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CHARTER
OF THE
UNITED NATIONS

COMMENTARY AND DOCUMENTS

SECOND AND REVISED EDITION

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tion of the principles in accordance with which the Organization a· its Members are to act in pursuit of the declared purposes of t United Nations. These principles include the following: the sovereig equality of Members, the loyal fulfillment of obligations under the Charter, the peaceful settlement of international disputes "in such i manner that international peace and security, and justice, are nc endangered," abstention from any threat or use of force "against th territorial integrity or political independence of any state," full assist ance to the Organization in any action that it takes under the Charter; no assistance to any state against which such action is being taken, enforcement of respect for these principles by non-members in so far as it may be necessary to the maintenance of international peace and security, and no intervention in matters which are essentially within the domestic jurisdiction of a state.

For the most part these principles are in the nature of basic directives which clearly must guide the conduct of Organization and Members alike if the declared purposes of the United Nations are to be attained. Nor is the application of these principles limited to Members, for in a paragraph somewhat reminiscent of Article XVII of the Covenant the general principle is laid down that the conduct of states not Members of the Organization is to be made to conform to these principles "so far as may be necessary for the maintenance of international peace and security."

One of the principles enumerated in this Article, however, appears to strike a somewhat negative note. The new paragraph 7, a revised version of a paragraph of the Dumbarton Oaks Proposals which applied only to the pacific settlement of disputes,[5] denies to the Organization any authority "to intervene in matters which are essentiall within the domestic jurisdiction of any state" or to "require the Mem bers to submit such matters to settlement under the present Charter It is stated, however, that this principle shall not prejudice the appl cation of enforcement measures under Chapter VII. This paragraph constitutes potentially the most substantial limitation that is to be found anywhere in the whole Charter upon the activity of the United Nations.[5a]

4. MEMBERSHIP AND ORGANS

The Charter contains much more detailed provisions on the questior of membership than were to be found in the Dumbarton Oaks Proposals. The distinction between original and elected Members, ci

[5] Chapter V, Section A, par. 7. See *infra*, p 578.
[5a] For int ion in practice, see comment on Article 2(7), *infra*, p. 1 icle ticle

lined in the Covenant of the League,[6] but which was not made, at east expressly, in the Dumbarton Oaks Proposals, is clearly stated. The original Members are those states which, having participated in the United Nations Conference at San Francisco or having previously signed the Declaration by United Nations of January 1, 1942, signed the Charter and ratified it in accordance with Article 110.[7] Elected Members are those states admitted to membership by decision of the General Assembly upon recommendation of the Security Council. The criterion laid down in the Dumbarton Oaks Proposals for membership is supplemented so far as elected Members are concerned by the requirements that applicants for membership must "accept the obligations contained in the present Charter" and be judged by the Organization "able and willing to carry out these obligations."[8]

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights of membership by the General Assembly upon the recommendation of the Security Council.[9] In like manner a Member "which has persistently violated the Principles contained in the present Charter" may be expelled.[10] While there is in the Charter no express recognition of the right of withdrawal, it is generally understood that this right exists.[11]

The Charter adds to the list of organs recognized by the Dumbarton Oaks Proposals as being the "principal organs" [12] of the United Nations the Economic and Social Council and the Trusteeship Council.[13] The first was provided for in the Proposals, but was not given the recognition in question, presumably because it was felt to be in a more subordinate position than the organs included in the list. It was included at San Francisco because of the increased importance that came to be attached to it in connection with the further development of the powers of the Organization in the economic and social field. The second was not provided for in the Proposals, and so the question of its inclusion first came up at the Conference when the decision was finally taken to set up an international trusteeship system.

5. THE GENERAL ASSEMBLY

The first-named of the principal organs of the United Nations the first to be treated in the Charter as to its composition, functio

[6] Article 1. *See infra*, p. 555.
[7] *Charter of the United Nations*, Article 3.
[8] *Ibid.*, Article 4.
[9] *Ibid.*, Article 5
[10] *Ibid.*, Article 6.
See comment on Article 6, infra, p. 142.
[12] These were a General Assembly, a Security Council, an internation
rd a Secretariat. [13] *Charter of the United Nations*

powers and procedure is the General Assembly. This is logical view of the fact that the Assembly is the most representative org of the United Nations, and the one from which the authority of ce tain of the other organs is largely derived. It is also the organ whic is chiefly responsible for the performance of the functions of di cussion, recommendation, review, election, financial control and initi tion of Charter amendments which are so important to the successfi functioning of the United Nations. If the organization of the Unite Nations were to be compared with that of a state, the Genera Assembly might be called the Parliament or Congress. This analog should not be pressed too far, however, because, since the Unitec Nations is not a world state having independent powers of its own, the General Assembly is not a legislative body in the sense in which that term is commonly used. It can initiate studies, discuss and recommend, but it cannot adopt legislation binding upon Members of their citizens.

The General Assembly consists of the "Members of the United Na tions," each of which has "not more than five representatives." [14] Eac has one vote.[15] Decisions on "important questions," such as recom nendations with respect to the maintenance of international peace and security, the election of non-permanent members of the Security Council, the admission of new Members, and budgetary decisions are taken by two-thirds majority of those present and voting.[16] Decisio on other questions, including the determination of additional cat gories of "important questions," are made by a majority of those pr ent and voting.[17] The General Assembly meets in regular annual s sions and in such special sessions as occasion may require. It adc its own rules of procedure, including rules governing the public cl acter of its proceedings.[18]

The functions and powers of the General Assembly cover a w range. They can be conveniently grouped under the following hea *deliberative, supervisory, financial, elective* and *constituent.*

The *deliberative* function is performed by virtue of extensive po ers of discussion and recommendation which the Charter vests in t General Assembly. Under Article 10, it may discuss "any questions any matters within the scope of the present Charter or relating the powers and functions of any organs provided for in the prese Charter." [19] Furthermore, it may make recommendations thereon Members of the Organization or to the Security Council, subje the provision that the General Assembly is not to make a rec nendation regarding any dispute or situation while the Security C

.ticle 9.
'icle 18(1)
[16] *Ibid.*, Article 18(2).
[17] *Ibid.*, Article 18(3)
[18] *Ibid.*, Article
[19] *Ibid.*, Article

is exercising in respect thereof the functions assigned to it in the esent Charter, unless the Council so requests.[20] The Charter also ves the Assembly the power to initiate studies and make recommenations for purposes of "promoting international cooperation in the olitical field and encouraging the progressive development of interational law and its codification," and "promoting international cooperation in the economic, social, cultural, educational, and health elds, and assisting in the realization of human rights and fundamental reedoms for all without distinction as to race, sex, language, or religion." [21] Article 14 gives the General Assembly broad authority to recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations." [22]

The *supervisory* function of the General Assembly is exercised through grants of power to control and regulate the activities of other organs and agencies. While the Security Council is made independently responsible for the maintenance of international peace and ecurity, it is to some extent subject to Assembly influence. Not only s it stated in the Charter that the General Assembly "shall receive and consider annual and special reports from the Security Council," but it is also specified that these reports "shall include an account of the measures that the Security Council has decided upon or taken maintain international peace and security." [23] These may then be scussed by the General Assembly and may lead to recommendations that body to the Council or to the Member States. The General sembly also receives reports from the other organs of the United ns.[24] The report of the Secretary-General (Article 98) is of al importance since it serves as the basis for the general discusthe opening of the ordinary sessions of the General Assembly.[25] the Trusteeship Council and the Economic and Social Council act under the authority and close supervision of the General Assembly.[26] The General Assembly is given specific supervisory powers connection with the administration of trust territories.[27] The staff the Secretariat is appointed under regulations established by the eneral Assembly.[28] The General Assembly is also empowered to ake recommendations for the coordination of the policies and activities of the various specialized bodies which either operate directly nder its authority or are brought into relation with the Organization v agreements which the General Assembly approves.[29]

[20] *Ibid.*, Article 12(1).
[21] *Ibid.*, Article 13.
[22] *Ibid.*, Article 14.
[23] *Ibid.*, Article 15(1).
[24] *Ibid.*, Article 15(2).
[25] This was also the practice in the League of Nations.
[26] *Ibid.*, Articles 60 and 85.
[27] *Ibid.*, Articles 85 and 87.
[28] *Ibid.*, Article 101.
[29] *Ibid.*, Articles 57, 58, 60, 6

The *financial* function of the General Assembly is closely related to the supervisory. In the performance of this function the Assembly is directed to "consider and approve the budget of the Organization," [30] and to apportion expenses among the Members.[31] The General Assembly is also made responsible for approving financial and budgetary arrangements with specialized agencies and examining the administrative budgets of such agencies "with a view to making recommendations to the agencies concerned." [32]

The *elective* function of the General Assembly places it in a central position in the Organization since the other organs are dependent upon the Assembly in varying degrees for the choice of their members. Thus the General Assembly elects the non-permanent members of the Security Council,[33] all the members of the Economic and Social Council,[34] and a part of the members of the Trusteeship Council.[35] Acting concurrently with the Security Council, it participates in the election of judges of the International Court of Justice.[36] The Secretary-General is "appointed" by the General Assembly upon the recommendation of the Security Council.[37]

The *constituent* function of the General Assembly finds expression in the provision that amendments shall in the first instance be adopted by two-thirds vote of the Assembly.[38] It is also provided that the decision to call a General Conference to review the Charter shall be taken by the General Assembly, with the concurrence of the Security Council.[39] As we have already seen, it is the General Assembly which, upon the recommendation of the Security Council, admits new members to the Organization.[40]

This survey shows the importance of the role of the General Assembly in the United Nations. In one respect, the General Assembly's position in the United Nations differs from that of the Assembly under the Covenant. The provisions of the Covenant did not differentiate clearly the functions and powers of the Assembly and Council, particularly in connection with the maintenance of peace. In practice a differentiation of function did emerge, but it was continually being modified by changes that occurred in the prestige and

[30] *Ibid.*, Article 17(1).
[31] *Ibid.*, Article 17(2).
[32] *Ibid.*, Article 17(3).
[33] *Ibid.*, Article 23(1).
[34] *Ibid.*, Article 61(1).
[35] *Ibid.*, Article 86(1).
[36] *Statute of the International Court of Justice*, Article 4(1).
[37] *Charter of the United Nations*, Article 97.
[38] *Ibid.*, Article 108.
[39] *Ibid.*, Article 109.
[40] *Ibid.*, Article 4.

influence of the two bodies. A certain amount of confusion and uncertainty necessarily resulted. The Charter provides that as regards *action* for the maintenance of international peace and security the Security Council is primarily responsible. However, the General Assembly has extensive powers of discussion and recommendation outside the sphere reserved to the Council. It was clearly intended to become the international forum for the discussion of matters of common concern where, by methods of reason and persuasion, action in support of common objectives may be furthered.

6. THE SECURITY COUNCIL

If we continue our analogy of the Organization of the United Nations under the Charter to the government of a state, it becomes somewhat difficult to find an organ of national government which corresponds closely to the Security Council. This is largely due to the fact that under the plan of the Charter, provision is made for a decentralized arrangement for the discharge of those duties which we ordinarily think of as executive in character. The result is that the functions and powers ordinarily associated with the executive branch of government, in so far as provision is made for them in the Charter, are divided between three organs – the Security Council, the Economic and Social Council, and the Trusteeship Council. In this respect the Charter plan differs markedly from the plan of the League Covenant which centralized functions of an executive character in the Council. Under the Charter, however, the Security Council is charged with the primary responsibility for the maintenance of peace and security, the function which historically is most closely associated with the executive.

The Council is composed of five permanent members (China, France, the Soviet Union, the United Kingdom and the United States) and six non-permanent members elected for two year terms by the General Assembly. In the election of non-permanent members, the General Assembly is required to pay due regard to the contribution of Members of the United Nations to the maintenance of international peace and the other purposes of the Organization, and also "to equitable geographical distribution." [41] The Security Council is to be so organized "as to be able to function continuously," and to this end each member of the Council is to be represented at all times at the seat of the Organization.[42]

The powers of the Security Council are defined in generous terms to permit it to fulfill its "primary responsibility." It can intervene in any situation or dispute whose continuance is likely to endanger the

[41] *Ibid.*, Article 23(1).

[42] *Ibid.*, Article 28.

maintenance of international peace and security for the purpose of bringing about a peaceful settlement, and in case it determines the existence of "any threat to the peace, breach of the peace, or act of aggression," it can decide what measures are to be taken "to maintain or restore international peace and security." [43] All functions of the United Nations under trusteeship agreements for areas designated as strategic are exercised by the Security Council.[44] The Members of the United Nations agree "to accept and carry out the decisions of the Security Council in accordance with the present Charter." [45] In discharging its duties the Security Council is bound to act in accordance with the purposes and principles of the Organization.[46] The Security Council is also responsible for formulating plans to be submitted to the Members of the United Nations "for the establishment of a system for the regulation of armaments." [47]

The question of Security Council voting procedure caused the most extended and heated discussion at San Francisco. The rule finally adopted [48] frankly recognizes the larger responsibility of the greater powers for the maintenance of peace and makes any effective action by the Security Council dependent upon great power agreement. Decisions on procedural questions can be taken by the affirmative vote of any seven members of the Council. Decisions on all other matters, however, require in addition the concurrence of all the permanent members of the Security Council, with the proviso, however, "that in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting." [49]

The idea back of the voting rule appears to have been that the success of the United Nations is wholly dependent upon the continuing agreement of the great powers, upon the ability of the principal members of the war-time coalition to continue in peace the cooperation which enabled them to prosecute the war to a successful conclusion. This conception was based on the premise that, with the distribution of power that would in all probability exist at the conclusion of the war, there would be no real possibility of taking enforcement action against certain at least of these great powers, and very little chance, judging by League experience, of making the United Nations operate successfully without their full participation and support. So, in effect, the United Nations is a league of peace-loving nations with an alliance of great powers for keeping the peace as its hard core of military strength and political reality. This of course involves a discrimina-

[43] *Ibid.*, Article 39.
[44] *Ibid*, Article 83(1).
[45] *Ibid.*, Article 25.
[46] *Ibid.*, Article 24(2).
[47] *Ibid.*, Article 26.
[48] *Ibid.*, Article 27.
[49] *Ibid.*, Article 27(3).

tion against the smaller nations which did not exist, at least on paper, under the League system, since under the Covenant unanimity was required for important Council decisions and any state, great or small, had an equal opportunity to protect its interests by an adverse vote.[50]

7. THE INTERNATIONAL COURT OF JUSTICE

Continuing our analogy, we can have little difficulty in identifying the Court as the judicial organ of the United Nations. In the course of the Dumbarton Oaks Conversations, the question of a court was discussed and agreement was reached that an international court of justice should be established as one of the principal organs of the proposed Organization. It was also agreed that the Statute of the Court should be a part of the Charter of the United Nations. These conclusions were later adopted at San Francisco. It was impossible, however, at the time of the Dumbarton Oaks Conversations, to conclude an agreement upon the constitution and powers of the proposed court. Two views were in conflict: one which held that the proposed court should be a continuation of the Permanent Court of International Justice, brought into being under the Covenant of the League of Nations, and the other which held that this should be an entirely new court even though its statute might be based largely on the Statute of the Permanent Court.[51] There was also a difference of opinion as to whether or not the court should have compulsory jurisdiction.

At San Francisco it was decided that there should be a new court, not a continuance of the Permanent Court.

On the questi n of the Court's jurisdiction, there was strong support for the establishment of a general system of compulsory jurisdiction, but the view that finally prevailed took account of the fact that some states were apparently not ready to accept it. Thus a system was adopted under which each Member may by a declaration accept the compulsory jurisdiction of the Court, conditionally or unconditionally.[52] As a concession to the proponents of a general system, it is provided that declarations made under Article 36 of the Statute of the Permanent Court of International Justice which are still in force "shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of

[50] *Covenant of the League of Nations,* Article V, paragraph 1, *infra,* p. 557. On question of voting procedure, see Koo, Wellington, Jr., *Voting Procedures in International Political Organizations,* New York, 1947.

[51] *Revised Statute of the Permanent Court of International Justice,* International Court of Justice, Series D, No 1 (4th ed.), p. 13–28 and Hudson, Manley O., *The Permanent Court of International Justice, 1920–1942: A Treatise,* New York, 1943, p. 669–81.

[52] *Statute of the International Court of Justice,* Article 36, *infra,* p. 619.

Justice for the period which they still have to run and in accordance with their terms." [53]

The Statute as finally approved [54] follows very closely that of the Permanent Court of International Justice. The Court is composed of a body of independent judges, 15 in number, elected for nine-year terms.[55] Judges are elected by the General Assembly and the Security Council, voting concurrently, from a list of nominations submitted by national groups.[56] The Court remains permanently in session.[57] Only states may be parties before the Court.[58] The conditions under which states not members of the United Nations shall have access to the Court are laid down by the Security Council.[59] Jurisdiction comprises "all cases which the parties refer to it" and all matters "specially provided for in the Charter" or "in treaties and conventions in force." Compulsory jurisdiction in enumerated categories of legal disputes may be accepted by special declaration, conditionally or unconditionally.[60] The Court decides cases generally on the basis of law.[61] The Charter provides that either the General Assembly or the Security Council may request the Court to give an advisory opinion on any legal question.[62] Other organs of the United Nations and specialized agencies may similarly request advisory opinions, if so authorized by the General Assembly.

While the Court which is provided for under the terms of the Charter and Statute is essentially the same as the Permanent Court of International Justice, there is one respect in which a change of some importance has been made. Whereas the Permanent Court's position was somewhat anomalous, being neither fully independent nor a recognized part of the League system, the new Court is the recognized judicial organ of the United Nations.[63]

8. THE SECRETARIAT

The Secretariat is the principal administrative agency of the United Nations. Every organization requires an administrative staff which will perform the numerous detailed day-to-day tasks which are necessary to the efficient performance of its functions. The recruiting and directing of such a staff for an international organization present special problems. The experience of the League of Nations demonstrated the importance of the work of such a staff and that the special prob-

[53] *Ibid.*, Article 36(5).
[54] See *infra*, p. 611.
[55] *Statute of the International Court of Justice*, Articles 2, 3 and 13.
[56] *Ibid.*, Article 4.
[57] *Ibid.*, Article 23.
[58] *Ibid.*, Article 34(1).
[59] *Ibid.*, Article 35(2).
[60] *Ibid.*, Article 36.
[61] *Ibid.*, Article 38.
[62] *Ibid.*, Article 96.
[63] *Ibid.*, Article 92.

lems arising in connection with the organization and direction of an international administrative service are capable of reasonably satisfactory solutions. The provisions of the Charter dealing with the Secretariat are based upon careful study and evaluation of this experience.[64]

The Secretariat is headed by a Secretary-General "appointed" by the General Assembly upon the recommendation of the Security Council.[65] The proposal of the Sponsoring Governments that express provision should be made in the Charter for four deputy secretaries-general was not accepted for the declared reason that it was judged better not to attempt to anticipate too far in advance the administrative requirements of the Secretariat.[66] The staff is appointed under regulations established by the General Assembly.[67] Appropriate staffs are "permanently assigned" to the Economic and Social Council, the Trusteeship Council, and, as required, other organs of the United Nations. These staffs form a part, however, of the Secretariat,[68] and remain subject to the Secretary-General's direction.[69]

The functions of the Secretary-General are largely suggested by what has already been said. He is "the chief administrative officer of the Organization."[70] The Secretary-General acts "in that capacity" at all meetings of the General Assembly, the Economic and Social Council, the Trusteeship Council, and the Security Council.[71] He is required to make an annual report to the General Assembly on the work of the Organization.[72] The Secretary-General "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."[73] At San Francisco, certain provisions were put into the Charter with a view to assuring the independence and efficiency of the Secretariat. The Secretary-General and his staff are not to seek or receive, in the course of the performance of their duties, instructions "from any government or from any other authority external to the Organization."[74] The Members of the United Nations undertake "to respect the exclu-

[64] See Ranshofen-Wertheimer, Egon F., *The International Secretariat*, Washington, 1945.

[65] *Charter of the United Nations*, Article 97.

[66] UNCIO, *Report of Rapporteur of Committee I/2 on Chapter X (The Secretariat)*, Doc 1155, I/2/74 (2), p. 4 (*Documents*, VII, p. 389).

[67] *Charter of the United Nations*, Article 101(1).

[68] *Ibid.*, Article 101(2)

[69] The Registry of the International Court of Justice is not subject to the direction of the Secretary-General. It is under the exclusive direction of the Court itself.

[70] *Ibid.*, Article 97.

[71] *Ibid.*, Article 98.

[72] *Ibid.*

[73] *Ibid.*, Article 99

[74] *Ibid.*, Article 100.

sively international character of the responsibilities of the Secretary-General and the staff" and "not to seek to influence them in the discharge of their responsibilities." [75] Furthermore it is stated that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity." [76]

9. PACIFIC SETTLEMENT OF DISPUTES

The Charter system for the pacific settlement of disputes [77] is in essence that of placing upon the parties themselves the responsibility for using means of peaceful settlement, while according to the Council authority to intervene at any time that the continuance of a particular dispute or situation is considered likely to endanger the maintenance of international peace and security. The Council cannot, however, impose an obligatory settlement upon the parties against their will; it can only act as an agency of conciliation.[78]

The basic obligation of Members, as stated in Article 2, is to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Other provisions of the Charter, notably those of Chapter VI, provide for the implementation of this general principle. The parties to any dispute "the continuance of which is likely to endanger the maintenance of international peace and security" are obligated first of all to "seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." [79] The Security Council shall, if necessary, invite the parties to settle their disputes by such means.[80] If Members of the United Nations have entered into regional arrangements or instituted regional agencies for the settlement of their disputes, they "shall make every effort" to achieve peaceful settlement by such means before referring their disputes to the Security Council.[81] Furthermore, the Security Council is to encourage this. If, however, the parties fail to settle their dispute by such means, "they shall refer it to the Security Council" which, if it finds that the continuance of the dispute is likely to endanger the maintenance of international

[75] *Ibid.*, Article 100(2).
[76] *Ibid.*, Article 101.
[77] For more detailed explanation, see Goodrich, Leland M., "The Pacific Settlement of Disputes," *American Political Science Review*, XXXIX, p. 956–70.
[78] UNCIO, *Report of the Rapporteur of Committee III/2*, Doc. 1027, III/2/31 (1), p. 4 (*Documents*, XII, p. 162)
[79] *Charter of the United Nations*, Article 33(1).
[80] *Ibid.*, Article 33(2).
[81] *Ibid.*, Article 52(2).

peace and security, may either recommend appropriate procedures or methods of adjustment, or such terms of settlement as it may consider appropriate.[82]

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, to determine whether its continuance is likely to endanger the maintenance of international peace and security.[83] Any Member of the United Nations may bring any such dispute or any such situation to the attention of the General Assembly or of the Security Council.[84] This may also be done by the Secretary-General on his own initiative.[85] A non-member may also do this with respect to a dispute to which it is a party if it accepts in advance the Charter obligations of pacific settlement.[86] The Council may, at any stage of a dispute or situation whose continuance it finds is likely to endanger the maintenance of international peace and security, "recommend appropriate procedures or methods of adjustment."[87] In making such recommendations the Security Council is expected to take into account any procedures which have already been adopted by the parties. As an exception to the general view of the role of the Security Council which prevails in the Charter, if the parties so agree, any dispute of any kind whatsoever may be submitted to the Security Council for recommendations with a view to peaceful settlement.[88]

Two or three points should be specially noted which apply to the over-all scheme of the Charter. While the principle of the obligatory submission to the Court of all legal disputes is not adopted, there is nevertheless recognition of the principle that "legal disputes should as a general rule be referred by the parties to the International Court of Justice."[89] Furthermore, while it is possible for disputes to be brought to the attention of the General Assembly, the assumption certainly is that in most cases the Security Council will act, since the General Assembly cannot make a recommendation with regard to a dispute or situation with which the Security Council is seized under the terms of the Charter. Furthermore, the General Assembly is required to refer any question on which action is necessary to the Security Council, either before or after discussion. Finally, the rule governing Council voting procedure, while it requires unanimity of the permanent members, except for the parties to a dispute, for a decision to investigate or make a recommendation to the parties, does not allow

[82] *Ibid.*, Article 37.
[83] *Ibid.*, Article 34.
[84] *Ibid.*, Article 35(1).
[85] *Ibid.*, Article 99.
[86] *Ibid.*, Article 35(2).
[87] *Ibid.*, Article 36.
[88] *Ibid.*, Article 38.
[89] *Ibid.*, Article 36(3).

a permanent member to veto consideration by the Council of a dispute or situation brought before it under the provisions of the Charter.[90]

10. ENFORCEMENT ACTION

The Charter system for enforcement action[91] differs in important respects from that provided in the Covenant of the League. Under it the initial responsibility is placed on the Security Council to determine "the existence of any threat to the peace, breach of the peace, or act of aggression."[92] Once it decides that one of these situations exists, it is required to recommend or decide what measures shall be taken "in accordance with Articles 41 and 42" to maintain or restore international peace and security.

At the United Nations Conference it was recognized that there was an intermediate situation which had not been adequately covered by the provisions of the Dumbarton Oaks Proposals. The Security Council might be faced with a situation which constituted a threat to the peace which could not be effectively handled by the immediate application of force. To cover this type of situation, the Security Council is empowered "to call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable."[93] These provisional measures are not to prejudice the rights or claims of the parties, but any failure to comply with them is to be taken into account by the Council in its subsequent action.

If the situation calls for the use of methods of coercion, the Security Council may first of all decide that "measures not involving the use of armed force" are to be employed, measures such as the interruption of economic relations or the severance of diplomatic relations.[94] If these means are considered or found to be inadequate, the Security Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."[95]

To give assurance that effective forces will be at the disposal of the Security Council, all Members undertake "to make available to the Security Council, on its call and in accordance with a special agree-

[90] See *infra*, p. 221.

[91] For more detailed description, see Fox, William T. R., "Collective Enforcement of Peace and Security," *American Political Science Review*, XXXIX, p. 970–81 and Kirk, Grayson, "The Enforcement of Security," *The Yale Law Journal*, LV, p. 1081–96.

[92] *Charter of the United Nations*, Article 39.

[93] *Ibid.*, Article 40.

[94] *Ibid.*, Article 41.

[95] *Ibid.*, Article 42.

ment or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."[96] At San Francisco, the content of these agreements was defined in greater detail than in the Dumbarton Oaks Proposals, and furthermore it was specified, which it had not been in the Proposals, that the "agreement or agreements" should be negotiated "as soon as possible on the initiative of the Security Council" and should be concluded "between the Security Council and Members or between the Security Council and groups of Members."[97] To meet any urgent situation, Members are required to hold "immediately available national air force contingents for combined international enforcement action."[98]

To assist the Security Council in the preparation of plans for the use of armed force and in the strategic direction of the armed forces placed at the Council's disposal, provision is made for a Military Staff Committee consisting of the Chief of Staff of the permanent members of the Council.[99] This Committee also advises the Council on all questions relating to military requirements for the maintenance of peace and security, the regulation of armaments and possible disarmament. The Military Staff Committee, with the authorization of the Security Council and after consultation with the appropriate regional agencies, may establish regional subcommittees.

The Charter contains other provisions intended to assure the effectiveness of such enforcement measures as may be undertaken. Members of the United Nations are obligated to "join in affording mutual assistance in carrying out the measures decided upon by the Security Council."[100] Furthermore, it is made clear that action required by the decisions of the Security Council is to be carried out by all Members of the United Nations, or by some, as the Council may decide.[101] Also, the decisions are to be carried out by Members both directly and in their capacities as members of appropriate international agencies.[102]

The Charter recognizes the need of transitional arrangements for the maintenance of international peace and security, pending the implementation of certain of the Charter provisions notably Article 43. It provides that during the transitional period, the signatories of the Moscow Four-Power Declaration and France assume special responsibilities for the maintenance of international peace and security. It is explicitly stated that this special responsibility will continue only

[96] *Ibid.*, Article 43(1).
[97] *Ibid.*, Article 43(3).
[98] *Ibid.*, Article 45.
[99] *Ibid.*, Articles 46 and 47.
[100] *Ibid.*, Article 49.
[101] *Ibid.*, Article 48(1).
[102] *Ibid.*, Article 48(2).

"pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42." [103]

11. REGIONAL ARRANGEMENTS

The Charter gives full recognition to regionalism in so far as arrangements for the maintenance of peace and security are concerned. While the general principle of the subordination of regional arrangements and agencies to the purposes and principles of the Charter is asserted, the Charter contains provisions which considerably strengthen the position of such regional arrangements as compared with their status both under the League Covenant [104] and the Dumbarton Oaks Proposals.[105] Under the provisions of Article 52 of the Charter, Members of the United Nations which enter into such arrangements or constitute such agencies "shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council." [106] The Security Council is also required to encourage "the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies." [107]

The possibility of using regional arrangements and agencies as the basis for common action against acts of aggression without the requirement of Security Council authorization is permitted by Article 51 which safeguards the right of self-defense. By the provisions of this Article nothing in the Charter shall impair "the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security." Measures that are taken under this Article are to be immediately reported to the Security Council and are not in any way to "affect the authority and responsibility" of that body.

Finally, while the Charter provides that no enforcement action shall be taken under regional arrangements or by regional agencies without Security Council authorization, it makes an exception of "measures against any enemy state . . . provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state." [108]

[103] *Ibid.*, Article 106.
[104] *Ibid.*, Article 21.
[105] Chapter VIII, Section C.
[106] *Charter of the United Nations*, Article 52(2).
[107] *Ibid.*, Article 52(3).
[108] *Ibid.*, Article 53(1).

12. ECONOMIC AND SOCIAL COOPERATION

The provisions of the Dumbarton Oaks plan relating to economic and social cooperation were subjected to extensive and significant modification at the United Nations Conference. While the basic approach and plan of the Dumbarton Oaks Proposals were retained, the changes that were introduced went far in making precise and definite a plan which was nebulous in certain respects and which imposed on Members few specific commitments.

The provisions of the Charter are based on the premise that a necessary condition of the maintenance of international peace and security is the creation generally throughout the world of "conditions of stability and well-being." [109] It is only under such conditions that "peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" can exist. With a view to the creation of such conditions, the United Nations undertake to promote "higher standards of living," "full employment," "conditions of economic and social progress and development," "solutions of international economic, social, health, and related problems," "international cultural and educational cooperation," and "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." [110] Also, Members of the United Nations "pledge themselves to take joint and separate action in cooperation with the Organization" for the achievement of these purposes.[111]

The Charter recognizes that specialized organizations enjoying a large measure of autonomy will continue to exist or come into being for the purpose of facilitating international cooperation in the fields of economic, social and cultural relations. It clearly and explicitly defines the authority of the United Nations with respect to the establishment of such specialized organizations and the coordination of their activities. Thus it is provided that the United Nations "shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes" of the Organization.[112] Furthermore, it is provided that the various specialized agencies "established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments" shall be brought into relationship with the United Nations,[113] and the Organization "shall make recommendations for the coordination of the policies and activities of the specialized agencies." [114] Responsibility for the discharge of these

[109] *Ibid*, Article 55.
[110] *Ibid.*
[111] *Ibid.*, Article 56.
[112] *Ibid.*, Article 59.
[113] *Ibid.*, Article 57.
[114] *Ibid.*, Article 58.

functions is vested in the General Assembly, and under the authority of the General Assembly, in the Economic and Social Council.[115]

The Economic and Social Council consists of eighteen Members of the United Nations, elected by the General Assembly.[116] Each member has one vote.[117] All decisions are taken by a majority vote of those present and voting.[118] The Council "shall set up" commissions in the economic and social fields and for the promotion of human rights and such other commissions as may be required.[119] It may make arrangements for representatives of specialized agencies to participate in its deliberations, without vote, and for its representatives to participate in the deliberations of the specialized agencies.[120]

The functions and powers of the Economic and Social Council are defined in the Charter in considerable detail. In order that it may discharge its responsibilities under the Charter, the Council is specifically empowered [121] to:

(1) "make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters";

(2) "make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned";

(3) "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all";

(4) "prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence";

(5) call international conferences on matters coming within its competence;

(6) enter into agreements with specialized agencies defining the terms on which each agency shall be brought into relationship with the United Nations, subject to approval by the General Assembly;

(7) "coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations";

(8) take appropriate steps to obtain reports from the specialized agencies and communicate its observations on these reports to the General Assembly;

(9) furnish information to the Security Council;

[115] *Ibid.*, Article 60.
[116] *Ibid.*, Article 61(1).
[117] *Ibid.*, Article 67(1).
[118] *Ibid.*, Article 67(2).
[119] *Ibid.*, Article 68.
[120] *Ibid.*, Article 70.
[121] *Ibid.*, Articles 62–66.

(10) perform services at the request of Members and at the request of specialized agencies, subject to the approval of the General Assembly;

(11) perform functions in connection with the carrying out of Assembly recommendations.[122]

A comparison of the provisions of the Charter bearing on economic and social cooperation with the relevant provisions of the Covenant of the League of Nations indicates the great advance that has been made in the conception of organized international cooperation in this field. In large part, this advance is the result of the substantial achievements of the League of Nations which far surpassed the modest promise of the provisions of the Covenant. A more important consideration, however, is probably the general recognition that has come to exist of the close interrelation of political and economic and social problems, and of the opportunities for achieving substantial results through international cooperation in dealing with economic and social problems where the need is obvious and political considerations do not necessarily stand in the way of agreement.

13. ADMINISTRATION OF NON-SELF-GOVERNING TERRITORIES

The provisions of the Charter with respect to non-self-governing territories were drafted without the benefit of agreed proposals by the Sponsoring Government. Proposals were submitted to the Conference by the Delegations of Australia, China, France, the Soviet Union, the United Kingdom and the United States. On the basis of these proposals and after careful study and consultation a working paper was prepared and adopted by Committee II/4 as the basis of its subsequent discussions.[123] The plan which was finally adopted by the Conference was based on this working paper.

The Charter provisions include a *Declaration Regarding Non-Self-Governing Territories* (Chapter XI) and two chapters (Chapters XII and XIII) providing for a trusteeship system.[124] The *Declaration Regarding Non-Self-Governing Territories* requires all Members of the United Nations which "have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government" to recognize the principle that "the interests

[122] *Ibid.*, Article 66.

[123] UNCIO, *Proposed Working Paper for Chapter on Dependent Territories and Arrangements for International Trusteeship*, Doc. 323, II/4/12 (*Documents*, X, p. 677–83).

[124] For more detailed analysis of trusteeship system and comparison with League mandate system, see Bunche, Ralph J., "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations," Department of State, *Bulletin*, XIII, p. 1037–44 and McKay, Vernon, "International Trusteeship — Role of United Nations in the Colonial World," *Foreign Policy Reports*, May 15, 1946.

of the inhabitants of these territories are paramount, actice of the mote to the utmost . . . the well-being of the inhabitan and inter- territories." [125] To this end, they accept the specific obligated Na- ensure . . . their political, economic, social, and educational adv the ment, their just treatment, and their protection against abuses"; e develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions"; "to further international peace and security"; "to promote constructive measures of development"; and to transmit regularly to the Secretary-General "statistical and other information of a technical nature relating to economic, social, and educational conditions." [126] It is to be noted that these commitments, except the last, apply to all non-self-governing territories whether or not they are brought under the international trusteeship system provided in the Charter.

In addition, the Charter provides for the establishment of "an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements." [127] The basic objectives of this system are defined in detail as follows:[128]

a. to further international peace and security;

b. to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence . . .;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice. . . .

It is stated that the system shall apply to such territories in the following categories "as may be placed thereunder by means of trusteeship agreements:[129]

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

It is to be especially noted that there is no commitment for specific areas. Unlike the provisions of the League Covenant which at least

[125] *Charter of the United Nations*, Article 73.
[126] *Ibid.*
[127] *Ibid.*, Article 75.
[128] *Ibid.*, Article 76.
[129] *Ibid.*, Article 77.

