignore a favourable recommendation and reject the application, or ignore an unfavourable recommendation and admit to membership a State unfavourably recommended.

An application which obtains a two-thirds or greater majority in the Assembly is, *ipso facto*, accepted, and an application which does not obtain a two-thirds majority is *ipso facto* rejected (Article 18).

We have further maintained that the Security Council may *suggest* the postponement of the consideration of any given application, but no organ of the United Nations, with the exception of the Assembly itself, can *decide* either with regard to this postponement or to the final question of the admission.

Such an interpretation of the Charter has been opposed by some delegations, more particularly by those enjoying permanent membership in the Security Council, but the Argentine Delegation defended, and at the last session of the General Assembly succeeded in obtaining a majority for, a draft resolution requesting the International Court of Justice to advise the General Assembly on the powers granted the Security Council and the Assembly under paragraph 2 of Article 4 of the Charter.

My Government understands that that draft inquires of the Court whether, according to the Charter, the General Assembly may consider as an *unfavourable recommendation* or as a *refusal to recommend* when the Security Council interrupts proceedings on the applications for admission of new Members because :

(*a*) the applicant State has not obtained seven affirmative votes ; or because

(*b*) having obtained seven affirmative votes, one of the permanent Members of the Council has cast a negative vote.

Moreover, my Government wonders if, in either of these cases, the Assembly, with the matter in hand, examines the application for admission and takes the final decision referred to in paragraph 2 of Article 4, by either accepting or rejecting the admission of the applicant State.

My Government holds that the Assembly definitely has that right, and further believes that any doubts on this matter could

be disposed of *rebus sic stantibus* through the exercise of that political power to interpret the Charter which undeniably belongs to the different organs of the United Nations, *subject to the limitation placed upon the powers granted each one.*

I shall show later how, on this same subject, the Security Council has exercised that political right of interpretation without the Assembly having questioned it.

Having thus clearly propounded the question submitted to the International Court of Justice for its consideration and advice, I venture now to outline to the Court the legal bases for the interpretation maintained by my Government.

* * *

The provisions of paragraph 2 of Article 4 of the Charter may be examined in the light of:

(1) the grammatical and juridical "wording" of the paragraph;
(2) the juridical correlation to the "context" of the Charter;
(3) the "background" from which that provision emerged, including whatever resolutions may have been adopted at the San Francisco Conference prior to the acceptance of the Charter;
(4) the general principles of law usually followed in the interpretation of positive international law;
(5) the *rebus sic stantibus* clause.

I

Paragraph 1 of Article 4 of the Charter states that membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the Charter and which, *in the judgment of the Organization*, are able and willing to carry out those obligations.

Paragraph 2 of the same article establishes the *procedure* to be followed when forming that *judgment of the Organization*, and states that "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".

It should be noted that paragraph 2 of Article 4 lays down the *procedure* subject to which the *judgment of the Organization* (paragraph 1 of Article 4) regarding the admission of any State applying for membership will be made known. That means that the Charter does not leave this procedure to the will or whim of the Organization. It also means that neither the Assembly nor the Security Council can lay down that procedure. The Assembly cannot subject the Council to special rules in order to obtain the *latter's recommendation*, nor can the Council prevent the Assembly from sanctioning rules it deems appropriate to the adoption of *its decision.*

It should be pointed out that the procedure thus established is to be found in Chapter II of the Charter dealing with *membership* in general, without specifying to which organs the Members may belong. Therefore, we are of the opinion that that procedure is in no way related to, nor can it be included among, those procedures which the Charter later lays down for the exercise of the powers of the General Assembly (Chapter IV) and the specific powers of the Security Council (Chapter V).

I wish to point out, furthermore, that the Organization does not select States in order to suggest their admission ; States desiring it voluntarily apply for admission. The Organization neither studies a case nor decides thereon until the State has submitted its application. I say this in order to avoid misunderstandings, because there are those who have affirmed that it is the Security Council which *suggests* the States that can be admitted.

The text laying down the procedure to be followed in the forming of the judgment of the Organization appears at first sight crystal clear. Once an application for admission has been received, the Security Council should make the *recommendation* which it deems appropriate to the General Assembly ; and the General Assembly, having noted the said recommendation, should *decide* on the acceptance or rejection of the application.

However, not everyone agrees. The permanent Members of the Security Council maintain that such a recommendation *must be favourable*, otherwise the Council makes no recommendation and the General Assembly cannot exercise its right to decide.

I hasten to state that when the permanent Members of the Security Council refer to this matter, they do not speak in terms of a *favourable* recommendation (an expression I use to explain their conduct), but merely do not accept the application. They behave as though among the specific powers granted the Council by the Charter was the right to *choose*, from applicant States, the admissible ones. The applications *not chosen* or, to quote the Charter, those *not recommended* are postponed *sine die*, and no action taken. But, when seven affirmative votes have been cast, any of the permanent Members so desiring believes it has the right to apply the "veto", thereby automatically halting all further action.

In fact, the truth is that the Security Council claims it has the right to give only *favourable recommendations*.

I affirm that by so acting, the Security Council is committing an act of "supererogation", *ultra vires*, and I propose to prove it.

* * *

Article 4 states :

> 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.

Grammatically speaking, the phrase *"upon recommendation"* does not imply that the recommendation *must* be favourable, that the Security Council is obliged, in other words, only to pronounce itself in cases where it agrees that the application should be accepted.

To simplify matters, I shall only refer to Webster's Dictionary.

To recommend means "to advise or counsel" ; "to advise regarding the procedure to be followed". Webster (page 2080) gives examples : *"His professors will not recommend him"* ; *"His physicians recommend it"*.

The first is an example of a negative recommendation, the second, of a positive one.

The noun *"recommendation"* follows from the meaning given to the verb "to recommend".

The phrase "upon recommendation" means that the General Assembly's decision must be given "upon recommendation" ; "prior recommendation" ; "at the recommendation" ; and "subject to the making of a recommendation" ; and, to quote Webster (page 2800)on the meaning of the word "upon", the decision must be taken "with little or no interval after the recommendation". Thus there is a relation established between the recommendation and the decision, a relation which is clearly expressed in paragraph 2 of Article 4 of the Charter. I shall, however, return to this later.

* * *

The phrase "upon recommendation" has been used in Article 4 of the Charter (admission of new Members), Article 5 (suspension of Members), Article 6 (expulsion of Members), Article 93 (determination of the conditions under which a State, non-member of the Organization, can be a party to the Statute of the International Court of Justice), Article 97 (appointment of the Secretary-General), and Article 4 of the Statute of the International Court of Justice (determination of the conditions under which a State, party to the Statute of the Court, non-member of the United Nations, may participate in the election of members of the Court).

It is worthwhile analyzing the type of recommendation which the Security Council can make in the six cases to which I have referred, though we should not forget that in each of them, the

General Assembly has been given the power *to decide* "upon recommendation" of the Security Council.

When applying Article 4, the Council must consider the applications for admission of new Members and give its opinion thereon. Paragraph 1 of the article lays down the conditions required for the admission of a State. Having considered the matter, each Member of the Council forms his opinion and can express by voting. Those in favour vote affirmatively and those against vote negatively.

