

SATURDAY MORNING SESSION  
January 5, 1946

The session convened in the headquarters building of the American Association for the United Nations at 10 a.m.

DR. JAMES T. SHOTWELL: I am very happy to turn over this meeting to Professor Philip C. Jessup for a discussion of the Charter of the United Nations. You all have a copy of that document before you. I might say that to me the technique of this morning is of interest because we are turning from the laboratory to an actual analysis of the lines along which the political scientist has to work.

Dr. Jessup!

CHAIRMAN JESSUP: Dr. Shotwell has suggested that we are bound together here by ties of common ignorance of each other's fields. I won't attempt to speak for you, but I can assure you that on this side of the table we have a rather complete ignorance of your field.

I think it is true, as Dr. Shotwell says, that while in the political-social science fields we have a different technique of operation from that which you have in the science laboratories, we do have a technique, and I hope you won't be too scornful of us if our familiarity with the numbers of the Articles in the Charter is not as precise as your familiarity with chemical or physical formulae.

In beginning our discussion of the Charter, we will have three preliminary statements analyzing the three chief aspects of the work of the United Nations as contemplated in its basic document or constitution known as the Charter -- the provisions for security, those for economic welfare and those for justice.

I am not going to introduce each of the speakers. There is a "Who's Who" at the end of the agenda (\*\*), and all of them are probably known to you anyhow. I will ask Professor Kirk if he will proceed on the question of the Provisions for Security.

Professor Kirk!

(\*\*) See APPENDIX at the end of this report.

ANALYSIS OF THE CHARTER -- PROVISIONS FOR SECURITY

Grayson L. Kirk

Being undertaken in the midst of a war, the steps which led towards the creation of the United Nations Charter naturally have focused attention upon the primary function of the projected organization: that of doing something, if possible more effectively than the League of Nations had done, for the provision of international security in the future. So the initial attention in the preparatory work was given to this and it occupies, as you will note from the final text, a very large part of the substance of the San Francisco Charter.

It was felt that one thing was essential. This was to set up an organization in which there would be the maximum assurance that force would be available as needed. The League of Nations Covenant had provided merely that the Council could call upon member states to contribute forces. This was never actually undertaken. This time, it was recognized that such an arrangement was inadequate, and that, without going so far as to attempt to create a permanently internationalized military force, it was necessary to reach a compromise which would provide the new Security Council with forces which would be almost automatically at its disposal in the event of need. This is to be done, as you will note from Article 43 of the Charter, by a series of military agreements which are to be concluded as soon as the organization is established between various member states or groups of states on one hand and the Security Council on the other. These military agreements will stipulate the number and types of forces and the facilities and other means of assistance which these states or groups of states will undertake to make available in behalf of the Council when need arises. In other words, it is to be a system of international contingents. These pledged units will remain as part of their respective national forces in ordinary times and will be detached therefrom for use

in conjunction with contingents of other countries under the direction of the Security Council whenever necessary. An effort has been made to write into the Charter provisions which will make that process as nearly automatic as possible so as to prevent the intrusion or the impediment of political decisions in various countries as to cooperation in the event of a given situation.

Military direction -- the provision of expert military advice for the Security Council in the determination of the contingents which will be needed for a particular project, their organization, and the general problem of strategic direction -- will be taken over by what is referred to as a Military Staff Committee in Article 47, which is to be composed as a nucleus of the chiefs of staff or their representatives of the five powers which have permanent seats on the Council. To those five chiefs of staff and their aides will be added in any given situation the chiefs of staff of other countries whose military collaboration is being sought by the Council as a part of the projected operations.

Finally on this point, you will note as you look through the Charter that there is no great amount of attention given to the question of armaments regulation or disarmament. There are a few references to it, but there is no such emphasis on disarmament as there was in the Covenant of the League. However, it is quite possible that the Pandora's box which you people have unlocked may force a reconsideration of this point. Anyhow, as of the time the Charter was made, the emphasis was far more upon making adequate provisions for force to be available for use in behalf of the Organization than for limiting and regulating national armaments as a path to peace.

