

The Procedure of the UN Security Council

Sydney D. Bailey

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OF THE
UN SECURITY COUNCIL

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PREFACE

*Every Christian prince must take as his chief maxim not to employ arms to support or vindicate his rights until he has employed and exhausted the way of reason and persuasion.**

IN an earlier volume I have reviewed the practice of the UN Security Council with regard to voting. This book examines other aspects of the procedure and practice of the Council. I hope to complete the trilogy with a further volume which will deal with aspects of the Council's primary responsibility for peace-making and peace-keeping.

It is usually only the casual reviewer who starts reading a book at the last chapter, but some who read this book may be unfamiliar with the working of the Security Council. I suggest that they read pages 290-308 of Chapter 7.

A number of diplomats and international officials were good enough to advise me on various factual points while I was writing this book. I have drawn fully on their experience, and in a couple of cases on their indiscretions, but not in a way that will embarrass any of them or enable the reader to identify the source of any particular item of information. I would like to express my appreciation to some who cannot be mentioned by name, and to the following: Sir Harold Beeley, Lord Caradon, F. Y. Chai, Sir Colin Crowe, Sir Patrick Dean, Lord Gladwyn, Sir Leslie Glass, Rosalyn Higgins, James N. Hyde, Sir Roger Jackling, Alan G. James, Gunnar Jarring, Judge Philip Jessup, Ismat Kittani, Sir Donald Maitland, Anthony Parsons, Oscar Schachter, Brian E. Urquhart, and Charles W. Yost.

It goes without saying that I alone am responsible for any factual mistakes or faulty judgments.

I am grateful for the consistent and friendly help I have received from several libraries, especially those at the London Office of the United Nations, the Royal Institute of International Affairs, and the Carnegie Endowment for International Peace in New York.

S.D.B.

1 March 1974

* This and the other epigraphs are taken from *On the manner of negotiating with Princes*, by François de Callières, first published in 1716.

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CHAPTER 1

THE INSTITUTIONAL FRAMEWORK

There is no durable treaty which is not founded on reciprocal advantage, and indeed a treaty which does not satisfy this condition is no treaty at all and is apt to contain the seeds of its own dissolution.

WHEN a new body meets for the first time, it usually has a clean procedural slate, except for the rules which customarily govern bodies of that kind, be it a political party, a religious congregation, or a golf club. But when the Security Council met for the first time just after 3 p.m. on Thursday 17 January 1946, the procedural slate was not clean. The Council had to operate within the framework of the UN Charter, which had been approved at San Francisco seven months previously. Moreover, the UN Preparatory Commission had drafted some tentative rules of procedure for the Council and had drawn up a provisional agenda of thirteen items for the first meeting, which the Secretariat placed before the Council after making some slight adjustments in the order of items.¹

The Security Council met in Church House, London, close to Westminster Abbey and the bomb-scarred Houses of Parliament. The Council's membership included, as it still does, five permanent members:* the Republic of China, France, the Soviet Union, the United Kingdom, and the United States, represented respectively by K. V. Wellington Koo, Vincent Auriol, Andrei A. Gromyko, Ernest Bevin, and Edward R. Stettinius Jr. (see pp. 114-15 and 124-5). The previous Saturday, the General Assembly had added six non-permanent members: Australia, Brazil, Egypt, Mexico, Netherlands, and Poland.

* In this book, I refer to members of the Security Council, but Members (with a capital M) of the United Nations.

It was a distinguished company. Paul-Boncour was a former Prime Minister and veteran of French public life. Vincent Auriol was to become President of the Fourth French Republic. Wellington Koo (China), Badawi (Egypt), Cordova (Mexico), and Padilla Nervo (Mexico) were to become members of the International Court of Justice. Padilla Nervo and van Kleffens (Netherlands) were to become Presidents of the General Assembly. Modzelewski (Poland) was in 1950 to be the Soviet candidate to succeed Trygve Lie as Secretary-General. Bidault (France) was to become Prime Minister; Bevin (United Kingdom) was Foreign Minister, and Cyro de Freitas-Valle (Brazil), Andrei Gromyko (Soviet Union), van Kleffens (Netherlands), and Andrei Y. Vyshinsky (Soviet Union) were later to reach that rank; Massigli (France) was a future Secretary-General at the Quai d'Orsay; Cadogan (United Kingdom) and Stettinius (U.S.A.) (Table pp. 118-19 and 124-5) were their countries' first ambassadors at the United Nations. Abdel Fattah Amr (Egypt), Foo Ping-sheung (China), W. R. Hodgson (Australia), Alfonso de Rosenzweig Diaz (Mexico), Henrique R. Valle (Brazil), and Jonkheer Michiels van Verduynen (Netherlands) were or were soon to become senior diplomats. Philip Noel-Baker (United Kingdom) was to be awarded the Nobel Peace Prize for 1959. Of those twenty-five men from eleven countries who were accredited to the Security Council during its first month, Gromyko is still active in international diplomacy and serves as Soviet Foreign Minister.

