

# EXPANSION OF SECURITY COUNCIL: INDIA'S CLAIM TO THE PERMANENT SEAT

*V.K. Ahuja\**

In 1945, the allied nations gathered at San Francisco and signed a multilateral treaty to give effect to their determination "to save succeeding generations from the scourge of war...". Thus, they created a new organisation namely United Nations Organisation to prevent future wars. The main purpose of United Nations is to maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and 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 peace. To carry out this purpose, Security Council was set up as a principal organ of the United Nations.

## I. PERMANENT AND NON-PERMANENT MEMBERS

When the plans were being drawn up for the establishment of United Nations to maintain the post World War-II peace, it was considered that those countries primarily responsible for the conduct of war against the Axis would occupy a "special" position within the organisation. It was also realized however, that any plan concentrating the power to maintain peace exclusively in their hands would not easily be acceptable to other nations. As a result, it was decided that the Security Council should also include few other States for a fixed term with lesser powers, elected on the basis of geographical distribution.

The "Big Three" i.e. Soviet Union, the United States and the United Kingdom were expanded to "Big Five" at the same time. Although skeptical of Roosevelt's views of China's ability to play a major role in the post war world, Churchill and Stalin accepted the inclusion of China as one of the permanent members in Security Council. Churchill's insistence upon including France among this small elite group was accepted with somewhat similar skepticism by Roosevelt and Stalin as to the post war

---

\* Lecturer, Law Centre-II, Faculty of Law, University of Delhi, Delhi.

position of France.<sup>1</sup> All the five permanent members of this elite group were given the prerogative right to exercise "veto".

## II. VETO POWER OF PERMANENT MEMBERS

At the San Francisco conference, the right of permanent members to exercise a veto provoked a long and heated debate. The smaller States feared that the permanent members could act arbitrarily and render the Security Council powerless to take measures for the maintenance of international peace and security. But the Big Five, unanimously insisted on this provision as vital, and emphasized that they would work in cooperation and the main responsibility for maintaining international peace would fall most heavily on them. Eventually, the other states conceded the point in the interest of setting up the United Nations. Prof. Bowett has also observed:

The justification for granting the exceptional status to five permanent members lies in the inescapable fact of power differential. In other words, the basic premise was that upon these members would fall the brunt of the responsibility for maintaining peace and security and therefore, to them must be given the final or decisive vote in determining how that responsibility should be exercised.<sup>2</sup>

At the San Francisco conference, it was suggested that a phrase be added identifying the permanent members as those "having the greatest responsibility for the maintenance of peace" to justify the special position accorded to them, but this suggestion was rejected.<sup>3</sup>

Under League of Nations also, the "Principal Allied and Associated Powers" were provided permanent representation on the Council. These countries were France, Italy, Japan, the United Kingdom and the United States of America.<sup>4</sup> The Covenant also permitted the Council, with the approval of the majority of the Assembly, to designate "additional" permanent members. Germany got a permanent seat in 1926 and the Soviet Union in 1934.<sup>5</sup> The United States had never joined the League although President Wilson had inspired and played a vital part for its establishment. The provision of designating additional permanent mem-

- 
1. Leland M. Goodrich et. al., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS (New York : Columbia University Press, 1969) at 193.
  2. D.W. Bowett, THE LAW OF INTERNATIONAL INSTITUTIONS (London : Sweet and Maxwell Ltd., 1982) at 28.
  3. UNCIO DOCUMENTS, XI at 289.
  4. Article 4 of the COVENANT OF LEAGUE OF NATIONS.
  5. H.O. Agarwal, INTERNATIONAL LAW (Allahabad: Asia Press, 1997) at 299.

bers without amending the Covenant has not been repeated in the U.N. Charter. The Covenant of League of Nations also provided for eleven non-permanent seats in the Council.

Contrary to the hopes of framers of U.N. Charter, the members of Security Council instead of being united, divided into two blocks - East and West. This happened because of the cold war which developed between them soon after the World War II was over. The veto power became weapon in their hands. It was used in an unobstructed manner by the permanent members to obstruct the working of Security Council and to make it defunct at several occasions endangering the maintenance of international peace and security. To overcome this unfortunate situation, the General Assembly adopted "Uniting for Peace Resolution" on November 3, 1950 which provides that if the Security Council, because of lack of unanimity of its permanent members, fails to exercise its primary responsibility in the maintenance of peace and security in a case where there appears to be a threat to the peace, breach of the peace or an act of aggression, the General Assembly shall consider the matter immediately with a view to making recommendations to members for collective measures, including in the case of a breach of peace or an act of aggression, the use of armed force when necessary to maintain international peace and security. It is very unfortunate that General Assembly had to adopt such a resolution because of the circumstances created by the use of veto by permanent members and their feelings of non-co-operation. The veto power has thus proved to be a curse for the maintenance of international peace and security on several occasions during cold war.

