

UNCLO - Working Papers - Commissions & Technical Committees - Rapporteur's Report

15 May 1945  
30 June 1945

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UN ARCHIVES

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weakened by some members deserting the ideal which inspired them when they signed the Charter, or even mocked by aggressor or would-be aggressor states.

"It is obvious, however, that withdrawal or some other form of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice. On account of this risk, inherent to all human enterprises, the Committee abstains from inserting in the Charter a formal clause forbidding withdrawals."

The question of expulsion and suspension evoked an extended exchange of views. Those in favor of omitting any reference to expulsion from the Charter argued that expulsion (1) would be inconsistent with universality; (2) would release a member from its obligations under the Charter; (3) would obstruct reconciliation between the Organization and any recalcitrant state; and (4) might prove less drastic in effect than suspension.

primary The opponents of these views, the supporters of expulsion, explained that (1) peace and security, not universality, was the aim of the Organization; (2) expulsion would apply to virtually incorrigible member states which persistently or gravely violated the principles of the Charter; (3) with regard to such states, it was necessary to make absolutely clear what attitude the Organization would assume towards them; (4) retention of membership under suspension might inhibit the Organization from acting drastically enough against such states; (5) absence of the power of expulsion might allow a member state to act in collusion with a non-member state in obstructing the Organization and its purposes; (6) the Organization would be capable of applying expulsion judiciously; (7) expulsion would not release the expelled state from the obligations specified for non-members; and (8) expelled states might be readmitted to the Organization.

A special subcommittee studied the question of expulsion and suspension. On May 25, the subcommittee recommended that reference to expulsion be omitted from the Charter. The subcommittee also recommended that, if Committee I/2 sustained the view of the majority of the subcommittee on expulsion, then the Committee should change the draft of paragraph 3, Section B, Chapter V concerning suspension along the following lines:



"The Organization may at any time suspend from the exercise of the rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council, or which shall have violated the principles of the Charter in a grave or persistent fashion. The exercise of these rights and privileges may be restored in accordance with the procedure laid down in Chapter ... para..."

The subcommittee, in discussing suspension, felt that a Norwegian amendment providing for the suspension of rights and privileges of members failing to pay their financial contributions was too severe and preferred the Netherlands amendment. On this matter the Norwegian delegate stated his willingness to withdraw the Norwegian amendment if the Netherlands amendment were brought officially to the attention of the Steering Committee.

✓ *Comp. 1/2*  
At its May 25 meeting, Committee I/2 voted 19 to 16 in favor of including a reference to expulsion in the Charter; but failing to receive the necessary two-thirds majority, the reference to expulsion in the Dumbarton Oaks Proposal was not sustained.

The Committee then proceeded to vote on the proposed revision of paragraph 3, Section B, Chapter V concerning suspension. This proposal was almost unanimously adopted by the Committee.

Having passed on Chapter III, withdrawal, suspension, and expulsion, Committee I/2 concluded its discussion on these subjects.

PREAMBLE

to the Rapporteurs' Reports on I/2

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NOTICE: The following report has not been discussed in the Committee. It is submitted to the Members of the Commission in order that the comments of the Delegations may be communicated in writing or verbally.

Due attention will be paid to such observations by the Commission's Rapporteur in his report to the Conference as shall be submitted for approval at the final meeting of Commission I.

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AVERTISSEMENT: Le présent rapport n'a pu être discuté par le Comité. Il est communiqué aux membres de la Commission en vue de recueillir les observations écrites ou orales des Délégations. Il sera tenu compte des dites observations par la Rapporteur de la Commission à la Conférence dont le rapport sera soumis à l'approbation de la Commission au cours de sa dernière séance.



