

# The Formation of International Organizations and India: A Historical Study

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## Abstract

As the clash of aspirations increased among European countries, a European ‘civil war’ started in 1914, which engulfed the whole world. With all the terrible destruction and loss of life, it was felt that an international organization must be established to avert war in future. At the Paris Peace Conference in 1919, the British government succeeded in gaining separate representation for its dominions, including India. This created a rather anomalous situation, since a dependency of a foreign power, a colony which could not control its internal affairs, was accepted as a sovereign state by an international treaty. Europe had hardly recovered from the First World War in the late 1920s when it drifted towards a second holocaust in 1939. India became a founding member of the United Nations in 1945, even though it was still under British rule, participating in the historic founding conference. But Indian national public opinion was neither very hopeful nor enthusiastic about the conference on the new international organization. Not only India, which was not even independent at that time, but Asian countries as such played a very small and insignificant role in the formulation of the UN Charter.

## Key words

British India; founding of international organizations

## I. INTERNATIONAL LAW: PRODUCT OF EUROPEAN STATES AND APPLICABLE ONLY AMONG THEM

Although international law is presumed to be applicable among all states, east or west, north or south, big or small, it is only a recent phenomenon, not older than the United Nations itself. Before the Second World War, international law was supposed to be not only a product of the European states and based on their customs and treaties, but applicable only among them – that is, European states or states of European origin. It was only in 1856 that an extra-European country, Turkey, was admitted into the family of civilized states and later, at the beginning of the twentieth century, that Japan forcefully entered the so-called exclusive European club after defeating China and Russia.<sup>1</sup>

As one of the foremost authorities on modern international law, Oppenheim, points out, ‘There were numerous states outside the international community’ and ‘international law was not as such regarded as containing rules concerning relations

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<sup>1</sup> R. Anand, ‘Family of “Civilized” States and Japan: A Story of Humiliation, Assimilation, Defiance and Confrontation’, in R. Anand (ed.), *Studies in International Law and History* (2004), 51.

with such states, although it was accepted that those relations should be regulated by the principles of morality'.<sup>2</sup>

As late as the First World War, we are told, 'the position of such states as Persia, Siam, China, Abyssinia, and the like was to some extent anomalous'. Although there was considerable international intercourse between these states and states of Western civilization – treaties had been concluded, full diplomatic relations had been established; China, Japan, Persia, and Siam had even taken part in the Hague Peace Conferences in 1899 and 1907 – since they belonged to 'ancient but different civilizations there was a question how far relations with their governments could usefully be based upon the rules of international society'.<sup>3</sup>

The result of the non-recognition of Asian and African states was that practically no conduct towards their peoples, or aggression on their territories, could be questioned according to the European law of nations. As John Stuart Mill, the great British empire builder, said in 1867,

To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another and between civilized nations and barbarians is grave error, and one which no statesman can fall into . . . To characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who so speaks has never considered the subject.<sup>4</sup>

Thus it was pointed out that 'the conquest of Algeria by France was not . . . a violation of international law. It was an act of discipline which the bystander was entitled to exercise in the absence of police.'<sup>5</sup>

## 2. THE CLASH OF ASPIRATIONS AMONG EUROPEAN STATES LEADS TO CONFLICTS AND WARS

As the clash of aspirations between European countries increased, peace came more and more to depend on the so-called balance of power and an uneasy equilibrium of forces. The scramble for colonies as protected overseas markets not only led to repeated clashes in Asian and African regions, but also contributed to the forging of conflicting alliance systems.

Such a situation could not last for ever. Change is beyond any law and is the law of life. The intense rivalry between European states over the extension of their rule and colonization in extra-European areas led to terrible tensions and an arms race supported by military-industrial complexes in Europe. Two Hague peace conferences, organized under the auspices of the tsar of Russia, to call a halt to the arms race did not help much. As the clash of aspirations between European countries increased, a European 'civil war' started in 1914, which engulfed the whole world and was called the First World War.

2 L. Oppenheim, *International Law* (1905), 58.

3 *Ibid.*, at 89.

4 Quoted in B. Roling, *International Law in an Expanded World* (1960), 29.

5 J. Lorimer, *The Institutes of International Law: A Treatise of the Jural Relations of Separated Communities* (1883), 161; see also *ibid.*, Vol. II, 28, for a defence of war against China and Japan to compel them to open their ports for European trade.

With all the terrible destruction and loss of life, which left Europe in ruins, it was believed that an international organization must be established to avert war in future. At the Paris Peace Conference in 1919, US President Woodrow Wilson was in the forefront of statesmen who suggested the establishment of a League of Nations to avoid war in future.

### 3. THE HAGUE PEACE CONFERENCES

It may be recalled that the two Hague conferences called to avert war had very limited success. Mutual suspicion between European states was so strong and pervasive that nobody could think in terms of reductions of armaments or peaceful settlement of disputes.<sup>6</sup> A Permanent Court of International Arbitration was established for the peaceful settlement of international disputes (which was in truth neither permanent nor a court, but only a list of names from which the parties, if they decided to settle their dispute through arbitration, could choose their arbitrators). The Second Hague Peace Conference, called in 1907, did not add much and had to be satisfied with the same Permanent Court of Arbitration. War continued to haunt Europe. The preoccupation of European international law with war may be gauged from the fact that of the 14 documents signed at the Second Hague Peace Conference in 1907, only two dealt with peaceful relations among states. The other 12 dealt with the problems of war.<sup>7</sup>

At the First Hague Peace Conference in 1899, only 26 states were represented, including two from the Americas – the United States and Brazil –and five from Asia – China, Japan, Persia, Siam, and Turkey, which were taking part in a major international conference for the first time. With the participation of other South American states, the number was increased to 44 at the Second Hague Conference in 1907. India was lost as ‘British India’, and Africa was unrepresented because it was outside the ‘charmed circle’.

