

. Discussion paper on
India and the United Nations
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INDIA AND THE UNITED NATIONS

Discussion Paper

on

Chapter VII - Organizational and Structural
Question

Part II - Representation of a Member State - China.

- A. Discussions in the Security Council and the General Assembly.
- B. The Secretary-General's Memorandum.

A. Discussions in the Security Council and General Assembly

The People's Republic of China formally came into existence on October, 1, 1949. This was followed by a controversy in the United Nations in regard to the representation of China in that Organization. The issue was first brought to the Security Council by the Soviet Union and the Ukraine. On January 8, 1950, the Foreign Minister of the New Chinese Government sent a cablegram to the Security Council informing them that the presence of the Kuomintang delegation in the U.N. was illegal and that its representative should be expelled. India did not participate in the discussion which followed. /and But the Indian/Yugoslavian representatives supported the Soviet resolution suggesting the grant of the right of representation to the new government. The resolution was defeated by 6 votes to 3 with two abstentions. The Soviet delegate walked out of the Security Council's meeting as a protest against the decision.

On January 17, 1950, the Indian delegate suggested that the Provisional rules of Procedure be amended to include procedure to be favoured in recognising new governments. The Security Council accepted on February 28, 1950 the proposals that credentials of representatives to the U.N. should be issued by the Head of the State or the government concerned or by its Minister of Foreign Affairs. The question of establishing a procedure in the matter of representation to be followed by all organs of the U.N. was left to the General Assembly to decide.

The problem of China's representation is not one which could be solved by the establishment of a procedure. The U.S. Government expressed the view that the decision between the competing claimant governments for China's seat in the U.N. was to be reached by the U.N. on its merits. Acheson, in a letter to Nehru wrote on July 18, 1950, ".....I know you will agree that the decision should not be dictated by unlawful aggression or by other conduct which would subject the U.N. to coercion and duress." Acheson was having in his mind the Soviet attempt to bring pressure on the Security Council by a walkout and later by the North Korean invasion of South Korea. When China herself entered the Korean War as a participant, the United States gave considerable emphasis to this argument. "No government must be allowed to shoot its way to the United Nations," was their declared view. Those who agreed with the United States were of the opinion that not only a government's capacity to fulfil international obligations, but also its willingness to do so must be taken into consideration while granting it the right of representation in the United Nations.

India felt that the New Chinese Government must be seated in the United Nations. When the Indian Government failed to get sufficient support to this view in the Security Council, it decided to bring the issue before the General Assembly. As soon as the fifth session commenced on September 19, 1950, the

Indian delegate introduced a draft resolution calling for the representation of the People's Republic of China in the United Nations. The Resolution recognised that "the Central Government of the People's Republic of China is the only government functioning in the Republic of China, as now constituted." The resolution wanted the Assembly to decide that this government should be entitled to represent the Republic of China in the General Assembly and called upon the Assembly to "recommend that the other organs of the United Nations adopt similar resolutions."

Three other draft resolutions dealing with the same question were introduced at this plenary meeting. The Soviet Union submitted two proposals, one suggesting that the Kuomintang group was not to take part in the work of the General Assembly as the Chinese representatives, and the other, inviting the People's Republic of China to send representatives to the General Assembly. A Canadian draft resolution called for a special committee to consider the question of Chinese representation and to report back to the General Assembly. This report was to be submitted after the Assembly had considered the proposed item on recognition by the United Nations of the representation of a Member state. Pending the decision by the Assembly on the report of the Special Committee, the representative of the Nationalist Government of China were accorded their usual privileges as delegates.

In the Assembly's general debate that followed, the members were divided between those who had recognised the New Government of China and who either favoured the Indian or Russian proposals, and those who continued to recognize the Nationalist Government and supported the Canadian resolution.

Both the Indian and Soviet resolutions, calling for the representation by the New Government of China, were defeated. The Canadian Resolution, envisaging the constitution of a special committee to study the problem, was adopted by the Assembly and such a committee was established. But its deliberations did not yield any significant results.

