

Discussion paper
on
India and the United Nations.
ch. 7.

INDIA AND THE UNITED NATIONS

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on

Chapter VII: Organizational and Structural Questions

Introduction

Proposals relating to the organisation of the United Nations, more especially regarding its structure, evoked great controversy even during the San Francisco Conference. More than once it was felt that the Conference would break down without coming to an agreement in regard to the nature and scope of the international organization. The charter, when it was finally approved, gave the Security Council the primary responsibility for the maintenance of international peace and security. It was decided that the Council would consist of eleven members; the five Great Powers as permanent members and six other non-permanent members to be elected by the General Assembly for a term of two years. Referring to the voting procedure in the Council the Charter stated: 'Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring vote of the permanent members'. In regard to the decisions connected with the pacific settlement of disputes it was stated that 'a party to a dispute shall abstain from voting'. This right of each Great Power to block the decision of the majority is very often referred to as the veto.

The assumption behind these provisions was that the Great Powers would co-operate with one another in maintaining peace and security and in making the new world organisation a great success. This assumption was not fulfilled by subsequent events. Since 1946 the rivalry between the Big Powers has eclipsed all other developments in the international field and has led to the discussions in the Security Council very often reaching a deadlock. Norman J. Padelford, a non-official American expert, analyses the situation as follows:

It is clear from the record that when the Soviet Union finds its vital interest at stake there are now no other Great Powers generally inclined to stand with it. Therefore, the negative vote of the Soviet delegate usually becomes a sole veto, accompanied ordinarily by the vote of whatever satellite holds a non-permanent

seat on the Council. When other Great Powers, particularly the United States and Great Britain, find their national interests at stake they can usually persuade other permanent members to go along with them either in casting a multiple negative vote sufficient to stop a proposal without the stigma of exercising a sole veto (or nearsole vote), or to join in introducing and passing a resolution more suitable to their desires.

The constant use of Veto by the Soviet Union has led the United States and some other Members to revise their attitude towards the role of the Great Powers in the international organisation. They have begun to demand that the area of Veto must be restricted and that the role of the General Assembly as against that of the Security Council, must be emphasised in the field of security matters. It is also clear that they have begun to look to organisations other than the U.N. to protect their interests; the conclusion of military pacts was the result. These developments raise very basic questions in regard to the structure and working of the United Nations.

1. Voting Privilege of the Permanent Members

The voting privilege of the Permanent Members was opposed even during the San Francisco Conference. But at that time criticism was mainly directed against it in theory and it was led by Australia. In 1946 the opposition to the privilege was again led by Australia but it was directed against the manner in which it was actually exercised. It is significant that in 1946 the United Kingdom and the United States generally supported Australia. Since 1947 the United States went a step further and herself took the lead in demanding the restriction of the area of Veto. This has created bitter controversy in subsequent sessions of the General Assembly.

In 1948, as suggested by the United States and her allies, the General Assembly asked its Interim Committee to study the problem connected with the frequent use of Veto. In April 1949, on the basis of the Committee's report, the United States, Great Britain, France and China formulated a resolution which called on the Members of the Security Council to agree among themselves that a list of 36 specified subjects would be regarded as procedural and thus not subject to Veto and that another 21 specified subjects even though substantive, would not be subject to Veto. The latter

category included decisions on the pacific settlement of disputes and the admission of new members. The resolution also called on the permanent members to consult together before voting on important questions. Although the Assembly accepted the resolution, the Soviet Union's refusal to abide by it has made it ineffective.

In 1948, 1949 and early in 1950 the United States demanded only the liberalization of the voting procedure in the Security Council. Some groups in America, however, had already proposed comprehensive and fundamental changes in the basic structure of the U.N. But no resolution, embodying such proposals, was discussed on the floor of the Congress. The State Department officials told the Committees of the Senate and the House of Representatives, where such proposals were discussed that the suggestion to revise the Charter was impracticable at that time. They also pointed out the need to determine the full implications of those proposals. It still remains to be seen what the United States will do if it is confronted by a decision of the U.N. without its concurrence on a vital issue which will call it to commit its military strength.

