

ARTICLE 93

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TEXT OF ARTICLE 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

INTRODUCTORY NOTE

1. Article 93 (1) has not given rise to any questions regarding interpretation. In respect of Article 93 (2), there has been some discussion whether an applicant to become a party to the Statute was a "state" within the meaning of the Article, and in four cases conditions upon which a non-member State might become a party to the Statute have been determined by the General Assembly upon the recommendation of the Security Council.

I. GENERAL SURVEY

2. The General Assembly, upon the recommendation of the Security Council, has determined conditions upon which the following States not Members of the United Nations might become parties to the Statute of the International Court of Justice: Switzerland, 1/ Liechtenstein, 2/ Japan 3/ and San Marino 4/. All four States have complied with the conditions determined, and have become parties to the Statute.

3. In pursuance of Article 4 (3) of the Statute of the Court, the General Assembly, upon the recommendation of the Security Council, has laid down 5/ the conditions upon which a State which is a party to the Statute but not a Member of the United Nations may participate in electing the members of the Court. No action has, however, yet been taken under the provision of Article 69 of the Statute whereby the General Assembly, upon recommendation of the Security Council, may adopt provisions for participation by States parties to the Statute but not Members of the United Nations in the procedure for amendments to the Statute.

1/ G A resolution 91 (I).

2/ G A resolution 363 (IV).

3/ G A resolution 805 (VIII).

4/ G A resolution 806 (VIII).

5/ G A resolution 264 (III).

4. It may be noted that the Interim Committee of the General Assembly, in its report 6/ on the problem of voting in the Security Council, submitted to the General Assembly at its third session in pursuance of the terms of General Assembly resolution 117 (II), recommended that a decision in respect of a recommendation of the Security Council under Article 93 (2) should be adopted by the vote of any seven members of the Council.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Article 93 (1) 7/

5. As Members of the United Nations are ipso facto parties to the Statute of the Court, it is unnecessary for applicants for membership in the United Nations to make any special acceptance of the Statute. Rule 135 of the rules of procedure of the General Assembly and rule 58 of the provisional rules of procedure of the Security Council provide only that the application of a State which desires to become a Member of the United Nations "shall contain a declaration, made in a formal instrument, that it accepts the obligations contained in the Charter".

B. Article 93 (2)

1. *The question whether an applicant was a "state" within the meaning of Article 93 (2)*

6. During the discussion 8/ in the Security Council and its Committee of Experts of the request of Liechtenstein to learn the conditions upon which it could become a party to the Statute of the Court, the objection was raised that Liechtenstein was not a sovereign State, since it had yielded important parts of its sovereignty to Switzerland. The arguments set forth below were among those adduced in support of that view. (1) Liechtenstein did not conduct its foreign affairs independently, but did so only through Switzerland. (2) Liechtenstein was a member of a customs union with Switzerland, which meant that it was not autonomous in the matter of customs. (3) Liechtenstein did not have its own currency. (4) Liechtenstein did not have a postal system, its postal affairs being handled by Switzerland. (5) The administration of the telegraph system of Liechtenstein was also in the hands of Switzerland. (6) Liechtenstein did not have an army of its own. (7) The League of Nations had refused to permit Liechtenstein to become a party to the Statute of the Permanent Court of International Justice.

6/ G A (III), Suppl. No. 10, p. 14, A/578, para. 81.

7/ In one instance, Article 93 (1) was cited in the Reports of the International Court of Justice. In a dissenting opinion, Judge Krylov, rejecting a contention that the Court was bound to answer a request for an advisory opinion, referred to a decision of the United Nations Committee of Jurists which was later embodied in this provision of the Charter, and, after quoting the text of Article 93 (1), continued: "this does not imply, in any way, that this Court is less independent than the Permanent Court of International Justice and that it is bound to answer the General Assembly's request". Interpretation of Peace Treaties, I C J, Reports 1950, pp. 109 and 110.

8/ S C, 4th yr., No. 26, 423rd mtg., pp. 16 and 17; S C, 4th yr., Suppl. for July, S/1342, p. 3; S C, 4th yr., No. 35, 432nd mtg., pp. 3 and 5.

7. The majority of the Committee of Experts and of the Security Council, however, was of the opinion 9/ that Liechtenstein was a State within the meaning of Article 93 (2). The arguments set forth below were among those advanced in support of that opinion.

(1) Most writers and jurists considered Liechtenstein as a State. (2) It had a population, a Government and a constitution. (3) The customs union treaty between Liechtenstein and Switzerland did not affect the independence of the former; the treaty stated that the customs union was without prejudice to the sovereign right of the Prince of Liechtenstein. (4) The fact that Switzerland represented Liechtenstein in foreign countries did not affect the sovereignty of the latter; there were several undoubted States which relied on the diplomatic service of other States.

8. The Security Council, by a vote of 9 to none, with 2 abstentions, adopted the draft resolution recommended for adoption by the Committee of Experts and setting forth the conditions in question for Liechtenstein.