Also you will note in Article 52 that there is a great deal of attention paid this time to the use of regional agencies. There was no such provision in the Covenant of the League except a passing reference for political reasons to the Monroe Doctrine as a regional understanding. This time we have provisions which encourage the formation of regional security groupings



of states. A strong obligation is placed upon these regional groupings of states to undertake to settle their local disputes by the regional organization, and not to transfer the dispute to the central Security Council if it can be avoided.

In its turn, the Security Council is obligated to transfer to regional organizations such disputes as in its opinion are appropriate for settlement by an organization of that type. But in order to prevent conflict the regional organization is not authorized to take the initiative in the use of force without the consent of the Security Council except in cases where the problem has to do with the ex-enemy states.

At the moment we have no very striking developments in this direction except at the Chapultepec Conference and in the proposed military treaty which the United States has submitted to all the other states of this hemisphere, except Argentina. These are the most substantial developments in this field up to the present time.

Another feature of the new charter which distinguishes it somewhat from the League of Nations in security matters is the very substantial concentration of authority in all matters relating to security in the hands of the Security Council. It is not possible now to share authority with the Assembly unless the Security Council so desires. It is not possible even for the Assembly to make recommendations on problems affecting international security if the Security Council has these matters under advisement at the time. Discussion can go on in the Assembly, but there can be no recommendations unless the Council is willing to have them made. Even the projected Atomic Commission is to be responsible primarily to the Security Council. As you go through the Charter, you will note that there is no sharing of responsibility in security matters to any substantial degree with any other organ of the new United Nations. This does not mean, of course, that the role of the Assembly is an unimportant one. As a contributory factor toward security matters the Assembly's province

is important because it will deal with matters which in the long run will affect the causes of war and hence will affect the basic aspects of international security.

Although the Security Council has the enforcement responsibility in its hands almost exclusively, we may witness an evolution in the future comparable with that which went on during the League of Nations period, which saw the growth of the authority of the Assembly in relation to that of the Council. But, as of the moment, we are beginning with a far greater concentration of authority in security matters in the hands of the Council than was true of the League of Nations.

Another point which is worth mentioning is that the Security Council can act without unanimity in substantive matters. Most of the talk on this point has emphasized the other side of it, the fact that action can be stopped by any one of the permanent members. That is true. It is also true that we are making a change from the League of Nations arrangement in that complete unanimity for substantive decisions is not required. It is now required, as you will note in Article 27, that decisions on substantive matters will require the vote of seven out of eleven, including the votes of the five having permanent seats on the Council. You may view this as retrogression from the League arrangement. You may also view it as progress from the League arrangement. It is a characteristic feature of the new organization that those states which will have essentially the burden of military responsibility for any action which may be undertaken have agreed that no decisions along those lines should be made except with the concurrence of all.

The Security Council is freer this time in the types of action which it can undertake in the interests of the maintenance of security than was the League of Nations. That perhaps technically requires a little more qualification than the way I just expressed it, but I think for our purposes here it is as close an approximation to the situation as we need. Thus, the Council has

the right under Article 34 to consider situations and to investigate them. It is not compelled to wait until a full-blown dispute has developed. It can investigate a situation when it is still a very small cloud on the international sky. Also under Article 40 the Security Council can take provisional measures in order to prevent a situation from worsening while a final decision is being made. In addition, the Council is free at any time to adopt any one of a variety of measures which seem in its opinion to be the most appropriate to deal with a given situation. It is not compelled, in other words, to follow in a set sequence diplomatic measures, economic measures, and, finally, military measures. It can telescope those or turn to the military almost at once if it wishes to do so. In this way, a great deal of elasticity is possessed by the Council in deciding what type of action to undertake to meet a given situation. Every effort was made in the drafting of the Charter to provide this maximum amount of elasticity.

