Chapter 2

The Early Years: Implementing Article 4?

2.1 Introductory

Article 4, paragraph 2 of the Charter sets out an admission procedure. Article 4, paragraph 1 sets out criteria for admission. Both the procedure and the criteria are set out only in general terms. Further detail was required, if admission was to be implemented as a rigorous process. The present Chapter examines steps taken early in the UN era to develop Article 4 into a workable system of institutional mechanisms and legal rules to control admission of States to the Organization. The fate of early efforts to establish and implement Article 4, especially the criteria contained in paragraph 1, we will see would prove a significant influence on the future shape of the United Nations.

Like other parts of the UN Charter, the provisions on admission were described broadly, so it remained for the member States and the Organization to develop their specific meaning through practice. It is a basic and accepted proposition that the practice of States and of international organizations is the material element in the formation of customary international law rules,1 and, so, too that practice can be the basis of interpretations of rules adopted initially in a treaty.2 As will be seen in Chapter 4 below, beyond that basic position, the effect of practice may be considerably murkier – e.g., as respects amendment of treaties and the constitutional evolution of an international organization.

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It is not however to be doubted that practice is relevant when considering Charter Article 4. As the United States submitted in the Competence advisory proceedings, ‘[T]he 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.’ Though the allocation of competence between the Security Council and General Assembly was not a difficult problem for the Court, the further development of admission rules and procedures was not a simple technical matter, nor was it resolved by a plain reading of the Charter text. The constitutional law of the Charter concerning substantive criteria for admission, as will be seen in the present Chapter, was a matter of disagreement among the member States in the first decade of the Organization. Charter law would involve the politics of Cold War rivalry, the interests of voting blocs in the General Assembly, and separation of powers among the principal organs of the Organization. The practice that resulted from these competing influences has been instrumental in determining how the UN has implemented Article 4.

Even before the formal adoption of the Charter in 1945 at San Francisco, dispute arose as to which States should be participants. The Argentine controversy, which concerned seating the delegation of Argentina in the Conference on International Organization, may be seen as the first test of admission criteria under the UN system. In itself, this was a short-lived dispute. It was enmeshed however in a nascent rivalry between the United States and the USSR and foretold impending difficulties. It also foretold future lines of development under Article 4. The Argentine controversy encapsulated competing legal positions which would form poles in the coming decade of disputed applications for admission.

The 1946 session of the UN witnessed adoption of rules of procedure, and under these rules the Committee on Admission of New Members showed some initial energy in the discharge of its assigned function. This was the function of fact-finding and evaluation with respect to applications for admission. Inquiries into the fitness of applicants under the substantive criteria of Article 4(1) were carried out in several instances. As controversy began to brew over new applicants however, the mechanism tentatively employed in 1946 by the Committee fell into disuse.

Controversy over admission would intensify thereafter. The General Assembly, seeking to resolve the matter, would request and obtain an Advisory Opinion on admission in 1948, but judicial guidance did not settle outstanding differences over how to manage pending applications. The World War II neutrals and various States allied with one or the other rival Cold War bloc were delayed admission,

3 ICJ Pldg 1950 p. 112.