

GENERAL

May 3, 1945

DUMBARTON OAKS PROPOSALS CONCERNING THE ESTABLISHMENT OF A
GENERAL INTERNATIONAL ORGANIZATION: AMENDMENTS SUBMITTED
BY THE BELGIAN DELEGATION

PART I

The Belgian Delegation is pleased to note that several of the observations formulated by the Belgian Government in February 1945 on the subject of the Dumbarton Oaks Proposals agree with amendments already drawn up by some of the United Nations, namely France and the Netherlands. The Delegation believes it superfluous to present, for the time being, the written modifications of detail or form that it would like to see made to these amendments, as well as to various provisions of the Dumbarton Oaks Proposals.

Some of the suggestions contained in the present document are prompted by observations already formulated by the Belgian Delegation. The others are intended to correct omissions or imperfections revealed by a further study of the document.

The Belgian Delegation has not tried to either give a definite form to its proposals, or to settle the exact position that these might occupy in the Charter, if adopted. It appears sufficient at this stage of the proceedings to point out the general scope of the modifications that the Belgian Government hopes to see made in the Dumbarton Oaks Proposals.

PARAGRAPH 1

Pacific Settlement of Disputes

Chapter VIII, Section A, relative to the pacific settlement of disputes, should contain two provisions worded as follows:

a) "The Security Council shall see to it that the engagements undertaken by the States with a view to a pacific settlement of their disputes are respected. In the case of non-observance of these engagements or of omission in the execution of court decisions or awards rendered in accordance with the procedures provided for, the Security Council shall advise as to the measures to be taken to insure their fulfillment."

b) "Any State, party to a dispute brought before the Security Council, shall have the right to ask the Permanent Court of International Justice whether a recommendation or a decision made by the Council or proposed in it infringes on its essential rights. If the Court considers that such rights have been disregarded or are threatened, it is for the Council either to reconsider the question or to refer the dispute to the Assembly for decision."

GROUND S

Next to political security, comes juridical or legal security. Several Delegations have expressed concern lest influence or political pressure might induce the Security Council to impose on a State modifications of essential rights which are derived, in the case of that State, from the general rules of international law or from treaties.

Moreover, the Dumbarton Oaks Proposals already emphasize the advisability of undertakings by the States relative to the methods of pacific settlement, and the particular competence of the Permanent Court of International Justice for the settlement of juridical differences.

The Belgian Delegation considers it desirable that these obligations be defined with more precision by entrusting directly to the Security Council the responsibility of insuring the observation of engagements entered into with respect to this and with the enforcement of any awards or decisions which may be rendered.

It also believes it important to give States whose differences are submitted to the Security Council the possibility of allowing the Court to express its opinion on the existence of any essential rights they may consider to be threatened or disregarded by the discussions or decisions of the Security Council. If the Court should consider that such rights have in fact been threatened or disregarded, it would be the duty of the Council either to

reconsider the question and maintain or modify its conclusions, or to refer the matter to the Assembly.

PARAGRAPH 2

Relations with Third-Party States

The last paragraph of Chapter II of the Dumbarton Oaks Proposals should read as follows:

"Whereas their association represents the authorized expression of the international legal community, the Member States express the intention, in their relations with third-party States, of basing their action on the principles defined above and on any other rules the general application of which is recognized by the International Organization. Conversely, the Organization will see to it that third-party States act in conformity with the aforesaid principles and rules so far as is necessary for the maintenance of international peace and security."

GROUNDS

The Dumbarton Oaks Proposals affirm the right of the Organization to impose on third-party States, so far as is necessary for the maintenance of peace, respect for those principles enumerated in Chapter II and more especially the obligation in certain cases to renounce the continuation of neutrality.

The Belgian Delegation is in favor of this proposal, but believes it advisable, in order to forestall criticism, to point out its moral and legal basis, and to give it a less unilateral bearing.

The Charter now being drawn up is not a special covenant but a general one which will, some day, we hope, be universal. In any case, as soon as it comes into operation, it will stand out as the will of most of the civilized States--some, indeed, will call it the collective conscience of humanity.

It is therefore perfectly legitimate that the States which adhere to it should free themselves with regard to a few other States from rules which the latter might seek to impose upon them by virtue of a traditional international law which is held to be unalterable. But it is fitting that in so far as these other States are bound by the

principles enumerated in the Charter, they should likewise be allowed to benefit by their application.