### 4. ‘BRITISH INDIA’ AND THE LEAGUE OF NATIONS

Whatever their international legal status earlier, with the establishment of British rule in India some 500-odd Indian princely states were all merged into the British Empire and lost their identity. They were only a part of the British Empire under international law, but the subordination of India was complete and absolute. The India Office in London conducted India’s external relations, and systematic attempts were made by the British authorities to prevent India from any responsible participation in world affairs.

The First World War, however, changed this position. For its own reasons – obviously to get more than due representation and voting strength – the British

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6 G. Best, ‘Peace Conferences and the Century of Total War: The 1899 Hague Conference and What Came After’, (1999) 75 *International Affairs* 619.

7 G. Tunkin, ‘International Law and Peace’, in *International Law in a Changing World by Thirteen Experts* (1963), 75.

government wanted to achieve separate representation for its dominions, including India, at the 1919 Paris Peace Conference, and, over the objection of several other participants, it succeeded. India, like the other British dominions – Australia, Canada, New Zealand and South Africa – gained representation in its own right at the conference and its plenipotentiaries actively participated in its deliberations. This created a rather anomalous situation, since a dependency of a foreign power, a colony which could not control its internal affairs, was accepted as a sovereign state by an international treaty. Indian plenipotentiaries, holding full power on behalf of India, took part in the discussions and signed the peace treaties, along with the representatives of other sovereign states, on the basis of ‘legal equality’. India thus acquired a right to become an original member of the League of Nations (since the Covenant of the League of Nations was part of the Peace Treaty), and, for the first time in the modern period, came into direct and formal contact with the outside world.<sup>8</sup>

#### 4.1. India’s anomalous position under international law

It is indeed doubtful that ‘international law contains any objective criteria of international personality’.<sup>9</sup> But it is generally believed that ‘the very act or practice of entering into international agreements is sometimes the only test that can be applied to determine whether an entity has such a personality’.<sup>10</sup> Although Lord McNair asserts that the ‘criterion is really international recognition’,<sup>11</sup> according to Schwarzenberger ‘an intermediate state on the road from dependence to independence may also lead to a stage of limited international personality’.<sup>12</sup> In fact, he states that ‘international personality may be accorded provisionally or definitely, conditionally or unconditionally, completely or incompletely, and expressly or by implication. The scope of the international personality granted is a matter of intent.’<sup>13</sup> Normally, when states lose their international personality, they are referred to as vassal states. The Indian princely states, under the paramourcy of the British crown, provided the best example of vassal states.<sup>14</sup>

But India’s position from 1919 to 1947, when it was declared to be and recognized as an independent state, was ‘that of an anomalous international person’.<sup>15</sup> As Oppenheim explained,

8 India’s position changed only after the First World War, when its tremendous contribution to the war effort led it to become a member of the British Imperial Conference in 1917, something earlier strongly opposed by the white British dominions. D. Verma, *India and the League of Nations* (1968), 1–9. It may also be mentioned that India had already become a member of such international organizations as the Universal Postal Union in 1876, the Conference of the International Union for the Publication of Tariff Customs in 1890, and the International Telegraph Conference in 1912. *Ibid.*, at 10.

9 O. Lissitzyn, ‘Efforts to Codify or Restate the Law of Treaties’, (1962) 62 *Columbia Law Review* 1166, at 1183–4. *Ibid.*

10 A. McNair, *The Law of Treaties: British Practice and Opinions* (1938), 67, 75–6.

11 G. Schwarzenberger, *A Manual of International Law* (1967), I, 61.

12 *Ibid.*, at 70.

14 T. Poullose, ‘India as an Anomalous International Person (1919–1947)’, (1970) 44 *British Yearbook of International Law* 201, at 202.

15 *Ibid.*, at 204.

The position of India as subject of international law was for a time anomalous. She became a member of the League of Nations; she was invited to the San Francisco Conference of the United Nations . . . She exercised the treaty-making power in her own right. However, so long as the control of her internal and external relations rested ultimately with the British Government and Parliament, she could not be regarded as a sovereign state and a normal subject of international law. In 1947, she became a fully self-governing Dominion and independent state.<sup>16</sup>

But after 1919 India began to function as a separate entity in its external relations. As far as membership of the League was concerned, at the peace conference President Wilson proposed that 'only self-governing states shall be admitted to membership of the league; colonies enjoying full power of self-government may be admitted'; he said that although he had great admiration for India, 'the impression of the whole world is that she is not self-governed, that the greater part is governed by the laws of Westminster, and lesser part is governed by the Princes whose power is recognized and supported by the British government'.<sup>17</sup> But in response the British government representative, Lord Robert Cecil, assured the conference that 'the British Government is trying just as rapidly as possible to advance India into a self-governing colony; and anything to happen which would exclude India would be unfortunate'.<sup>18</sup> In any case, it was pointed out that since India had signed the peace treaty (which also included the Covenant of the League of Nations), India could become a member of the League independently of any condition which might be laid down concerning subsequent membership.<sup>19</sup> Ultimately Britain succeeded, and India was included among the original members of the League,<sup>20</sup> although Miller called it 'an anomaly among anomalies'.<sup>21</sup> Out of 31 original members of the League, India was the only state which was not self-governing.<sup>22</sup>