(10) perfo obligation that certain areas would be brought under quest of sys system provided for under Article 22, the provisions of Assembler place no express obligation of any kind on Members of United Nations to place territories under their control under the trusteeship system. Whether the territories referred to are to be placed in the category of trust territories, and on what terms, is made to depend entirely upon individual agreements, subsequently approved by the General Assembly.[130]

Provision is also made that in any trusteeship agreement an area or areas of special strategic importance may be designated "a strategic area or areas."[131] The effect of such designation is to make the Security Council, instead of the General Assembly, responsible for the exercise of all functions of the United Nations.[132] The basic objectives of the trusteeship system are to apply, however, and the Security Council is expected to avail itself of the services of the Trusteeship Council in the performance of its functions.

The functions of the United Nations with respect to trusteeship agreements for all areas not designated as strategic areas are exercised by the General Assembly.[133] The Trusteeship Council, acting under the authority of the General Assembly, assists that body in carrying out its functions.[134] The Council consists of those Members administering trust territories, permanent members of the Security Council which are not administering trust territories, and as many other Members of the United Nations elected by the General Assembly as may be necessary to ensure that the membership of the Trusteeship Council is equally divided between those administering trust territories and those who are not.[135]

The General Assembly "and, under its authority, the Trusteeship Council" are given certain specific powers to enable them to carry out their functions. They may consider reports submitted by the administering authority which that authority is required to make,[136] accept petitions and examine them in consultation with the administering authority, "provide for periodic visits to the respective trust territories at times agreed upon with the administering authority," and do such other things as the trusteeship agreements may permit.[137]

14. MISCELLANEOUS PROVISIONS

The Charter contains provisions dealing with certain matters of a miscellaneous, but important nature which were not covered by the

[130] *Ibid.*, Article 79.
[131] *Ibid.*, Article 82
[132] *Ibid.*, Article 83.
[133] *Ibid.*, Article 85(1)
[134] *Ibid.*, Article 85(2).
[135] *Ibid.*, Article 86(1).
[136] *Ibid.*, Article 88.
[137] *Ibid.*, Article 87.

Dumbarton Oaks Proposals. Following the rule and practice of the League,[138] Article 102 provides for the registration of treaties and international agreements entered into by any Member of the United Nations. Article 103 establishes the superiority of obligations under the Charter over obligations under other international agreements. The United Nations is assured such legal capacity and privileges and immunities within the territory of each Member as may be necessary to the performance of its functions.[139] Likewise, representatives of Members and officials of the United Nations are assured such privileges and immunities as are necessary to the independent exercise of their functions.[140]

Article 110 of the Charter provided that it should enter into force after ratification by the states accorded permanent seats on the Security Council and by a majority of the other signatories. In accordance with this provision, the Charter entered into force on October 24, 1945, following the deposit of ratifications by China, France, the Soviet Union, the United Kingdom and the United States, and twenty-four other signatories.[141]

Like the Covenant of the League of Nations, the Charter contains express provisions regarding its amendment. However, the Charter is distinctive in that it prescribes how the amendment is to be proposed as well as adopted and makes additional provision for a Conference of Members to consider revision. Amendments may be proposed by vote of two-thirds of the members of the General Assembly. The Charter also provides that amendments may be proposed by a General Conference of the Members, held for the purpose of reviewing the Charter at a date and place fixed by "a two-thirds vote of members of the General Assembly" [142] and by vote of any seven members of the Security Council. Proposed amendments enter into force 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." [143] If a General Conference is not held before the tenth annual session of the General Assembly, the proposal to hold such a Conference is to be placed on the agenda of the General Assembly and may be adopted by majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.[144]

[138] See *Covenant of the League of Nations*, Article 18, *infra*, p. 563.
[139] *Charter of the United Nations*, Articles 104 and 105.
[140] *Ibid.*, Article 105(2) and (3).
[141] Department of State, *Bulletin*, XIII, p. 679.
[142] *Charter of the United Nations*, Article 109.
[143] *Ibid.*, Articles 108 and 109(2).
[144] *Ibid.*, Article 109(3).

ORGANIZATION OF THE UNITED NATIONS

Consideration was given at the Conference to the question of the initial establishment of the organs of the United Nations. It was recognized that with the successful conclusion of its work the Conference would terminate its existence. On the other hand, the organs envisaged in the Charter could not come into existence until the Charter had been ratified by the requisite number of states and these ratifications had been deposited. It was also recognized that before these organs could be established there was a vast amount of preparatory work to be done. If this work could be undertaken immediately, the United Nations could be set up as a working organization with a minimum of delay once the necessary number of ratifications were deposited.

1. THE PREPARATORY COMMISSION AND ITS WORK

In order that this preliminary work might be undertaken immediately, Interim Arrangements were signed on June 26, 1945,[1] establishing a Preparatory Commission "for the purpose of making provisional arrangements for the first sessions of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council, for the establishment of the Secretariat, and for the convening of the International Court of Justice."[2] The specific functions and powers of the Commission may be summarized as follows:[3]

1. Convocation of General Assembly in its first session.
2. Preparation of provisional agenda for the first sessions of the principal organs of the United Nations, and preparation of documents and recommendations relating to all matters on these agenda.
3. Formulation of recommendations regarding the possible transfer of certain functions, activities, and assets of the League of Nations to the United Nations on terms to be arranged.
4. Examination of problems involved in the establishment of relationships between the specialized intergovernmental organizations and agencies and the United Nations.
5. Issuance of invitations for the nomination of candidates for the International Court of Justice in accordance with the provisions of the Statute.
6. Preparation of recommendations concerning arrangements for the Secretariat.
7. Preparation of recommendations concerning the location of the permanent headquarters of the Organization.

The Commission consisted of one representative of each government signatory of the Charter.[4] When not in session, its functions and

[1] For text, see *Documents*, XV, p. 511–3.
[2] *Interim Arrangements*, etc., Article 1.
[3] *Ibid.*, Article 4.
[4] *Ibid.*, Article 2.

powers were to be exercised by an Executive Committee composed of the representatives of those governments represented on the Executive Committee of the Conference.[5] The Commission was to be assisted by an Executive Secretary "who shall exercise such powers and perform such duties as the Commission may determine," and by such staff as might be required.[6]

The agreement provided that the seat of the Commission should be in London. The first meeting of the Commission was held in San Francisco on June 27, the day following the signing of the Charter. It was provided that the next meeting should be held upon the call of the Executive Committee "as soon as possible after the Charter of the Organization comes into effect and whenever subsequently it considers such a session desirable." The agreement further provided that the Commission should cease to exist upon the election of the Secretary-General of the United Nations.

The Executive Committee of the Preparatory Commission held its first meeting in London on August 16, 1945. Ten committees were set up, corresponding broadly to the terms of reference laid down in Articles 1 and 4 of the Interim Arrangements, except that one committee was set up to deal with problems of finance. The committees completed their work in seven weeks and cast their reports in the form of recommendations with supporting and explanatory materials. These recommendations, accepted by the Executive Committee with some reservations, along with committee reports and supplementary papers, were included in the Committee's report to the Preparatory Commission.[7]

The Preparatory Commission met on November 26. The Charter had entered into force on October 24. The Report of the Executive Committee served as the basis of the Preparatory Commission's work. This Report was referred to eight Technical Committees for detailed consideration. The Committees began their work on November 28 and finished on December 22.[8] The final report of the Preparatory Commission, adopted on December 23,[9] included specific recommendations, positive proposals integrally connected with them, such as the draft provisional staff regulations and the provisional rules of pro-

[5] For membership, see *supra*, p. 13.

[6] *Interim Arrangement*, etc., Article 3.

[7] *Report by the Executive Committee to the Preparatory Commission of the United Nations*, Doc. PC/EX/113/Rev. 1, November 12, 1945 (subsequently referred to as *Report by the Executive Committee . . .*).

[8] See *Summary Records* of the meetings of the eight Committees and the *Journal of the Preparatory Commission*, English and French texts.

[9] *Report of the Preparatory Commission of the United Nations*, Doc. PC/20, December 23, 1945 (subsequently referred to as *Report of the Preparatory Commission . . .*).

cedure of the principal organs, a number of reports and memoranda setting forth the views of the Commission and of special expert bodies, and certain supplementary materials, including extracts from summary records of committee meetings.

2. THE GENERAL ASSEMBLY

The General Assembly held its first meeting in London on January 10, 1946. The Preparatory Commission had recommended that it was "most urgent to summon the General Assembly and constitute the other principal organs of the United Nations at the earliest possible moment" and that this end could best be attained by dividing the first session of the General Assembly into two parts, the first to be devoted to organizational matters and "urgent world problems", and the second to consideration of substantive items on the agenda.[10] This recommendation was accepted, though in practice it was found to be impossible strictly to adhere to it.[11] The Provisional Rules of Procedure adopted in the first session provided for a regular session commencing on the third Tuesday in September. A special session may be held at the request of a majority of the Security Council or of the Members of the United Nations, or as the result of a decision of the General Assembly.

The organization of the General Assembly follows in general the recommendations of the Preparatory Commission. The Provisional Rules of Procedure [11a] provided for a President and seven Vice Presidents elected by the General Assembly. The President has the usual powers of a presiding officer. The General Assembly has four types of committees: (1) the Main Committees to consider substantive matters referred to them by the General Assembly; (2) procedural committees required for the organization and conduct of the business of the General Assembly; (3) standing committees with continuing functions; and (4) *ad hoc* committees required from time to time for particular purposes. The Main Committees consist of the First Committee (Political and Security); the Second Committee (Economic and Financial); the Third Committee (Social, Humanitarian and Cultural); the Fourth Committee (Trusteeship); the Fifth Committee (Administrative and Budgetary); and the Sixth Committee (Legal). Each Main Committee consists of a representative from each Member and elects its own chairman. It may establish sub-committees.

[10] *Ibid.*, p 7.

[11] For summary of work of first part of first session in London, see *Yearbook of the United Nations, 1946–47* (subsequently referred to as *Yearbook, 1946–47*), p. 55–115 and *International Organization*, I (1947), p 46–50.

[11a] Adopted with some modifications as the Rules of Procedure by the General Assembly in its second session, UN, Doc. A/520. The basic organization of the General Assembly has not been changed.

There are two procedural committees: the General Committee, consisting of the President of the General Assembly, seven elected vice presidents, and the Chairmen of the six Main Committees, which is the steering committee of the General Assembly assisting in the preparation of the agenda, in determining the priority of items, and in coordinating the proceedings of committees; and the Credentials Committee consisting of nine members elected at each session, which verifies the credentials of the delegates. There was considerable opposition in the General Assembly to the proposal of the Preparatory Commission to restrict the membership of the General Committee to fourteen members on the ground that too much power would be given to a few states. It was finally decided to amend the Provisional Rules of Procedure to provide that the General Committee should not decide any political question, and that any Member which had requested the inclusion of a particular item in the agenda should be entitled to be present and participate in the discussion, without vote, when its request was being considered.[12]

The standing committees of the General Assembly are two in number: the Advisory Committee for Administrative and Bugetary Questions, consisting of nine members elected by the General Assembly, which acts in an advisory capacity, and the Committee on Contributions, consisting of ten members elected by the Assembly, which reports on questions relating to the distribution of expenses. The members of these two committees are selected "on the basis of broad geographical representation, personal qualifications and experience," and serve for three year periods corresponding to three financial years.

The General Assembly has made extensive use from the beginning of *ad hoc* committees. Committees of this nature which have thus far been established include the Permanent Headquarters Committee, set up to consider and report on the question of the permanent site of the United Nations; the Special Committee on Palestine, created during the special session of 1947 to examine and report on the Palestine question; the Committee on Transmission of Information under Article 73(e), created to make recommendations to the General Assembly with respect to information as summarized by the Secretary-General; the Committee on the Progressive Development of International Law and its Codification; the Temporary Commission on Korea, set up by the Second General Assembly to supervise elections in Korea and to help in establishing a provisional government; the Special Balkan Committee, created to observe compliance of the Governments of Albania, Bulgaria, Greece, and Yugoslavia with the General Assembly's recommendations and to assist in implementing them; and the In-

[12] UN, Doc. A/71, Rules 33 and 34 and *Yearbook, 1946–47*, p. 316.

terim Committee set up by the second session of the General Assembly.

Up to July 1948, the General Assembly had held two annual sessions and two special sessions. The first session was held in two parts, the first in London from January 10 to February 14, 1946, and the second at Flushing and Lake Success, Long Island, New York, from October 23 to December 16, 1946. A special session was held from April 28 to May 5, 1947, to consider the Palestine question. The second session was held from September 16 to November 29, 1947. A second special session was held from April 16 to May 15, 1948 to consider further the Palestine question.

3. THE SECURITY COUNCIL

Since by the terms of Article 23 of the Charter, the Security Council is composed in part of members elected by the General Assembly, it was not possible for the Security Council to hold its first meeting until the General Assembly had performed its elective functions. This it did on January 12, 1946, permitting the Security Council to meet for the first time on January 18 at Church House, Dean's Yard, Westminster, in London. Twenty-three meetings in all were held there. Beginning with the twenty-fourth meeting on March 25, the Security Council met at the temporary headquarters of the United Nations in New York, first at Hunter College and subsequently at Lake Success.

For the year 1946, the Council consisted of the five permanent members (China, France, the Soviet Union, the United Kingdom, and the United States) plus the following six non-permanent members elected by the General Assembly: Australia, Brazil and Poland for two years; and Egypt, Mexico and Netherlands for one year. On December 19, 1946, Belgium, Colombia, and Syria were elected for two-year terms to succeed Egypt, Mexico and the Netherlands. The second Assembly elected Argentina, Canada and the Ukraine for two-year terms to succeed Australia, Brazil and Poland.

In accordance with rule 9 of the Provisional Rules of Procedure, the presidency is held in turn by members (states) in the English alphabetical order of their names, each holding office for one calendar month. Under this rule, the first president was Mr. N. J. O. Makin of Australia. At its first meeting, the Council referred the Provisional Rules of Procedure recommended by the Preparatory Commission to a Committee of Experts which was to recommend rules to the Council for adoption. The rules of procedure now operative are the Provisional Rules of Procedure, adopted by the Council from time to time on the basis of recommendations from its Committee of Experts.[18]

The Security Council has been assisted in its work by a number of

[18] See UN, Doc. S/96; Doc. S/96/Add. 1; and *Yearbook, 1946–47*, p. 455–65.

subsidiary organs, either provided for in the Charter or set up under decisions taken by the Council or, in one case, by the General Assembly. These subsidiary organs include the Military Staff Committee provided for under Article 47 of the Charter to advise and assist the Security Council on all questions relating to the Council's military requirements, the employment and command of forces placed at its disposal, and possible disarmament; the Atomic Energy Commission, consisting of the members of the Security Council and Canada, and established under the General Assembly resolution of January 24, 1946 [14] to inquire into all phases of the problem of the international regulation of atomic energy and to make specific recommendations to the Security Council; the Commission on Conventional Armaments, composed of the members of the Council, and established on February 13, 1947,[15] to implement in part the General Assembly Resolution of December 14, 1946 on the "Principles Governing the General Regulation and Reduction of Armaments", the Committee of Experts which advises the Council on rules of procedure; and the Committee on the Admission of New Members, which considers applications for membership and makes recommendations to the Council. The Commission of Investigation Concerning Greek Frontier Incidents was a subsidiary organ of the Council which passed out of existence when the Greek question was removed from the list of matters with which the Council was seized.

4. THE ECONOMIC AND SOCIAL COUNCIL

The eighteen initial members of the Economic and Social Council were elected by the General Assembly on January 12 and 14, 1946, thus permitting the Council to hold its first meeting on January 23. Up to July 1948, the Council held six sessions as follows: First Session (London), January 23–February 16, 1946; Second Session (New York), May 25–June 21; Third Session (New York), September 11–October 3; Fourth Session (Lake Success), February 28–March 29, 1947; Fifth Session (Lake Success), July 19–August 17, 1947; and Sixth Session (Lake Success), February 2–March 11, 1948. An *ad hoc* meeting of the Third Session was held on December 10, 1946 to confirm various appointments.

The initial members of the Economic and Social Council were as follows: Belgium, Canada, Chile, China, France, and Peru, for three-year terms; Cuba, Czechoslovakia, India, Norway, the Soviet Union and the United Kingdom, for two-year terms; and Colombia, Greece,

[14] UN, General Assembly, *Resolutions Adopted During the First Part of its First Session . . .*, Doc. A/64, p. 9.

[15] UN, Doc. S/P V 105 and *Yearbook, 1946–47*, p. 380–1

Lebanon, the Ukraine, the United States, and Yugoslovia, for one-year terms. The General Assembly, in the second part of its first session elected the following for three-year terms beginning January 1, 1947, to succeed those originally elected for one-year terms: Byelorussia, Lebanon, New Zealand, Turkey, the United States, and Venezuela. The Netherlands was elected to fill the vacancy created by the relinquishment by Belgium of her seat in the Council. In its second session, the General Assembly elected Australia, Brazil, Denmark, Poland, the Soviet Union, and the United Kingdom for three-year terms beginning January 1, 1948, to succeed those originally elected for two-year terms.

The Economic and Social Council adopted, with minor changes, the Provisional Rules of Procedure recommended by the Preparatory Commission.[16] For performing its functions under the Charter, the Council has set up a number of subsidiary organs falling into the four following categories: (1) Commissions, established under Article 68 of the Charter; [17] (2) Standing Committees, such as the Committee on Negotiations with Specialized Agencies, the Committee on Arrangements for Consultation with Non-Governmental Organizations, and the Agenda Committee; (3) *ad hoc* Committees; and (4) special bodies such as the International Children's Emergency Fund.

The Commissions of the Council are specifically provided for in the Charter and their importance was emphasized in considerations and recommendations contained in the Report of the Preparatory Commission.[18] In fact the Economic and Social Council in setting up its Commissions followed in general the recommendations of the Preparatory Commission both as to procedure and substance, though the organization of the Council has expanded considerably beyond the recommended pattern. In general, the Commissions study matters within their spheres of competence and advise the Council thereon. By July 1948, the following Commissions had been set up: [19] (1) Economic and Employment; (2) Transport and Communications; (3) Statistical; (4) Human Rights; (5) Social; (6) Status of Women; (7) Narcotic Drugs; (8) Fiscal; (9) Population; (10) Economic Commission for Europe; (11) Economic Commission for Asia and the Far East; and (12) Economic Commission for Latin America. The last three Commissions are regional and temporary, their status being subject to review by the Council before 1951. The establishment of an

[16] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 29–34.

[17] For detailed comment, see *infra*, p. 386.

[18] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 84–9.

[19] For details on membership and terms of reference, see United Nations, Department of Public Information, *Structure of the United Nations*, May 1947, p. 11–20; *Yearbook, 1946–47*, p. 467 *et seq.*; and UN, *Bulletin*.

Economic Commission for the Middle East is under consideration.

The Rules of Procedure of the Council[20] provide for at least three sessions a year, subject to the right of the Council to amend or suspend the Rules at any time, consistently with the Charter. The President and two Vice Presidents are elected by the Council for approximately one-year periods and are eligible for reelection. At each session the Council may set up such committees as are necessary for the transaction of its business. The Council has followed the practice of full publicity for its meetings.

5. THE TRUSTEESHIP COUNCIL

Because of difficulties that arose in connection with the application of the trusteeship provisions of the Charter, there was a long delay in the establishment of the Trusteeship Council. The specific cause of this delay was the fact that, since the Charter required that the membership of the Council should be equally divided between Members administering trust territories and those not administering them, it became necessary for trust agreements to be in force before the membership of the Council could be determined. The Executive Committee of the Preparatory Commission recommended the establishment of a temporary Trusteeship Committee to perform the functions of the Trusteeship Council pending its establishment.[21] This proposal met strong opposition and was not included in the recommendations of the Preparatory Commission,[22] nor was such action taken by the General Assembly. Consequently the establishment of the Trusteeship Council was postponed.

Following the approval of eight trusteeship agreements by the General Assembly on December 13, 1946,[23] the Assembly on December 14 proceeded to constitute the Trusteeship Council by electing two members for three-year terms,[24] thus giving it for the time being the balanced composition which the Charter required. As constituted, the Council consisted of Australia, Belgium, France, New Zealand and the United Kingdom, — states administering trust territories; China, the Soviet Union, the United States, — permanent members of the Security Council; and Iraq and Mexico, — elected by the General Assembly to create equality between the members administering trust territories and those that do not. The subsequent approval by the Security Council of the United States trusteeship agreement for the former Japanese

[20] *Yearbook, 1946–47*, p. 564–8.
[21] *Report by the Executive Committee . . .*, Doc. PC/EX/113/Rev. 1, p. 55–6.
[22] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 49.
[23] For list, see *infra*, p. 79.
[24] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 122–3.

mandated islands destroyed this balance, and made necessary the election of two additional members. During its second session the General Assembly elected Costa Rica and the Philippines for three-year terms expiring December 31, 1950.

The Trusteeship Council met for its first session at Lake Success, March 26–April 28, 1947. During this session the Council completed its basic organizational arrangements, adopted rules of procedure, drew up a draft questionnaire on administration of trust territories, and considered arrangements for cooperation with other organs of the United Nations. The rules of procedure adopted provide for two regular sessions of the Council each year, one in June and one in November.

6. THE INTERNATIONAL COURT OF JUSTICE

The Statute of the Court provides for the use of the same procedure for the election of the judges of the new court as was used for the election of the judges of the Permanent Court of International Justice.[25] Consequently the first step in the establishment of the new Court was the preparation of a list of candidates through nomination by national groups according to the terms of Article 4 of the Statute. On January 12, 1946 a list of nominations was submitted to the General Assembly and the Security Council, and on February 6, after four ballots had been taken, the list of judges was declared complete. To satisfy the requirements of Article 13 of the Statute, lots were drawn following the election of the judges to determine which ones should serve for three, six and nine year terms respectively. The results were as follows: *For nine-year terms,* — Alejandro Alvarez (Chile), José Philadelpho de Barros e Azevedo (Brazil), Jules Basdevant (France), José Gustavo Guerrero (El Salvador), and Sir Arnold Duncan McNair (United Kingdom); *for six-year terms,* — Isidro Fabela (Mexico), Green H. Hackworth (United States), Helge Klaestad (Norway), Sergei Borisovich Krylov (U.S.S.R.), and Charles De Visscher (Belgium); *elected for three-year terms,* — Abdel Hamid Badawi Pasha (Egypt), Hsu Mo (China), John E. Read (Canada), Bohdan Winiarski (Poland), and Milovan Zoričić (Yugoslavia).[25a]

The first meeting of the Court was held in the Peace Palace at The Hague on April 3, and the inaugural sitting on April 18. The Court sat until May 6, devoting most of its time to various administrative matters, including preparation of Rules of Procedure[26] based upon those of the Permanent Court of International Justice.

[25] *Statute of the International Court of Justice,* Articles 2–14.

[25a] On constitution of the Court, see I C.J., *Yearbook, 1946–47.*

[26] International Court of Justice, Series D, No. 1, *Acts and Documents Concerning the Organization of the Court,* p. 54–83

7. THE SECRETARIAT

Mr. Trygve Lie, former foreign minister of Norway, was appointed Secretary-General by the General Assembly, upon the recommendation of the Security Council, on February 1, 1946. He was initially appointed for a term of five years, the appointment being open to renewal for another five-year term. In making the appointment on these terms, the General Assembly and the Security Council followed the recommendation of the Preparatory Commission.[27]

The Charter does not prescribe any particular form of administrative organization for the Secretariat nor does it contain specifications regarding subordinate positions. The Secretary-General is made the "chief administrative officer" of the Organization, and was therefore responsible from the beginning for the determination of the structure of Secretariat organization, the recruitment of personnel, the definition of powers and responsibilities, and other administrative matters. The recommendations of the Preparatory Commission, as approved by the General Assembly,[28] were in general followed by the Secretary-General.

Under the Secretary-General, are eight Departments, each headed by an Assistant Secretary-General. The eight Departments are as follows: Department of Security Council Affairs, Department of Economic Affairs, Department of Social Affairs, Department of Trusteeship and Information from Non-Self-Governing Territories, Department of Public Information, Legal Department, Department of Conference and General Services, and Department of Administrative and Financial Services. Except for certain sections of the Department of Security Council Affairs which exclusively serve the Security Council and its subsidiary organs, these Departments service generally the United Nations. The Secretary-General is also assisted in the performance of his duties by an Executive Assistant and the personnel of the Executive Office.

The Departments of the Secretariat are further divided into divisions, bureaus, and services. Titles of these departmental subdivisions afford convincing evidence of the range of the activities of the Secretariat which of course by the nature of things is as wide as the field of action of the United Nations itself.[29] The growth of Secretariat

[27] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 81–94 and UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 14.

[28] *Ibid.*, p. 14–9.

[29] See UN, General Assembly, *Report of the Secretary-General on the Work of the Organization*, Doc. A/65, June 30, 1946, p. 50–2; *Annual Report of the Secretary-General on the Work of the Organization*, Doc. A/315, July 14, 1947, p. 72–4; *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948*, Doc. A/565, printed as Suppl. No. 1 to General Assembly, *Official Records, Third Session*, p. 121–7; and *Yearbook, 1946–47*, p. 613–57.

functions and responsibilities is to some extent reflected in the increases that have occurred in personnel. Whereas at the end of June 1946, 1,546 persons were employed by the United Nations, by the end of June 1947, this number had increased more than two-fold, to 3,379.[30] Furthermore, the activity of the Secretariat has assumed larger geographic scope through the establishment and development of branch offices, including the office in Geneva.

8. PERMANENT HEADQUARTERS

Unlike the Covenant of the League of Nations, the Charter does not specify the permanent headquarters of the United Nations. This was one of the matters referred to the Preparatory Commission for study and recommendation. The Preparatory Commission, after receiving and examining various proposals, recommended that the permanent headquarters be located in the United States, and that the specific site should be determined by the General Assembly, on the basis of recommendations prepared by the Interim Committee established by the Preparatory Commission.[31] On February 14, 1946, the General Assembly voted that the interim headquarters should be located in New York.[32] This it did on the basis of the recommendation of its Permanent Headquarters Committee, which had before it the report of the Interim Committee. Hunter College was selected by the Secretary-General as a temporary location, and beginning in early March, 1946, the Secretariat was moved to the new location. This site proved inadequate for the needs of the United Nations as well as being available for only a short time. Consequently, in April the Secretary-General made arrangements for the use of the Sperry Plant at Lake Success for the Secretariat, the Councils, and committee meetings, and the City Building at the World's Fair Grounds in Flushing for the plenary sessions of the General Assembly.[33]

The final decision as to the permanent headquarters of the Organization was taken on December 14, 1946. The dramatic offer of Mr. John D. Rockefeller, Jr. of the sum of $8,500,000 for the purpose of acquiring a tract of land in the City of New York along the East River, between 42nd and 48th Streets led to the adoption of the proffered New York site.[34]

[30] Carnegie Endowment for International Peace, *The Budget of the United Nations*, United Nations Studies, 1, p 9.

[31] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 114–5.

[32] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 37.

[33] See UN, *Report of the Secretary-General on the Work of the Organization*, Doc. A/65, June 30, 1946, p. 40–3.

[34] See UN, General Assembly, *Annual Report of the Secretary-General on the Work of the Organization*, Doc. A/315, July 14, 1947, p. 78–80 and *Resolu-*

9. DEMISE OF THE LEAGUE OF NATIONS

The establishment of the United Nations made the continuance of the League of Nations unnecessary and undesirable, especially for those Members of the United Nations which were at the same time members of the League. It had been assumed from the beginning of the discussions leading to the establishment of the United Nations that the League which had in fact suffered an eclipse as the result of World War II would be liquidated once the new organization was set up. The question of the extent to which the United Nations would take over the assets and functions of the League was not considered at San Francisco. The Preparatory Commission was specifically authorized to make recommendations.

The matter was fully discussed in the meetings of the Executive Committee and the Preparatory Commission. There was opposition to the assumption by the United Nations of all the functions of the League, especially the political. In its Report, the Preparatory Commission recommended that the United Nations take over custodial, technical and non-political functions exercised by the League under international agreements, and that the General Assembly reserve the right after due examination not to take over any particular function. The Commission appointed a Committee to enter into discussions with the League Supervisory Committee for establishing a common plan for the transfer of the assets of the League to the United Nations, this common plan to be submitted to the General Assembly for approval.

The General Assembly, on February 12, 1946, adopted a resolution giving effect to the Preparatory Commission's recommendations.[35] By the terms of this resolution, the General Assembly declared the United Nations willing in principle to assume the exercise of certain functions and powers entrusted to the League of Nations. It declared the willingness of the United Nations to charge its Secretariat with the performance of certain secretarial functions formerly entrusted to the League of Nations, and to take necessary measures to ensure the continued exercise of technical and non-political functions and power of the League. It insisted on examination by the General Assembly or the appropriate organ of any request for the assumption of political functions or powers. It approved the Common Plan[36] submitted by the Preparatory Commission's Committee. Under the Common Plan, the United Nations agreed to take over the material

tions Adopted . . . During the Second Part of its First Session . . ., Doc. A/64/Add. 1, p. 196–7.

[35] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 35–6.

[36] UN, Doc. A/18; Doc. A/18 Corr. 1; Doc. A/18 Add. 1; and Doc. A/18 Add. 2.

assets of the League, with suitable provisions for the protection of the interests of states, individuals and organizations in the property and assets of the League. A Negotiating Committee was established to assist the Secretary-General in making further agreements in connection with the orderly transfer of League assets and assets of the Permanent Court of International Justice at The Hague to the United Nations.

The twenty-first and final session of the Assembly of the League of Nations met in Geneva April 8–18, 1946. Resolutions providing for the transfer to the United Nations of the League's assets and functions in accordance with the terms of the General Assembly's resolution were approved. A final resolution was passed declaring the League of Nations dissolved.[37] In accordance with arrangements worked out between the Secretary-General of the United Nations and the League authorities, the buildings, library and archives of the League were transferred to the United Nations on August 1, 1946.[38]

THE UNITED NATIONS AT WORK[1]

During the first two odd years of its operation, the United Nations has faced a wide range of problems, organizational and substantive. While it has not in this relatively brief period achieved many definitive solutions, there is no question of the seriousness with which it has been taken by governments and peoples alike. The number and importance of the matters that have been brought before it for consideration and action give ample assurance that the new Organization will not die of disuse. Unlike the League which during the first years of its existence faced the danger of being by-passed and falling into harmless desuetude, the United Nations from the beginning has found itself at the very center of the political conflicts resulting from the war. In large part this has been due to the fact that, unlike the League, the United Nations came into being before the peace settlements had been made.

1. MEMBERSHIP

While original membership in the United Nations was limited to those states which had declared war against one of the major Axis

[37] For record of discussions and decisions, see League of Nations, *Official Journal, Special Supplement*, No. 194.

[38] For the text of agreements, see *Yearbook, 1946–47*, p. 269–71.

[1] For detailed account of activities of the United Nations, see *Yearbook, 1946–47;* United Nations, *Weekly Bulletin* (subsequently referred to as UN, *Weekly Bulletin*), 3 vols. (August 3, 1946–January 1, 1948); United Nations, *Bulletin* (subsequently referred to as UN, *Bulletin*) (January 1, 1948–); annual reports of the Secretary-General, *op. cit.;* and *International Organization*, I– (1947–). See also, Goodrich, Leland M., "The United Nations: Its Record of Achievement," *Foreign Policy Reports*, September 15, 1947.

powers or had at least been the victims of Axis aggression, there was no thought in the minds of the framers of the Charter that future membership should be thus restricted for long. In fact, at the Berlin Conference of July 17–August 2, 1945, the Governments of the United States, the United Kingdom and the Soviet Union agreed that they would support applications from neutral states which fulfilled the qualifications set out in Article 4 of the Charter, and that the conclusion of peace treaties with recognized democratic governments in Italy, Bulgaria, Finland, Hungary, and Rumania would "enable" them to support applications for membership from these states.[2]

During 1946, nine applications were received. Three of these—those of Afghanistan, Iceland and Sweden—were unanimously approved both by the Security Council and by the General Assembly. The application of Siam was initially opposed by France on the ground that a state of war still existed between the two countries, but later, following the conclusion of a French-Siamese agreement on November 17, it too received the necessary approval. The other applications were rejected by the Security Council. Those of Albania and the Mongolian People's Republic did not receive the necessary seven affirmative votes, and in addition were opposed by the United States and Great Britain. The applications of Eire, Transjordan, and Portugal received the necessary seven affirmative votes, but since the Soviet Union was opposed, they failed to receive the support of all the permanent members of the Security Council.[3]

The action of the Security Council was strongly criticized in the General Assembly during the second part of its first session. The General Assembly requested that the Security Council reexamine the five applications that had been rejected. This was done in the summer of 1947 with the same results as the year before. The Council also considered applications from Austria, Bulgaria, Finland, Hungary, Italy, Pakistan, Rumania and Yemen. It unanimously recommended Pakistan and Yemen for membership, but failed to reach a favorable conclusion on the other applications. The applications of Austria, Finland and Italy received the necessary seven affirmative votes, but one permanent member (the Soviet Union) cast a negative vote. The other four applications failed to receive the necessary seven affirmative votes.

During its second session, the General Assembly again considered critically the action of the Security Council. In addition to approving the applications of Pakistan and Yemen, it indicated its opinion that certain of the applicants which the Security Council had failed to

[2] Department of State, *Bulletin*, XIII, p. 153.

[3] For reasons given, see comment on Article 4(1) of the *Charter of the United Nations*, *infra*, p. 125

commend were qualified for admission and it asked the International Court of Justice to give an opinion on the interpretation of Article 4 of the Charter. It also requested the Security Council to reconsider certain of the applications with respect to which it had not made recommendations. The members of the Security Council, however, maintained their previous positions.

Following receipt of a recommendation from the Security Council, the General Assembly voted on April 19, 1948 to admit Burma to membership. Thus the total membership of the United Nations at the end of June 1948 stood at 58. Of this number, 7 had been admitted under the terms of Article 4 of the Charter. On the other hand, during this same period, 12 applications had failed to receive the approval of the Security Council and consequently were not recommended to the General Assembly for action by that organ.[4]

The experience of the first two years provided little encouragement for those who believed that the attainment of universality of membership at an early date was necessary to the maximum effectiveness of the Organization. In fact it became apparent that the procedure for admitting new members was likely to make the attainment of universality by the United Nations more difficult than it was for the League. The requirement of Security Council recommendation, combined with the additional requirement of unanimity of the permanent members, would be a serious barrier to favorable action in any case. It becomes an insuperable obstacle for many states so long as relations between the permanent members are distrustful and uncooperative. Furthermore, there is no apparent way by which the impasse can be broken except by an improvement in the relations between these states, since the same agreement that is necessary for the admission of a new member is also required for any modification of the Charter procedure.

2. MAINTENANCE OF PEACE

During the first two and a half years of its operation the Charter provisions for keeping the peace were well tested. Thirteen disputes or situations involving some threat to the peace were brought before the Security Council, five before the General Assembly, and one before the Court. The fact that so little use was made of the Court testifies to the dominance of political considerations over legal in the international relations of the period.

[4] For summary of action taken by the Security Council and General Assembly on membership, see *International Organization*, I (1947), p. 51–2, 90–4, 503–4 and II, (1948), p 63–4, 90–5, 315. See also, comment on Article 4, *infra*, p. 125.