Some official spokesmen have made it clear that the U.S. Government has not ruled out the possibility of itself vetoing any proposal to give representation to the Communist China in the U.N.

The Indian Government did not associate itself with any move to restrict the area of Veto. They considered the right of Veto to be the reflection of the power situation in the world today and its constant use the symptom of the tension in the international field; its abolition would not cure the basic disease. India pointed out how the League of Nations was ineffective in the absence of the support of Big Powers.

India also expressed the view that it was too premature for the Interim Committee of the General Assembly to study the problem and that what was needed then was allegiance to the Charter in its entirety. Perhaps the establishment of good conventions, instead of rigid formulæ, would reduce the undesirable effects of the Veto provision.

Issues

What amendment, if any, is to be suggested in the Charter in regard to this matter?

1. Should the area of the exercise of Veto be restricted?
2. Should subjects like the admission of new members and the pacific settlement of disputes be not subject to Veto?
3. Should Veto be completely abolished?
4. What are the practical possibilities, in view of juridical facts and political realities, of altering the rule of unanimity of the Permanent Members of the Security Council in any of the above ways? What should be India's attitude if such a step would lead to the withdrawal of some important Members from the U.N.?

II. Interim Committee

The Interim Committee, popularly known as the Little Assembly, was established in 1947. Its constitution was proposed by the Western Powers and vigorously opposed by the Communist States. The U.S. Representative stated that the formation of such a Committee was necessary because the Security Council could not come to any decision on many important and urgent problems as the result of the Soviet representative vetoing "any reasonable proposals" submitted by other States. The Committee, unlike the Assembly, was to sit continuously and it was given very wide powers by the General Assembly; but being a subsidiary organ it lacked prestige and influence. Moreover the Assembly could not give the Committee any power which it itself did not have. The Communist States boycotted the meetings of the Committee and their non-cooperation made it ineffective.

At first India supported the establishment of the Interim Committee stating that it would not constitute any infringement of the Charter. But in 1948 she opposed the extension of its term on the ground that its value had been vitiated by the absence of the U.S.S.R. India also suggested the setting up temporary ad hoc committees to perform the functions of the Interim Committee, because such committees could not be accused of encroaching upon the powers of the Security Council. Experience had shown that similar committees were very useful.

The question is of no great importance now, because the "Uniting for Peace Resolution" of 1950 has superseded the earlier attempts to strengthen the role of the General Assembly as against that of the Veto-ridden Security Council in the

field of security questions. Moreover, when the Committee met for the last time on 17 March 1952, it noted that it had nothing on its agenda and therefore adjourned sine die.

Issue

May it be suggested that the Interim Committee be abolished?

III. Strengthening the General Assembly

While discussing the powers of the Interim Committee we noted that the General Assembly itself did not have much power and authority in the field of security questions. The "Uniting for Peace Resolution", which was another step to circumvent the Veto, gave explicit reference to the powers of the General Assembly in this field. Sponsors of the resolution claimed that the Charter has granted these powers to the Assembly by implication.

There was an immediate reason for moving such a resolution on the part of the United States. U.N. action had been possible in Korea in June 1950 only because of two accidents; the absence of the Soviet Union from the Security Council and the presence of American troops in Japan. In America it was felt that in future the U.N. must be permitted to take action on similar questions even if the circumstances were different.

The 'Uniting for Peace' resolution recognised that the failure of the Security Council would not deprive 'the General Assembly of its rights or relieve it of its responsibilities under the Charter in regard to the maintenance of international peace and security'. Some of its provisions are:-

- (a) If the Security Council failed to exercise its responsibility for maintaining peace and security in the world, the Assembly should have the right to consider the matter in regular or emergency session and make recommendations to members for collective measures, including when necessary, the use of armed forces.
- (b) A Peace Observation Commission should be established to observe and report on the situation in any area where international tension seemed likely to endanger peace and security.

- (c) Member states were invited to survey resources in order to determine what assistance they could render in support of any recommendations of the Security Council or the General Assembly for the restoration of international peace and security. It was further recommended that each member should maintain within its national armed forces elements which could promptly be made available to the United Nations on the recommendation of the Security Council or the General Assembly.
- (d) A Collective Measures Committee should be established to study and report to the Security Council and the Assembly not later than September 1, 1951, on methods which could be used and resources, including armed forces, which could be made available to the U.N. by Member-States for maintaining international peace and security.

