

**Article 109(3)
of
United Nations Charter
and
India**

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Messages



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From ancient times India has been contributing to the vision of peaceful coexistence in this world. The very idea of “**Vasudhaiva Kutumbakam**” exemplifies this thought.

WCPA has been connected with India since its inception. This global democratic movement has grown leaps and bounds in India in strength and spirit.

It is interesting to note from the historical UN records that India played a significant role in getting Art.109(3) enshrined in the charter itself and also India's position on the “Veto”. A piece of untold history being shared now. Hope the global citizens will find it interesting and useful.

Every civilisation has had its share of contribution to the mankind. While the west was focussed on the technological development, east has stuck with ethical and social values.

Two successive world wars caused enough decimation and misery. The idea of finding world peace through United Nations was an afterthought of these wars. San Francisco conference resulted in the formation of UN when the treaty was signed.

There is an interesting aspect of history here that a few countries along with India had expressed serious concerns in the way UN Charter was drafted and provision concerning Veto power was inserted. Resistance from these countries resulted in the insertion of Art.109(3) in the charter document which in true sense is a solution to the issue of UN Reforms Process.

India's views on this can be seen in the views expressed by Sir Arcot Ramaswamy Mudaliar, the leader of Indian delegation to San Francisco Conference. Entire speech of this visionary has been brought out in a separate flyer by WCPA.

Hope this information will be of interest to students , youth and to all those interested in Peace and Global Governance.

It is coincidence that this flyer is coming out during the Disarmament Week of 2023.

Article 109(3) of United Nations Charter

On 1st July 2023, the UN General Assembly decided to roll over the Inter-Governmental Negotiations (IGN) on Security Council reform to its next session, i.e. the 78th. India has termed it as “yet another wasted opportunity” and said the process could well go on for another 75 years without achieving genuine progress. In the current chaotic global situation there is an urgency to know the history behind the UN reforms process and Art. 109(3) of the UN Charter, which is its significance today.

Many civilisations have existed on this planet from time immemorial. Business and trade led to exploring newer geographic locations. Dominance of human greed resulted in aggression, expansion, subjugation of native cultures and colonisation and human misery. Cultural values were decimated, personal wealth & natural resources, both were plundered. Wars killed lives all over the globe. Power centers have been forcing wars even today. Big powers have been infringing the sovereign rights of smaller nations in many ways. Enormity of destruction during WWII led to an arrangement of convenience known as United Nations in 1945 during San Francisco Conference (SFC). The United Nations Charter was signed on 26th June 1945.

India was invited to SFC. It was not an independent country then, but it was given an opportunity to be part of a global federation. Indian delegation was led by Sir Arcot Ramaswamy Mudaliar. It is an important but untold history that India participated proactively in the discussions. The UN proceedings in the public domain are a witness. India made three most valuable contributions to the idea of global governance.

The First Indian contribution is on its stand on sovereign rights of countries. At a basic level, every country, its people, culture considers itself a sovereign entity, which is natural. But what is required is the consciousness that other countries,

small or big, to be recognised sovereign as well and behave accordingly. This may be new to the outside world, but India has been saying from time immemorial that “World is One Family”. Even on the floor of UN, in very clear terms Sir Mudaliar said “We talk of independence, we talk of sovereign rights -- I am one of those that believe in sovereign rights -- but I believe the world has come to a stage when the emphasis is not to be so much on independence as on interdependence.” This is the best possible articulation under Indian ethos, which the world never recognised. India continues to espouse this till-day.

The Second most significant contribution of India, at San Francisco Conference, is on the most contentious issue of “Veto” power of the members of UN Security Council, the decision making and controlling body in UN.

Academically there is a need to understand the history and context of the “Veto”. Veto emanates from the YALTA (CRIMEA) CONFERENCE of February, 1945 and this Yalta formula was embedded in Art. 27 (3) of the UN Charter which reads as:

“3. Decisions of the Security Council on all other matters shall be made by an **affirmative vote of seven members including the concurring votes of the permanent members**; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”

It is evident from the wordings in the San Francisco Conference proceedings that many countries including India were not willing to accept “Veto” power. After much persuasion, they relented, only after Art 109(3) was enshrined in the Charter. Incidentally it is necessary to take a quick look at the provisions in Art. 109 for a clear understanding. It states:

“Art.109: 1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote

of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.”