It is significant to note that it was India, and not 'British India', which was admitted to the League of Nations. It may be recalled that India was divided into two parts – British India and 562 princely states, which were under the suzerainty of the British crown. But at the peace conference it was felt that it was 'India', and not 'British India', without the princely states, which should become member of the League; otherwise the Indian states would remain out of the orbit of the League – except to the extent that they could be regarded as represented through the British government. They could not be eligible for separate membership as they were precluded from foreign relations. Thus at the Paris Peace Conference and in the Covenant of the League of Nations, India was accepted and recognized as a composite state. However, this gave the princes an opportunity to be represented on the Indian delegation and every year the Indian delegation included one of the ruling princes as India's delegate. In fact,

16 L. Oppenheim, *International Law*, ed. H. Lauterpacht (1955), 209, n. 4.

17 Quoted in Verma, *supra* note 8, at 16.

18 D. Miller, *The Drafting of the Covenant* (1928), I, at 164–5.

19 *Ibid.*, at 166.

20 Miller, *supra* note 18, II, at 261; see also Verma, *supra* note 8, at 1–44, for an exhaustive discussion of the whole controversy about India's membership of the League of Nations.

21 Miller, *supra* note 18, at 493; Verma *supra* note 8, at 20.

22 Verma, *supra* note 8, at 21.

at the Paris Peace Conference, it was a prince, the maharaja of Bikaner, who signed the Treaty of Versailles as one of the plenipotentiaries to act on behalf of India.<sup>23</sup>

#### 4.2. Indian national opinion against the League of Nations

Membership of the League of Nations was not something which Indians liked or appreciated. India was seething with political unrest after the First World War and the Indian nationalist movement, seeking India's independence, was gaining momentum. Nationalist opinion in India felt that the British were merely trying to 'hoodwink and camouflage' world opinion regarding the real state of affairs in India. As an Indian member of the Legislative Assembly of India, M. Asaf Ali, said,

We became a member of the League of Nations at a time when the victorious powers were trying to rob the vanquished powers of their colonial possessions. That could not be done easily . . . because unfortunately at that time, President Wilson . . . was thinking in higher terms and the victorious wanted to pacify him. They could not justify swallowing . . . practically half of Africa without showing some reasonable position as far as they themselves were concerned in their relationship to India. It was just before then that we received in India a message from His Majesty King George that we had the beginning of *swaraj* (self-rule) in India. This message was flashed across the world, and it was under those circumstances, to pacify the powers of the world, that India was made an original member of the League. All these facts were made to present a wholly camouflaged state of affairs to the world, and this is how we became a member of the League of Nations.<sup>24</sup>

#### 4.3. Opposition by the United States

But in addition to Indian national opinion, the membership of India and other British dominions of the League of Nations was strongly resented in the United States. Thus the *Majority Report of the Committee on Foreign Relations* of the US Senate stated,

Great Britain now has under the name of the British Empire one vote in the Council of the League. She has four additional votes in the Assembly of the League for her self-governing dominions and colonies which are most properly members of the League and signatories to the treaty. She also has the vote of India, which is neither a self-governing Dominion nor a Colony but merely a part of the Empire and which apparently was simply put as a signatory and member of the League by the peace Conference because Great Britain desired it.<sup>25</sup>

It was stressed in the US Congress that a League vote for India was absolutely and completely a second vote for Britain, since India was

absolutely and exclusively under British control. When other British colonies signed the preliminary Covenant they signed through native statesmen. When India signed, she signed through 'The Right Honorable Edwin Montagu, Member of the British Parliament, and the King's Secretary of State for India.' . . . The Maharaja of Bikaner, who signed below, was only a rubber-stamp, because these native princes are specifically barred from peace-making authority.<sup>26</sup>

23 Ibid., at 239–41.

24 *Legislative Assembly Debates in India* (1936), I, at 895–6; also quoted in Verma, *supra* note 8, at 25.

25 Quoted in Poulouse, *supra* note 14, at 207; see also T. Poulouse, *Succession in International Law: A Study of India, Pakistan, Ceylon, and Burma* (1974), 23 ff.

26 Quoted in Poulouse, *supra* note 14, at 207.

Senator James A. Reed from Missouri, who opposed the United States joining the League, argued that the United Kingdom, by including the dominions and India in the League, would have six votes, as against a single vote for the United States and other members, which was totally unreasonable. Referring specifically to India, he said,

India would have a vote in the League. Is that the vote of an independent democracy? Eleven hundred Britishers constitute the governing class in India, where there are 290,000,000 people. I wonder if that Government . . . is entitled to a representation as an independent people. Does he doubt that those 1,100 Britishers, all of them officers of the Crown, will fail to do the bidding of the Imperial Government of the Empire?<sup>27</sup>

Senator Norris ridiculed the British claim, pressed at the peace conference, that India was democratically governed. Referring to the Jallianwala massacre at Amritsar, he said,

India furnished more than a million men upon various battle fronts on behalf of England's cause, and when the soldiers of India went home, imbued with a spirit of liberty, believing in proclamations of self-determination that were made by England and her Allies, believing thereby that she had fought to make the world more free and that in the end she might share the freedom; when those soldiers went home and undertook to demand it in a peaceable assembly, they were shot down in cold blood by British machine guns.<sup>28</sup>