The following questions were brought before the Security Council with the results indicated:

(1) *The Iranian question.* By letter dated January 19, 1946, addressed to the Acting Secretary-General, the Iranian Government asked that the alleged interference of the Soviet Union in the internal affairs of Iran be brought before the Security Council under Article 35(1). After hearing the parties, the Council voted to refer the matter back to the parties for further negotiations, requesting that it be kept informed of results achieved. By letter of March 18, the Iranian Government again brought the matter to the attention of the Security Council, claiming new developments which constituted violations of Iranian sovereignty and endangered peace. Consideration of the merits of the question became involved in procedural complications. Over Soviet protest it was decided to keep the question on the Council's agenda after Iran had withdrawn its complaint. After it became clear that Soviet troops had been withdrawn, the Council voted to adjourn further discussion of the case.[5]

(2) *The Indonesian question* (Ukrainian appeal). On January 21, 1946, the Ukrainian Government, in a letter to the President of the Security Council, charged that the presence of British troops in Indonesia created a situation threatening the maintenance of international peace and security under Article 34. The appointment of a commission of investigation was proposed. After various proposals had failed of adoption, the matter was declared closed on February 13.[6]

(3) *The Greek question* (Soviet appeal). This question was first brought before the Security Council by a letter, dated January 21, 1946, from the Soviet representative invoking Article 35 and charging that the presence of British troops in Greece caused extraordinary tension fraught with grave consequences for the maintenance of peace and security. After full discussion, note was taken by the Council of the views expressed and the matter was declared closed.[7]

(4) *The Syrian and Lebanese question.* This was brought before the Security Council on February 4, 1946, by the Lebanese and Syrian Governments in a communication claiming that the continued presence of British and French troops constituted a violation of the sovereignty of the two states which might give rise to serious disputes. A conciliatory proposal expressing confidence that the troops would be withdrawn as soon as possible was not adopted due to Soviet opposition,

[5] For summary of action taken, see *Yearbook, 1946–47,* p. 327–36 and *International Organization,* I (1947), p. 74–7.

[6] See *Yearbook, 1946–47,* p. 338–41 and *International Organization,* I (1947), p. 77–8.

[7] See *Yearbook, 1946–47,* p. 336–8 and *International Organization,* I (1947), p. 84–5.

but was accepted and carried out by France and the United Kingdom.[8]

(5) *The Spanish question.* This was brought before the Security Council by the Polish Delegate who charged, in letters dated April 8 and 9, 1946, that the activities of the Franco Government in Spain had caused international friction and endangered international peace and security. Articles 34 and 35 were invoked. Action under Articles 39 and 41 was also asked. On April 29, the Council appointed a subcommittee to investigate and report. The subcommittee found that, although the Franco Government did not constitute a threat to the peace under Article 39, it was a potential menace to international peace and security.[9] It made recommendations with respect to measures to be taken. Failure of the Council to accept these recommendations or to decide on any other course finally led on November 4 to the removal of the question from the list of matters with which the Council was seized in order that the General Assembly might be free to act.[10]

(6) *The Greek question* (Ukrainian appeal). On August 24, the Greek question was again brought before the Council under Articles 1(2) and 35(1) by the Ukrainian Government which charged the presence of British troops as the principal factor causing border violations and persecution of minorities. There was long and recriminatory discussion, and various proposals were made, but none received the necessary support to be adopted. The discussion was declared closed.[11]

(7) *The Greek question* (Greek appeal). On December 3, 1946, the Greek Government charged Albania, Bulgaria and Yugoslavia with giving support to guerilla warfare being waged in northern Greece, and, invoking Articles 34 and 35(1), of the Charter, asked for an investigation. The Security Council voted unanimously on December 19 to establish a commission to investigate the facts and report. The Commission made its report public on June 25, 1947.[12] The majority of the members found that Yugoslavia, and to a lesser degree, Albania and Bulgaria, had supported guerilla warfare in Greece, though they admitted that the internal situation in Greece was not to be ignored as a contributing factor. They recommended that steps be taken to reestablish normal relations and furthermore recommended that continued support of armed bands in Greece by these

[8] See *Yearbook, 1946–47*, p. 341–5 and *International Organization*, I (1947), p. 79–81

[9] UN, Doc. S/75.

[10] See *Yearbook, 1946–47*, p. 345–51 and *International Organization*, I (1947), p. 81–4.

[11] See *Yearbook, 1946–47*, p. 351–60 and *International Organization*, I (1947), p. 85–9.

[12] UN, Doc. S/360 and Doc S/360/Corr. 1.

countries be regarded "as a threat to the peace within the meaning of the Charter".[13] On June 27 the Security Council began its consideration of the report. The majority conclusions and recommendations were not acceptable to the Soviet Union, and consequently a resolution presented by the United States representative incorporating them failed of adoption. Other proposals proved unacceptable, and on September 15, 1947, the Security Council voted to remove the question from the list of matters with which it was seized, thus making possible consideration and action by the General Assembly.[14]

(8) *The Corfu Channel question.* On January 10, 1947, the British Government brought its dispute with Albania over incidents in the Corfu Channel before the Security Council. It claimed that British ships had been damaged and lives lost as the result of the explosion of mines laid with the knowledge of the Albanian Government and firing from shore batteries. A subcommittee was appointed but its report failed to produce agreement on any resolution dealing with the question on its merits. The Council finally decided to recommend to the parties that they submit the question to the International Court of Justice.[15]

(9) *The Egyptian question.* By letter dated July 8, 1947, the Egyptian Government brought before the Security Council its dispute with the United Kingdom over the continued presence of British troops in Egyptian territory and the future status of the Sudan. Settlement through ordinary diplomatic channels had proven impossible, it was alleged. The Security Council commenced its consideration of the matter on August 5. Various proposals were advanced but none was accepted. The question was allowed to remain on the agenda of the Council, it being understood that it might be considered at the request of any member of the Council or of either party.[16]

(10) *The Indonesian question* (Indian and Australian appeals). On July 30, 1947, the Indian and Australian Governments brought to the attention of the Security Council the situation in Indonesia resulting from conflict between Dutch and Indonesian armed forces. The Indian communication invoked Article 35(1) of the Charter; the Australian, Article 39. On August 1, the Security Council adopted a resolution calling upon the parties "to cease hostilities forthwith" and to settle

[13] *Ibid.*, p 248.

[14] See *Yearbook, 1946–47*, p. 360–75, UN, *Weekly Bulletin*, III, p. 385–6; and *International Organization*, I (1947), p 89–90, 331–2, 494–503

[15] See *Yearbook, 1946–47*, p. 392–4 and *International Organization*, I (1947), p. 326–9.

[16] UN, *Summary Statement by the Secretary-General on Matters of which the Security Council is Seized, etc.*, Doc. S/576, October 3, 1947; UN, *Weekly Bulletin*, III, p. 239–44, 319–23, and *International Organization*, II (1948), p. 87–90.

their disputes by peaceful means. The continuation of military operations in the face of acceptance of the August 1 resolution by the parties led to further consideration of the question by the Council, in the course of which the competence of the Security Council was challenged. On August 25 and 26, the Council adopted resolutions calling upon the Netherlands and the Indonesian Republic to observe strictly the Council's recommendations, requesting career consuls of members of the Council in Batavia to report on the situation, and tendering the good offices of the Council for the settlement of the dispute.

After receiving reports from the career consuls indicating that the cease-fire request was not being fully obeyed, the Council on October 3 adopted a resolution calling for the convening of the Committee of Good Offices provided for in the earlier resolution and requesting the Committee to proceed to exercise its functions with the utmost dispatch. Faced with the continued fact of non-observance of the August 1 resolution, the Council adopted a resolution on November 1 calling upon the parties to consult with regard to means of giving effect to the August 1 resolution, stating its interpretation of the cease-fire provisions of that resolution, and requesting the Committee of Good Offices to assist the parties in reaching agreement on arrangements for the observance of the resolution and the settlement of the dispute. As the result of the efforts of the Committee of Good Offices, representatives of the Netherlands and the Indonesian Republic signed on January 17 and 19, 1948 the "Renville" agreements consisting of a truce agreement and an agreement on political principles to serve as the basis for a settlement of the dispute. The negotiations between the parties, however, soon ran into deadlocks and mutual recriminations. The Security Council maintained its offer of good offices, requested the parties and the Committee of Good Offices to keep it informed of the progress of negotiations, and kept the question under close advisement.[17]

(11) *The India-Pakistan question.* In a letter to the President of the Security Council dated January 1, 1948, the Indian Government brought before the Security Council under Article 35(1) of the Charter the situation resulting from aid which invaders, comprising Pakistan nationals and tribesmen from areas adjacent to Pakistan, were alleged to have received from Pakistan for operations against the states of Jammu and Kashmir. After hearing representatives of the parties, the Council adopted a resolution on January 17 recognizing the urgency

[17] For detailed summary of Security Council action, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 17–24 and *International Organization*, II (1948), p. 80–5, 297–9, 500–2.

of the situation and calling upon the two governments to take measures to improve the situation and refrain from acts which might aggravate it. On January 20, the Council established a Commission to proceed to the spot to investigate the facts and act in a mediatory capacity. After extended discussion of the merits of the dispute, the Council adopted a resolution on April 21 making recommendations with respect to the restoration of peace and order and the holding of a plebiscite with a view to the pacific settlement of the dispute, and instructing the Commission, increased in size by the addition of representatives of the two parties, to use its good offices to get the Council's recommendations carried out. The Council kept the question under advisement.[18]

(12) *The Palestine question.* The Security Council became seized of the Palestine question on December 9, 1947, when it took note of a letter from the Secretary-General transmitting the General Assembly resolution of November 29, 1947. It began consideration of the resolution on February 24, 1948, when it had before it the first monthly report and the special report on the problem of security of the Palestine Commission calling attention to the need of force to restore order in Palestine. On March 5 the Council adopted a resolution making a general appeal for the elimination of disorder in Palestine and calling upon its permanent members to consult and make recommendations with respect to the implementation of the General Assembly resolution. It became clear from the discussions that the Security Council was not prepared to use force to implement the General Assembly resolution. With the date of the announced termination of the mandate by the United Kingdom approaching, the Council on April 1 adopted a resolution asking the Secretary-General to call a special session of the General Assembly to consider further the Palestine question. The efforts of the Council were largely centered on achieving a truce. By its resolution of April 27, provision was made for a Truce Commission to this end. These efforts failed.

With the formal termination of the mandate on May 15, the proclamation of an independent state of Israel, and the sending of armed forces of the Arab states into Palestine territory, the Palestine question entered a new phase. The General Assembly in its special session had placed the emphasis on mediatory action. The Security Council, when it resumed consideration of the question, concentrated its efforts on achieving the termination of hostilities and an agreed settlement. On

[18] For detailed summary of Security Council action, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 24–6 and *International Organization*, II (1948), p. 299–306, 488–9.

May 22, the Council adopted a resolution calling upon all governments and authorities to abstain from military action and issue a cease-fire order. This was followed by a stronger resolution on May 29 which was accepted. During the four-week truce period for which the resolution provided, efforts were made by the United Nations Mediator (appointed under the General Assembly resolution of May 14) to achieve agreement among the parties. These efforts failed. With the termination of the truce, the refusal of the Arab states to agree to its extension, and the resumption of hostilities, the Security Council finally adopted on July 15 a resolution ordering an immediate and unconditional cease-fire and declaring that failure to comply would lead to further action under Chapter VII of the Charter. This was notable as the first formal action under Chapter VII of the Charter. The Security Council emphasized, however, that efforts at a negotiated settlement were to continue.[19]

(13) *The Czechoslovak question.* By a letter dated March 12, 1948, the Representative of Chile asked the Secretary-General to bring before the Security Council under Article 35(1) the question of the alleged violation of the political independence of Czechoslovakia by the Soviet Union. He requested that an investigation of the situation be made under Article 34. While the question was placed on the agenda of the Council over the opposition of the Soviet Union, the proposal to appoint a subcommittee to take evidence and report was defeated by the negative vote of a permanent member. The question remains on the list of questions before the Council for action.[20]

While under the Charter the Security Council is made primarily responsible for the maintenance of international peace and security, the General Assembly is empowered to discuss disputes and situations the continuation of which is likely to endanger the maintenance of international peace and security, and under certain conditions to make recommendations. Furthermore, under Article 14 it may recommend measures for the peaceful adjustment of any situation which "it deems likely to impair . . . friendly relations among nations." Down to July 1, 1948, the General Assembly had considered five such questions.

The first was the Spanish question, brought before the General Assembly in the second part of its first session, after the Security Coun-

[19] For detailed summary of Security Council action, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 5–6, 9–12, UN, *Bulletin;* and *International Organization,* II (1948), p. 306–11, 491–500.

[20] For detailed summary of Security Council action, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit;* UN, *Bulletin;* and *International Organization,* II (1948), p. 311–4, 489–91.

cil had failed to reach a decision and had voted to remove the question from the list of matters before it. The General Assembly adopted a resolution on December 12, 1946, recommending that the Franco Government be debarred from the specialized agencies, that Members withdraw their ministers and ambassadors from Madrid, and that, if within a reasonable time an acceptable government were not established, the Security Council consider the measures to be taken.[21] The question was again brought before the General Assembly in its second session, but a proposal to reaffirm the General Assembly's earlier action was defeated. The General Assembly limited itself to expressing confidence that the Security Council would "exercise its responsibilities."[22]

The second question to come before the General Assembly was the claim by the Indian Government of mistreatment of Indians by the Government of the Union of South Africa. In its first session, the General Assembly adopted a resolution recognizing that friendly relations had been impaired, expressing the opinion that the treatment of the Indians should be in accordance with international obligations, and calling upon the two governments to report on action taken.[23] Failing to obtain a satisfactory settlement, the Indian Government again brought the matter before the General Assembly in its second session but a resolution calling for a conference to settle the matter on the basis of international obligations failed to receive the necessary two-thirds vote.[24]

The third question to be brought before the General Assembly was that of Palestine. In a letter dated April 2, 1947, the Government of the United Kingdom requested that the question be placed on the agenda of the General Assembly for action under Article 10 of the Charter. It also requested that a special session be summoned to constitute and instruct a special committee to give preliminary consideration to the matter. The General Assembly met in special session from April 28 to May 15, 1947 for the consideration of the matter. On May 15, it adopted two resolutions, one establishing a Special Committee on Palestine to investigate and report on conditions and to submit such proposals as it might consider appropriate for the solution of the problem, and the other calling upon governments and peoples to refrain, pending General Assembly action, from the threat or use

[21] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 63–4.

[22] For detailed summary of General Assembly action, see *Yearbook, 1946–47*, p. 126–30 and *International Organization*, I (1947), p 56–7 and II (1948), p. 61.

[23] *Yearbook, 1946–47*, p. 144–8 and *International Organization*, I (1947), p. 57–8

[24] UN, *Weekly Bulletin*, III, p. 725–7 and *International Organization*, II (1948), p. 61–2.

of force or any other action prejudicial to early settlement of the problem.[25]

The report of the Special Committee,[26] communicated to the General Assembly on September 1, 1947, contained majority and minority recommendations. These were considered at length during the second session of the General Assembly. The majority recommendations were adopted in substance in the General Assembly resolution of November 29[27] which recommended the partition of Palestine into Arab and Jewish states, a plan of economic union, and the establishment of the City of Jerusalem under a special international regime to be administered by the United Nations. The resolution set up a United Nations Palestine Commission to supervise the carrying out of the plan.[28]

The General Assembly plan encountered strong opposition from the Arab states. The unwillingness of the Security Council to undertake enforcement action necessary to the implementation of the plan made a new approach necessary. Taking its cue from the emphasis placed by the Security Council upon the termination of hostilities in Palestine and a negotiated settlement, the General Assembly adopted a resolution[28a] on May 14, 1948, in its second special session, affirming its support of the efforts of the Security Council to obtain a truce, providing for a United Nations Mediator empowered to use his good offices to restore peace and order in Palestine and to promote a peaceful adjustment of the situation, and relieving the Palestine Commission from the further exercise of responsibilities under the November 29, 1947 resolution. Thus the General Assembly retreated from its earlier efforts to impose a solution of the Palestine problem to the use of methods of good offices and mediation. In effect, its hand was forced by the Security Council and more particularly by the policies of its permanent members.[28b]

[25] See *Yearbook, 1946–47*, p. 276–303 and *International Organization*, I (1947), p. 488–91.

[26] UN, General Assembly, *Official Records of the Second Session . . .*, Suppl. No. 11.

[27] *Ibid., Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 131–50

[28] For detailed account of action of General Assembly in its second session, see *International Organization*, II (1948), p. 53–8 and UN, *Weekly Bulletin*, esp. III, No. 24 (December 9, 1947).

[28a] UN, General Assembly, *Official Records of the Second Special Session . . ., Resolutions*, Doc. A/555, p. 5–6.

[28b] For detailed account of the handling of the Palestine question subsequent to the General Assembly resolution of November 29, 1947, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 1–12; UN, *Bulletin;* and *International Organization*, II (1948), p 283–8, 306–11, 337–41, 478–81, 491–500, 515.

The fourth question to be brought before the General Assembly was that of alleged threats to the political independence and territorial integrity of Greece which was placed on the agenda of the second session at the request of the United States. After a prolonged and heated discussion, the General Assembly adopted a resolution on October 21, 1947, calling upon the states directly concerned to settle their dispute peacefully, making recommendations looking to the establishment of normal relations, and establishing a Special Committee to aid in carrying out these recommendations.[29] This action was strongly resisted by the delegations of the Soviet Union, Poland, Czechoslovakia, Yugoslavia, the Ukraine and Byelorussia who announced that their governments would not cooperate in carrying out the terms of the resolution. The United Nations Special Committee held its first meeting in Paris on November 21, 1947 and met continuously after December 1 at Salonika, its principal headquarters. The Special Committee observed and reported the extent of compliance with the General Assembly's resolution to that body. It has been seriously handicapped in working out solutions of such problems as restoration of diplomatic relations, border conventions, and repatriation of refugees by the refusal of the above-mentioned states to cooperate.[29a]

The fifth question brought before the General Assembly during this period was that of the independence of Korea, submitted by the Government of the United States after the alleged breakdown of negotiations in the American-Soviet Joint Commission on Korea. Though the competence of the General Assembly to act in the matter was contested, the Assembly finally, on November 14, 1947, adopted by a decisive majority a resolution [30] recommending that free elections to be held in Korea not later than March 31, 1948 and that a Korean National Government be established. It set up a Temporary Commission on Korea to assist in the attainment of these objectives.

The work of the Commission was handicapped from the beginning by the refusal of the Soviet Union to cooperate. Members of the Commission were denied access to the Soviet-occupied zone, and consequently were only able to perform their functions in South Korea, that part of Korea occupied by United States Military forces. After

[29] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 12–4

[29a] For detailed account of action of General Assembly and Special Committee, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 12–5, UN, *Weekly Bulletin* and *Bulletin;* and *International Organization,* II (1948), p. 59–60, 294–6, 486–7.

[30] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 16–8.

consultation with the Interim Committee of the General Assembly the Commission decided to proceed with the observance of elections in such parts of Korea as were open to them.. Elections were held in South Korea on May 10, 1948. On June 25, the Commission recorded its opinion that the results of the voting were a valid expression of the free will of the electorate in those parts of Korea accessible to the Commission.[31]

During the period of two and a half years down to July, 1948, comparatively little use was made of the International Court of Justice in dealing with disputes and situations involving some threat to or violation of the peace. Only in one case, that of the Corfu Channel dispute between Albania and the United Kingdom, was use made of the facilities of the Court. In this instance, appeal was made in the first instance to the Security Council and it was only after a recommendation by that organ that the parties accepted the jurisdiction of the Court. No question relating to an actual dispute or situation was referred to the Court for an advisory opinion, though proposals were made in connection with the consideration of the treatment of Indians in South Africa, the Spanish question, the Indonesian question and the Palestine question that this be done.

It cannot be said that the United Nations has been outstandingly successful in the handling of disputes and situations brought before it. There has been no recurrence, it is true, of armed conflict on a broad scale. In those cases where armed conflict has occurred, the operations have largely been of the nature of guerilla warfare and local insurrectionary activities. In Palestine the situation was unusual in that military operations initially took the form of local disorders and later assumed the character of hostilities involving states as the result of competition between legal and de facto authorities to fill a vacuum left by the termination of the authority of the mandatory power and inability to agree on any international arrangement for its replacement. Yet while serious violations of international peace have been avoided or brought under control, the organs of the United Nations have not achieved equal success in eliminating the causes of distrust and eventual conflict.

The cause of this failure, or lack of success, is to be found not so much in the technical provisions of the Charter as in the prevailing political atmosphere, created in part by the absence of a peace settlement. One result of this situation is that every dispute, even one re-

[31] For detailed account of action of General Assembly and Temporary Commission on Korea, see UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op. cit.*, p. 29–35 and *International Organization*, II (1948), p. 59, 288–90, 293–4, 484–6.

lating to the interpretation of a treaty, assumes a definitely political character, with the result that judicial methods of settlement, such as reference to the International Court of Justice, are not acceptable.

The charged political atmosphere has had its effect on United Nations procedures. The original intent of the framers of the Charter, at least of the permanent members of the Security Council, was that the Security Council should be the organ primarily responsible for the maintenance of peace. It is expressly stated in Article 24 of the Charter. This of course was based on the assumption that the permanent members of the Security Council would be able to agree among themselves to a sufficient extent to permit the Council to function. Such agreement has not in practice been achieved, with the result that on many of the questions that have come before the Security Council no decision has been possible. In order to avoid the consequences of the "great power veto" and to obtain decisions desired by the majority of the Members of the Organization, there has been a strong trend in the direction of utilizing the General Assembly.

The most important, but not the only move in this direction, was the proposal of the United States to the General Assembly at its second session to create an Interim Committee, thus depriving the Security Council of one of the advantages which it has under the express provisions of the Charter.[32] In somewhat modified form the proposal was adopted by the General Assembly on November 13, 1947.[33] The resolution provided for an Interim Committee consisting of one representative from each Member with power to consider matters referred to it by the General Assembly, to consider and report on any dispute or situation proposed for inclusion in the agenda of the General Assembly, to consider and report on general principles of cooperation in the maintenance of international peace and security, and to conduct investigations and appoint commissions. Considering that the Security Council may by procedural vote remove a question from the list of matters with which it is seized, thus making possible action as well as discussion by the General Assembly, this resolution had the effect of radically changing the functional relationship between the Security Council and the General Assembly. The announcement by the Delegations of the Soviet Union, Poland, Czechoslovakia, Yugoslavia, Byelorussia and the Ukraine that they would not participate in the work of the Interim Committee because of its illegal character raised some doubts as to its probable effectiveness. This brought again

[32] See, "Address by the Chief of the U. S. Delegation to the General Assembly," Department of State, *Bulletin*, XVII, p. 618–22.

[33] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 15.

into sharp focus the difficulty of achieving important results in this field by methods of international cooperation so long as certain of the great powers are sharply and openly in opposition to each other.

3. SECURITY AND THE REGULATION OF ARMAMENTS

The Security Council was of necessity limited in any enforcement action that it took during the first two years to Articles 39, 40 and 41. Military action was not possible, even if the need was found to exist, since no agreements were completed under Article 43 placing military forces at the disposal of the Security Council. In February 1946, the Security Council directed the Military Staff Committee, as constituted under the terms of Article 47 of the Charter, "to examine from the military point of view the provisions of Article 43." After over twelve months of study and discussion, the Committee submitted its report to the Council on April 30, 1947.[31] The recommendations of the Committee were set forth in 41 articles of which only 25 were accepted unanimously. The points on which disagreement existed included the nature of the contributions to be made by the permanent members of the Security Council, the location of forces when employed, the extent to which rights of passage and the use of available bases were to be guaranteed, the organization of command, and the time within which armed forces placed at the disposal of the Security Council were to be withdrawn. Obviously these are all questions which must be decided before the agreements envisaged in Article 43 can be made, and thus far there has been no appreciable progress.

The failure to conclude and put in force any military agreements under the terms of Article 43 left operative the provisions of the Charter regarding transitional security arrangements contained in Article 106. Thus the responsibility for taking military action rested with the signatories of the Moscow Four-Power Declaration of October 30, 1943, and France. Since, however, the failure to conclude agreements was due to the inability of these five powers to agree, there was bound to be some uncertainty as to their ability to carry out their responsibility under Article 106, if the occasion should arise.

Even so, Members of the United Nations were not without means for dealing with any violation of international peace and security of special concern to them. Each Member retained under Article 51 the right of self-defense against armed attack, and under the same article the right of collective self-defense was reserved. This permitted concerted action by Members similarly situated and regional or limited arrangements for dealing with a common danger. Pursuant to the provisions of this Article, the American Republics concluded at Rio

[31] UN, Security Council, *Report by the Military Staff Committee*, Doc. S/336.

de Janeiro the Inter-American Treaty of Reciprocal Assistance on September 2, 1947.[35] Also acting under the terms of this Article the Western European powers – the United Kingdom, Belgium, France, Luxembourg and the Netherlands – concluded on March 17, 1948, a treaty of economic, social and cultural collaboration and collective self-defense.[35a] Furthermore, treaties such as the French-Soviet Treaty of Alliance and Mutual Assistance of December 10, 1940, directed against the renewal of aggression by a former enemy power, remained in force with the express approval of Article 53 of the Charter.

Difficulties encountered in the organization of security have been paralleled by difficulties in the way of achieving any agreement on the international regulation of armaments. The Charter places far less emphasis than did the League Covenant on the limitation and reduction of armaments. In fact it stresses the idea of regulation of armaments, instead of limitation or reduction, suggesting that it is concerned with establishing minimum requirements as well as maximum levels.

The Charter provisions might have been different if the destructiveness of the atomic bomb had been known at the time of the San Francisco Conference. The use of the bomb seems to have convinced most Members that it was necessary to achieve as a minimum the international control and limitation of atomic weapons and weapons of mass destruction. By the General Assembly resolution of January 24, 1946, an Atomic Energy Commission was established to make specific proposals for the international control of atomic energy to the extent necessary to ensure its use only for peaceful purposes.[36]

From the work of the Commission it has become clear that the United States and the Soviet Union are in fundamental disagreement on certain basic issues. These relate to (1) whether outlawry and disposal of atomic bombs or establishment of adequate safeguards is to have priority; (2) the extent of the power to be given to the international atomic authority proposed by the United States; (3) the voting procedure of the Security Council when performing its duties under the proposed agreement; and (4) the time and extent of the release by the United States of information regarding the use of atomic energy. The United States is unwilling to relinquish its present advantageous position until it has the best possible guarantees of protection against the consequences of willful violation of the agreement by another state. On the other hand, the Soviet Union opposes any plan which would permit interference by the international authority

[35] Department of State, *Bulletin*, XVII, p. 565–7

[35a] *Ibid*, XVIII, p 600–2.

[36] UN, General Assembly, *Resolutions Adopted During the First Part of its First Session*, Doc A/64, p. 9

in its internal economic affairs or which would deprive the Soviet Union of the veto which it now enjoys in the Security Council.[37]

The problem of the international regulation of armaments in its larger aspects was raised before the General Assembly during the second part of its first session. After an extended debate, the Assembly finally adopted a resolution recommending that the Security Council "give prompt consideration to formulating the practical measures, according to their priority, which are essential to provide for the general regulation and reduction of armaments and armed forces and to assure that such regulation and reduction of armaments and armed forces will be generally observed by all participants and not unilaterally by only some of the participants." [38] In the course of the discussion the old arguments dating back to the League of Nations and before were revived. States in a favorable armaments position were reluctant to agree to any reduction without guarantees that the agreement would be respected and without further provision for collective security. States in a less favorable armaments position or who were convinced that they could best attain their objectives by internal political action, favored the immediate reduction of armaments as a step toward peace.

When the question of carrying out the General Assembly's resolution came before the Security Council, the United States insisted that priority be given to the international control of atomic energy, while the Soviet Union proposed that the general principles covering the whole range of armament reduction be considered. The action finally taken conformed closely to the American position. Questions relating to the international control of atomic weapons and other weapons of mass destruction were referred back to the Atomic Energy Commission, while those relating to the regulation of other forms of armament were referred to a new body, the Commission for Conventional Armaments.[39] After further debate, in which the fundamental differences between the United States and the Soviet Union were again empha-

[37] For United States and Soviet proposals, see UN, Atomic Energy Commission, *Official Records*, No. 1, p 4–14 and No. 2, p. 23–30. For further details of Soviet position, see statement of M. Gromyko before the Security Council, March 5, 1947, UN, Security Council, *Official Records, Second Year*, No. 22, p. 443–61, and Proposals on Atomic Energy Control Submitted by the Representative of the U.S.S.R., UN, Doc. AEC/24, June 11, 1947. For summary of discussions on atomic energy, see *Yearbook, 1946–47*, p. 444–51, and *International Organization*, I (1947), p. 99–102, 324–6, 333 and II (1948), p. 96–8, 315–6. See also, *Reports*, listed in *Select Bibliography*.

[38] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 65.

[39] For summary of Security Council action, see *Yearbook, 1946–47*, p. 375–81 and *International Organization*, I (1947), p. 320–6.

sized, the Security Council on July 8 approved a plan of work for this Commission.[40] The second report of the Atomic Energy Commission, transmitted to the Security Council on September 11, 1947,[41] indicated that none of the basic issues which had stood in the way of agreement had been resolved. In fact, by the end of 1947, no observable progress had been made in achieving agreement between the United States and the Soviet Union on the international regulation of armaments, atomic or other, or on the broader question of the international control of atomic energy.

The conclusion to be drawn from the experience of the United Nations in attempting to organize enforcement measures and achieve the international regulation of armaments, taking into account the experience of the League of Nations, is that any success by the methods of international cooperation is conditional on the existence of conditions of friendliness and mutual confidence among the great powers concerned. So long as present unsettled conditions exist and great power rivalries have not been brought within defined limits consistent with cooperative and friendly relations, the work of the United Nations in this field is likely to be of little avail.

Furthermore, the experience of the United Nations to date would seem to indicate that the early emphasis in discussions of the Charter on enforcement features was considerably overdone. Not only is it impossible, with the requirement of great power unanimity for Security Council decisions on substantive questions, to take enforcement action against a permanent member of the Security Council, but it is unlikely that any action will be taken against a smaller state which has the protection and support of a permanent member. If the United Nations is to achieve the maintenance of international peace and security, it is clear that first emphasis must be placed on the improvement of relations between the permanent members of the Security Council, and upon preventive, not enforcement action.

4. ECONOMIC AND SOCIAL COOPERATION

The work of the United Nations in the field of economic and social cooperation has, by its very nature, been slow in coming to full fruition. It must be remembered that the General Assembly, the Economic and Social Council, and the Secretariat have no authority given them under the Charter to achieve economic and social purposes by legislative or administrative action affecting individuals directly, nor can they take decisions binding states in policy matters without their consent. Ar-

[40] UN, Security Council, *Official Records, Second Year*, No. 55, p. 1217–29 and Suppl. No. 14, Annex 37.
[41] UN, Doc. S/557.

ticle 1(3) of the Charter makes it clear that the purpose of the United Nations in this field is "to achieve international cooperation in solving international problems" and "in promoting and encouraging respect for human rights and for fundamental freedoms." These purposes are repeated in Article 55 and under the terms of Article 56 Members pledge themselves to cooperate in the attainment of them. The powers of the General Assembly and the Economic and Social Council are limited to study and report, discussion, the initiation of negotiations, and the making of recommendations The experience of the League and the International Labor Organization showed that these are procedures that are slow in producing tangible results.

The Charter provides that its purposes may be achieved either by cooperation through specialized agencies brought into relationship with the United Nations or by cooperation within the framework of the United Nations itself. An important function of the General Assembly and the Economic and Social Council is to initiate negotiations with a view to the creation of specialized agencies necessary to the achievement of the purposes of the Organization. A significant part of the work of the United Nations during the past two years has been of this nature.

At the time the United Nations came into being, there were numerous specialized agencies already in existence or in process of being created. The Universal Postal Union (UPU) and the International Telecommunications Union (ITU) had their origins in the pre-1914 period. The International Labor Organization (ILO) was established at the same time as the League of Nations. The constitutions of the Food and Agriculture Organization (FAO), the International Monetary Fund (the Fund) and the International Bank for Reconstruction and Development (the Bank) were in force. The Provisional International Civil Aviation Organization (PICAO) was carrying on pending the coming into force of the agreement establishing the International Civil Aviation Organization (ICAO). The Establishment of the United Nations Educational, Scientific and Cultural Organization (UNESCO) was at an advanced stage.

The United Nations was thus faced in the beginning with a situation in which specialized agencies already established or in process of formation would assume important segments of the responsibilities placed upon it by the Charter. It had to decide with respect to fields that had not been covered whether additional specialized agencies should be created or whether the needs could best be met in some other way. Thus it was decided that for health matters a new specialized agency was desirable and the United Nations initiated negotiations leading to the creation of the World Health Organization.

In like manner, negotiations were initiated looking toward the creation of the International Refugee Organization and the International Trade Organization.[41a] The question of the relationship of the specialized agencies to the United Nations has been carefully considered. Agreements with the ILO, FAO, ICAO, UNESCO, the Bank, the Fund, WHO, UPU and ITU had been completed by June 30, 1948.[42] With the exception of the agreements with the Bank and the Fund, they follow the same general pattern. Provision is made for reciprocal representation at meetings without vote, the reciprocal right to propose agenda items, and the full exchange of information and documents. The specialized agencies agree to submit to the appropriate organs recommendations which the United Nations makes and to report on action taken. The desirability of close budgetary and financial arrangements is recognized but details are left to future agreements. It is recognized that it is desirable to have common headquarters, a single unified international civil service, and common technical services. The specialized agencies, however, do little more than "agree to cooperate." The agreements with the Bank and the Fund do not permit the United Nations to make recommendations with respect to individual loans and they require that the United Nations enter into preliminary consultations before making recommendations. Representation of the United Nations is limited to meetings of the Board of Governors and the United Nations is denied the right to consider the administrative budgets of the two agencies.[43]

It is obvious that the agreements made to date afford little certainty that proper coordination of the work of the United Nations and the specialized agencies will be achieved. At most the agreements, taken together with the Charter provisions, provide a legal framework for administrative action. The Economic and Social Council has established a Coordination Committee, consisting of the Secretary-General and corresponding officers of the specialized agencies "to insure the fullest and most effective implementation" of the agreements in force.[44] The achievement of this coordination would appear to be one of the heaviest responsibilities resting on the Secretary-General.[45]

[41a] For detailed information on the pattern of specialized agencies as of July 1, 1948, see comment on Article 57, *infra*, p 326.

[42] For references to documents and more detailed consideration, see *infra*, p. 346. The first six of these agreements had entered into force on June 30, 1948 See UN, *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1947–30 June 1948, op cit.*, p. 87.

[43] UN, Doc. A/349.

[44] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p 24–5

[45] Laves, W. H. C. and D. C. Stone, "The United Nations Secretariat," *Foreign Policy Reports*, October 15, 1946.

The direct achievements of the United Nations in the field of economic and social cooperation during its first two years cover a variety of subjects.[46] They range from emergency action to meet situations resulting from the war to long-range undertakings to improve economic and social conditions throughout the world.

Before the conclusion of hostilities the United Nations had joined in establishing the United Nations Relief and Rehabilitation Administration (UNRRA) to meet the relief and rehabilitation needs of countries freed of enemy control. The decision to liquidate UNRRA during 1946 and 1947 before these needs had been fully met required that some provision be made for continuing certain of its functions. The task of over-all coordination of relief needs and means of meeting them was undertaken by the United Nations, with the actual raising and spending of funds left to national governments and private organizations. The United Nations was limited, however, to fact-finding, publicity and exhortation. In addition, the United Nations took over the advisory welfare functions of UNRRA and established the International Children's Emergency Fund for the benefit of children and adolescents of countries victims of aggression to assist in their rehabilitation. Finally, the General Assembly and the Economic and Social Council initiated negotiations which led to the adoption of the Constitution of the International Refugee Organization to care for refugees and displaced persons, hitherto the responsibility of UNRRA and the armies of occupation, and to an agreement on interim measures to be taken pending the entrance into force of the Constitution.

Closely related to problems of relief and rehabilitation were the problems of reconstruction which faced those countries and regions ravaged by the War. The Economic and Social Council took the first step toward the solution of the economic problem in June, 1946, when it decided to create a Temporary Sub-Commission on Economic Reconstruction of Devastated Areas. This Sub-Commission presented a preliminary report which constituted the first realistic analysis of the problem of economic reconstruction.[47] This was followed by the establishment of the Economic Commissions for Europe and for Asia and the Far East specifically empowered to initiate and participate in measures for the economic reconstruction of these areas. The work of these Commissions, however, came to be overshadowed, temporarily at least, by the program initiated by the United States,

[46] For detailed accounts, see *Yearbook, 1946–47*, p. 467–555, reports of the Economic and Social Council to the General Assembly, and reports of the Secretary-General on the work of the Organization. See also, factual summaries in *International Organization.*

[47] UN, Doc. E/211/Rev. 1.

the so-called European Recovery Program (ERP), which called for cooperative action outside the framework of the United Nations.