Six Members joined the United States in sponsoring the resolution which was adopted by the General Assembly by 52 votes to 5 with the Soviet bloc opposing and Argentine and India abstaining.

Presenting the plan to the Political Committee on October 9, Dulles said that the Security Council, because of the frequent use of the Veto, had found itself unable to take effective action in face of threat to international peace, and had also failed to set up an adequate international force and an observation system as provided in the U.N. Charter. He added: 'For five consecutive sessions this Assembly has met in an atmosphere of steadily mounting tension. At first that tension found expression in verbal ideological clashes. Then came threats of violence, then civil wars, then open armed attack with tanks, planes, and all the paraphernalia of a modern war. Many feel that a general war is the next inevitable stage. The U.S. does not take that view, but we do recognize that the prevalent fear is a corroding and dangerous force'. Amplifying the arguments put before the Assembly by Acheson, Dulles declared: 'The United States does not accept the view that the responsibility for the maintenance of peace is the monopoly of the few and the great. We believe that an informed world opinion is the most responsible of all the forces that influence the course of human events. The General Assembly more nearly reflects informed world opinion than any other body. The United States has no fear that, in a moment of gravity, two-thirds of its members will act irresponsibly. The Security Council should, of course, have its chance to exercise its primary responsibility to maintain

international peace and security. We hope it will. But if it fails the General Assembly has a duty promptly to consider the situation. The Charter expressly gives it that right.'

Vyshinsky on October 10 insisted that the "Principle of unanimity" in the Security Council constituted the foundation of the U.N. He asserted that the U.S. proposals were in many respects a violation of this principle and thus of the Charter and defined the Soviet Government's attitude to the four points of the plan as follows:

- (i) While not opposing the convening of the General Assembly for emergency sessions, it denied that the Assembly had the power to take action in questions relating to international peace and security for which it maintained, responsibility lay with the Security Council under the provision of the Charter. Moreover, in accordance with the Charter, emergency sessions should be called by the decision of the Security Council itself.
- (ii) The USSR agreed to the establishment of a Peace Observation Commission, subject to "the determination of its membership".
- (iii) It stoutly opposed the proposal that all U.N. member nations should maintain special units of their own armed forces for service under the U.N. in an emergency, on the grounds that the Security Council alone, under Article 43 of the Charter, had the right to direct the use of armed forces, and that the necessary jurisdiction lay with its Military Staff Committee composed of representatives of five Great Powers.
- (iv) It also opposed the creation of a Collective Measures Committee on the ground that, in the absence of the armed forces provided for in Article 43, it was Article 106 which provided for the interim staff conversation between the Big Five that would remain in force.

Many legal arguments were put forward for and against the proposals. Mr. Vyshinsky's point that Article 11, Paragraph 2, forbade any "action" by the General Assembly to maintain peace and security was based on the last sentence of the paragraph which reads "Any such question on which action is necessary shall be referred to the Security Council by the General Assembly, either before or after discussion" Closely allied to this objection was the other point that

Article 12 declares that, when the Security Council would be exercising its functions on any dispute or situation, the Assembly could not make any recommendation except at the Council's request.

Those who supported the resolution claimed that the phrase 'exercising its functions' in Article 12 was a 'matter of interpretation'. The Security Council was not 'exercising its functions' when it was no longer seized of a question. Any seven members could determine by a procedural vote (which was not subject to veto) when the Council completed its consideration of question. Sponsors of the resolution agreed to the view that if a question requiring "action" were raised it should be referred by the Assembly to the Council. And if the Council did not make use of its powers, the Assembly could resume consideration and take action, including recommendations to Members to use armed forces. True, the Charter did not give the Assembly the power to take coercive action, but the Assembly's recommendations would carry some weight.

The system of collective security established by the Resolution is much nearer to the one established by the Covenant of the League of Nations than was intended by the framers of the Charter.

