

A critical feature of the secrecy provisions is their failure to supersede the Espionage Act. The authors make a detailed and informative study of the overlap between the two laws and argue convincingly that this is a serious defect in the new legislation. We are told: "If, therefore, Section 10(b)(6) is so construed that the Espionage Act remains in force for private research as well as governmental activities, the scientists have, indeed, sustained a crushing defeat and the more moderate and enlightened information provisions of the Atomic Energy Act are little more than pietisms." As an offsetting factor, however, the book reminds us that the Act does a relatively discriminating job, having made a bad initial assumption as to the desirability of control; for the ordinary nuclear scientist its chief impact may be the inconvenience of securing clearance from the Commission on borderline publication questions and the awkwardness of being a bit skeptical of his friends.

We are inclined in the end to accept the authors' estimate that "the information section of the Atomic Energy Act is principally significant as symptom and warning." It seems probable at the moment that the chief discouragement of scientific inquiry will come not from the Act's additions to the law of treason and the catalogue of capital crimes, but from procedures outside the scope of the Act, such as those of Congressional investigating committees, and from the emergence of an unfortunate technique of government by defamation.

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The United Nations. By Herbert Vere Evatt. Cambridge: The Harvard University Press, 1948. Pp. 154. \$2.50.

The United Nations Organization from its very inception has been criticized as being inherently incapable of keeping the peace.¹ Dr. Evatt in his book, which is a revision of the 1947-48 Holmes lectures delivered at Harvard Law School, does not attempt to meet this criticism. He accepts the institution as given, traces its formation, describes its structure and operation, and makes proposals for interstitial reform. He speaks with distinction and with special authority derived from his important role in the formation and operation of the organization. His book, which is fresh and non-technical, should interest a wide audience.

Nevertheless, there are several aspects of Dr. Evatt's work which invite criticism: 1) He tends to overstate the importance of the changes in the Dumbarton Oaks Proposals which were made at San Francisco. 2) His optimism about the organization's prospects, although perhaps an occupational necessity, is not justified either by an a priori analysis of the Charter² or an objective examination of the organization's record.³

3) He gives excessive attention to the formal veto power within the Security Council and formal methods for circumventing it, but does not give enough attention to the

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¹ See Schuman, *The Dilemma of the Peace-Seekers*, 39 *Am. Pol. Sci. Rev.* 12 (1945); Borchard, *The Impracticability of "Enforcing" Peace*, 55 *Yale L.J.* 966 (1946); Meyer, *Peace or Anarchy* (1947). Although Mr. Schuman dealt with the Dumbarton Oaks Proposals his argument is equally applicable to the Charter.

² Note 1 *supra*.

³ See Hamilton, *The United Nations at Work*, 37 *Yale Rev.* 88 (1947).

de facto veto power outside of the Council which results both from the existing distribution of physical power and the basic character of the United Nations Organization as a loose league of "sovereign" states.

The United Nations is divided into three sections: 1) the formation of the United Nations, 2) the work of the organization, and 3) its future. In the first section, Dr. Evatt finds that the preparation of the final Charter and its predecessor, the Dumbarton Oaks Proposals, before the war had ended, had a significant effect on the character of the final product. The Charter, however, reflected first the new and peculiar distribution of military power which emerged out of the war,⁴ and secondly a careful attempt to avoid domestic political opposition, particularly in the United States.⁵ These factors would have been at least as influential during the postwar period, and it seems unlikely that the Charter would have been fundamentally altered had it been drafted after hostilities had ended. Conceivably, the courtesy veto to some of the weaker powers, such as China, might have been omitted if the Charter had been drafted after the Japanese surrender. Similarly, Russia's successful bid for three votes in the General Assembly might have met stiffer United States resistance. It is, however, difficult to see how such modifications would have materially affected the general character of the resultant organization or the course of events since its establishment.