Let us suppose that the necessary votes are obtained for a favourable majority recommendation—then the application must be sent to the General Assembly for it to adopt the necessary decision.

However, in certain cases, the negative votes may be so numerous as to constitute a majority or even the unanimity of the votes cast—and in such cases, that majority or unanimity would express the will of the Council against the admission of the applicant State.

The facts cannot be gainsaid. There being neither unanimity in favour, no against, the vote takes two directions and the recommendation becomes either favourable or unfavourable, according to the number and direction of the votes cast.

Let us overlook for a moment the existence of the "veto". Seven affirmative votes out of eleven represent a favourable opinion, and the Council makes that fact known to the Assembly. Less than seven votes represents an unfavourable opinion and the Council must also communicate that fact to the General Assembly.

According to the procedure followed heretofore, in the second case mentioned above, the Council does not communicate, and contends that if there is no favourable recommendation, *no recommendation exists*, and therefore none is emitted. But why? Because it understands that the Assembly can adopt no decision unless the Council pronounces itself in favour of the applicant State. It understands too that when the Charter lays it down that the admission of a new Member will "be effected by a decision of the General Assembly upon recommendation of the Security Council", it means that the Council has the right to suggest the States which may be admitted, and that, lacking such suggestion, the application cannot be considered by the Assembly.

Let us, however, for one moment suppose that the "veto" (paragraph 3 of Article 27) be applicable. In spite of the fact that seven or more Members of the Security Council have voted in favour of the application, if one of the permanent Members has voted against, the Council contends that that negative vote cancels the others and that no matter how many votes were cast in favour of the application, the applicant State should not be recommended.

Personally, I repeat that even in this last supposition the facts remain; the contrary opinion of the Council has been made

known by the vote and the unfavourable recommendation should be communicated to the Assembly for this body to take the appropriate decision.

But the point is not worth labouring. For the moment, it is sufficient to say that whatever the usage followed before in the Security Council in the application of Article 4, the pronouncements of this body show that the action of recommending works in two opposite directions and that according to the votes for or against, the facts point to the possibility of recommending either in favour or against the admission of the applicant State.

As there is no express provision in the Charter giving the Council the privilege of not presenting a recommendation to the General Assembly for its decision on the applicants that have not obtained the Council's blessing, it is obvious that the behaviour of the Council constitutes a supererogation *ultra vires*.

On the other hand, in the application of Article 5 there can only be one type of recommendation : that of requesting suspension if the Security Council deems it appropriate to do so. In this case there is no application to be considered one way or another—no State can ask that it be suspended—it is for the Council to take the initiative.

And the same occurs in the case of Article 6 : no Member applies for expulsion. Here too it is for the Council to take the initiative.

According to Article 93, it is for the Security Council to determine the conditions under which a State, not a member of the Organization, can become a party to the Statute of the International Court of Justice. In this case there exists an application presented by the State concerned. It would be difficult, not to say impossible, for an application to be presented by a State unworthy of becoming a party to the Statute of the Court, but no doubt the case might occur, and in that case, the Security Council could advise the General Assembly not to determine the conditions referred to in Article 93. In other words, not to accede to the request that the State become a party to the Statute of the Court. Therefore the use of the phrase "upon recommendation" in Article 93 is similar to its use in Article 4, and if, in accordance with it, the Security Council were to act as it has in the case of Article 4, the application of the State concerned could be permanently shelved without answer unless it obtained the approval of the Security Council.

The same applies in the case of the phrase "upon recommendation" in Article 97 as it did in Articles 5 and 6. In Article 97, there is no application upon which the Council may have to give an opinion ; the initiative belongs to the Security Council, and until its Members have agreed upon a candidate, no recommendation can be made and the General Assembly can appoint no

Secretary-General. In this case action can only be taken in one direction, viz. to recommend a candidate.

At the request of the Soviet Delegation, the San Francisco Conference annulled a first decision by virtue of which the Security Council could present candidates for the post of Secretary-General if seven affirmative votes were obtained, and laid down the rule that the votes of the five permanent Members had to be included among those seven. This decision is not stated in the Charter; but it was adopted by the Conference at a plenary session on 20th June, 1945, after approval by the First Committee of Commission III.

This was merely a resolution which clarified the provisions of Article 97, and was adopted solely to state that in order to recommend a candidate for Secretary-General, the acquiescence of the five permanent Members of the Security Council was necessary. According to some, this circumstance would tend to show, *by analogy*, that the expression "upon recommendation", established in paragraph 2 of Article 4 with regard to the admission of new Members, must be understood as also requiring the concurring votes of the five permanent Members.

But that *analogy* is non-existent. In the case of the admission of a new Member, the Security Council can either recommend favourably or unfavourably, according to whether the applicant State does or does not fulfil the conditions required in paragraph 1 of Article 4. On the other hand, in the appointment of a Secretary-General there is no application to consider; on its *own initiative* the Security Council must recommend a candidate once he has obtained the necessary majority of 7 out of 11 votes. It is obvious that such a recommendation will be much more difficult to come by with the "veto" than without it, but it is also obvious that without the "veto" there could be no candidate, however many times the vote were taken, until the seven votes were cast in favour of a certain candidate.

But this does not arise when recommending the acceptance or rejection of an application for admission to membership in the United Nations, presented by a sovereign State. In this latter case, only one vote is taken: seven or more affirmative votes show that the Council wishes to recommend favourably upon the application, whereas six or less affirmative votes show that the Council wishes to recommend unfavourably or, if it be preferred, that the Council wishes *not to recommend* the admission of the applicant State.

The dissimilarity in these two cases lies in the fact that in the admission of new Members the Council can choose a favourable or an unfavourable [....] to be made on an application spontaneously presented by a State which has not been selected by the Council, whereas in the presentation of a candidate for Secretary-General, the Security Council cannot be against anything or anyone, it

can only be in favour of a person whom *the Council itself has selected and decided to recommend.*

In passing, I should like special note to be taken of the fact that if paragraph 3 of Article 27 is applicable in the appointment of a candidate for Secretary-General, it is not because the Charter so lays it down, but because of the resolution alluded to before, which says : "that the system of voting in the Security Council as adopted by the First Committee of Commission III at its 20th session on 13th June, 1945, at 10.30 a.m., regarding non-procedural matters *is applicable in the appointment of Secretary-General*". (U.N.C.I.O. Vol. II, page 571.)

Finally, in the application of Article 4 of the Statute of the International Court of Justice, that is, the determination of the conditions under which a State, party to the Statute of the Court, non-member of the United Nations, may participate in the election of the members of the Court, the meaning of the phrase "upon recommendation" is similar to that of Article 93, and states that the Security Council recommends in favour or against the granting of that privilege. The final decision, as in other cases, lies with the General Assembly.

* * *

We have just found that "upon recommendation" can be used in entirely different circumstances and be given completely different meanings according to the case.