Among the more important long-range achievements of the United Nations may be listed the following: (1) the establishment of the World Health Organization, taking over the functions of the League Health Organization and the Office international d'Hygiène publique in Paris, which has been given important functions to perform in spreading health knowledge, in combatting disease, and in improving public health practices; (2) the drafting of the Constitution of the International Trade Organization, which, once in force, will commit members to important principles of commercial policy, and taken together with the trade agreements negotiated in Geneva during the summer and fall of 1947, gives promise of important progress toward realizing the goals of freer international trade, higher production and employment, and a more stable world economy, (3) the preparation of an International Bill of Rights, intended to implement one of the important objectives of the Charter; (4) preparation for and holding of a world Conference on Freedom of Information in an endeavor to break down some of the barriers that have stood in the way of international understanding; (5) assumption of powers formerly exercised by the League of Nations under international agreements for the control of narcotic drugs and the further development of effective international control, and for prohibiting traffic in women and children; (6) the improvement of statistical procedures, thus making available better statistical information for public officials and private investigators; and (7) the initiation of studies and the preparation of reports on such subjects as the world economic situation, public debts and expenditures, economic status of women, and population movements.

From this brief survey it is clear that from the point of view of the range of subjects with which it deals, the techniques employed and the rate of progress to be expected, the United Nations does not differ fundamentally from the League of Nations. As was true of the League, it is limited to the time-consuming process of winning support for its programs by methods of persuasion. While decisions may be taken by majority vote, these are only decisions to recommend. Whether a Member joins in a course of action which has been recommended but which it initially opposed depends upon its own decision as to whether the advantages of conforming do or do not outweigh the disadvantages of pursuing a non-conformist course. The theory of the United Nations. as of all voluntary international organizations, is that objective study and analysis, full and free discussion, and the formation of a general consensus of opinion as to what should be done,

do assist in achieving final agreement between Governments and the necessary implementation of these agreements.

The experience of the League demonstrated, however, that in an unfavorable political environment the possibilities of constructive achievement by such methods, even when dealing with problems in the economic and social field, are distinctly limited. Questions of commercial policy and currency stabilization, for example, cannot be disassociated from questions of national security conceived in terms of maximum economic self-sufficiency and military preparedness. The emphasis upon ideological differences in recent years further extends the range of "non-political" subjects which have become colored with political overtones and filled with political implications. It is significant that, apart from the World Health Organization, the Soviet Union has not taken part in any of the recently created specialized agencies. Furthermore, it has appeared to show limited interest in many of the other economic and social projects of the United Nations. A further consequence of the political stalemate has been the decision of some Members to proceed outside the framework of the United Nations in the achievement of certain of its economic purposes. Thus the economic reconstruction of Western Europe has been undertaken through machinery specially created for the purpose. So long as this condition of conflict between two systems with respect to basic programs and principles of economic, social and political organization continues, it is difficult to see how the United Nations can function with maximum effectiveness in dealing with the controversial problems in this field.

5. NON-SELF-GOVERNING TERRITORIES AND TRUSTEESHIP

Chapter XI has proved to be one of the most important chapters of the Charter.[48] Unlike Chapters XII and XIII, this "international charter of colonial administration"[49] applies to all non-self-governing territories of Member States. When it became clear that the trusteeship system could not be put into operation immediately because of difficulties encountered in the making of trusteeship agreements, the General Assembly reminded Members that the provisions of Chapter XI were in full force and applied to mandated territories, and it requested the Secretary-General to include in his annual report a statement summarizing the information transmitted to him.[50] By its resolution of December 14, 1946, the Assembly invited Members to

[48] For text, see *infra*, p. 601.

[49] Bunche, *op. cit.*, p. 1040.

[50] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

report to the Secretary-General by June 30 of each year the most recent information at their disposal, recommended that this information be summarized, analyzed, and classified by the Secretary-General, and provided for an *ad hoc* committee to examine the Secretary-General's summary with a view to aiding the General Assembly in its consideration of this information and to make recommendations for procedures to be followed in the future.[51] Information with respect to sixty-two territories was received and summarized by the Secretary-General in time for consideration by the *ad hoc* committee. Acting in conformity with the recommendations contained in the report of the *ad hoc* committee,[52] the General Assembly decided that a special committee be created to assist it in the consideration of this information, that a standard form be used in its preparation, that the Secretary-General in preparing his own summary be allowed to use supplementary sources of information, and that the transmission of political information be encouraged.[53]

Thus, in actual practice, Chapter XI is being used to develop a system of international accountability for colonial administration which not only goes beyond anything that existed before but which in fact exceeds the requirements of the Charter itself. Under this Chapter, the United Nations may indeed make a more important contribution to the development of the enlightened administration of non-self-governing territories than under the more detailed and more publicized provisions of Chapters XII and XIII.

The establishment of the trusteeship system in working operation was delayed for a year by difficulties encountered in the making of trusteeship agreements.[54] This was unfortunate for the special reason that the demise of the League of Nations left no provision for the international supervision of the administration of mandated territories. The principal difficulty was inability to agree on the meaning of the phrase "states directly concerned" as used in Article 79 of the Charter.[55]

When the General Assembly met in October 1946, draft trusteeship proposals were submitted for Tanganyika, Togoland, and the Cameroons by the United Kingdom; for Togoland and the Cameroons by France; for Ruanda-Urundi by Belgium; for Western Samoa by New Zealand; and for New Guinea by Australia. All these territories

[51] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 124.

[52] UN, Doc. A/424, October 27, 1947.

[53] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 56–7.

[54] See McKay, *op. cit.*, p. 59–68.

[55] See comment, *infra*, p. 438.

had been administered under League mandates. The proposals were initially drafted by the mandatory powers and were revised by them on the basis of suggestions made by interested powers to which the original texts were submitted. In no case, did the proposals take the form of draft agreements between "states directly concerned." With some changes, the proposed terms of trusteeship were approved by the General Assembly after the decision had been taken by a subcommittee of the Fourth Committee to by-pass the procedural difficulty raised by Article 79 of the Charter.[56] This action was justified on the ground that all Members had "had an opportunity to present their views with reference to the terms of Trusteeship." At the second session of the General Assembly, the United Kingdom, Australia, and New Zealand presented proposals for a trusteeship agreement for the Island of Nauru which were approved by the Assembly substantially as offered.

These nine agreements, all for non-strategic areas, follow the same general pattern. Comparison with the League mandates for the same territories indicates significant differences. While the League mandates tended to stress the prevention of abuses, the trusteeship agreements place greater emphasis upon positive action by the administering authority to carry out the basic purposes of the Charter. Greater emphasis is placed in the trusteeship agreements upon the obligation of the administering authority to insure that the trust territory "play its part" in the maintenance of international peace and security. In fact the agreements permit the administering authority to establish naval, military, and air bases, erect fortifications, and station and employ armed forces in the trust territories.

The most significant differences between the League mandates system and the trusteeship system, as developed in the provisions of the Charter and the trusteeship agreements, and the rules of procedure of the Trusteeship Council, relate to the matter of international supervision. Under the trusteeship system, not only is the administering authority required to make an annual report, but to assure uniformity and adequate coverage, this report must be based on a questionnaire prepared by the Council.[57] Furthermore, the right of petition is not only admitted, but according to the rules of procedure adopted by the Trusteeship Council,[58] may be exercised under most liberal con-

[56] See UN, Doc. A/258, December 12, 1946, Annex III. On action of the General Assembly and texts of agreements, see *Yearbook, 1946–47*, p. 184–205. For discussion of issues raised, see Armstrong, E. H. and W. I. Cargo, "The Inauguration of the Trusteeship System of the United Nations," Department of State, *Bulletin*, XVI, p. 511–21.

[57] For text of draft questionnaire, see UN, Doc. T/44.

[58] UN, Doc. T/1/Rev. 1. Reprinted in *Yearbook, 1946–47*, p 581–9.

ditions. Finally, the General Assembly and the Trusteeship Council may arrange for periodic visits to trust territories for the purpose of establishing the facts by on-the-spot investigations. The dispatch by the Trusteeship Council of a mission of inquiry to Western Samoa following receipt of a petition asking for self-government and the action taken on that mission's report suggest that this power of inquiry, though restricted by the requirement of agreement with the administering authority as to time, will be seriously and effectively used.[59] Thus the establishment of the facts, so necessary to the effective operation of any system of international supervision, which under the Covenant was only imperfectly achieved, holds promise of being more satisfactorily realized. If a violation of the Charter or the trusteeship agreement is established, however, the United Nations, like the League, must fall back on moral sanctions.

One of the compromises made at the San Francisco Conference was to provide a special regime for so-called strategic areas. Such areas would normally be those "in which strategic considerations are clearly controlling." [60] It follows, of course, from the nature of the trusteeship system and the manner of making agreements that the decision whether an area is strategic or not is made in the first instance by the Member in possession. The trusteeship agreement designating the United States as the administering authority for the former Japanese Mandated Islands is the only example to date of the application of the trusteeship principle to strategic areas.[61] The agreement differs from the agreements for non-strategic areas in two important respects, apart from the fact that the supervisory functions are performed by the Security Council instead of the General Assembly. The agreement permits discrimination in favor of American nationals in commercial matters. The provisions of the Charter relating to annual reports, petitions, and inquiries are made applicable with the important proviso that the administering authority may determine the extent of their applicability to areas which may be closed for security reasons.

6. CONCLUSIONS

The Charter as written at San Francisco provided the legal basis for a working organization. By reference to the terms of the Charter it was possible to foretell with some degree of accuracy the structural lines of this organization and how in general it would function. It re-

[59] See Finklestein, Lawrence S., "Trusteeship in Action: the United Nations Mission to Western Samoa," *International Organization*, II (1948), p. 268–82.

[60] Bunche, *op. cit.*, p. 1043.

[61] Robbins, R. T., "United States Trusteeship for the Territory of the Pacific Islands," Department of State, *Bulletin*, XVI, p. 783–90. For text of agreement, see *ibid.*, p. 791–2, 794 and *Yearbook, 1946–47*, p 398–400

mained, however, for actual practice under the Charter to give it flesh and blood. It is now possible after two years of experience to draw some additional conclusions. Of course it must always be borne in mind that the United Nations, so long as it is a living thing, will be in a state of transition, adapting itself by usage as well as by formal amendment, to changing conditions and needs.

As the United Nations has become an established functioning organization, forced to deal realistically with a variety of international problems by the slow methods of international cooperation, there has been an inevitable tendency for it to draw upon League experience and to become in fact the successor to that organization, continuing, by much the same methods, the important work which the League first undertook.[62] Thus the United Nations is no longer generally regarded as representing an essentially new approach to the problem of international organization, but rather is viewed, in proper historical perspective, as a phase of the evolutionary process by which international organization has developed to meet changing world problems and needs.

Quite in line with League experience and with the emphasis at San Francisco, the economic and social work of the United Nations has come to occupy an important place. During the war and in the months immediately following there was an inevitable tendency to emphasize the role of military power in international relations. While the importance of power is still recognized, we are coming to see that man cannot live by force alone. The disruption of the economic and social life of the world by the war has brought recognition of the need of more emphasis upon social and economic reconstruction. Only under favorable economic and social conditions do international peace and security have the best chance of being achieved.

Furthermore, the War has hastened the emancipation of peoples hitherto regarded as "backward" or unable "to stand by themselves under the strenuous conditions of the modern world." This emancipation finds expression in the relative increase in the number of African and Asiatic members of the United Nations, as compared with the League of Nations, and the insistence and success with which Asiatic and African peoples are demanding the opportunity to be heard and to participate in the discussion of matters of common concern to them. The League of Nations was essentially European in its concerns and operated under the influence of nineteenth century ideas, including that of the white man's special responsibility for less fortunate peoples. These ideas are now being challenged, or at least critically ex-

[62] See Goodrich, Leland M., "From League of Nations to United Nations," *op cit.*

amined. This change of outlook is reflected in the emphasis placed in the work of the United Nations on the special problems of non-self-governing peoples and backward areas generally. Even the Security Council has frequently been called upon to deal with situations resulting from the political awakening of non-European peoples.

Partly as the result of this emphasis on problems of economic reconstruction and social welfare, and upon the economic and political development of non-self-governing and backward peoples, but also because of its more representative character, and the greater flexibility of its powers and procedures, the General Assembly has come to assume a central role in the United Nations. Senator Vandenberg's characterization of it as "the town meeting of the world" has already been realized in practice. It has not only provided a forum, but it has shown itself capable of taking decisions. It has come to play an important, although not dominant, role in the maintenance of international peace and security for which the Charter declares the Security Council to be primarily responsible. It is significant that the General Assembly alone was able to adopt an acceptable decision in the Spanish question, and that the Greek question was in the end referred to the General Assembly after the Security Council had been unable to come to a decision. The adoption of the United States' proposal for an Interim Committee is further evidence of the increased importance of the General Assembly.

So far as the Security Council itself is concerned, its principal work has been in connection with the pacific settlement or adjustment of disputes on situations likely to endanger peace, not enforcement action. Here again the failure of great power agreement to materialize has been an important factor. With the veto operating absolutely, the Security Council cannot be expected to take any important decisions regarding the organization of enforcement measures or their execution so long as the permanent members of the Council are in fundamental disagreement. On the other hand, the Council can function under Chapter VI, though its effectiveness here too is admittedly reduced. In any case, it is likely that the Security Council will continue to be primarily concerned with the peaceful settlement or adjustment of dangerous disputes and situations, and that the taking of enforcement measures will be highly exceptional.

A significant development in the United Nations system in practice has been the importance of the role which the Secretary-General has come to assume. For reasons partly of a personal nature, the Secretary-General of the League failed to provide strong leadership and direction for the organization. The need for such leadership is particularly great in the case of the United Nations, in large part because of the

necessity of properly coordinating the work of the Organization and the specialized agencies.[63] Furthermore, the nature of the United Nations organization is such that unless the Secretary-General is prepared to take the initiative, there is great danger that the broad international point of view will be lost sight of in the welter of conflicting national interests and departmental and agency jealousies.

While the United Nations has thus far achieved some substantial results, there is as yet no reasonable assurance that it will succeed where the League failed. To be sure it started with certain advantages over the League. It had the benefit of League experience and all the great powers were Members of it from the beginning. But it is under one great handicap which the League did not initially experience. It is called upon to operate in a world which is divided between conflicting ideologies and conflicting political and economic systems. Under such conditions the measure of general agreement necessary to the success of international cooperation is difficult to attain. As a "general international organization . . . for the maintenance of international peace and security" the future of the United Nations seems conditioned upon the ability of the United States and the Soviet Union, the leading representatives of these competing systems, to find the bases for constructive cooperation.

[63] See Laves and Stone, *op. cit.*

PART II
COMMENTARY ON ARTICLES

CHARTER
OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and
to unite our strength to maintain international peace and security, and
to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Origin and Purpose of Preamble. The preamble is a customary part of a treaty. The Dumbarton Oaks Proposals did not contain a preamble. Those provisions relating to motives and intent which are customarily placed in the preamble were contained in the first two chapters of the Proposals, dealing with "Purposes" and "Principles".

However, several delegations at the United Nations Conference on International Organization proposed that there should be a preamble to the Charter. The most important of these proposals was that made by Field Marshal Smuts, the chairman of the Delegation of the Union of South Africa.

On the basis of this and other proposals, the Preamble[1] was drafted and inserted in the Charter. The process by which it was drafted was not conducive to the production of a literary and inspiring text. The Smuts and other proposals were referred to a subcommittee of Committee I/1 which prepared a draft for Committee consideration.[2] The draft adopted by Committee I/1 was subsequently reviewed by the Coordination Committee and apparently approved only because time did not permit a fresh approach to the problem. Last minute changes, deemed necessary to put the text into grammatical form, were made by the Steering Committee.

It was recognized in the discussions of Committee I/1 that it was difficult, in fact impossible, to draw a clear-cut distinction between the Preamble, the statement of "Purposes" (Article 1) and the enumeration of governing "Principles" (Article 2). Such a differentiation was, however, attempted in these words:

> (*a*) The "Preamble" introduces the Charter and sets forth the declared common intentions which brought us together in this Conference and moved us to unite our will and efforts, and made us harmonize, regulate, and organize our international action to achieve our common ends.
>
> (*b*) The "Purposes" constitute the *raison d'être* of the Organization. They are the aggregation of the common ends on which our minds met; hence, the cause and object of the Charter to which member states collectively and severally subscribe.
>
> (*c*) The chapter on "Principles" sets, in the same order of ideas, the methods and regulating norms according to which the Organization and its members shall do their duty and endeavor to achieve the common ends. Their understandings should serve as actual standards of international conduct.[3]

The Committee was forced to admit, however, that the distinction between the three parts was "not particularly profound." A careful study leaves the impression not only of serious duplication but also of

[1] For detailed studies of the Preamble, see Kelsen, Hans, "The Preamble of the Charter — A Critical Analysis," *Journal of Politics*, VIII, p. 134–59 and Salomon, A., *Le prèambule de la Charte, base idéologique de l'O.N.U.*, Geneva and Paris, 1946.

[2] UNCIO, *Draft Preamble (As Approved by Committee I/1/A)*, Doc. WD 62, I/1/A118 (*Documents*, VI, p. 694).

[3] UNCIO, *Report of Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1), p. 1–2 (*Documents*, VI, p 446–7).

possible inconsistencies between the Preamble and other provisions of the Charter.[4]

Legal Force. The view of Committee I/1 of the Conference was that all provisions of the Charter, "being in this case indivisible as in any other legal instrument, are equally valid and operative." Each is to be construed and applied "in function of the others." [5]

It is clear of course that while the Preamble is an integral part of the Charter, it does not set forth the basic obligations of the Members. Nevertheless, the Preamble has significance as a statement of the basic motivating ideas of the Charter and of the purposes which the framers had in view. There can be little doubt that its words can be used as evidence of these ideas and purposes in any interpretation of the provisions of the Articles that follow. Thus within the limits of its purpose and character, it has the same legal value as other parts of the Charter.[6]

"We the peoples of the United Nations". The insertion of these words in the Charter was proposed by the Delegation of the United States. The purpose was to emphasize that the Charter is an expression of the will of the peoples of the world and is primarily concerned with their welfare. The proposal was inspired by the opening words of the Constitution of the United States. Its adoption constituted an important departure from past practice which had been, as in the case of the Covenant of the League of Nations, to refer only to states or their governments as parties to such international instruments. It was necessary, however, in drafting the Charter to recognize that, even though the Charter purported to reflect the resolution of peoples, the actual agreement must, of necessity, be between governments. Consequently, the Preamble concludes with the words: "Accordingly our respective Governments, through representatives assembled in the city of San Francisco . . . have agreed to the present Charter of the United Nations".

Purposes and Principles Set Forth in Preamble. The Preamble consists of a solemn affirmation of purposes in the name of "We the peoples of the United Nations" and a statement of principles of policy to be followed in pursuit of these purposes.

[4] See Kelsen, *op. cit.*

[5] UNCIO, *Report of the Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1), p. 2 (*Documents*, VI, p. 447).

[6] *Ibid.*, p. 2–3 (*Documents*, VI, p. 446–7) and *Charter of the United Nations, Report to the President on the Results of the San Francisco Conference . . .*, Department of State, Pub. 2349, Conference Series 71, p. 34–5. For example of use of preamble in interpreting an international instrument, see advisory opinion of Permanent Court of International Justice on the competence of the International Labor Organization, P.C.I.J., *Publications*, Series B, No. 2.

The first purpose stated is to save coming generations from the scourge of war. Here the word "war" is used instead of the word "force". It is quite clear that this is not meant in any way to limit the obligations of Article 2(4), which applies to the threat or use of "force". "War" is presumably here used in a non-technical sense to describe the use of armed force in international relations.

The reaffirmation of 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" is a declaration of purpose which had received wide and presumably serious support from the governments of the United Nations. In the Declaration by United Nations of January 1, 1942, the signatory governments recognized that victory in the war against the Axis powers was necessary "to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands." To many this represented the essence of the way of life which the United Nations had been engaged in defending against Axis aggression. Many at the Conference desired to incorporate in the Charter an international bill of rights further implementing this basic objective. Although this was not done, numerous Articles of the Charter were specifically intended to promote action in the direction indicated by this affirmation.[7] The phrase "and of nations large and small" introduces the idea of equal rights of states which is again affirmed in Article 2(1). The word "nations" is used in a non-technical sense.

The third of the general purposes set forth in the Preamble is the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." The "other sources of international law" are apparently those enumerated in Article 38 of the Statute of the International Court of Justice.[8] Obviously the "conditions" which are here referred to include the existence of organized procedures for settling disputes peacefully and suitable arrangements for keeping recalcitrant states from disturbing the peace. Broadly conceived, however, these conditions would seem to include such economic and social relations between states as will make it possible for all peoples to enjoy decent standards of living and general well-being and will thereby make easier the task of maintaining an order based on respect for law. The phraseology of the Charter is open to criticism. Justice in the sense in which the word is commonly used and respect for international law are not always easy to harmonize. Furthermore, "obligations arising from treaties and other sources of international law" might more

[7] See particularly Articles 1(2) and (3); 8; 13; 55; 56; 62; and 76.
[8] See *infra*, p. 620.

simply be referred to as "international obligations" without any loss of effect.[9]

The promotion of "social progress and better standards of life in larger freedom" is given as a separate and final general purpose. This purpose finds more detailed exposition in Article 1(3). Provision is made for its implementation in Chapters IX and X in particular. The phrase "in larger freedom" suggests a conception of freedom akin to that developed in President Roosevelt's annual message to Congress of January 6, 1941 in which he listed "four essential human freedoms"; "freedom of speech and expression – everywhere in the world," "freedom of every person to worship God in his own way – everywhere in the world," "freedom from want – . . . – everywhere in the world," and "freedom from fear – . . . – anywhere in the world."[10]

The second part of the Preamble contains an enumeration of the specific policies which the peoples of the United Nations announce their determination to pursue in achieving the above purposes.

The policy enunciated in the first phrase following "to these ends" is of a fundamental nature, and was originally intended by General Smuts to be the basic guiding principle of which the remainder would be an elaboration. It would appear to be the affirmation of "the policy of the good neighbor" as stated by President Franklin D. Roosevelt in his inaugural address, March 4, 1933, in these words:

> In the field of world policy I would dedicate this nation to the policy of the good neighbor – the neighbor who resolutely respects himself and, because he does so, respects the rights of others – the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.[11]

This part of the Preamble was specifically invoked by the General Assembly in its resolutions of October 21[12] and November 3, 1947,[13] dealing respectively with the Greek question and measures to be taken against war propaganda.

The ideas contained in the second and third clauses are reaffirmed in Article 1(1) and Article 2, and detailed provision is made for their implementation in other parts of the Charter, especially Chapters VI and VII.

The policy set forth in the fourth and final clause is reaffirmed in

[9] See Kelsen, *op. cit.*

[10] *Documents on American Foreign Relations, III, 1940–1941*, p. 33.

[11] *Roosevelt's Foreign Policy, 1933–1941*, New York, 1942, p. 3.

[12] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 12–4.

[13] *Ibid.*, p. 14.

Article 1(3), and it receives detailed implementation in other parts of the Charter, especially in Chapters IX to XIII.

Name of the Organization. In the Dumbarton Oaks Proposals it had been suggested that the new Organization should be given the name "The United Nations". This title had been suggested by President Roosevelt, and by Field Marshal Smuts of the Union of South Africa in an address before the two Houses of the British Parliament on October 21, 1942.[14] The idea back of this suggestion was, first of all, that this name accurately described the kind of organization necessary to the achievement of common purposes, and, secondly, that it had already been given recognition in the Declaration by United Nations of January 1, 1942. The official British position was that the name was intended to affirm both the fact that the Organization "is a result of the common effort which has saved civilization from the Nazi and Fascist attacks and the belief that such a close union will continue in the future."[15]

There were, however, delegations at San Francisco who felt that the name was unwise because it tended to perpetuate the idea of a military coalition formed for limited purposes under given historical circumstances. They felt that the name was too narrow in its implications, that it was associated with military action against certain states, and that it might impede progress towards universality. Certain difficulties of translation into other languages were also pointed out. Most of the delegates, however, felt that the proposed name was fitting. It was unanimously adopted by Committee I/1 as a tribute to President Franklin D. Roosevelt,[16] and the Committee's recommendation was accepted without dissent by Commission I and by the Conference.

There was consideration at the Conference of the question whether the definite article "the" should be considered part of the title, and, if so, whether it must always be capitalized. It was decided that the definite article should be included in the title, but that it should not for that reason be generally capitalized.

[14] Holborn, Louise W., ed., *War and Peace Aims of the United Nations*, Boston, 1943, p. 347.

[15] *British Parliamentary Papers*, Miscellaneous No. 6 (1944), Cmd. 6571, par. 1.

[16] UNCIO, *Report of Rapporteur of Committee I to Commission I*, Doc. 944, I/1/34(1), p. 5 (*Documents*, VI, p. 450).

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Maintenance of Peace and Security as an Objective. The present Charter, like the Dumbarton Oaks Proposals, makes the maintenance of peace and security the first purpose of the United Nations. It should be noticed that the peace to be maintained is "international" peace. It is not the purpose, except incidentally and on account of international implications, to keep internal peace or to intervene in a civil war.[1] None of the other purposes of the Organization can be achieved without peace and security. Formal peace alone, however, is not enough. Armed peace with the fear of war as the recurrent theme is not sufficient for the achievement of the purposes of the United Nations. Peace must be accompanied by a feeling of security, security from war in particular.[2]

Some would hold that there must also be a guarantee of justice as an assurance of peace. There is no real peace and security, it is argued, if these are achieved only at the sacrifice of justice.[3] It was proposed, both in Committee I/1 and in Commission I, to make this principle explicit by inserting the words "in conformity with the principles of justice and international law" immediately after the words "maintain international peace and security". The purpose of this amendment was to rule out any possibility of "appeasement", of "a new Munich." The proposal was not accepted.

The reasons for maintaining the original text were stated by dele-

[1] See comment on Article 2(7), *infra*, p. 110.
[2] See Point 6 of the Atlantic Charter, *infra*, p. 569.
[3] See the statement about withdrawal in comment on Article 6, *infra*, p. 143.

gates opposed to the change. They were in favor of justice, they were against appeasement, but they did not want to tie the hands of the Security Council. Their view was that the chief role of the Council is to prevent or to suppress the use of armed force. It must be able to do this without asking in each case which of the parties is wrong. Its first duty is to act as a policeman. After performing that duty, when the disorder is suppressed, it may act as an organ of conciliation. But no state which has taken the law into its own hands should be allowed to stop the Council from acting by saying that it is right and that its adversary is wrong. That claim can only be made at a later stage.[4]

Means for Maintaining International Peace and Security. To maintain international peace and security "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace" are to be taken. These words establish the principle of so-called collective security. The detailed implementation of this principle is left particularly to Chapter VII. It is to be noted here, however, that the Charter does not attempt any definition of aggression. It was not considered desirable to attempt any such definition for fear that it would unduly limit the power of the Security Council and would play into the hands of the would-be aggressor.[5]

The Charter also proposes to achieve the maintenance of international peace and security by bringing about "by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." These principles are implemented by Chapters VI and XIV in particular. It is not stated that the Organization shall undertake the "adjustment or settlement" of all disputes or situations, only those "which might lead to a breach of the peace." Thus the Charter makes a distinction between disputes or situations of minor importance and those whose continuance "might lead to a breach of the peace." It is to be noted that the phraseology used here is different from that of Articles 33, 34, and 37 where the test applied is whether "the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."

The use of the words "by peaceful means" calls for a word of comment. "Peaceful" and "pacific" are used interchangeably in the Charter.[6] The use of so-called armed reprisals is presumably not

[4] UNCIO, *Report of the Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1), p. 8 (*Documents*, VI, p. 453).

[5] See comment on Article 39, *infra*, p. 262.

[6] "Peaceful" is used in Article 1(1); Article 2(3); Article 33(1). "Pacific" is used in the title of Chapter VI; in Article 35(2); and in Article 38. Textbooks on international law use the words "amicable", "pacific", and "peaceful". The use

make it clear that the strengthening of the economic and social provisions of the Charter did not give the United Nations power to coerce states in respect to matters which had hitherto been regarded as falling within their exclusive domestic jurisdiction.[12] It would thus appear that a claim such as was advanced in the course of the General Assembly consideration of the treatment of Indians in South Africa, that Article 1(3) of the Charter obligates Members to respect specific human rights and fundamental freedoms is not well-founded. It only purports to be a statement of purpose, and furthermore the purpose set forth is the achievement of "international cooperation", not the enforcement of specific policies or legal rights.

There is no attempt made in the Charter to define the "human rights" and "fundamental freedoms" to which reference is made. In the Atlantic Charter, freedom from fear and freedom from want were given express recognition as objectives. By the Declaration by United Nations, the signatories subscribed to the objectives of the Atlantic Charter, and, in addition, recognized the defense of religious freedom as one goal of their common war effort. At the San Francisco Conference, the United States Delegation made it clear that, in their understanding, the "fundamental freedoms" included freedom of speech, and that freedom of speech involved, in international relations, freedom of exchange of information.[13] A proposal was made at the Conference that a declaration of human rights should be included in the Charter. This proposal was not accepted, chiefly for the reason that it was felt that the Organization, once formed, could best act upon this suggestion. The Commission on Human Rights, established by the Economic and Social Council under Article 68 of the Charter, has completed a draft International Declaration of Human Rights.[14]

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

This purpose was accepted at San Francisco without discussion. The use of the word "center" might suggest a geographical location where international activity for the achievement of the purposes of the United Nations is to be centered, a common headquarters for the United Nations and the various specialized agencies. This result has

[12] See comment on Article 2(7), *infra*, p. 110.

[13] *Charter of the United Nations, Report to the President on the Results of the San Francisco Conference . . .*, Department of State, Pub. 2349, Conference Series 71, p. 38.

[14] For further discussion, see comment on Article 62(2), *infra*, p. 378. See also, Malik, Charles, "International Bill of Human Rights" and "Draft International Declaration of Human Rights," UN, *Bulletin*, V, p 519–24.

not been achieved. A more reasonable interpretation of Article 1(4) would seem to be that the United Nations is to be the means for harmonizing the actions of nations in the attainment of common ends. The emphasis is thus placed, and quite properly, on the necessity of agreement as the basis for action, because it is only by agreement between the states concerned, not by votes or by coercive measures, that the purposes of an Organization can be achieved. Consequently, a central purpose of the Organization is to provide the means for achieving agreements.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

This Article is of fundamental importance in the total economy of the Charter. It lays down certain fundamental principles which the Organization operating through its various organs must respect. These same principles are also binding upon Members. Since the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council are composed of Members, it might be thought that, at least with respect to the activities of these organs, the inclusion of the word "Organization" is superfluous. This, however, is clearly not true of the Secretariat and the International Court of Justice. The Charter clearly distinguishes between the Organization and its Members. Both, by this Article, are to respect certain basic principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.[15]

The expression "the sovereign equality of all peace-loving states" first appeared in the Moscow Four-Power Declaration of October, 1943. The Dumbarton Oaks Proposals used the same phraseology. This was modified at the United Nations Conference in San Francisco to make the principle applicable only to Members since it was not considered appropriate or desirable to give non-Members the benefits conferred by the Charter.

"Sovereign equality" is a far from self-explanatory term. It appears to be the result of an attempt to express euphoniously the two distinct concepts of sovereignty and equality. Some indication of the intended meaning of the term was given by Committee I/1 in its report to

[15] See Kelsen, Hans, "The Principle of Sovereign Equality of States as a Basis for International Organization," *Yale Law Journal*, LIII, p. 207–20.

Commission I at the United Nations Conference. This statement was approved by the Commission and by the Conference in plenary session. According to it, sovereign equality includes the following elements:

(1) that states are juridically equal;
(2) that each state enjoys the rights inherent in full sovereignty;
(3) that the personality of the state is respected, as well as its territorial integrity and political independence;
(4) that the state should, under international order, comply faithfully with its international duties and obligations.[16]

These ideas are usually associated with the principles of sovereignty and equality.

The Concept of National Sovereignty. Space does not permit any extended discussion of the meaning of sovereignty. A distinction is commonly made between internal and external sovereignty. The internal sovereignty of the state is its superiority over other bodies within its jurisdictional limits. This aspect of sovereignty received emphasis in the writings of Bodin and other early exponents of the idea of state sovereignty. The external sovereignty of the state consists of its independence of action, its freedom of external control, in its relations with other states or outside authorities. It is this aspect of sovereignty in particular which some find difficult to harmonize with an international legal order.

The Charter provides for an international organization and imposes upon Members certain obligations. It consequently must follow that the principle of sovereignty as enunciated in the Charter is compatible with responsible participation in a legal order. The Charter clearly accepts the view that a state by accepting international obligations does not violate its sovereignty. Rather it is by an exercise of this sovereignty that such obligations are assumed.[17]

There must however be limits to the extent to which this process may be carried as it is conceivable that otherwise a state might by the exercise of its sovereignty yield the substance of its sovereignty completely. Obviously the Charter does not envisage this possibility. Various provisions of the Charter emphasize the large area of freedom of action reserved to Members. Admission of the right of withdrawal,[18] the safeguarding of domestic jurisdiction,[19] and the limitation, gener-

[16] UNCIO, *Report of Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1) (*Documents*, VI, p. 457) and *Verbatim Minutes of the Ninth Plenary Session, June 25, 1945*, Doc. 1210, P/20, p. 3 (*Documents*, I, p. 614).

[17] See judgment of the Permanent Court of International Justice in the Wimbledon case, P.C.I.J., *Documents*, Series A, No. 1.

[18] See *infra*, p. 142.

[19] See comment on Article 2(7), *infra*, p. 110.

ally speaking, of the powers of the principal organs of the United Nations, other than the Court, to the making of recommendations provide examples.

The Concept of State Equality.[20] This concept is derived from that of state sovereignty. Every state, irrespective of origin, size or form of government is equally entitled to the rights conferred by international law. States are entitled to have the rules of international law applied equally and impartially in the settlement of disputes which they refer to international tribunals.

This equality before the law, or juridical equality, does not of course mean that states are equally capable of getting their rights respected in a world which still permits individual states to use power for exclusively national purposes. Nor does equality, thus conceived, mean political equality. Cuba is not the equal of the United States in political power and influence, nor is Finland the equal of the Soviet Union.

In the Charter the principle of equal legal rights is recognized.[21] Furthermore, by providing in general that the organs of the United Nations may only make recommendations with respect to matters of substance, and that new obligations for Members must be based on voluntary acceptance, the principle of equality is largely preserved in respect to the creation of new international obligations. The only important exception to this is to be found in the power of the Security Council to take substantive decisions under Chapter VII which create obligations for Members that have not concurred in the decisions, with the exception of permanent members of the Council. The Charter does, however, recognize the inequality of Members in respect to power and political influence by according the "Great Powers" permanent membership in the Security Council and the so-called "right of veto."

Application of the Principle. As might have been expected, and no doubt was intended, the principle of "sovereign equality" has served to emphasize the fact that the United Nations is an international organization to facilitate voluntary cooperation among its Members, and has been invoked by those Members desirous of checking any development of the authority of the United Nations or any related body at the expense of national freedom of action. Thus it was vigorously argued by the Soviet Union that the establishment of an atomic energy authority as proposed by the United States would be in violation of this principle. When the Greek question was before the Security Council in the summer of 1947, and later before the General Assembly,

[20] For discussion of the concept of equality of states, see Dickinson, E. D., *The Equality of States in International Law*, Cambridge, 1920.