9. The same arguments 10/ for and against adoption of the conditions recommended by the Security Council were repeated in the Sixth Committee at the fourth session of the General Assembly. The Committee approved the draft resolution containing the conditions recommended by the Council by a vote of 42 to 4, with 1 abstention. The General Assembly, by a vote of 40 to 2, with 2 abstentions, adopted the draft resolution, which became resolution 363 (IV).

2. Conditions determined by the General Assembly upon the recommendation of the Security Council under which States not Members of the United Nations might become parties to the Statute of the Court

10. Conditions identical in substance were determined 11/ by the General Assembly in each of the four cases in which States not Members of the United Nations (Switzerland, Liechtenstein, Japan and San Marino) sought to become parties to the Statute of the Court. The conditions determined for Switzerland read as follows:

"Switzerland will become a party to the Statute of the Court on the date of the deposit with the Secretary-General of the United Nations of an instrument, signed on behalf of the Government of Switzerland and ratified as may be required by Swiss constitutional law, containing:

"(a) Acceptance of the provisions of the Statute of the International Court of Justice;

"(b) Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter;

"(c) An undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time after consultation with the Swiss Government."

The above-quoted provisions were explained in the report 12/ of the Chairman of the Committee of Experts of the Security Council which was annexed to General Assembly resolution 91 (I). The observations of the Committee on certain aspects of the conditions recommended are set forth below.

9/ S C, 4th yr., Suppl. for July, S/1342, p. 3; S C, 4th yr., No. 35, 432nd mtg., pp. 3-6.

10/ G A (IV), 6th Com., 174th mtg., pp. 214 and 215.

11/ G A resolutions 91 (I), 363 (IV), 805 (VIII) and 806 (VIII).

12/ S C, 1st yr., 2nd Series, Suppl. No. 8, annex 13 (S/191), pp. 159-161.

a. THE QUESTION OF THE ACCEPTANCE OF THE PROVISIONS OF THE STATUTE

11. In the above-mentioned report, the Committee of Experts of the Security Council observed: 13/

"3. The Committee decided that it is unnecessary in the first suggested condition to use the words in the Protocol of Signature of the Statute of the Permanent Court of International Justice (16 December 1920, Series D, No. 1, fourth edition, page 7), whereby signatories declared acceptance of 'the jurisdiction of the Court in accordance with the terms and subject to the conditions of the Statute.' In the opinion of the Committee, acceptance of the provisions of the Statute includes acceptance of any incidental jurisdiction exercisable by the Court under the provisions of the Statute."

b. THE QUESTION OF THE ACCEPTANCE OF ALL THE OBLIGATIONS OF A MEMBER OF THE UNITED NATIONS UNDER ARTICLE 94

12. The explanation of the Committee of Experts in this regard is set forth in paragraph 9 of the Analytical Summary of Practice in the study on Article 94 in this Repertory.

c. THE QUESTION OF THE UNDERTAKING TO CONTRIBUTE TO THE EXPENSES OF THE COURT

13. The Committee of Experts observed: 14/

"5. On the third suggested condition relating to contributions to the expenses of the Court, the Committee noted that the last sentence of Article 35, paragraph 3, of the Statute contemplates a general contribution (not assessed in each case) towards the expenses of the Court by parties to the Statute which are not members of the United Nations. Although budgetary matters are within the competence of the Assembly, the obligation to contribute to the expenses of the Court must be imposed by the Assembly as a condition under Article 93, paragraph 2, upon the recommendation of the Security Council. The Committee therefore decided to recommend this condition."

3. *The question of the determination of conditions "in each case"*

14. The Committee of Experts of the Security Council, in its report to the Security Council recommending the conditions upon which Switzerland might become a party to the Statute of the Court, drew attention to the words "in each case" in Article 93 (2), and stated that 15/

"Accordingly, the conditions recommended above as appropriate to the case of Switzerland are not intended to constitute a precedent to be followed in any future case under Article 93, paragraph 2, either by the Security Council or by the General Assembly."

13/ Ibid., p. 160.

14/ Ibid., pp. 160 and 161

15/ Ibid., p. 161.

15. The same conditions were recommended by the Committee of Experts of the Security Council in the case of Liechtenstein. The Committee offered the following explanation: 16/

"Though those conditions had not been intended as a precedent to any future case, the discussion of the application of Switzerland in the Committee had been so exhaustive and detailed that it appeared advisable that the same conditions, in the same wording, be set in the case of Liechtenstein."

16. The reports of the Committee of Experts in the cases of Japan and San Marino 17/ stated that

"it was pointed out that the conditions recommended ... were not intended to constitute a precedent to be followed in any future case under Article 93, paragraph 2, of the Charter."

16/ S C, 4th yr., Suppl. for July, S/1342, p. 3.

17/ S C, 8th yr., Suppl. for Oct., Nov. and Dec., S/3146 and S/3147, pp. 72 and 73.