In order to suspend a Member State from the exercise of its rights and privileges of membership (Article 5), if the Council wishes to act, it cannot avoid recommending the suspension ; it cannot propose its non-suspension ! To expell a Member from the Organization (Article 6), if the Council wishes to act, its only recourse is to recommend such an expulsion ; it is inconceivable that the Council recommend a non-expulsion ! For the General Assembly to appoint a Secretary-General (Article 97) it is imperative that the Security Council propose a candidate for that office. In these three cases the first move is made by the Council and by it alone. In these three cases the proposed action can be in but one direction : suspension, expulsion, appointment. The Council can recommend in no other sense.

But in reply to a State, non-member of the United Nations, which desires to become a party to the Statute of the International Court of Justice (Article 93), or, being a party to that Statute and not a member of the United Nations, wishes to take part in the election of members of the Court (Article 4 of the Statute), the Council can recommend either in favour of that request or against it, according to the circumstances and in order to guide the decision of the General Assembly. In both these cases the first move is made, not by the Council, but by the applicant State.

In both these cases, the action of recommending can move in two directions: in favour of or against the application.

The self-same thing occurs in the case of the admission of a new Member (Article 4); the action can move in either of two directions: in favour of or against the admission, in favour of or against the application. The first move is made not by the Council but the applicant State. The favourable or unfavourable recommendation, however, is made by the Council. But a previous study of the qualifications required according to Article 4, paragraph 1, must be made, i.e., that it be a State, that it be a peace-loving State, one that accepts the obligations of the Charter, one that shows itself willing and able to do so.

Summing up therefore, in three of the only six cases in which the Charter uses the expression "upon recommendation", the Council can only act in one direction if it wishes to act at all, and there can be no doubt that at least in the case of the appointment of a candidate for Secretary-General, the Council must act. In the other three cases, it can act in two directions: in favour or against, and even in three directions if we consider the possibility of a postponement.

In the case of the admission of new Members, *the Council must act.* In this case, recommending is a *function* and not a *power.* Moreover, the Council cannot decide the number of States that will compose the Organization, and thus interfere in one of the most important institutional prerogatives of its Members expressly meeting in plenary assembly.

* * *

With reference to the existing relation between the *recommendation* of the Security Council and the *decision* of the General Assembly to which I have referred, and in order to enhance the importance of the recommendation, it has been argued that in so far as concerns the admission of new Members, the recommendation is a *decision* of the Security Council.

There can be no doubt regarding this. All volitional act, however insignificant it be, requires a decision. But those who argue thus forget that paragraph 2 of Article 27 of the Charter which refers to procedural matters also refers to decisions. As does also paragraph 3 of the same article.

What we should like to know is whether that "decision" of the Security Council solves the matter conclusively, or in other words, whether it is a final decision.

The *recommendations* which the Security Council may make in the fulfilment of its specific tasks of maintaining peace and security by pacific means, are not mandatory but are nonetheless final decisions. No other organ of the United Nations can either modify or cancel them. And the General Assembly is obliged to refrain

from interfering with recommendations on any matter whatever so long as that matter is being considered by the Council.

* * *

The phrase "upon recommendation" used in Chapter II, Article 4, as an obligation of the Security Council, has nothing whatever to do, nor can it be compared, with the recommendations mentioned in Chapter VI. These latter are final decisions of the Council and are adopted in the exercise of its specific powers.

The *recommendation* mentioned in Article 4 with regard to the Security Council is not *isolated*. It may certainly be considered a decision, but never a final one; it is linked to a decision which is to be taken by the General Assembly, and this last decision is final and cannot be either modified or annulled by any other organ of the United Nations. Therefore, the recommendation of the Council is only a procedural decision, and were the system of voting of Article 27 applicable—as some contend—it is paragraph 2 and not paragraph 3 which should be applied.

Because in the final analysis, the entire process of the admission of new Members—from the moment that the original application is presented and until the General Assembly adopts its final decision—is all procedural; and one of the stages of this procedure is the recommendation called for from the Security Council. This procedure cannot be interrupted by the will of one of the organs which take part in it, no matter what importance that organ attributes to itself. The only matter of substance is the final decision, that is when the admission is permitted or not, and in this final act the Council takes no part.

* * *

The word "recommendation" is very often in the Charter outside of Articles 4, 5, 6, 93 and 97. In Chapter IV, when it refers to the functions and powers of the General Assembly (Articles 10, 11, 12, 13, 14 and 17); in Articles 36, 37 and 38 of Chapter VI, when considering the specific powers of the Security Council with regard to the pacific settlement of disputes; in Chapter VII, when these same powers are considered with regard to the action to be taken by the Council in cases of breaches of the peace and acts of aggression (Article 39); in Chapter IX, when it examines international economic and social co-operation (Article 58); in Chapter X, when laying down the functions and powers of the Economic and Social Council (Articles 62, 63, 64 and 66); and in Chapter XIV, which refers to the International Court of Justice and considers the possible decisions of the Security Council upon measures to be taken to give effect to the judgments of the Court.

The meaning of the word in these cases is very varied ; recommendations vary according to the circumstances. They can be positive or negative, or conditional, to do or not to do, etc., and nothing will be gained by labouring this point.

With regard to the meaning of the phrase "upon recommendation", it would be useful to find out whether the Council *can* or *should* make recommendations.

It is well known that recommendations are not binding—but that is not the question at issue. What we must find out is whether the organs to which the Charter gives the power of recommending are bound to exercise that power.

In the case of Articles 5 and 6 dealing with the suspension or the expulsion of Members, it is obvious that the recommendations become sanctions, that is to say, the putting into effect of extreme and punitive measures which, as countries are involved, are not easy to adopt because of the reactions they may provoke and because they jeopardize peaceful international existence and co-operation.

When the Security Council recommends such measures and the General Assembly, having accepted the recommendation, applies them, these organs are fulfilling a necessary and appropriate *function* in order to ensure the welfare of the Organization ; but such a function is not automatic. As always when political sanctions are applied, the person or organ enforcing them, in this case the Security Council, exercises at the same time a *power*.

The Security Council has to weigh the causes, the timeliness, the consequences before it can recommend such grave measures, and to this extent it exercises a *power* that it alone can wield. However grave the causes, in the opinion of some of its Members or of third parties, the Security Council *is not bound* to recommend the suspension or expulsion of a State, however numerous the reasons it may have for so doing. And thus the function entrusted to it is identified with the power of enforcing it or not according to the dictates of the conscience of its eleven Members.

Naturally, therefore, the General Assembly cannot exercise its power of decision until the Council has recommended the measure.

However, notwithstanding the fact that the situation is entirely different with regard to Articles 4, 93 and 97 of the Charter, even in these cases the General Assembly decides *upon recommendation* of the Security Council.

In order to exercise that right, the Charter has granted the General Assembly the help of the Security Council, *upon the recommendation* of which it adopts its decisions. But the Charter has very clearly and specifically laid down the conditions to be fulfilled by the applicant States before they can be admitted. Hence the task of the Security Council is a *function* given it by the Charter, and that function is bound to the life of the Organization and is not a special *power* which can be added to the

"specific" powers referred to in Article 24 and defined in Chapters VI, VII, VIII and XII.

For that reason, the Security Council *is obliged* to make a recommendation by virtue of Article 4 because it is not exercising a power but fulfilling a function.

