

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

Advisory Opinion of 3 March 1950

The question concerning the competence of the General Assembly of the United Nations to admit a State to the United Nations had been referred for an advisory opinion to the Court by the Assembly in its Resolution dated November 22nd, 1949.

The question was framed in the following terms:

“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?”

The Court answered the question in the negative by twelve votes against two. The two dissenting Judges—Judge Alvarez and Judge Azevedo—each appended a statement of their dissenting opinion to the Court’s Opinion.

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The Request for Opinion called upon the Court to interpret Article 4, paragraph 2, of the Charter. Before examining the merits of the question, the Court considered the objections that had been made to its doing so, either on the ground that it was not competent to interpret the Charter, or because of the alleged political character of the question.

So far as concerns its competence, the Court referred to its Opinion of May 28th, 1948, in which it declared that it could give an opinion on any legal question and that there was no provision which prohibited it from exercising, in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function falling within the normal exercise of its judicial powers. With regard to the second objection, the Court further pointed out that it could not attribute a political character to a Request which, framed in abstract terms, invited it to undertake an essentially judicial task, the interpretation of a treaty provision. There was therefore no reason why it should not answer the question put to it by the Assembly.

That question envisaged solely the case in which the Security Council, having voted upon a recommendation, had concluded from its vote that the recommendation was not adopted because it failed to obtain the requisite majority, or because of the negative vote of a permanent Member of the Council. It thus had in view the case in which the Assembly was confronted with the absence of a recommendation from the Council. The Court was not asked to determine the rules governing the Council’s voting procedure or to examine whether the negative vote of a permanent Member of the Council was effective to defeat a recommendation which had obtained seven or more votes. Indeed, the text of the question

assumed in such a case the non-existence of a recommendation.

The question was therefore whether, in the absence of a recommendation by the Council, the Assembly could make a decision to admit a State.

The Court has no doubt as to the meaning of the relevant clause: paragraph 2 of Article 4 of the Charter. Two things were required to effect admission: a recommendation by the Council and a decision by the Assembly. The use in the article of the words “recommendation” and “upon” implied the idea that the recommendation was the foundation of the decision. Both these acts were indispensable to form the “judgment” of the Organization (paragraph 1 of Article 4), the recommendation being the condition precedent to the decision by which the admission was effected.

Attempts had been made to attribute a different meaning to this clause by invoking the “*travaux préparatoires*”. But the first duty of a tribunal which was called upon to interpret a text was to endeavour to give effect to the words used in the context in which they occurred, by attributing to them their natural and ordinary meaning. In the present case, there was no difficulty in ascertaining the natural and ordinary meaning of the words in question, and of giving effect to them. Having regard to these considerations, the Court considered that it was not permissible for it to resort to the “*travaux préparatoires*”.

The conclusions to which the Court was led by its examination of paragraph 2 of Article 4 were confirmed by the structure of the Charter, and particularly by the relations established between the General Assembly and the Security Council. Both these bodies were principal organs of the United Nations, and the Council was not in a subordinate position. Moreover, the organs to which Article 4 entrusted the judgment of the Organization in matters of admission had consistently recognised that admission could only be granted on the basis of a recommendation by the Council. If the Assembly had power to admit a State in the absence of a recommendation by the Council, the latter would be deprived of an important role in the exercise of one of the essential functions of the Organization. Nor would it be possible to admit that the absence of a recommendation was equivalent to an “unfavourable recommendation” upon which the General Assembly could base a decision to admit a State.

While keeping within the limits of the Request, it was enough for the Court to say that nowhere had the Assembly received the power to change, to the point of reversing, the meaning of a vote by the Council. In consequence, it was impossible to admit that the Assembly had power to attribute to a vote of the Security Council the character of a recommendation, when the Council itself considered that no such recommendation had been made.

Such were the reasons which led the Court to reply in the negative to the question put to it by the General Assembly.