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COMMITTEE I/2. RAPPORTEUR'S REPORT ON CHAPTER III

(MEMBERS)

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

"Membership of the Organization should be open to all peace-loving States."

This text has been broadened in the course of our discussions, and Committee I/2 wishes to present it to Commission I in the following form:

"Original members of the Organization are the States signatories of the Charter whose ratification has become effective in accordance with Chapter , Article .

"Membership of the Organization is open to all peace-loving States which, in the judgment of the Organization, are ready to accept and able to carry out the obligations contained in the Charter."

"The Organization may at any time suspend from the exercise of the rights or privileges of membership of the Organization any member 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 , paragraph ."

There are obvious flaws in the drafting of the French text, but the necessary adjustments will be made by the Coordination Committee.

The Committee I/2 has been concerned with the following questions, which we shall consider separately, without failing when necessary to establish the natural links between them: (a) the capacity of member vested in nations participating in this Conference; (b) admission of new members; (c) withdrawal; (d) suspension and expulsion.

Members and admission of new members

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 Philippines Commonwealth, Uruguay and Venezuela.

Taking the first paragraph of the text 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 is regarded as a right; while that of the others is 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 are not States properly so called and which might therefore be refused the right to become members of the Organization.

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 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 of the Organization that new members would be able to carry out the obligations imposed on them by the Charter, that they would be ready to do so, and would not follow a policy contrary to the principles of the Organization. On the other hand, there were others who held that

the Charter should not needlessly limit the Organization in its decisions regarding requests to be admitted, and maintained that the Organization itself would be the best to judge of a candidate's fitness for admission.

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 them out.

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 fulfil certain of the most important obligations of the Charter, notably that of lending assistance to repel or punish an aggressor. The Committee considered that this incompatibility, if it were to be expressly mentioned in the Charter, should be better placed in Chapter II, and it has sent the French amendment to Committee I/I.

To conclude our commentaries on Chapter III, we should add that the provisions of that Chapter have become more flexible. Henceforth they will set forth more clearly than in the original text of the Dumbarton Oaks Proposals, the wishes of the nations assembled at this Conference, and they close the door to doubtful interpretations of the expression "Peace-loving", which, as has been said so well by the Delegate from Uruguay, does not have juridical meaning.

Withdrawal, expulsion and suspension of members.

The questions of withdrawal, expulsion and suspension have the following problem in common:

Whether a member-State may cease to be a member on its own initiative, or as a result of measures taken against it by the Organization?

The arguments against withdrawal were (1) that it would be contrary to the idea of universality. (But, as has been seen, universality has not generally been accepted as anything more than an ideal towards which, at the present, we are striving.) (2) That withdrawal would give recalcitrant members the possibility of obtaining concessions from the Organization by threatening to leave it. (3) That withdrawal would be a means of a State escaping its obligations on leaving the Organization.

Nevertheless, the decision of the Committee was neither to anticipate nor expressly to prohibit a withdrawal. In this connection it was observed that while the withdrawal of a State from the Organization might signify, as we have said, that the State proposes to act contrary to the principles of the Organization, it is equally true that a State might wish to withdraw simply because the Organization proved itself incapable of achieving the ends for which it was created. On the other hand, to forbid withdrawal would presuppose the application of sanctions against members which decide to withdraw, and such action might in certain cases seem difficult to carry out or even excessive.

It was recognized that the omission of a reference to withdrawal in the Dumbarton Oaks Proposals was intentional on the part of the Sponsoring Powers. It may, however, be noted that, in the course of the discussions which took place concerning this point, although certain Delegates saw in that omission a proof that the Sponsoring Powers were opposed to withdrawal, others interpreted the omission as an expression of the wish to give the Organization an opportunity to study, in the light of more recent developments, those withdrawal cases which might arise.

The Sub-Committee on the 23rd of May proposed in its report to the Committee that, in conformity with the Dumbarton Oaks Proposals, the Charter did not allow any mention of withdrawal. The opinion of the Sub-Committee, with which that of the Committee was in accord, was expressed in the following manner:

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The Commission agrees with the opinion of the Sponsoring Powers that it is out of place to provide for or to regulate the right of members to secede. If the Organization is to fulfil its function in the spirit of the Charter, it must be beyond all question that its authority might be weakened by the action of certain members deserting the ideal which they espoused in subscribing to the Charter or even flouted by aggressor States or others on the verge of becoming aggressors. It is self-evident, however, that withdrawals or other forms of dissolution of the Organization would become inevitable if, shattering the hopes of mankind, it should show itself incapable of maintaining peace or capable of maintaining it only at the expense of law or justice. It is precisely because of that danger, which is inseparable from all human enterprise, that the Committee declines to insert in the Charter a formal clause prohibiting withdrawal.