June 18, 1945

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OF COMMITTEE I/2 ON CHAPTER III (MEMBERSHIP)

Chapter III of the Dumbarton Oaks Proposals was worded  
as follows:

"Membership of the Organization should be  
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The Sponsoring Powers proposed no amendments to Chapter III concerning members, whereas amendments, comments and proposals were submitted to the Committee by the following Governments: Australia, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Egypt, France, Guatemala, Honduras, Mexico, the Netherlands, Norway, the Philippine Commonwealth, Uruguay and Venezuela.

Taking the first paragraph of the text which we recommend, and comparing it with the second paragraph, we see that a distinction has arisen between original members and future members. As to the former, their participation in the Organization was regarded as a right; while that of the others was subject to conditions. Yet it was clearly understood that this distinction involved no discrimination against future members, but was necessitated by circumstances and would serve in particular to allay the anxiety of certain nations participating in our work which have not achieved



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We need only point out that in the second paragraph the use of the word "State" does not satisfy those in favor of future incorporation of other communities.

Passing on to the question of admitting new members, we would point out that the Delegation of Uruguay took its stand on the subject of universality, as follows: two principles had to be recognized, first the world-wide nature of the Organization--that is to say, that all communities should be members of the Organization--and, secondly, compulsory participation--that is to say, that no nation could choose to become a member of the Organization, or to withdraw from it--and in these conditions the question of expulsion would not even arise.

This standpoint which was supported by various delegations, has been opposed by others which held that this concept of universality was an ideal to be aimed at, but that

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we should not cling to it irrevocably.

In addition, the Committee had to consider two other fundamental problems: (1) the relation between membership and the observance of the principles and obligations mentioned in the Charter, and (2) to what extent we should determine the limits within which the Organization would exercise its discretionary power as regards the admission of new members.

We hasten to say that it was the unanimous opinion of the Committee that adherence to the principles of the Charter and complete acceptance of the obligations resulting therefrom were essential conditions of a State's participation in the Organization.

Nevertheless, two main trends were evident in the discussions. On the one hand, some declared themselves in favor of inserting in the Charter special rules concerning the regime and policy followed by the various governments, and stressed the need to assure members already forming part

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The words "all peace-loving States", generally considered insufficient, were retained but defined. The expression was far from inadequate; it well expressed the ideal which inspired the founders of the Charter.

But it was not enough for a State to declare itself peace-loving. What nation has ever admitted a different attitude? It was necessary also to prove two things: that a State was ready to accept and carry out the obligations of the Charter, and that it was able to accept them and carry



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This clearly meant that the admission of a new member would be a matter for examination, but the Committee did not think it necessary to recommend establishing in detail the factors to be considered in such an examination. It had not lost sight of the difficulties that would arise in evaluating the political institutions of States, and it was feared that any mention in the Charter of such an examination would strike a blow at the principles of non-intervention, or, rather, non-interference.

Nevertheless, all sorts of considerations might be taken into account when forming an opinion as to the desirability of admitting new members.

We would like to refer here to a French amendment regarding neutrality. The French delegate, in supporting it, declared that neutrality was incompatible with membership. Paragraph 2 under consideration here, implies this, since a neutral State, if it were consistent, would not be able to

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June 18, 1945

PROJET DE RAPPORT DU RAPPORTEUR DU COMITE I/2  
SUR LE CHAPITRE III (MEMBRES)

Le Chapitre III du Plan de Dumbarton Oaks était ainsi  
conçu:

"Devrait pouvoir être membre de l'Organisation tout Etat  
épris d'un idéal de Paix."

Ce texte, qui a été élargi au cours de nos discussions, le  
Comité I/2 désire le présenter à la Commission I, sous la forme  
suivante:

"Sont membres originaires de l'Organisation les Etats  
signataires de la Charte dont la ratification sera devenue  
effective conformément aux termes du Chapitre , Article "

"L'Organisation est ouverte à tous les Etats épris d'un  
idéal de paix qui acceptent les obligations contenues dans  
la Charte et qui, au jugement de l'Organisation, sont aptes



la Charte et qui, au jugement de l'Organisation, sont aptes et résolus à les exécuter."