These arrangements for the provision of force and for the canalizing of the energies of the Council so as to make it as responsive and responsible as possible have, on the whole, given us a written document which in my judgment is more promising for our present and prospective needs than the League of Nations Covenant. Of course, it is true that no document can possibly be self-enforcing. No organization of a consultative character, involving the association of sovereign states, can be self-operating. Its propulsive power must rest upon the political agreement of at least the major member states. If that agreement exists, there is nothing in the Charter which can prevent the smooth and fairly expeditious application of these security measures, but if that political agreement does not exist, the Charter cannot force it into existence. It can assist it; it can facilitate the development of a political atmosphere of collaboration which will help; but the Charter itself is not a thing which can create a political agreement which does not otherwise exist. This is the problem, the essentially political problem, which lies at the



heart of the whole security question in the future.

I think at this point I had better stop and we can come back to any of these points in detail, depending upon the questions which come to you later.

CHAIRMAN JESSUP: We will save the discussion until the three statements are made and discuss the Charter as a whole.

We have had our explanation of the security end of the Charter from Professor Kirk, and Dr. Stacy May is going to continue with a discussion of the provisions for economic welfare.

ANALYSIS OF THE CHARTER -- PROVISIONS FOR ECONOMIC WELFARE

Stacy May

I will be very brief in my description of the Economic and Social Council on the paper set-up side.

First, you know about its 18 members selected by the General Assembly, all of them eligible for re-election. This is quite different from the Security Council set-up. Second, their decisions in all cases are to be made by a majority vote of those who are present and who care to vote, which is again very different from the Security Council set-up.

The Economic and Social Council has the power to make its own rules, to formulate its policies and procedures to a very large extent and to work out the relationships for the UNO with these specialized agencies like the International Labor Office, the International Bank, the Monetary Fund, the Food and Agricultural Organization, and international organizations for trade, health, etc., some of which have been set up and some of which have not.

How these relationships fit in, whether their position is to be more or less organic in its connection with the UNO or whether it isn't, or how it is to be coordinated has all to be worked out. They are allowed to make recommendations for coordinating. They are charged with coordinating the activities of the specialized organizations. They are empowered to set up any commissions they want to, to study any problem within their own field - that is, the economic and social field.

Now as to the functions and powers of the Economic and Social Council. (This is still paper, you understand - the way it is written down.) It is supposed to make studies and reports on international matters of economic, social, cultural, educational, health and related aspects. After studying the problems it is empowered to make recommendations to the General Assembly or to make them to any members of the UNO, or to make recommendations to any of these



specialized agencies, to work up draft conventions and submit them to the General Assembly for approval or amendment. It can call any international conference on any of the questions within its jurisdiction. It can review the progress of any of these specialized agencies or of member countries' programs in any of these fields and report upon them to the General Assembly.

Very importantly, it is charged with supplying information to the Security Council when the Security Council requests it. With the Security Council, on invitation to work out economic control matters, it might be used for any of the disputes which may arise in the international field. It, then, has a general portfolio to act more or less as an executive arm of the General Assembly on any of the matters in the general field about which I have talked, which the Assembly asks it to take in hand. That is a paper organization.

Not many people paid much attention to that. There was relatively little newspaper notice of it when the sessions were being held, and the radio commentators who are trained on the good red meat of reporting hockey games, etc., were looking for excitement. This did not capture their imaginations. In this field most of their attention was focused on the previous section, that is, on Chapter IX where there were some general social and economic ideas which were formulated as aims for the United Nations Organization.

This section is worth looking at. It commits the United Nations to promote high standards of living, full employment and economic and social progress and development throughout the world. It says that it shall try to promote solutions of international economic, social, health and related problems, and international cultural and educational cooperation, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The thing which struck fire in people's imagination in the reporting, and I think it was somewhat justified, was the statement of full employment and international development of high standards of living as a direct aim

of the United Nations Organization, and hence of the arm which is most concerned with this field, the Economic and Social Council. If it can be implemented, this is very different from the functions of the technical organizations and the secretarial operations of the League of Nations, where certainly the emphasis was much more on a set of procedures, economic let us say, to which most nations were supposed to adhere.

The practical outlook, particularly the full employment concept, has been denounced as an electioneering slogan, and has been talked of as something which cannot be implemented by the United Nations Organization or its Economic and Social Council - that it is just language. In other words, that it is promising a lot more than can be delivered. Of course in many ways it is, when you begin to look at the powers of the Social and Economic Council, which are powers to study and recommend and not powers to step over and change the internal affairs of any nation. But the goal is important and the emphasis which I have suggested is important, namely, that the international rules presumably will be so operated as to forward these goals within the countries rather than making the economic structure of the country conform willy nilly to a set of rules no matter how they affect them.