India voted against those provisions of the resolution (Section C and D) which emphasised the military role of the U.N. because in her opinion Members must concentrate on improving the machinery of the U.N. for the tasks of peace rather than those of war. Referring to Section (e) India pointed out that national military units would only be available to the U.N. in accordance with the respective constitutional processes of Member-States and without prejudice to their exercise of the right of individual and collective self-defence. Indian armed forces were intended only for self-defence, and she could not spare any part of them for use outside the country -- much more so when she would not know who the enemy would be.

Issues

Is the 'Uniting for Peace' resolution legally valid and politically wise? Is it necessary to revise the Charter in the light of the ideas accepted by the Assembly when the resolution was passed?

IV. Admission of New Members

The admission of new members was an issue on which the U.N. discussions very often reached a deadlock. The Charter stated that the admission of any state to membership "will be effected by a decision of the General Assembly upon the recommendations of the Security Council". The applications of the Communist States (e.g. Hungary, Roumania, Bulgaria, Outer Mongolia and Albania) were rejected by the U.N. because the majority of Members in the Security Council and the General Assembly opposed them. The application of non-communist states like Austria, Ceylon, Finland, Ireland and Italy, were also rejected because the Soviet Union vetoed them in the Security Council.

To meet this crisis, the General Assembly, at the instance of the western powers, requested the International Court of Justice to give a legal opinion on the question whether the Assembly could admit a state to the U.N. even if the Security Council had not supported its application. The Court expressed the view that the General Assembly could not do so.

The Soviet Union then suggested a compromise proposal, which is sometimes referred to as a "package deal". According to this proposal the Soviet Union would not veto the application of non-communist states if others would not oppose the admission of communist states.

India stood for the strict adherence to the qualifications of membership and the procedure to consider them as laid down in the Charter, although she desired the admission of many new members.

Issues

1. How far has India's attitude been justified?
2. Is there any revision of the relevant provisions of the Charter necessary and desirable?
3. What is the basis of India's opposition to the admission of Spain and Portugal?

V. Regional Agreements and Organizations
for Collective Self-Defence

A. Regional Agreements

The Charter does not exclude the validity of certain regional agreements provided they are consistent with the purposes and principles of the United Nations. Article 53 states:

The Security Council shall, where appropriate, utilize such agencies or arrangements for enforcement action under its authority.

The Article also states:

But no enforcement action shall be taken under regional arrangements or by regional agencies without the authority of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article.

The organization of American States claims to be such a regional organization and one of its declared objectives is to fulfil the regional obligations under the Charter. Since 1948 many disputes between the American States had been settled through the peaceful procedure set forth in the Organization's constitution.

Issues

1. Is recognition by the U.N. necessary for a regional organization to fall within the category of organizations mentioned in Chapter VIII?
2. And if it is necessary, which one of the U.N. organs should give the recognition?
3. Should the phrase "regional agreements" be taken to mean agreements between States geographically contiguous to one another?
4. What is the significance of the evolution of the Arab-Asian group?

B. Organisation of Collective Self-defence

The organisation of collective self-defence under Article 51, much more than the Regional Agreements under Chapter VIII, has created great controversy. To take the case of the North Atlantic Treaty: Is it a regional agreement under Chapter VIII or an organisation of collective self-defence under Article 51? The British Government has contended that the North Atlantic Treaty is not a regional arrangement under Chapter VIII, but an organization of collective self-defence under Article 51. It is only incidentally a regional agreement.

It is to be noted that under the Charter this right of self-defence is only for a limited period because the Security Council would, it was expected, decide on enforcement measures and then all Members would have to act in accordance with these decisions. Now a question may be asked: If the Security Council is unable to come to any decision due to the unanimity principle (of Article 27) can the right of self-defence operate for the whole duration of this conflict?

Another view on NATO is as follows (Kelson 922): "It may not be in conformity with the intention of the framers of the Charter to organise collective self-defence by a treaty; but if a treaty is concluded by some Members of the United Nations for the purpose of organising collective self-defence restricted to a certain area, this treaty is a regional arrangement; and the rule of Article 53 that no enforcement action shall be taken without the authorisation does not apply to the exercise of the right of collective self-defence organised in the regional arrangement, because this rule is restricted by Article 51.

