

Application of Liechtenstein
To Become A Party To The
Statute Of The International Court Of Justice

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The Principality of Liechtenstein seeks to become a party to the Statute of the International Court of Justice under Article 93 (2) of the Charter. It is understood that formal application to this end will be lodged by Switzerland, this being presumably merely a matter of diplomatic representation by Switzerland.

According to Article 93 (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".

1. Qualifications

A. Is Liechtenstein a state within the meaning of this Article?

(1) According to Fenwick, International Law (p.95): "Liechtenstein is a sovereign state without question."

(2) The Report made by the Fifth Committee to the First Assembly of the League of Nations, December 6, 1920, said "The Government of the Principality of Liechtenstein has been recognized de jure by many States ... there can be no doubt that juridically the Principality of Liechtenstein is a sovereign state ... but she has deputed some attributes of sovereignty such as customs, communications, diplomatic representation ... Liechtenstein has no army. For the above reasons we are of the opinion that the Principality of Liechtenstein could not discharge all the international obligations which would be imposed upon her by the Covenant"

(League of Nations, Records of the First Assembly, Plenary (1920), p.652.)

(3) On May 6, 1931, the Department of State of the United States in reply to an inquiry, said "This Government

has regarded Liechtenstein as being an independent Principality ..."

(Hackworth, Digest of International Law, Vol. 1, p. 49.)

(4) It would appear that the Permanent Court of International Justice recognized that Liechtenstein was a state for the purposes of appearing before the Court under Article 35 of the Statute. In accordance with a Council Resolution of May 17, 1922, the Principality in May, 1939 made a declaration accepting the jurisdiction of the Court; and on June 17, 1939, instituted proceedings in the Court against Hungary. The case was never concluded, but an order was issued by the Court fixing time limits for presentation of documents by the parties.

(M.O. Hudson, World Court Reports, Vol. 4, pp. 43, 84-85, 497-499.)

This declaration was for a period of five years and was apparently not renewed; it is not listed in the Yearbook of the International Court of Justice. Nevertheless, it may be regarded as strong evidence, on the one hand, of the willingness of the Court to accept Liechtenstein as a party to the Statute and, on the other hand, of the willingness of Liechtenstein to accept obligations in relation to the Court. It is also to be observed that Liechtenstein showed sufficient interest in judicial settlement and willingness to submit to this process by making an additional declaration under Article 36 of the Statute accepting the compulsory jurisdiction of the Court.

No provision was made in the Statute of the Permanent Court of International Justice by which a non-Member of the League could become a party to the Statute; the authorization to the Council found in Article 35, and the Council Resolution of May 17, 1922, allowing a "general declaration" to be made, is as near as a non-Member state could come to being made a party to the Statute. The status given to Liechtenstein under the "general declaration" made by her in 1939 is sufficiently near to that of being a party to the Statute to justify using it as a precedent.

B. Since Liechtenstein is not a Member of the United Nations, the conditions upon which she could be admitted would be set ("in each case") by the General Assembly on the recommendation of the Security Council.

(1) The only precedent thus far established in the practice of the United Nations was the application of

Switzerland. In this case the General Assembly, upon recommendation of the Security Council, approved the resolution, stating three conditions as follows:

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

(b) Acceptance of all 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 amounts as the General Assembly shall assess from time to time after consultation with the Swiss Government".

(Official Records of the Second Part of the First Session of the General Assembly (1946), Plenary Meetings, Verbatim Record, p. 1156.)

(2) The Report of the Committee of Experts to the Security Council adopted by the Council on 15 November 1946, made it clear that the stated obligations included Articles 25 and 103 of the Charter, insofar as those Articles relate to Article 94.

(Resolutions Adopted by the General Assembly during the Second Part of its First Session, Document A/64/Add 1, No. 91 (I) Annex, p. 184)

It might be argued in view of the possible obligation to use force under a Security Council decision (Article 94) and in view of the above mentioned attitude concerning membership of Liechtenstein in the League of Nations, that Liechtenstein is not capable of fulfilling such obligations and would not therefore be acceptable as a party to the Statute. On the other hand, the Military Staff Committee has made it clear that the contribution of a Member under Article 43 need not always be measured in terms of armed force:

"Article 14. Contributions by Member Nations of the United Nations, other than the Permanent Members of the Security Council, may not necessarily be represented by armed forces. Such other Member Nations which may be unable to furnish armed forces may fulfill their obligations to the United Nations by furnishing facilities and other assistance in accordance with agreements reached with the Security Council".