Dr. Evatt describes the San Francisco Conference largely in terms of the clashing points of view of the large and smaller powers. He emphasizes that the broad veto power, which he considers the vital flaw in the Charter, remained intact only because the great powers smothered small power opposition by making the veto the price of any international organization. He applauds the persistence of "Australia and other *non major powers*"⁶ in the successful fight to broaden the authority of the General Assembly to discuss and recommend. Here he rides his thesis too hard. There were major powers who joined with Australia in this fight. It was Senator Vandenberg, as a member of the United States delegation, who phrased the slogan—the General Assembly should be the "town meeting of the world"—a slogan which became the battle cry of Dr. Evatt and others urging the expansion of the Assembly's authority. In fact, during the San Francisco debates, Dr. Evatt generously acknowledged the Senator's support, stating: "I want to conclude . . . by paying tribute to Senator Vandenberg, who from the first was a keen advocate of the widest powers of discussion and criticism by the Assembly. . . ."⁷

It is this expanded authority of the Assembly, which, as Dr. Evatt tells us, has been the legal basis for the creation of the Little Assembly and the Greek Investigating Commission, and for the recommendation of the partition of Palestine⁸—developments

⁴ See Millis, *The United Nations Charter and Peace*, 35 *Yale Rev.* 14, 21 (1945).

⁵ *Ibid.*, at 15-18.

⁶ Italics added.

⁷ *United Nations Conference on International Organization* 192, 209 (1945). It is an amusing and possibly a significant measure of the nationalism of the "internationalists" to compare Dr. Evatt's and Hamilton Fish Armstrong's allocation of credit for the expansion of the Assembly's authority at San Francisco. The latter tells us that this expansion resulted from one of the "toughest fights" of the American delegation at San Francisco. Armstrong, *Calculated Risk* 54 (1947).

⁸ The legal basis for the enforcement of the Palestine partition would have been strengthened if the partition resolution had made it clear that the General Assembly was discharging the responsibility for approving changes in the mandate which had been conferred on the

which reveal an attempt to redistribute responsibility for the maintenance of security from the veto-ridden Security Council to the General Assembly.

Dr. Evatt describes other changes in the Dumbarton Oaks Proposals which were stimulated by the smaller nations. He tells us, for example, that the Economic and Social Council was to be a very weak organ under the Dumbarton Oaks Proposals. He finds that the pledge by members in Article 56 of the Charter "to take joint and separate action to promote full employment and higher living standards" greatly strengthened the economic provisions of the Charter. It is, however, difficult to see how this ambiguous pledge will advance international economic collaboration. Good resolutions to achieve full employment are no more meaningful than resolutions for promoting happiness. They formalize agreement on an end which is universally accepted as desirable while they are silent on the crucial problem of what constitute appropriate means.

Even though stronger rhetoric was incorporated in the Charter's economic and social provisions, the apparent grant of additional authority was largely nullified by the amendment to the domestic jurisdiction clause, which was proposed by Australia and was embodied in Article 2, paragraph 7 of the Charter.⁹ Under the Dumbarton Oaks Proposals the domestic jurisdiction clause was a limitation only on the pacific settlement of disputes by the Security Council,¹⁰ and did not bar discussion or recommendations regarding national economic policies. In the Charter, the clause was transposed so as to limit all the activities of all the organs of the United Nations.¹¹ As a result, the organization was apparently denied authority to recommend changes in the economic policies of particular countries, e.g., tariff policy, on the ground that particular policies do not promote "full employment," etc.¹²

In the second section of *The United Nations* Dr. Evatt looks for "some underlying causes" of the organization's failures. He refers principally to the failure to conclude,

League Council. Benjamin V. Cohen, *The United Nations and Palestine*, N.Y. Herald Tribune, p. 22, col. 6 (March 17, 1948); see resolution of the General Assembly of the United Nations, dated February 12, 1946, part C., U.N. Yearbook 1946-47 111, and resolution of General Assembly of League, dated April 18, 1946. *Ibid.*, at 575.

⁹ That paragraph provides, in part, as follows: "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; . . ." See Goodrich and Hambro, *Charter of the United Nations* 72 (1946).

¹⁰ Dumbarton Oaks Proposals, c. vii, Sec. A, par. 7; Goodrich and Hambro, *op. cit. supra* note 9, at 72.