The following extract from the observation of an American Study Group, further clarifies the position:-

"Both the Rio and the North Atlantic treaties provide for collective self-defence within the meaning of Article 51 of the Charter. In addition, the Rio Treaty provides for enforcement measures to restore peace in case of a conflict between its signatories. It also contains provisions for specially complying with Chapter VIII (Article 52, 53, and 54) of the United Nations Charter, as well as with Article 51. Enforcement action under the Rio Treaty, except when the treaty is functioning as an arrangement for collective defence under Article 51, remains subject to the veto power of any of the five permanent members of the Security Council. The North Atlantic Treaty,

on the other hand, does not provide for enforcement measures against offenders among its signatories, and its provisions are limited to compliance with Article 51. The Inter-American system has long been accustomed to the pacific settlement of disputes among the participants, and at various times since the Rio Treaty has been in effect, its machinery has been used for this purpose. The North Atlantic Treaty, however, was not so designed. It was intended to provide for joint action by its signatories in their common defence against an outside aggressor, and not for policing its members".

It was argued that according to the wording of the Charter the conclusion of a treaty organising collective self-defence is permissible only 'if', and that means, after an armed attack occurs. Against this view it is contended that such an interpretation would make collective self-defence almost illusory because the states, anticipating the aggression, should have the right to prepare for meeting it.

Against the NATO the Soviet Union contended that it was a treaty to organize war and aggression and that the attempt of the western Powers was to bypass the collective security measures envisaged in the Charter.

Mr. Zillacus, the British Labour M.P., said that the United Nations "must never in any circumstances, on the plea of self-defence or the abuse by the other fellow of the veto, or for any other reason, prepare for or contemplate war against each other, or resort to force in order to break deadlocks or end agreements".

India has not expressed any view on the question whether NATO is in conformity with the spirit of the Charter. In the field of the maintenance of peace and security, she has, however, emphasised the role of the U.N. as distinct from any regional or military pacts. Also she has not shown any enthusiasm to be a party to any such treaty.

Issues

1. Should India revise her attitude towards regional agreements and military pacts.
2. In the western countries there were some proposals to extend NATO's responsibility to the overseas territories of its Members. In view of India's interest in the non-self-governing territories what must be India's attitude towards this development?

3. Should there be any amendment to the relevant provisions of the Charter?

VI. The Secretary-General

Appointment. "The Secretary-General shall be appointed by the General Assembly upon the recommendations of the Secretary-General". (Article 97).

Issue

In view of the deadlock connected with the reappointment of Lie and the election of his successor is this article to be amended?

Political Functions. The Secretary-General is primarily the Chief Administrative Officer; but he has some political functions also. It is significant that the Secretariat is given the status of a separate organ of the U.N. Article 99 says: "The Secretary-General may bring the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security".

The first Secretary-General shows considerable initiative in exercising his political functions. The following were some of the issues in which his role created some controversy:-

- (1) The recommendation that post-partition India should automatically inherit the U.N. Membership of undivided India;
- (2) the suggestion for the creation of a committee of experts to help the implementation of Article 73(e);
- (3) the representation of China in the U.N. after the establishment of the Communist Government in that country;
- (4) the U.N. action in Korea.

By preparing the annual reports, by the help given in drafting the agenda of many meetings and drafting of many resolutions, and by his intervention during the discussions of many issues in the committees and the plenary sessions, the Secretary-General has very often contributed to the making of policy.

Issues

1. Is it desirable and possible to have a clearer statement of the political role of the Secretary-General, or is it desirable to vest the political functions in the President with longer period of office - say five years. If it is considered undesirable to have such a President is it necessary to provide for ratification of the political acts of the Secretary-General by a standing committee of the Assembly?
2. How to maintain the international character of the Secretariat?. In this connection some factors to be taken into consideration are the situation of the Headquarters in the territory of a Major Power and the pressure put on some of its members by the domestic forces of that country.
3. While recruiting the members of the staff what steps must be taken to reconcile the two criteria of efficiency and geographical representation?