### III. CRITERIA FOR THE ELECTION OF NON-PERMANENT MEMBERS

The U.N. Charter originally provided for eleven members in the Security Council-five permanent and six elected. On 17th December, 1963 an amendment to Article 23 was adopted by the General Assembly which raised the number of non-permanent members from 6 to 10. This amendment came into force on 31st August 1965.

At the San Francisco conference, following criteria was considered for the election for non-permanent members:

Geographical distribution, rotation, contribution of the members of the Organisation towards the maintenance of international peace and security and towards the other purposes of the organisation, guarantees concerning the active defence of international order and means to participate substantially in it, combinations of elements including population, industrial and economic capacity, future contribution in armed forces and

assistance pledged by each member state, contributions rendered in the second World War, and so on; also special assignment of non-permanent seats to certain Groups of Nations.<sup>6</sup>

Since the aforesaid criteria was not acceptable to the smaller nations, an agreement therefore, reached after further discussion on a compromise solution, embodied in Article 23 (1) which provides that "due regard being specially paid, in the first instance to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution".

The seats of the non-permanent members of Security Council are allocated according to the following formula : Afro-Asia-5; Eastern Europe-1; Latin America-2; Western Europe and others-2. Non-permanent members are elected for a term of two years and a retiring member is not eligible for immediate re-election. More and more nations are thus admitted to Security Council as non-permanent members.

After discussing in brief the composition and historical background of the Security Council, its now turn for the discussion of present day status of the Security Council.

#### IV. PRESENT DAY SECURITY COUNCIL : US DOMINANCE

After disintegration of USSR, Security Council is now being dominated by the United States which is trying to achieve its desired goals by making a mockery of the United Nations.

Following Iraq's invasion of Kuwait on August 2, 1990, US led multinational forces took enforcement action against Iraq in January 1991. Legally speaking, it was not an action taken by the UN forces. The members of the NATO joined US in taking action against Iraq under the authorisation of Security Council. Iraq was made as a testing ground by the US to test its weapons. It is noteworthy that in Gulf War, the coalition forces fired a million rounds of ammunition coated in radioactive material. Heavy metal depleted uranium was used in the battle field. This has brought tragic consequences for the people of Iraq. The genetic plague in Iraq has resulted in the birth of headless or two-headed babies. It has affected plant life too, with huge tomatoes and giant marrows. Since

---

6. UNCIO DOCUMENTS, XI at 676-77.

depleted uranium has a long radioactive life, the food chain has been affected there.<sup>7</sup>

When the Gulf war was over, sanctions were imposed on Iraq by the Security Council. UN Special Commission (UNSCOM) was sent to Iraq. UNSCOM's professed goal was to locate and destroy whatever allegedly remains of Iraq's capability to produce weapons of mass destruction-chemical, biological and nuclear. In reality, the Commission-especially since it had been headed by Richard Butler, an Australian diplomat not known for his impartiality, had been dragging its feet and ensuring that the inspection process never reaches an end. The US calculation was that the longer the sanctions remained, the easier it would be to undermine the Saddam Hussein regime.

Iraq had tried hard to satisfy the demands of UNSCOM Inspectors. At the end, however, Butler wrote a report in which he stated relatively small number of instances of Iraqi non-co-operation. The Butler's report was drafted by him in close collaboration with Clinton administration officials, who were interested to make a case for military action. Within 90 minutes of Butler having presented his report to the Security Council in December 1998, the US told UN to pull out its staff from Iraq and began preparing to strike. The actual attacks came a few hours later, even though the Security Council was debating the issue.<sup>8</sup>

In 1998 itself, following terrorist attacks on American embassies in Tanzania and Kenya which claimed lives of number of American people, the US retaliated by attacking the terrorist sites in Sudan and Afghanistan which it claimed were being maintained by the multi-millionaire terrorist Osama-bin-Laden. About 70 Tomahawk missiles were fired from the Arabian Sea and the Red Sea, traversing 1000 to 15000 miles in each case. These missiles overflew the coastal waters and air space of countries other than those which were targeted. Neither the targeted countries nor the countries whose territorial seas and air space were involved were given any advance information.<sup>9</sup>

The missiles fired on Sudan and Afghanistan destroyed more than the specific target. It is noteworthy that a couple of missiles fell inside the Pakistani territory also. The attacks in Sudan and Afghanistan were justified by the US as actions taken in self-defence.