[21] See Preamble and comment, *supra*, p. 87.

the resolution introduced by the United States to accept the proposals of the Council's Balkan Commission, to recommend that the Balkan states take the proposed action, and to create a commission to assist in carrying out these proposals was opposed by the Soviet Union, Albania, Bulgaria and Yugoslavia on the ground, among others, that it involved an infringement of the sovereignty of the last-named states.[22] Experience thus far would indicate that this principle will operate primarily as a limitation on the United Nations, as an argument for a restrictive interpretation of the powers of the organs of the United Nations, rather than as a safeguard of the rights of smaller states.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

Though this principle would seem to be fairly obvious, and indeed fundamental to the establishment of any international legal order, it was considered desirable to state it explicitly as one of the basic principles of the Charter. It was contained in the Dumbarton Oaks Proposals. There was, apart from drafting changes, only one modification of the Dumbarton Oaks text. The words "in good faith" were added at San Francisco. These words were inserted by Commission I when the report of Committee I/1 was under consideration at the request of the Delegate of Colombia, who thought that it was appropriate to state the idea of good faith as "a *leit motif*" of the new Organization because good faith had so often been conspicuously lacking from international relations in the years immediately preceding. The amendment was adopted by a unanimous vote.[23]

The paragraph states the reason why Members are to fulfil in good faith their obligations under the Charter. The advantages of membership can only be had if the burdens of membership are loyally assumed. This principle finds specific application in Article 19.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

[22] For discussions in Security Council and General Assembly, see *International Organization*, I(1947), p. 494–503 and II(1948), p. 59–60, 85–7; and "The General Assembly and the Problem of Greece," Department of State, *Bulletin*, XVII, No. 440A.

[23] UNCIO, *Verbatim Minutes of the Second Meeting of Commission I, June 15, 1945*, Doc. 1123, I/8, p. 7–16 (*Documents*, VI, p. 71–80).

The principle laid down in this paragraph is basic to the provisions of the Charter for the pacific settlement of disputes, especially Chapters VI and XIV.

At the United Nations Conference, the word "international" was inserted in the Dumbarton Oaks text to make it clear that the obligation does not apply to domestic disputes. This same result would, however, have been achieved by the provisions of paragraph 7 of this Article, but it was thought desirable to make the meaning clear beyond a doubt. It was also decided, on the proposal of the Delegation of Bolivia, to insert the words "and justice" in the Dumbarton Oaks text. The purpose of this clearly was to prevent a recurrence of appeasement at the expense of the smaller nations. It is not enough that peace and security should be safeguarded; the principles of justice must also be respected.[24]

Unlike Article II of the Pact of Paris, this paragraph states the obligations of the contracting parties in positive terms. Members of the United Nations are obligated to settle all their disputes by peaceful means. This of course does not mean that some international disputes may not go for a long time unsettled. So long as their continuance is not likely to endanger the maintenance of international peace and security or the parties themselves do not bring them before the appropriate organs of the United Nations by procedures which they have accepted, the United Nations has no basis for action. This paragraph is therefore quite consistent with the principle on which Chapter VI is based that the Security Council should concern itself only with the more serious disputes and situations. Article 33 of the Charter gives a detailed, though not exhaustive, enumeration of peaceful means of settlement.[25] Interpreted in the light of paragraph 4, this principle would seem to prohibit any method of settlement involving the use of force short of war. The use of armed reprisals, for example, is not to be regarded as a peaceful means, though technically it may not be war.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

History and Significance. This paragraph lays down one of the cardinal principles of the United Nations. As an organization established to maintain international peace and security, its success is obvi-

[24] See comment on Article 1(1), *supra*, p. 93.
[25] *Infra*, p. 237.

ously dependent on the extent to which its Members respect this basic principle and the effectiveness of its organs, notably the Security Council, in obtaining respect for it. This provision is to be compared with the corresponding provisions of the League of Nations Covenant, notably Article 10 by which members undertook "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League" and Articles 12, 13 and 15 by which members undertook not to "resort to war" under certain conditions.

The principle set forth in this paragraph is concise and simple as compared with the corresponding provisions of the Covenant and attempts made in the inter-war period to define "aggression" more fully.[26] The Dumbarton Oaks Proposals contained an even more simple statement.[27] The words "against the territorial integrity or political independence of any state" were inserted at the United Nations Conference in response to demand by certain smaller states that there should be included in the Charter some more specific guarantee that force could not be used by the more powerful states in violation of the "territorial integrity and political independence" of weaker states. A proposal that it should be made an obligation of all Members to resist any act of aggression against one or more Members without waiting for a decision by the Security Council was not accepted.[28]

"In their international relations". This phrase limits the application of the principle to the international relations of Members, i.e. their relations with other Members and with states not Members of the United Nations in much the same way that the words "as against external aggression" limited the application of Article 10 of the Covenant. The principle thus does not prevent a state from using force within its metropolitan area to put down a revolution or other disturbance, nor does it prohibit the use of force in suppressing a colonial disorder. This conclusion is further supported by the provision of paragraph 7 of this Article. In the Indonesian case, the Netherlands Government maintained that it was justified in using force to maintain its authority within the Empire and that the resulting situation was no proper concern of the United Nations.[29] While a Member is not prevented by this paragraph from using force in its internal affairs, such use of force may have international repercussions which justify some action by the Security Council.

[26] See Royal Institute of International Affairs, *International Aggression*, London, 1938, p. 177–87.

[27] *Infra*, p. 573.

[28] UNCIO, *Summary Report of Twelfth Meeting of Committee I/1, June 6, 1945*, Doc. 810, I/1/30, p. 1–5 (*Documents*, VI, p. 342–6).

[29] See *infra*, p. 117.

"The threat or use of force". This phrase covers a considerably wider range of actions than the phrase "resort to war" as used in the Covenant and interpreted in the practice of the League. "Resort to war" was interpreted as requiring the existence of a legal "state of war" not necessarily resulting from the use of armed force, much less the threat of the same.[30] Measures of self-help involving the use of armed force have often been adopted by states in their international relations without any state of war existing.[31] These measures of self-help, except as they may be consistent with the purposes of the Charter, are prohibited by this paragraph.

While the paragraph is not explicit on the point, the discussions at San Francisco, other provisions of the Charter and common usage strongly suggest that the word "force" is to be understood in the sense of "physical force" or "armed force". The coercion or attempted coercion of states by economic or psychological methods may be undesirable and contrary to certain of the declared purposes of the United Nations, but the obligation of this paragraph is not directed against action of this kind. So far as armed force is concerned, however, the prohibition is not limited to its actual use. The threat of the use of such force is also prohibited. By the terms of Article 39 the Security Council determines whether such a threat has been committed.

It was decided at San Francisco not to attempt a detailed definition of aggression for the guidance of the Security Council and Members of the United Nations. While the advantages of such criteria were strongly supported by some delegations, arguments emphasizing the possible dangers of any detailed listing of prohibited acts finally prevailed.[32]

"The territorial integrity or political independence". As we have seen, this phrase did not appear in the Dumbarton Oaks Proposals and was inserted at San Francisco to provide added protection for the smaller and weaker states. Contrary to the provisions of Article 10 of the Covenant, however, the undertaking of Members to respect the territorial integrity and political independence of Members is not accompanied by an obligation to preserve them. Thus no obligation arises for other Members of the United Nations in case of a threat or use of force against one until the Security Council has taken a decision.

The interpretation of the expressions "territorial integrity" and "political independence" raises the same difficulties as under Article

[30] See Wright, Quincy, "When Does War Exist?", *American Journal of International Law*, XXVI, p. 362.

[31] See Hindmarsh, A. E., *Force in Peace*, Cambridge, 1933, p. 57–83.

[32] See comment on Article 39, *infra*, p. 262.

10 of the Covenant.[88] Would the principle here laid down be violated if a Member sent its armed forces into the territory of another Member for "protective" purposes with the declared intention of withdrawing them as soon as the threat to the weaker state had been removed? In other words, is the territorial integrity of a state respected so long as none of its territory is taken from it, or does respect for the territorial integrity of a state require respect for the territorial inviolability of a state, i.e., the right of a state to exercise exclusive jurisdiction within its own territory? Obviously, the consequences of the two interpretations might be radically different.

The expression "political independence" lends itself to easier interpretation. Clearly the "political independence" of a state is in fact violated if a state is coerced through the threat or use of force by a more powerful state into taking action which it would not otherwise take. On the other hand, we have seen that it is possible even here to use fictions which are intended to have the effect of concealing the real character of the action taken.

It would thus appear that these words, inserted to provide an added guarantee that force will not be used by any Member for its purely selfish purposes at the expense of another, will only serve their purpose to the extent that the Members of the United Nations, and particularly the permanent members of the Security Council, loyally respect the spirit and intent of the words in question, and act through the Security Council to implement effectively the general principle here laid down.

When the neighboring Arab States sent their armed forces into territory claimed by the Jewish State of Israel in support of the Palestinian Arabs, following the termination of the British mandate on May 15, 1948, the question arose as to whether this action constituted a violation of Article 2(4). Since the Arab States had not recognized the State of Israel which proclaimed its independence on May 15, and had insisted on an independent united Palestine, it was argued from their point of view that there was no violation of the principle laid down in this paragraph. Rather the military measures taken were in the nature of legitimate measures of self-defense. On the other hand, from the point of view of the State of Israel and Members of the United Nations which had recognized it violation of the principle seemed clear.

The Right of Self-Defense and "the Purposes of the United Nations." In addition to requiring Members to refrain from the use or threat of force against the territorial integrity or political independence of any state, this paragraph obligates Members to refrain from the use or

[88] Cf. Kelsen, Hans, "Legal Technique in International Law: A Textual Critique of the League Covenant," *Geneva Studies*, X, No. 6, p. 66–81.

threat of force "in any other manner inconsistent with the Purposes of the United Nations." This raises the question whether such action taken by a state may be justified as an exercise of the right of self-defense if intended to meet a threat to its security which has not yet assumed the form of an armed attack covered by the provisions of Article 51.[34]

The right of self-defense is commonly regarded as inherent. Nevertheless it must be admitted that the right has been seriously abused in the past. This paragraph obviously is intended to restrict the freedom of action of a state in the exercise of this inherent right. When the Security Council was considering the report of its Commission of Investigation concerning Greek Frontier Incidents, the deputy representative of the United States expressed the view that the failure of the Security Council to act did not preclude individual or collective action by states willing to act, so long as the action taken was in accordance with the general purposes and principles of the United Nations.[35] This raises the question whether the threat or use of force in the exercise of the right of self-defense to meet a danger short of "armed attack" would be consistent with "the Purposes of the United Nations."

One of the purposes of the United Nations is "to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace".[36] This would seem to mean that, subject to the provisions of Article 51, measures involving the use of force must be "collective". Must they also be taken by the United Nations in accordance with the provisions of Chapters V, VII and XVII of the Charter or is collective action by some Members independently of the organs of the United Nations in the exercise of the right of self-defense also permissible? It is not clear what the intention of the framers of the Charter was. Committee I/1 which drafted the text at San Francisco stated in its report that "the use of arms in legitimate self-defense remains admitted and unimpaired," but followed this with the statement that "the use of force, therefore, remains legitimate only to back up the decisions of the Organization at the start of a controversy or during its solution in the way that the Organization itself ordains."[37] The United States Delegation reported that "the whole scheme of the Charter is based on this conception of collective force made available to the Organization for the maintenance of international peace and

[34] See *infra*, p. 297.
[35] UN, Doc. S/P. V. 180, p. 65–6.
[36] Article 1(1), *supra*, p. 93.
[37] UNCIO, *Report of Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1), p. 14 (*Documents*, VI, p. 450).

security," but added that "under Article 51 force may also be used in self-defense before the machinery of the Organization can be brought into action, since self-defense against aggression would be consistent with the purposes of the Organization."[38] One would seem justified in concluding that the authors of the Charter, assuming that the Security Council would be able to perform reasonably effectively the responsibilities placed upon it by the Charter, intended to limit the exercise of the right of self-defense, whether individual or collective, to cases of actual armed attack. The inability of the Security Council to act effectively in the discharge of its responsibilities because of disagreements among its permanent Members, together with the development of the atomic bomb, has created a situation, not envisaged at San Francisco, in which a more liberal exercise of the right of self-defense seems necessary. The provisions of the Charter, not too clear in their meaning in any case, are being interpreted to justify action which now seems necessary to meet situations which the regular organs and procedures of the United Nations have proven incapable of handling in a satisfactory manner. It must be recognized that to allow the use or threat of force by one or more Members in the exercise of a right of self-defense, undefined except as to its purpose, involves serious dangers to the United Nations. It substitutes the decisions of single Members or limited groups of Members, motivated by particular views of national interests, for the decisions of the established organs of the United Nations with all the safeguards that the Charter provisions establish.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

The two principles here set forth were contained in paragraphs 5 and 6 of Chapter II of the Dumbarton Oaks Proposals. They were regarded as complementary at the San Francisco Conference and were combined into one paragraph. The first part of the paragraph requires Members "to give to the Organization any assistance which their obligations under the Charter require of them."[39] It imposes no obligations not provided for in other parts of the Charter. Chapter VII, in particular, makes specific provision for the detailed application of the principle here stated. The second part of the paragraph complements the first, by requiring that no assistance be given to any state against

[38] *Charter of the United Nations, Report to the President . . ., op. cit.*, p. 41.
[39] *Ibid.*, p. 42.

which preventive or enforcement action is being taken in accordance with the terms of the Charter.

At San Francisco, the French Delegation proposed an amendment which would have expressly denied to any Member the right to claim exemption from the provisions of this paragraph on the ground of its status of permanent neutrality. In the discussions in Committee I/1, it was agreed that the adoption of the amendment was unnecessary since the principles of this paragraph, as adopted by the Committee, had that effect.[40] Switzerland was allowed to retain its neutral status as a member of the League of Nations.[41]

6. 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.

This paragraph corresponds to the last unnumbered paragraph of Chapter II of the Dumbarton Oaks Proposals. It represents a somewhat different approach to the problem from that adopted in the Covenant of the League of Nations. Article 17 of the Covenant provided that in the event of a dispute involving a state not a Member of the League the state should be invited "to accept the obligations of membership" "for the purposes of such dispute" upon conditions deemed just by the Council. If the invitation were accepted, the provisions of Articles 12 to 16 inclusive would be applicable with such modifications as might be deemed necessary by the Council. If a non-member refused to accept the obligations of membership and resorted to war against a Member, the sanctions provisions of the Covenant became applicable. If both parties, being non-members, refused to accept the obligations for the purposes of the dispute, the Council might take such measures and make such recommendations as would prevent hostilities and result in the settlement of the dispute.

The Charter places on the Organization the obligation to see that states which are not Members act in accordance with the principles of Article 2 "so far as may be necessary for the maintenance of international peace and security." It is clear that the Organization thereby actually assumes authority not based on the consent of the states affected. It is doubtful whether an international instrument like the Charter can impose legal obligations on states which are not parties

[40] UNCIO, *Report of Rapporteur of Committee 1 to Commission I*, Doc. 944, I/1/34(1), p. 14–5 (*Documents*, VI, p. 459–60).

[41] See Hudson, Manley O., "Membership in the League of Nations," *American Journal of International Law*, XVIII, p. 439–40.

to it. The traditional theory, which is not unanimously held,[42] is that treaties cannot obligate third parties. If this theory is accepted, the authority of the United Nations under this paragraph is based exclusively upon the will and power of the contracting parties.

Since the Security Council is the organ primarily responsible under the Charter for the maintenance of international peace and security, it is the Security Council which, under the terms of this paragraph, is required in the first instance to enforce upon non-Members conformity with the Principles of the Charter, so far as may be necessary to the maintenance of international peace and security. Because of the recent experience with aggression by Japan and Germany when these states were not members of the League of Nations, there was no question at San Francisco but what some provision of this nature for dealing with threats to or violations of the peace by states not Members of the Organization should be made. Otherwise the whole scheme of the Charter might be jeopardized.

The provisions of this paragraph should be considered in connection with the terms of Article 35(2), which permit a state not a Member of the United Nations to bring to the attention of the Security Council or General Assembly any dispute to which it is a party "if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter," and of Article 106 which empowers the parties to the Moscow Four-Power Declaration and France to take such joint action on behalf of the Organization, pending the coming into force of the special agreements referred to in Article 43, as may be necessary for the purpose of maintaining international peace and security.

The principle of paragraph 6 has been invoked and applied by the United Nations in a number of cases. The first application came in connection with the consideration by the Security Council of the Polish charge of April 9, 1946 that the activities of the Franco Government endangered international peace and security. Article 2(6) was expressly invoked.[43] Though doubts were expressed with regard to the jurisdiction of the Council under Articles 39, 41 and 42, the Council's jurisdiction was never questioned on the ground that Spain was not a Member. The Council was again called upon to take action involving non-Members in connection with the Greek charge of December 3, 1946, that Albania and Bulgaria were giving support to guerrilla forces operating in Greece, and the British complaint of January 10,

[42] See, for example, Kelsen, Hans, *Peace through Law*, Chapel Hill, 1944, p. 38 and "Traités internationaux à la charge des États tiers," *Mélanges Mahaim*, II, p. 164 *et seq.*

[43] UN, Doc. S/84.

1947, against Albania in which Albania was charged with causing illegal damage to British warships by mines and gunfire. In the last two cases, the representatives of the non-Member states were allowed to participate in the Council discussions on condition that they accept the obligations of Members for the pacific settlement of disputes.[44] The General Assembly pursued a similar course when the Greek question was brought before it during its second session.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.[44a]

History of the Paragraph. It has not been uncommon to include in treaties for the pacific settlement of international disputes provisions excluding matters solely within the domestic jurisdiction of states.[45] Article 15(8) of the Covenant of the League of Nations provided as follows:

> If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendations as to its settlement.

It is to be noted that this paragraph applied to action of the Council under Article 15. Furthermore it prescribed the standard of international law for determining whether a matter was "solely within the domestic jurisdiction" of a state, and expressly empowered the Council to make the determination.

The Dumbarton Oaks Proposals contained a comparable provision. Paragraph 7 of Chapter VIII, Section A, provided that the provisions of the preceding six paragraphs dealing with the pacific settlement of disputes "should not apply to situations or disputes arising out of matters which by international law are solely within the domestic

[44] See Article 32 and comment, *infra*, p 233.

[44a] For discussion of domestic jurisdiction as a limitation on international jurisdiction, see Davies, D. J. Llewelyn, "Domestic Jurisdiction: A Limitation on International Law," Grotius Society, *Transactions*, XXXII (1946), p. 60 *et seq.*; Gross, Ernest A., "Impact of the United Nations upon Domestic Jurisdiction," Department of State, *Bulletin*, XVIII, p. 259–67; Kelsen, Hans, "Limitations on the Functions of the United Nations," *Yale Law Journal*, LV (1946), p. 997–1015; and Pollux, "Domestic Jurisdiction," *Acta Scandinavica juris gentium*, XVII, 1946, Fasc. 3–4, p. 13–29.

[45] See Habicht, Max, *Post-War Treaties for the Pacific Settlement of International Disputes*, Cambridge, 1931, p. 996–8.

jurisdiction of the state concerned." [46] At the United Nations Conference in San Francisco the Sponsoring Governments proposed an amendment which involved revision of paragraph 7 and its transfer from Chapter VIII, Section A, to Chapter II (Principles) where it would become a governing principle for the whole Organization and its Members.[47]

In the view of the Sponsoring Governments this change was required by the broadening of the scope of the Organization's functions, particularly in respect to economic, social and cultural matters. It was intended, in particular, to require the Organization in carrying out its economic and social objectives to deal with governments, instead of allowing the Organization to "penetrate directly into the domestic life and social economy of the member states." [48] It was not intended to weaken the power of the United Nations in the maintenance of peace and security. To make this clear, the new proposal contained a proviso to the effect that the application of Chapter VIII, Section B, dealing with the determination of threats to the peace and acts of aggression and action with respect thereto, should not be prejudiced.[49]

This proposal of the Sponsoring Governments was critically received at San Francisco. It was argued that it undermined the authority and influence of the United Nations, that it weakened the role of law in the new Organization, and that it opened the way to arbitrary acts based on considerations of expedience and national interests. On the other hand, there were many delegations, including the Australian, who believed that the new proposal did not go far enough, in that while it adequately safeguarded the positions of the permanent members of the Security Council who would be in the position to exercise the veto, it did not sufficiently protect the smaller nations against pressure that might be brought to bear in connection with wholly domestic matters. The only change made in the proposal of the Sponsoring Governments at San Francisco was the adoption of an Australian amendment,[50] which further restricted the authority of the Organization. To understand the reasons for and the significance of this amendment, it is necessary to consider the history of other related provisions of the Charter.

[46] *Infra*, p. 578.

[47] UNCIO, *Amendments Proposed by the Governments of the United States, the United Kingdom, the Soviet Union, and China*, May 5, 1945, Doc. 2, G/29 (*Documents*, VI, p. 622–8).

[48] See statement of Mr. Dulles of the United States Delegation, UNCIO, *Summary Report of the Seventeenth Meeting of Committee I/1, June 14, 1945*, Doc. 1019, I/1/42, p. 1–2 (*Documents*, VI, p. 507–8).

[49] See *infra*, p. 578.

[50] UNCIO, *Amendment by the Australian Delegation to Proposed Paragraph 8 of Chapter II (Principles)*, Doc. 969, I/1/39 (*Documents*, VI, p. 436–40).

Under Chapter VIII, Section B, of the Dumbarton Oaks Proposals, the Organization had the right to "make recommendations or decide upon measures to be taken to maintain or restore peace and security." This could be interpreted to mean that the Security Council had the power to decide upon the terms of settlement of a dispute, as well as take enforcement measures. An amendment to paragraph 2 of Chapter VIII, Section B, proposed by the Sponsoring Governments, did make it clear that binding decisions to be taken under the paragraph were to relate to enforcement measures. Nevertheless it still remained possible for the Security Council to make recommendations of terms of settlement under Section B and Section B as a whole was specifically excluded from the operation of the domestic jurisdiction principle. Back of the Australian amendment was a fear that the Security Council, when faced with a threat of force or an actual violation of the peace, might make recommendations under paragraph 2 (later Article 39 of the Charter) with respect to domestic matters and exercise strong pressure to secure their acceptance. In fact, it was argued that the proposals as they stood might place a premium on the threat or use of force. The Australian amendment provided for the further limitation of the exception to enforcement measures under Section B (Chapter VII of the Charter).[51]

Nature and Purpose of Limitation. In its report to Commission I of the San Francisco Conference, Committee I/1 expressed the following view regarding the *raison d'être* of the paragraph:

> The Organization we are developing is assuming, under the present Charter, functions wider in their scope than those previously assumed by the League of Nations or other international bodies and even wider than those which were first contemplated at Dumbarton Oaks, especially in the economic, social, and cultural fields. The tendency to provide the United Nations with a broad jurisdiction is, therefore, relevant and founded. The necessity, on the other hand, to make sure that the United Nations under prevalent world conditions should not go beyond acceptable limits or exceed due limitation called for principle 8 (Article 2(7)) as an instrument to determine the scope of the attributes of the Organization and to regulate its functioning in matters at issue.[52]

The paragraph establishes a limitation on the authority of the United Nations and then proceeds to make an exception to the limitation. It limits the United Nations by denying it authority to intervene

[51] *Ibid.* For position of those opposing proposal of Sponsoring Governments and Australian amendment, see UNCIO, *Statement by the Norwegian Delegation (Dr. Arnold Raestad) on Paragraph 8*, Chapter II, Doc. 929, I/1/37 (*Documents*, VI, p 430–2).

[52] UNCIO, *Supplement to Report of Rapporteur, Committee I/1 to Commission I*, Doc 1070, I/1/34(1) (d), p 1 (*Documents*, VI, p 488)

in matters essentially within the domestic jurisdiction of any state and by expressly providing that Members are not required to submit such matters to settlement under the Charter. It makes an exception to this limitation by providing that the principle does not prejudice the application of enforcement measures under Chapter VII.

In the course of discussion at San Francisco it was emphasized that this is not a "technical and legalistic formula." [53] Whereas Article 15(8) of the League Covenant and paragraph 7 of Chapter VIII, Section A of the Dumbarton Oaks Proposals had included a reference to international law as the standard of interpretation, the substitute proposal of the Sponsoring Governments at San Francisco contained no such reference. Proposals to include a reference to international law were resisted on the grounds that in any case the intention of the new paragraph was not to establish a legalistic formula but rather a general principle. On the other hand, it was argued that the inclusion of a reference to international law was unnecessary since the paragraph, being part of an international agreement, would be interpreted by reference to international law in any case.[54]

Practice to date has evidenced a lack of general agreement on whether the principle of this paragraph is to be regarded primarily as a legal limitation or a political principle. Arguments with respect to the interpretation of the paragraph have very commonly been legalistic in content. Proposals to refer the question of interpretation to the Court, though made, have not been adopted, and there has been strong and successful insistence by many governments that interpretation of the paragraph is a political function properly to be performed by the organ directly concerned with the matter giving rise to the question of competence.

There can be little question regarding the importance of the paragraph. It establishes the principle that certain matters are to be excluded from the competence of the United Nations to act, in much the same way that the Tenth Amendment to the Constitution of the United States together with other provisions of the Constitution limit the sphere of action of the Federal government. Being couched in general terms, its interpretation will become a decisive factor in determining whether the United Nations will be an organization of large and expanding responsibilities or be kept within relatively narrow limits dictated by a strict interpretation of the provisions of the Charter.

[53] See statement of the United States Delegate (Dulles) in Committee I/1, UNCIO, *Summary Report of the Seventeenth Meeting of Committee I/1*, Doc. 1019, I/1/43, p. 1–2 (*Documents*, VI, p 507–8)

[54] For discussions in Committee I/1, see UNCIO, *Summary Report of Sixteenth Meeting of Committee I/1*, Doc. 976, I/1/40 (*Documents*, VI, p. 494–9) and *Summary Report of Seventeenth Meeting of Committee I/1*, Doc. 1019, I/1/42 (*Documents*, VI, p 507–13)

The Power of Interpretation. Proposals were made at San Francisco that questions involving the interpretation of this paragraph be referred to the International Court of Justice. Various alternative suggestions were made to this end, including one that the compulsory jurisdiction of the Court over such questions be accepted. In opposition to conferring any special competence on the Court in this manner it was argued that the principle of compulsory jurisdiction had been rejected by another Committee (IV/1) of the Conference and that there was no reason for making an exception in this case. It was pointed out that other provisions of the Charter relating to the powers of the United Nations and its organs presented the same problem, and that there was no good reason why the general rule adopted should not apply to this paragraph.[55] Furthermore, if, as was argued by some, the question of the extent of domestic jurisdiction was not to be decided exclusively by legal standards, there appeared no compelling reason for making the Court the sole, or even the principal, interpreter of the Article.

The rule adopted by Committee IV/2 of the Conference with respect to the interpretation of the provisions of the Charter generally thus was made applicable to this paragraph as well. According to this rule, the paragraph is interpreted by the organ concerned and by the Members themselves.[56] Of course the provisions of Article 96[57] are applicable, according to which an organ of the United Nations may request the Court to give an advisory opinion on a legal question.

The practice of the United Nations to date has conformed to this rule. Though the question of the interpretation of Article 2(7) has been considered on a number of occasions, particularly by the Security Council and the General Assembly, and has been argued in legal terms, every proposal to refer the question to the Court for an opinion has been defeated. Though the question of competence when raised before the organs of the United Nations has not as a rule been explicitly decided, the organs concerned have taken decisions which have clearly implied determinations of the preliminary question. The usual practice, however, has been to circumvent the issue rather than face it directly.

Interpretation in Practice. The paragraph has been many times invoked or referred to in the practice of the United Nations. The actual

[55] UNCIO, *Summary Report of Seventeenth Meeting of Committee I/1*, Doc. 1019, I/1/42, p 3 (*Documents*, VI, p. 509).

[56] See UNCIO, *Report of Committee IV/2*, Doc. 933, IV/2/42(2) (*Documents*, XIII, p. 703–12). By the terms of the United States acceptance of the compulsory jurisdiction of the International Court of Justice, the United States reserves the exclusive right of interpretation. See I C.J., *Yearbook*, 1946–47, p. 217–8

[57] See *Infra*, p 487.

cases to which reference will be made fall into five different categories: (1) questions involving the governmental regime or internal administration of a state; (2) questions involving non-self-governing territories; (3) questions involving human rights and fundamental freedoms; (4) economic and social matters; and (5) questions relating to the international control of atomic energy.

In the Spanish and the Czechoslovak cases, the argument was advanced that the domestic regime of a state or a change in the government of a state is a purely domestic matter. In the Spanish case it was argued that for the Security Council to take jurisdiction it was necessary to find that the Franco regime constituted a threat to the peace under Article 39.[58] The view of the subcommittee appointed to study the matter and of the great majority of the members of the Council was that the situation was of international concern. Although the governmental regime of a state was admitted to be in principle a matter of domestic concern, the Franco regime was considered to be a threat to the maintenance of international peace and security and a cause of international friction. In support of this conclusion, attention was called to the resolution adopted by the United Nations Conference at San Francisco on June 25, 1945, the Potsdam Declaration of August 2, 1945, the General Assembly resolution of February 13, 1946, and the Declaration of France, the United Kingdom and the United States of March 4, 1946.[59] Though the Security Council did not adopt a resolution because of failure of the permanent members to agree on a text, there was general acceptance of the Council's right to act, and later the General Assembly adopted a resolution containing specific recommendations.[60]

During the preliminary discussion by the Security Council of the Czechoslovak case, the position was taken by the Soviet representative that a change in government is a matter exclusively within the domestic jurisdiction of a state.[61] The United States representative argued that the conclusion was justified only if it was established (1) that the Government of Czechoslovakia had not been changed with the assistance, direct or indirect, of a foreign power, and (2) that no threat of the use of force or other pressure or interference has been directed against the political independence of Czechoslovakia by a foreign power.[62]

[58] UN, Security Council, *Journal* . . , No. 28, p. 555–7 and No. 29, p. 565–77.
[59] See UN, Security Council, *The Report of the Sub-Committee on the Spanish Question* . . . , Doc. S/75 and *Journal* . . . , No. 37, p. 723–31.
[60] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session* . . . , Doc. A/64/Add.1, p. 63–4.
[61] UN, Security Council, *Official Records, Third Year*, No. 56, p. 2–21.
[62] *Ibid.*, p. 25–33.

In the consideration of applications for membership under Article 4, particularly by the Security Council, attention has been given to the governmental systems of applicant states. Decisions taken have clearly been influenced by such considerations.[62a]

The question of domestic jurisdiction in relation to matters of domestic government and administration was raised several times in the course of United Nations consideration of the Greek question. The Committee of Investigation, set up by the Security Council to report on conditions along Greece's northern frontier, while it did not accept the Soviet contention that the Greek regime in power was the primary cause of the disturbed conditions, nevertheless concluded that the internal domestic situation in Greece could not be ignored as a contributing factor.[63]

The domestic jurisdiction principle has been invoked on several occasions to protect the jurisdiction of colonial powers over non-self-governing territories. When the question of the power of the General Assembly to consider matters relating to non-self-governing territories under Chapter XI was before the General Assembly for discussion during the second part of its first session, it was argued that no system of implementation of the principles of Chapter XI was provided for in the Charter because none was intended, and that implementation by the General Assembly through the creation of an *ad hoc* committee to examine information received under Article 73(e) would be a violation of domestic jurisdiction.[64] In spite of this opposition, the General Assembly adopted a resolution establishing such a committee.[65] This committee later rejected as violations of Article 2(7) Soviet proposals calling for information on immigration policies, participation by native populations in local government, receipt of petitions by the organs of the United Nations and periodic missions to these territories. Upon its recommendation, however, the General Assembly did agree that the "voluntary" transmission of political information was to be encouraged.[66]

The question of the extent to which Article 2(7) permits organs of the United Nations to enter into direct contact with the peoples of non-self-governing territories has come up in connection with proposals before United Nations organs. A resolution introduced by the

[62a] See comment on Article 4, *infra*, p. 126.

[63] UN, Doc. S/360, p. 181.

[64] UN, Doc. A/C.4/Sub. 2/19.

[65] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 124–6.

[66] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 56.

Philippine delegation during the first session (second part) of the General Assembly provided for the calling of a conference of representatives of non-self-governing territories by the Economic and Social Council. This resolution was opposed, even in a modified form which associated the administering authorities in the calling of the conference, on the ground that it constituted a violation of Article 2(7).[67] The resolution finally adopted recommended the calling of such conferences by Members having colonial responsibilities.[68] A similar question arose when membership of non-self-governing territories in the Economic Commission for Asia and the Far East (ECAFE) was being considered. Although the proposal that non-self-governing territories have associate membership was generally acceptable, the colonial powers strongly and successfully opposed a Soviet proposal that applications for membership be received directly by the Commission without requirement of action by the administering powers.[69]

In the Indonesian case, the question arose as to whether Article 2(7) prevented Security Council action in a situation where the relations of the Netherlands and the people of Indonesia were in the process of being established on a new basis following the period of Japanese occupation. When the Indonesian question was first brought before the Security Council in February 1946, the presence of British troops was under consideration, and while the Netherlands Government did not object to Council consideration of this question, it did make it clear that it considered the question of the relation of Indonesia to the Netherlands to be a domestic matter. In July 1947, the situation resulting from the outbreak of hostilities between Netherlands and Indonesian forces was brought before the Council by Australia and India. This time the Netherlands representative strongly contested the right of the Council to act on the grounds that the relation of Indonesia to the Netherlands was a matter essentially within the domestic jurisdiction of the Netherlands, and that the military action being taken was of no concern to the Council since it was in the nature of domestic police action, and that no threat to or violation of international peace and security existed.[70] The Netherlands representative contended that the Cheribon and Linggadjati Agreements between the

[67] See UN, Doc. A/C.4/74 and General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .*, p. 1327–57.

[68] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 126.

[69] See UN, Doc. A/P.V./103, Doc. E/CN.11/S.R. 17; and Doc. E/CN.11/S.R. 23.

[70] UN, Security Council, *Official Records, Second Year*, No. 67, p. 1619–20, 1639–48.

Netherlands and the Indonesian Republic were not to be regarded as agreements between two sovereign states and that by concluding them the Netherlands Government had not given recognition to the Indonesian Republic. Other members of the Council, however, took the view that the Indonesian Republic had been given *de facto* recognition by a number of states, including the Netherlands, and that a breach of the peace under Article 39 did exist.[71] The question of jurisdiction was never explicitly decided by the Council, though the action subsequently taken could only have been justified on the assumption that competence to act existed. Nor was it made clear whether the action of the Council was based on the exception to the domestic jurisdiction principle or on the view that the matter was not essentially within the domestic jurisdiction of the Netherlands.[72]

Article 2(7) has also been invoked in connection with the consideration by organs of the United Nations of questions of human rights. When the General Assembly was asked to consider during the second part of its first session the question of the treatment of Indians in South Africa, its competence was supported on the grounds that the Union of South Africa was bound by bilateral agreements with India and by the provisions of Articles 1(2) and (3), 55(c) and 56 to refrain from the discriminatory treatment in question and that the continuation of the situation threatened friendly relations between states.[73] On the other hand, the competence of the General Assembly to take action was denied on the ground that the matter was essentially within the domestic jurisdiction of the Union of South Africa, it being argued that there were no bilateral agreements applicable and that the provisions of the Charter did not by themselves create any obligation to respect particular individual liberties.[74] The question of competence was never explicitly decided but the resolution finally adopted by the General Assembly on the question of substance by implication upheld its authority to act. The General Assembly appeared to decide that a matter relating to the treatment of nationals was not essentially within the domestic jurisdiction of a state if it impairs friendly relations between states and if there is question of the violation of international obligations.[75] When the matter was again considered during

[71] *Ibid.*, p 1620–30.

[72] For summary of action taken by the Security Council, see *International Organization*, II(1948), p. 80–5, 297–9, 500–2

[73] See UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Joint Committee of the First and Sixth Committees* and *ibid., Plenary Meetings . . .* , p 1006–61.

[74] *Ibid.*

[75] For text of resolution, see UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc A/64/Add.1, p. 69.

its second session, the General Assembly failed to reaffirm its earlier action.