President Wilson, in a speech at Cheyenne Wyo Ming, referred to India's vote:

The only other vote given to the British Empire is given to that hitherto voiceless mass of humanity that lives in the region of romance and pity that we know as India. I am willing that India should stand up in the Councils of the world and say something.<sup>29</sup>

But that was just not possible. Even after India's admission into the League of Nations, Britain completely controlled its external relations. From the constitutional point of view, India was still 'an integral part of the British Empire'.<sup>30</sup> A. B. Keith observed,

The justification for League membership was autonomy, it could fairly be predicated of the Great Dominions; of India it had no present truth, and it could hardly be said that its early fulfillment was possible. In these circumstances it would have been wiser candidly to admit that India could not be given then a place in the League, while leaving it open for her when autonomous to be accorded distinct membership . . . As it is, in the League India's position is frankly anomalous, for her policy is determined and is to remain determined indefinitely by the British Government.<sup>31</sup>

While the dominions enjoyed freedom of action with respect to policy matters affecting them in the League as well as in other international organizations, India did not have much say on major policy matters or political questions affecting it or the British Empire.<sup>32</sup> Some Indian nationalist leaders, including the Indian National

27 *US Congressional Record*, Vol. 59, 2354, quoted in Verma, *supra* note 8, at 26–7.

28 *US Congressional Record*, Vol. 59, 3569.

29 Quoted in Poulouse, *supra* note 14, at 207.

30 L. Sundram, *India in World Politics* (1944), 27.

31 A. Keith, *Constitutional History of India, 1600–1935* (1936), 473.

32 P. Noel-Baker, *The Present Judicial Status of the British Dominions in International Law* (1929), 13–14.

Congress, urging the application of the Wilsonian principle of self-determination, appealed to the United States to reject the Versailles Treaty. A respected Indian national leader, Lala Lajpat Rai, asked the American public to reject the Covenant because the League of Nations was a “fraud” and was meant for the “perpetuation of imperialism”.<sup>33</sup>

## 5. INDIA’S ACHIEVEMENT OF INTERNATIONAL STATUS?

It is interesting to note that although India had not been formally recognized as an independent state by any other member of the family of ‘civilized’ countries, was not a self-governing member of the British Commonwealth of Nations, and was committed to the First World War by the unilateral declaration of the British government, several British publicists argued that India had achieved an international status because of its membership of the League of Nations. Thus Professor A. B. Keith said that membership of the League gave India ‘quasi-independence in her international relations’ and that therefore India had a definite measure of international status.<sup>34</sup> W. E. Hall had no doubt that the British self-governing dominions and India had acquired something of an international personality through the League, ‘but how much is not so evident’.<sup>35</sup> Oppenheim felt that India stood in a special position. By virtue of its membership of the League, India, he said, ‘certainly possesses a position in international law’. ‘It is *sui generis*’, he maintained, writing in 1928, ‘and defies classification’.<sup>36</sup>

With its newly acquired status India participated in the Washington Conference on Naval Armament in 1921, and its delegate, Srinivas Sastri, on 6 February 1922 signed the Washington treaty, which was separately ratified by the British emperor on India’s behalf. Further, as a member of the League, India was automatically admitted to the International Labour Organization, the Permanent Court of International Justice, the Committee of Intellectual Co-operation in Paris, the International Institute of Agriculture, and several other League or semi-League organizations. India was represented on its own at almost every international conference after 1920. India also signed numerous multilateral treaties, including the Kellogg-Briand Pact of 1928.<sup>37</sup> Although India was still a colony and part of the British Empire, it started participating, albeit through representatives selected by the British government in India, in international conferences and signing treaties as a member of the international community. This was surely helpful to some extent. As the Report of the Indian delegation to the Ninth Session of the Assembly of the League (1928) pointed out,

Nothing that we have said should be taken as supporting the view that the advantages which India already derives from the League are negligible. These advantages have

33 See also Verma, *supra* note 8, at 27–9, for more discussion on India’s membership and reaction in the US Senate.

34 A. Keith, *Sovereignty of the British Dominion* (1929), 327, quoted in Verma, *supra* note 8, at 29.

35 W. E. Hall, *A Treatise on International Law* (1924), 35.

36 L. Oppenheim, *International Law, A Treatise* (1928), I, 195.

37 For numerous other conferences India attended and treaties that it signed, see Verma, *supra* note 8, at 33–6.



always, on the contrary, been considerable and they are becoming more so. They include in particular a degree of international status which India would not now enjoy, nor be able to obtain, if her separate signature to the Treaty of Versailles had not made her an original member of the League.<sup>38</sup>

## 6. THE DEMAND FOR SELF-GOVERNING STATUS

India's membership of the League and its participation in international affairs prompted several Indian statesmen to demand a self-governing status like that of other British dominions. A. B. Keith said that 'by securing admission of India to the League, the British Government bound itself to the task of creating a self-governing India'.<sup>39</sup> Pointing to India's anomalous position, Phiroz Sethna, an Indian member of the Council of State in India, said in 1930, 'India cannot take her rightful place in international affairs unless she has her rightful place as a nation here in India. Until that is done Indians will regard their representation in the League of Nations as a mockery.'<sup>40</sup>

Following the repeated wartime declarations of Allied leaders, especially President Wilson, that the war was being fought to safeguard democracy and the principle of self-determination, some Indian political leaders were excited and hopeful during the First World War about India's independent status in the post-war settlement.<sup>41</sup> But India's enthusiasm abated when the people saw the imperialistic attitude of the British Government. It was an alien bureaucratic, autocratic government that obtained membership, and not the self-governing India which the Indian leaders had imagined. As long as India was ruled by the British, it mattered little what happened in the outside world. Indians were mainly interested in their freedom. When the United States refused to join the League, they were convinced there was something radically wrong with the League.