---

7. THE TIMES OF INDIA, December 23, 1998.

8. THE TIMES OF INDIA, December 20, 1998.

9. V.K. Ahuja, *US Attack on Sudan and Afghanistan : Does the Action Fall Under Article 51 of the UN Charter?* III NATIONAL CAPITAL LAW JOURNAL, 1998 at 102.

In 1999, on the initiative taken by the US, NATO forces attacked Yugoslavia on Kosovo issue. The attack was made on the pretext of safeguarding international security and for providing humanitarian assistance in Kosovo. Once again, no UN forces were involved.

Earlier also US has committed blatant acts of aggression in violation of international law. In December 1989, US invaded Panama to arrest the Panamanian leader, General Manuel Noriega, on charges of drug trafficking and help bring "democracy" to Panama. Prior to this in 1983, the US invaded Grenada. The ostensible reason given by the Regan presidency was the protection of US lives, whereas the real aim was to overthrow the Caribbean state's New Jew Movement government and bring the island back into the "western" fold. This aim of protecting American lives has also been invoked by the US to justify its armed invasion in the Dominican Republic in 1965. Other examples of the unilateral use of force by the US or the use of covert means to overthrow unfriendly governments are: Libya (1986), Chile (1973), Iran (1953), Guatemala (1954), Nicaragua (the 1980s) etc.

The US as a permanent member of the Security Council has not played the role which was assigned to it at the time of establishment of United Nations Organization. Rather it has violated international law to serve its interests.

It is interesting to note that US may incur heavy expenditure in attacking a country to serve its interests in violation of principles laid down in UN Charter, but at the same time it is not interested to pay UN dues which according to Mr. Joseph E. Connor, UN Under Secretary for Management, Dues and Other Assessments amount to \$ 1.739 billion at the end of August, 1999.<sup>10</sup> There will be no surprise if the millennium starts for the US with the loss of UN General Assembly vote as a result of not paying its dues.<sup>11</sup> However, its permanent membership of Security Council will remain.

#### V. EXPANSION OF THE SECURITY COUNCIL

The composition of the Security Council does not accord to the present day reality. Since 1945 when the UNO was established the world has completely changed but unfortunately no changes has been made in the composition of the Security Council except one that took place in 1963, when the number of non-permanent members was increased to fifteen from eleven. Presently, the number of members has gone up from 51 to

---

10. THE HINDUSTAN TIMES, September 29, 1999.

11. Article 19 of the UN CHARTER.

188. The permanent members are no longer the only States which have superior military capabilities, resources and influence. In the present changed scenario, the size of the Security Council appears to be disproportionate to the enlarged size and functions of the Organisation. The present number of the permanent members as well as non-permanent members is required to be changed so that it may have equitable and fair representation of all the regions of the world.

The matter for the expansion of the membership of the Security Council was discussed by the General Assembly which on December 4, 1993 decided by consensus to set up a Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council.<sup>12</sup> The Group met for the first time in January 1994 in New York. According to the informal paper issued by the General Assembly virtually all member States of the UN favoured an increase in the membership of the Security Council. But there was no unanimity on the number of seats increased. The Working Group failed to take a decision in this regard in its later meeting held in 1996. In 1995 also, the General Assembly adopted a declaration on the occasion of the fiftieth anniversary of the United Nations which accepted that the Security Council should be expanded in a way that will further strengthen its capacity and effectiveness and enhance its representative character. Diverse factors were cited regarding the criteria for Council membership, such as population, contribution to peace-keeping operations, economic potential, financial contribution, military capability, regional importance etc. Since there was no unanimity on how to proceed in this matter not much progress has been done in this regard.