The domestic jurisdiction principle has also been invoked in connection with the drafting of an international bill of rights. A Working Group on Implementation of the Commission on Human Rights proposed an international court with power to give final and binding decisions on questions involving the alleged violation of human rights as defined in the proposed bill, to be aided by a standing committee of five persons who would receive petitions, collect information and submit recommendations.[76] The recommendation was wholly unacceptable to the Soviet Union because it constituted interference in the domestic affairs of states. The argument was advanced that human rights, involving the relations of nationals to their governments, cannot be made the subject of international enforcement action unless violation of them results in a threat to or breach of the peace.[77]

In view of the fears expressed at the San Francisco Conference, it is interesting that little attention has been given to the domestic jurisdiction principle in connection with the consideration of economic and social matters. The view has been expressed, and not seriously challenged, that the organs of the United Nations can survey the economic development of particular states and make proposals thereon only upon the request of the states concerned.[78] In connection with a resolution on stateless persons which the Economic and Social Council adopted in March 1948,[79] the Soviet representative argued that "no resolution regarding stateless persons is legal without the approval in each single case of the government of the country of origin of the so-called stateless person."[80]

When the question of international control of atomic energy was under consideration by the Atomic Energy Commission and by the Security Council, the Soviet representative argued that

> the proposal to grant to an international control organ the right to possess establishments for the production of atomic energy, and unlimited power to carry out other important functions connected with the ownership and management of the establishments and with the disposition of their production, would lead to interference by the central organ in the internal affairs and the internal life of States and eventually would lead to arbitrary action by the control organ in the solution of such problems as fall completely within the domestic jurisdiction of a State.[81]

[76] UN, Doc. E/CN.4/53. [77] UN, Doc. E/CN.4/S.R. 7.
[78] UN, Doc E/CN.1/S.R. 3 and Doc. E/CN.1/S.R. 28.
[79] UN, Economic and Social Council, *Resolutions Adopted . . . During Its Sixth Session . . .*, Doc. E/777, p. 18
[80] UN, Doc. E/S R. 159.
[81] UN, Security Council, *Official Records, Second Year*, No 22, p 452.

The United States' answer to this objection was that the proposed control system would rest on a treaty basis and that consequently, to the extent provided, Members of the United Nations would agree not to regard these matters as being within their domestic jurisdiction.

General Conclusions. The Charter text, the discussions at San Francisco, and the practice of the United Nations to date do not give any very satisfactory indication of the exact meaning of Article 2(7) or the role it is going to play in the development of the Charter system. While on the one hand it has on a number of occasions been invoked in support of a restrictive interpretation of the Charter and the functions and activities of the United Nations, it has not thus far proved to be as serious a limitation upon the actual work of the United Nations as was feared by some in the beginning. No doubt this has to a large degree been due to the fact that certain of the organs of the United Nations, the General Assembly and the Economic and Social Council in particular, whose competence has been questioned under this paragraph, have been able to take their decisions by two-thirds or majority vote without the possibility of veto by an interested member. (Security Council voting procedure, however, allows an interested permanent member to prevent action from being taken on the ground that Article 2(7) would be violated.[81a])

The practice of the United Nations makes it clear, as indeed does the phraseology of Article 2(7), that the word "intervention" as used in the paragraph is not to be given a narrow technical interpretation. While discussion does not amount to intervention, the creation of a commission of inquiry, the making of a recommendation of a procedural or substantive nature, or the taking of a binding decision constitutes intervention under the terms of this paragraph. To limit intervention to coercive measures would have the result of largely limiting the application of the paragraph to the field of the exception which obviously could not have been intended.

While the word "intervention" has been broadly interpreted, the phrase "matters essentially within the domestic jurisdiction of any state" has been restrictively interpreted in the practice of the United Nations. The use of "essentially" in place of "solely" has proved to be of no special significance. The rule of international law that a matter ceases to be within the domestic jurisdiction of a state if its substance is controlled by the provisions of international law, including international agreements, has been accepted.[82] In a sense it could be argued that this is the only valid test. However, the organs of the United Na-

[81a] See comment on Article 27, *infra*, p. 213.

[82] See advisory opinion of the P.C.I J. in the case of the Nationality Decrees in Tunis and Morocco, P.C.I.J., *Publications*, Series B, No. 4.

tions have not been satisfied with an exclusively legalistic app. They have quite clearly been concerned with the attainment of the major objectives and purposes of the United Nations and have shown an unwillingness to accept any interpretation of Article 2(7) which would prevent action from being taken in a situation deemed to be of international concern in terms of these purposes.

However, in evaluating the significance of the paragraph one must look beyond the acts and decisions of the organs of the United Nations. This paragraph, inserted to safeguard the domestic jurisdiction of states, has no doubt had its effect on national policies and acts. As an international organization dependent for its achievements on the willingness of its Members to cooperate effectively, the United Nations can obviously suffer if its Members in their policies and acts emphasize too greatly their exclusive rights and interests.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Universal vs. *Limited Membership.* The question of membership is of fundamental importance for an international organization of the kind contemplated at San Francisco. The Dumbarton Oaks Proposals had simply provided that membership should be open to all peace-loving states[1] and that the General Assembly should be empowered, upon the recommendation of the Security Council, to admit new members.[2]

Certain delegations at San Francisco, particularly those of the Latin American states, were of the opinion that the United Nations should be completely universal from the beginning. However, the prevailing view was that it would be unwise to take in all states irrespective of their political systems and conduct during the War The majority of states represented at San Francisco felt that it was necessary to demand certain guarantees from the states that were admitted. On the other hand there seemed to be a general agreement to the effect that the United Nations should eventually include all states.

This question of universal *vs.* limited membership is the permanent dilemma of an international organization. A closed organization can be strong and efficient but it may easily invite counter alliances and become wrecked on the shoals of power politics. On the other side, one may be forced to sacrifice so much in order to obtain a universal membership – or a close approach to it – that the organization becomes loose and inefficient

Classes of Membership. The Charter divides Members into two classes, original Members and elected Members. This distinction, however, is of a purely formal nature and does not in any way imply

[1] Chapter III, *infra*, p. 573.

[2] For provisions of League Covenant, see Article 1, *infra*, p. 555

that there is to be any difference in status between these two classes of Members.

Original Members. The original Members of the United Nations were the states which, having participated in the San Francisco Conference or having been parties to the Declaration by United Nations of January 1, 1942, signed the Charter and ratified it in accordance with the provisions of Article 110.

The following states were original signatories of the Declaration by United Nations of January 1 1942

United States of America
United Kingdom of Great Britain and Northern Ireland
Union of Soviet Socialist Republics
China
Australia
Belgium
Canada
Costa Rica
Cuba
Czechoslovakia
Dominican Republic
El Salvador
Greece
Guatemala
Haiti
Honduras
India
Luxembourg
Netherlands
New Zealand
Nicaragua
Norway
Panama
Poland
South Africa
Yugoslavia

The following states subsequently adhered to the Declaration:

Mexico	June 5, 1942	Peru	Feb. 11, 1945
Philippines	June 10, 1942	Chile	Feb. 12, 1945
Ethiopia	July 28, 1942	Paraguay	Feb. 12, 1945
Iraq	Jan. 16, 1943	Venezuela	Feb. 16, 1945
Brazil	Feb. 8, 1943	Uruguay	Feb. 23, 1945
Bolivia	Apr. 27, 1943	Turkey	Feb. 24, 1945
Iran	Sept. 10, 1943	Egypt	Feb. 27, 1945
Colombia	Dec. 22, 1943	Saudi Arabia	Mar. 1, 1945
Liberia	Feb. 26, 1944	Syria	Mar. 1, 1945
France	Dec. 26, 1944	Lebanon	Mar. 1, 1945
Ecuador	Feb. 7, 1945		

The following states participated in the United Nations Conference on International Organization, either from the beginning or following admission by vote of the Conference:

Argentina
Australia
Belgium
Bolivia
Brazil
Byelorussian Soviet Socialist Republic
Canada
Chile
China
Colombia

Costa Rica
Cuba
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
France
Greece
Guatemala
Haiti
Honduras
India
Iran
Iraq
Lebanon
Liberia
Luxembourg
Mexico
Netherlands
New Zealand
Nicaragua
Norway
Panama
Paraguay
Peru
Philippine Commonwealth
Saudi Arabia
Syria
Turkey
Ukrainian Soviet Socialist Republic
Union of South Africa
Union of Soviet Socialist Republics
United Kingdom
United States of America
Uruguay
Venezuela
Yugoslavia

The only signatory of the Declaration by United Nations that did not participate in the Conference was Poland, which did not at the time of the Conference have a government recognized by all the Sponsoring Governments. The so-called "Lublin Government" had been recognized by the Soviet Union on January 5, 1945. After agreement had been reached permitting recognition of a properly constituted Polish Government by the Governments of the United Kingdom and the United States, the Polish representative signed the Charter on October 15, 1945.[3]

Meaning of "States". A special question that requires consideration is the meaning of the word "states" as used in this Article. If the word is taken in its strict legal sense, as used in international law, it would exclude certain political bodies that participated in the Conference with full expectation of becoming Members of the Organization. It is very difficult to draw a firm line of distinction between "states", on the one hand, and colonies, protectorates, etc., on the other. The League of Nations Covenant in the second paragraph of Article 1 used the expression "any fully self-governing state, dominion or colony." The Charter of the United Nations uses the word "state" or "states".

It is quite clear in view of the attendant circumstances that the word "state" is not to be understood in its usual legal sense. The participation of two constituent republics of the Soviet Union in the Confer-

[3] Department of State, *Bulletin*, XIII, p. 627.

ence indicates that parts of a union, highly centralized in fact, may be independent members of the United Nations. The inclusion in India, the Philippine Commonwealth, Lebanon and Syria further indicated that a "state", in the sense in which the word is used in the Charter, need not at the time be in possession of full and generally recognized independence.[4]

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

Conditions of Elective Membership. In addition to providing that certain states shall be original Members, the Charter provides that other states may under defined conditions be subsequently admitted to membership. In this respect the Charter follows the Covenant of the League. Article 1, paragraph 2, of the Covenant provided that

> any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.[5]

The Charter adopts the basic ideas of the Covenant in so far as it provides for the admission of new Members by election and prescribes conditions to be satisfied by applicants for membership. In the detailed application of these ideas, the Charter departs quite widely from the Covenant. The net effect is that admission to the United Nations is made more difficult than admission to the League.

The idea that the general international organization to be established as a successor to the League should be limited to "peace-loving states" first found expression in the Moscow Four-Power Declaration of October 30, 1943.[6] It was accepted at Dumbarton Oaks and incorporated into the Dumbarton Oaks Proposals.[7] At San Francisco, how-

[4] India became a self-governing dominion within the British Commonwealth of Nations on August 15, 1947. President Truman proclaimed the independence of the Philippine Commonwealth on July 4, 1946. At the time of the San Francisco Conference, the French Government took the view that its responsibilities under Article 22 of the League Covenant were not yet terminated in Lebanon and Syria.

[5] On League membership, see Hudson, Manley O., "Membership in the League of Nations," *American Journal of International Law*, XVIII, p. 436–58.

[6] See *infra*, p. 571.

[7] Chapter III, *infra*, p. 573.

Costa Rica it was the generally accepted view that the Dumbarton Oaks text was inadequate. In particular, it was believed "that adherence to the principles of the Charter and complete acceptance of the obligations arising therefrom were essential conditions to participation by States in the Organization."[8] There was, however, some disagreement as to the extent to which specific conditions relating to matters to be taken into consideration should be included in the Charter. The conclusions of Committee I/2 were thus expressed in the report of the Rapporteur:

> . . . The Committee did not feel it should recommend the enumeration of the elements which were to be taken into consideration. It considered the difficulties which would arise in evaluating the political institutions of States and feared that the mention in the Charter of a study of such a nature would be a breach of the principle of non-intervention, or if preferred, of non-interference. This does not imply, however, that in passing upon the admission of a new Member, considerations of all kinds cannot be brought into account.[9]

It would thus appear from the San Francisco discussions that while the intention was to establish definite qualifications for new Members which would guide the Security Council and the General Assembly in the exercise of their functions under paragraph 2, it was equally the intention of the delegates to leave a considerable amount of discretion to the Security Council and the General Assembly in determining in concrete cases the factors that should be taken into account and the relative weight to be given to them in applying the tests laid down in this paragraph.

As to the conditions to be fulfilled, the paragraph leaves little question. In the words of the International Court of Justice,

> The requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving, (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.[10]

Practice with Respect to Admission of New Members. The interpretation and application of this paragraph began at San Francisco. The Conference adopted an interpretative commentary submitted by the Delegation of Mexico which read as follows:

> It is the understanding of the Delegation of Mexico that paragraph 2 of Chapter III cannot be applied to the states whose regimes have been estab-

[8] UNCIO, *Report of the Rapporteur of Committee I/2 on Chapter III (Membership)*, Doc. 1178, I/2/76(2), p. 3 (*Documents*, VII, p. 326).

[9] *Ibid.*

[10] Advisory opinion of May 28th, 1948, I.C.J., *Reports of Judgments, Advisory Opinions and Orders*, 1948, p. 62.

lished with the help of military forces belonging to the countries which have waged war against the United Nations, as long as those regimes are in power.[11]

This statement, directed particularly against the Franco Government in Spain, was reaffirmed in the Potsdam Declaration of August 2, 1945 in the following words.

> The three governments feel bound, however, to make it clear that they for their part would not favor any application for membership put forward by the present Spanish Government, which, having been founded with the support of the Axis powers, does not, in view of its origins, its nature, its record and its close association with the aggressor states, possess the qualifications necessary to justify such membership.[12]

These two statements were endorsed in the General Assembly resolution of February 9, 1946.[13]

The three Governments represented at the Potsdam Conference agreed that the conclusion of peace treaties with recognized democratic governments in Italy, Bulgaria, Finland, Hungary and Rumania would enable them to support applications from these states for membership in the United Nations. They also agreed to "support applications for membership from those states which have remained neutral during the war and which fulfill the qualifications set out" in Article 4 of the Charter.[14] Thus these three Governments accepted the principle that active participation in the war against the Axis Powers was not a necessary condition to being a "peace-loving nation."

Up to July 1948, the Security Council considered 18 applications for admission to membership, of which 7 were acted upon favorably and were subsequently approved by the General Assembly. The seven states thus admitted to membership were Afghanistan, Iceland, Siam and Sweden (admitted by the General Assembly during the second part of its first session in 1946); Pakistan and Yemen (admitted by the General Assembly during its second session in 1947); and Burma (admitted by the General Assembly during its second special session in 1948). Of the 7 states admitted, one was a recently formed dominion within the British Commonwealth of Nations, one had recently gained its independence by separation from the Commonwealth, 3 had been neutral during the war, and two had been occupied by belligerent military forces, one by United Nations and one by Axis (Japanese)

[11] UNCIO, *Verbatim Minutes of the Ninth Plenary Session, June 25, 1945*, Doc. 1210, P/20, p. 4–5 (*Documents*, I, p. 615–6).
[12] Department of State, *Bulletin*, XIII, p 159–60.
[13] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 39.
[14] Department of State, *Bulletin*, XIII, p 159–60.

forces. The admission of Siam (under Japanese control during the war) was delayed by French opposition in the Security Council until the territorial conflict resulting from Siamese aggression against French Indo-China was settled by agreement.[15]

Of the 11 applicants whose applications were not favorably acted upon by the Security Council, five (Bulgaria, Finland, Hungary, Italy and Rumania) were at war with one or more of the United Nations. Two (Albania and Austria) were under effective Axis control during all or part of the war. Two (Ireland and Portugal) were neutral during the war. One (Transjordan) had been a mandated territory and one (Mongolian People's Republic) a protectorate. In connection with the consideration of the applications in the Security Council, various reasons were advanced for opposing them, not all explicitly related to the Charter provisions.[16]

The Soviet representative initially opposed the applications of Ireland, Portugal and Transjordan on the ground that his government had no diplomatic relations with these countries. In subsequent discussion, he argued that this lack of diplomatic relations had special significance in view of the importance of the role of the Soviet Union in winning the war against Fascist aggression. He furthermore contended that Ireland did not help the Allies in the war and had actually expressed sympathy with the Axis Powers and Franco Spain;[17] that Portugal aided the Axis Powers and had special ties with Franco Spain;[18] and that there were questions regarding the independent status of Transjordan that needed clarification.[19]

The Albanian application was opposed or not actively supported by all but two members of the Security Council. The reasons given included the following: (1) failure of the Albanian Government to reaffirm pre-1939 bilateral treaties; (2) conduct of the Albanian Government in connection with the Corfu Channel incident, particularly its failure to accept a resolution supported by seven members of the Security Council and (as of the time) to refer the matter to the Court; and (3) the conduct of the Albanian Government in the Greek case, as evidenced by the findings of the majority of the Security Council's

[15] UN, Security Council, *Official Records, First Year: Second Series,* Suppl. No. 4, p. 76.

[16] For a summary of arguments advanced in the Committee on Admission of New Members of the Security Council, see UN, Security Council, *Official Records, First Year· Second Series,* Suppl. No. 4 and *Official Records, Second Year,* Special Suppl. No. 3. Subsequent references will be to the latter, since positions earlier taken were consistently maintained.

[17] UN, Security Council, *Official Records, Second Year,* Special Suppl. No. 3, p. 15.

[18] *Ibid.,* p. 16–7.

[19] *Ibid.,* p. 14.

Commission of Investigation and the failure of the Albanian Government to cooperate with the Council's Subsidiary Group.[20] On the other hand, the Soviet representative supported the Albanian application on the basis of the war record of the Albanian people.

The application of the Mongolian People's Republic was supported by the Soviet Union and Poland on the basis of Mongolia's part in combatting Japanese aggression. Other members of the Security Council opposed the application or were unwilling to support it because of alleged Mongolian military aggression (China's claim), or lack of adequate information as to whether Mongolia controlled its foreign relations and in other respects satisfied the requirements of Article 4.[21]

With respect to applications received from ex-enemy states, the initial position of the Soviet Union was that consideration of them should be postponed until the treaties of peace had entered into force. It was argued that the terms of the treaty preambles and Chapter IX of the Postdam Declaration made it clear that the powers concerned would support the application of these states only after the treaties of peace had entered into force.[22] For the most part the members of the Security Council did not believe this consideration decisive. A number of members, including the United States and the United Kingdom, opposed, or at least were not prepared to support, the applications of Bulgaria, Hungary and Rumania because of alleged flagrant violations of human rights in clear disregard of international agreements. In addition, attention was called to the finding of the Council Commission of Investigation that Bulgaria had given aid to the guerrillas operating in northern Greece. These same members supported the application of Italy on the grounds that Italy had become a co-belligerent in the war against Germany, that Allied military occupation had ceased, that a democratic government had been set up and was functioning, and that the peace treaty had been ratified by all the Great Powers except the Soviet Union.[23]

With respect to the Austrian application the position of the Soviet Union was similar to that regarding the former enemy states. Particular attention was called to the agreed-on preamble to the Austrian Treaty.[24] The United States took the position that by the Moscow Declaration on Austria of October 30, 1943, the five signatory governments agreed to treat Austria as a liberated country and not as an enemy state, and that the Control Agreement of June 28, 1946 permitted the Austrian Government to conduct international relations and exer-

[20] *Ibid.*, p. 4–8, 35–6.
[21] *Ibid.*, p. 8–13.
[22] *Ibid.*, p. 18–9.
[23] *Ibid.*, p. 22–3.
[24] *Ibid.*, p. 19.

cise other attributes of statehood.[25] The United Kingdom took the position that the application was premature since the end of military occupation was not yet in sight.

Following ratification of the peace treaties by the Soviet Union on August 29, 1947 and their consequent entrance into force, the Security Council reconsidered the applications of Hungary, Italy, Rumania and Bulgaria, and considered for the first time an application from Finland. The Polish representative introduced a resolution by which the Security Council would recommend the admission of all five states. When the question of approving one application only was raised, the Soviet representative stated that he was willing to agree "to the admission of Italy to the United Nations, but only on condition that all the other countries which are in the same position — namely, Bulgaria, Rumania, Hungary and Finland — are admitted as well."[26] The Council finally decided to hold a separate and final vote on each applicant. No application received the support necessary to a favorable recommendation. Three failed to receive the necessary majority and two failed to receive the required support from the permanent members.

Repeated deadlocks in the Security Council resulting in the failure of that organ to make recommendations to the General Assembly led to extended discussion of the question of admissions by the General Assembly during its first and second sessions. Interpretations given by members of the Security Council to the provisions of Article 4(1) were severely criticised. During the second part of its first session, the General Assembly adopted a resolution recommending that the Security Council reexamine applications for membership not favorably acted upon "on their respective merits as measured by the yardstick of the Charter, in accordance with Article 4."[27] During its second session the General Assembly adopted resolutions declaring Ireland, Portugal, Transjordan, Austria, Italy and Finland to be qualified for membership by the standards prescribed in Article 4 and requesting the Security Council to consider these applications in the light of these determinations.[28] The members of the Security Council maintained their initial positions.

Furthermore the General Assembly, during its second session, prompted by alleged failure of certain members of the Security Coun-

[25] *Ibid.*, p 49–50.

[26] UN, Security Council, *Official Records, Second Year*, No. 91 (Doc. S/P.V. 204).

[27] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 61.

[28] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 19–21.

cil to base their decisions on the provisions of the Charter, adopted a resolution requesting the International Court of Justice to give an advisory opinion on the following question:

> Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State? [29]

In its opinion, given on May 28, 1948, the majority (9 judges) of the Court reached the conclusion that a Member of the United Nations called upon to pronounce itself on the admission of a state to membership "is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article," and that in particular a Member cannot "subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that state." [30] The dissenting judges in general took the position that a state may in making determinations under this Article be guided by political considerations, and that so long as it is acting in good faith in accordance with the Purposes and Principles of the Organization, its determinations cannot be questioned.

Conclusions. While Article 4(1) defines the conditions of admission to membership in the United Nations, the fact that admission is a function of the Security Council and the General Assembly inevitably results in the determination of the meaning of these conditions in specific cases by these two organs, and more particularly, by the states members thereof. In fact, so far as the Security Council is concerned, a single permanent member can prevent a decision from being made. Consequently, though it may be argued, as did the majority of the Court in the advisory opinion above referred to, that Members of the United Nations in their capacity as members of the Security Council and General Assembly are restricted to basing their judgments on the criteria set forth in this paragraph, there is no such limitation, as the dissenting judges pointed out, on the considerations that may be taken into account and the evaluation of them in determining whether these

[29] *Ibid.*, p. 19.
[30] I.C.J., *Reports of Judgments, Advisory Opinions and Orders*, 1948, p.

conditions have been fulfilled. It hardly seems necessary to emphasize that certain of the criteria used permit the exercise of considerable discretion in this regard.

The requirement that an applicant be a state would appear, at first glance, to be capable of interpretation by accepted legal criteria. However, as we have seen, the use of the word "state" in the Charter to include all Members [31] raises some doubts as to its exact meaning and opens the way for judgments based on political considerations. One cannot imagine a more subjective standard than "peace-loving". The decision whether or not a state is "peace-loving" is bound to be a political one, based on preconceptions regarding the motivation of governments and the influence of various factors and forces on political attitudes. Obviously no interpretation which would limit the designation to those states which were at war with one or more of the Axis Powers was intended. Yet it is clear that in the judgment of some governments the attitude and conduct of states during the last war is an important consideration, and any evaluation of these becomes highly political. Other evidences of a non-peace-loving character which have been used are failure to maintain diplomatic relations, alleged acts of aggression, alleged failure to cooperate in the peaceful settlement of disputes, and in the case of former enemy states, the absence of peace treaties.

The acceptance of the obligations contained in the Charter is an objective fact which should create no difficulty. The requirement has been interpreted to mean that a state which desires to maintain a permanent neutral status, such as Switzerland, cannot become a Member because it would be unwilling to accept all the obligations of membership.[32] The added requirement that a state must be "able and willing" to carry out these obligations requires a determination that is bound to be largely political. Considerations that have thus far been taken into account in making this determination are presence of foreign troops within territory, extent of control over foreign relations, acceptance of international obligations, and ability and willingness to carry out international obligations in general.

Whether Members of the United Nations as members of the General Assembly or Security Council can set additional conditions to admission, as was done by the Soviet Union in the case of Italy, is bound to be a highly academic question. Assuming that the opinion

[31] See *supra*, p. 124.

[32] See UNCIO, *Report of the Rapporteur of Committee I/2 on Chapter III (Membership)*, Doc. 1178, I/2/76(2), p. 4 (*Documents*, VII, p. 327) and *Report of Rapporteur of Committee I to Commission I*, Doc. 944, I/1/34(1), p. 14 (*Documents*, VI, p. 459) See also, comment on Article 2(5), *supra*, p. 107.

of the Court that such additional conditions cannot be set is accepted it still remains possible for Members to achieve the same results in the application of the accepted criteria. The only limitation upon Members in determining considerations to be taken into account in applying these criteria and the weight to be given to these considerations is good faith.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Comparison with League Provisions. The Covenant of the League provided that new members should be admitted by vote of "two-thirds of the Assembly." This was interpreted in practice to mean two-thirds of the members present and voting. No action by the Council was required. The Charter contains an additional requirement, that admission be recommended by the Security Council. Furthermore, a decision to recommend is regarded as a substantive decision, requiring a majority of seven, including the permanent members. Consequently, a permanent member of the Security Council can prevent favorable action on an application, as has happened in a number of cases. This was not possible under the Covenant.

Procedure of Admission. The details of the procedure of admission are determined by the rules of procedure of the Security Council and the General Assembly. These have been modified in the light of practice and on the basis of consultations between the two organs.

Any state desiring to become a Member of the United Nations is required to submit an application to the Secretary-General. The rules of procedure of the Security Council and the General Assembly initially required that the application be accompanied by a declaration of readiness to accept the obligations of the Charter.[33] In 1947 these rules were amended to require that the application "contain a declaration, made in a formal instrument, that it (the applicant) accepts the obligations contained in the Charter."[34] This was made necessary by the decision to dispense with the deposit of an instrument of adherence following final General Assembly action.

The Secretary-General is required immediately to place the application "before the representatives on the Security Council." Unless the Security Council decides otherwise, the application is referred by the President to the Council's Committee on the Admission of New Members on which each member of the Security Council is represented.

[33] UN, Doc. S/96, Rule 58 and Doc. A/71, Rule 118.
[34] UN, Doc. S/96/Rev. 3, Rule 58 and Doc. A/520, Rule 123.

132 Committee must report its conclusions not less than thirty-five days in advance of a regular session of the General Assembly and not less than fourteen days in advance of a special session.[35] The Secretary-General must also send a copy of the application for information to the General Assembly, or to the Members of the United Nations if the General Assembly is not in session.[36]

The Security Council decides, by affirmative vote of seven members, including the permanent members, whether to recommend the applicant state for membership. When it considered the first batch of applicants in 1946, the Security Council acted under Provisional Rules of Procedure adopted in June of that year which simply required the Council to make its recommendations to the General Assembly in time to assure their consideration by that organ. Recommendations were to be made not less than twenty-five days in advance of a regular session and not less than five days in advance of a special session. The Security Council might under special circumstances make a recommendation on shorter notice.[37] In practice the Security Council did not during its first year send to the General Assembly any information or report on applications which were not the subject of favorable recommendations. Dissatisfaction with the manner in which the Security Council performed its functions led to extensive discussion of the question of admission of new members by the General Assembly during the second part of its first session and the adoption of a resolution requesting the Security Council to appoint a committee to confer with a committee of the General Assembly with a view to preparing rules of procedure which would be acceptable to both organs.[38] Following joint committee consideration of the matter, the Security Council and the General Assembly adopted in 1947 certain changes in their Rules. The Rules of the Security Council now provide that if the Council recommends an applicant for membership, "it shall forward to the General Assembly the recommendation with a complete record of the discussion," and if it does not recommend the applicant for membership or postpones consideration of the application, "it shall submit a special report to the General Assembly with a complete record of the discussion."[39]

If the Security Council recommends an applicant for admission, the General Assembly considers whether the applicant satisfies the conditions of Article 4(1) and decides, by a two-thirds majority of the

[35] UN, Doc. S/96/Rev. 3, Rule 59.
[36] UN, Doc. A/520, Rule 124.
[37] UN, Doc S/96, Rule 60.
[38] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 62.
[39] UN, Doc. S/96/Rev. 3, Rule 60.

Members present and voting, whether the applicant shall be admitted to membership.[40] If the Security Council does not recommend the applicant for membership, or postpones the consideration of the application, the General Assembly may, "after full consideration of the special report of the Security Council, send back the application to the Security Council, together with a full record of the discussion in the General Assembly, for further consideration and recommendation or report."[41]

The Secretary-General informs the applicant of the decision of the General Assembly. Until the change in Assembly Rules in 1947, admission became effective on the date when the applicant deposited with the Secretary-General an instrument of adherence.[42] Under the amended Rules, admission becomes effective on the date when the General Assembly takes its decision on the application.[43]

Roles of the Security Council and the General Assembly. The Charter states that admission will be effected by decision of the General Assembly upon recommendation of the Security Council. This provision, contained in the Dumbarton Oaks Proposals, was accepted at San Francisco without extensive consideration. In his Report, the Rapporteur of Committee II/1 explained that in supporting the provision "several delegates emphasized that the purpose of the Charter is primarily to provide security against a repetition of the present war and that, therefore, the Security Council should assume the initial responsibility of suggesting new participating states."[44] There is nothing to indicate that the delegates did not intend to make a favorable recommendation by the Security Council a necessary condition to admission by vote of the General Assembly.

The Security Council has been severely criticised for the manner in which it has exercised its functions under Article 4, especially for its failure to make any recommendations with regard to certain applicants. The belief has grown, particularly but not exclusively among the smaller powers, that improper use has been made of the so-called "right to veto" enjoyed by permanent members of the Security Council with the result that applications, approved by eight to nine members of the Council, have failed because of the opposition of one. This conviction, combined with doubts of long standing regarding the wisdom of associating the Security Council with the General Assembly in the admission process, has resulted in numerous attempts to strengthen the role of the General Assembly.

[40] UN, Doc. A/520, Rule 125.
[41] *Ibid.*, Rule 126.
[42] UN, Doc. A/71, Rule 116
[43] UN, Doc. A/520, Rule 127.
[44] UNCIO, Doc. 666, II/1/26(1) (a). p. 1–2 (*Documents*, VIII, p. 451).

When the Security Council considered the first batch of applications to be submitted, the Australian Government took the position that applications should in the first instance be considered by the General Assembly.[45] This view was not supported by other members of the Council. During the second part of the first session of the General Assembly, the Australian delegation made a formal proposal for a revision of the rules of procedure of the General Assembly and the Security Council with respect to admission of new Members to be based upon the following principles:

(*a*) The admission of new Members is a corporate act.

(*b*) The General Assembly has primary and final responsibility in the process of admission.

(*c*) The Security Council, not having been given any general power covering all matters within the scope of the Charter, its recommendation for the admission of an applicant to membership should be based solely on the judgment of the Council that the applicant state is able and willing to carry out its obligations under those sections of the Charter which come within the competence of the Security Council.[46]

For different reasons the members of the General Assembly were unwilling to accept these principles. Many delegations expressed the view that they were not consistent with the terms of the Charter. This view was expressed particularly with respect to (c).[47]

Another proposal for limiting the power of the Security Council, made by the Argentine delegation at the second session of the General Assembly, was that the General Assembly should proceed to decide on applications for membership which had not been favorably recommended by the Security Council.[48] This proposal did not meet with favor, the general view being that it was not consistent with the clear provisions of the Charter.

Prevented by constitutional difficulties from achieving complete liberation from the "veto" of the Security Council, the General Assembly has concentrated its efforts primarily on influencing the Security Council by discussion and recommendations under Article 10. While certain delegations at San Francisco, notably the Soviet, were averse to giving too extensive powers of discussion and recommendation to the General Assembly,[49] there can be little question but what the General Assembly has under Article 10 the power to discuss ques-

[45] UN, Security Council, *Official Records, First Year: Second Series,* Suppl. No. 4, p. 78.

[46] UN, Doc. A/C.1/23/Rev. 1 and Doc. A/C.1/23/Corr. 1.

[47] See UN, *Journal* . . ., No. 31: Suppl. No. 1– A/C.1/45 and No. 32: Suppl. No. 1– A/C.1/47.

[48] UN, Doc. A/C.1/184; Doc. A/C.1/185; and Doc. A/C.1/222.

[49] See Article 10 and comment, *infra*, p. 150.

tions relating to the admission of new Members and to make recommendations. This power the General Assembly has seized upon and exercised to the full. During the second part of its first session, the General Assembly recommended the reexamination by the Security Council of applications of states with respect to which that organ had made no recommendations [50] and furthermore requested the Security Council to undertake with it a joint review of the rules of procedure governing admission of new members.[51] During its second session, the General Assembly went even further. It adopted eight resolutions in all.[52] It recommended to the permanent members of the Security Council that they consult with a view to reaching agreement on the admission of applicants not hitherto recommended. It sought the advice of the International Court of Justice on the interpretation of Article 4. It requested the Security Council to reexamine six specific applications after giving its own conclusions as to the qualifications of the applicants under Article 4. Furthermore it sought to achieve some relaxation of the requirement of concurrence of the permanent members of the Security Council for decisions on substantive questions, particularly questions relating to the admission of new members. In fact, the proposal had earlier been made in the Security Council, on August 21, 1947, by the representative of the United States, that the General Assembly be requested to consider the qualifications of applicants upon which the Security Council had been unable to take a decision, and that the Security Council should agree to act favorably on those applications which received the approval of two thirds of the members of the General Assembly.[53] The proposal was not accepted.

Conclusions. The Charter provisions with respect to the admission of new Members have proven in practice more restrictive than the corresponding provisions of the Covenant. This has been primarily due to the requirement of Security Council recommendation, combined with the rule of Article 27(3) governing voting procedure. The General Assembly, where sentiment favors a more liberal admissions policy than has been practiced by the Security Council, has exercised various pressures on the Council to obtain more generous treatment of applications. Thus far these pressures have been of little avail. It would seem that, within the constitutional framework of the Charter, the desired results can only be achieved by improvement in the relations between the permanent members of the Security Council.

[50] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 61.

[51] *Ibid.*, p. 62.

[52] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 18–21.

[53] UN, Doc. S/P.V. 190.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

No provision was made for the suspension of the rights and privileges of membership in the League Covenant. The Dumbarton Oaks Proposals contained a provision which in modified form was adopted at San Francisco.

Conditions and Manner of Suspension. The exercise of the rights and privileges of a Member can be suspended only if "preventive or enforcement action" has already been taken by the Security Council against it. Presumably this refers in the main to measures taken by the Security Council under Chapter VII. There is, however, nothing in the Charter to exclude suspension as a consequence of action taken under Article 94(2). The suspension of rights and privileges of membership is thus made to appear as not being of itself a part of "preventive of enforcement action" but the effect is bound to be that, and the purpose also is clearly that. While suspension requires a two-thirds vote of the General Assembly, the Assembly can only take this action on the recommendation of the Security Council. Thus the Security Council, upon which is placed primary responsibility for taking action to maintain international peace and security under the Charter,[54] can alone take the initial action, and the role of the General Assembly becomes that of approving or disapproving the recommendation made. Moreover, to emphasize further the importance of the Security Council's role, that body alone is empowered to restore the exercise of the rights and privileges in question. At the United Nations Conference in San Francisco, certain delegations wished to give the General Assembly the same control over restoration as over the initial suspension, but the prevailing view was that the Security Council should be allowed to act alone since the consequences of restoration were not as serious, and quick action might be necessary to attain the desired result.

