

THE AUTHOR has divided his work into three parts : the first deals with doctrinal assessment of the theory of implied powers, the second with practice and the third gives a critique of the problem under consideration.

Before coming to the international field, Khan briefly touches upon the constitutional position in the United States, Canada, Australia and India. Citing *State of West Bengal v. Union of India*<sup>1</sup> he concludes that the Supreme Court of India has rejected the doctrine of implied powers. This is, however, just contrary to the majority view of the Court. The Court held that

Power to legislate for regulation and development of mines and minerals under the control of the Union, would by necessary *implication* include the power to acquire mines and minerals.<sup>2</sup>

That the doctrine of implied powers has not been rejected is again clear from the following observation of the majority :

Exercising power under the diverse entries...the Union Parliament could legislate so as to trench upon the rights of the State in the property vested in them. If the exclusion of State property from the purview of Union legislation is regarded as *implicity* in...List I, it would be difficult if not impossible for the Union Government to *carry out its obligations* in respect of matters of national importance.<sup>3</sup>

So, it is the functional aspect of the Union's powers that is unequivocally approved by the Court and it in no way undermines the doctrine of implied power. What Khan has stated is the dissenting view of Justice Subba Rao and not the view of the Supreme Court itself. Analyzing the doctrine of implied powers, Khan makes some important observations. He criticized the advisory opinion of the International Court of Justice in the *Certain Expenses of the U.N.* case for having "projected the objective personality of the U.N. a little too far into the sensitive domain of State sovereignty...".<sup>4</sup> He, however, maintains that the I.C.J. dicta do not provide a *carte blanche* to the United Nations and have built-in checks and balances.<sup>5</sup> He rightly concludes that "since the levers of operation continue to be within the hands of its members there is no danger of its (United Nations) going out

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1. A.I.R. 1963 S.C. 1241.

2. *Id.*, at 1265-66. Italics added.

3. *Id.*, at 1259. Italics added.

4. Khan, *Implied Powers of the United Nations* 32.

5. *Id.*, at 33.

of control".<sup>6</sup> He refers to the views of legal scholars like Kelsen, Finn Seyersted, Lauterpacht, and Fitzmaurice and seems to rally round the view that the doctrine of institutional effectiveness (which renders the institution effective rather than ineffective) is quite harmless. It might have been useful to elaborate the doctrine of implied powers as seen by Finn Seyerstead.<sup>7</sup> The latter discards the implied powers doctrine in favour of the concept of inherent legal powers of an organization. Consequently he does not favour the theory of 'derived' subjects of international law.<sup>8</sup> He comes to the logical conclusion that the absence of a provision regarding subsidiary organ has not prevented organizations from establishing one.<sup>9</sup> Professor Seidl-Hohenveldern who has been writing on the subject for some time does not find any place in Khan's work. He is one of many other writers like Kasme and Reuter who deny the objective international personality of the United Nations.<sup>10</sup> Accordingly, he takes the view that constitution of an international organization is not binding on a non-member and that the latter can present any claims to individual members in preference to the organization.

The practice of the United Nations relating to its implied powers in matters of peace-keeping, treaty-making, suspension, expulsion and admission of members *etc.* is dealt in five chapters. Discussing the implied powers of the United Nations in respect of its peace-keeping functions, Khan dwells on the concept of "preventive diplomacy" as conceived by Dag Hammarskjold.<sup>11</sup> The aim of this concept was to eliminate conflicts and to prevent and "authority vacuum" by asserting the presence of the United Nations. The author attempts to test the efficacy of this concept in the light of United Nations' experience in U.N.E.F., O.N.U.C. and other operations. Regarding the recent withdrawal of U.N.E.F. on the request of President Nasser, Khan observes that "if it is remembered that the U.N.E.F. was symbolic of non-enforcement by force but pacification by prersure—U. Thant's action might well be understood."<sup>12</sup> But, he does not say whether this withdrawal is to be treated as failure of the United Nations to assert its implied powers. He concludes that there is "conclusive proof to the theory that the U.N. was intended to have, and has, abundant *unexpressed* powers in matters relating to world peace."<sup>13</sup> But one cannot

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6. *Id.* at 35.

7. Seyerstead has been quoted by Dr. Khan, *Id.* at 13.

8. Seyerstead, "International Personality of Inter governmental Organizations," 4 *Ind. J. Int'l* 69 (1964).

9. See *id.* at 72 (n. 243).

10. Seidl Hoenveldern cited by Seyersted, *id.* at 234.

11. See *Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1959-15 1960*, General Assembly Official Records, 15th Session, Suppl. No. I.A. Also, "Do we need the U.N.?" June 1959 at 26.

12. *Op. cit. supra* note 4 at 57. See also Jack Israel Garvey, "United Nations Peacekeeping and Host State Consent," 64 *Am. J.I.L.* 241-269 (1970).

13. *Id.*, at 78. Italics added.

justify the withdrawal of the U.N.E.F. in consonance with this view. While dealing with the implied treaty-making powers of the international organizations, the author takes into account the draft articles prepared by the International Law Commission on the subject of law of treaties. Since then the Vienna Convention on the Law of Treaties, 1969 has already taken place and it has modified the draft articles to some extent. For example, article 20(3) of the Convention (article 17 of the I.L.C. draft cited by Khan) now reads, as follows :

When a treaty is a constituent instrument of an international organization *and unless it otherwise provides*,<sup>14</sup> a reservation requires the acceptance of the competent organ of that organization.