The same applies for Article 97. The Charter requires the Organization to have an officer called the Secretary-General who is also the Chief Administrative Officer. The General Assembly must appoint such an officer *upon recommendation* of the Security Council once every five years. Can the Council omit to propose a candidate? No. The Security Council *is bound* to recommend a candidate, and by so doing it is not exercising a *power* as of right, but fulfilling a *function* as of duty.

The same applies to Article 93. The recommendation of the Security Council is not an exercise of power, it is the fulfilment of a function and a function which the Security Council has no right to leave unfulfilled.

* * *

I have only a few more remarks to make before concluding this part of my argument.

We have drawn the attention of the Court to the provisions of paragraph 1 of Article 4 which refer to the *judgment of the Organization.*

The Charter requires that the *judgment of the Organization* be known in order to decide upon the admission of new Members, and this is the only occasion in which the Charter uses that expression. Many articles refer to the "Organization" as an abbreviation of the title "United Nations Organization". But it is only in Article 4, when dealing with the future of the United Nations, that the Charter speaks of the "*judgment of the Organization*" and lays down that the Security Council and the General Assembly shall make known their judgment through a recommendation of the former and a final decision of the latter.

The Assembly has not been given the right to take a final decision for a mere whim. The constitutional powers are vested in the Assembly because it consists of all the Member States (Article 9); the power to renew the other organs are vested in the Assembly (Articles 23, 61 and 83); and so are the powers of control over the entire Organization (Articles 10 and 15). In the Assembly lies that spirit which on the 1st January, 1942, gathered together in Washington the 41 nations who wished to unite to win the war, that same spirit which brought together 50 nations at San Francisco on the 25th April, 1945, to organize and maintain peace.

The Charter could not, in fact did not, decide otherwise! On the other hand, that interpretation which the Argentine Delegation

has contested and which it now contests in this present document, tends to hand over the future of the Organization to the vote, if not to the caprice, of *merely one* of the permanent Members of the Security Council. And this is no exaggeration. The negative vote of any one of the permanent Members is sufficient to create the fiction that the Security Council has arrived at no decision and thus hinder the exercise of the final power of decision of the General Assembly.

This is tantamount, and practice has proven it so, to placing the right of decision in the hands of the Security Council, but the Charter says nothing concerning the *judgment of the Security Council*, it requires the *judgment of the Organization* and lays down the procedure whereby that judgment is to be given. The practice followed heretofore violates the Charter, and, what is yet more serious, jeopardizes the future of the Organization.

* * *

Having thus grammatically and juridically proved the precise meaning of the phrase "upon recommendation of the Security Council" which appears in paragraph 2 of Article 4, may I now be permitted to test that proof by a study of the context of the Charter. The juridical correlation of the different chapters will bring us to the same conclusion.

II

The authors of the Charter have been blamed for certain tautology due to their lack of legal experience, more particularly in Articles 1 and 2, also for the inadequate use of certain phrases. If such were the case, the defects could be ascribed to the fact that the document in question is a multilateral treaty which was prepared and approved by a political conference at which were present 50 States having the right to speak, submit proposals and vote.

However, it must be admitted that the structure of the Charter is very clearly defined insofar as it refers to the Statute of the Organization which it was desired to set up.

Setting aside the two first chapters which lay down the purposes and principles upon which the proposed Organization was to be set up, and which States who are and who might become Members—and these are chapters of fundamental importance and essential to the creation of the said Organization—the Charter consists of a nucleus of 13 chapters (III to XV) which form the true constitution or organic Charter of the United Nations, and an appendix of 4 chapters (XVI to XIX) which deal with different questions of an accessory character though necessary in this type of document.

The nucleus begins by defining the organs established in order to make the Organization work (Chapter III). Subsequently a chapter is devoted either specifically to each of the organs concerned (Chapters IV to XV), or to matters related to the object for which those organs were established.

It is worth looking at those chapters in detail. Chapter IV deals with the General Assembly; Chapter V with the Security Council; followed by Chapters VI, VII and VIII which define its specific powers. Chapter X deals with the Economic and Social Council and is preceded by Chapter IX which establishes the general principles of economic and social co-operation; Chapter XIII deals with the Trusteeship Council and the preceding Chapters XI and XII refer to non-self governing territories and to the international trusteeship system. Chapter XIV deals with the International Court of Justice, and finally Chapter XV is devoted to the Secretariat.

For obvious reasons I am setting aside the last two chapters and shall concentrate on an analysis of Chapters IV, V, X and XII, i.e., those referring to the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council.

Each of those chapters was carefully but uniformly broken up into sections which in clear and precise terms define the problems to be dealt with in regard to the four organs mentioned above.

Both in the case of the General Assembly and in the case of the three Councils, these sections bear the same titles: "Composition", "Functions and Powers", "Voting", "Procedure". No particularly subtle legal perspicacity is required to realize that the authors of the Charter accurately defined the composition, functions and powers, voting, and general rules of procedure of *each* of the four organs concerned. Having carefully defined them, they were separated in order to avoid all possibility of misunderstanding or duplication of functions.

There was an additional safeguard provided in the case of the Security Council. In Article 24, the first in Section "Functions and Powers", reference is made to the "specific powers" granted to the Security Council for the discharge of its duties defined in Chapters VI, VII, VIII and XII.

These facts lead us now to affirm that all reference to the *functions and powers* of the General Assembly and the three Councils is contained in the appropriate chapters of the nucleus of the Charter, and that the *voting* and the *general rules of procedure* have been provided for the General Assembly and the Councils, bearing in mind those very functions and powers, as limitedly enumerated in those four chapters and the others closely related to them.

In other words, the voting and rules of procedure established in Chapter IV are applicable only in the exercise of the functions and powers granted to the General Assembly in Chapter IV. The voting and the rules of procedure established in Chapter V are

applicable only in the exercise of the functions and powers granted to the Security Council in Chapters V, VI, VII, VIII and XII; the voting and rules of procedure established in Chapter X are applicable only in the exercise of the functions and powers granted to the Economic and Social Council in Chapters IX and X; and finally, the voting and rules of procedure established in Chapter XIII are applicable only in the exercise of the functions and powers granted to the Trusteeship Council in Chapters XI, XII and XIII.

If, on the other hand, we look beyond the central nucleus of the Charter which relates to the General Assembly and the three Councils (Chapters III to XIII) and try to find faculties or attributes related to the objects at the basis of the establishment of these organs, our search will be in vain. Should we discover such attributes, they will be found to be related to the structure proper of the Organization, but that in no case are they related to the activities of its organs. Reference to the latter is found in their respective chapters.

With regard to the attributes connected with the structure of the Organization, they are to be excercised subject to the text of the provisions which establish them and the inherent character thereof.

I referred previously to the six special powers granted to the General Assembly and the Security Council, namely, those contained in Articles 4, 5 and 6 (Chapter II), Article 93 (Chapter XIV), Article 97 (Chapter XV) of the Charter and Article 4 of the Statute of the International Court of Justice. In each of these articles, the General Assembly is granted the right to make decisions upon recommendation of the Security Council.

An attempt has been made to exercise functions proper to and necessary for the life of the Organization. The General Assembly's share in the first three allotted to it has been dealt with in Chapter IV (Article 18), among them, those matters to be considered as important and thereby conferring real power upon the General Assembly.

