A FUNCTIONAL STUDY OF THE U.N. SECURITY COUNCIL FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

SUMMARY OF THE THESIS

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SUMMARY

In any ordered society, the task of keeping the peace is of primary importance. Only on the basis of peace and security can a legal order be developed. A study of the development of English law and political institutions reveals that the earliest concern of the Anglo-Saxon kings was to enforce "the King's peace." Not until reasonable certainty of peace was assured was there the opportunity to develop, institutions and procedures which would provide justice through law.

Responsibility

In the international community the maintenance of peace and security is also of first importance. So long as force can be used with impunity to achieve selfish ends, the strong will have little reason to use methods of cooperation- and accommodation to achieve common purposes, and the weak will find little protection in such procedures. Furthermore, the experience of two world wars has demonstrated not only that war is immensely destructive for all concerned but also that it solves few problems, creates many more than it solves, and generally leaves nations both great and small in a worse condition than it found them. It was, therefore, not surprising that those who wrote the Charter should have been convinced that the first job of the new organization, both in time and in importance, was to keep the peace. In line with this thought, the United States delegation to the San Francisco Conference reported to the President that "if any single provision of the Charter has more substance than the others, it is surely the first sentence of Article 39, which places upon the Security Council the duty to determine the existence of 'any threat to the peace, breach of the peace or act of aggression' and to make recommendations or decide upon measures to be taken 'to maintain or restore international peace and security.

The primacy of this particular Charter provision, the members of the United States delegation recognized that without the effective maintenance of
peace, the United Nations would not be in the position to perform its other functions. While it was recognized that the successful discharge of its responsibilities for promoting economic and social cooperation and developing friendly relations between states was of the greatest importance and would in the long run contribute to the maintenance of peace and security on a more acceptable and durable basis, it was rightly believed that for these curative and preventive measures to make their contribution, it was necessary that present peace and security be assured. In other words, pending the development by cooperative means of long-range programs and policies that would make the world a better place to live in, it was necessary to maintain conditions of peace and security without which the necessary cooperation would be impossible.

The Charter approach to the problem of maintaining international peace and security is essentially a two-fold one. On the one hand it requires Members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations." In this respect, it goes considerably further than the League Covenant which required members not to "resort to war" under certain defined conditions, but not all. The ambiguity of the term "resort to war" made the League commitment even less restrictive in its legal effect than the corresponding provision of the Charter. On the other hand, the Charter requires that "all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." This, too, is a more sweeping commitment than was contained in the corresponding provisions of the Covenant. These two commitments are, in effect, the two complementary aspects of one central commitment, not to use force for the achievement of purely national purposes.

The Charter of the United Nations goes beyond the Covenant in the duty that it places on Members to abstain from the use of force in the achievement of national purposes, it does not go as far as the Covenant in obligating Members to use collective measures to restrain or suppress any improper use of force by a
state. The Covenant contained quite revolutionary provisions in this respect. In addition to the collective guarantee contained in Article 10, which to President Wilson was the heart of the Covenant, Article 16 required members to apply "immediately" sweeping economic and financial sanctions against any state resorting to war in violation of its obligations. Though the application of military sanctions was not made mandatory, the Covenant thus did go far in creating a system of collective security under which each member would be required to assist any other member that might be the victim of aggression. The failure of League sanctions against Italy in 1935-1936 convinced many of the basic weakness of the League system of collective security and was in large measure responsible for the decision of the authors of the Charter to adopt a different approach to the problem of implementation, and to place primary responsibility on the major powers acting in concert instead of relying on the individual actions of all Members responding to a common legal commitment.

The Charter places upon the Security Council the primary responsibility for the maintenance of international peace and security. This responsibility is made particularly clear with respect to measures to be taken in case of a threat to the peace, breach of the peace, or act of aggression. The Security Council alone is expressly directed to determine the existence of such a condition, and to recommend or decide measures to be taken to restore international peace and security.

The Charter defines in considerable detail what particular measures the Council may take and how it is to take them, although it gives the Council very wide discretion in the evaluation of circumstances, the choice of means, and the timing of its actions. Acting under Article 39 and Chapter VI of the Charter, it may exercise its powers of peaceful settlement and adjustment, i.e., it may investigate the dispute or situation and make recommendations to the parties regarding the procedures and methods of settlement and adjustment.” Under Article 40 it may call upon the parties to comply with provisional measures intended to prevent an aggravation of the situation, without prejudice, however,
"to the, rights, claims or position of the parties concerned." Under Articles'41 and 42 it may require Members to take such political, economic and military measures as may be necessary to restore international peace and security.

Members can be required to take military measures, they must agree to make available on call and "in accordance with a special agreement or agreements ... armed forces, assistance, and facilities, including rights of passage." These agreements are to govern "the number and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided." To enable the Council to take urgent military measures, Members undertake under the terms of Article 45 to "hold immediately available national airforce contingents for combined international enforcement action." Until military agreements are concluded placing at the Council's disposal sufficient military forces to enable it to exercise its responsibilities under Article 42, the permanent members of the Security Council are to consult with each other with a view to taking such joint action on behalf of the United Nations as may be necessary to maintain international peace and security.

