

## A SECURITY SYSTEM FOR OUR GLOBAL VILLAGE: New research regarding the relationship between Peace Constitutions and the UN Charter



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The UN Charter provides for Members to “confer primary responsibility for the maintenance of international peace and security” on the Security Council (Art. 24). The Council acts on the assumption that it has the authority to take “prompt and effective action” on behalf of its Members, if and when the necessity arises, provided that nine of the 15 Members of the Council are in agreement. However, a controversy exists as to whether Article 24 is really binding, means what it says, and even whether it has actually been implemented. In fact, Article 106 suggests that the UNSC’s powers are arbitrary, and the institution has strictly speaking not been empowered “by law”<sup>2</sup> to exercise its responsibilities. As John Foster Dulles has stated, “No principles of law are laid down to guide it; it can decide in accordance with what it thinks is expedient.”<sup>3</sup> Obviously, the purpose from the beginning was that Members should define the law and lay down guiding principles for the Council. However, nations have been reluctant to give up any part of their national sovereignty that would affect their war-making powers and the right to maintain powerful and costly military institutions which train to defend against and kill presumed enemies. This is a far cry from what the drafters of the Charter had originally intended. If Article 24 had been implemented, nations by now would have been mostly disarmed, and the UN System of Collective Security would be in operation.

The narrative presented here suggests that provisions in national constitutions, notably the war-renouncing Japanese Article 9 (A9),<sup>4</sup> and the UN Charter are closely related, complement each

other and can be used to overcome the apparent shortcomings of the United Nations if and when they are implemented. Research conducted over the years has led to the recognition that there is a vital connection between the legal status of the five Permanent Members of the Security Council (“P5”), and constitutional provisions like A9, forming part of what I have called “the normative current,” i.e. the more than 20 European Nations whose constitutions provide for the delegation of sovereign powers to international organizations such as the UN.

For example, Article 24 of the German Constitution provides for legislation to empower the United Nations; Article 11 of the 1948 Italian Constitution has Italy agreeing to the “limitations of her sovereignty necessary to an organization which will ensure peace and justice among nations;” Denmark’s 1953 Article 20 enables the legislator to transfer powers to international authorities “through a bill, to promote international legal order and cooperation;” the 1946 French Constitution “accepts the limitations of sovereignty necessary for the organization and defense of peace” (albeit “under condition of reciprocity”). Similarly, Japan’s Constitution aims for “an international peace based on justice and order,” and India’s Article 51 wants, among other things, to “promote international peace and security,” settle “international disputes by arbitration,” and “foster respect for international law.”

Important discussions and plannings for the Post-WW2 International organisation took place in the League of Nations’ Committee for Intellectual Cooperation (ICIC, the predecessor of UNESCO). Documents of the ICIC are available in the archive of the United Nations University (UNU), the academic and research arm of the United Nations, headquartered in Shibuya, Tokyo. Besides prominent members like Albert Einstein, Madame Curie, Henri Bergson and Inazo Nitobe, the Indian representative in the ICIC was Sarvepalli Radhakrishnan, Oxford University professor, philosopher, and post-war President of India.<sup>5</sup> Historian Donald Mackenzie Brown points out that Radhakrishnan, having been first nominated

member of the ICIC in 1931, became, in the eyes of Western political thinkers and intellectuals, “the recognized Hindu authority on Indian ideas and a persuasive interpreter of the role of Eastern institutions in contemporary society.”<sup>6</sup> What kind of institutions from Indian traditional political culture was Mackenzie Brown thinking of that might qualify, and which were at the time widely practiced even under British administration? The suggestion here is that there is only one that qualifies, the Panchayati Raj, the system of self-government practiced in villages throughout India. Professor Radhakrishnan’s mandate was renewed, together with Professor José Castillejo, for a period of three years in 1936, beginning July 1, 1936 and terminating December 31, 1938. Invited by the French ‘Commission des Hautes Etudes internationales’ the tenth session of the Permanent International Studies Conference convened at the Sorbonne in Paris from June 28 to July 3, a “general debate dealing with ‘Peaceful Change’ [the theme had been adopted in London in 1935] considered from the philosophic and psychological angle” dealt, among other items, with “Legal questions and procedure,” relating to the organization of peace--another item on the ICIC’s agenda. Subjects to be studied at a next Conference included “reciprocity, regionalism, and self-sufficiency in commercial politics in the modern world, their relation to the problem of national security” etc.,<sup>7</sup> all relevant to our inquiry.