During the same session a sub-committee of the Assembly studied the problem of recognition by the United Nations of the representation of a Member state. Cuba moved a resolution, suggesting that the following considerations must be taken into account in regard to this matter:-

1. Effective authority over the national territory.
2. The general consent of the Population.
3. The ability and willingness to achieve the purposes, observe their principles and fulfil the obligations of the Charter; and
4. Respect for human rights and fundamental freedoms.

The Indian delegate said that as a member of the United Nations and a permanent Member of the Secretariat, China had certain obligations to fulfil. But to carry out these obligations, the government representing China must have effective control over the territory and people of China. It is the new Government that could discharge China's duties and obligations under the Charter. The Indian delegate asked, "How can we require the fulfilment of these obligations and yet deny that government its right under the Charter, one of which is the right to be represented in the United Nations?"

The United Kingdom moved another resolution. Its operative part recommended that, where the question of representation of a Member State arose as the result of internal changes which had occurred in the State, the United Nations should recognise that Government as representative of the Member State, which exercised effective control and authority over all or nearly all the National territory and which had the permanent obedience of the bulk of the population of that territory.

The Indian representative said that he would confine himself to considerations dictated by common sense and indisputable general principles of law. The question to be considered must be whether the new government was sufficiently stable, exercised effective authority over the territory, and was obeyed by the majority of the population. These were questions of fact and should be decided by the General Assembly. If the stability was present in a particular state, then the government of that state was entitled to be recognised by the United Nations. If it should be later established that the government in question was violating the provisions of the Charter and failing to observe human rights and fundamental freedoms, then the Assembly could act in accordance with the steps laid down in the charter. India supported the British resolutions.

Finally the General Assembly on December 14, 1950 adopted a resolution recommending that the question of representation of a Member State, if a controversy arose, between two claimant Governments, should be considered by the General Assembly or its Interim Committee in the light of the purposes and principles of the Charter and the circumstance of each case. India abstained from voting as she felt that the Interim Committee was not competent to tackle such an issue.

The discussions in the Security Council in the Assembly and its Committees have not so far led any solution of the problem connected with the representation of China. On this question Indian public opinion supported the government more or less unanimously. The National Standard even questioned the claims of the U.N. to be considered as an organization with world-wide responsibility. It wrote on 16 January 1951: "America deprived the U.N. of its moral claims to enforce the

directive by her obstinate refusal to buy peace through the concession of Red China's claims on Formosa and for the seat in the Security Council." The Statesman, which is considered as a pro-West and conservative newspaper wrote on 16 September 1950: "Perhaps it is not realised that what other nations tend to regard as the unrealistic obstinacy of the U.S.A. on the China question is prejudicing her relations, not with China only, but with other Asian countries and lessening the authority of the U.N.... The Security Council as at present constituted represents neither the facts of world power, as was intended; nor (it now seems clear) the wishes of the majority of members. How it can successfully champion democratic causes if not itself democratically constituted is a question which is likely to be asked as time goes on." The National Herald of 20 September 1950 says: "As Jawaharlal Nehru has said once again, the exclusion from the world organization of a country of China's size constitutes a danger to peace since it weakens that organization."

B. The Secretary-General's Memorandum

In the memorandum on the Legal Aspects of the problem of Representation in the United Nations, transmitted to the President of the Security Council, the Secretary General (Lie) on March 8, 1950 made the following significant observations in regard to this matter:

" The primary difficulty in the current question of the representation of Member States in the United Nations is that this question of representation has been linked up with the question of recognition by Member Governments. It will be shown that this linkage is unfortunate from the practical standpoint and wrong from the standpoint of legal theory.

1. From a practical standpoint, the present position is that representation depends entirely on a numerical count of the number of Members in a particular organ which recognize one government or the other. It is quite possible for the majority of the Members in another organ to recognize one government, and for the majority of Members in another organ to recognize the rival government. If the principle of individual recognition is adhered to, then the representatives of different governments could sit in different organs. Moreover in organs like the Security Council, of limited membership, the question of representation may be determined by the purely arbitrary fact of the particular governments which happen to have been elected to serve at a given time.