What will the organization amount to? First, I think you have to take up Grayson Kirk's point and consider it carefully. As in his field, it depends upon the will of the nations that make up the United Nations Organization. The paper program I think is a progressive and forward looking one which goes probably about as far as any instrument which could be drawn at the present time can go. How effective it will be depends on how effective the people are in their intent and their will to act together. You are making recommendations to sovereign states, and action will depend upon the action of those states and upon their agreement to act together.

I can give you examples of that from cases which can arise. The Director of the Food and Agricultural Organization has already stated that

he intends to propose that international commodity agreements can be reached. Now that is a proposal which a group of states coming together can agree on, as to how commodity markets are to be run, controlled and operated. It well may mean international purchases and the operation of a central fund of accumulated agricultural products to stabilize prices, or something of the sort. Nations will only enter into those agreements if they are willing to give up a certain amount of their own freedom of action. It may mean that each nation will decide to take steps which will have some definite control over the amount of agricultural produce which is produced. It may require control over prices by the individual states, or a forcing of their prices by the international body. Think what howls will go up if such a measure is proposed in the United States - that foreigners are controlling our agricultural policy!

Whether or not it then can be implemented will not depend upon what the central organization recommends - not on what a group of technicians sitting around a table agrees is sensible - but on what nations that make up the body are willing to do and how much accommodation they are willing to give to each other - and that is something you don't accomplish by writing things on paper. It often takes a long while.

The Economic and Social Council will even have some battles, as I see it, with the specialized organizations which I have talked about. They are not at all continuous, that is, their representation isn't the same as the United Nations Organization. There will be 18 member states on this Council. Most all of the specialized agencies have wider memberships than the United Nations Organization. In other words, you will be reaching decisions on the part of 18 representatives of 18 nations sitting in the Economic and Social Council. You will be having recommendations made to the Assembly. You will be having recommendations made to the member nations who were not represented in that year, at least on the Council, and if they are to be world-wide in operation, they will even go beyond the United Nations Organization membership.



Also all of these specialized agencies have their own charters and their own operating functions. If the United Nations Organization is to be effective in influencing their operations, it will have to do so by acting pretty largely as a chief of staff, it would seem to me, rather than as a board of directors, because they have no power to require the I.L.O., for example, to do anything. Also all of these specialized agencies have roots deep down in the non-governmental organizations within the countries that are represented. If you take the I.L.O., it has its roots down deep in the labor organizations of member countries. Now those are very effective. Back in these countries there is a loyalty built up. There will be a jealousy at having their prerogatives usurped.

Therefore, the functions which the Economic and Social Council can perform in coordinating, in steering or directing the work of these agencies will depend a lot upon its wisdom, its good will and upon the acceptance of its formulations; but it has not got the power to organize anything so as to make it mandatory.

The international bodies of this type have only three functions which they can really perform: one, the function of gathering information and analyzing it, making recommendations, saying what the implications of this analysis lead to; two, certain consultative functions, pulling groups together as the League did on a lot of matters like the uniform marking of grade crossings, eliminating double taxation, getting uniform contract forms and uniform statistical nomenclature and a whole series of things of that sort. They are necessary and they can be important. You pull groups together and try to get general agreements, which each of them then implements. The third one is genuine operating functions such as were undertaken by the League, let us say, in the opium control.

My guess is that the Economic and Social Council will work mostly on the first problem, that is, on the gathering of information and its analysis

and drawing implications from that analysis. It will do relatively little, I think, in the consultative field although it may do more than I would expect it might do. However, the specialized agencies will do more, and I am quite sure that the specialized agencies will carry the burden of the general operations there.

By the way, here as in the other fields, we have the point which Dr. Kirk made, and it must be reinforced if anything is to come out of it. About the only one of these agencies which has an important operative function which affects the individual nations is the Monetary Fund, and that has been the one of course which has raised the most storm all around the world and against which most questions have been raised by people on the ground that they are ceding to the international organization the right to do certain things and make certain decisions which will affect the internal operations of the country concerned.

