

DUMBARTON OAKS PROJECT OF WORLD DEMOCRACY

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THERE are very few who do not forget that all the general ideas, so often disputed over, are not really the aims of mankind. They are only some ways and means proposed to reach man's aim of giving to all an opportunity to enjoy life. Prerequisites for this final aim are health, economic and social welfare, and a certain degree of culture in a world of elementary justice. All these general ideas are very flexible. The differences in the understanding of what constitutes civilization and welfare, combined with differences in the dynamic potentialities of cultural development, cause a perpetual oscillation between extremes. Even if we assume that all are agreed about the final aim—which is neither easy nor certain—the greatest variance is to be found in men's conception of the ways and means of achieving this aim. With origins in different kinds of thought and feeling, caused by differing circumstances in geography, history, actual culture, and predilections, what is for one obvious is for another too complex to be understood. It is certain, however, that in order to reach the outskirts of life happiness for man, we must secure sensitivity and understanding for common aims, for common methods of work, and for a common basis for that work. It is a truism, therefore, that without cooperation on a national and international scale we shall never achieve what we are seeking to accomplish. This determination should be a stimulus to those now actively engaged in working toward international cooperation. However, there is one thing to be borne constantly in mind: cooperation can never be accomplished without some sacrifices of individuality.

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The Conference at Dumbarton Oaks was a first meeting of the founders of an international, spiritual, political, social, and economic enterprize. These founders are following the empirical method of the *Pax Romana* and *Treuga Dei*, believing that to consider an agreement, they must work in peace, which cannot arise from emotions excited by wars. In this guise the

Conference must be welcomed by all who wish to advance the cause of international cooperation.

In order to clear up the atmosphere of international suspicion, we must establish a material and formal code of cooperation. If some rules of mutual attitude in international cooperation were established, and parties were obliged to observe the code, much of the distrust between nations would disappear. Moreover, the backing of such a code by international force would make easier and fairer its realization and execution.

A Constitution for the world has to be drafted *and adopted for use*. Here the greatest difficulty will be found in deciding what the term "Constitution" means, and what should be secured by such a Constitution. A Constitution is a law guaranteeing to the people of a community the rights they hold of the government ruling them, and also defining their rights in dealing with each other. Establishing a Constitution for all nations of the world would mean a rapid elevation of politically unaware and unprepared nations to the political maturity of the more progressive states. Such an intellectual elevation takes time, and none should expect that we can secure it in another Dumbarton Oaks Conference. However, in the meantime, something must be done to find an exit from the vicious circle in which man has involved himself, and to teach some nations to undertake a way of life which will lead them to understanding of the importance of Constitutions and their meaning for both states and their population.

Without doubt, mankind now waits on the verge of historical events. How strong our own decision will be, depends largely on our ability to see clearly the aim toward which we strive, on our unanimity of agreement about the plan, on a correct choice of sequence, on our coordination of the ways and means, and upon their perfect performance.

The principles of our aims were outlined in the *Atlantic Charter*, and approved by all the United Nations. The technique and the plan of their achievement were agreed upon in Teheran. The performance of the principles by the technique and according to the plan was started in Dumbarton Oaks. All three are based on the conception of a World Democracy of States. This conception is in some aspects not new. For about fifty years, some political thinkers have realized that through preservation of peace we can approach the high goal of prosperity by means of world cooperation instead of force and war. They have their monuments in the achievements of the Hague Conference in

1899, reaffirmed in 1907. The most important phase of this progress was the foundation of the Permanent Court of Justice and Arbitration in Hague. In reality, also, the League of Nations did not fail. It was a useful stepping-stone toward world cooperation, and proved through its failure to prevent wars that any such organization must be based upon a democratic system of voting and adoption of resolutions; unanimity is in its very spirit undemocratic. The give and take of democracy demands some limitations of individual opinion; the necessity for unanimity may result in a deadlock of members, each insisting on his own view and each refusing to fit himself into the common purpose by sacrificing a part of his own interest. Moreover, the League also proved that without the power to execute decisions no cooperation on world vital problems is possible. In these two respects the merit of the League of Nations lies in its so-called failure.

The delegates at Dumbarton Oaks tried in their proposals to eliminate the chief faults, which were the principle of unanimity and lack of enforcement, which so weakened the League. In their suggestions they paid more attention to the problem of security than to the problem of universal welfare. In considering the sequence of the steps toward the final aim, they are using an inductive method; while the projected system has provisions for both social and economic welfare, it places these objectives as secondary to the attainment of security. Clearly the delegates from the three founding nations are convinced that no economic or social welfare is possible before security is reached, and their plans should be considered with this conviction in mind.