To assist the Security Council in the performance of its military responsibilities, provision is made for a Military Staff Committee, composed of the Chief of Staff of the permanent members or their representatives. The Committee is made responsible under the Security Council for the strategic direction of armed forces placed at the disposal of the Council. The Security Council is authorized to decide whether measures which it orders shall be taken by all Members of the United Nations or by some. Furthermore, Members are required to afford mutual assistance in carrying out these measures.

The Charter system for keeping the peace by enforcement action as constructed at San Francisco was, therefore, one which vested great responsibility and power in the Security Council, along with wide discretion in the discharge of this responsibility and the use of this power. Clearly, since the Security Council could only take action by agreement of all the permanent members, the system could be operative only against a non-permanent member of the Council, and not
against a permanent member or for that matter a non-permanent member backed by a permanent member. It clearly depended for its effectiveness on recognition by the permanent members that they had a common interest in keeping the peace and that they should compromise their differences in order that they might cooperate in furthering this common interest.

The primary responsibility of the Security Council for taking enforcement action, the San Francisco Charter also lays down the general principle that enforcement action is a monopoly of the United Nations, that no such action can be taken under any regional arrangement or by any regional agency without the consent of the United Nations 'given through the Security Council. This principle had been stated without qualification in the Dumbarton Oaks Proposals. In the course of the San Francisco deliberations, however, it was found necessary to introduce two exceptions. One was to the effect that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has " taken measures necessary to maintain international peace and security." This exception was introduced to meet two objections to the absolute requirement of Security Council authorization.

First, the Latin-American Republics argued that this requirement made it possible for a non-American permanent member of the Council to veto any collective action that might be taken by the American republics under an Inter-American system of collective security such as was envisaged by the Act of Chapultepec, adopted by the Mexico City Conference of February-March 1945. The other objection was that since the requirement of Security Council authorization made it possible for a permanent member to prevent any action from being taken by the Council, this might lead to a situation in which a stale would be deprived of any protection against an attack directed or supported by a permanent member. Clearly, the second objection was based on some skepticism as to whether relations between the Soviet Union and the Western powers would be such as to permit the close cooperation which the effective functioning of the
Security Council required. To meet these two objections, and to permit collective action to be taken under certain conditions without the requirement of Security Council authorization, Article 51 was adopted. Significantly, it was placed at the end of Chapter VII and not in Chapter VIII, thus stressing its function of introducing an exception to the total responsibility of the Security Council as well as to the special responsibility of the Council in authorizing enforcement action under regional arrangements.

The second exception that was introduced at San Francisco related explicitly to the requirement of Council authorization of enforcement action under regional arrangements or by regional agencies. It provided that the requirement should not apply in the case of "measures against an enemy state, as defined in paragraph 2 of [Article 53], provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state." This exception was introduced to meet the demands of certain of the allies in the Second World War, notably the Soviet Union and France, that Members should be able, without waiting for Security Council authorization, to take such measures as might be necessary to prevent the "renewal of aggressive policy" on the part of defeated enemy states.

At the time these exceptions were introduced into the Charter, their inclusion was defended on the ground that they were necessary precautions. The emphasis was placed on the importance of the central principle that the United Nations alone and more particularly the Security Council, should be responsible for deciding where, when, and what collective measures should be taken. With the revival of earlier fears, distrusts, and antagonisms between the Soviet Union and the West, these exceptions, particularly that contained in Article 51, have acquired major importance as providing alternative bases for collective measures to keep the peace.

FAILURE

The full effectiveness of the Security Council as the primary instrument of
peace enforcement was premised on two conditions neither of which materialized: (i) the availability to the Security Council of military forces and facilities under the terms of agreements concluded between the Council and Members; and (ii) the effective cooperation of the permanent members of the Council in dealing with threats to the peace, breaches of the peace, and acts of aggression.

One of the first acts of the Security Council after its organization in 1946 was to request the Military Staff Committee to examine and report on the question of military agreements under Article 43. Following the Assembly's recommendation in December, 1946, that the placing of armed forces at the disposal of the Council be accelerated, the Council on February 13, 1947, directed the Military Staff Committee to make its report not later than April 30. The Report which the Committee submitted on that date contained forty-one articles. Of these, twenty-five were agreed to by all members of the Committee; agreement on the other sixteen was not possible. Unfortunately, the sixteen articles were the important ones since they dealt with matters, not adequately covered by the Charter, which had to be decided if agreements under Article 43 were to be concluded.