The more you get over into that the more resistance you get, and the more it becomes clear that people will have to have a will and a loyalty to serve the international organization which is comparable to their will and loyalty to their national organization. It took us many years to arrive at that, and we fought a bitter war between the states before we got it pretty well settled here as to whether our loyalty was a state loyalty or a national loyalty.

I want to make two more remarks. First, I think that there is a great danger that this body, by the very fact that it is representative of so many nations, may try to operate along much too orthodox lines. It is a very inhibiting process. When you are making recommendations which really are important it is easy to do what the comparable League bodies did to get pushed off on the unimportant ones or the small ones.

The second danger is, that you are working on what has been happening in the past instead of what is going to happen in the future. It is my

belief that it would be a very good addition to the United Nations Organization, and can be provided for under its machinery, to have a really first class scientific group advising both the Security Organization and the Economic and Social Organization. There won't be any miracles performed; but if you have one really good central scientific body they may be able to keep fresh, at least in the minds of the people who are making both the Security decisions and the Economic decisions, what changes are on the horizon and have to be allowed for, instead of having them slug away at something which is pretty well past - that is an Adam Smith book, written when the steam engine was being developed. He knew about the steam engine but certainly had no conception of what steam power was going to do to the world.

Now we are in that kind of a situation and we can make a great many of the same mistakes. There won't be any magic formula. I am not speaking of just the atomic bomb.

I think the most important thing to remember for the Economic and Social Council is that almost none of the things with which it will be dealing are strictly mechanical. I don't believe that the greatest disparities in the world come from the uneven distribution of the resources. They are certainly unevenly divided. I would think far more important was the somewhat allied influence, the great difference in the technologies, in the skills of people, and in the managerial and other aptitudes of the people.

A country like the United States has both the resources and the skills, as can be seen from the fact that with 1/17 of the world's population, it controls maybe 60 percent of all existing harnessed power - steam, electric and animal. Russia's advance is also to be measured pretty much by the same criteria. Its ability to mobilize manpower and human skill is far more important than the cumulation of the capital equipment as such, though the two go together. We could get rid of ours and reproduce it pretty fast.



I am quite sure that the Economic and Social Council has enough powers to do everything which can usefully be done at the present time by an international agency operating in this field. It could be given more power on paper and it would be simply placed in the position of not daring to use it because it would perhaps not be given, or have the confidence to feel that it could handle, the really hot problems and get them acted upon by the states when their recommendations were drawn up. You cannot have this kind of a body making recommendations continuously and having them thrown out continuously, because it goes to seed.

I think its weaknesses are the weaknesses which are inherent in a world organization which has not learned to think in international terms, which does now think inherently and feel viscerally in nationalistic terms. Its danger is that it won't be bold enough in its recommendations which it has a chance to make, partly because it isn't going to be fundamentally an operative body.

I am sure its portfolio is to look over the whole world, not at the trouble spots merely - that is, not at the nation which is having exchange difficulties but at the creditor nations as well as the debtor nations, the nations whose trade is flourishing as well as those whose trade is bad. Its portfolio is to look at the whole structure and, if it can assemble enough people, to make diagnoses as to the things which are looming on the horizon which are apt to interfere with international trade and cause trouble, and those which are apt to interfere with prosperity in the individual countries and the general development of their better standards of living. That is its duty.

CHAIRMAN JESSUP: Thank you, Dr. May.

The third topic, "Justice," has this significance in the position

of the program, that when the Dumbarton Oaks proposals were framed as a project for the Charter of the United Nations, there was an immediate howl that justice seemed to have been forgotten in setting up the plan, that the emphasis was entirely on security and economics. This protest was not without effect. The Charter contains much more in the field of justice than did the Dumbarton Oaks proposals on which it was largely based. It is that aspect of the United Nations that Professor Eagleton is going to discuss now.