The Security Council's share in those chapters is not mentioned among those enumerated in Chapter V and related chapters, and consequently represents the exercise of a function.

A correlated study of the whole text of the chapter shows, therefore, that paragraph 3 of Article 27 is not applicable when the Security Council considers what recommendation it is to make with regard to the admission of a new Member from among those applications which are submitted to the Organization.

III

Even in those cases in which a correct interpretation is given after an analysis of the text of the Charter, ratification could be

sought in the preparatory work of the establishment of the Charter, and not considering this superfluous, I now propose to do this.

The provisions of paragraph 2 of Article 4 of the Charter are based upon the Dumbarton Oaks Proposals (Chapter V, Section B, paragraph 2) regarding the admission of new Members. That proposal reads as follows :—

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

At the meeting on May 9th of Committee II/1 (Committee 1 of Commission II), the Egyptian Delegation proposed that the General Assembly should admit new Members after consideration of the opinion of the Security Council. It affirmed that the admission of new Members was not a matter constituting a threat to the peace or to international security.

The Australian Delegation proposed that the Security Council should not intervene except in cases where the State concerned had been at war with one of the United Nations subsequent to September 1939.

The Delegation of the United States of America affirmed that Member States of the Organization should have unquestioned confidence and faith in their future colleagues.

At the same committee's meeting of the 10th May, some delegates were of the opinion that the Security Council should have deciding authority in the matter and that care should be taken to avoid inclusion in the Charter of any provisions which might be liable to provoke disputes between the General Assembly and the Security Council.

The Chinese Delegation proposed to change the date given by the Australian Delegation and make it September 1931, date of the invasion of Manchuria.

At the above-mentioned meeting, Committee II/1 rejected the amendments suggested by Egypt, Australia, Brazil, Paraguay, Venezuela and Uruguay and approved the Dumbarton Oaks proposal as it stood, by 22 votes to 9.

On the 25th May and by a vote of 28 to 0, it confirmed that decision after having submitted the text previously approved to a drafting sub-committee. The text was worded as follows:—

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

On the 30th May, the rapporteur's report to the Commission II was considered, approved by it, and the text referred to the Committee for Co-ordination.

On the 18th June, the Co-ordination Committee advised the substitution of the text approved by the Committee and the Commission by the following :

"The admission of any State to membership in the United Nations shall be made by a decision of the General Assembly upon the recommendation of the Security Council."

That same day, Committee II/1, presided over by Hasan Saka, of Turkey, examined and approved the text as revised by the Co-ordination Committee.

On the 19th June, Committee II/1 considered and approved the second report of the Rapporteur, to be submitted to Committee II. The pertinent part of that report is as follows :—

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 the recommendation of the Security Council, was in any 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, or a recommendation to the effect that a given State should not be admitted to the United Nations.

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."

On the 21st June, Commission II, presided over by Marshal Smuts, approved the text submitted by the Co-ordination Committee which had been adopted two days previously by Committee II/1. In this connexion, the words of the Chairman of the Second Commission should be recalled. Marshal Smuts stated :—

"The next point (on the agenda), the admission of new Members, does not call for any action. The matter to be clarified was whether the text, as adopted, weakened the position of the General Assembly, and the Committee of Jurists advised that it did not. The First Committee therefore recommends that the Jurists' opinion should be included in the minutes. That will be done, so that no action need be taken by us." Thus the Second Commission unanimously adopted the text which its Committee 1 had approved on the 19th of June.

Under the chairmanship of Lord Halifax, the Conference met in plenary session on the 25th of June, and having heard the report of Dr. Alfaro, Rapporteur of the Second Commission, unanimously approved the text to which we have referred.

Shortly after, the Members of the Conference rose to their feet and unanimously approved the Charter, together with the reports of the four Commissions, and the text to which we have referred became Article 4, the article which is the basis of this study.

* * *

It is clear from the foregoing that the preparatory work leading up to the adoption of Article 4 of the Charter fully confirms the interpretation to which we have arrived from a grammatical and juridical examination of the text of the article, and from a correlation of the different provisions contained in the Charter itself.

The resolution which was approved on the 19th June by Committee 1 of the Second Commission (Committee II/1), which was the expert body which prepared matters relating to the admission of new Members, could not be more clear. According to that resolution, the General Assembly may accept or reject a Security Council recommendation in favour of the admission of a new Member, just as it can likewise accept or reject a Security Council recommendation against the admission of any given State to membership in the Organization.

First the Committee, then the Commission, and finally the Conference itself, in plenary session, approved the resolution ordering that note be taken in the records that such was the only interpretation to be given that article—Article 4.

An analysis of both the text and its context, and an examination of the preparatory work, lead to the same conclusion, and therefore we are able to state that the Security Council is bound to make either a favourable or unfavourable recommendation on each occasion in which it considers an application for admission from a State. By so doing, the Council will be fulfilling the *function* ascribed to it without hindering the exercise of the power of the Assembly to make the final decision.

Reference was made previously to the importance of the complementary resolutions adopted by the San Francisco Conference, and on that occasion I was referring to the resolution which was adopted whereby the recommendation of the Security Council concerning the candidate for Secretary-General should be voted upon subject to the provisions of paragraph 3 of Article 27. That resolution is not in the Charter, but it is in the records and therefore must be respected.

The same applies to the resolution which was adopted (and to which I have referred) in connexion with the admission of new Members. This resolution is not in the Charter either, but it too is in the records and therefore must also be respected. Hence, when considering applications for the admission of new Members, the Security Council may make a favourable or an unfavourable recommendation, but *it is obliged* to make a recommendation of some sort that the General Assembly will be able to take the final decision.

* * *

It has been argued that some delegations defended the view that in this matter the Security Council should have a preponderant part, and this is so. But there were also those who defended the

universality of the Organization, unfettered and, in particular, free from all intervention from the Security Council.

We are of the opinion that we should abide by the text sanctioned and the explanatory resolution adopted.

The views of those countries which opposed the intervention of the Security Council must have carried some weight at the time when the text which had been approved and revised was submitted to the Co-ordination Committee for its opinion and study as to whether the rights of the General Assembly had been weakened in this matter.

The Co-ordination Committee consulted the Advisory Committee of Jurists and returned the text drafted in the form in which it was finally adopted and accompanied by the explanation to which we have alluded. Both the text and the explanation were approved with the addition that the latter was ordered to be inserted in the records as constituting the only interpretation to be given to the said wording.

* * *

I have already pointed out the importance of the explanatory and complementary resolutions of the Charter, and I have referred to two of them : the first, specifying the right of the Members of the Security Council to use the "veto" in connexion with a recommendation regarding a candidature for the post of Secretary-General, and the second which sets up as the only rule for the interpretation of paragraph 2 of Article 4, the power of the Security Council to make a recommendation, either in favour of the admission of a new Member or against it.

But I feel constrained to deal with a third resolution. The Charter contains no resolution—nor provisions—with regard to the right of Members to withdraw from the Organization ; yet the Conference recognized the existence of that right, and, with a view to avoiding any possible discussion thereon, approved a complementary resolution establishing that right.