Expulsion and suspension gave rise to a lengthy exchange of views, and a special Sub-Committee was entrusted with the study of these important questions.

The subject of expulsion is treated exclusively in Chapter V in connection with the General Assembly. The Committee, in accordance with the Presidents of Commissions I and II, two of the interested Committees and the Organizing Committee, was of the opinion that it was appropriate to inscribe in Chapter III, which deals with membership, the principles upon which this status would be lost or affected. The basic text, which reflected in this respect the Dumbarton Oaks provisions, was reworded as follows:

"The Organization may at any time suspend the exercise of rights and privileges of members of the Organization in the case of any member against which the Security Council shall have taken preventive or enforcement measures, or which shall have violated seriously or repeatedly the principles of the Charter. The exercise of these rights and privileges may be reestablished in conformity with the procedure established by Chapter , paragraph ,"

It will be recalled that paragraph 3, Section B, Chapter V, of the Dumbarton Oaks Proposals, dealing with the questions of suspension and expulsion was as follows:

"The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter."

Suspension, as conceived in the text proposed by the Subcommittee, was considered sufficient to achieve the results which could be attained by expulsion. Furthermore, it has been explained that suspension--a sort of temporary expulsion--would remove the undesirable elements of an ordinary expulsion.

When this question was put to the entire Committee, the members in favor of exclusion explained that peace and security, and not universality, constitute the aims and purposes of the Organization; that exclusion would be applied only to those member-States, recognized as incorrigible, which violate the principles of the Charter in a serious or persistent manner; that in the instance of such States, it was necessary to state, in

an absolutely clear manner, the attitude which the Organization will take in their regard; that the retention of membership while a State is suspended could prevent the organization from taking sufficiently strong action against such States; that the lack of the power of expulsion would permit a member State to act in concert with a non-member State, with a view to impeding the functioning of the Organization; that the Organization would be able to exercise its judgment wisely in case of expulsion; that this would not release the expelled member from the obligations imposed on non-member States, and the expelled States could be readmitted to the Organization.

Those in favor of omitting from the Charter any reference to expulsion, maintained that expulsion would be incompatible with the concept of universality which envisages the eventual admission of all members into the Organization; that it would release a member-State from the obligations imposed on him by the Charter; that it would outlaw the expelled State and, consequently, would force the Member-States to take war measures against that State, instead of police measures; that it would place the Organization in greater danger than the state concerned; that it would create a center of opposition to the Organization around which other malcontent States would unite themselves; that it would force the Member-States to break all diplomatic and other relations with the expelled State; it would prevent any reconciliation between the Organization and the expelled State; and it could prove to be less severe in its effects than suspension.

Among the numerous arguments which have been presented in favor of the omission of expulsion from the Charter, that which seemed to carry the most weight was that suspension, as envisaged in the Charter, would fulfil all the functions of expulsion and would not release the penalized State from these obligations, as would expulsion.

At the meeting of May 25, of Committee I/2, a proposal providing for expulsion, put to the vote, was rejected because it had not received the necessary support of a two-thirds majority of the delegates present and voting.

The Committee then put to the vote the contemplated revision of paragraph 3, Section B, Chapter V, concerning suspension of members, mentioned above, agreeing that this paragraph would be reopened for examination if the right of expulsion should once again be introduced. This proposal was adopted, almost unanimously, by the Committee.

Then, as before stated, it was considered useful, principally because of the annulment of the expulsion clause, to add the words "or who have violated the principles of the Charter in a serious or persistent manner". This would thus be a more forceful wording of the text on suspension, which would need no explanation.

The restoration of the rights and privileges was left to the examination of another Commission.

The following nations had submitted amendments to paragraph 3, Section B, Chapter V; Australia, Belgium, Brazil, The Dominican Republic, Ecuador, Egypt, Honduras, Mexico, The Netherlands,

New Zealand, Norway, Uruguay and Venezuela. These amendments were examined in detail by our Sub-Committee and our Committee, during debates on expulsion and suspension.

Such, Gentlemen, is the report which we have the honor to submit for your consideration. We have done our best to bring out, in our report, the various arguments of the delegates who have expressed on the matters under discussion the points of view of their nations. We are ready to recognize that it is possible that we have not reflected in every case the views expressed; also, we beg our colleagues, whose thoughts may not have been interpreted with the complete accuracy which they have the right to expect, to remember that it is always within their legal right to furnish us with a written memorandum which, attached to our report, we will transmit to the Commission with the greatest speed.

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