But it was Norman Makin, a former Australian Minister for Navy and Munitions, who by the accident of the alphabet was to become the Security Council's first presiding officer. The Council established a tradition, which it has respected ever since, by starting late. Modzelewski presented part of the report of the Preparatory Commission (item 2 of the agenda), after which the Council adopted a rule by which the presidency was to rotate on a monthly basis in the English alphabetical order of the names of the Council's members. Makin then changed from being 'temporary chairman' to becoming President, and addressed the Council briefly about the political and organizational tasks which lay ahead and the need to base the work of the Council on the Charter. Other members of the Council then made remarks appropriate to a formal historic occasion,

Bevin taking special pride in the fact that a British Dominion (as the jargon then was) had been called upon to preside. The Council approved the provisional agenda, adopted the remaining rules of procedure on an interim basis, and appointed a committee of experts to consider procedural matters. At 4.15 p.m., Stettinius moved that the Council adjourn, and one minute later the motion was approved. The Council had disposed of six of its first thirteen items.

By the time the Council met again eight days later, substantive problems had started to accumulate. Iran had complained of Soviet interference in its internal affairs. The Soviet Union alleged that the presence of British troops in Greece endangered world peace. The Ukrainian Soviet Socialist Republic drew attention to military operations against the people of Indonesia. Albania had applied for UN Membership. The Council was thus faced at an early date with some of the issues of the Cold War.

I. THE ROLE OF THE SECURITY COUNCIL

The United Nations was created to advance human welfare; in particular, by the avoidance of war through co-operative efforts among sovereign States. But the avoidance of war is a negative goal, and in positive terms the United Nations devotes its efforts, or should devote them, to creating the conditions of peace in which disputes do not arise or, if they do, are resolved without recourse to armed force; in which human rights are protected on a non-discriminatory basis, economic and social advancement for all is promoted, international law is respected, and nations co-operate in those technical matters which affect the universal common good.

It is sometimes said that the United Nations has had more success in dealing with economic and social problems than in the field of peace and security. This is a judgment which it is difficult to substantiate in a scientific way, but it may be doubted whether the Organization will have a useful future in the long term if it is manifestly failing to do what it should to preserve world peace. It is on the Security Council that this primary responsibility rests.

Five facts about the Security Council are especially relevant to this study.

First, although the Council consists of only a limited number of UN Members (originally eleven, now fifteen), it acts on behalf of them all (Article 24(1) of the Charter).

Second, the Council has the authority to take decisions which bind not only its own members but all the Members of the Organization (Articles 25 and 49) and, to some extent, even non-Members (Article 2(6)).

Third, this right of decision is limited by the rule of unanimity, or veto, by which all five permanent members have the right to block non-procedural proposals in the Security Council and amendments to the Charter (Articles 27(3) and 108). I would interject at this point that Article 27(3) is concerned with non-procedural decisions ('... all other matters . . .'), but I will in this book often use the more handy terms 'substantive proposals' or 'substantive decisions'.*

Fourth, the Council must be able to function at all times (Article 28(1)). Other UN organs, such as the General Assembly, meet at prescribed times of the year, and the machinery for calling emergency or special sessions is relatively cumbersome. The Security Council can and does meet at only an hour or two's notice.

Fifth, the Charter gives to the Council the right to adopt its own rules of procedure (Article 30) subject, of course, to the Charter itself.

The Charter, like any basic constitutional document, expresses the views and expectations of the founders at a particular point in time. The long process of planning an international organization to keep the peace began in national capitals more than thirty years ago, leading to the Dumbarton Oaks meetings in 1944, the summit consultations in Malta and Yalta in 1945, and culminating in the San Francisco Conference in 1945 and the formal signing of the Charter on 26 June.

The Charter consists of 111 Articles divided into 19 Chapters, occupying about fourteen pages of medium octavo text. Attached to the Charter and integral to it is the Statute of the International Court of Justice (Article 92). Relevant articles from the two documents are reproduced in Appendix 1.

* It may be noted that in the General Assembly the distinction is not between procedure and substance but between 'important' and 'other' questions, the former requiring a two-thirds majority (Article 18(2)).

Throughout this book, references to the Charter are given in parentheses, as in the citing of Article 92 earlier in this paragraph.

It is possible to rank the issues which come before the Security Council according to their gravity, beginning with those which are described as matters, questions, or situations, and proceeding through disputes, to threats to or breaches of the peace, and (most serious of all) acts of aggression. The more threatening the issue, the more likely it is that the Security Council will be involved (see Table 1).