The chief disagreements were between the Soviet Union and the other permanent members, though this division did not hold on all issues. The Soviet Union held fundamentally different views from the United States and to a somewhat less extent from other permanent members on the all-important questions of the size and composition of the armed forces to be contributed by permanent members; the provision of bases; the location of the forces when not in action; the time of withdrawal of forces; and the manner of logistical support. Generally speaking, the United States favored a large force with great striking power, flexibly composed, organized, and directed, and so stationed as to be readily available. The Soviet Union saw no need of a large force if it was not to be used against a major power; insisted that the principle of equality should govern the contributions of the permanent members; and demanded clear definition of the conditions under which the force could be used. It was obvious from the
discussions in the Committee and subsequently in the Security Council that the disagreements resulted primarily from lack of confidence between the Soviet Union and the United States in each other's good faith and intentions. The differences, therefore, were political and not technical in origin, and could only be eliminated at the political level.

The governments were not able to resolve their political differences, the deadlock over principles governing the military agreements continued and the Security Council has never been provided with the armed forces and facilities necessary to the full discharge of its responsibilities under the Charter. And since it was the inability of the permanent members to agree that made it impossible to conclude these agreements, it was unlikely that these same permanent members would be able to agree on joint action on behalf of the Organization under Article 106. pending the conclusion of the necessary military agreements. In the one case where this was proposed, when the failure to implement the Assembly's recommendations on Palestine was before the Security Council in February, 1948, the proposal was subsequently withdrawn when it was obvious that the rapidly deteriorating relations between the Soviet Union and the Western Powers made joint action quite out of the question.

Though military forces, and facilities were not made available to the Security Council, it was still legally possible for the Council to take measures short of the use of armed force to keep the peace in case of threat or actual violation. There was even the possibility that the Council members might agree to use their own forces or forces voluntarily contributed by other members to achieve this result. But the likelihood of such action being taken was greatly reduced, if not for all practical purposes eliminated by the conflicting purposes of the policies and actions of the Soviet Union and the Western Powers in the postwar period, and by the distrust and hostility that came to characterize their relations.

Greece complained in December, 1946, that her northern neighbors were threatening the peace by giving aid to guerrillas in northern Greece and later requested that the Council take action under Chapter VII of the Charter, the Soviet
Union vetoed proposals that were made. When the Security Council was considering the situation in Indonesia resulting from fighting between Netherlands and Indonesian forces, no decision to take enforcement action was possible, in part because the United States and the United Kingdom were opposed to having Soviet forces introduced into Indonesia, even for international police purposes. Likewise, when the Security Council was asked in 1948 to consider the implementation of the General Assembly's recommendation on Palestine and the situation resulting from fighting between Arabs and Jews, distrust and rivalry between the Soviet Union and the Western Powers and unwillingness on the part of each side to see armed forces of the other introduced into the area, even under Council auspices, seriously delayed any effective action to stop hostilities and were in fact in large measure responsible for failure to implement the Assembly's proposals.

Only under the very special circumstances resulting from the withdrawal of the Soviet representative from the Council in January, 1950, in protest against the seating of the representative of the Chinese National Government was it possible for the Security Council to initiate collective measures in Korea." The possibility of the Council's continuing to carry on the task it had undertaken disappeared with the return of the Soviet representative on August 1, and it is reasonable to surmise that circumstances permitting the Council to act in a situation where the permanent members are in basic conflict will not again occur.

The Security Council has been unable, except in one instance, to initiate collective measures of the kind described in Articles 41 and 42 of the Charter, it has in a number of instances been able to exercise sufficient influence on the situation, acting under the provisions of Chapter VI and Articles 39 and 40 of the Charter, to prevent hostilities from breaking out or to bring them to an end. Thus, in dealing with the Dutch "police action" in Indonesia in 1947, the Security Council was able first to get the parties to agree on a cease-fire and the principles of a political settlement, and then to terminate the second Dutch "police action" on terms that gave no profit to violence. The success of the Council in this instance
was due primarily to the fact that the principal major powers, for different reasons, were anxious to bring hostilities to an end and to eliminate any excuse that any one of them might have for introducing its national forces into the area. In this particular case, the exercise of economic pressure on the Netherlands by the United States, together with the threat of economic measures by certain Asian Countries, contributed greatly to the Dutch decision to yield.

In Palestine, during the period 1947 to 1949, the Security Council was successful in finally bringing Israel and the Arab States to accept a cease-fire and to conclude armistice agreements putting an end to hostilities. To achieve this result, the Council found it necessary to invoke Chapter VII explicitly and threaten action under it. Here again the decisions of the Council were made possible by the fact that the permanent members had a common desire, though for different reasons, to bring an end to the fighting. The Soviet Union was anxious that fighting should end so that the United Kingdom and the United States would have no excuse for sending their armed forces into the area, and the Western Powers were equally anxious to prevent any situation—from arising which would provide an excuse for the dispatch of Soviet forces. In the Palestine case, the threat of the United Kingdom to take-action under the Anglo-Egyptian Treaty of 1936 which Egypt was anxious to terminate helped persuade the latter to agree to the Council's request for a cease-fire. From 1949 on, and particularly after the North Korean attack and the United Nations counteraction, the Council became a less effective instrument for keeping the peace in the Middle East, specifically, by supervising the enforcement of armistice agreements. Once the "cold war" spread to that area, the Security Council became largely impotent to take any effective action.