Now let us also understand what was India's stand on this provision. India signed UN treaty in 1945. Sir Mudaliar made his views on veto very clear. He said:

“Now, I come to the whole question of the Yalta formula, the veto power. The position that my country, along with many other countries, took was this: We realized that in the immediate future the five great powers should act together. We realize that that combined and joint action can best be secured by the formula that was involved at Yalta, and that we can try and understand the reasons why the five great powers wanted this particular provision. We try to see, not only our side of the case and how much we disagreed with this power of Veto, But we tried to see also what the Great Powers had in mind when they suggested this formula and were so firmly standing by it during all the discussions in the committee. we realize that the organization had yet to be set up; That it had yet to function; That its credentials had yet to be laid down; And that some powers, great though they may be, were yet not quite experienced in international affairs.

We realized that it was quite justifiable that such power might feel rather exercised in their minds as to how these international conferences might ultimately turn out, and that it was legitimate on their part to wish to become members of such organizations with some safeguard like the Yalta Formula assured to them over a period of years.

On that understanding, my country was prepared to agree to the Yalta formula over a period. And I made my position clear, and that of my country clear-- and I believe several other countries did the same in the course of these discussion-- That while they were prepared to agree to the Yalta formula over the next ten years, it would be a very proper proposition on their part to urge that the whole position should be re-examined, Denouveau, without prejudice, and without commitments either of one kind or another, at the end of that period. That naturally took us to a consideration of the amendment sections and on what conditions amendment of the Charter may be proposed. And we felt that if this unanimity rule were not to be applied at the end of ten years to any proposal regarding the amendment of the Charter, We could safely, and with good conscience and with complete trust and confidence in the five great powers, agreed to the **complete Yalta formula during the intervening period of ten years.**”

From the above it is evident that countries signed the Charter with a clear understanding that the reforms in UN charter should be taken up latest by 1955 and the Veto to go. It has been 75 years and a formal intent to reform UN has not commenced.

But to present the scenario from legal & technical view point an attempt was however made in 1955 a resolution in UNGA(992(X) and UNSC [110(1955) Resolution of 16th Dec 1955-S/3504] was passed with the below comments:

UNGA:-”992(X). Proposal to call a General Conference of the Members of the United Nations for the purpose of reviewing the Charter: The General Assembly, Mindful that paragraph

3 of Article 109 of the Charter of the United Nations provides that if a General Conference of the Members of the United Nations for the purpose of reviewing the charter has not been held before the tenth annual session of the General Assembly, such a conference shall be held if so decided by a majority vote of the Members of General Assembly and by a vote of any seven members of the Security Council,

Believing that it is desirable to review the Charter in the light of experience gained in its operation, Recognising that such a review should be conducted under *auspicious international circumstances*,

1. Decides that a General Conference to review the Charter shall be held at an appropriate time;....” [547th plenary meeting, 21st November 1955.

UNSC- “Having considered resolution 992(X), adopted by the General Assembly on 21st November 1955, in which the Assembly decided that a conference to review the Charter shall be held at an appropriate time. ..Expresses its concurrence in the General Assembly’s decision, as set forth in resolution 992(x)”--Adopted at the 707th meeting by 9 votes to 1, 1 Union of Soviet Socialist Republics with 1 abstention (France).

It is interesting to note that by the very wordings of Art.109(3): “3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held *if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.*” the principle of Veto shall not be applicable, as affirmative concurrence all permanent members is not mentioned herein.

The third and significant contribution of India was that it expressed its desire that the United Nations would be the emerging World Parliament. In the concluding words of Sir

Mudaliar: “Mr. President, there is only one last word that I should like to say. I said that I shall go back an enthusiastic supporter of the Charter that emerges from this Conference, whatever defects I might have considered it to have at several stages of our deliberations. I go back in the belief that the time has come and will soon come when the drums of battle will cease to beat, when the battle flags of nations will cease to be unfurled. I go back with the hope, maybe the assurance, that here at San Francisco we have taken a step, we have made a move; we have advanced; and that sooner or later, perhaps sooner rather than later, there will be that far off Divine event to which the whole creation moves: the convocation of the parliament of man, the establishment of the Federation of the World. Thank you.” it can be seen that the desire to see the emergence of “Convention of Parliament of Man.” has also not fulfilled.

So, the opportunity to reform the UN should never be missed. More so in times of many multilateral organisations coming up. It is heartening to see that India, time and again been asking for UN reforms and there is a need for the democratic forces of the world to join together to save the planet from further destruction.

World Constitution and Parliament Association is vigourously engaged in its efforts in this direction to bring peace on the face of the earth. I seek your cooperation in our efforts to call for invoking Art.109(3) reforms.



Sir Arcot Ramaswamy Mudaliar , leader of Indian delegation to San Francisco Conference
Siging the UN Charter on 26th June 1945

FOR INDIA:
POUR L'INDE:
印度:
За Индию:
POR LA INDIA:

ARamaswami Mudaliar
V. T. Krishnamo Chari

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