There was strong criticism and resentment of the manner in which India was represented. India's representatives at the League and other international conferences were nominated by the Secretary of State for India, or by the British government, or, at most, by the British Viceroy in India.<sup>42</sup> The so-called 'representatives of India', it was pointed out by Indians, had 'always been the nominated tools and mouthpieces, megaphones and microphones of the British Government', and this was considered to be a 'shameful and disgraceful position with which no self-respecting Indian could be happy'. Indian delegations, it was demanded, should not be represented, or at least not always led, by Englishmen. India, it was said by Indian nationalist leaders, 'must be represented by the people, by members elected by the Central legislature. If we are not in a position to do this there is no use of India taking part in the League

38 Quoted in *ibid.*, at 36.

39 A. Keith, *A Constitutional History of India* (1933), 468.

40 Quoted in Verma, *supra* note 8, at 39.

41 Bal Gangadhar Tilak even wrote a letter to Georges Clemenceau, the president of the Peace Conference, outlining India's prospective role as a leading Asian power in post-war world affairs. *Ibid.*, at 270.

42 *India and the United Nations: Report of a Study Group Set up by the Indian Council of World Affairs, Prepared for the Carnegie Endowment for International Peace* (1957), 4.

of Nations.<sup>43</sup> A typical comment on the issue of India's representation in the League was,

India may be an original member of the League of Nations, but all the world knows that this means an additional voice and vote for the British Foreign Office. The people of India have no say in the matter and their so-called representatives are nominated by the British government.<sup>44</sup>

To many Indians the League of Nations was nothing more than an instrument of imperialism, a 'society for the exploitation of the east and protection of the west'. Instances of Britain's conduct in Egypt and outrages in China and Iraq, and in some of its colonies, were sufficient to prove the utter helplessness of the colonized, oppressed peoples under the rule of the League. The League appeared to Indians as a sort of balance of power or alliances between European states for the maintenance of the status quo. Although the League talked of honour and justice between nations, as Jawaharlal Nehru said,

[I]t does not enquire whether existing relationships are based on justice and honour . . . The dependencies of an imperialist power are domestic matters for it. So that, as far as the League is concerned, it looks forward to a perpetual dominance by these powers over their empires.<sup>45</sup>

The League had not accepted the principle of self-determination outside Europe. The mandate system of the League in India's view was nothing more than 'colonialism' and 'oppression' of the territories taken from Germany and Turkey and given to the imperialist powers, where conditions had further deteriorated. A leading newspaper in India said,

The League's Mandates can be otherwise described as the control of the European powers over the weaker nationalities in Asia and Africa and from our experience of such control in Egypt, India and elsewhere it can only be said that incessant strife, racial bitterness and intrigues . . . are the almost inevitable concomitants of the League of Nations.<sup>46</sup>

The League was said to be mainly an organization of the white peoples and it worked primarily for the European countries and their problems. While the League took prompt action in the Graeco-Bulgarian dispute, it ignored Asians altogether. 'Whites must not fight Whites – this is the business of the League to see', said an Indian newspaper on 24 March 1927:

But the importance of the League is nowhere [more] marked than when Asiatic nations have appealed for protection against white imperialism. The bombardment of defenseless Nanking by British and American warships has not been challenged by the League.<sup>47</sup>

The East, it was thought, was deliberately ignored. 'It was not surprising', said an Indian political journal, 'that the League had in no way interfered to prevent war in

43 Several Indian leaders quoted in Verma, *supra* note 8, at 270 ff.

44 *India and the United Nations*, *supra* note 42, at 4.

45 J. Nehru, *Glimpses of World History* (1942), 682; see also *India and the United Nations*, *supra* note 42, at 5.

46 *Anandabazar Patrika* (Calcutta), 23 June 1921, also quoted in *India and the United Nations*, *supra* note 42, at 7.

47 *Anandabazar Patrika* (Calcutta), quoted in *India and the United Nations*, *supra* note 42, at 8.

Syria or put a stop to recent British aggression in China for the sufferers there were Asiatics and not Europeans'.<sup>48</sup> The failure of the Disarmament Conference and the League's utter inability to protect China and Abyssinia from the aggression of Japan and Italy respectively caused feelings of disappointment and revulsion among the Indian people, and there were demands for India's withdrawal from the League, and even the liquidation of the League.<sup>49</sup>

Although in theory India's membership of the League was based on the principle of sovereign equality of states, it was really meant to help the British gain more weight in the League. The fact that India and the British dominions – Australia, Canada, New Zealand, and South Africa – which appeared for the first time as members of the international community, did not figure in their proper alphabetical place among other signatories, but were grouped together under the rubric of the 'British Empire', clearly showed that they were not regarded as independent sovereign states. Article 1 of the Covenant, permitting 'any fully self-governing State, Dominion or Colony', to become a member of the League, was evidently designed to take account of their special status.<sup>50</sup> India by and large spoke at Geneva in 'her master's voice'. Britain did not want India to contest a non-permanent seat on the Council of the League. The practice of giving an Indian prince representation, first at the peace conference and later in the annual sessions of the League Assembly, aroused the suspicion of the Indian people and, it was felt, was meant to emphasize the political disunity of the country, using the princes against the rising tide of Indian nationalism. India's financial contribution was by far the largest of any of the non-permanent members of the Council, not because India was a rich country but despite the poverty of its vast population. On the other hand, very few Indians had been appointed to the League secretariat.<sup>51</sup>