The conclusion to be drawn from these and other instances is that while the Security Council has not been able to act as the armed policeman, as the framers of the Charter had intended, it has nevertheless, within those areas where the permanent members have a common interest in preserving or restoring peace, been able to perform its police function with considerable success. This it has done by various forms of persuasion—short of the use of the collective measures
authorized in the Charter—persuasion that is usually cloaked in the language of Article 40, providing for provisional measures to be taken "without prejudice to the rights, claims and position" of the parties. Thus, in the resolutions which it adopted in dealing with hostilities in Palestine, it most commonly put its decisions in the form of requests addressed to the parties to cease hostilities or to withdraw their forces from certain areas without prejudice, and in making these requests, the verb calls upon was commonly used.

**EFFECTIVENESS**

The early years of the United Nations that the effectiveness of the Security Council was being destroyed by the excessive use of the veto. In recent years the veto has been used with much less frequency. On many occasions the Council has not been able to take a decision—or, at least, to take a decision which many would consider adequate to the demands of the situation—because of the absence of the necessary consensus among its members. Even when the Council has taken a decision, as in the case of its resolution of November 22, 1967, outlining the terms of settlement of the Middle East situation, it has not found it possible to secure compliance of the parties concerned.

This relative ineffectiveness of the Council in the discharge of its responsibilities has been a source of major concern to member governments and to all people interested in what the United Nations is supposed to achieve. It presents a considerable contrast to claims that were made in the beginning on behalf of the United Nations as the successor to the League of Nations. It was then emphasized that the new organization had "teeth" which the League did not have, and in consequence the means at its disposal to enforce its decisions. This strength was expected to come from the common interests of the major powers and their willingness to act in concert. Without that common purpose and agreement upon means, the Council has frequently been little more than an organ of discussion. And yet, in spite of the disagreements among its permanent members, the Council has discharged its responsibilities with somewhat more success than it has been given credit.
The functions of the Council fall roughly into two categories. First, the constituent functions which have to do with such matters as membership, appointment of the secretary-general, election of judges, and establishment of subsidiary organs; and, second, substantive functions in the maintenance of international peace and security which have to do with the handling of specific disputes and situations and the elaboration of possible schemes for the regulation of armaments. The effectiveness of the Council's work can be considered under these two principal heads.

Under the Charter, a state is admitted to membership in the organization by decision of the General Assembly and on the recommendation of the Security Council. The Security Council is associated with the General Assembly in the admission of new members because of its primary responsibility for the maintenance of international peace and security and the importance of peace and security as a purpose of the organization. Since it was decided at San Francisco that membership should not be automatic and that there should be certain qualifications that applicants must satisfy, including willingness and ability to discharge the obligations of membership, it seemed reasonable that the Security Council should have a share in the admission process. Under the Charter its function is to make an initial determination whether an applicant is qualified, leaving to the General Assembly the responsibility for making the final decision.

In the first decade the requirement of initial Security Council approval operated as an obstacle to the admission of the great majority of the states that applied. This was due to the fact that permanent members used the occasion of passing on applications to achieve political advantage in the cold war. Though positions on membership applications were formally developed as a rule on the basis of criteria contained in Article 4 of the Charter, an important consideration influencing votes on applications was the likely voting behavior of the applicant, once a member, on cold war issues. When the membership deadlock was finally broken in 1955, the Security Council's action on membership applications took on a quite different character. Some members appeared extremely anxious to win the
favor of applicants by supporting their admission without too close attention to basic qualifications laid down in the Charter. While on a few occasions questions were raised as to whether the applicant state had the capacity for discharging the obligations of membership, objections were rarely carried to the point of negative votes and from 1955 on few applications failed to receive approval. Thus the Security Council passed very suddenly, one might say, from the practice of excessive restraint to that of nearly complete permissiveness. Only in the case of the divided states were objections to admission consistently maintained. Rarely during the period of twenty-five years did the Council perform as a discriminating judge of the qualifications of members by the standards originally laid down under the Charter. On the other hand, except for the first decade and the special case of the divided states, proponents of universality had little cause to complain regarding Council behavior.