ANALYSIS OF THE CHARTER -- PROVISIONS FOR JUSTICE

Clyde Eagleton

I never have found a satisfactory answer to one of the favorite questions: what is justice? Therefore, I am a little bit uncertain what I should include under the topic of justice this morning. I shall interpret it very broadly and make a few points, some general and some specific, for the purpose of arousing discussion. The best working definition which I have found for practical purposes is to say that justice is whatever the community organization says it is. The trouble about that in the community of nations is that you have not got enough organization, so you cannot find out or cannot get justice very well.

We have international law, a certain amount of it, which operates pretty well within its limited field; but this international law does not cover the subjects which people are most interested in. We have a very good court, but there is no compulsory jurisdiction. There is no legislature or legislative process which could make international law, and no executive to apply or enforce the law.

These are essential things, and in a community if you want justice, there must be means of settling disputes; there must be means of upholding rights; there must be means of remedying wrongs or injustice. But in the community of nations, there is only one authoritative way for doing any of these things, and that is war. That is the best that intelligent human beings thus far have provided for doing these things. As Dr. Shotwell said yesterday afternoon, we are not going to be able to get rid of war until you find a substitute for war which can serve these functions of settling disputes and upholding rights and remedying wrongs, etc. It is not enough just to repress the use of war or force. It is not enough to use power to put down the use of force. You have got to have justice along with it. Along with security



must go justice because human beings will always fight for justice, and if you get a Munich settlement or something like that which may prevent war but which does not get justice, well, you are going to have trouble in the future over it.

Why is it that the community of nations has not got these institutions or cannot serve these functions? Well, the answer is because people have not demanded it, because you and other citizens have not fought for it. The State Department, and the Senate, and the Government in general have a right to assume in a democracy such as this that the old ways are to continue until the people demand a new way. I myself think that the government has shown a lack of courage and could have taken much more leadership than it does; but this is a correct principle: unless the people speak up, the government cannot afford to change its policy in a democracy.

We have not got a broader range of international law because the American people have not been willing to submit themselves as a sovereign nation to this law. We have not got a legislative process because the American people say, "We are not going to have foreigners telling us what to do." We have a court, yes, but we have not got compulsory jurisdiction because it is believed that the American people have been unwilling to take it. I am rather inclined to believe they would. We have not got an international police. We say we want one, but we want one which can be used only against the other fellow, which will be manned and paid for by others. We don't want our boys drafted for international police.

What I want to say here very briefly is that international law and government and justice don't just grow up. You have to work for them and fight for them and unless the people in a democracy take a strong stand for them you are not going to get them.

Now let me look at the United Nations Charter and see how far it

moves in these directions. The first statement in the Charter is Article 1, Chapter I, which says the first purpose is to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

We will see in a moment that there is no authority here to bring that about. You can make efforts in that direction but you cannot bring it about. You will notice also that this phrase "in conformity with the principles of justice and international law," as Professor Jessup just suggested, was added at Dumbarton Oaks and is about the only reference to law in the Charter. I believe "justice" is put in the Charter in one other place. In other words, the Security Council is unlimited, except for this vague statement at the beginning, by the necessity of conforming with international law or with justice in reaching its decisions. The intent of the organization was to provide security. The emphasis was upon security rather than upon justice. I think a large part of that was just oversight at Dumbarton Oaks, but it is nevertheless true that the prevailing purpose of this organization was to get security, and whether in accord with justice or not was not so important.

The next statement is in Article 2, Paragraph 3, which says 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. There is the obligation on the members that they shall settle their disputes.

The last paragraph in that same article I think is one of the worst things in it: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter, but this principle shall

not prejudice the application of enforcement measures under Chapter VII." By the way, they struck from this paragraph the right to decide "by international law" which things are domestic questions, leaving you with the implication that each state can decide for itself what is a domestic question. Certainly no organ of the United Nations is authorized to say what is a domestic question. I think there will be a good deal of debate over this paragraph. A state can put up a pretty good argument and say, "We exclude the question of immigration; we exclude the question of tariff <sup>or</sup> (whatever it is). We don't have to submit that," and the organization can do nothing about it because it is a domestic question.

