Sino-Indian Crisis and United Nations

Basanti Mitra

It has often been said that the Chinese aggression against India could have been more effectively countered and China made to conform to the UN Charter had People's China been a member of the United Nations. It needs to be emphasised, however, that as far as threat to peace or the use of force is concerned, the UN Charter imposes certain obligations on non-Member States as well.

Thus Article 2, paragraph 6, of the Charter reads: "The Organization shall ensure that States which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security".

It needs to be seriously considered, therefore, whether India should not press for collective measures against the Chinese aggressor through the United Nations. Such a move would be perfectly consistent with our policy of non-alignment which has certain decided advantages. An analysis of the present situation can be made by considering the following.

INDIA'S policy of non-alignment faces in this hour of crisis its gravest challenge. An important aim of India's foreign policy, based on legal and ethical principles, has been the reconciliation of Communist China with the United Nations. In 1950, during the Korean war, it was repeatedly stated that the war could have been avoided if the representatives of Communist China had held their rightful place in the Security Council. The significance of the Korean war and the application of collective measures were not fully realized in India at the time. Consequently, India took up a neutral position when the Uniting for Peace resolution (1950) authorized the General Assembly to recommend collective measures should the Security Council fail, as a result of the Soviet veto, to assume its functions for the maintenance of international peace and security.

Since then both the Soviet Union and India have modified their position and India sent contingents for the United Nations Emergency Force set up at the initiative of the General Assembly to safeguard peace after the Suez crisis of 1956. It was realised that in order to render the United Nations effective, in times of crisis, a flexibility in procedures was called for, and even international lawyers have argued generally for both a political and legal interpretation of the Charter. The upshot of India's experience with the United Nations has been an attitude reflecting change in the use of force by the organization, and India readily supported the resolution, in February of 1961, calling for use of force by the Security Council, in the Congo, to stop civil war in the newly independent state. And now in the face of continuing and intensified hostilities by China, and when time is of the essence, Krishna Menon's recent statement justifying India's support for representation of Communist China in the United Nations, based on certain principles, calls for comment and a certain measure of elucidation. For, if India is to meet her present crisis with a firm belief in non-alignment, her only way may be through the United Nations, strengthening the organization in the process.

Chinese Response

If the pivotal place in India's policy in regard to China has been to effect reconciliation with the United Nations, with the belief that all other disputes and conflicts would subside with the resolution of this issue, the People's Republic of China, in the United Nations, based on certain principles, calls for comment and a certain measure of elucidation. For, if India is to meet her present crisis with a firm belief in non-alignment, her only way may be through the United Nations, strengthening the organization in the process.

"Even today in the UN when the issue of Chinese representation is brought forward, we have not changed our position in spite of the fact that China is waging a ruthless war on us. Our position is based on certain principles."

(The Statesman, October 25).

1 "Even today in the UN when the issue of Chinese representation is brought forward, we have not changed our position in spite of the fact that China is waging a ruthless war on us. Our position is based on certain principles."

(The Statesman, October 25).

in the end. They would prevail far less by fear of armaments because that produces a new context of things" (1954).

The alternatives before non-aligned India are either to go it alone, or seek co-operation through the United Nations. The latter policy has certain decided advantages. An all-out effort should first be made to mobilise public opinion in other countries through the United Nations. India has so far done precious little to utilize her presence in the United Nations, while Communist China is out, India has not only abstained during the Assembly resolutions on Tibet, but in early years, in 1950, she prevented a discussion lest it offend the People's Republic of China. It may be explained that by following a policy of non-interference we are trying to avoid open conflict with China. This explanation is no longer valid.

UN Can Act against Non-Member

Popular opinion may also point to the fact that the present hostilities would not have occurred, or that Communist China could have been made to conform to Charter principles if she had been included in the United Nations. As far as a threat to peace, or, the use of force is concerned, it should be emphasized that the Charter of the United Nations imposes certain obligations on non-Member states. Thus Article 2, paragraph 6 reads: "The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security". Included in the principles of the Charter, is the idea that Members shall refrain from the threat or use of force...
against the territorial integrity or political independence of any state. The United Nations has taken action against non-Member states, notably political action in the early years against the Franco government in Spain, and in 1950, collective measures against North Korea, likewise a non-Member state. India need not, therefore, wait for People's China to be seated in the U.N. In the present circumstances of armed aggression by China and consistent with her policy of non-alignment, India should press for collective measures through the United Nations.