The full discharge by the Council of its responsibilities in dealing with disputes and situations was recognized from the beginning as depending upon the completion of certain arrangements envisaged in the Charter which were left for subsequent action by the Council itself. For one thing, the Charter by implication provided, and this was clearly understood at San Francisco, that the power of the Council to take decisions binding upon members with respect to the use of military forces would depend upon the conclusion of special arrangements by which members would undertake to place forces and facilities at the Council's disposal. Article 43 of the Charter provides for the conclusion of such agreements between the Council and individual members or groups of members. One of the first actions of the Security Council was to direct the Military Staff Committee to undertake a study of the principles which should govern the conclusion of such agreements." When the Military Staff Committee undertook the consideration of these principles, it was soon discovered that agreement among the permanent members did not extend much beyond the specific Charter provisions and did not cover important principles essential to the conclusion of the agreements in question. As a result of this basic disagreement the committee's report consisted of forty-one draft articles, only twenty-five of which had been accepted unanimously.
Most of the important areas of disagreement were between the Soviet Union, on the one hand, and the other permanent members of the Security Council, on the other. The major point of disagreement between the Soviet Union and the other members concerned the strength and composition of the contributions to be made by the permanent members. China, France, the United Kingdom, and the United States took the position that initial contributions of all permanent members should be comparable but that, in view of differences in the size and composition of their national forces, members might make contributions differing widely as to the strength of the separate components of land, sea, and air forces. The Soviet Union, however, insisted that the contributions of permanent members should be equal both in overall strength and composition. Other major areas upon which the Soviet Union and other permanent members disagreed concerned the provision of bases, the location of forces, and their withdrawal following completion of their assignment. The disagreements in the Military Staff Committee were repeated in the Security Council when the committee's report came before that organ for consideration. As pointed out by the Soviet representative, the problem was primarily political rather than technical; consequently, disagreement reflected not so much the inability of the military experts to agree on technical problems as the failure of their respective governments to agree on basic issues of security and prestige.

The Charter goes into great detail in Chapters VI and VII in defining the powers to be exercised by the Security Council and the particular steps to be taken in dealing with disputes and situations submitted to it. Article 34 provides that the Security Council may carry out an inquiry for the purpose of determining whether a dispute or situation is sufficiently serious to warrant its further consideration. In Articles 36 and 37 the distinction is made between the power of the Security Council to recommend appropriate procedures or methods of adjustment and its power to recommend terms of settlement. In Article 39 the Security Council is directed to determine the existence of any threat to the peace, breach of the peace, or act of aggression as a precondition to deciding what measures are to be taken under subsequent articles of Chapter VII. Article 40 authorizes the Council to "call
upon" the parties to adopt provisional measures, and under. Articles 41 and 42 the Council may order a whole range of collective measures. In practice, the Security Council has not taken too seriously these specific directives and authorizations of the Charter and has adopted a more flexible attitude in determining the course that it is to follow in dealing with a particular dispute or situation. This flexibility has been due primarily to the fact that the Security Council, as a political organ, in reaching its decisions is guided by its estimate of what is acceptable to the parties as well as by the specific provisions of the Charter.

The disputes and situations that have been handled by the Security Council have, generally speaking, fallen within two broad categories. On the one hand, there have been those disputes and situations, commonly arising from the liquidation of colonialism and the establishment of new boundaries between newly created states, in which permanent members of the Security Council have had important interests but in which these interests have not been regarded as of such a vital nature as to exclude some possibility of compromise and third-party decision. On the other hand, other disputes and situations have involved such direct and vital interests of the permanent members, particularly the United States and the Soviet Union, as to exclude the possibility of Security Council consideration and a decision by that organ representing an accommodation of conflicting interests. When it has been asked to deal with disputes and situations in this second category, the Council has found it impossible or inexpedient to take a decision or even, in most instances, to undertake a serious discussion of the matter in question.

The successes of the Council, moderate or limited as they have been in many instances, have been achieved in dealing with disputes and situations falling in the first category. Here the degree of success has been quite uneven, in most instances not going beyond the achievement of a temporary cease-fire or a truce. Rarely has the Council been able to achieve a definitive settlement or accommodation although it has been successful in keeping discussions alive and in creating an atmosphere where there is at least the possibility of an agreement being reached through negotiations between the parties. The methods used by the Security Council have varied greatly, depending in each case upon the Council's
evaluation of the particular situation and the conclusions reached by members as to the maximum, area of agreement. While there was initially a tendency on the part of some members of the Council to push matters to a vote in order to establish a majority position and, by inference at least, to place the blame for the Council's failure to take a decision on the dissenting permanent member, the more common practice in recent years has been to seek by informal discussions to achieve a consensus which may be registered by a Journal vote or often by a statement by the president.

The Security Council has achieved considerable success in containing and putting an end to armed conflict in situations where the vital security interests of the permanent members are not directly involved, it has never ordered the use of military measures for that purpose. The nearest the Council has come to doing this was during the Congo crisis when it authorized the use of force, if necessary, to prevent the occurrence of civil war and to secure the removal of foreign military, paramilitary, and political advisory personnel. In these instances, the measures were presumably adopted under Article 40 and the coercion was not to be directed against a member or another state. Also, the Council authorized and did not order the action in question, and the decisions were clearly not taken under Article 42. Not only is the ordering of collective military measures precluded by the absence of special agreements under Article 43, but joint action by the permanent members, as authorized in Article 106, has been practically out of the question because of mutual distrust.