#### VI. INDIA'S CLAIM TO THE PERMANENT SEAT IN SECURITY COUNCIL

India has put forward its claim to the permanent seat in the Security Council before the world community from time to time. The claim of India is based on sound grounds which are enumerated below:

##### *A. Participation in UN Peace-Keeping Operations*

India has played a significant role in carrying out UN peace-keeping operations. Since 1953, India has participated in 28 UN peace-keeping operations during which as many as 88 Indian soldiers and officers have died. Some of the major operations by India have been in Korea, Congo, former Yugoslavia, Lebanon, Somalia and Cambodia.

India's commitment to the peace-keeping operations has been such that it has never stopped contributing troops despite the fact that in many

---

12. Agarwal, *supra* n.5 at 341.

instances, the UN failed to pay salaries of the Indian soldiers in time. For instance, the UN owes money to India for the services rendered by its soldiers in Congo (Zaire) as far back as in 1960. Until October 1998, the UN was estimated to owe \$ 58 million to India for its peace-keeping operations. Without waiting for the money to come from the UN, India pays its soldiers UN salaries.<sup>13</sup>

### *B. Population*

India is the most populous state in the world next to China. The population of India is going to touch 1 billion mark which is 1/6 th of the entire world's population.

### *C. Largest Democracy*

India has democratic system of Government and it is the largest democracy in the entire world. Fair and free elections are conducted in India.

### *D. Economic Power*

India is one of the economically significant nations of the world. It is a member of G-15 which represents G-77. Recently, it has accepted the membership of the G-20, which is to be launched in Berlin.<sup>14</sup> To be a part of G-20 implies that the world recognises an increasing global role for India. This is also reflective of the recognition that India makes an important contribution to the evolution of international thinking and consensus on issues of global concern. G-20 would help in facilitating greater interaction between developing and developed countries.

### *E. Nuclear Power*

India conducted its first nuclear test in 1974 and expressed its intention to use atomic energy for peaceful purposes. In May 1998, India successfully conducted a series of nuclear tests at Pokhran and shown the world its nuclear capabilities. India is now a nuclear power. It has now declared its moratorium on further nuclear tests. In its nuclear doctrine, India has expressed its intention of not using nuclear weapons against non-nuclear state. Further, it has always shown interest on a 'no first use' pact with nuclear weapon States. Thus, the military capabilities of India have been enhanced which is significant for playing a role for the maintenance of international peace and security.

---

13. THE TIMES OF INDIA, October 31, 1998.

14. THE TIMES OF INDIA, October 1, 1999.

### *F. An Allied State in World War-II*

In World War-II, India fought against Axis. Since India was not independent at that time, therefore it could not be considered for the permanent seat in the Security Council. But now when it has emerged as a power on the world map, it cannot be denied what is due to it. Interestingly, Germany and Japan which were enemy States in World War -II are now being offered permanent seats in the Security Council. Although in the changed world scenario, the claim of Germany and Japan to the permanent seat may be considered, the claim of India should not be undermined.

### *G. Leader of the Developing Countries*

India has represented developing countries at various international fora. It is an influential country among the Non Aligned Movement (NAM) countries which constitute majority in the United Nations.

Apart from the aforesaid grounds, it is noteworthy that India became a non-permanent member of the Security Council during 1951-52, 1972-73, 1977-78, 1984-85 and 1991-92<sup>15</sup> and thus contributed immensely for the cause of international peace and security.

## VIII. CONCLUSION

It is high time to expand Security Council to make it more democratic by inducting some more permanent and non-permanent members. New permanent members should not be given veto powers and the present five permanent members should be stripped off this prerogative. Decision of Security Council should be taken by the 3/4th majority of the members present and voting. There should be no difference between the permanent and non-permanent members except to the effect that non-permanent members are elected for a fixed term of two years on rotational basis. The UN Charter should be amended in such a way as to make it possible to take enforcement action against the permanent members under the Charter itself. Such a permanent member should not be allowed to vote in Security Council. Presently, enforcement action against a permanent member is possible only under the Uniting for Peace Resolution, 1950 by the General Assembly. There is no provision in the UN Charter which allows the enforcement action against a delinquent permanent member of the UN Charter. This is a deliberate omission. The principle of sovereign equality which has also been recognised in Article 2 paragraph 1 of the UN Charter

---

15. Agarwal, *supra* n.5 at 342-43.

must be respected. Financial contribution of permanent members should be redefined. There is a need to reduce the US share as it is the major defaulter.

To free the UNO from the clutches of US and NATO, it is imminent to expand Security Council.