A coincidence? Is it not possible that Radhakrishnan, from his own experience familiar with the concept of the village panchayat<sup>8</sup> introduced the idea of a ‘Global Village Panchayat’ for the UN as the Security Council’s central authority, meant to consist of the “wise and respected elders,”<sup>9</sup> chosen and endowed--as was the case in India--with “large powers, both executive and judicial.”<sup>10</sup> The Panchayat system may be the most basic democratic political concept India has ever produced. Mahatma Gandhi advocated the system as the “foundation of India’s political system.”<sup>11</sup> Decisions of the village Panchayat are based on the principle of unanimity, just as happens to be the case with the “P5.” The concept of our world as a ‘global village’ or “noosphere” developed in the interwar period.<sup>12</sup>

Like a virus, the idea was ‘in the air’.<sup>13</sup> Inspired by democratic considerations, the Security Council had opened itself to allow Member states to take legislative action toward its future constitution.<sup>14</sup> But are the “P5” sufficiently experienced and qualified to be recognised as “wise and respected?” “I would like to argue that since they are the same world powers that at the Hague Peace Conferences in 1899 and 1907 were in favor of disarmament and the peaceful settlement of international disputes by an international court with binding powers, once given the task, their collective memories would ensure that they are, and also would in the future be, responsible and reliable actors.”<sup>15</sup> Furthermore, it has to be taken into account, argued and investigated to what extent group size matters, in order to ensure optimal conditions for problem solving. A study published in the Journal of Personality and Social Psychology suggests that small groups not bigger than five are optimal.<sup>16</sup> Any number higher than “5” would make it more difficult to achieve consensus. Any number lower would make it more difficult to accord with the principle of equitable geographic representation. (It has been suggested that Europe, being overrepresented, should have a single shared seat, allowing the seat that becomes vacant to go to a representative of the Global South, i.e. preferably India.<sup>17</sup>)

Relevant, too, in this context, and an indispensable Charter principle commentators have neglected and misrepresented,<sup>18</sup> is Article 106, which stipulates a transition from the present state of armed peace to one of complete disarmament, where the UN’s System of Collective Security guarantees peace among nations by policing the planet;<sup>19</sup> during the transition measures taken by the Security Council to keep the peace, operating under the authority of the “P5,” have to be taken unanimously. I believe that it can be proven that five is the ideal number for a system of decision-making operating on the principle of unanimity.

Even if more research needs to be done to confirm these findings, it is obvious that the Panchayat Raj is empirical proof that such a system works. International peace and security cannot be preserved and the Security Council cannot function

effectively, if its authority and standing is based on power politics and arbitrary decision-making alone. What Hermann Hesse wrote in 1917 in his Swiss exile, describing the prevailing attitude at the time, may still be true today: "If perpetual peace was not to be had, perpetual war was decidedly preferred."<sup>20</sup>

Article 9 and the European constitutions that provide for conferring "primary responsibility for the maintenance of international peace and security" on the UN can initiate the process of the transition toward genuine peace and security.