Though the Security Council has not made use of its powers under Articles 41 and 42 to restore international peace and security in a situation of armed conflict, the Council has of late called upon or requested states to take measures of the kind listed in Article 41, such as ceasing the shipment of arms, munitions, and war materials, and the breaking off of diplomatic relations, to induce compliance with the United Nations principles of self-determination and racial equality. In the case of the Smith regime in Southern Rhodesia, it even made a formal determination that the situation there constituted a threat to the peace and ordered political and economic measures under Article 41. It is significant, however, that
the Council has been unwilling—even in a situation of this nature in which members are under strong pressure from the Asian and African countries—to authorize military measures, nor has there been any evidence thus far that the permanent members are prepared to take joint military measures on behalf of the organization.

The failure of the Council to be more effective as an organ of peaceful settlement and accommodation is no doubt due primarily to the fact that while in particular situations the permanent members have seen a common interest in putting an end to fighting, they have not found a like common interest in agreeing upon the terms of settlement which they are prepared to persuade the parties to accept. Left to their own devices, the interested parties have been able to play the major powers against each other and to exploit their conflicting interests to their own particular national advantage. Though they have been largely deterred by their commitments under the Charter and pressures brought to bear upon them through the responsible organs of the United Nations from prosecuting their claims by armed force, they have not been induced to anything like the same degree to accommodate their respective claims in the interest of permanent settlements.

The limited achievement of the Council does not indicate any defect in the basic premise of the Charter that power should be related to responsibility and that substantial decisions of the Council should require agreement of the major powers. It is difficult to see how the Council could have been any more effective if it had been able to take its decisions by simple or majority votes without the requirement of permanent member concurrence. It is the state of international relations in the postwar period that has been responsible for the limited achievements of the Security Council and not the particular structure and voting procedure of the Council which, on the whole, apart from the absence of Communist China, have realistically reflected the state of world affairs.

The future of the Security Council very largely depends upon the course of international relations and more particularly the attitudes of the major powers with respect to the role which the United Nations is to play. It is, of course,
impossible to predict with any certainty. One can indicate present trends and assume that the developments of the decade or so ahead will be substantially in line with current trends but there is always the possibility of some unforeseen development. One unforeseeable uncertainty is the impact which the bringing of Communist China into active participation in the United Nations is going to have upon the work of the organization, and upon the role of the Security Council in particular.

The future of the Security Council will largely depend upon the attitude of the principal member governments. The attitudes of the permanent members will be the most decisive influence because they alone have it within their power to determine whether the Security Council plays an important and effective role or not. Their interest in the Security Council may well be decisively influenced by the extent to which the Security Council, by its composition and operating procedures, provides a forum where the representatives of the major powers can exercise the influence to which they feel entitled over the course of international affairs. Any attempt to further enlarge the Council to increase the number of non-permanent representatives and permit more extensive participation and wider representation may be highly detrimental to the organ's future. Any attempt by the smaller states to use their voting power in the Council to serve their particular purposes, even to the detriment of major power interests, is likely to be self-defeating. The basic concept which the authors of the Charter had in mind in the establishment of the Security Council corresponds to the realities of international politics, and any attempt to circumvent it in the name of "sovereign equality" is likely to have serious consequences not only for the Security Council but also for the United Nations itself.

REVISION

There is a lingering perception in both informed and lay circles that the problem of revision of the UN charter is largely an academic issue. Altitude of the former may be ascribed to use observed inertia of the organization, especially due to status quoit's stand of the permanent members each of which has a decisive say
in the matter. The latter group, seems to be unaware of the many formal and informal changes that have crept into the UN system without, of course, heralding any radical transformation.

Assuming that reforms of the UN are regarded as urgent and that existing procedural hurdles would not impede the work of reforms, one can try to identify a number of aspects of the UN Charter which need revision as a matter of priority. Suggestions for change would, of course, have to be made in the light of experiences gained about the limitations and prospects of the UN in the course of the five decades of its working. The overall aim is to enhance its capability and efficiency as well as to safeguard it from any misuse, by member states. It is also necessary to point out in this connection that with the end of the cold war and its attending complications, the UN must be recharged and restructured to fulfil its missions more effectively.

First place, attention may be drawn to the membership provisions. It is gratifying to note that the organization has at last achieved universality and the old era of bickerings and obstructionism over admission of members (as in the case of China, Albania, Mongolia, Korea, Vietnam or Germany) is over. Nonetheless, one cannot say with certainty mat no new states would emerge in future and apply for membership, (as had happened in the case of Bangladesh or Palestine) especially in view of the current upsurge of subnational separatist movements in different parts of the world. The question of Taiwan's representation after it was unseated in 1971 continues to be sensitive. International response to such developments is likely to be guided again by partisan political interests. Consequently, automatic membership of an emergent nation is not ensured. It is in this context that the UN should go by certain objective standards to determine 'peace lovingness' and 'ability to fulfil obligations to the UN'. Membership questions should be kept outside the scope of the 'Veto' power.