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Already the preliminary draft for the new organization issued by the Dumbarton Oaks Conference reveals the three main functions: legislative, judicial, and administrative. Legislative power should normally reside with the General Assembly of representatives from all member states, and its two special committees, the economic and social councils, each of which consists of delegates from 18 nations. The judicial function should be performed by a world court of justice, created to handle any dispute arising in the community of states. Administrative power should be concentrated in the Secretariat under its chief

executive, the General Secretary, who is appointed by the General Assembly.

The above presented natural division among three functions is marred by the effort to place the security question above all other problems, and by the delegation of the greatest authority and jurisdiction, in particular also the legislative one, to the Security Council. Reasons for this distortion of the functional division become clear, when we remember that the whole effort has resulted from the disaster of wars, and has now as its first aim the insurance of peace, so that this young organization need not be handicapped in its development by the constant danger of aggression or internal disturbances in member states. The world cooperation, as proposed by the Dumbarton Oaks Conference, is a child of war and chaos, and therefore its Constitution has the significance of the police force. If the project had been born as a development of friendly international relations, the Constitution could be more democratic. Thus the police force, in normal conditions only a subdivision of the administration, is the first consideration of the whole organization. The preeminence of the police arm should last only through the period of transition, and, the moment conditions permit, its importance should be diminished and the normal state of three chief functions and divisions restored. It is apparent that, as long as we remain uncertain of some states' political maturity and of their will to democratic cooperation through a World Constitution, we must entrust this Constitution to guardianship by a controlling force.

The source of power in a democracy is the legislative body. In the world organization that body will be the General Assembly, together with its councils and committees of which more probably will be added. The first task for this main body is the establishment of the code of the international law governing the international organization, the world community and its members, and providing for adjustments, operation and procedure within organization; in other words, the material and formal law. This first task of codemaking presents the first difficulty, for differences of opinion exist among the united nations. European continental countries are accustomed to strict, detailed codification. Their law codes derive mainly from those of the ancient Roman Empire, which have since been improved during centuries of legal development. If European tradition of law is followed in the international code, almost all political questions which are the most dangerous in inter-

national disputes and lead always to wars could be reduced to specific legal disputes, which will be judged by the court of justice, with its members chosen from the best lawyers of all nations. Such a code would represent the maximum achievement possible, because the continental law system leaves only a small margin for determination by the court on grounds of common sense, good faith, and fair morals. Such a system would be the most advantageous in a world filled with discrepancies of legal opinion caused by varying histories, economies, cultures, needs, locations, and even different intellectual developments. On the other hand, the Anglo-Saxon law remains satisfied in stating principles, leaving a broad margin of free interpretation and decision for the judge. It is impossible to explore here the differences between the two conceptions of law and the reasons for their origin; the important fact is that the two schools of legal thought do exist. It is true, however, that there is great justification for a strict codification of the international law. If detailed codes developed in Europe because of diversified levels of circumstances in which peoples are living in European conditions and cultures, a precise system would appear even more needed in a world of still more diversified conditions and standards of life. The judges of the Permanent Court of Justice in international range will represent different systems of legal theory, and what will seem to one of them natural and perfectly obvious will seem strange to another with a different background. Considerable difficulties in uniform treatment and interpretation of the international law can arise, if too much is left to the discretion of judges.

A detailed codification of international law need not create a hard and stiff system; rather it should create a stable one, which at any time may be adjusted, if necessary, by the assembly either of its own volition or at some suggestion from outside. Whatever is decided about the degree of detail in law, it is of primary importance that the international court be accorded authority to act in all cases. Its jurisdiction and the acceptance of its decision should be compulsory, and force should be available to back it. Non-compulsory jurisdiction would mean that states would submit their disputes only when they could expect a favorable decision. The authority of the court would be in such a case a highly problematical matter.

The necessity of a compulsory jurisdiction does not imply that every type of negotiation, mediation, world conference, commission, conciliation, or extrajudicial arbitration ought to

be replaced by decisions of the international court. It is only cases where no means of reaching agreement by extrajudicial means exists which should be decided by the international court of justice.

Once the general outlines of jurisdictional division are agreed upon and the General Assembly has began the task of codification, we are in sight of establishment of a code of international law, which will make legal cases out of war-provoking political disputes. They will be submitted to a world court, whose verdict will be enforced by the Security Council, as one of its administrative functions.