It will be noted that the proposed draft of the Belgian Delegation not only refers to principles, but also to other rules which might be laid down by the Organization and which it might consider generally applicable. This remark refers to another amendment of the Delegation, to paragraph 4, discussed further on.

PARAGRAPH 3

Members (Suspension and/or Expulsion)

Any mention of the expulsion of members in Chapter V of the Proposals should be deleted and limited to the suspension of their rights.

GROUNDS

The Dumbarton Oaks Proposals introduce a happy improvement to the Covenant by conceding to the Assembly the power to suspend upon unanimous recommendation of the Security Council, the rights and privileges of membership of any member against whom the Council would be led to take preventive or enforcement measures. (Chapter V, B-3)

Concurrently with this disposition, it provides for the power of expelling from the Organization any member who "persistently violates the principles contained in the Charter".

The Belgian Delegation considers this last clause both useless and injurious. It is useless because suspension in itself is sufficient to eliminate any right of representation from the State under sanction. It is harmful because it creates a great cleavage, not between the Organization and a government but between the Organization and a State, and it creates a future obstacle to the universality of the Organization that will be difficult to surmount.

One will notice, moreover, the illogicalness of a system which, after withdrawing the legitimate right of the adherent States to withdraw from the Organization, in order to confirm its permanent character as an institution, would give a chance to the dissident State to effect such a rupture in an indirect manner by provoking its expulsion.

Powers of the General Assembly

Chapter V on the General Assembly should contain the following provisions:

- a) "The General Assembly has sovereign competence to interpret the provisions of the Charter.
- b) "The General Assembly may submit general conventions for the consideration of States which form part of the United Nations Organization and, should occasion arise, for the consideration of other States, with a view to securing their approval in accordance with the appropriate constitutional procedure.
- c) "If the General Assembly is of the opinion that the obligations involved in any draft general convention are mere corollaries of principles it already recognizes as compulsory, or that the general observance of these obligations is necessary for the maintenance of international peace and security, it may decide that the convention in question will come into force for all States Members of the Organization and, should occasion arise, for third-party States, as soon as it has been ratified under the conditions contemplated for the coming into force of amendments to the Charter."

GROUNDS

In principle, the Dumbarton Oaks Proposals only give the Assembly a mere power of recommendation.

The Belgian Delegation is of the opinion that this does not correspond to practical requirements, and proposes that the Assembly should be granted certain further powers of decision, it being understood that whenever questions of substance are being dealt with the decision shall call for a two-thirds majority of the members present and voting, as provided in the paragraph dealing with the vote.

A) The experience gained at Geneva shows first of all the necessity of not allowing an isolated State to impose its interpretation of the Covenant by opposing the adoption of a decision sanctioning a different interpretation, whatever may be the majority.

B) Furthermore, the League of Nations Assembly, when the draft of a general convention was placed before it, frequently decided to submit this draft for immediate ratification or adherence by the States, perhaps after having itself revised the text. It is difficult to see why the General Assembly of the Organization should not have the same rights, or should limit itself to recommending that a separate International Conference be convened. The proposed amendment would give two-thirds of the Members power to decide on the conclusion of a convention submitted for ratification.

C) Lastly, the Belgian proposal, which is based on the provision already written into the draft regarding amendment procedure, suggests that these methods of adoption should be extended to regulations which, while their general application would seem eminently desirable, are too lengthy to be incorporated in the Charter.

In order to realize the discretion with which this option we propose inserting in the Charter would be used, should occasion arise, we need only recall the provisions of Chapter XI of the Dumbarton Oaks Proposals, which stipulate that amendments, before coming into force, must be ratified by all States occupying a permanent seat on the Security Council, as well as by a majority of the other Members. Moreover, the Assembly must not be placed in the paradoxical and distressing position of being validly able to insert new principles into the Charter, determining the duties of States--as regards control of the traffic in arms, for instance--and making them compulsory for all members as soon as these principles have been voted for by two-thirds of the Members and ratified by the permanent members of the Security Council as well as by a majority of other Members, while, on the other hand, detailed conventions applying the same principles would be binding upon all Members of the Organization only after unanimous ratification.

