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CHAPTER XI

RELATIONS WITH OTHER UNITED NATIONS ORGANS

Rule 61

Any meeting of the Security Council held in pursuance of the Statute of the International Court of Justice for the purpose of the election of members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes.

APPENDIX

PROVISIONAL PROCEDURE FOR DEALING WITH COMMUNICATIONS FROM PRIVATE INDIVIDUALS AND NON-GOVERNMENTAL BODIES

- A. A list of all communications from private individuals and non-governmental bodies relating to matters of which the Security Council is seized shall be circulated to all representatives on the Security Council.
- B. A copy of any communication on the list shall be given by the Secretariat to any representative on the Security Council at his request.

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APPENDIX III

THE YALTA FORMULA ON VOTING IN THE SECURITY COUNCIL, 8 JUNE 1945*

Statement by the delegations of the four sponsoring Governments, to which the delegation of France also subscribed. The references are to the Dumbarton Oaks Proposals for the establishment of a General International Organization; references in square brackets are to the Charter as finally adopted.

Specific questions covering the voting procedure in the Security Council have been submitted by a Subcommittee of the Conference Committee on Structure and Procedures of the Security Council to the Delegations of the four Governments sponsoring the Conference—the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China. In dealing with these questions, the four Delegations desire to make the following statement of their general attitude towards the whole question of unanimity of permanent members in the decisions of the Security Council.

I

1. The Yalta voting formula recognizes that the Security Council, in discharging its responsibilities for the maintenance of international peace and security, will have two broad groups of functions. Under Chapter VIII [of the Dumbarton Oaks proposals, which became Chapters VI, VII, and VIII of the Charter], the Council will have to make decisions which involve its taking direct measures in connection with settlement of disputes, adjustment of situations likely to lead to disputes, determination of threats to the peace, and suppression of breaches of the peace. It will also have to make decisions which do not involve the taking of such measures. The Yalta formula provides that the second of these two groups of decisions will be governed by a procedural vote—that is, the vote of any seven members. The first group of decisions will be governed by a qualified vote—that is, the vote of seven members, including the concurring votes of the five permanent

* UNCIO, 1945, Vol. XI, pp. 710-14.

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members, subject to the proviso that in decisions under Section A [Chapter VI] and a part of Section C of Chapter VIII [Article 52(3)] parties to a dispute shall abstain from voting.

2. For example, under the Yalta formula a procedural vote will govern the decisions made under the entire Section D of Chapter VI [Articles 28-32]. This means that the Council will, by a vote of any seven of its members, adopt or alter its rules of procedure; determine the method of selecting its President; organize itself in such a way as to be able to function continuously; select the times and places of its regular and special meetings; establish such bodies or agencies as it may deem necessary for the performance of its functions; invite a member of the Organization not represented on the Council to participate in its discussions, when that Member's interests are specially affected; and invite any State when it is a party to a dispute being considered by the Council to participate in the discussion relating to that dispute.

3. Further, no individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention under paragraph 2, Section A, Chapter VIII [Article 35]. Nor can parties to such dispute be prevented by these means from being heard by the Council. Likewise, the requirement for unanimity of the permanent members cannot prevent any member of the Council from reminding the Members of the Organization of their general obligations assumed under the Charter as regards peaceful settlement of international disputes.

4. Beyond this point, decisions and actions by the Security Council may well have major political consequences and may even initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under Section B, Chapter VIII [Chapter VII]. This chain of events begins when the Council decides to make an investigation, or determines that the time has come to call upon States to settle their difference, or makes recommendations to the parties. It is to such decisions and actions that unanimity of the permanent members applies, with the important proviso, referred to above, for abstention from voting by parties to a dispute.

5. To illustrate: in ordering an investigation, the Council has to consider whether the investigation—which may involve calling for reports, hearing witnesses, dispatching a commission of inquiry, or other means—might not further aggravate the situation. After investigation, the Council must determine whether the continuance of the situation or dispute would be likely to endanger international peace and security. If it so determines, the Council would be under obligation to take further steps. Similarly, the decision to make recommendations, even when all parties request it to do so, or to call

The Yalta Formula

upon parties to a dispute to fulfil their obligations under the Charter, might be the first step on a course of action from which the Security Council could withdraw only at the risk of failing to discharge its responsibilities.

6. In appraising the significance of the vote required to take such decisions or actions, it is useful to make comparison with the requirements of the League Covenant with reference to decisions of the League Council. Substantive decisions of the League of Nations Council could be taken only by the unanimous vote of all its members, whether permanent or not, with the exception of parties to a dispute under Article XV of the League Covenant. Under Article XI, under which most of the disputes brought before the League were dealt with and decisions to make investigations taken, the unanimity rule was invariably interpreted to include even the votes of the parties to a dispute.

7. The Yalta voting formula substitutes for the rule of complete unanimity of the League Council a system of qualified majority voting in the Security Council. Under this system non-permanent members of the Security Council individually would have no 'veto'. As regards the permanent members, there is no question under the Yalta formula of investing them with a new right, namely, the right to veto, a right which the permanent members of the League Council always had. The formula proposed for the taking of action in the Security Council by a majority of seven would make the operation of the Council less subject to obstruction than was the case under the League of Nations rule of complete unanimity.

8. It should also be remembered that under the Yalta formula the five major powers could not act by themselves, since even under the unanimity requirement any decisions of the Council would have to include the concurring votes of at least two of the non-permanent members. In other words, it would be possible for five non-permanent members as a group to exercise a 'veto'. It is not to be assumed, however, that the permanent members, any more than the non-permanent members, would use their 'veto' power willfully to obstruct the operation of the Council.

9. In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred. Therefore, if a majority voting in the Security Council is to be made possible, the only practicable method is to provide, in respect of non-procedural decisions, for unanimity of the permanent members plus the concurring votes of at least two of the non-permanent members.

10. For all these reasons, the four sponsoring Governments agreed on the Yalta formula and have presented it to this Conference as essential if an

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international organization is to be created through which all peace-loving nations can effectively discharge their common responsibilities for the maintenance of international peace and security.

II

In the light of the considerations set forth in Part I of this statement, it is clear what the answers to the questions submitted by the Subcommittee should be, with the exception of Question 19. [Question 19 reads: 'In case a decision has to be taken as to whether a certain point is a procedural matter, is that preliminary question to be considered in itself as a procedural matter or is the veto applicable to such preliminary question?'] The answer to that question is as follows:

1. In the opinion of the Delegations of the sponsoring Governments, the Draft Charter itself contains an indication of the application of the voting procedures to the various functions of the Council.

2. In this case, it will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise, the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members.

APPENDIX IV (a)

OPINION OF THE LEGAL COUNSEL ON RELATIONS BETWEEN THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL, 10 SEPT. 1964*

(A) RELEVANT PROVISIONS OF THE CHARTER

1. The following provisions of the Charter are relevant to the question of simultaneous consideration by the General Assembly and the Security Council of the same agenda item:

Article 12

'1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

'2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.'

Article 10

'The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.'

* *Juridical Yearbook 1964*, pp. 228-37.