The resolution in question states :

> *"Declaration on withdrawal.*
>
> The Committee (Committee II of the First Commission) adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. The Committee deems that the highest duty of the nations which will become Members is to continue their co-operation within the Organization for preservation of international peace and security. If, however, a Member, because of exceptional circumstances, feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its co-operation in the Organization.

It is obvious, however, that withdrawal or some other form of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice.

Nor would it be the purpose of the Organization to compel a Member to remain within the Organization if its rights and obligations, as such, were changed by Charter amendments in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly, or General Conference, fails to secure the ratification necessary to bring such amendment into effect.

It is for these considerations that the Committee has decided to abstain from recommending the insertion in the Charter of a formal clause specifically forbidding or permitting withdrawal."

That statement was approved by Committee I/2 on the 17th June, 1945, by 38 votes in favour and 2 against, with 3 abstentions, and on the 25th by the Conference in plenary session.

Numerous well-known American jurists have testified before the Senate Foreign Relations Committee that once that statement was approved by the Conference, it became an integral part of the Charter.

I shall be bold enough to affirm that, as a basis for that opinion, neither the Committee nor the Senate Committee had any objection to the ratification of the Charter, for they were convinced that it would not be violated were the United States one day to withdraw.

Taking as a basis these expressed opinions, I contend that the explanatory resolution regarding the admission of new Members which was approved by the Committee concerned, on the 19th June, by the Commission on that same day, and by the Conference on the 25th June in plenary session, is legally if not materially a part of the Charter.

I therefore hold that the Security Council *is obliged* to make a recommendation either in favour of or against applications for admission of new Members ; that once the voting has taken place, applications which obtain seven or more affirmative votes receive a favourable recommendation, whereas those applications obtaining only six or less affirmative votes receive an unfavourable recommendation.

Should it occur that the Security Council lays down as one of its rules of procedure that one or more negative votes from its permanent Members would cancel an affirmative vote, then any application, the consideration of which has led to that action, would receive an unfavourable recommendation regardless of the number of affirmative votes cast in its favour.

* * *

One of the generally accepted—and observed—rules of positive international law is that of *reasonable* interpretation. If a clause of the Charter gives rise to two interpretations, one of which gives a reasonable or practical meaning to the text and another which leads to an absurd conclusion or which presents the fulfilment of the purpose for which it was included in the text, it is clear that the interpreter of said clause should prefer the first.

In the case before us, that rule confirms my argument. The interpretation maintained by the Argentine Delegation permits the fulfilment of the purpose which the founders of the Organization had in mind—an organization which may be aggrandized by the admission of new States so long as they comply with the requirements of the Charter. The opinion of each Member of the Security Council, particularly that of the permanent Members, can carry the required weight in the minds of the Members of the General Assembly which has to present a two-thirds majority vote for the admission of a new Member. The opposition of the Security Council, and especially that of the permanent Members, will be patent, and may easily constitute a vote of a third plus one, which is required in order to reject an application unfavourably recommended.

On the other hand, the interpretation which we are contesting might, for political reasons, close the doors of the Organization to States which fulfill the requirements of paragraph 1 of Article 4, and might create the *absurd situation* in which one State alone could oppose the will of the remaining 58.

* * *

How can one admit the fact that the interpretation which we contest prevails over the text and context of the Charter and in spite of the explanatory resolutions discussed and more than once amended and examined by the searching eyes of the Committee of Jurists and the Co-ordination Committee and ultimately and unanimously approved by the plenary session of the San Francisco Conference ?

How can one possibly countenance an interpretation which expressly contradicts the true and real meaning given to a clause of the Charter by the official reports of the Conference ?

It is perfectly clear that the action taken thus far by the Security Council with regard to the admission of new Members is not a reasonable interpretation of paragraph 2 of Article 4 of the Charter.

V

The Argentine Delegation has often made reference to the "spirit of San Francisco", but that spirit has unquestionably disappeared, vanished, deserted us. And to such an extent, that even the most optimistic of us is forced to talk of a "cold" war as a euphemism to describe the present crisis in the realm of international politics.

Indeed yes, the spirit of San Francisco has gone. *The political situation has changed.* The Charter was signed under the impression that the oft-vaunted *rule of unanimity* would operate with clockwork regularity. But the facts make it painfully obvious that the principle of unanimity only operates when it is a question of defending the privilege which it sanctifies. It is common knowledge that the nations not thus privileged agreed to accept the adoption of this principle solely because it was to have been the guarantee of absolute peace and international security.

At that time, we were told that the "veto" would only be used under exceptional circumstances. But in actual fact, it is brought out daily, even to the point of utilizing it where it is illegal to do so—in the case of the admission of new Members.

Conditions have changed, and the States that accepted the principle under the duress that there would be no Charter without it, and with the promise that it would only be invoked in exceptional cases, have at present entire right to withdraw from the Organization because one of its organs, the Security Council, far from carrying out the functions for which it was established, twists and turns and is, practically speaking, unable to act.

However, the Argentine Delegation does not propose a withdrawal, nor does it intend a dissolution of the Organization. We seek to strengthen the United Nations by attracting new Members that will infuse into it new vigour, new ideas, and that will contribute to emerging from the *impasse* into which the Organization has been forced.

The campaign against the veto in San Francisco could now become a campaign for withdrawal from the Organization, thus leaving the "greater Powers" to solve their own differences without jeopardizing the moral prestige of the lesser Powers. But that is not our intention.

In view of the difficulties which have arisen regarding the admission of new Members, the Argentine Delegation has appealed to its peers to turn to the political power of the Organization, and, with their decision and vote, defend the right of the General Assembly to consider the applications for admission, regardless of the attitude of the Security Council.

Such a decision of the General Assembly could not be appealed against, and the Security Council would have no alternative but to accept the facts and bow to them, accepting the view that the General Assembly will no longer tolerate the supererogation of powers which it has permitted thus far. Such an attitude of the General Assembly would be worthy of the noble reasons for which the Organization has Members.

And the General Assembly has the right to act thus, first of all, because any legal body which has the right to apply a legal principle has the power to interpret it. Then too, if the Assembly act in this way, it would merely be following in the footsteps of the Security Council in the same matter. The Security Council maintains that paragraph 3 of Article 27 is applicable in the recommendation for admission of a new Member, that is to say, that seven or more affirmative votes—including those of the five permanent Members—are required. However, when the application of Israel was considered, the Council accepted it by the vote of *only four of the permanent Members*. The fifth abstained from voting, and in flagrant violation of the Charter, the Security Council decided that in the case of an abstention, four votes equalled five votes.

The General Assembly was weak enough to accept this turnabout, and cannot be blamed for it, because as far as the Argentine Delegation is concerned, the veto cannot anyway be applied in the case of the admission of new Members.

I have cited this case simply to show that the Security Council exercises its political power to interpret—as it deems fit—the clauses which it alone is in a position to apply. And I maintain, with even more justification, that since the General Assembly and it alone is entitled to *decide*, it should exercise its political powers of interpretation in order to affirm those powers confirmed for it by paragraph 2 of Article 4.