PARAGRAPH 5

It is proposed to complete Chapter VIII, Section C, paragraph 2, as follows:

"Dissentient votes of permanent members of the Council which are not parties to such arrangements or agencies will not impair the validity of a decision of the Council in this respect."

GROUNDS

According to Chapter VIII, Section C, paragraph 2, of the Dumbarton Oaks Proposals, "no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council".

Yet according to Chapter VI, Section C, paragraph 3, the Council's decisions are made by a majority which must include the votes of the permanent members.

So far as the authorization in question is concerned, it would seem that to insist on an affirmative vote by the permanent members is justifiable only in relation to members which are parties to the regional arrangements or agencies in question.

May 4, 1945

PART II

TECHNICAL AMENDMENTS

1. The Belgian Delegation endorses the proposals of the French and Dutch Delegations to include in the Charter of the Organization a text on the registration of treaties.

Nevertheless, the Belgian Delegation sees no reason why the scope of this text should be limited, as suggested in the French memorandum, to international treaties or engagements "of a political nature". The latter are admittedly of considerable importance for the development of international relations; but the same can often be said nowadays of other treaties or engagements, such as economic and trade agreements.

The Belgian Delegation therefore recommends adhering in this respect to the general formula adopted in Article 18 of the Covenant of the League of Nations, without making any changes therein.

2. The Belgian Delegation is of the opinion that the Charter on which the United Nations Organization is to be based should be completely protected from the risk of its application being threatened by the existence of previous or subsequent international agreements incompatible with its terms.

A similar provision already existed in Article 20 of the Covenant of the League of Nations.

The Delegation proposes to retain its essential points.

Furthermore, the Delegation requests that the Charter should likewise be protected against unilateral measures taken by States, either in the form of laws (in the widest sense of the term) or of internal judicial decisions.

This principle was not written into the Covenant of the League of Nations, but it is incorporated in practical international law.

In the light of experience, the Belgian Delegation believes that the time has come to reaffirm its existence.

The Belgian Delegation therefore suggests that the following text be introduced among the final provisions of the Charter:

- "1) The Members of the Organization recognize that the present Charter abrogates all international agreements incompatible with its terms, and pledge themselves not to contract similar engagements in the future.
- "2) No State can evade the authority of international law or the obligations of the present Charter by invoking the provisions of its internal law."

3. The recognition of the international status of the United Nations Organization should likewise, according to the Belgian Delegation, form the subject of a special text.

In former times, it was disputed that the League of Nations was a party under international law. This gave rise to difficulties of a practical nature, which chiefly affected the administrative life of the League. Later on, the main tendency of doctrine and jurisprudence was to acknowledge that it was such.

The Belgian Delegation believes this development should now be sanctioned, and that any possibility of controversy should be ruled out.

The Belgian Delegation recommends the adoption of the following text:

"The Parties to the present Charter recognize that the Organization they are setting up possesses international status, together with the rights this involves."

It goes without saying that the benefits of this provision will extend, should occasion arise, to any institutions attached in any capacity to the United Nations Organization.

4. The Belgian Delegation considers that facilities and immunities should be granted to the United Nations Organization and any institutions attached thereto, as well as to Representatives of Members in the exercise of their duties, and to officials properly so called.

This provision seems vital for the good working of the Organization.

Its general principles would be determined by the Charter in the following terms:

- "1) To enable the Organization to fulfill the tasks entrusted to it, its members undertake to accord it facilities and immunities on their respective territories.
- "2) The premises and records of the Organization are inviolable.
- "3) Members undertake to grant the Organization the same facilities for official communications as are extended to other members for their official communications.
- "4) The Organization, its assets and property, shall enjoy immunity from local jurisdiction, except in cases where the Organization itself expressly renounces this right, and shall likewise be exempt from all direct taxation. The Organization shall also enjoy exemption from customs duties on articles intended for official use, and on publications issued by the Organization.
- "5) Representatives of members of the Organization are entitled, in the exercise of their duties, to the immunities granted to diplomatic officials.
- "6) As regards officials of the Organization, the above-mentioned immunities shall at all times apply to the Secretary General and to officials holding appointments which the Organization ranks among its higher posts. Other officials are entitled to immunity from legal proceedings with regard to acts performed in the exercise of their duties, unless this immunity is cancelled by the Secretary General or his authorized representative."