"L'Organisation pourra à tous moments suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privilèges pourra être restitué conformément à la procédure fixée au Chapitre ..... paragraphe..."

"L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte."

Les travaux du Comité I/2 ont porté sur les questions suivantes que nous considérerons séparément, sans négliger d'établir, quand cela sera nécessaire, les liens naturels qui les unissent: (a) qualité de membre des nations participant à cette Conférence, (b) admission de nouveaux membres, (c) retrait, (d) suspension et expulsion.

#### Membres et admission de nouveaux membres

Les puissances invitantes n'avaient proposé aucun amendement au Chapitre III se rapportant aux membres, tandis que les Gouvernements suivants avaient soumis des amendements, observations et propositions au Comité: l'Australie, la Bolivie, le Brésil, le Chili, le Costa-Rica, l'Equateur, l'Egypte, la France, le Guatemala, le Honduras, le Mexique,



Les Pays-Bas, la Norvège, le Commonwealth des Philippines, l'Uruguay et le Venezuela.

Abordons le premier paragraphe du texte que nous recommandons et rapprochons-le du deuxième paragraphe. Nous voyons qu'une distinction s'est établie entre les membres originaires et les membres à venir. Tandis que pour les premiers, la participation à l'Organisation est considérée comme acquise, celle des autres est soumise à des conditions. Il a été cependant bien compris que cette distinction n'impliquait aucune discrimination contre les membres futurs mais s'imposait par la nature des choses et servirait notamment à calmer les appréhensions de certaines nations participant à nos travaux, qui ne sont pas à proprement parler des Etats et, de ce fait, pourraient se voir dénier le droit d'être membres de l'Organisation.

Il nous faut seulement reconnaître que, au deuxième paragraphe, l'emploi du mot "Etat" ne donne pas satisfaction à ceux qui préconisent l'incorporation future d'autres



communautés.

Passant à la question de l'admission de nouveaux membres, nous signalerons que la délégation de l'Uruguay, au sujet de l'universalité, avait pris la position suivante: deux principes devaient être admis, d'abord l'universalité de l'Organisation, c'est-à-dire que toutes les communautés devraient être membres de l'Organisation et ensuite la participation obligatoire, c'est-à-dire que le choix ne serait laissé à aucune nation d'entre comme membre de l'Organisation ou de s'en retirer et, dans ces conditions, la question de l'expulsion ne se poserait même pas.

Cette position soutenue par diverses délégations a été combattue par d'autres qui ont pensé que l'universalité ainsi comprise était un idéal vers lequel il convenait de tendre, mais auquel il ne fallait pas s'attacher indéfectiblement.

En outre le Comité eut à considérer deux autres problèmes fondamentaux: (1) le rapport existant entre la qualité de membre



et l'observation des principes et des obligations mentionnés dans la Charte et (2) la mesure où il convient de déterminer les limites dans lesquelles l'Organisation exercerait son pouvoir discrétionnaire en ce qui concerne l'admission de nouveaux membres.

Empressons-nous de dire que l'opinion unanime du Comité était qu'une adhésion aux principes de la Charte et une acceptation totale des obligations qui en découlent étaient des conditions essentielles de la participation des Etats à l'Organisation.

Toutefois, deux tendances principales s'étaient manifestées dans les discussions. D'un côté, il y avait ceux qui se déclaraient en faveur de l'insertion dans la Charte de règles spéciales se rapportant au régime et à la politique des divers gouvernements, soulignant la nécessité de donner aux membres faisant déjà partie de l'Organisation l'assurance que les nouveaux membres seraient en mesure d'exécuter les obligations que leur imposerait la Charte, qu'ils seraient prêts à le faire



et ne poursuivraient pas de politique contraire aux principes de l'Organisation. De l'autre côté, il y avait ceux qui soutenaient que la Charte ne devait pas sans raison limiter l'Organisation dans ses décisions concernant les demandes d'admission, et affirmaient que l'Organisation elle-même serait mieux inspirée pour juger de l'aptitude des candidats à l'admission.

