Book Review

International Conflict and Peace

Basanti Mitra

International Law and the United Nations by Quincy Wright. Under the auspices of the Indian School of International Studies, Asia Publishing House, New Delhi, f960. Pp 134. Price Rs 11.25.

THE role of international law is one of moderation according to principles accepted by State practice —of the free inter-play of power rivalry inherent in the State system. The United Nations, and the League of Nations before it, have had to contend with policies of States over which they have had little control, exercising at the same time a restraining influence on the strength of the principles enshrined in the Charter and the Covenant. To effect a balance between politics and the rule of law is to maintain peace, but both organisations have been seriously limited by the structure of relationships amongst the Great Powers on which hinge their strength and weakness. In *International Law and the United Nations,* Professor Quincy Wright recognizes, in the first instance, that avoidance of war rests not on the strength of the United Nations, but rather on mutual fears.

The author considers that a political interpretation of the Charter as in a constitution is not necessarily harmful, for the United Nations is a social institution and must have ample room for development. The Charter is not the United Nations but only its fundamental document. As regards interpretation, he observes, ,"judicial interpretation, because of its authority, its precision and the rationalisation inherent in the judicial process closes the door to future development more than does political interpretation." (p 37) He thus leaves the door wide open for a broad acceptance of the principles of natural law and the development of the General Assembly when the Security Council is hamstrung by the veto, for a strict legal interpretation of the Charter may have limited flexibility in procedures and reduced the United Nations to ineffectiveness.

Apart from the fact that the United Nations Charter creates pledges which go beyond the bounds of traditional international law, the modern trend in the law of nations is a 'widening of horizons towards the rights of individuals and strengthening of the international community. For both purposes international law enters the domain of domestic jurisdiction jealously guarded as being within the sovereignty of States.

The very wide obligations in respect of human rights and social welfare in the Charter enables the General Assembly to criticise actions of States which it regards to be in contravention of the Charier; but since the scope of the General Assembly is limited to the power of recommendation, the principles embodied may only serve as an international standard till States have implemented them by legislation.

Of great importance is the right given to all members of the United Nations to foster, as a sacred trust of civilisation, the well-being of inhabitants of non-self governing territories. The General Assembly is thus given the power to criticise the metropolitan country for lack of progress, including promotion of self-government, in dependent areas. The colonial problem, long considered a domestic matter, is now within the sphere of international law, creating rights and obligations. The League had made no reference either to racial equality or self-determination in the text of the Covenant; and the mandates system, which broke new ground in dependency administration, applied exclusively to former colonies of Germany and Turkey.

In considering the trusteeship system and its advanced methods of supervision relatively to that of areas under the mandate, one notes with interest the right given to individuals, the inhabitants of trust territories, to petition the United Nations.

It is clear that the field of domestic jurisdiction is likely to change with the development of international law and the environment in which additional international obligations are accepted; therefore, in interpreting a member's rights in a dispute, the author would like the International Court of Justice to be the final arbiter. In the case of a civil conflict threatening international peace and security, the political organ should be given the power of decision in accordance with present practice.

But the task of international organisation is not merely the promotion of rights, but the prevention of war. Since the time of Hugo Grotius there has been speculation on the question of a just nnd unjust war, but the United Nations Charter itself makes no effort to define aggression. An attempt was made at the time of the League of Nations, in the Geneva Protocol in the direction of prohibiting the use of force. Over every possible dispute, States were to be under an obligation to use procedures of pacific settlement and in the event of a Slate resorting to hostilities without arbitration, it was to be designated the aggressor. The Protocol was never accepted by members of the League.

The Charter leaves the Security Council to decade whether a threat to peace, a breach of peace or an act of aggression has occurred. Professor Wright would like to see in the Charter a more definite commitment, and he advances the view that a State which has refused to comply with provisional measures, such as a cease-fire order, may be regarded as the aggressor. A clarification may always appear helpful, but unless the United Nations or its members are prepared to use force, a recommendation by the General Assembly would merely amount to recording the fact. The General Assembly declared the. Soviet Union an aggressor in Hungary in 1956, but could do little about it.

Another difficulty, an increasing concern of mutual assistance pacts, is subversive action by a State in the territory of another, generally known as 'indirect aggression'. In such a case the inherent right of individual and collective self-defence (Article 51) is said to operate although the Charter presumes that such right prevails only when there is an armed attack. One would have liked a further clarification of this controversial Article on The lines of the author's note on United Slates' Intervention in the Lebanon, in the

American journal of International Law, 1959, for Article 51 may turn out lo be a serious poser in the Charter. Professor Wright deplores the exaggerated development of NATO and the Warsaw Pact, prompted in large measure by General Mac Arthur's attempt to cross the thirty-eighth parallel in Korea in 1950, which ranged, the Communist fours against the United Nations,

The impetus towards regional pacts , sprang from failure of the collective security system under the Charier, for the condition regarding the concurrence of the Big Five, essential to the system, is not likely to he fulfilled. The Uniting for Peace resolution permits such action by the General Assembly. But it was initially opposed by the Soviet Union though later it accepted the principles underlying the resolution in the Suez crisis of 1956 and the Lebanon emergency of 1958

In his concluding chapter, Professor Wright points out the dangers and benefits of a review conference. The stress of international tension and the temptation to yield to propaganda moves have to be weighed against the educative value of such a conference. The role of the United Nations in world affairs can be effective only if pressure is exercised by public opinion in each country to strengthen the legal framework of the organisation. One is somewhat puzzled to find that the author has very little In say on the acceptance of compulsory jurisdiction by the International Court or the reservations made in regard to the optional clause. In view of the India Portugal case on rights of passage, his opinion on reservations to the optional clause might have been en lightening.

Without formal amendment, the Uniled Nations has developed procedures to mitigate the power of the w to. the use of mediators and commissions of conciliation, the development of the Central Assembly and the increasing use of Article 51 have had their impact in the direction of effectiveness rather than of inaction. At the same time, the author warns against the opinion entertained by some non-official groups in the United Stales that it would he better to strengthen the United Nations even at the risk" of withdrawal of the Soviet group of States, for such policy would be against the nature of the concert inherent in the United Nations system.

In tracing broadly the fundamentals of the United Nations and its development for the Indian leader, the author emphasises aspects of an international organisation not often taught or appreciated in India. However, Professor Wright is at his best in a close analysis *of* specific problems, and those who are familiar with his ideas on the status of Communist China, intervention and the right of self-defence. where he illumines with the light *of* reason, may miss such keenness of perception in the present volume.

The book may be heavy going for those unfamiliar with the texts of Ihe Covenant and the Charter, but with a companion such as *The United Nations: the First Ten years* led A B Wortley, University of Manchester. Manchester, 1957), it may be easier to appreciate the values of the United Nations. To the Indian reader!', texts of United Nations resolutions, such as the one on Uniting for Peace, may be helpful. Writers in the United States like Quincy Wright, Grayson Kirk and Lei and Goodrich, among others, in their efforts to foster a United Nations viewpoint, create the atmosphere of Woodrow Wilson's idealism. But. unhappily, till the United Nations means something to the peoples of the world, Ihe balance will be held by realists trying to maintain peace with justice.