Furthermore, the San Francisco Conference expressly authorizes the General Assembly to proceed in this manner when, having decided not to include in the Charter a special authorization to interpret it, it admitted in a report unanimously adopted that the different organs of the United Nations have the right to interpret those clauses which refer specifically to the powers conferred upon them.

On May the 28th, Committee IV/2 discussed the question of the interpretation of the Charter and decided to appoint a subcommittee to advise it with regard to this matter.

That sub-committee examined the debate on the question and decided that the following could be drawn from it :

In the course of the daily work of the different bodies of the Organization, it is inevitable that each organ will interpret the provisions of the Charter in the light of its own functions. This procedure is inherent in the proper functioning of each organ which works in accordance with a Statute defining its powers and functions. It will be made obvious in the work of such bodies as the General Assembly, the Security Council and the International Court of Justice. Therefore, it is not necessary that the Charter carry a special provision authorizing or permitting the application of the normal meaning of this principle.

It is possible that certain difficulties may arise if there is a contrary opinion expressed among Members of the Organization about the correct interpretation of certain provisions of the Charter. Therefore, two bodies may hold, express and even act in accordance with different points of view. In national governments, the final decision on such matters can be entrusted to the Supreme Court, or to any other national authority. But, nevertheless, the character of the Organization and its actions do not appear to be such as to invite the inclusion in the Charter of a provision of this sort.

. . . . . .

It is, of course, understood that if an interpretation *given by one organ of the Organization*, or by a Committee of Jurists, is unacceptable to all, then such an interpretation is not obligatory. In such cases, or when an authorized interpretation is required to serve as a precedent for the future, it may be necessary to include such an interpretation in an amendment to the Charter.

The underlining is my own.

On the 7th June, Committee IV/2 considered the sub-committee's report and stated that if two organs had different opinions regarding the correct interpretation of the Charter, they can request an advisory opinion from the International Court of Justice, or they can establish a Committee of Jurists *ad hoc* to consider the matter, or even to call a joint conference of the two bodies concerned.

On the 15th June the report was adopted by the Fourth Commission and on the 25th of the same month, the plenary meeting of the Conference did likewise.

I should like now to cite a few of the ideas of Kopelmanas—from his book *L'Organisation des Nations Unies.*

"When an organ votes in accordance with *the conditions set forth in the provisions which govern its competence and functions, it gives to the interpretation implemented in that act the same value as that given the action itself, and if that act is to be abided by by all the Members of the Organization, the above-mentioned interpretation must automatically produce the same effect.*"

The underlinings are my own.

Kopelmanas adds—and I share his views—that such an interpretation is not a precedent, and only has validity for the specific case in which it was applied.

For all these reasons, I believe that the General Assembly could interpret paragraph 2 of Article 4 of the Charter in the manner which has been consistently defended by the Argentine Delegation.

9. EXPOSÉ ÉCRIT DU GOUVERNEMENT DU VENEZUELA

1. *Dispositions de la Charte des Nations Unies.*

L'article 4 de la Charte établit les conditions par lesquelles un État peut être admis comme Membre de l'Organisation. Ces conditions sont claires et précises : « Peuvent devenir Membres des Nations Unies tous autres États pacifiques qui acceptent les obligations de la présente Charte et, au jugement de l'Organisation, sont capables de les remplir et disposés à le faire. » Le paragraphe 2 du même article détermine les conditions auxquelles sera soumise l'admission : « L'admission comme Membre des Nations Unies de tout État remplissant ces conditions se fait par décision de l'Assemblée générale sur recommandation du Conseil de Sécurité. »

La lecture des deux paragraphes met en relief l'existence d'un très fort lien qui fait de ces deux parties un tout harmonieux et inséparable. En effet, le paragraphe 1 affirme, en des termes qui ne laissent aucun doute, que pourront être Membres des Nations Unies les États qui, « au jugement de l'Organisation, sont capables de remplir lesdites conditions et disposés à le faire ». Le jugement de l'Organisation n'est pas en ce cas la décision isolée de l'Assemblée, puisque le paragraphe 2 exige pour l'admission de ces Membres le concours de volontés du Conseil de Sécurité et de l'Assemblée générale.

Sans doute, il y a des situations dans lequelles la simple décision de l'Assemblée constitue par soi-même le jugement de l'Organisation ; mais dans le cas qui nous occupe ce « jugement » exige l'opinion favorable des deux organismes comme condition requise indispensable ; si le seul vote de l'Assemblée était suffisant dans cette matière, les rédacteurs de la Charte auraient eu bien soin d'y établir comme étape préalable du procès, la recommandation du Conseil de Sécurité. Celui-ci n'est pas le seul cas dans lequel l'acquiescement commun des deux organismes soit exigé. La Charte, en effet, signale spécifiquement les affaires qui, pour être considérées de grande importance, exigent le concours de vue du Conseil et de l'Assemblée, avec l'indiscutable caractéristique que ce soit toujours le Conseil de Sécurité le seul appelé à agir et à exprimer son opinion dans l'étape initiale de chaque procès.

Par exemple, il apparaît clair que la suspension des droits et privilèges d'un Membre ne peut être décidée par l'Assemblée sans la préalable recommandation du Conseil de Sécurité. Tel est, à notre avis, le sens et la portée corrects du texte de l'article 5 de la Charte, qui, dans sa partie finale, renforce davantage les pouvoirs du Conseil de Sécurité quand il établit que la restitution de l'exercice des droits et privilèges suspendus peut être accordée par la décision du Conseil de Sécurité sans qu'il soit nécessaire

pour cela du consentement de l'Assemblée générale. Il n'y a donc pas de doute que la faculté spéciale — conférée par la Charte au Conseil de Sécurité — naît ou s'établit du fait du caractère permanent de celui-ci, ce qui lui donne la possibilité d'agir en n'importe quel moment et en toute émergence, tandis que l'Assemblée ne se trouve réunie que périodiquement, et, partant, attendre la décision de l'Assemblée dans des problèmes ou des cas qui méritent une solution rapide, ne ferait qu'un obstacle au fonctionnement de l'Organisation des Nations Unies. Cet exemple peut donner une idée exacte de l'ampleur des pouvoirs que la Charte confère au Conseil de Sécurité.

Il convient peut-être de mentionner d'autres cas ou situations dans lesquels l'Assemblée générale et le Conseil de Sécurité doivent agir de plein accord :

1) Expulsion définitive de Membres (article 6 de la Charte) ;
2) Élection du Secrétaire général des Nations Unies (article 97 de la Charte) ;
3) Élection des membres de la Cour internationale de Justice (article 4 du Statut de la Cour).

Il est clair que dans le cas susmentionné la phrase « par recommandation du Conseil de Sécurité », qui apparaît à plusieurs reprises dans la Charte, n'est pas simplement une formalité, mais au contraire un élément indispensable et de grande signification, apporté délibérément pour imposer l'accord des deux organismes — Assemblée générale et Conseil de Sécurité — dans les affaires qui, par leur transcendance, pourraient affecter le fonctionnement et le développement des Nations Unies.