Rights and Privileges Affected. The Charter does not specify in detail what are the rights and privileges which will be effected by suspension. It is quite clear that the rights of representation and of voting will be lost for the period of suspension. The general idea is

[54] *Charter of the United Nations*, Article 24

that such a Member for the period of suspension and so far as its rights and privileges are concerned will be treated as a non-Member. For that reason it cannot participate in the meetings of the General Assembly. Certainly it cannot be elected a member of the Security Council, the Economic and Social Council or the Trusteeship Council. If it is already a member of one of these Councils, it is quite clear that its representatives cannot attend meetings of these organs. It is a more difficult question whether such a Member can continue as administrator of a trust territory. In League practice states which ceased to be Members were allowed to continue as mandatory powers under Article 22 of the Covenant. The answer to the question of the effect of suspension under the terms of the Charter would appear to depend upon whether the rights of the administering state are regarded as among the rights of membership or rather as rights flowing from the specific trusteeship agreement. Since Article 81 does not specify that the administering authority must be a Member, the second alternative would seem the more logical.[54a] However, such a state should not be in a more favored position than non-Member states in respect to trust territories administered by other Members or by the Organization.[55]

As far as positions in the Secretariat are concerned, the suspension of the rights and privileges of a Member should not affect the nationals of that state. When a person has been appointed to the international secretariat, he becomes an international and not a national official. For that reason he must be permitted – and even obliged –, so far as the provisions of the Charter are concerned, to continue serving the international community, regardless of the acts committed by the state of which he is a national.

Since the International Court of Justice is an organ of the United Nations and its Statute is an integral part of the Charter, it might be argued that all rights and privileges relating to participation in the work of the Court which follow from membership in the United Nations would be affected. It should, however, be remembered that other States may be admitted as signatories to the Statute although they are not Members of the United Nations.[56] It would seem that a Member of the United Nations against whom action has been taken under Article 5 ought not to be placed in a worse position than a non-Member admitted to be a party to the Statute of the Court in accordance with Article 93 of the Charter. It should also be mentioned that the Court may under certain conditions be open to States not parties

[54a] See comment on Article 81, *infra*, p 447

[55] See Article 76(d), with respect to rights of Member States.

[56] See comment to Article 93(2), *infra*, p. 483

to the Statute, according to the second paragraph of Article 35 of t Statute.[57] There seems no reason to exclude a Member of the Unit Nations from appearing before the Court if it fulfills the conditio laid down by the Security Council for other States.[58] This argument strengthened by the fact that a Polish proposal to exclude Spain fro the enjoyment of this privilege was voted down in the Securit Council.[59]

It is undoubtedly in the general interest that the procedures for pacific settlement should be utilized to the fullest extent possible. Nevertheless, it seems reasonable to assume that a Member whose privileges and immunities have been suspended would have no greater right to bring disputes and situations to the attention of the Security Council and the General Assembly than a non-Member under Article 35.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

The Covenant of the League provided for the expulsion of a member which had "violated any covenant of the League" by vote of the Council "concurred in by the Representatives of all the other Members of the League represented thereon." [60] The only action taken under this provision was when the Council, presented by the Assembly with a resolution condemning Soviet action and asking the Council to pronounce upon the question, voted the expulsion of the Soviet Union on December 14, 1939 [61] on the ground that the Soviet Union had violated its obligations under the Covenant by its attack on Finland. The legality of this action has been doubted.[62]

Reasons for Provisions. The Dumbarton Oaks Proposals included among the functions and powers of the General Assembly a provision to the effect that that organ "should be empowered, upon recommen-

[57] See *infra*, p. 618.

[58] These conditions were decided by the Security Council on October 15, 1946. UN, Security Council, *Official Records, First Year: Second Series*, p. 467. See also, I.C.J., *Publications*, Series D, No. 1, Second edition, p. 98.

[59] UN, Security Council, *Official Records, First Year: Second Series*, p. 468.

[60] *Covenant*, Article 16, paragraph 4.

[61] See League of Nations, *The Appeal of the Finnish Government to the League of Nations. A Summary Based Upon the Official Documentation.* Special Suppl. to the Monthly Summary, December 1939, p. 60–9.

[62] See Gross, Leo, "Was the Soviet Union Expelled from the League of Nations?" *American Journal of International Law*, XXXIX, p. 35.

dation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter." At the San Francisco Conference, there was considerable opposition to this proposal on the ground, among others, that expulsion would in effect weaken the position of the United Nations since from the time expulsion became effective the expelled Member would no longer be bound by the obligations of the Charter. It was proposed instead to broaden the provisions regarding suspension of the rights and privileges of membership to cover the case of a Member which "persistently violates the principles" of the Charter. There was, however, strong opposition to this proposal, particularly on the part of the Delegation of the Soviet Union, which appealed from a decision of Committee I/2 in favor of deletion to the Steering Committee. As a result, the matter was reconsidered and the provision of the present Charter was finally adopted.[63]

It was argued in favor of retaining the provision for expulsion that it was desirable to have a stronger penalty and method of expressing disapprobation than the suspension of rights and privileges. It was argued that a Member engaged in persistently violating the Principles of the Charter would have demonstrated that it did not satisfy the basic requirements of membership, and would be like a cancerous growth which it would be better to remove completely than to allow to remain in the body of the Organization and persist in its evil influence. As a non-Member the expelled Member would be subject to such action as the Organization might consider necessary in order to maintain peace and security. It would not in all likelihood contribute materially to the achievement of this or other purposes of the Organization to be able to say that the state in question was legally subject to certain obligations of membership when by its action it showed an utter disregard for such obligations.

Conditions Governing Expulsion. A Member, in order to be expelled, must have persistently violated "the Principles contained in the present Charter." The reference presumably is to the principles enumerated in Article 2. It is not stated whether all these principles are of equal importance in this connection. The use of the word "persistent" suggests that expulsion will only be resorted to in the very gravest cases and as a last resort.

Expulsion is obviously conceived as a form of action going beyond the enforcement measures for which the Security Council is [illegible]ed responsible. In effect, it is a measure to be taken when a[illegible] itself

[illegible]y major-
ratification

[63] For account of Committee discussion and action taken, see U[illegible] *of the Rapporteur of Committee I/2 on Chapter III* (*Members'* [illegible] I/2/76(2), p. 6–9 (*Documents*, VII, p. 329–32).

measures have failed. In view of its gravity, and in view of the fact that its effect is conceivably to reverse an action in which the General Assembly and the Security Council have cooperated, namely, that of admitting a new member, a decision by each of these is required. Article 18(2), explicitly states that the decision of the General Assembly must be by "a two-thirds majority of the members present and voting." It is clear that the matter is of such a character as to require the affirmative vote of seven members with the concurrence of all permanent members of the Security Council, pursuant to the provisions of Article 27(3).

Withdrawal from Membership [64]

The Dumbarton Oaks Proposals did not contain any provision with respect to withdrawal. The Covenant of the League of Nations stipulated in Article 1, paragraph 3, that a member might withdraw after a two-years' notice. Article XV of the Articles of Agreement of the International Monetary Fund gives the members complete freedom of withdrawal and Article VI of the Articles of Agreement of the International Bank for Reconstruction and Development contains a like provision. Article XIX of the Constitution of the Food and Agriculture Organization of the United Nations accords to any member the right to withdraw after a year's notice, given at any time after four years from the date of acceptance of the Constitution. Article X of the UNRRA Agreement permitted withdrawal six months after its entry into force. Article 95 of the International Civil Aviation Convention permits denunciation after three years. It might, then, be assumed that the silence of the Dumbarton Oaks Proposals on this score had a certain significance.

Many delegations at the San Francisco Conference thought that silence must exclude withdrawal since no multipartite treaty could be unilaterally denounced by one of the signatories. Others claimed, however, that Members clearly had the right to withdraw since such withdrawal was not expressly forbidden. Certain delegates were of the opinion that it would weaken the permanent character of the United Nations and the tendency towards universality if Members were free to withdraw. Other delegates claimed that membership was [59] untary and that, consequently, termination of membership must be [60] tary as well. The argument of universality was of little value, [61] See imed, since the principle of universality had already been *League of N*

Suppl. to the M Hans, "Withdrawal from the United Nations," *The Western* [62] See Gross, L March 1948, p. 29.
tions?" *American Jou*

rejected. They claimed also that voluntary withdrawal was a natural consequence of the right to expel Members.

Certain delegations claimed also that it might be difficult, if not impossible, to obtain ratification of the Charter in their countries if membership were to be regarded as permanent. Attention was called to the provisions of Articles 108 and 109 relating to amendments. Certain delegations said that it was impossible for constitutional reasons for their states to accept membership if membership implied that they would be bound by amendments which they had voted against and had refused to ratify. They must, they stated, be free in such cases to leave the Organization since their constitutions made it impossible to accept unlimited and unknown obligations. Furthermore, this would be a violation of the principle of "sovereign equality" which was the foundation stone of the Organization.

Thus, it became more and more clear that the right of withdrawal must be accepted in one form or another The question was whether there should be an explicit provision permitting withdrawal or whether this right should be based on an agreed interpretation of the Charter. Most delegations took the view that an express stipulation would weaken the United Nations by giving encouragement to Members to withdraw. The result of this discussion was the adoption of a declaration of interpretation which was incorporated in the Report of Committee I/2 and was subsequently approved by Commission I and the Conference in plenary session.

As approved by the Conference, the declaration reads as follows:

> The Committee adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. The Committee deems that the highest duty of the nations which will become Members is to continue their cooperation within the Organization for the preservation of international peace and security If, however, a Member because of exceptional circumstances feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its cooperation in the Organization
>
> It is obvious, however, that withdrawal or some other forms of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice.
>
> Nor would it be the purpose of the Organization to compel a Member to remain in the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect.

It is for these considerations that the Committee has decided to abstain from recommending insertion in the Charter of a formal clause specifically forbidding or permitting withdrawal.[65]

At the time of the submission of the declaration to the Conference for approval, the Soviet Delegation made a statement to the effect that it could not agree to the expression "and leave the burden of maintaining international peace and security on the other Members." It expressed the opinion that it is wrong to condemn beforehand the grounds on which any state might find it necessary to exercise the right of withdrawal from the United Nations, since this right is a expression of state sovereignty.[66]

The declaration as approved by the Conference emphasizes that it is "the highest duty" of Members to continue their cooperation as Members for the achievement of the purposes of the United Nations. This duty, however, is not conceived as strictly legal or as absolute, since the statement goes on to say that if a Member because of "exceptional circumstances" feels constrained to withdraw, it is not the purpose of the United Nations to compel the Member to continue its membership. The declaration then proceeds to particularize these circumstances by specifying certain conditions, by way of illustration, under which withdrawal would be proper. These include the failure of the United Nations to maintain peace or to do so without the sacrifice of law and justice, a change in the rights and obligations of a Member by amendment of the Charter without its specific concurrence, and failure of an amendment to secure the necessary number of ratifications after it has been adopted by the necessary majority of the General Assembly or by a General Conference called specially for the purpose. It is clear from the declaration that this particularization does not exhaust the "exceptional circumstances" which would provide justification for withdrawing. While it is doubtful whether declarations adopted by the San Francisco Conference but not forming part of the Charter are binding on Members to the same extent as the Charter itself, the manner in which this declaration was adopted would seem to justify its being considered a generally accepted reservation with the same binding force as the Charter itself.

[65] For discussion leading up to adoption by the Conference of this statement, see UNCIO, *Summary Report of Twenty-Eighth Meeting of Committee I/2*, June 17, 1945, Doc. 1086, I/2/77 (*Documents*, VII, p. 262–7). See also, *Report of the Rapporteur of Committee I/2 on Chapter III (Membership)*, Doc. 1178, I/2/76(2), p. 4–6 (*Documents*, VII, p. 327–9); *Verbatim Minutes of Fourth Meeting of Commission I*, Doc. 1186, I/12, p. 1–4 (*Documents*, VI, p. 163–6); and *Verbatim Minutes of the Ninth Plenary Session*, June 25, 1945, Doc. 1210, P/20, p. 5–6, 8–9 (*Documents*, I, p. 616–7, 619–20).

[66] UNCIO, *Verbatim Minutes*, etc., p. 8 (*Documents*, I, p 619)

The effect of this declaration, taken together with the absence of any express provision regarding withdrawal in the Charter, is to place upon each Member the duty to justify its withdrawal in the eyes of the United Nations and its Members. Each Member retains the power to withdraw at will. It must, however, give its reasons, and these reasons must be such as to justify the action, or the Member State will incur the moral condemnation of the Members of the United Nations and of "the conscience of the world." [67] If the action is thought to be unjustified by the remaining Members, no action will or can be taken to prevent it. If the act is accompanied or followed by a threat to or violation of the peace, the United Nations is obligated and empowered to take the same measures to maintain or restore the peace which would be taken if the state in question had remained a Member.

[67] Phrase used by Senator Vandenberg in discussing this matter at hearings before the Committee on Foreign Relations, United States Senate, July 9, 1945. *Hearings . . ., on The Charter of the United Nations . . ., July 2, 1945*, p. 237.

CHAPTER III

ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

The Dumbarton Oaks Proposals named the General Assembly, the Security Council, the International Court of Justice and the Secretariat as the "principal organs" of the proposed Organization. At San Francisco, the increased importance given to the economic and social work of the Organization seemed to justify the inclusion of the Economic and Social Council. The Trusteeship Council, for which no provision was made in the Dumbarton Oaks Proposals, was also included.

Except for the two additional councils, the organizational pattern of the United Nations parallels that of the League of Nations. The General Assembly, from the point of view of organization and functions, closely parallels the Assembly of the League of Nations; the International Court of Justice is very similar to the Permanent Court of International Justice which, while not technically an organ of the League, practically so functioned, and the Secretariat corresponds to the League Secretariat. The important difference arises from the fact that "executive" functions of the United Nations are divided between the Security Council, the Economic and Social Council and the Trusteeship Council, the latter two being subordinated to the authority of the General Assembly.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

This paragraph repeats the substance of Chapter IV, paragraph 2, of the Dumbarton Oaks Proposals. It repeats, in general terms, certain other provisions of the Charter. Thus, Article 22 states that the Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.[1] Article 29 gives the same power to the

[1] See comment on Article 22, *infra*, p. 193.

Security Council. Article 68 imposes upon the Economic and Social Council the duty to set up specified commissions and such others as may be needed. While the Charter does not expressly authorize the Trusteeship Council to establish subsidiary organs, the Council's Rules of Procedure permit the setting up of "such committees as it deems necessary" [1a] and provide that such committees may sit while the Council is not in session. Furthermore, the Rules permit the creation of visiting missions to conduct on-the-spot investigations and inquiries on behalf of the Council. The International Court of Justice under Articles 26 and 29 of the Statute is empowered to set up Chambers. Article 27 of the Statute provides that judgments rendered by the Chambers shall be considered as rendered by the Court.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

The League Covenant contained a similar provision assuring that "all positions under or in connection with the League, including the Secretariat, shall be open equally to men and women." [2] The Dumbarton Oaks Proposals contained no comparable provision. At San Francisco, there was strong support for including a provision of this nature with the broadest application, which explains why it was decided to include it in the Chapter dealing with "Organs".

The proposal leading to this Article was discussed at some length in the technical committee of the San Francisco Conference. It was necessary to set up a subcommittee to prepare a draft. This was subsequently changed several times. There was no open opposition to the principle of complete equality between men and women. Certain delegates, however, thought it superfluous to insert any such provision. They stated, first of all, that it was absurd to put into the Charter anything that was self-evident. Secondly, they pointed out the danger of antithetical interpretation in other international treaties if it was found necessary to state the principle here. These arguments were overruled because of the very great importance attributed by some delegates to having the principle expressly stated.

The idea of the equality of men and women is expressed in other provisions of the Charter.[3] The present Article is only a concrete appli-

[1a] UN, Doc. T/1/Rev. 1, Rule 66.
[2] Article 7, paragraph 3.
[3] See Preamble; Article 1(3); Article 55(c); and Article 76.

cation of this general principle. It is to be noted that Article 8 uses a negative form. The reason for this is quite clear. It was decided to establish the principle not only that women should be able to share the jobs of the Secretariat on an equal basis with men, but also that they should be able, as far as the Organization is concerned, to serve as delegates, substitute delegates, etc. This, however, could not be expressed by a positive provision in the Charter. It must be left to the Members themselves to decide whether they want to employ women, as they have often done in the past in international organizations. The Article provides that the Organization shall in no way prevent the Members from appointing women.

There was a fairly widely held view before and during the Conference at San Francisco, especially on the part of the delegates from the smaller countries, that it was necessary to strengthen the position of the General Assembly, particularly as a forum for discussion and recommendation. The committee to which the matter was referred (Committee II/2) originally adopted a text which, while recognizing the Security Council's special responsibility, would have permitted the General Assembly to discuss any matter within the sphere of international relations.[6] Opposition to this text arose on the grounds that it would allow the General Assembly to interfere in matters exclusively within the domestic jurisdiction of Members, would create tension and misunderstandings, and would overburden the Assembly. Toward the close of the Conference, a special subcommittee of the Executive Committee of the Conference, consisting of Mr. Evatt (Australia), Mr. Stettinius (U.S.A.), and Mr. Gromyko (U.S.S.R.) drafted the present text, which was then adopted by Committee II/2, Commission II and by the Conference in plenary session.[7]

Scope of General Assembly's Power. Article 10 of the Charter empowers the General Assembly to discuss "any questions or any matters within the scope of the . . . Charter or relating to the powers and functions of any organs provided for in the . . . Charter." The very fact that this Article has been put at the beginning of the enumeration of the powers of the Assembly suggests the importance to be attached to it. It is the key to the whole role of the General Assembly in the United Nations. The General Assembly has thereby been designated as the open conscience of the world. It is a world forum where all important questions within the scope of the Charter can be discussed. This point was well emphasized by Dr. Evatt, the head of the Australian delegation at the San Francisco Conference, when he said that the present text of Article 10 establishes "the clear right of the Assembly to discuss any question or any matter within the scope of this Charter. That scope will include every aspect of the Charter, everything contained in it and everything covered by it. It will include the Preamble of the Charter, the great purposes and principles embodied in it, the activities of all its organs; and the right of discussion will be free and untrammelled and will range over that tremendous area."[8]

Although the General Assembly may make recommendations both

[6] UNCIO, *Summary Report of Fifteenth Meeting of Committee II/2, May 30, 1945*, Doc. 686, II/2/34 (*Documents*, IX, p. 108 *et seq.*).

[7] See UNCIO, *Summary Report of the Twenty-fifth Meeting of Committee II/2, June 20, 1945*, Doc. 1121, II/2/59, p. 2–4 (*Documents*, XI, p. 233–5).

[8] UNCIO, *Verbatim Minutes of the Fourth Meeting of Commission II, June 21, 1945*, Doc. 748), p. 2; see also II/17, p. 19 (*Documents*, VIII, p 208).

to the Members of the United Nations and the Security Council, it should be kept in mind that recommendations have no obligatory character, as has been shown in the Palestine case,[9] although they may be of the greatest political importance. The Members of the United Nations are legally free to accept or reject them.

Delimitation of Powers of General Assembly and Security Council. The General Assembly may not only discuss any question within the scope of the Charter or relating to the powers and functions of any organs of the United Nations, but it may make recommendations on such questions and matters, unless the Security Council is at the time exercising in respect of a dispute or situation the functions assigned to it in the Charter. Thus with respect to matters covered in Chapters IX–XIII of the Charter, questions of economic and social cooperation, the promotion of respect for basic human rights, and the political, economic and social advancement of non-self-governing peoples, the General Assembly has the power not only to discuss but also to recommend specific courses of action. In respect to matters pertaining more directly to the maintenance of international peace and security, matters generally thought of as being essentially political in nature, the powers of the General Assembly under the Charter are large, though somewhat more restricted than were the powers of the League Assembly. The General Assembly may discuss and make recommendations with respect to the development of international law (Article 13(1)(a)). It may also discuss and make recommendations with respect to the general principles of cooperation in the maintenance of international peace and security (Article 11(1)), but with respect to actual disputes and situations it must refrain from taking action of the kind envisaged under Chapters VI and VII until after the Security Council has had the opportunity to act and so long as the matter is before the Security Council for action (Article 12(1)).

This was the delimitation of functions and powers between the Security Council and the General Assembly which was clearly intended by the framers of the Charter and for which explicit provision is made. In practice, the delimitation has worked out somewhat differently for reasons which have to do with subsequent political developments. The inability of the Security Council to act and the use of the "veto" to prevent the Security Council from adopting decisions desired by the great majority of the Members of the United Nations have resulted in the development of the role of the General Assembly in practice to the point where the distinction between the roles of the General Assembly and the Security Council has lost much of

[9] See *infra*, p. 153.

its sharpness. An important step in this development was the adoption by the General Assembly during its second session of a resolution establishing an Interim Committee to assist it in the performance of its functions in the political field.[10]

Application. Article 10 is so inclusive in its terms that it covers much that is explicitly stated in other articles of the Charter. Consequently, it usually happens that in a particular case the General Assembly derives its authority from one or more articles in addition to Article 10. Thus Article 11(2) gives explicit authority to the General Assembly under certain conditions to discuss and make recommendations with respect to disputes brought before it under Article 35(1). Article 14 specifically empowers the General Assembly to discuss and make recommendations for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations. Our study of the application of Article 10 will be limited to a few cases where it has been explicitly referred to or where other provisions of the Charter do not provide the necessary legal basis for action. Furthermore, attention is given particularly to those cases which have significance with respect to the developing role of the General Assembly.

1. *The Palestine Question.* This is probably the most important question to come to the attention of the General Assembly to date. Palestine was a class A mandated territory administered by the United Kingdom. The mandate was unique because of the dual commitment assumed by the mandatory power, to the Arabs who were in the majority and to the Jews for whom the mandatory undertook to establish a national home. After repeated failures to achieve agreement between the parties in interest on a plan which would permit the termination of the mandate, the Government of the United Kingdom announced its intention to withdraw from Palestine. In a letter transmitted to the Secretary-General on April 2, 1947, it requested the Secretary-General to place the question of Palestine on the agenda of the General Assembly at its next regular session, and it asked the General Assembly to make recommendations under Article 10 on the future government of Palestine.[11]

The General Assembly, meeting in special session on April 28, 1947, established the United Nations Special Committee on Palestine (UNSCOP), with "the widest powers to ascertain and record facts, and to investigate all questions and issues relative to the problem of

[10] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions* . . , Doc. A/519, p. 15–6

[11] *Yearbook, 1946–47*, p. 276. For review of action taken by the General Assembly, see *ibid.*, p. 276–303, *International Organization*, I(1947), p. 488–91 and II(1948), p. 53–8; and UN, *Bulletin*

Palestine."[12] The Committee was also authorized to formulate proposals for the solution of the Palestine problem and present them to the second session of the Assembly. The General Assembly also passed a resolution at this first special session calling "upon all Governments and peoples, and particularly on the inhabitants of Palestine, to refrain, pending action by the General Assembly on the report of the Special Committee on Palestine, from the threat or use of force or any other action which might create an atmosphere prejudicial to an early settlement of the question of Palestine."[13]

The Committee's report,[14] containing a majority recommendation of partition with economic union, was considered at the second session of the General Assembly. On November 29, 1947, the General Assembly adopted a resolution incorporating, in modified form, the majority recommendations of the Committee.[15] The General Assembly found the situation to be one "likely to impair the general welfare or friendly relations among nations".[16] It recommended that the United Kingdom and all other Members of the United Nations adopt and implement the Plan of Partition with Economic Union set forth in the resolution. It requested that other organs of the United Nations, in particular the Security Council, take steps indicated in the resolution to the same end. It called upon the inhabitants of Palestine to cooperate in putting the Plan into effect and appealed to all Governments and peoples to refrain from taking any action which might hamper or delay the carrying out of the recommendations. The Assembly also established a Palestine Commission to supervise the implementation of the Plan, particularly the transfer of authority from the United Kingdom to the governmental bodies established by the Arab and Jewish states.

Considerable discussion took place in the Assembly on the competence of the General Assembly to make recommendations of such a far-reaching character and on such an important matter as the future government of a potential member of the family of nations. Those delegates opposing partition and favoring a federal unitary state – the Arab states and their supporters – denied the competence of the Assembly to recommend the partition of Palestine. They did not deny that the Assembly possessed the competence to recommend the termination of the mandate and the establishment of a

[12] UN, General Assembly, *Official Records of the First Special Session . . . , Plenary Meetings . . .*, p. 173–5.
[13] *Ibid.*
[14] UN, Doc. A/364.
[15] UN, General Assembly, *Official Records of the Second Session . . . tions . . .*, Doc. A/519, p. 131–50.
[16] See Article 14, *infra*, p. 178.

federal state, but they claimed that the recommendations for partition violated Article 1(2), providing for the equal rights and self-determination of peoples, that the Assembly was creating a Commission with more extensive powers, both legislative and administrative, than the Assembly itself possessed, and that the resolution of the General Assembly on the Palestine question was more far-reaching than a mere recommendation. In the words of the Cuban delegate:

> It is one thing to move a recommendation under Articles 10 and 11 and a very different thing to adopt a plan which affects the territorial integrity of a people and their legal and political status, and which entrusts the implementation of this plan to a commission of the General Assembly. Neither do we think that it can be maintained that this plan is a mere recommendation because a recommendation carries implicit in it the possibility of being rejected. The plan approved has, without any doubt, a compulsory character, a coercive character, which is proved by the fact that one of its provisions is that we shall consider as a menace to the United act of aggression, according to Article 39 of the Charter, other activities change by force the arrangement provided for in this by these agencies, it is a question of imposing something by force; ited in Spain"; (b) that mere recommendation.[17] within a reasonable time,"

Those delegates supporting measures to be taken in order to and the Soviet Union, that all Members of the United Nations to examine the Pal om Madrid their Ambassadors and Ministers Under Article accredited there"; and (d) that Members report to scope of the General and to the next session of the Assembly action the United ordance with this recommendation. At its second session cluded w ber 17, 1947, after reconsidering the situation in the light side the oer response to its earlier recommendations, the Assembly present a resolution merely expressing its confidence that "the Secur- Natior uncil will exercise its responsibilities under the Charter as soon Decl considers that the situation in regard to Spain so requires."[26] and ous proposals to reaffirm the Assembly resolution of December be 16, to recommend that the Security Council take enforcement meas- fr res pursuant to Article 41 of the Charter, and to express regret that the Assembly resolution of the previous year had not been complied with, failed to receive a two-thirds majority vote.

The Assembly took strong action with respect to Spain at its first session in spite of serious opposition by some delegations. This action

[23] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session* . . . , Doc. A/64, p. 39.

[24] For summary of action taken, see *Yearbook, 1946–47*, p. 345–51 and *International Organization*, I(1947), p. 81–4.

[25] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session* . . . , Doc. A/64/Add 1, p 63–4.

[26] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions* . . . , Doc. A/519, p. 21

the terms of the Assembly resolution or to modify its assignment in any way. Any political decisions would have to be made by the Security Council, under whose guidance the Assembly had placed the Commission.[14]

Although efforts had been made by the General Assembly to devise a plan for Palestine acceptable to Jews and Arabs alike, it failed to arrive at such a solution and was forced to recommend the Partition Plan in the face of Arab opposition. The Palestine Commission soon found, and so reported to the Security Council, that the Assembly resolution could not be carried out by peaceful means. Arab elements, both inside and outside Palestine, were actively resisting partition by force of arms and a full-scale war was developing in Palestine.

On February 24, 1948, the United States representative took the position before the Security Council that the United Nations had no authority to impose by force of arms any of its political decisions. Friendly relations, he claimed, were not binding, he claimed, Kingdom and automatically enforceable by the Security Council, implement the Plan possessed "great moral force." Therefore, any action the resolution. It requested took must be solely for the maintenance in particular the Security Council under Article 39 rather than for tion to the same end. It called upon ons, the Security Council found cooperate in putting the Plan into effect and.[20] The Security Council ments and peoples to refrain from taking any action Assembly resolution, per or delay the carrying out of the recommendations. mediate truce also established a Palestine Commission to supervise the vene another tion of the Plan, particularly the transfer of authority from tion of the Kingdom to the governmental bodies established by the on of the Jewish states. tes pro-

Considerable discussion took place in the Assembly on the Trus- petence of the General Assembly to make recommendations of being a far-reaching character and on such an important matter as the ed a ture government of a potential member of the family of natio As- Those delegates opposing partition and favoring a federal unitahis state – the Arab states and their supporters – denied the competence of the Assembly to recommend the partition of Palestine. They did not deny that the Assembly possessed the competence to recommend the termination of the mandate and the establishment of a

[12] UN, General Assembly, *Official Records of the First Special Session . . . , Plenary Meetings . . . ,* p. 173–5.
[13] *Ibid.*
[14] UN, Doc. A/364.
[15] UN, General Assembly, *Official Records of the Second Session . . . , tions . . . ,* Doc. A/519, p. 131–50.
[16] See Article 14, *infra,* p. 178.

the basis of Articles 4, 10 and 14. On February 9, 1946, the Assembly adopted a resolution recalling the decisions of the San Francisco Conference and the Potsdam Conference that the admission of Spain to the United Nations would not be supported, endorsing these decisions, and recommending that Members of the United Nations act in accordance with them.[23] On April 9, the question was brought before the Security Council at the request of the Polish Government.[24] When it became clear that the Security Council could not take a decision on the merits of the question because of the absence of necessary agreement among its members, a resolution was adopted on November 4 removing it from the list of matters with which the Council was seized in order that the General Assembly might act. On December 12, the Assembly passed a resolution[25] recommending (a) that "the Franco Government be debarred from membership in international agencies established by or brought into relationship with the United Nations, and from participation in conferences or other activities which may be arranged by the United Nations or by these agencies, until a new and acceptable government is formed in Spain"; (b) that if such a government is not established "within a reasonable time," the Security Council consider the measures to be taken in order to remedy the situation; (c) "that all Members of the United Nations immediately recall from Madrid their Ambassadors and Ministers Plenipotentiary accredited there"; and (d) that Members report to the Secretary-General and to the next session of the Assembly action taken in accordance with this recommendation. At its second session on November 17, 1947, after reconsidering the situation in the light of Member response to its earlier recommendations, the Assembly passed a resolution merely expressing its confidence that "the Security Council will exercise its responsibilities under the Charter as soon as it considers that the situation in regard to Spain so requires."[26] Various proposals to reaffirm the Assembly resolution of December 1946, to recommend that the Security Council take enforcement measures pursuant to Article 41 of the Charter, and to express regret that the Assembly resolution of the previous year had not been complied with, failed to receive a two-thirds majority vote.

The Assembly took strong action with respect to Spain at its first session in spite of serious opposition by some delegations. This action

[23] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 39.

[24] For summary of action taken, see *Yearbook, 1946–47*, p. 345–51 and *International Organization*, I(1947), p. 81–4

[25] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc A/64/Add 1, p. 63–4

[26] UN, General Assembly, *Official Records of the Second Session . . .*, *Resolutions . . .*, Doc. A/519, p. 21.

was opposed on the ground that it would constitute interference in the internal affairs of Spain in violation of Article 2(7), that, in effect, it was an attempt to force a change of government in Spain.[27] However, a majority of the members of the Assembly concluded that the situation in Spain was of international concern and a potential threat to international peace. The action taken by the General Assembly was also opposed for another reason. It was contended that the proposal that Members recall their Ambassadors and Ministers Plenipotentiary from Madrid was a violation of the Charter in that Articles 39 and 41 reserved such power to the Security Council. The Security Council had already considered the Spanish case, it was argued, had failed to find that Spain was a menace to international peace, and had not recommended coercive measures. The recommendation that Members withdraw their diplomatic representatives from Madrid constituted a form of enforcement action similar to that which might be taken by the Security Council under Article 41. The only difference, it was stated, was that the recommendation of the General Assembly was not binding on the Members, whereas such a recommendation of the Security Council would be binding if a decision had been reached under Article 39 that a threat to the peace, breach of the peace, or act of aggression existed.

A third objection to Assembly action on Spain was directed against the recommendation that the Security Council consider adequate measures to be taken if the Government of Spain were not made more democratic within a reasonable time. The United States and the United Kingdom delegates asserted that it was not for the General Assembly, but for the Security Council itself to decide whether to take action in this matter in the light of its own consideration of the question. Moreover, the resolution implied that the existence of a government in Spain which did not completely fulfill the conditions laid down in the resolution was in itself a ground for action by the Security Council. This was contrary to the Charter, it was argued, which limits action by the Council to cases in which it has determined that there is a danger to the maintenance of international peace and security.[28]

3. *The Greek Question.* This question was considered at length by the Security Council during 1946–1947. It was unable to find a solution acceptable to the permanent members.[29] After the Security

[27] See comment on Article 2(7), *supra*, p. 115.

[28] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . . ,* p. 1198.

[29] For summary of action by Security Council, see *Yearbook, 1946–47*, p. 336–8, 351–75 and *International Organization*, I(1947), p. 84–90, 331–2, 494–503, and II(1948), p. 85–7.

Council had voted to remove the question from the list of matters with which it was seized, the United States brought the question before the General Assembly, claiming that there was a threat to the political independence and territorial integrity of Greece. No specific article of the Charter was referred to in the United States draft resolution as providing the basis for Assembly action, but Article 10, taken together with Article 2(4), appeared to provide the necessary authority. The resolution finally adopted by the General Assembly on October 21, 1947 took account of the record of the Security Council proceedings in the matter and of the majority finding of the Council's Commission of Investigation that Albania, Bulgaria, and Yugoslavia had given assistance and support to the Greek guerillas, called upon those countries to do nothing which could furnish such aid and assistance, and called upon all four Balkan states involved to settle their disputes peaceably. Additional recommendations called for the early establishment of normal diplomatic and good neighborly relations among the four states, for the establishment of effective frontier conventions among them, and for their cooperation in handling refugee and minority problems. The resolution established an eleven-nation Special Committee of the Assembly to make investigations and report to the United Nations on whether Albania, Bulgaria, and Yugoslavia did anything which could furnish aid or assistance to the guerillas, and on the compliance of the countries concerned with the Assembly recommendations as a whole. The Committee was also to be available to assist the four governments in the implementation of the Assembly's recommendations. The Commission was granted the power to recommend the calling of a special session of the General Assembly if, in its opinion, further action by the Assembly was necessary prior to the next regular session.[30]

Some Members, including the Soviet Union and Yugoslavia, opposed the establishment of the Special Committee on the ground that it violated the principle of the sovereign equality of nations and the domestic jurisdiction of Member nations, and refused to participate in its work. This attitude was also adopted by Albania and Bulgaria.

4. *The South African Question.* The Government of India submitted in 1946 a complaint regarding the treatment of Indian nationals in the Union of South Africa, asking the General Assembly to study the question on the basis of Articles 10 and 14 of the Charter.[31] The matter was considered by the General Assembly during the second part of its first session. South Africa and the countries supporting her in

[30] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 12–4.

[31] UN, Doc. A/49.

the case denied the right of the Assembly to consider the case since any action on the part of the Assembly would constitute intervention in the internal affairs of a state in violation of Article 2(7).[32] However, the great majority of the delegations appeared to believe that the Assembly did possess competence under Articles 10 and 14 because economic reprisals had been taken and friendly relations between the two countries had been jeopardized. On December 9, 1946, the Assembly adopted a resolution declaring that friendly relations between India and the Union of South Africa had been impaired as the result of discrimination against the Indians in South Africa, and that such treatment should be in conformity with the international obligations of the two countries under the agreements concluded between them and under the relevant provisions of the Charter. The resolution also requested the two governments to report to the Assembly at its next session on the measures which had been taken.[33]

During the second session of the General Assembly, India reported that South Africa had taken no steps to put the resolution into effect; that the situation had worsened during the past year; and that it had been impossible to reach a common basis for discussion since South Africa would not accept the Assembly's resolution as such a basis. South Africa still denied the General Assembly's jurisdiction in the case and did not consider itself bound by the resolution. The First Committee of the Assembly adopted a draft resolution reaffirming the Assembly's resolution of December 1946 and requesting the two governments to enter into discussion at a round table conference "on the basis of that resolution" without further delay.[34] The General Assembly failed to adopt the draft resolution of its First Committee and took no action on the question. Reaffirmation of the 1946 resolution was opposed because, as the United States delegate stated, "it did not seem to have improved the situation and it would be a mistake and a sign of weakness to re-state a decision which had not produced the expected results."[35] The resolution requesting the parties to enter into discussions at a round table conference was also defeated because such discussions were to be on the basis of the 1946 resolution.