¹¹ *Ibid.*

¹² Dr. Evatt states (at 132) that "the Economic and Social Council [may] . . . examine the extent to which members of the United Nations have carried out such specific obligations as the pledge to promote full employment and higher standards of living." It is not clear whether "examination," i.e., inquiry and investigation, would be considered "intervention" within the meaning of Art. 2, par. 7 of the Charter. It does seem clear that Art. 2, par. 7 was intended to block the organization from criticizing national economic policies which were not the subject of international agreements. Goodrich and Hambro, *op. cit. supra* note 9, at 75; Dept. of State, Report to the President on the results of the San Francisco Conference 43-44 (1945); Kelsen, *Limitations on the Functions of the United Nations*, 55 *Yale L.J.* 997, 1006 (1946).

outside of the United Nations Organization, peace treaties with Germany, Japan, and Austria. The unsuccessful treaty negotiations, as well as the failure of the organization, are, of course, bound up with the larger conflict between Russia and the West. If we are to reach the "underlying causes" of the organization's failure, we must wrestle with the forces which have generated the larger conflict. There are no easy answers here, and we can sympathize with Dr. Evatt's decision not to explore the questions, given his official responsibilities and the limitations of a short book.

Dr. Evatt briefly evaluates the work of the various organs of the United Nations and points to the difficulties which have prevented further progress. The "failure of the Security Council to discharge its responsibility" Dr. Evatt attributes principally to an "excessive and almost irresponsible use of the veto" by Russia. In an illuminating analysis of the deliberations within the Council, Dr. Evatt shows how the veto has been exercised "either in circumstances when the vital interests of the Soviet Union were not affected or in apparent breach of understandings given at San Francisco by the Great Powers." He traces the use of the veto by Russia to exclude applicants for admission to the organization and criticizes the Russians for introducing extraneous considerations, such as the applicant's neutrality during the war or the fact that the applicant does not maintain diplomatic relations with Russia. He is also critical of the Soviet practice of "block-booking"—withholding favorable Soviet action on some applicants until the admission of other applicants is recommended.

The United States and the United Kingdom have not been as blameless in these matters as Dr. Evatt's silence implies. When the petition of Albania, the first applicant for admission, was before the Security Council, both the United States and the United Kingdom not only "expressed doubt as to whether the Albanian Government was peace loving and able to carry out the obligations of the Charter," but also "pointed to the fact that their governments did not maintain diplomatic relations with the government of Albania."¹³ Similarly, the United States at one stage of the discussion on admissions proposed that all of a group of applicants be admitted en bloc; after the defeat of this proposal, it opposed the admission of particular applicants within the group.¹⁴

The criteria of admission—a peace-loving state, able and willing to carry out the Charter's obligations—are, of course, extremely nebulous.¹⁵ Dr. Evatt treats them as if they were subject to precise and objective application. Given such criteria and the Soviet fear that the General Assembly is a forum for building up an anti-Soviet bloc, it is to be expected that Soviet voting on admissions will involve an estimate of the applicant's probable voting alignment. Nor is it clear (or to be expected) that the United States and United Kingdom have disregarded this factor. The whole procedure for admission to the United Nations Organization is an invitation to maneuver for future voting power.¹⁶

¹³ The quotation is from a summary of Council deliberations set forth in the U.N. Yearbook 1946-47, at 415.

¹⁴ *Ibid.*, at 414, 421.

¹⁵ See Kelsen, *Membership in the United Nations*, 46 Col. L. Rev. 391, 393 (1946).