2. *Attributions de l'Assemblée et du Conseil de Sécurité.*

Quelques-unes des dispositions de la Charte déterminent l'orbite de l'Assemblée et du Conseil et leurs études pourraient démontrer la force logique des conclusions ci-dessus mentionnées. Ainsi les articles 10 et 11 confèrent à l'Assemblée générale des pouvoirs étendus pour discuter des affaires de toute sorte, mais cette faculté n'a pas un caractère discrétionnaire vu que l'article 10 établit la première limitation quand il détermine que « l'Assemblée générale peut discuter toutes questions ou affaires rentrant dans le cadre de la présente Charte ». De ceci on peut déduire que la souveraineté de l'Assemblée n'est pas sans restriction et qu'elle doit être exercée d'accord avec les normes dictées par la Charte. La Charte, en effet, exige en forme expresse l'accomplissement des conditions données, afin que les différents organismes des Nations Unies puissent remplir les fonctions qui leur ont été respectivement assignées.

L'article 12 établit une deuxième limitation à l'action de l'Assemblée générale : « Tant que le Conseil de Sécurité remplit, à

l'égard d'un différend ou d'une situation quelconque, les fonctions qui lui sont attribuées par la présente Charte, l'Assemblée générale ne doit faire aucune recommandation sur ce différend ou cette situation, à moins que le Conseil de Sécurité ne le lui demande. » Ce texte représente une importante restriction aux pouvoirs de l'Assemblée.

3. *Emplacement du problème dans les termes de la Charte.*

L'article 27, paragraphe 2, de la Charte établit que sur les questions de procédure, le Conseil de Sécurité prendra ses décisions par le simple vote affirmatif de sept de ses membres, sans distinction de catégorie. Le paragraphe 3 du même article détermine que les décisions du Conseil sur toutes les autres questions seront prises également par le vote affirmatif de sept membres, y comprises « les voix de tous les membres permanents ».

En face de ces deux sortes différentes de votations on se trouve en présence du problème de déterminer si l'admission d'un État comme Membre des Nations Unies est, oui ou non, une simple question de procédure. Le ministère des Affaires étrangères du Venezuela juge que la clarté de l'esprit et du texte de la Charte en ce point ne laisse aucun doute. En effet, l'article 18, paragraphe 2, *sur les questions importantes*, qui doivent être approuvées par une majorité de deux tiers des membres présents dans l'Assemblée générale, mentionne expressément comme appartenant à cette hiérarchie « l'admission den ouveaux Membres » aux Nations Unies. Cependant, la Charte définit bien que le problème en étude n'est pas un simple cas de procédure, mais « une question importante » ou de fond.

En fixant ainsi la nature du problème, il est évident que, pour sa bonne solution, on doit tenir compte du principe sanctionné par l'article 27, paragraphe 3, qui exige l'unanimité de cinq membres permanents du Conseil de Sécurité. Le vote adverse d'un des cinq membres empêcherait automatiquement l'admission d'un nouvel État.

Nous ne nous arrêterons pas à des considérations sur les avantages ou inconvénients du système. Il s'agit ici de fixer un jugement sur la droite application des termes de la Charte, jugement qui s'appuiera exclusivement sur des principes essentiellement juridiques, sans faire cas d'influences politiques qui pourraient dénaturer les postulats essentiels de l'Organisation.

4. *Sens du mot recommandation.*

Dans plusieurs réunions de l'Assemblée des Nations Unies, la délégation du Venezuela a eu l'occasion d'exprimer son avis à ce sujet. Le terme « recommander » doit être interprété dans un sens favorable, ainsi que dans le langage courant. Il est, en effet, difficile d'imaginer qu'il puisse exister une « recommandation »

défavorable ou négative ; mais en tout cas, à l'examen arrêté de la forme et du texte du paragraphe 2 de l'article 4, la chancellerie vénézuélienne juge par simple norme herméneutique que le mot « recommandation » doit être interprété, en ce cas, dans un sens positif, car, en sens inverse, il apparaîtrait complètement inutile de l'exiger.

En relation avec ceci, le ministère des Affaires étrangères du Venezuela trouve tout à fait juste l'attitude du Conseil de Sécurité quand il s'abstient de communiquer à l'Assemblée le vote négatif dans l'admission de nouveaux Membres. Ce vote négatif constitue l'absence de « recommandation ». Par ailleurs, le Conseil a l'obligation d'en informer l'Assemblée, mais il peut le faire à une autre opportunité, comme par exemple au moment de rédiger les mémoires annuels ou spéciaux, prévus dans l'article 24, paragraphe 3, et en cette occasion il pourrait en référer à l'Assemblée sur la sollicitation ou demande « non recommandée ».

5. *Le principe de l'universalité.*

L'universalité est, sans doute, l'un des principes essentiels des Nations Unies ; mais la lecture de la Charte révèle qu'une telle universalité n'est pas conçue comme principe absolu, ni même comme un fait totalement réalisé. Les Nations Unies penchent vers l'universalité comme un *desideratum*, mais avec les restrictions établies par la même Charte. On peut observer, par exemple, que seuls les États « pacifiques » peuvent devenir Membres des Nations Unies, d'où il découle que les États qui ne remplissent pas cette condition, ne peuvent opter à devenir Membres de l'Organisation. De même, la Charte confirme l'existence du système de gouvernement des territoires non autonomes, et cependant personne ne pourrait soutenir, comme appui du principe de l'universalité, que ces territoires doivent être rendus immédiatement indépendants pour qu'ils puissent devenir Membres des Nations Unies comme entité souveraine, ce qui serait une véritable transgression des dispositions de la Charte. Les mêmes conséquences pourraient en résulter, du fait de ne pas tenir compte de la recommandation du Conseil de Sécurité dans le cas de l'admission de nouveaux Membres.

6. *Harmonie des différents organismes des Nations Unies.*

L'harmonie des principaux organismes des Nations Unies, l'Assemblée générale, le Conseil de Sécurité, le Conseil économique et social et le Conseil d'administration fiduciaire, existe conjointement avec le principe de l'universalité de l'Organisation des Nations Unies et elle se trouve implicitement mentionnée dans la Charte. Par la nature et l'importance de ses fonctions et par l'ordre dans lequel s'établissent ses attributions dans la Charte, il n'y a pas de doute que l'Assemblée générale et le Conseil de

Sécurité sont les organismes de plus grande signification ; et, si l'on fait abstraction ou si l'on ne tient pas compte de la recommandation du Conseil pour l'admission de nouveaux Membres, ceci le mettrait en directe opposition à l'Assemblée, ce qui serait, par ailleurs, contraire à l'esprit, à l'équilibre juridique et à l'harmonie des différentes parties dans l'ensemble, que précisément les représentants à San-Francisco eurent bien soin d'établir dans la Charte.

* * *

En raison de ceci, la chancellerie vénézuélienne estime que l'admission d'un État comme Membre des Nations Unies par la seule décision de l'Assemblée générale et sans la recommandation du Conseil de Sécurité (soit parce que l'État aspirant n'ait pas réuni le nombre de voix nécessaires ou pour avoir obtenu le vote adverse d'un des membres permanents) représenterait une violation de la Charte des Nations Unies avec toutes les graves conséquences que ceci pourrait entraîner.

Caracas, le 17 janvier 1950.

Sceau :

EE.UU. de Venezuela,
Legacion en La Haya.