(Report of the Military Staff Committee (April 30, 1947) S/336.)

It may also be assumed that obligations in terms of armed force under Article 94 would be controversial and, in any case, very rare; a decision of the Court would rarely be one calling for enforcement action against a threat to the peace. For these reasons - and in general - the objections raised to membership by Liechtenstein in the League of Nations would not apply to her applications to become a party to the Statute of the Court.

II. Procedure.

A. Charter and Rules of Procedure.

(1). The Security Council

The application of Liechtenstein would presumably be referred by the Secretary-General first to the Security Council, upon whose recommendation the General Assembly acts. Council rule of procedure No. 6 provides:

"The Secretary-General shall immediately bring to the attention of all representatives on the Security Council all communications from States, Organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter".

Under rule 7 this item would be included in the provisional agenda and should be communicated three days in advance.

As to voting, there is no decision as to whether, in this case, the vote would be procedural or not. The Statement of the Sponsoring Powers concerning the Yalta Formula does not mention it. It may be argued, however, that Paragraph I, 1, of the Statement clearly excludes this item from the requirement of a qualified majority. A list of possible decisions of the Security Council was prepared for the Interim Committee and that Committee recommended as to each decision whether it thought that the vote should be procedural or not. Strangely enough, the list omits this question; but in all other questions relating to the Court the Interim Committee favoured exclusion of the veto. The question was not raised with regard to the Swiss application; the vote was unanimous. Decision as to whether a question is subject to the veto must be taken by a vote of seven, including the concurring votes of the Permanent Members.

(2.) The General Assembly.

According to rule 11 of the rules of procedure of the General Assembly an item should be placed on the agenda sixty days before the opening of the session. The provisional agenda includes "all items proposed by the other principal organs of the United Nations" (Rule 12); since this item would come from the Security Council, it would automatically be placed upon the agenda of the Assembly. An item may be put upon the agenda of the Assembly during its session by majority vote (Rule 14).

B. The Swiss Case

"Max Petitpierre, Chief of the Swiss Federal Political Department, in a letter forwarded to the Secretary-General of the United Nations on October 26, 1946 by G. Gyax, Swiss Consul General in New York, expressed the desire of the Swiss Federal Council to ascertain the conditions on which Switzerland could, in pursuance of Article 93, Paragraph 2 of the Charter, become a party to the Statute of the International Court of Justice".

(Quoted from the United Nations Yearbook pp. 411-412)

The letter was put on the agenda of the Security Council on October 30, 1946, and was referred to its Committee of Experts. The recommendations of this Committee were adopted without discussion or debate by the Security Council at its Eightieth Meeting on November 16, 1946. The conditions quoted above were preceded by the following paragraph:

"Switzerland will become a party to the Statute on the date of the deposit with the Secretary-General of an instrument, signed on behalf of the Government of Switzerland and ratified as may be required by Swiss Constitutional Law, containing ..." - the above stated conditions.

(The letter is to be found in the Official Records, Security Council, First Year, Second Part, Supplement No. 7; The Report of the Committee of Experts is in Supplement No. 8)

The recommendation of the Security Council was considered by the General Assembly on December 7, 1946 and referred to the Sixth Committee, which Committee on December 9, 1946, recommended adoption of the Security Council recommendation. There was no debate in the General Committee which unanimously referred the item to the Sixth Committee;

nor was there any debate in the General Assembly itself where it was adopted without formal vote. I have not yet consulted the records of the Sixth Committee. The General Assembly, by resolution of December 11, 1946, adopted verbatim the resolution of the Security Council.

(Official Records, Second Part of the First Session of the General Assembly, General Committee, No. 67, p. 94; Plenary Meetings, p. 1156. For Resolution 91 (I) Document A/64/Add 1.)