¹⁶ The League procedure was much more satisfactory. Art. 1 of the Covenant named certain non-signatories who could accede to the Covenant by depositing a declaration with the

Dr. Evatt finds that the work of the Assembly, although suffering from blemishes such as propaganda in debate and voting blocs, has been successful. The basis of this judgment is not clearly set out, and the reader may wonder whether Dr. Evatt is not a very indulgent father when he approaches the Assembly's work. He tells us that "not only does the Assembly help to shape world opinion, it is shaped by world opinion." However, given the barriers to the free flow of information and the never-ending stream of national propaganda, the Assembly often can preach only to the converted. World opinion is, moreover, elusive, if not mythical, at any time, and particularly when the world is split in two. In any event, it would be helpful in connection with an evaluation of the Assembly's work to have some evidence of the impact of its action on national policies. On the other hand, it would also seem desirable to consider the failure of certain member nations to comply with Assembly recommendations which they find uncongenial. South Africa's noncompliance with the resolutions regarding the treatment of Indians¹⁷ and Argentina's with the Spanish resolution¹⁸ come to mind as instructive examples of the limitations of "world opinion." Dr. Evatt's silence on these matters is in sharp contrast with his attack on Soviet non-cooperation with the Assembly and the other organs of the organization.

He points to the preliminary discussion of the Palestine question as evidence of the Assembly's success. The developments which occurred after the publication of his book but which were foreshadowed by the stubborn imperatives of the struggle for power require a reversal of this judgment. They are a reminder that international "moral pressure" unsupported by power does not override deeply held local convictions or the corresponding local policy. Such convictions are, or can be rationalized into, an expression of national morality; and in a contest between national and international morality, the cards are stacked against the latter. This is not intended to suggest that the Assembly is doomed to complete ineffectiveness. It is intended to suggest that the Assembly's action will affect important policies of a member nation only if there is power in the background or if there is in existence within the member nation a strong and like-minded group whose position will be strengthened by Assembly action.

In the final section of his work, which deals with the future of the Organization, Dr. Evatt renews the suggestion which he fought for at San Francisco, that the veto be excluded from pacific settlement of disputes and be limited to enforcement action. Since Soviet opposition¹⁹ bars the adoption of this proposal, he argues that "other members of the United Nations must look elsewhere for the best available means for insuring that the United Nations takes what action it can in the field of international peace and security." The new focus is the expansion of the functions of the veto-less General Assembly. Dr. Evatt applauds this expansion as it is reflected in the As-

Secretariat. The admission of states, colonies, etc., not so named required a two-thirds vote of the Assembly.

¹⁷ 3 U.N. Bull. 525 (1947).

¹⁸ U.N. Yearbook 1946-47, at 130; New York Times, § 1, p. 8, col. 4 (Dec. 17, 1946).

¹⁹ See the statement of Mr. Vishinsky during the opening debate in the General Assembly on Sept. 17-19, 1947 in U.N. Document, A/P. V. 82-85 (Sept. 17-19, 1947), partially reproduced in Padelford, Current Readings on International Relations, No. 3, 217 (1948).

sembly's establishment of the Greek Investigating Commission and the Little Assembly. With respect to the latter, he adds the caveat that "it may be so weak that it will tend to reduce the status of the Assembly itself."

These subsidiary organs are, of course, an understandable response to Russian vetoes. Dr. Evatt properly dismisses the Soviet charge that their establishment is "unconstitutional." Nevertheless, he does not indicate what they can accomplish in the face of the fact that they have been boycotted by the Soviet group. They purport to rely on "moral pressure," but the boycotting nations have denied their moral authority. They may, of course, further solidify, or gain new adherents for, the anti-Soviet bloc, but it is doubtful that a majority in the Assembly is much more effective for this purpose than debate, followed by a Soviet veto, in the Security Council. Whatever role these new instruments of the Assembly may play, it seems clear that they merely reflect and institutionalize the gap between Russia and the West; they do not bridge that gap. They may foreshadow an attempt to build a new "security" system without and against Russia; they do not appear to strengthen the existing system.

Dr. Evatt's discussion of the veto, its amendment, and its circumvention, is concerned mainly with the legality of the new organs and with the rhetoric of majority rule. This rhetoric may be persuasive and comforting to Americans who can generally rely on the familiar 9-2 majority against the Russians in the Security Council. It is not surprising that the Russians, quite apart from any theoretical insistence that the "unanimity principle" reflects the realities of power distribution, respond differently. They can "justify" the veto because of immediate practical considerations. It protects their satellites²⁰ against adverse recommendations approved by an unfriendly majority in the Council. The veto question is obviously not an abstract debate about majority rule but is another engagement in the cold war.