Second comes the perpetual controversy regarding the competence of the UN to intervene in the domestic matters of the member countries. Article 2 para 7 debars it from such intervention though by a stretch of interpretation the General
Assembly has managed to keep aside colonial, certain human rights and economic issues from the scope of its application on the ground that they affect international peace, security and amity. To accept limitation of the UN in such areas runs counter to the spirit of the age. Clear international legal norms should be formulated and followed in future. The International law Commission may very well assist the UN in this regard.

**Third** nothing has raised greater controversy or generated more heat than the exercise of Veto power by the permanent members. Despite known cases of frequent misuse of this power. The prevailing consensus is that it is the constitutional expression of an inescapable fact of power equation. Therefore, its complete elimination is neither feasible nor practicable. Possibly, no great power would ever feel like renouncing this privilege. Nonetheless, need has been felt for restriction of its use in some ways. For example, admission of new members, conciliation or pacific settlement of disputes should be kept out of its purview. In serious and substantive matters the rule of unanimity should be modified by prescribing a special majority say 3 out of 5 of the permanent members while the non permanent members support a move by three fourth majority.

**Fourth** in line comes restoration of the collective security provisions to their original status. This calls not only for the formation of a standing military outfit for the organization ready to be deployed in any disturbed area. but it also needs to be safeguarded against any overbearing power. Thus enforcement actions must conform to certain conditionalities such as (i) the action must rest on a decision backed by a special majority either of the Security Council or of the General Assembly, whichever has initiated the move; (ii) the action must not overstep the limits envisaged by the Charter and the rules of propriety established by international law; (iii) the action must be free from unnecessary retaliation and avoid disproportionate damage being inflicted on the target state and (iv) finally, there should be a post Operation review of the course of action in each case. These and similar conditions are necessary to save the UN from arbitrary use by interested powers.
Fifth in relation to the regional formations (Articles 52, 53 and 54), every care should be taken so that they do not usurp the functions of the Security Council. Instead of contributing to regional peace and stability they are likely to be used as instruments of balance of power. The persistence of NATO in the political and military affairs of continental Europe or the US guided activities of the OAS or Gulf Council do not augur well for regional or world peace. Which type of situations are appropriate for early regional action can not, of course be defined in advance. Nonetheless in an age of instant satellite communication, members responsible for regional defence activities must obtain Security Council approval within the shortest possible time and need not be allowed a convenient time gap to confront the UN with a-fait accompli. By and large all regional bodies must register with the UN secretariat and try to devote greater attention to economic and social cooperation among members. Inclusion of extra-regional powers within a regional organization should be subject to express qualification that their participation should be mainly in the nature of good offices.

Sixth overlapping jurisdiction between the General Assembly and the Economic & Social Council in the sphere of welfare, human rights, eco-systems, technology, information etc, should be, as far as practicable, streamlined and simplified. The organization must learn to walk with an optimum number of sub-agencies rather than a plethora of them. That would ensure both economy and efficiency.

Seventh the powers of the Secretary General have to be spelt out to reflect the special responsibilities he has to discharge. In fact, many new powers have accrued to the office in the course of giving leadership to the organisation through thick and thin. The Secretary General's hands should not be tied except where absolutely necessary in the opinion of the majority of members. Also, in the matter of his appointment, the subjective political preferences of the powers big or small, must not come in the way of the selection of the sure that the appointee is really me best and not merely the bill available among the conformists. A proper search should be under part of the selection procedure. Again the possibility of
appointment of the incumbent Secretary General must not remain open united. A maximum of two consecutive terms should be ideally the practice.

**Eighth** matters which have become redundant or dated, may be deleted from the text such as the Chapter on trusteeship system. One benefit of this move will be to eliminate the possibility of a big power claiming special authority over 'strategic territories'.

The Charter can be made or unmade by convenient interpretation. Instead of leaving the question of interpretation in the hands of different agencies and therefore subject to the prevailing bias of a temporary majority the issues of interpretation must be dealt with by the ICJ Controversies over admission of new members liabilities for Charter violation or propriety of an enforcement action must pass the exacting test of judicial wisdom.

**EXPANSION**

Changes in the wake of the Gulf War of '90s—notably, the official termination of the Cold war by US and USSR and the projection of a rosy new world order from Washington obviously to gloss over the sombre prospects of a unipolar power structure and to drown the noises about UN being hijacked gave birth to a transient optimism-One element of this optimism consisted in the elusive slogan for democratising the UN, that too in a limited manner by expanding the permanent membership of the Security Council. When the United states broached the idea, names of several countries were in the air as likely candidates. Each claimant had its own case as well as a cultivated support base and believed that it deserved special consideration.