Article 75 of the ILC draft on which Khan makes "special comment" has undergone complete change in article 80 of the Vienna Convention and the phrase "treaties entered into by parties to the present articles" is no longer to be found in that article. Similarly, many other relevant articles have also been considerably modified (e.g. articles 3 and 4 of the I.L.C. draft). The author has made a useful doctrinal assessment of the treaty-making capacity of the international organizations. He, however, misses to mention the views of D.W. Bowert<sup>15</sup> and Chiu.<sup>16</sup> His conclusion about the doctrinal position is not identical with Weissberg who advocates a sort of mixed theory. Weissberg thinks with Briery that agreements concluded by an international organization should have some connection with its purposes and functions. Like Carroz and Probst he does not rely solely on the legal personality of the organization. In practice as absence of express provisions has not inhibited the organization in treaty-making, Khan seems to prefer a single criterion *i.e.* how far function and purposes of the organization require "utilisation of the treaty technique."<sup>17</sup>

In his next chapter on implied powers relating to suspension, expulsion and forced withdrawal of member states, of the organization, he admits the existence of such powers but convincingly maintains that their exercise may not be conducive to the fulfilment of its purpose.<sup>18</sup> In this area he advocates "under utilisation of the implied powers."<sup>19</sup> If "suspension" is to be preferred to "expulsion", as Jenks does on the ground that a suspended member is not released from its obligations to the organization, the validity of the proposition seems doubtful. The

14. This phrase was absent in the draft articles of the I.L.C.

15. Bowett, *The Law of International Institutions* (1963) especially at 278.

16. Hunddah Chiu, *The Capacity of International Organizations to conclude Treaties, and the special legal aspects of the Treaties so concluded.* (The Hague, 1966) *esp.* at 32.

17. *Op. cit.*, *supra* note 4 at 112. But see at 222 where his general conclusion is entirely identical with Weissberg's mixed theory.

18. See *Id.* at 124.

19. *Id.* at 135.

question arises is it legally incumbent on a suspended member to continue to abide by obligations during the suspension period ?

The crux of chapter five on "admissions and implied powers of international organizations" is that express criteria for membership have been liberally construed by the international organizations so as to be able to admit states to membership. To this reviewer, it is in the domain of liberal interpretation that these organizations effectively exercise their implied powers.

In chapter six on "subsidiary organs of the U.N. and implied powers" Khan takes the U.N. Administrative Tribunal for his case study. Undoubtedly his study of this Tribunal is quite comprehensive but with more than hundred sub-organs existing, one cannot perhaps hazard any general conclusions regarding suborgans as a whole. Moreover, Administrative Tribunal being a very specialized type of sub-organ, it may be preferable to study other sub-organs which have some common features. A study based on their practice could lead to more reliable conclusions regarding sub-organs as a whole. In this respect, one might include UNCTAD, UNICEF and other organs of like nature. It is to be noted that UNCTAD is entitled to adopt multilateral legal instruments and it has a further organ called Trade and Development Board. It is provided that :

The Board shall establish such subsidiary organs as may be necessary to the *effective* discharge of its functions.<sup>20</sup>

Thus, one can visualise the possibility of organs subordinate to sub-organs also enjoying implied powers for the *effective* discharge of their functions. At the end of the chapter the author observes that "the doctrine of implied powers serves as a double-edged sword. It can be invoked to claim fresh fields of activity as well as to limit the sanctioned authority."<sup>21</sup> This observation is, however, inconsistent with his statement in the preface which is as follows :

But one can see.....that the doctrine of implied powers is not a double-edged sword, that the General Assembly can invoke the doctrine to establish an administrative tribunal with judicial powers but that it cannot draw upon the same source for appellate authority.<sup>22</sup>

Chapter seven deals with "legal controls of the exercise of implied powers". He discusses this aspect in the light of the *Expenses* and the *IMCO* opinions. In the author's opinion "the view that international organs remain the final arbiters of their acts, is a (sic.) oversimplification

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20. E/Conf, 46/L. 28, Annex A at 132 ; 3 *Int'l Legal Materials* 986 (1964). Italics added.

21. *Op. cit. supra* note 4 at 195.

22. *Id.* at XI.

of the problem".<sup>23</sup> He, therefore, favours some machinery to review their acts. In this regard, he recommends the model of International Trade Organization article 96 of which provides for necessary review-procedure.

In fine, although Khan has chosen only limited fields for the study of implied powers of the United Nations, he has done a good job of it. The work is well-written, lucid and a contribution of value. There are quite a few spelling and other mistakes<sup>24</sup> but they do not affect the readability of the book.

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23. *Id.* at 213.

24. Stray examples : this provisions (pages 18, lines 8), provisions (p. 61, note 59), affect and not effect (page 75, line 34), Justice (p. 84, line 20), inverted commas are not closed (page 86, line 2 ; page 87, line 20), simile and not simiie (p. 160, line 14), fortuitous and not fortuititious (page 202, line 7), perennial and |not prennial (page 208, line 13), consistent and not consisted (page 214, line 9), concerned and not concerned (page 218, line 13), "and" is superfluous (page 221, line 18), would and not wolud (page 221, line 36).

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