If we look more closely at the Charter and the existing distribution of physical power, the engagement does not seem to be an important one. There is no legal obligation on the part of member nations to comply with recommendations concerning pacific settlement,²¹ whether these recommendations are made by the Security Council or the General Assembly. There is no right on the part of the Organization to compel such compliance.²² A Council recommendation is simply a consolidation of general sentiment. Although this interpretation has been criticized as destructive of the authority of the United Nations,²³ it appears to be required by both the language and the legislative history of the Charter.²⁴

The proposed change in the veto, although it might increase the number of Council recommendations, would not increase their legal or practical significance. Each nation,

²⁰ A permanent member of the Security Council may not formally veto a recommendation of pacific settlement in a dispute to which it is a party. See Charter, Art. 27, par. 3; Goodrich and Hambro, *op. cit.* supra note 9, at 125 (1946).

²¹ Goodrich and Hambro, *op. cit.* supra note 9, at 152, 153.

²² *Ibid.*; see also Hearings before Senate Committee on Foreign Relations on the Charter of the United Nations, 79th Cong. 1st Sess., at 278-79 (1945).

²³ Benjamin V. Cohen, *The United Nations and Palestine*, *New York Herald Tribune*, p. 26, col. 6 (March 16, 1948).

²⁴ Notes 19, 20 *supra*.

whether or not represented in the Council, would still have a de facto veto over adverse recommendations. The veto of the Palestine partition exercised by the Arabs and/or the United States is an instructive example.²⁵ Whether the de facto veto would be exercised in a given case would depend on subtle calculus by a nation prejudiced by the recommendation and in a position to prevent compliance. The immediate and direct impairment of its position resulting from compliance would be weighed against the "goodwill" cost of flouting the organization's recommendation.

Generalizations about the varying responsiveness of different nations to international "moral" pressure are dangerous,²⁶ particularly when the pressure seems to be going largely in one direction. But since proposals to change the veto have been stimulated by, and are directed at, the practices of Russia and her satellites, we may note that these countries appear to have rather tough hides. Even if Russia could not prevent uncongenial recommendations by the use of the formal veto within the Council, she could often prevent compliance with these recommendations by the use of the de facto veto outside the Council.

The crucial veto problem results from the retention of right and power by each member of the United Nations Organization to exercise the de facto veto after the Council has made its recommendation. Formal or informal exclusion of the veto from the field of pacific settlement would not touch this problem. The problem is inherent in the basic character of the United Nations as a league of "sovereign states," each one of which is legally and physically immune to coercion by the organization designed to effect compliance with the Organization's recommendations for pacific settlement.

In addition to the exercise of the restraint in the use of the veto, Dr. Evatt makes some sound, although necessarily general, proposals for procedural revisions, the improvement of the secretariat, bolder participation by the Secretary-General in the work of the Organization, the avoidance of duplication by the various committees, commissions, and specialized agencies which have mushroomed in the international economic and social field, the expansion of world economic statistics, and the avoidance of propaganda in United Nations debate.

He concludes with an admission of the secondary character of all of his proposals: They cannot "lead to a substantial improvement in the work of the United Nations so long as there are suspicion and lack of good will and understanding among its members, particularly several major powers." He properly implies that the United Nations Organization can do very little to achieve this understanding. The conclusion, unstated in his book, but underscored by the headlines, is that the Organization has only the remotest relevance to the current search for international peace and security.

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Patterns of Union-Management Relations. By Frederick H. Harbison and Robert Dubin. Chicago: Science Research Associates, 1947. Pp. ix, 229. \$3.75.

Analysis of labor-management relations has lately entered a new stage of development as a result of group planning of research projects that is now taking place in re-

²⁵ There was, of course, an assembly recommendation in the Palestine case, but its legal consequences are no different from those of a recommendation by the Security Council.

²⁶ See Carr, *The Twenty Year Crisis*, Chap. 9, esp. p. 213 (1939).

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