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Detailed analysis of the proposals made at Dumbarton Oaks brings to light several objections. For example: Chapter II, Art. 3, calls for settlement of disputes "in such a manner that international peace and security are not endangered". Art. 4 contains the equally negative expression "in any manner inconsistent with the purposes". A code ought to provide positive, not negative, definitions.

Therefore it is suggested that the above principles should be restated as follows: "In case of a dispute, each party has the right to seek a settlement by the means described in Chapter VIII, Section A 3, (negotiation, mediation, conciliation, arbitration), or other peaceful means of its own choice. If these means are tried and still no settlement is reached, each party should give notice of the dispute to the Secretariat of the United Nations, delivering full information about the background of the dispute and the means previously employed to settle the case peacefully, as well as the suggested solutions. The states which are parties to the dispute must not use any force against the other party; should they use force, they will be declared aggressors regardless of their substantial rights in the dispute, and the United Nations organization will employ the necessary force to suppress the aggressor and to restore the *status quo*. After this is accomplished, the primary dispute will be considered by the International Court of Justice." Provision for military sanction in restoring peace is included, because a law without the backing of sanctions is no law at all. The parties to the dispute must know what to expect if they break the peace, and the principal plan for action must be set up beforehand, so that the Security Council and General Assembly will not be handicapped,

when the time for action comes, by having to consider and discuss the procedure.

Since the proposals of Dumbarton Oaks have limited the purpose of the world organization by emphasizing the function of keeping the peace, it is certainly essential that the means of performing this function be at least definitely determined. In fact the success or failure of the whole institution hinges on its ability to preserve this procedure. Nothing will diminish the authority of the organization more than its lack of clear decision and speedy action, and nothing can make the aggressor nation more arrogant than a divided opinion among the members of the League. In order to inspire confidence in its fairness and impartiality, the organization itself must be bound by law and its principles must be handled absolutely, not relatively. We must not again risk permitting nations to assume that their dispute is not an international problem, but only an attempt to settle a neighborly accident caused by a drunken soldier.

As for the question of non-members of the organization, the last paragraph of Chapter II contains a rule referring to those who have not joined the new international organization, but it is limited to the case of action by them against international peace. This rule is insufficient. The *Four Freedoms* and the *Atlantic Charter* are the basis for the world organization and the Dumbarton Oaks Conference, and its proposals provide in Chapter IX, Section A. 1, that the duty of the organization is "to promote respect of human rights and fundamental freedoms". If this is limited to member states and can be frustrated inside a state by its not belonging to the United Nations organization, then the whole organization will not survive very long. Therefore, its Constitution should provide steps to stop any action by non-member states which might jeopardize these principles within their own countries. Non-member states are not deprived of their duties because of their non-participation; their only loss is of rights. Since the organization is intended to be world-wide and will evidently include all states, those not yet members of the world community ought to adapt their ways to conform with the world constitution, even if they do not enjoy the privileges of membership. A man living in a country where he is not a citizen may not have the right to vote or hold a government office, but must adapt his conduct to the law of the state of his residence. Provision for the needed expansion of the system might be made by adding to the end of Chapter II last paragraph: "and promotion of human rights and fundamental

freedoms". Once this is understood, it becomes apparent that limitations of state sovereignty must apply also to non-member states, or else they will be better off than members in this respect.

Gaps exist, too, in the suggestions of the Dumbarton Oaks delegates on the problem of membership in the world organization. In any existing institution of public utility it is essential that the institution be obliged to make contracts with those with whom it would deal; such contract standards contain the general conditions of the transaction. The United Nations organization is a world public utility in the sense of the international law. The general conditions for admission are defined, in Chapter III, as "love for peace". Now, love is a sentiment, an emotion, and it is a highly flexible and relative idea, understanding and interpretation of which depend very much on temperament, intellect, culture, sensitiveness, and on many other circumstances and conditions. No other word in the whole world's vocabulary is so misinterpreted, misunderstood, misleading, and misused as love. While impressive when used in a general, high-sounding declaration, "love" as a legal definition is a misconception. Evidently the paragraph about membership should be restated: "The United Nations Organization is a worldwide organization open to all states which declare their intention to belong and to observe its rules, and which prove that their constitutions, laws, and actual behavior toward all their citizens, inhabitants, and to other states conform with the constitution, spirit, principles, and purposes of the United Nations Organization."