## 7. THE FAILURE OF THE LEAGUE OF NATIONS

The primary purpose of the League was to preserve peace, something it could not do. From the beginning it was hampered by the absence of the United States. Symptoms of weakness soon appeared, and were accentuated towards the end of the first decade of the League's existence. Only seven Asian and African countries, some of them mere European colonies – China, Japan, Siam, Persia, British India, Liberia, and South Africa – were included among the original 45 members of the League, and five – Afghanistan, Egypt, Ethiopia, Iraq, and Turkey – subsequently joined it. Although the League gave the first opportunity to such countries as Afghanistan, Egypt, Iraq, and India to appear on the modern international stage, its centre of gravity remained western Europe.

48 *Modern Review* (1927), XLI, 2, at 255.

49 Indian Delegation Report, 1935, *Gazette of India*, 21 March 1936, at 225; see also *India and the United Nations*, *supra* note 42, at 10–11.

50 E. Carr, *International Relations between the Two World Wars (1919–1939)* (1950), 254.

51 Verma, *supra* note 8, at 277–8.

## 8. THE SECOND WORLD WAR AND THE FREEDOM MOVEMENT IN INDIA

Europe had hardly recovered from the First World War when in the late 1920s it drifted towards the second holocaust in 1939. If quarrelling and fighting Asians could not withstand the pressure of aggressive European states in the eighteenth and nineteenth centuries, Europe could not remain unaffected by the continued bickering and wars among European states. Asian peoples were also not expected to be subdued when they came to know and understand Europeans and their weaknesses from close quarters. Several Indians, like other Asians, had gone to Europe and had been educated in their universities. They realized that the injustices which had been committed against Asians were being continued. Under the leadership of European-educated dynamic Indian leaders, there had started a strong freedom movement in India. All the atrocities committed by British rulers could not contain this movement and suppress the new demands for independence and self-rule.

When Britain declared war on Germany on 3 September 1939, India was automatically involved. Britain was naturally anxious to utilize India's abundant resources for the prosecution of the war. But the Indian political leaders, while sympathetic to the cause of democracy and freedom for which the Allied powers said they were fighting, made it clear that India and its people should not, and could not, be expected to join up and help in any war until they were granted self-rule and independence. In fact they complained that Indian troops had earlier been

sent abroad for imperialist purposes and often to conquer or suppress other peoples with whom we had no quarrel whatever, and with whose efforts to regain their freedom we sympathized. Indian troops had been used as mercenaries for this purpose in Burma, China, Iran, and the Middle East, and parts of Africa. They had become symbols of British imperialism in all these countries and antagonized their peoples against India.<sup>52</sup>

Indians did not want Indian resources to be used for 'maintaining [British] imperialist domination', and did not want the British government to 'impose war on India' as they had done in 1914.<sup>53</sup>

But while the Indian nationalist leaders refused to co-operate with the British in their war efforts, the Indian princes stood solidly behind the government, which had no difficulty in securing sufficient recruits without resorting to compulsion. Britain's efforts were greatly enhanced by the manpower and material resources of India. The Indian states supplied more than 375,000 recruits for the fighting forces of India, provided men for technical work, and important materials, such as steel, blankets, webbing, cloth, and rubber products.<sup>54</sup>

It is important to note that, before the entry of the United States into the war, the British colonial empire 'cracked up with amazing rapidity'. The Indians sometimes wondered if this outwardly proud structure 'was just a house of cards with no

<sup>52</sup> J. Nehru, *The Discovery of India* (1946), 429.

<sup>53</sup> *Ibid.*, at 430-2.

<sup>54</sup> For details of the participation of Indian troops see R. Majumdar, H. Raychaudhuri, and K. Datta, *An Advanced History of India* (1999), 949 ff.

foundations or inner strength'.<sup>55</sup> Although Japan was not particularly liked in India, especially because of its aggression against China, as Nehru said,

[T]here was a feeling of satisfaction at the collapse of old-established European colonial powers before the armed strength of an Asian power. The racial, Oriental Asiatic feeling was evident on the British side also. Defeat and disaster were bitter enough, but the fact that an Oriental and Asiatic power had triumphed over them added to the bitterness and humiliation. An Englishman occupying a high position said that he would have preferred it if the *Prince of Wales* and *Repulse* had been sunk by the Germans instead of by the yellow Japanese.<sup>56</sup>

## 9. INDIA AND THE MAKING OF THE UN CHARTER

India became a founding member of the United Nations in 1945, even though it was still under British rule. In fact its membership flowed from its membership of the League of Nations, and because India was a signatory to the Declaration of the wartime coalition of the 'United Nations' of 1 January 1942, in Washington, DC.<sup>57</sup> India was invited to the United Nations Conference on International Organization (UNCIO) in 1945 and participated in the historic conference, but only as a British colony, 'British India'. Except for Byelorussia and Ukraine, admitted on the initiative of Russia, although they were only members of the then Soviet Union, India was the only non-sovereign state in the United Nations.