There are legal arguments to be considered. In the long run and in normal circumstances, the objective rather than the subjective test should apply in a case of representation—Recognition, should be distinguished from representation, for the former is both a political and legal act within the prerogative of a sovereign independent state. The United Nations Secretariat in a Memorandum (1950), going into the legal aspects of the problem of representation in the United Nations, was at pains to point out that a Member could vote to accept a representative of a government it did not recognize, and that such a vote did not imply recognition, or a willingness to assume diplomatic relations.

Recognition and Representation

A leading case on the status of a revolutionary government, in which no less a person than Chief Justice Taft of the United States Supreme Court acted as sole arbitrator, was the 'Tinoco Claims Arbitration' in 1923, between Great Britain and Costa Rica. Before an international tribunal the principles to be applied were that of international law and not the policy laid down by the executive of a sovereign power, which the municipal courts were bound to follow. In the course of his award, the arbitrator made an interesting observation on the status of a revolutionary government which had established effective authority during a period of time in Costa Rica, and whose legal validity was later denied by the Costa Rican Government itself. 'To hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a de facto government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government cannot establish a new government. This cannot be, and is not, true.'

Subjective Test and Representation

Thus effective authority, embodying sovereign power and government control, were assumed to be the proper test of the existence and legality of a government before an international tribunal. The subjective tests are usually applied by a sovereign when he chooses for political reasons not to recognize an existing fact, and such moral or policy tests may comprise of failure to assume international obligations, or inadequate respect for human rights and fundamental freedoms. While subjective tests may be important in questions of admission of new Members, they are not equally pertinent in that of representation, for China is already a Member of the United Nations Security Council, and the question is which of the two rival claimants be deemed to represent China.

The validity of these arguments in normal conditions notwithstanding, the advantage India may gain by collective measures through the United Nations still remains substantial, and, in turn, throws a certain amount of light on the issue of representation. The United Nations before it applies sanctions which may be political, economic or military in nature, may determine whether there has been a threat to the peace, breach of the peace or act of aggression. Such a resolution was passed, in this instance after action in Korea, in February 1951, by the General Assembly branding Communist China as an aggressor state. A legal authority upholding the objective test, in the case of Chinese representation, nevertheless observed: 'As long as the Chinese Communist government remains in aggression against United Nations forces, it would seem politically and morally impossible to prefer its claim to representation in United Nations organs over the intrinsically weak claim of the Chinese Nationalist government to represent China."


Clarification of Soviet Stand

Another advantage of discussion in the United Nations would be clarification of the Soviet attitude. The Soviet delegate, Mr Zorin, strikes a mechanical note in his recent speech to the General Assembly on inclusion of Communist China in the United Nations. If the issue were pressed further and India assured of support, in the General Assembly, for her stand on aggression by Communist China, would the Soviet Union on a vital question of India's national safety bow to the will of the majority in the United Nations, or support a Communist country against India? If the Soviet Union adopts an intransigent attitude, it may wipe out the goodwill created in India by her support for India over Kashmir and Goa. Apart from this, the Soviet Union has made known her views that the question of revision of the Charter can be raised only after settlement of the Chinese representation question. Will the Soviet Union continue to offend Afro-Asian sentiment in the United Nations which is demanding increased representation in an enlarged Security Council by opposing every move to develop the United Nations till Communist China is reconciled with the organization? Every autumn during the annual session of the General Assembly the Chinese representation question assumes greater importance. Time is now opportune to discuss its implications fully whilst the General Assembly is in regular session.

Within the institutional framework of the United Nations, there is ample room for individual initiative, and the manner in which the United Nations Emergency Force came into being is, in this regard, one of the illuminating chapters of United Nations history. A recent writer has characterised the UNEF as "an expression of a positive and responsible realism." Will India sit still when she has the opportunity not only to mobilize the United Nations in her favour, but also help in the evolution of a truly international force? A combined and co-ordinated pressure imposing political and military sanctions and an economic embargo against mainland China will enable the General Assembly to come into its own, acting no longer for the Western alliance, but in the name of the world community.