In addition, and because of the above, amendments in some constitutions might have to be made before states could be admitted to membership. The possibility of requiring changes in national constitutions ought to be recognized now. Paragraphs similar to those which follow should be added:

- (a) Amendments of national constitutions will be required on all topics vital to future cooperation. In practical terms this will mean the adoption by all nations of a constitutional amendment saying that they will abandon war and will settle all their disputes before the forum of the United Nations Organization, which will carry out the decision.
- (b) Insertion of paragraphs in criminal codes will be required, that every citizen who joins any army commits a crime and is to be punished as criminal. The only exception in constitutions and criminal codes will be

made for the wars and armies established by the international organization to prevent or end aggression or to enforce its decisions.

- (c) International political and private law will be adapted to meet the new conditions of world-wide cooperative political system, and will be put into effect. The adjustments to be made will cause a change in the principle of the sovereignty, because of the super-sovereignty of the international organization, similar to the adjustment of the States to the sovereignty of the Federal Constitution and Government in the United States of America.

The present character of the General Assembly is assumed to be a transitional one, designed for the period when it will be necessary to keep world security by force. Even in view of this transitional nature and the relation of the Assembly to the Security Council on the question of use of force, the meaning of Art. 6 and Art. 7 of Chapter V, Section B is not clear. In these paragraphs the political, economic, and social fields are dealt with. The General Assembly is granted only the right to initiate studies and make recommendations to adjust dangerous situations through the means of other agencies. It may be intelligible that during the transition period the Security Council should not be under the control of the legislative body, but the departure from the normal situation in the case of the economic and social committees, which should be subordinated to the legislature, seems irrational and confusing. If the Assembly may only make recommendations, who is empowered to make the final decision? This lack of fix responsibility is evidenced again in Section C of Chapter IX, entitled "Functions and Powers of the Economic and Social Councils", which declares that these councils are to submit recommendations to the General Assembly. Apparently, the intention here was to give power of the final decision to the Assembly; if so, the matter of authority ought to be clarified as follows: "The General Assembly should authorize particular Councils to undertake studies in political, economic, social, and other fields; these Councils shall report the results of their research to the General Assembly. The General Assembly is empowered to coordinate the different Councils under its supervision, to decide on their suggestions, and to take action to realize them." (For the time being, "after obtaining the agreement of the Security Council" should be added.) And in this connection in Chapter IX,

Section B, the last sentence should be changed to read: "Decisions on recommendations of the Economic and Social Council to the General Assembly should be determined by a simple majority vote of those present and voting". However, in Section C, an addition should be made to read: "The Economic and Social Council report all their activities to the General Assembly, which is empowered to make decisions on reported problems and suggested solutions, and to take action." (For the time being, the temporary addition of consent of the Security Council during the transition period should be made again here.) It is to be assumed that the remaining economic and social organs of the old League of Nations will become a part of the new world organization in the form of councils as provided in Chapter IX.

Amending certain paragraphs in a charter is obviously not the most satisfactory method for correction, if such vital problems as a world organization are involved. Complete rewriting of the whole charter would be more suitable, if the world organization is to have a consolidated structural design of a political institution of world importance and vitality, and is to combine with this main structure the necessary accommodation for exceptional needs during the transition period. As it is now written, the charter will cause much confusion and conflict in authority which could be prevented, if it were more clearly stated.

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Since the Dumbarton Oaks first draft was issued, a few months are over. Not long enough to let the idea take root; however, long enough to get experience from the fast advance of some political events, which are very significant and furnish us with indications about the potential developments. It look as if, in spite of the principal agreement about the future activity of the international organization, some of the members of the United Nations were trying to improve in the meantime their political situation by the establishment of "a *fait accompli*" before the world organization starts.

In the light of what happened in several countries liberated after the Dumbarton Oaks Conference and before the Yalta Conference, it looks as if the procedure and the sequence were wrong. The experiment of the establishment of self-governments immediately after the liberation failed. There were two different reasons for it. One was the exaggeration of the principle of

democracy. The other was the desire to adopt the principle of the "hands-off policy". Both proved to be wrong. In regard to the first part, it may be said that only theoreticians could demand an immediate establishment of a democratic self-government. A country whose balance was destroyed during five years of physical starvation, spiritual slavery and moral pestilence, cannot manage its recovery by itself. The task of the liberators is to bring the solution into a right channel not by giving self-government to sick and weak people, but by giving them food, vitamins, medical attention; by finding out the uprooted members of their families, where this is still possible: by helping them in reestablishment of their homes, their agriculture, industry, and communication; by giving their children shoes, warm clothes, and a school in which they can learn in their own language how nice their country can be and how much they can contribute to it; by creation of compensated constructive jobs; and by letting the people learn what is the present political tendency in the world with which they will cooperate for the future, because under the Nazi rule they did not hear very much about world cooperation of free peoples.