Indian public opinion was not very hopeful or enthusiastic about the new conference on international organization during the war years because of their bitter experience in the past. The Atlantic Charter,<sup>58</sup> the declaration of four freedoms, and other Allied wartime declarations regarding the war and peace, such as the Teheran Declaration of 1943,<sup>59</sup> were all regarded with scepticism. When the draft proposals for the establishment of a new international organization under the title of the United Nations, known as the Dumbarton Oaks Proposals (DOP), were issued by the United States, the Soviet Union, the United Kingdom, and China, on 9 October 1944,<sup>60</sup> they were not received with much hope. It was pointed out that the 'territorial ambitions of the big powers were responsible for most of the conflicts in the world and that the DOP made no attempt to reconcile the conflicting interests of different states in various fields'. It might, therefore, be just 'another futile attempt for the achievement of the world peace'.<sup>61</sup> By the time the San Francisco Conference was convened, the questions of the transfer of power in India and the proposed partition of India drew so much attention in the country that discussions and comments on the proposed international organization were meagre. Such opinions as were expressed were not very optimistic. Thus it was said that 'imperialists were crying and

55 Nehru, *supra* note 52, at 457.

56 *Ibid.*, at 476–7.

57 See L. Goodrich and E. Hambro, *Charter of the United Nations: Commentary and Documents* (1946), 306.

58 *Ibid.*, at 305.

59 *Ibid.*, at 307.

60 *Ibid.*, at 308 ff.

61 *India and the United Nations*, *supra* note 42, at 22–3; see also M. Rajan, 'India and the Making of the UN Charter', (1973) 12 *International Studies* 430, at 431–2.

clamouring for dominating the weaker nations for all time to come', and 'measures were being adopted to suppress the voice of the enslaved nations of the world'. The conference, therefore, 'cannot produce much hope in the minds of Indians, still in bondage'.<sup>62</sup>

Indian national opinion was very critical of the selection process of the Indian delegation by the Viceroy-in-Council to the San Francisco Conference, especially because the British and US delegations included representatives of the major political parties in their countries. The selected Indian delegates were Sir A. R. Mudaliar (leader), Sir Feroz Khan Noon, and Sir V. T. Krishnamachari (representing the princely states), all supposed to be mere spokesmen of the British government.<sup>63</sup> The most prominent Indian national leader, Mahatma Gandhi, said that there were two essential conditions for peace as far as India was concerned, namely that India should be free from foreign control and that the peace should be just. 'If these foregoing essentials of peace are accepted', he said,

it follows that the camouflage of Indian representation through Indians nominated by British imperialism will be worse than no representation. Either India at San Francisco is represented by an elected representative, or represented not at all.<sup>64</sup>

Supporting Gandhi's views, the *Hindustan Times* in the same issue commented editorially, 'Rather than be a mere appendage to the British Government, we feel India should stand aloof from all international organizations till she can enter them as a free and sovereign state.' The paper pungently remarked in another editorial that 'the Government would rather keep up their pretence and allow one of the most important [members] of the United Nations to have the most unrepresentative of delegations'. It added, 'It will be a hoax on San Francisco.'<sup>65</sup> Some other Indian national leaders from other parties were equally critical.<sup>66</sup>

Indian nationalist elements took the fight against the unrepresentative character of the Indian delegation to the United States. In an advertisement in Washington newspapers, the National Committee for India's Freedom said that the members of the delegation represented only their 'British employers' and that 'their masquerade in San Francisco as India's representatives becomes a bitter mockery and a brazen affront to the intelligence of authentic delegates'.<sup>67</sup> Mrs Vijayalakshmi Pandit, a respected Indian political leader and sister of Jawaharlal Nehru, said in a press conference two days after the UNCIO opened that 'the so-called Indian representatives' did not have 'the slightest representative capacity'.<sup>68</sup>

62 *India and the United Nations*, *supra* note 42, at 24.

63 It was not easy for the British government to select members of the Indian delegation because of serious criticism coming from Indian national leaders. See another article by Professor M. S. Rajan, 'India and the Making of the UN Charter—II (from British Sources)', (1999) 36 *International Studies* 3. The articles complement each other.

64 *Hindustan Times*, 7 March 1945.

65 9 March 1945, quoted in Rajan, *supra* note 63, at 434.

66 T. Bahadur Sapru, H. Kunzru, Right Hon. V. S. Srinivasa Sastri, C. Rajagopalachari, quoted in *ibid*.

67 *The Hindu*, 13 April 1945, quoted in Rajan, *supra* note 63, at 435.

68 One year later she led the Indian delegation to the UN General Assembly, and was elected president of the General Assembly's eighth session in 1953. *Ibid*.

