

## Summary

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### Membership in International Organizations Basic Problems

#### I.

1. This paper deals primarily with basic questions of membership beyond the normal questions of entering in and withdrawing from international organizations.

2. Membership in an international organization means:

- a) partnership to the constituent treaty
- b) the sum total of rights and duties accruing to memberstates from the organizational provisions of the constituent treaty for the purpose of activating the organization as an objective entity.

3. Theoretically three questions of membership may be distinguished:

- a) questions of the law of treaties concerning the partnership to the constituent treaty;
- b) questions of the status of memberstates on the basis of the organizational provisions, i. e. on the basis of the constitutional law of an international organization;
- c) questions concerning the legal evaluation of membership policy from the point of view of international law in general or a general international institutional law.

4. Membership policy means the range of decisions in the field of organized multilateral diplomacy pertaining to the membership of the acting state(s) or other states. Membership policy may deviate from or run counter to the provisions of the constituent treaty.

5. As a fundamental question of a general nature the question arises whether at all and which principles of general international (institutional) law ought to be taken into consideration in order to determine the merits or demerits of a membership policy from the point of view of international law.

6. In particular the following questions will be discussed in detail:

- a) the question of an international obligation of cooperation will be discussed together with the question of merits and demerits of inactive membership in international organizations;
- b) in a casuistic way questions will be dealt with demonstrating the impact of membership policy on rights and duties of memberstates with special regard to the membership policy within the United Nations Organization; that is in particular:
  - aa) the implications of decolonization with regard to a right of membership and to the application of the principle of equality;
  - bb) As regards the impact of membership policy on the organisational provision of constituent treaties, yielding or resisting to a potential alteration of rights or duties of memberstates is here considered to be a fundamental question of membership. That includes also the question of the relationship between a change of the membership structure and of the functions of an international organization on the one hand and an alteration of the substantive law of an international organization on the other.

## *II.*

7. Inactive membership, as a rule, results from a membership policy the consistency of which with the provision of the constituent treaty has become a matter of controversy.

8. Inactive membership represents an intermediate status between membership and non-membership which on the basis of a general obligation of cooperation under international law, may be regarded as a reasonable development of a general international institutional law.

9. International organizations are the expression of an inevitable social necessity of cooperation. They can at the same time be considered as the realization of the international legal principle of cooperation. In the "Declaration of Principles" the principle of cooperation has been formally and generally recognized as an independent principle of international law.

10. There remains, however, a rivalry between the obligation to cooperate, inherent in any membership, and the principle of sovereign equality, on the basis of which every memberstate determines its own membership policy. This conflict reflects the peculiarity and weakness of international law in general within the law of international organizations in particular.

11. Inactive membership is the practical result of the rivalry between the principles of cooperation and sovereignty, weighted in favor of preserving, at least, the formal participation of the respective state in an international organization as a matter of principle. Inactive membership can at any time and without a formal readmission be reactivated in the form of comprehensive participation. Inactive membership, in any case, has to be given preference to an exclusion or expulsion where a far-reaching desintegration or shattering of the organizational structure might be avoided.

### *III.*

12. With the "Declaration on Decolonization" the United Nations Organization assumed an active role in the creation of new states, factually revising Chapter XI of the Charter. Particularly the socialist states saw in that Declaration past and future success of their membership policy under the maxim of the principles of peaceful coexistence.

13. Under the acceleration and radicalization of decolonization the question of the right to membership in the United Nations presents itself under a new aspect. The conflict stemming from a change of functions and substantive law of the United Nations on the one hand and the membership status based on the static principle of sovereign equality on the other has so far not yet been solved.

14. The attempt to provide for an associate membership for microstates remained an episode. The repeated admission of microstates can be seen as an endorsement of the changing functions of the Organization and as an authoritative substantiation of a right to membership of developing states of any size. The legal basis of the right to membership may be found in a *bona fide* relationship between the Organization and the states brought to independence within the process of decolonization.

15. At the latest, by admitting so-called microstates to the United Nations, the principle of "Equality of the legal conditions of memberstates as regards the exercise of their rights and the fulfillment of their duties" has become questionable as a fundamental principle of membership; yet, that fact has so far not led to a formal revision of the Charter provisions regarding the membership status.

16. The question arises whether at all and in which way the membership provisions can be adjusted through customs and usage to the changed functions and to a nowadays more and more group-oriented membership structure, where a relatively stable majority and a likewise stable minority confront each other in bargaining positions fixed beforehand.

#### IV.

17. The question of representation of a State in an international organization on the basis of appropriate credentials has to be distinguished from the question of a legitimacy of representation of a government.

18. With regard to the question of the legitimacy of a government two occasions may be distinguished:

- a) a revolutionary change of government followed by two claimants or only by one whose claim, however, is objectionable; in this case the valid criterion is the principle of effectiveness;
- b) the case in which a majority of memberstates of the United Nations Organization try to enforce their criterion of legitimacy against a memberstate independent of any internal revolution; this is the case of the exclusion of the South African delegation from the XXIX General Assembly.

19. The case of the exclusion of the South African delegation from the XXIX General Assembly has to be seen within the greater context of the policy of sanctions of the Organization against South Africa; to that end the General Assembly has assumed powers which it was not entitled to according to the Charter. Thus the question arises how an action of the General Assembly which is obviously *ultra vires*, can be prevented to become a precedent by which constitutional rights of memberstates are encroached upon.

20. Following the ruling in the *Expenses Case* in a protest against the exclusion of the South African delegation as an *ultra vires* action of the General Assembly it should be set forth that this action was not appropriate for the fulfillment of one important purpose of the Organization. Such a protest should not be limited to the statement of the illegality of the proceedings. Yet, it should in particular be stressed that the consequences of the exclusion of a state are under no circumstances compatible with the current functions and working purposes of the Organization, amounting to a negotiating system of *peaceful change*.

21. The present status of South Africa as an inactive member of the United Nations can be taken as the actual result of an antagonistic membership-policy; i. e. the consequence of a conflict between the assertion of the principle of cooperation in the Security Council on the one hand and the enforcement of a substantive criterion of legitimacy through the General Assembly on the other.

## V.

22. To preserve international organizations legal guarantees for a balanced membership policy are required. Assuming that at least certain international organizations are of a permanent character, the development of a general international institutional law concerning the membership in international organizations may be counted on.

23. It is by recourse to general principles of international law that membership policy may be legally evaluated and brought to bear upon the development of a general international institutional law for the preservation of international organizations as necessary institutions in an overall interdependent world.