It was Radhakrishnan who wrote:

***"We must surrender a part of our sovereignty, work together for the elimination of every kind of injustice... The United Nations is the first step towards the creation of an authoritative world order. It has not got the power to enforce the rule of law... Military solutions to political problems are good for nothing. Ultimately they will leave bitterness behind... The challenge that is open to us is survival or annihilation... but what are we doing to bring about that survival? Are we prepared to surrender a fraction of our national sovereignty for the sake of a world order? Are we prepared to submit our disputes and quarrels to arbitration, to negotiation and settlement by peaceful methods? Have we set up a machinery by which peaceful changes could be easily brought about in this world? So long as we do not have it, it is no use merely talking."***<sup>21</sup>

For all intents and purposes, it should be seriously taken into consideration that following up on Article 9 is the key to achieving the purposes of the UN Charter, and that this is the reason why the Japanese have upheld the article and have preserved their constitution unchanged since its original Inception in 1947.<sup>22</sup>

#### References:

1. Dr. Klaus Schlichtmann acquired his PhD from

Kiel University in Germany ("Pax optima rerum"). In 1992 he came to Japan on a scholarship to research the Japanese Constitution's Article 9 and its author, Kijuro Shidehara. Schlichtmann is also a peace activist and has been lecturing and teaching Peace Studies in Japan. His dissertation on Article 9 and its author Shidehara was published in German in 1997, and in English in two volumes in 2009 with the title "JAPAN IN THE WORLD, Shidehara Kijuro, Pacifism and the Abolition of War." He has also published a book on India, "A Peace History of India, from Ashoka Maurya to Mahatma Gandhi." His 9th book, a world history of wars and the peace movement, in which he outlines some of the differences between European and Asian approaches to conflict-settlement, may be published this year.

2 The German Constitution's Article 24 provides for delegating sovereign powers "by law" to international organizations like the UN.

3 John Foster Dulles, War or Peace, New York, Macmillan 1950, p. 194, quoted in Mohammed Bedjaoui, The New World Order and the Security Council, Testing the Legality of Its Acts, Dordrecht, Boston and London, Martinus Nijhoff 1994, p. 1. Dulles further: "The Security Council is not a body that merely enforces agreed law. It is a law unto itself." (Ibid.)

4 Shidehara Kijuro, the pacifist post-war Prime Minister, proposed the Article to General Douglas MacArthur on January 24, 1946. Seven days later it appeared in machine-typed form, known as the MacArthur Memo.

5 Another Indian representative was Sir Jagadis C. Bose, who was replaced by Sarvepalli Radhakrishnan in 1931.

6 Donald Mackenzie Brown, The Nationalist Movement: Indian Political Thought from Ranade to Bhave, University of California Press 1970, p. 153.

7 League of Nations--Official Journal, 98th and 99th Sessions, December 1937, p. 988. See also

The Permanent International Studies Conference, *Nature*, volume 138 (28 November 1936), pp. 915–916: “The most recent subjects dealt with by the Conference are State intervention in economic life, the possibility and conditions of an organization of collective security, and peaceful methods of change as applied to particular problems.”

8 Young Radhakrishnan studied for seven years in the Tiruttani Panchayat Union School in South India; the school was recently renovated and inaugurated in 2010, on September 5, his birth anniversary, which is observed as Teachers’ Day in India. The school was renamed “Dr. Radhakrishnan Panchayat Union Middle School.” It is also worth noting that Radhakrishnan was nominated 11 times for the Nobel Peace Prize.

9 Anupama Mohan, *Utopia and the Village in South Asian Literatures*, Palgrave Macmillan, 2012, p. 190, n. 3.

10 Jawaharlal Nehru, *The Discovery of India*, New Delhi etc., Oxford University Press 1990, p. 248.

11 Mamta Chandrashekhar, *Political and Social Change and Women in India*, Anchor Academic Publishing, 2016, p. 118.

12 Teilhard de Chardin, *The Vision of the Past*, Collins 1966, p. 63: wrote: “And this amounts to imagining, in one way or another, above the animal biosphere a human sphere, a sphere of reflection, of conscious invention, of conscious souls (the noosphere, if you will)” (original in an essay “Hominization,” 1923) See also Wyndham Lewis, *America and Cosmic Man*, Nicholson & Watson, London 1948, and Raphaël Josset, *Inconscient collectif et noosphère. Du ‘monde imaginal’ au ‘village global’* (Collective Subconscious and Noosphere: From “Imaginal World” to “Global Village”), *Sociétés*, vol. no 111, no. 1, 2011, pp. 35–48.