## 10. THE LONDON CONFERENCE

As a preliminary to the San Francisco Conference, the Indian delegation, along with other members of the British Commonwealth – Australia, Canada, New Zealand, South Africa, and the United Kingdom – participated in a conference in London on 4–13 April 1945, to exchange ideas and consult each other on the draft proposals for the establishment of the world organization. Speaking for the Indian delegation, Sir Feroz Khan Noon, obviously referring to the criticism of the unrepresentative character of the delegation, pointed out that ‘We are here to represent India and not His Majesty’s Government’, that the government had not given any instructions to them but they had ‘instructions from our government’, and that India had quietly grown into a dominion without the British government actually knowing it.<sup>69</sup>

Discussing the role of the small versus the great powers in the proposed world organization, the leader of the Indian delegation, Sir A. R. Mudaliar, agreed with the Canadian contention that in the DOP, the five great powers had safeguarded their position at the expense of the smaller powers. From the point of view of India, he said, the draft provision regarding the nature of representation of states other than the Big Five was one of the most important:

India felt that the present position was almost intolerable. China had been classified as a Great Power at the instigation of the United States. It only required a moment’s comparison to realize the anomaly of this situation. On the test suggested by Australia and New Zealand, of past and potential contributions to the war effort, India deserved better representation.<sup>70</sup>

Mudaliar also pointed out that in the previous 25 years India had not once been elected to the Council of the League of Nations. In the future, however, it was likely that a great deal would be expected of India, militarily and economically, by the new world organization. Therefore the position put forward in the DOP was not, he thought, ‘one which his countrymen could accept’. It was not a question of prestige, he said, ‘it was merely an extension of the logical decision reached in regard to the Great Powers, namely, that power and responsibility should count’.<sup>71</sup>

The Indian delegation, while supporting the ‘Yalta formula’ and the right of veto of some great powers, found it, however, ‘particularly unpalatable’ that such rights were given to China and France. It agreed that it was consistent for a permanent member to exercise its veto in a dispute to which it was not a party, and it was also desirable that the veto should be applicable in some other matters also.<sup>72</sup>

The Indian delegation also took a lot of interest in the future of the League of Nations mandates. Mudaliar reiterated Indian opposition to the restoration of colonies to their original colonizers, because such a policy would ‘encourage the belief which was held in Eastern countries that the object of the struggle [i.e. the Second World War] was to bring about the re-establishment of colonial rule by the European powers’. He suggested that these colonial territories be put under

69 British Commonwealth Meeting, 4 April 1945, quoted in *ibid.*, at 437.

70 Quoted in Rajan, *supra* note 61, at 438–9.

71 Quoted in *ibid.*, at 438–9.

72 Quoted in *ibid.*, at 140.

international trusteeship with a view to removing 'a fundamental cause of future wars'.<sup>73</sup>

## I I. THE SAN FRANCISCO CONFERENCE

The London Conference was considered as a 'useful rehearsal' for Commonwealth delegations before going on to the San Francisco Conference. The Indian delegation was one of the smallest at San Francisco and, according to the *Indian Report*, there was a great deal of stress on its members and pressure to attend committees which met simultaneously.

In his preliminary remarks the leader of the Indian delegation referred to the part played by India in the First and Second World Wars. While commending the four sponsoring powers for their contribution to victory in the Second World War, Mudaliar added,

We talk of the Great Powers and of small powers; we talk of the special responsibility of the Great Powers, and the special privileges of the Great Powers also. I should therefore like to put in its appropriate perspective what India has done in this war. Two and a half million sons of India . . . drawn on a voluntary basis, are today fighting in the different parts of the world.

He pointed out that, next to the armed forces of the sponsoring powers, the Indian army was the largest in the field. Further, none of the great powers standing alone could have withstood the aggressor states. He reminded the great powers of the great contribution of the smaller countries.<sup>74</sup>

The Indian delegation sponsored four amendments to the DOP relating to (i) human rights, (ii) penalizing a member if it failed in its financial obligations, (iii) criteria for the selection of the non-permanent members of the Security Council, and (iv) the inclusion of observers in the Security Council. The Indian delegation was quite concerned about the selection of states to sit on the Security Council which, it argued, should be based, *inter alia*, on population, industrial potential, willingness and ability to contribute to international security arrangements, and past performance. It supported the Yalta formula regarding the veto, but suggested that the provision should be open to revision after ten years. Since the big powers were determined to have the Charter as they wanted, India and other smaller countries hardly mattered. In the end, as Mudaliar said, 'We realize as earnestly as anyone else in this conference that it is vital to bring into existence an organization, however defective, on which the hopes, the aspirations of the people of the world depend.'<sup>75</sup>

It may be mentioned that not only India, which was not even independent at that time, but Asian countries as such played a very small and insignificant role in the formulation of the UN Charter.<sup>76</sup> In the UNCIO, there were only six of them, and two of these – India and the Philippines – were not yet independent. The Indian

73 Ibid., at 441.

74 *Report of the Conference of the United Nations in San Francisco, 3 August 1945*, quoted in *ibid.*, at 443–5.

75 Quoted in Rajan, *supra* note 61, at 449; see also *ibid.*, at 40.

76 A. Lall, 'The Asian Nations and the United Nations', in N. Padelford and L. Goodrich (eds.), *The United Nations in the Balance* (1965), 365.



delegation did not even have the support of nationalist India. They realized their limitations and the marginal role that they, or any other small state, could play. In spite of all these handicaps, they participated as well as they could without compromising Indian nationalist opinion.<sup>77</sup> An Indian newspaper correspondent, reporting the UNCIO from San Francisco, summed up the Indian delegation's role as follows:

India has been a good little boy among the 45 [delegations], never saying an important thing likely to offend Britain and the other Big Four, meek and content to stand and wait, because that, too, is service. She has lost an opportunity which will never come again.<sup>78</sup>

With most of the nationalist leaders in prison, and the interests of the people and press being focused on achieving independence, this was bound to be the case.

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77 Rajan, *supra* note 63, at 455. Professor Rajan does not agree with Arthur Lall that India's role in the UNCIO 'was disappointingly and disproportionately small'.

78 *The Hindu*, 27 June 1945; also quoted in *ibid.*, at 456.