Les termes "tous les Etats épris d'un idéal de paix", généralement jugés insuffisants, ont été maintenus mais définis. L'expression était loin d'être inadéquate; elle reflétait bien l'idéal qui animait les fondateurs de la Charte.

Mais il ne suffisait pas de se déclarer épris d'un idéal de paix. Quelle nation a jamais avoué d'autres sentiments? Il fallait aussi prouver deux choses: qu'on était prêt à accepter et à exécuter les obligations de la Charte et qu'on était en mesure de les accepter et de les exécuter.

C'était dire clairement que l'admission d'un membre



nouveau serait soumise à un examen, mais le Comité ne crut pas devoir recommander l'énumération des éléments qui seraient à considérer dans cet examen. On ne perdait pas de vue les difficultés qu'il y aurait à évaluer les institutions politiques des Etats et l'on craignait que la mention dans la Charte d'un examen de cette nature ne portât atteinte aux principes de la non-intervention ou si l'on aime mieux, de la non-ingérence. Cela n'impliquait pas cependant que, lorsqu'il s'agirait de se former un jugement sur l'opportunité de l'admission d'un membre nouveau, des considérations de tout ordre ne pussent entrer en ligne de compte.

Ici, nous voudrions nous rapporter à un amendement français visant la neutralité. Le Délégué français, en le soutenant, avait déclaré que la neutralité était incompatible avec la qualité de membre. C'est ce qu'impliquait le paragraphe 2 en question, puisqu'un Etat neutre, s'il était conséquent avec lui-même, ne pourrait pas remplir certaines des obligations les



plus importantes de la Charte, notamment celle de prêter main forte pour repousser ou punir un agresseur. Le Comité a considéré que cette incompatibilité, si elle devait être expressément mentionnée dans la Charte, devrait l'être plutôt au Chapitre II et a renvoyé l'amendement français au Comité I/1.

Pour conclure nos commentaires sur le Chapitre III, nous devrions ajouter que ses dispositions sont devenues plus flexibles. Désormais, elles énoncent plus clairement que dans le texte original de Dumbarton Oaks les vœux des nations réunies à cette Conférence et elles ferment la porte à des interprétations douteuses de l'expression "épris d'un idéal de paix" qui, ainsi que l'avait si bien dit le distingué Délégué de l'Uruguay, n'a aucun sens juridique.



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### Retrait, expulsion et suspension des membres

Les questions de retrait, d'expulsion et de suspension avaient en commun le problème suivant:

Un Etat-membre peut-il cesser d'être membre, soit de sa propre initiative, soit à la suite de mesures prises contre lui par l'Organisation ?

Les arguments contre le retrait étaient: (1) qu'il serait contraire à l'idée d'universalité. (Mais, l'universalité, comme on l'a vu, n'a été généralement acceptée que comme un idéal vers lequel il fallait se contenter pour l'instant de tendre). (2) Que le retrait procurerait aux membres récalcitrants la possibilité d'obtenir des concessions de l'Organisation en menaçant de la quitter. (3) Que le retrait serait un moyen d'échapper à ses obligations en quittant l'Organisation.

La décision du Comité a été de ne pas prévoir le retrait dans la Charte.

Au cours de la décision, deux tendances d'insertion du droit de retrait dans la Charte s'étaient manifestées: La première recommandait une clause envisageant le retrait pur et simple, et la deuxième suggérait l'adoption d'une clause ne permettant le retrait que dans deux cas bien définis: 1) lorsque les droits et obligations d'un Membre sont modifiés par un amendement qu'il n'approuve pas et qu'il n'est pas en mesure d'accepter, et 2) lorsqu'un amendement dûment accepté par la majorité nécessaire