Some of these semantic differences are not of great importance, but parties to a 'dispute' must abstain from voting on substantive proposals in the Security Council (Article 27(3)), and measures under Chapter VII can be taken only if world peace is seriously endangered.* In this book I use the full Charter expression 'the maintenance of international peace and security' only when a shorter expression might be misleading or cause confusion; in other cases, I do not hesitate to use more crisp wording such as 'Members look especially to the Security Council to preserve world peace', whereas the full wording of the Charter is 'Members confer on the Security Council primary responsibility for the maintenance of international peace and security' (Article 24(1)).

2. THE CHARTER

All constitutions are imperfect, but some are more imperfect than others. The UN Charter was based on some assumptions in 1945 which are not valid thirty years later. As Secretary-General Waldheim has put it,

some of the assumptions on which the United Nations was based have proved unfounded . . . The Organization has, for example, proved to be of limited value as an instrument of collective security . . . The idea of maintaining peace and security in the world through a concert of great Powers . . . would seem to belong to the nineteenth rather than to the twentieth century . . .²

Secretary-General Thant said much the same thing.³

* By 'measures', I include provisional measures referred to in Article 40 of the Charter, preventive or enforcement measures in Articles 5 and 50, enforcement measures in Article 2(7), enforcement action in Article 53(1), measures or military measures in Articles 39, 41, 45, 49, 51, 53(1), and 94(2), and action in Articles 11(2), 42, and 106.

TABLE I
UN peace-making and peace-keeping: Charter responsibilities

	<i>Articles of the Charter</i>		
	<i>General</i>	<i>Security Council</i>	<i>General Assembly</i>
any questions or any matters within the scope of the . . . Charter or relating to the powers and functions of any organ provided for in the . . . Charter			10
general principles of co-operation in the maintenance of international peace and security			11(1)
to maintain [or restore] international peace and security, [establishment and] maintenance of international peace and security, [matters relative to the maintenance of] international peace and security	Preamble, 1(1), 2(3) and (6), 73, 76, 84, 106	12(2), 24(1), 26, 33(1), 37(2), 42, 43(1), 47(1), 48(1), 51, 54	18(2), 23(1)
any matter which in [the Secretary-General's] opinion may threaten the maintenance of international peace and security		99	
any question		31	
any question relating to the maintenance of international peace and security			11(2)
situation		12(1), 36(1)	12(1)
any situation which might lead to international friction or give rise to a dispute, situation(s) . . . likely to endanger [the maintenance of] international peace and security		34, 35(1)	11(3), 35(1)
situations which might lead to a breach of the peace	1(1)		
dispute(s)	1(1), 2(3)	12(1), 32, 34, 35(1) and (2), 38	12(1), 35(1) and (2)
dispute the continuance of which is likely to endanger the maintenance of international peace and security, or a situation of like nature	33(1)	33(2), 36, 37	
threat(s) to the peace	1(1)	39	
breach(es) of the peace	1(1)	39	
aggression, act(s) of aggression	1(1)	39, 53(1)	

This imperfect UN Charter contains contradictions, such as its assertion of the equality of States (Preamble and Article 2(1)) while at the same time conferring on five Members the right to veto substantive proposals in the Security Council and amendments to the Charter (Articles 27(3) and 108), as well as giving one State three seats in the General Assembly (the Soviet Union and the Byelorussian and Ukrainian Soviet Socialist Republics); or the ban on intervening in matters which are essentially within the domestic jurisdiction of any State (Article 2(7)) while at the same time requiring Members to take joint action to achieve universal observance of human rights and fundamental freedoms for all (Articles 55-6). There are expressions in the Charter which are ambiguous, or the meaning of which is not absolutely clear, such as 'the expenses of the Organization' in Article 17(2), or the relationship between Articles 25 and 49 regarding the obligation of UN Members to implement resolutions of the Security Council. Some provisions of the Charter are out of date, such as the references to 'any state which during the Second World War has been an enemy of any signatory of the present Charter' (Articles 53 and 107). There have been some *de facto* amendments to the Charter, such as the interpretation of Article 12(1) so as to permit the General Assembly to make recommendations about matters of which the Security Council is seized; or the practice whereby an abstention by a permanent member of the Security Council on a substantive proposal is not regarded as a veto, which is inconsistent with the natural meaning and intention of Article 27(3).

It is, however, the only UN Charter we have, and none of the Members which can veto proposals to amend the Charter (Article 108) has given any encouragement to the idea that major amendments are within the bounds of possibility. The challenge, then, is to use whatever flexibility the Charter allows so as to adapt the Organization to a world which differs greatly from that of 1942-5, when statesmen were taking their minds momentarily off the prosecution of war in order to speculate about the hazards of world politics once victory had been achieved. A Hungarian scholar has described the Security Council as 'a living organism'⁴—an expression which would have appealed to Dag Hammarskjöld. The fault (and the