2. From the standpoint of legal theory, the linkage

of representation in an international organization and recognition of a government is a confusion of two institutions which have superficial similarities but are essentially different.....(a).... while states may regard it as desirable to follow certain legal principles in according or withholding recognition, the practice of states shows that the act of recognition is still regarded essentially a political decision, which each state decides in accordance with its own free appreciation of the situation.....(b) on the other hand membership of a state in the United Nations and representation of a state in the Organs is clearly determined by a collective act of the appropriate organs.

The practice as regards representation of Member States in the United Nations organs has, until the Chinese question arose, been uniformly to the effect that representation is distinctly separate from the issue of recognition of a government. It is a remarkable fact that, despite the fairly large number of instances of breach of diplomatic relations among Members, there was not one single instance of a challenge of credentials of a representative in the many thousands of meetings which were held during four years. On the contrary, whenever the reports of credentials committees were voted on (as in the sessions of the General Assembly), they were always adopted unanimously and without reservation by any Members.

The Members have therefore made clear by an unbroken practice that (a) a Member could properly vote to accept a representative of a government which it did not recognize, or with which it had no diplomatic relations, and (b) that such a vote did not imply recognition or a readiness to assume diplomatic relations.

In two instances involving non-members, the question was explicitly raised/the cases of granting the Republic of Indonesia and Israel the right to participate in the deliberations of the Security Council. In both cases, objections were raised on the grounds that these entities were not States; in both cases the Security Council voted to permit representation after explicit statements were made by members of the Council that the vote did not imply recognition of the State or government concerned.

The practice which has been thus followed in the United Nations is not only legally correct but

/to but conforms the basic character of the Organization. The United Nations is not an association limited to like-minded states and governments of similar ideological persuasion (as is the case in certain regional associations). As an organization which aspires to universality, it must of necessity include States of varying and even conflicting ideologies.

The Chinese case is unique in the history of the United Nations, not because it involved revolutionary change of government, but because it is the first in which two rival governments exist. It is quite possible that such a situation will occur again in the future and it is highly desirable to see what principles can be followed in choosing between the rivals. It has been demonstrated that the principle of numerical preponderance of recognition is inappropriate and legally incorrect - Is any other principle possible?

It is submitted that the proper principles can be derived by analogy from Article 4 of the Charter. This Article requires that an applicant for membership must be able and willing to carry out the obligations of membership. The obligations of membership can be carried out only by governments which in fact possess the power to do so. Where a revolutionary government presents itself as representing a State, in rivalry to an existing government, the question at issue should be which of these two governments in fact is in a position to employ the resources and direct the people of the State in fulfilment of the obligations of membership. In essence, this means an inquiry as to whether the new government exercises effective authority within the territory of the State and is habitually obeyed by the bulk of the population.

If so, it would seem to be appropriate for the United Nations organs, through their collective action, to accord it the right to represent the States in the Organization, even though individual Members of the Organization refuse, and may continue to refuse, to accord it recognition as the lawful government for reasons which are valid under their national policies. "

In a letter to the Secretary-General the representative of the Nationalist China made the following observations:

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" (1) On the technical side your memorandum asserts that it is wrong to link the question of representation with the question of recognition by Member Governments. International law has nothing direct to say for or against this linkage. As practised in the League of Nations as well as in the United Nations, this linkage is the general rule; the few cases of non-operation of the linkage which your memorandum cited, have been the exceptions. "

ISSUES

1. What are the general principles to be followed in determining which government in a State (when there are two competing governments) may be recognized for the purpose of representation to the United Nations in the light of accepted international law?
2. Is the willingness to fulfil international obligations to be considered as a factor even before the new government is given the right of representation?
3. The capacity to fulfil the international obligations by the new government and the obedience of the people to it are the factors emphasised by India and the Secretary-General. How far is this attitude correct?