The first and the most obvious issue surrounding the proposal concerns the procedural arrangement for introducing any such change in the UN organization. In fact no major organ of the UN has been given an inelastic composition. Over the period the Assembly, the ECOSOC and even the non-permanent part of Security Council have undergone quantitative changes. It is, therefore, not entirely unlikely for permanent membership of Security Council to be offered to one or
more new members. The only essential condition is the concurrence of the existing permanent members in a proposal of this sort with a supportive resolution of the General Assembly. It is here that one crosses the boundaries of law and enters into the domain of power politics- Whatever motive the US had, to which we shall refer presently, in putting this idea into circulation, the point remains that there has been no official indication of any serious consultation among the existing permanent members over the future shape of the Security Council, far less any overt or covert agreement as to who ought to be invited to the privileged membership. Stray public statements by leading political figures in the west expressed varying degrees of preference for Germany, Japan, Canada, Brazil and India. With hindsight it seems that these statements were in the nature of tentative feelers to assess global reactions. There was hardly any consistent approach and possibly no follow-up consultation among the existing and the prospective permanent members. The 51st session of the UN General Assembly was to direct its mention, among other things, to the possible expansion of the Security Council’s permanent membership, yet no move was taken to pursue the matter on to the agenda of the UN.

An American brain wave, the idea had a two fold objective: (i) to rope in the two most economically powerful nations viz, Germany and Japan till now outside the charmed circle of the UN, understandably to fill its near empty coffers and (ii) to lure the ambitious among the third world, nations to the possibility of a finger in the pie, raising of course no definite hope for any particular candidate. The US possibly got a tacit nod from the rest of its Council partners Russia and China included.

The present composition of the permanent members of the Security Council one cannot but notice certain changes that have already occurred there. At least two original members have been replaced by new entities- China which occupies a permanent seat today is not the China of 1945. Similarly, the replacement of the former USSR by a part thereof, namely the Russian Federation almost without a fuss is a recent case in point. One also wonders whether today's England truly lives up to the image of 'Great Britain of the grand alliance'. The
point is that the Security Council as it stands today has not one but two inner structures. The outer ring of non-permanent members surrounds the inner circle of permanent members who again hardly act independent of the United States. Ultimately therefore, the choice of new permanent members, if at all necessary, will be determined principally by the US and dittoed by others. This makes a mockery of the so-called 'democratisation', especially when one considers the fact that the US itself continues to be the largest defaulter in respect of its obligation to contribute to the peacekeeping funds of the UN.

Among the third world aspirants, India has made public its interest in a permanent membership and started canvassing for support. Unfortunately all its hopes were dashed when in 1996 elections to a non-permanent vacancy in the Security Council India was abjectly defeated by Japan. India, it seems, is still eager to try its luck. To succeed it must too the weaker nations and get by any means into the good book of the stronger ones, especially the US. Persuading the US, however, will be an impossible task. A country which had the nerve to veto the perproposa of US for the Comprehensive Test Ban Treaty at Geneva and again at New York is certainly going lo be cornered. Besides, the country has the distinction of not going fast enough about economic liberalisation and is yet to reduce its external debt burden to any significant degree. India's greatest handicap which the western powers are only too. happy to exploit is the unabated conflictual relations with Pakistan over Kashmir.' Neither does she stand much chance of bagging enough votes in the General Assembly to outdo a pro-West Egypt or an affluent Asian tiger not to speak of Brazil or Nigeria. Again nations with an unbroken peaceable record like the Scandinavian ones can not be easily set aside. They may be ready to produce tangible proofs of greater loyalty to the UN.

DEMOCRATISATION

A mitigative measure perhaps lies in an expanded Security Council that accommodates the major interest groups in today's society of nations something the present rotative ten are representing but inadequately. Apart from having sovereign state members per se, there is some merit in accommodating a specified number of high profile personalities playing leading roles in, international
movements like the Green Peace/NAM regional groupings like CIS/ASEAN and international conciliation in the form of Track II diplomacy. "The United Nations shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."

The present territorial view of a version for fair 'geographical' representation needs to be supplemented by 'functional' representation that is relevant to the pressing issues before the world.

The final lest of democratisation would not lie merely in the numerical expansion or in the variety of representation. Rather, it is accountability of the Security Council to the prevailing world public opinion as reflected through the General Assembly that is the greatest need of the hour.

The Security Council, as a responsible global executive, the veto power would simply appear to be an anachronism. Equitable representation is one thing but democratisation is something more. The five allied powers simply helped themselves to the privileged position on the Council for having crushed the Fascist powers in the course of World War II. But once in the role of global guardians of peace, they hardly lived up to the high ideals of peacekeeping. Most of the evils of the postwar international society can be attributed to the indiscriminate use of power by one or the other war, intervention, arms race, mutual distrust, neocolonialism, ideological pretensions and general subversion of the UN's collective security in the name of fighting aggression.

Global reach, if that is the criterion of a big power, need no longer be defined in crude military terms. Technological superiority and economic powers today have become a greater decisive factor for welding world leadership. The UN is there not merely as a global entity but also an apex body trying to put some order in to international relations which today rest considerably on regional formations. The minimum that the present move for extension of the Security Council ought to achieve is to ensure full and fair representation of each region on the world executive body.