Most of the provisions with regard to peaceful settlement are contained in Chapter VI, which I will sketch over rapidly. The larger part of that chapter is devoted to saying that states shall settle their disputes by means of their own choice. Certain ones are listed in Article 33. That provision was not in the League of Nations Covenant. It is not necessary here because it is always understood that states or individuals can settle their disputes by means of their own choice and should make such an effort before they ever take it to a court.

Notice also that not all disputes are to be settled. It would be absurd of course to require that all disputes should be settled; it is only those whose continuance might endanger international peace and security, which leaves you with the question: Who is to decide whether its continuance can endanger international peace and security? The Security Council has the power to investigate for the purpose of determining that.

If the parties fail to settle a dispute by means of their own choice, by their own efforts, that is, they are obligated to refer it to the Security Council. There are some technical points there. Suppose they don't refer? I think the answer will probably be that the Security Council could take it up anyway. However, what can the Security Council do when the dispute is



referred to them? They can do one of two things. They can recommend to the parties another procedure which they would follow themselves, or they can recommend the actual terms of settlement. The latter part was put in at San Francisco. The United States had not been very much in favor of that, but the procedure of pacific settlement was very much strengthened by the addition of power for the Security Council to recommend the actual terms of settlement.

Notice, they can only recommend. They cannot impose. There is no differentiation made here between legal questions or other questions. There is a slight reference in one of the articles that the Security Council ought to recommend to the parties that the parties should refer legal disputes to judicial settlement.

Chapter XIV and the appended statute of the Court provide an excellent system of judicial settlement with the one exception that it is not compulsory. It is fine for any two states that want to bring their dispute before the Court, but no state is obligated to bring it before the Court. Many states have accepted the compulsory jurisdiction of the Court one way or another by treaties outside of the Charter of the United Nations, and I hope the United States itself will accept the optional clause.

The Security Council, as I said, can investigate, but only to find out whether a dispute is one the continuance of which would be likely to endanger peace and security. Maybe they can stretch that so that they would be able to find out a little about the merits of the case, to use when they come to recommend terms of settlement.

Notice also that the Security Council under the next chapter can decide that a threat to the peace has been committed, and then, as Professor Kirk explained, it has an enormous contingent power of enforcement against such a state, so it would be possible for the Security Council under the very flexible power that it has, as explained, to say that the failure of a state to accept the recommendation of the terms of settlement by the Council

constituted a threat to the peace, and therefore they could enforce it. However, if they do that you get outside of the field of pacific settlement and on another basis.

Notice also in connection with this that one of the great powers can veto any decision of the Council in this respect. Even the weak powers that the Council has can be blocked by one of the great powers. No state which is a disputant can vote; that is to say, if one of the five powers was a disputant its vote would not be counted, but any one of the other four powers could veto and block action.

Going a little bit further, interpreting justice a little bit more broadly and taking in the field of peaceful change or the methods of remedying injustices, etc., there is no authority whatever in the Charter by which the Organization itself can make any change in the settlement of a dispute. Changes might be recommended by the Council in the course of settling a dispute. I am rather inclined to think -- probably I would get debated on this -- that the Assembly is going to have as much power, even in the settlement of disputes, as the Council has, and certainly the Assembly has such authority as there is, with the Economic and Social Council and others under it, to provide for peaceful change. But the point which I make is that neither the Economic and Social Council nor the Assembly has the power to make a decision which is binding upon the sovereign states without their consent, as Dr. May was explaining a moment ago.

Thus, if you think in terms of removing the causes of war, of creating conditions conducive to peace, the Organization itself has very little authority. Whether it can do anything depends upon the cooperativeness, the willingness of the member states, to accept the recommendations made by the Assembly or the Economic Council, etc. The Assembly has a big opportunity here and I feel pretty sure that the Assembly is going to come out the most important organ in the system.

Thus the United Nations Charter does not enable the organization itself to provide justice. It does not provide a substitute for war as a means of settling disputes, as a means of remedying wrongs or upholding rights. The UNO will not be strong enough to handle the situation, the crisis produced by the atomic bomb.