13 In contradistinction to E.H. Carr authors David Long and Peter Wilson, *Thinkers of*

the ‘Twenty Years’ Crisis: Inter-War Idealism Reassessed, S. vii, explain the “feeling, partly brought on by recent reassessments of realism ... borne out by our research, that the ‘idealists’ were not as naïve in their assumptions, as simplistic in their analysis, nor as uniform in their outlook, as the received wisdom suggests.”

14 The UN Charter is not a Constitution, but it had moved in that direction, significantly because the International Court had become part of the system, which had not been the case during the League of Nations.

15 S. Klaus Schlichtmann, Japan, Germany and the Idea of the two Hague Peace Conferences, *JOURNAL OF PEACE RESEARCH*, vol. 40, no. 4 (2003), pp. 377–394.

16 Patrick Laughlin, Erin Hatch, Jonathan Silver, and Lee Boh, Groups Perform Better Than the Best Individuals on Letters-to-Numbers Problems: Effects of Group Size, *Journal of Personality and Social Psychology*, Vol. 90, No. 4.

17 This is what I have argued in *A Draft on Security Council Reform, Peace and Change*, vol. 24, no. 4 (October 1999), pp. 505–535.

18 Rudolf Geiger, Chapter XVII, *Transitional Security Arrangements*, Article 106, in Bruno Simma, Daniel Erasmus Khan, Georg Nolte, and Andreas Paulus (eds.), *The Charter of the United Nations, A Commentary, Third Edition* (Oxford Commentaries on International Law), 2012, Vol. II, pp. 2179–2182.

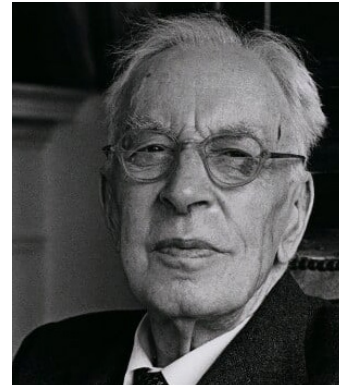
19 See SECOND REPORT: THE TRANSITIONAL PERIOD (February 1942), pp. 11–30, in *Building Peace, Reports of the Commission to Study the Organisation of Peace 1939–1972*, The Scarecrow Press, Metuchen, N.J., 1973. Notably, the REPORT does not have the seminal article by Quincy Wright, *Political Conditions of the Period of Transition: Commission to Study the Organization of Peace. International Conciliation*, no. 379, pp. 264–279. See the text at [http://www.unfor.info/transition\\_text.pdf](http://www.unfor.info/transition_text.pdf).



20 “Gegen einen Frieden, der möglicherweise nicht ewig währen konnte, war man überall sehr eingenommen -- wenn der ewige Friede nicht zu haben war, so zog man mit Entschiedenheit den ewigen Krieg vor.“ Hermann Hesse, Krieg und Frieden. Betrachtungen zu Krieg und Politik seit 1914, Zürich 1946, p. 30.

21 Sarvepalli Radhakrishnan, Towards a New World, New Delhi and Bombay, Orient Paperbacks 1980, pp. 14, 45, 52, 135.

22 This is the idea of the “Second Article 9 Campaign” (SA-9), which is supported by a Japanese group of peace activists, founded in 2017/18 by Mikihiro Ohmori (recently sadly deceased). The “Second Article 9 Campaign” interprets the Japanese Article as a ‘motion’ aiming to abolish war as a sovereign right of the nation; to achieve its purpose it should be ‘seconded’ in the UN General Assembly. The Campaign has received a lot of media attention in Japan and abroad. Some countries have already shown interest in the idea. The Campaign has been twice nominated for the Nobel Peace Prize. There is hope that this year’s nomination may provide the Campaign with enough leverage to be able to find a country bold enough to stand up in the UN General Assembly and second the Japanese Article. To do this later may no longer be an option.



“ I do feel that some minimum of global government to abolish war, to cope with pollution, is absolutely necessary “

ARNOLD TOYNBEE  
— Historian, UK philosopher