If, however, the liberators promise them self-government immediately, they initiate troubles and stimulate revolts based on competition of partisanship. He who thinks sincerely that, after a time of such misery, the right persons come up into the political life of a liberated country, has a wrong idea about sociology, political science, and history, and has no idea about wars, revolutions, and life. No one self-government can give to the starved countries more than the combined fair administration by the Allies during the transition period, until they recover.

The second part of the failure has the following aspect. In the world cooperation proposed by the Dumbarton Oaks Conference, we will treat world troubles by world police, until the emotions are appeased. As analyzed above, for the time being the scheme does not provide very much constitutional right for the member states in the new organization, until an equilibrium is established in the world by the security police. One may like it or not, but there was agreement upon this principle. On the other hand, in the cooperation of peoples inside the liberated countries, the same liberators who agreed about the principles of the world cooperation like to avoid the responsibility by granting them immediately their self-government and applying the "hands-off policy", a new edition of the previous

isolationism, by excluding themselves from the so-called "internal problems". The matter of fact is that world disaster started from national disasters. Therefore, if we will preserve world peace in the way of a common administration, we must undertake the peace-creating job from the very bottom by an administration of the Allies in the liberated countries, and no effort to escape from this difficult task will help us. It can only annihilate all up to date successes. It is without question that to administer a country in peace is an easier task than to liberate it in terrific battles from its oppressor. In this situation the principle of the "hands-off policy" is a contradiction in presumption, because it is the application of two opposite methods in the solution of two consecutive links of the same problem. This way is, from the standpoint of any scientific organization of work, impossible.

The Yalta Conference, as far as the future constitution of the United Nations is affected, does not show any change of the situation. We expect that this will be done on the competent forum of the San Francisco Conference, in which all the official delegations of the United Nations will be present. We did not hear an official announcement about any changes in the voting procedure during the Yalta Conference. However, some usually well informed observers (copyright *N. Y. Times* and *S. F. Chronicle*) see the compromise on the voting procedure settled in this way, that in all cases not involving punitive measures a simply majority will be applied, with exclusion of the vote of parties to a dispute; however, in cases involving the punitive action against a nation, the decision on such an action can be taken only with the majority of the Security Council, including the unanimous affirmative vote of the Big Five, even if one of them is charged with the intended or actual aggression.*

To write about this kind of settlement of voting would mean a dissertation for itself. It involves discussion about the formula: "*Nemo iudex in causa sua*"—"Nobody can be a judge in his own case", which is a legal axiom accepted for 1600 years. It would be also premature, because a big fight on this topic is to be expected in April in San Francisco. Under certain circumstances it can destroy the whole organization and nullify the great effort toward the international cooperation, as proposed

* Written before the text of the invitation to the San Francisco Conference had been published. -- EDITOR.

by the Dumbarton Oaks Conference; but let us hope that this will not be the case, and that the sound reason and common sense will be stronger than suspicion and distrust among the partners.

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The above remarks do not pretend to enumerate and exhaust all problems; many other questions exist already, and many will yet arise. These problems cannot all be settled exclusively by plain politicians. Scientists and experts in jurisprudence, international law, political and social science, international relations, and economists must cooperate with the leaders of international politics. They must all be people who possess a wide horizon of thinking and feeling, international understanding, background, training, and intellect; they must have the willingness to act in accordance with common sense, and not for narrow-minded local or private interests; they should be dependable and conscious of their great world mission and historical responsibility, but not vainglorious and presumptuous; with an understanding for justice and human needs and wants; free from small backyard and cheap street politics, underhand tricks, and any mental reservation; elevated above jealousy and personal ambitions; and with consciousness that we are now at the turning point of history, and we must decide either to shape a new world, a new era, and a new world citizenship for all people, or to go down in disaster.

The problems are complex, but not insoluble. They are not too complex to be forged out, if we exercise goodwill and fair play. The greatest difficulty will lie in finding the needed number of people for a staff, who have the vital qualifications of brain, heart, and character combined. If we do not succeed in the selection of this team, we shall fail in the final achievement.