Now having said this, having pointed out these weaknesses, I want to say just as emphatically on the other hand that I am for the UNO. I would certainly not want to see it abandoned. I would not want to throw it out and try to build again from the bottom up. In the first place, the UNO is valuable simply as machinery through which sovereign states can cooperate, and probably for this purpose is as good a system as you can get. So long as the sovereign states, the American people primarily, are unwilling to accept obligations and responsibilities, probably the UNO is about as good a system as we can devise. It can settle a good many disputes as it is. It can probably work out a good many of the economic and other problems. It is only for the most desperate crises that it would fail.

It is also true that political development is always slow, that it must always build upon the past; and therefore we stand to gain by keeping the UNO and developing it. I do think that we should not build anew. While the UNO is weak and while we should accept it, we should try our best to strengthen it, and I will bring that to a specific point as the last thing I have to say.

In the statement by Truman, Attlee and Mackenzie King, it was said we would turn over the atomic bomb to the United Nations Organization when adequate safeguards have been provided. I take it that that means when the UNO has been made strong enough to take care of the situation to control the bomb. The UNO cannot be made strong in that way without the active support and leadership of the United States. The United States so far has not given



any indication that it will be willing to strengthen the United Nations Organization for this purpose. I mean, suppose you want to authorize it to have control over raw materials, or for inspection, or to have an international police, or whatever it is that they have in mind as adequate safeguards, we have given no indication that we, the United States, would be willing to take any step in that direction. So it seems to me that the immediate duty ahead of us is to get the American people to demand of their government that these steps be taken, that leadership be assumed for this purpose, and that we try to strengthen the United Nations Organization so that it could handle such a problem as this one.

CHAIRMAN JESSUP: Thank you very much, Professor Eagleton!

Dr. Shotwell, I wonder if you want to add anything before we have general discussion?

DR. SHOTWELL: I am very anxious to get at the discussion. That is the heart of the morning's work.

I would like to say there are two in this room, Mr. Eichelberger and I, who for a year and one-half sat in a little committee of five with Sumner Welles, from the early spring of 1942, planning for Dumbarton Oaks. I would like you to know, as in contrast to the state of mind today, what we were up against, when we laid the basis for the Charter.

First of all, it is perfectly clear that the White House, with a supreme master of politics, President Roosevelt, there, was convinced that American public opinion had to be, shall I say, led along by the hand and not given too much idea of any project for a League of Nations. We met in secret. Our names were never given to the public. We worked under the camouflage of doing something else in the State Department. We were conscious all the time that at least some of the most experienced politicians in the country, not

only F.D.R., but Cordell Hull as well, were convinced that the country was not ready for the kind of thing which would be a revival of a League of Nations. This has a bearing on the present planning. I am amazed to see how fast and far public opinion has gone.

I was also on a committee of the United States Chamber of Commerce. We got out a plebiscite in December after Mr. Hull had gone to Moscow: "Are you in favor of the United States joining an international organization to maintain peace and security with force behind it?" We sent that out to be voted on by all the Chambers of Commerce in the United States, thus taking a plebiscite of the business men of the country. To our great joy, at least my joy, the answer was, as I remember, about 139 for and 13 against. I took those figures to Mr. Hull. He said, "I can't believe it, but perhaps they did not know what they were voting on. In any case you cannot get the Senate to follow that lead." So we were held back there.

I am talking now of our own American difficulties. With reference to the international organization, of all the things that Dr. Stacy May has been talking of on the economic side, F.D.R. said, "Don't connect that with the League of Nations. Do it quietly, one thing at a time. Send your food and agriculture experts to Hot Springs in Virginia and let them work quietly and don't let any newspapers in on it." The same method was used at Bretton Woods. It was not connected up with the central body; it was all done by that master hand in the White House, trying to prevent American public opinion from becoming alarmed at too grandiose a plan. That was the state of mind in 1942.

Total war taught this country tremendous lessons, and then at last came the bomb. Now we are on a moving tide, moving out of the static past. But if we move too fast, as you see, and try to set up paper constitutions which public opinion is not yet ready to endorse, we shall find that we shall be repeating in this country a situation similar to that of the nineteen twenties, when disillusionment followed great hopes.



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