In its first session the General Assembly made bold use of its powers under Articles 10 and 14 in spite of the domestic jurisdiction clause. In its second session the Assembly was unwilling to reaffirm its previous action. Whether this represented a reversal of the earlier position of the General Assembly with respect to the powers of the General As-

[32] See comment on Article 2(7), *supra*, p. 118.
[33] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 69.
[34] UN, Doc. A/C.1/SR 112.
[35] UN, Doc. A/C.1/SR 109.

sembly under Articles 10 and 14, it is difficult to say. Political considerations were undoubtedly an important factor in explaining the result. The delegate of India argued that failure to confirm the 1946 resolution, in the face of a violation of it, meant a departure from the stand of the previous year and that such practices would undermine the authority of the General Assembly and the United Nations.[36]

5. *The Question of Security Council Voting Procedure.* In both the second part of its first session and its second session the General Assembly considered thoroughly, on the basis of Article 10, the voting procedure of the Security Council, especially the exercise of the veto privilege by the permanent members. The Assembly assumed the power of recommending to the Council the correction of certain defects in its voting procedure under Article 27 in order to enable the Council to fulfill the tasks which the Charter had entrusted to it. In its first resolution on the question the Assembly followed the advice of Mr. Wellington Koo (China), who stated that the Assembly should adopt a resolution which was acceptable generally, especially to all the members of the Security Council, "because you will recall that, while under Article 10 of the Charter, the General Assembly has the right to make any recommendation as regards the powers and functioning of the Security Council as well as of other organs, yet under Article 30 of the Charter, the Security Council has the exclusive right to adopt its own rules of procedure. Therefore, whatever resolution we pass can take effect only when it is implemented by the Security Council."[37]

The resolution passed by the General Assembly in December 1946, requested the permanent members of the Security Council to consult with one another and with their fellow members with a view to bringing about some moderation in their use of the veto; and recommended to the Security Council the adoption of practices and procedures which would assist in reducing the defects in the application of Article 27, taking into consideration the views expressed by the General Assembly.[38]

During the seven months following the passage of this resolution, some progress was made in the Security Council toward securing sufficient agreement among the permanent members so that decisions could be taken. Seven major matters were considered by the Council and, until July 1947, the veto was exercised only once. The chief reason for this improvement was the development of the practice

[36] UN, Doc. A/P.V. 120.

[37] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .* , p 1260.

[38] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .* , Doc. A/64/Add. 1, p. 64.

of voluntary abstention[39] from voting by the permanent members in respect to proposals they could not actively support but to which they were not strongly opposed. However, between July 29 and December 31, 1947, the veto was used thirteen times – twelve times by the Soviet Union and once by France.

The problem was again brought before the General Assembly in its second session and the Assembly adopted a resolution (1) requesting the Interim Committee of the Assembly to consider the problem, consulting any committee which the Council might designate to cooperate with the Interim Committee, and report with its conclusions to the third session of the General Assembly; and (2) requesting the permanent members of the Council to consult with one another in order to secure agreement among themselves on the problem.[40] The Soviet Union charged that these resolutions were a direct attack on the rule of Great Power unanimity and a violation of the Charter. Moreover, the Soviet Union refused to participate in the work of the Interim Committee.

6. *Membership in the United Nations.* Article 10, in addition to Article 4, was used by the General Assembly at its first and second sessions in support of its right to discuss and make recommendations to the Security Council on the applications of states for membership in the United Nations which had been rejected by the Security Council.[41]

7. *Non-Self-Governing Territories.* Article 10 was cited by various delegations in the General Assembly in support of the right of the General Assembly to discuss questions arising under Chapter XI of the Charter (*Declaration Regarding Non-Self-Governing Territories*) and to make recommendations in connection therewith. These included resolutions recommending the establishment of an *ad hoc* committee to consider information received from Members administering non-self-governing territories under Article 73(e) of the Charter, and recommending to governments administering such territories the calling of conferences of representatives of non-self-governing peoples.[42]

Conclusions. The discussions at San Francisco bear witness to the importance that was attached to Article 10 by those delegations anxious to strengthen the role of the General Assembly, particularly in relations to the Security Council. There can be little question that

[39] On effects of abstention, see comment on Article 27, *infra*, p. 223.

[40] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 23.

[41] See *supra*, p. 130.

[42] See *infra*, p. 411. See also, UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .* , p. 1327.

in practice Article 10 has largely served that purpose. Article 10 has been used to provide additional support for General Assembly action under other articles of the Charter, and as an independent source of Assembly authority. In a sense, the role of Article 10 with respect to Assembly functions and powers has been similar to that of the "necessary and proper" clause of the United States Constitution with respect to the legislative powers of Congress. However, it has been necessary to recognize that the powers of the General Assembly under Article 10 are subject to certain practical limitations, arising not only from the Article itself, but, more importantly, from the nature of the Organization and the special powers and responsibilities of the Great Powers. After all, the General Assembly can only recommend, as finally had to be admitted in the Palestine case, and its authority rests therefore on the persuasiveness of its recommendation, i.e. on a moral basis. Even with respect to enforcement measures, unlike the Security Council, it can only recommend. Furthermore, while it has asserted its right to discuss the way in which the Security Council performs its functions under the Charter, and has made recommendations with respect thereto, these recommendations again have only moral force back of them. The right of a permanent member to veto a substantive proposal in the Council remains intact and under the Charter can only be modified with its consent. Recognition of these realities has tempered somewhat the earlier enthusiasm for strong action by the General Assembly under Article 10 and other articles of the Charter and led to a greater emphasis upon the need for agreement between the parties concerned as a solid foundation for Assembly action if Assembly resolutions are not to be disregarded with dangerous frequency.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

General. This paragraph, following as it does Article 10, becomes a specific application of the more comprehensive provisions of that Article. By its terms the General Assembly is given the power to consider and make recommendations concerning the general principles of cooperation in the maintenance of international peace and security. The specific mention of disarmament and the regulation of arma-

ments is intended to make it clear that these topics are included, not to limit in any way the scope of the Assembly's power.

It should be noted that paragraph 2 of Article 11 qualifies the right of the Assembly to make recommendations; paragraph 1 does not contain any such limitation. The General Assembly may under this paragraph make recommendations whether or not the Security Council is dealing with the same subject matter. The paragraph fits into the general plan of the Charter that so far as the field of political cooperation is concerned, the special function of the General Assembly is to consider and recommend principles of action, while the special function of the Security Council is to deal with disputes and situations as they arise.

A point to be noted in connection with this paragraph is the use of the word "consider" in place of the word "discuss" which we find used in Article 10 and in Article 11(2). The distinction goes back to the Dumbarton Oaks Proposals. It has been suggested that there is a "shade of difference" between the two words, that "consider" is more comprehensive than the word "discuss", and may have the implication of leading to some form of action, as, for example, the making of a recommendation.[43] This distinction would seem, however, to lose much of its point in view of the fact that in Article 11(1), where the word "consider" is used, the General Assembly is expressly given the power to recommend, as in Article 10 and Article 11(2), where the word "discuss" is employed.

General Principles of Cooperation in the Maintenance of International Peace and Security. The authority conferred upon the General Assembly to consider and make recommendations with respect to such general principles is closely connected with the power which the Assembly has under Article 13(1) (a) to initiate studies and make recommendations for the purpose of promoting international cooperation in the political field. In fact the General Assembly resolution of November 13, 1947, establishing an Interim Committee, combines these two paragraphs for purposes of study and recommendation by the Committee.[44]

A distinction is made in Article 11(1) and (2), between "general principles of cooperation" and "any questions relating to the maintenance of international peace and security" brought before it by a Member, a non-Member or by the Security Council. In a memorandum prepared by the Secretariat for the Interim Committee on experience

[43] Testimony of Leo Pasvolsky before Senate Committee on Foreign Relations, *Hearings . . . , on The Charter of the United Nations . . . , July 2, 1945*, p. 242.

[44] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 15.

in the preparation of political and security matters for the General Assembly,[45] the distinction was made between "questions which concern the generality of Members" and "special questions which are of more direct concern to two States or to a restricted group of States."

Several proposals were submitted to the Interim Committee for the improvement of procedures of pacific settlement. These were considered by Sub-Committee 2 which in its report [46] made a series of recommendations based upon them. These recommendations included the restoration to the General Act of 26 September 1928 of its original efficacy, amendment of the Rules of Procedure of the General Assembly to authorize the President to exercise conciliatory functions, a recommendation to the Security Council of the adoption of an improved conciliation procedure, and the creation of a panel from which commissions of conciliation and inquiry might be drawn. These recommendations were accepted by the Interim Committee and submitted to the General Assembly at its third session.

Disarmament and the Regulation of Armaments. The provisions of the Charter with respect to disarmament are considerably weaker than the provisions contained in Articles 8 and 9 of the Covenant of the League of Nations. For instance, the Covenant recognized the dangers of the private armament industry, but a proposal to include a similar provision in the Charter was defeated. It is quite clear that the framers of the Charter intended that disarmament should take a more modest place in the system of the United Nations than it did in the League system. The League aimed to develop a system whereby "Security, Arbitration, and Disarmament" would work hand in hand and on an equal basis. The Charter emphasizes "Security, Pacific Settlement and Welfare", with disarmament in a subordinate position.

While the Council of the League was specifically empowered to formulate plans for the reduction of national armaments "for the consideration and action of the several Governments", the Assembly's competence was sufficiently broad to permit it to do the same thing. The Charter, however, expressly grants to the General Assembly the power to consider "the principles governing disarmament and the regulation of armaments" and to make recommendations with respect to such principles, while the Security Council alone is made responsible, under the terms of Article 26, "for formulating . . . plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments." The competence of the General Assembly is thus permissive, and confined to the formulation of general principles; whereas that of the Security Council

[45] UN, Doc. A/AC.18/59.
[46] UN, Doc. A/AC.18/73.

is more mandatory and is directed towards the formulation of specific plans.[47]

In the first part of its first session in London the General Assembly took the initiative in respect to the international control of atomic energy by establishing a Commission to deal with the problems raised by the discovery and use of atomic energy and other weapons of mass destruction. The Atomic Energy Commission was to be composed of one representative from each of the states represented on the Security Council, and Canada, when that state was not a member of the Council, and was to be accountable to the Security Council to whom it was to submit its reports and recommendations. The Commission was to make proposals

(a) for extending between all nations the exchange of basic scientific information for peaceful ends;

(b) for control of atomic energy to the extent necessary to ensure its use only for peaceful purposes;

(c) for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction;

(d) for effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.[48]

During the second part of its first session the General Assembly considered the larger question of general principles governing the regulation and reduction of national armaments in general. The discussion covered a variety of topics, including international control of atomic energy, information regarding national armaments, a system of inspection and the implementation of Article 43 of the Charter.[49] It became apparent that much the same conflict of interests and attitudes existed as characterized League discussions of the disarmament question. The resolution finally adopted on December 14, 1946, was a compromise which because of its importance is here reproduced in full. The resolution was as follows:

1. In pursuance of Article 11 of the Charter and with a view to strengthening international peace and security in conformity with the Purposes and Principles of the United Nations,

The General Assembly,

Recognizes the necessity of an early general regulation and reduction of armaments and armed forces.

2. *Accordingly,*

The General Assembly,

[47] See Evatt, Herbert V., *The United Nations,* Cambridge, 1948, p. 84.

[48] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session* . . . , Doc. A/64, p. 9.

[49] For summary of discussion, see *Yearbook, 1946–47,* p. 134–43.

Recommends that the Security Council give prompt consideration to formulating the practical measures, according to their priority, which are essential to provide for the general regulation and reduction of armaments and armed forces and to assure that such regulation and reduction of armaments and armed forces will be generally observed by all participants and not unilaterally by only some of the participants. The plans formulated by the Security Council shall be submitted by the Secretary-General to the Members of the United Nations for consideration at a special session of the General Assembly. The treaties or conventions approved by the General Assembly shall be submitted to the signatory States for ratification in accordance with Article 26 of the Charter.

3. As an essential step towards the urgent objective of prohibiting and eliminating from national armaments atomic and all other major weapons adaptable now and in the future to mass destruction, and the early establishment of international control of atomic energy and other modern scientific discoveries and technical developments to ensure their use only for peaceful purposes,

The General Assembly,

Urges the expeditious fulfilment by the Atomic Energy Commission of its terms of reference as set forth in section 5 of the General Assembly resolution of 24 January 1946.

4. In order to ensure that the general prohibition, regulation and reduction of armaments are directed towards the major weapons of modern warfare and not merely towards the minor weapons,

The General Assembly,

Recommends that the Security Council expedite consideration of the reports which the Atomic Energy Commission will make to the Security Council and that it facilitate the work of that Commission, and also that the Security Council expedite consideration of a draft convention or conventions for the creation of an international system of control and inspection, these conventions to include the prohibition of atomic and all other major weapons adaptable now and in the future to mass destruction and the control of atomic energy to the extent necessary to ensure its use only for peaceful purposes.

5. *The General Assembly,*

Further recognizes that essential to the general regulation and reduction of armaments and armed forces, is the provision of practical and effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions.

Accordingly,

The General Assembly,

Recommends to the Security Council that it give prompt consideration to the working out of proposals to provide such practical and effective safeguards in connexion with the control of atomic energy and the general regulation and reduction of armaments.

6. To ensure the adoption of measures for the early general regulation and reduction of armaments and armed forces, for the prohibition of the

use of atomic energy for military purposes and the elimination from national armaments of atomic and all other major weapons adaptable now or in the future to mass destruction, and for the control of atomic energy to the extent necessary to ensure its use only for peaceful purposes,

There shall be established, within the framework of the Security Council, which bears the primary responsibility for the maintenance of international peace and security, an international system, as mentioned in paragraph 4, operating through special organs, which organs shall derive their powers and status from the convention or conventions under which they are established.

7. *The General Assembly*,

Regarding the problem of security as closely connected with that of disarmament,

Recommends the Security Council to accelerate as much as possible the placing at its disposal of the armed forces mentioned in Article 43 of the Charter;

Recommends the Members to undertake the progressive and balanced withdrawal, taking into account the needs of occupation, of their armed forces stationed in ex-enemy territories, and the withdrawal without delay of their armed forces stationed in the territories of Members without their consent freely and publicly expressed in treaties or agreements consistent with the Charter and not contradicting international agreements;

Further recommends a corresponding reduction of national armed forces, and a general progressive and balanced reduction of national armed forces.

8. Nothing herein contained shall alter or limit the resolution of the General Assembly passed on 24 January 1946, creating the Atomic Energy Commission.

9. *The General Assembly*,

Calls upon all Members of the United Nations to render every possible assistance to the Security Council and the Atomic Energy Commission in order to promote the establishment and maintenance of international peace and collective security with the least diversion for armaments of the world's human and economic resources.[50]

The adoption of this resolution placed upon the Security Council the responsibility for further action by way of implementation. While important procedural steps have been taken, no progress has been made toward resolving the substantive difficulties in the way of a plan of international regulation of armaments.[51] The unsatisfactory state of relations between certain of the permanent members of the Security Council has of course been primarily responsible for this result.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by

[50] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 65–7.

[51] See comment on Articles 26 and 43 *infra*, pp. 900 ff., 921

a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

General. This paragraph is also a special application of the general principle expressed in Article 10. It follows closely provisions contained in Chapter V, Section B, paragraph 1, of the Dumbarton Oaks Proposals. The one additional provision, permitting a state that is not a Member to bring a question of the nature indicated before the General Assembly, simply harmonizes this paragraph, dealing with the powers of the General Assembly, with the provisions of Article 35(2), dealing with the pacific settlement of disputes.

This paragraph, with the limitation on the General Assembly's power contained in the reference to Article 12, is consistent with the general principle upon which the peace and security system of the Charter is based, namely, that the General Assembly is primarily the organ for discussion, while the Security Council is the organ for action. It is recognized, however, that there are two circumstances under which the General Assembly can make recommendations with respect to questions relating to the maintenance of international peace and security which specially concern two or a limited number of states. The first is when the Security Council is not exercising, in respect to such questions, its functions under the Charter. The second is when the Security Council requests the General Assembly to consider the question and to make recommendations. The first circumstance is limited, however, by the requirement of the last sentence of this paragraph that any question on which action is necessary shall be referred to the Security Council. It is presumably only when the Security Council has voluntarily ceased to deal with the question, that the General Assembly can make recommendations as well as discuss the subject matter.

"Action" Which the General Assembly May Take. The last sentence of this paragraph provides that any question upon which action is necessary shall be referred to the Security Council before or after discussion. The question naturally arises as to what meaning "action" has in this context. It would appear to have been the intention of the framers of the Charter that the Security Council was the organ primarily responsible for performing the kind of acts described in Chapters V, VI, VII and VIII of the Charter. According to this conception of the role of the Security Council, "action" under this paragraph might be defined as action under these chapters and would in-

clude action with a view to the pacific settlement of a dispute or adjustment of a situation as well as enforcement action.

In practice, however, the General Assembly would appear to have interpreted its powers somewhat more broadly. The Spanish and Greek questions were both removed from the list of questions before the Security Council before they were considered by the General Assembly. The fact that the Security Council had thus proclaimed its inability to act provided the General Assembly with justification under the Charter to take the steps that it did. These included the recommendation of terms of settlement, the establishment of a commission to assist in implementing the terms of settlement and the recommendation of enforcement measures. The question relating to the treatment of Indians in South Africa, however, was brought before the General Assembly directly. The alleged impairment of friendly relations between states and the threat of further impairment were certainly related to the maintenance of international peace and security. The question was discussed and a resolution was adopted by the General Assembly,[52] requesting the two governments to report on measures taken to improve the situation, without any reference of the question to the Security Council. Technically, perhaps, no "action" was taken.

In the Korean [53] and Palestine [54] cases, the questions brought before the General Assembly were certainly not devoid of serious implications so far as the maintenance of international peace and security were concerned. By its resolution of November 29, 1947, on the Palestine question, the General Assembly recommended a comprehensive plan for the final settlement of the question, "Partition with Economic Union", and established a Commission to implement the Plan. In addition, the resolution requested the Security Council to accept certain responsibilities in connection with the implementation of the Plan and the maintenance of peace, responsibilities that the Security Council subsequently refused to accept.[55] By its resolution of May 15, 1948, adopted after the Security Council had requested that the General Assembly reconsider the question in special session, the Assembly empowered a United Nations Mediator to perform mediatory functions in connection with the long-range settlement of the question and the immediate limitation of hostilities.

In the Korean case, the General Assembly was in effect called upon to resolve a conflict which had developed between the United States

[52] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 69.

[53] See *infra*, p 180.

[54] See *supra*, p. 153.

[55] See *supra*, p. 154.

and the Soviet Union over the implementation of the Moscow agreement of December 1945. By its resolution of November 14, 1947, the General Assembly decided that elected representatives of the Korean people should participate in the consideration of Korea's future, recommended a plan for the election of such representatives, and created a Temporary Commission to expedite the holding of elections.[56] The Soviet Union refused to accept the resolution and to participate in the carrying out of the plan.

The provisions of this paragraph make it possible for the Security Council to transfer a matter to the Assembly in the same way as the League Council could do under Article 15, paragraph 9, of the Covenant. The Security Council is not, however, required to do this at the request of one of the parties as was the rule under the Covenant. The Security Council has removed two questions from its agenda so that they might be considered by the General Assembly, the Spanish question on November 4, 1946, and the Greek question on September 15, 1947, and in the Palestine case, requested the calling of a special session of the General Assembly to reconsider the matter.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

This paragraph was added at San Francisco with a view to strengthening the position of the General Assembly. While recognizing by implication the primary responsibility of the Security Council for taking action to maintain international peace and security, it empowers the Assembly to call the attention of the Council to situations which are likely to endanger peace and security, as it did in the Palestine case. This enables the Assembly to take a decision as to whether in its opinion such a situation exists, and to place openly upon the Council responsibility for dealing with it. It is intended to reduce the likelihood that a particular situation in which one of the permanent members of the Council has a special interest will not be brought before the Council for action.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

This paragraph is intended to make clear that the provisions of Article 11 are intended to particularize, but not restrict, the more general provisions of Article 10.

[56] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 16–8

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

Background. It is quite clear that the object of this paragraph is to ensure that the General Assembly shall not interfere with the exercise by the Security Council of its functions to maintain international peace and security in accordance with the powers vested in it by Chapters V, VI, VII, and VIII, or by Article 94(2). The Council was given these functions because it was thought that it was the organ best constituted to work quickly and efficiently. It was felt at Dumbarton Oaks and San Francisco that this speed and efficiency would be endangered if the General Assembly were permitted to make recommendations with respect to questions under treatment by the Council. For that reason, it was deemed wise to introduce a special provision to prevent interference and overlapping of action. This reason obviously disappears if the Council should request the opinion of the Assembly. This is expressly recognized in the latter part of the paragraph.

It is stated in this paragraph that the Assembly shall not make any recommendation under the circumstances indicated. This does not mean that the Assembly cannot discuss such disputes or situations. The wording of Articles 10 and 12 makes it clear that discussion is permitted.

Application. To date, the Security Council has not explicitly requested the General Assembly to make a recommendation on any matter before it for action. The one attempt that was made in connection with the consideration of the Greek question by the Security Council was defeated. However, in considering the Palestine question, substantially the same result was achieved when the Security Council by its resolution of April 1, 1948, requested the Secretary-General "in accordance with Article 20 of the United Nations Charter, to convoke a special session of the General Assembly to consider further the question of the future government of Palestine." [87] In two cases, the Spanish and Greek, the Security Council voted to remove the questions from the list of matters before it for action in order that the General Assembly might act.

The introductory words of this paragraph, "while the Security Council is exercising in respect of any dispute or situation the func-

[87] UN, Security Council, *Official Records, Third Year*, No. 52, p. 34–5.

tions assigned to it in the present Charter," have been interpreted by the Council in actual practice as meaning "while a dispute or situation is still on the agenda of the Council." A contrary view as to the proper interpretation of the clause has been expressed as follows: "This interpretation is not in accordance with the ordinary meaning of the words and is not supported by the debates which took place on the subject at San Francisco. In fact, the Council should be actually exercising its functions of conciliation or settlement of disputes by enforcement measures, before the Assembly is blocked from making recommendations. Obviously, it is not so doing if, after exercise of the right of veto, the Council has been reduced to inaction, even though technically the matter may still be listed on the Council's agenda."[58] The established practice is that the Council must vote to remove a question from its agenda before the General Assembly may make a recommendation concerning it. The decision taken is a procedural one which consequently does not require the concurrence of all the permanent members of the Council. Thus the possibility of appealing in effect from the Council to the General Assembly is facilitated.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

There was no comparable provision in the Dumbarton Oaks Proposals. One of the major concerns of the smaller powers was that the Security Council might by one means or another keep a dispute or situation from coming before the General Assembly for consideration and recommendation, even though the Council was not engaged in dealing with the matter in any active way. This paragraph was agreed upon at San Francisco, after lengthy discussion, for the purpose of giving some assurance that the principle of the first paragraph was not misused in practice. It was also felt that the Members of the United Nations should be kept informed regarding matters before the Security Council for consideration and action.

The first part of this paragraph places upon the Secretary-General the obligation to notify the General Assembly at each session of any matters relative to the maintenance of international peace and secur-

[58] Evatt, *op. cit.*, p 123.

ity which are being dealt with by the Security Council. This obligation does not extend to reporting action taken since the purpose of the report is to assist the Assembly in determining its agenda.[59] The one condition imposed is that the Secretary-General must act with the consent of the Council.

The second part of the paragraph requires the Secretary-General to notify the General Assembly immediately, if it is in session, and the Members of the United Nations, if the Assembly is not in session, when the Council has ceased to deal with such matters. The word "similarly" refers to Council consent. Consequently, the Council decides, by a vote of any seven members, that it has ceased to deal with a matter and the General Assembly cannot make a recommendation on the question until the Council has taken the decision.[60]

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Background. The obligation placed upon the General Assembly by this paragraph, i.e., to "initiate studies and make recommendations", provides the basis for extremely constructive work by that body. It directs the General Assembly to initiate studies within the wide range of subjects covered by sections (a) and (b), to discuss the results of these studies, and to make recommendations, either to the Members or to the appropriate organs of the United Nations or to both, with respect to action which should be taken. The paragraph has provided the opportunity for the continuation of a form of international activity which proved to be very useful under the League system.

Although at San Francisco a proposal that the General Assembly be specifically empowered to "submit general conventions for the consideration" of states both Members and non-Members was defeated, the General Assembly has assumed that power and has initiated the drafting of several important international conventions dealing with subjects covered in this Article. The Assembly of the United Nations

[59] See UN, Doc. A/124.

[60] See UN, Doc. A/389.

follows the practice of the League Assembly which, without specific authority, undertook the drafting of important international agreements, such as the Geneva Protocol of 1924.

"Promoting international cooperation in the political field." "Article 13, paragraph 1, may be regarded as a transition from the functions of the General Assembly dealing with the maintenance of peace and security, to its functions, more nearly legislative in character, dealing with constructive efforts to secure cooperation between States in the field of 'peaceful change' with which Article 14 deals. The word 'political' is given no explanation, but is set off as against legal development in the same clause, and as against economic, social and other fields, which were transferred to the following clause."[61] It is difficult, in these days of interdependence, to distinguish political from other types of questions. Almost anything today may be a political issue, but this clause reinforces efforts to secure cooperation in all fields which might remove causes of war and thereby maintain international peace and security.

The clause directing the General Assembly to initiate studies and make recommendations to promote cooperation in the political field is closely connected with the first part of Article 11, which provides that the General Assembly "may consider the general principles of cooperation in the maintenance of international peace and security". As stated previously, the General Assembly entrusted to its Interim Committee the task of studying methods whereby the principles of Article 11(1) and Article 13(1) (a) might be developed.[62] The limitations specified in Article 12 do not apply to this Article.

The power of the General Assembly under Article 13(1) "to initiate studies and make recommendations" has been cited by Assembly members to justify the investigatory powers of the Interim Committee and the establishment of the Palestine, Greek and Korean Commissions.

"Encouraging the progressive development of international law and its codification." The inclusion of this phrase was due in large part to the insistence at San Francisco that more emphasis be placed on law as the basis of the Organization. This attitude is also reflected in the inclusion of references to international law and justice in the Articles dealing with Purposes and Principles.

The terms "progressive development" and "codification" describe in general processes which are in common use in modern legal systems. The first is a process by which law is developed through practice, legislation and judicial decision without too much attention to com-

[61] Memorandum by the Secretariat, UN, Doc. A/AC.18/33, p. 9.
[62] See *supra*, p. 164.

plete authoritative statements, while codification is a process by which law is given a complete and systematic statement which supercedes in a sense previous court decisions and legislative enactments. With respect to international law the terms of necessity have a somewhat different meaning. The Statute of the International Law Commission, adopted by the General Assembly in its resolution of November 21, 1947 [63] contains the following definition of these terms:

> In the following articles, the term "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine.[64]

It is to be noted that the term "progressive development" precedes the term "codification" in the Article. In the General Assembly resolution of December 11, 1946, this order is maintained, while "codification" is specifically qualified by the word "eventual".[65] Thus, emphasis so far as present action is concerned is very definitely placed on the process of progressive development.

By the above resolution, the General Assembly established a Committee to study the methods by which the Assembly "should encourage the progressive development of international law and its eventual codification" and methods of securing the cooperation of United Nations organs and other international and national bodies to this end.[66] In its report [67] the Committee recommended that the General Assembly set up a permanent International Law Commission for the purpose. Provision was made for its establishment in a resolution adopted by the General Assembly during its second session.[68]

According to its Statute, the Commission is to be composed of fif-

[63] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 105–10.

[64] *Ibid.*, Article 15

[65] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 187.

[66] *Ibid.*

[67] UN, Doc. A/504.

[68] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc A/519, p. 105. For discussion of this general problem, see Alvarez, Alejandro, "The Reconstruction and Codification of International Law," *The International Law Quarterly*, I, p. 469–81; Hurst, Sir Cecil, "A Plea for the Codification of International Law on New Lines," Grotius Society, *Transactions*, XXXII (1946), p. 135 *et seq.*; and Liang, Yuen-li, "The General Assembly and the Progressive Development and Codification of International Law," *American Journal of International Law*, XLII, p. 66–97.

teen persons of recognized competence in international law, representing the chief forms of civilization and the basic legal systems of the world. Its members are nominated by the governments of Members and are to be elected by the General Assembly.[69] The Statute defines the procedures to be followed both in the progressive development and in the codification of international law.

Since international law includes all treaties and other agreements between states,[70] a multipartite treaty which is entered into following recommendation by the General Assembly is an important step in the "progressive development of international law". International law may also be developed through the practice of states in response to General Assembly recommendations, and by the practice of the United Nations itself. During its second session, the General Assembly passed resolutions, based in part on Article 13(1), which: (a) recommended that organs of the United Nations and the specialized agencies should, from time to time, review the important points of law which have arisen in the course of their activity, including points of law relating to the interpretation of the Charter or the constitutions of the specialized agencies, and should refer them to the International Court of Justice for an advisory opinion; (b) drew the attention of Members of the United Nations which have not yet accepted the compulsory jurisdiction of the Court to the desirability of doing so with as few reservations as possible; (c) called attention to the desirability of inserting in treaties and conventions arbitral clauses providing for the submission of disputes to the Court; (d) recommended that states, whether Members of the United Nations or not, should submit their legal disputes to the Court; [71] and (e) recommended to all Members that they take measures to encourage the teaching of international law, and the purposes, principles, structure, background, and activities of the United Nations in their schools.[72]

Economic and Social Cooperation. Section (b) of this paragraph represents a considerable amplification of the comparable provisions of the Dumbarton Oaks Proposals and provides a broad basis for General Assembly action to remove the causes of war. It is necessary to bear particularly in mind in connection with this paragraph the limitations imposed by Article 2(7). Work which has been done by the Assembly under this section will be considered in greater detail in connection with Chapters IX and X.

[69] The resolution of the General Assembly provided that the first elections would be at the third session.

[70] See *Statute of the International Court of Justice,* Article 38, *infra,* p. 620.

[71] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 103.

[72] *Ibid.,* p 110.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

See comment on Articles of Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Background. This Article had no counterpart in the Dumbarton Oaks Proposals except for the provision of Article V, Section B, paragraph 6, which said that the General Assembly should initiate studies and make recommendations for the purpose of "adjusting situations likely to impair the general welfare". The scope and purpose of the Dumbarton Oaks provision was obviously more limited than the scope and purpose of the Article under consideration. Article 19 of the Covenant provides a closer parallel.

This Article was one of the amendments proposed by the Sponsoring Governments at San Francisco. It was intended to provide a means by which situations which threaten the general welfare or friendly relations between states may be considered and recommendations made with respect to them. It represents a modest approach to the problem of "peaceful change" in a dynamic world. The approach is modest since no recommendation made by the General Assembly has any binding force. Like advice given by the League Assembly under Article 19 of the Covenant, any recommendations made by the General Assembly under this Article may be disregarded, and the Member or Members so disregarding them suffer no specifically prescribed penalties. The only forces behind a recommendation are the power of public opinion and the moral force of the Assembly. For this reason, a large measure of agreement among Members becomes essential.

Revision of Treaties. In the early stages of the discussion leading up to the formulation of this Article, the revision of treaties was the aspect of the problem chiefly in mind. In fact, in the original draft of the Article and in other amendments proposed at San Francisco there was specific reference to revision of treaties. There was strong objection, however, to the inclusion of any reference to treaty revision

on the ground that it would weaken the structure of international contractual obligations which provides the basis for orderly relations among the nations of the world, and in particular would be an invitation to the enemy states of World War II to seek revision of the peace treaties. Since the objective was not solely the revision of treaties, but rather the consideration of any situation or condition which might impair the general welfare or friendly relations among nations, without regard to whether it has relation to a treaty or not, the more general phraseology was introduced.[73]

The only attempt, to date, to revise a treaty under the provisions of Article 14, was made at the second session of the General Assembly. Argentina proposed that the Assembly consider a revision of the peace treaty with Italy and make recommendations thereon. Several states objected to placing this item on the Assembly agenda because of the principle of the sanctity of treaties and because it would be a violation of Article 107 of the Charter. The Australian delegate (Evatt) speaking in favor of placing the question on the Assembly agenda, asserted: "There is nothing in the Charter which stops action by the Allies against enemy states, but neither is there anything in the Charter which prevents situations created by any treaty being brought before the General Assembly for discussion." [74] In support of his position, he cited Article 14 and emphasized the phrase "regardless of origin". Mr. Evatt's view was accepted and the item was placed on the agenda of the Assembly. Argentina later withdrew its proposal and no action was taken on the matter.[75]

Action Taken. The General Assembly is empowered under this Article to recommend measures for the peaceful adjustment of any situation, regardless of origin, resulting from dissatisfaction with a treaty or from a conflict of interests that does not necessarily involve any treaty, which it deems likely to impair the general welfare or friendly relations among nations. The specific reference to the provisions of the Charter setting forth the Purposes and Principles of the United Nations makes it clear that under this Article the Assembly can deal with any alleged violation of principles such as that of "equal rights and self-determination of peoples."

There are two important limitations upon the authority conferred in this Article. One is contained in the text in the express reference

[73] UNCIO, *Summary Report of Seventeenth Meeting of Committee II/2, June 1, 1945,* Doc. 748, II/2/39 (*Documents,* IX, p. 126–30); *Summary Report of Eighteenth Meeting of Committee II/2, June 2, 1945,* Doc. 771, II/2/41 (*Documents,* IX, p. 138–42); and *Summary Report of Nineteenth Meeting of Committee II/2, June 4, 1945,* Doc. 790, II/2/42 (*Documents,* IX, p. 149–52).

[74] UN, Doc. A/P.V. 90.

[75] UN, Doc. A/500.

to Article 12. The other important limitation, not mentioned in Article 14, is the all-embracing exception of Article 2(7).

In spite of the potential importance of this Article, which has led to the observation that by it the General Assembly becomes "the town meeting of the world," its provisions are implicit in the more comprehensive terms of Article 10. For that reason, the majority of cases dealing with international peace and security which have come before the Assembly have been brought on the basis of Article 10 or Articles 10 and 14 together.[76] This Article must, therefore, be read in conjunction with Article 10 and many of the cases referred to in the commentary on Article 10 might be cited in connection with this Article as well.

Article 14 was expressly invoked to justify the consideration by the General Assembly of the Korean question. The complete inability of the United States and the Soviet Union to agree, after two years of fruitless negotiations, on the implementation of the Cairo, Potsdam and Moscow Agreements concerning the eventual freedom and independence of Korea, led the United States to lay this problem before the General Assembly at its second session. The Soviet Union opposed the discussion of the question on the ground that such consideration would be a violation of Article 107, which was designed to leave to the victors of the war the determination of the terms of peace and the taking of the necessary control measures to implement the peace. Mr. Evatt of Australia asserted that Article 11(2), and Article 14 permitted the Assembly to consider the question, and that Article 107 did not preclude the examination of this case by the General Assembly. "Since the Allied Powers had not been able to conclude peace treaties speedily, it devolved on the United Nations to deal with the question. Nevertheless," he asserted, "such questions should only be brought before the General Assembly as a last resort, because its function was not to intervene in the preparation of peace treaties, but to see that peace was maintained once the treaties had been signed." [77]

The Assembly voted to place the matter on its agenda and eventually passed a resolution recognizing "the urgent and rightful claims of the people of Korea to independence," and establishing a United Nations Temporary Commission on Korea. This Commission was to travel, observe, and hold consultations throughout Korea; to facilitate and expedite fulfilment of the program recommended by the Assembly for the attainment of Korean independence and the with-

[76] See discussion of Palestine, Spanish and South African cases, *supra*, p. 153, 156 and 159.

[77] UN, Doc. A/C.1/SR 87. See also, Doc. A/P.V. 90.

drawal of occupying forces, taking into account its observations and consultations in Korea; and to report with its conclusions to the General Assembly.[78]

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

Background. Taken in conjunction with Article 24(3), this paragraph places upon the Security Council the obligation to make annual and special reports to the General Assembly. It is thereby established that the Security Council owes the public opinion of the world, through the General Assembly, an account of how it has performed its important tasks in the maintenance of international peace and security.

The powers of the General Assembly in connection with these reports were discussed extensively at San Francisco, opinions being sharply divided between the adherents of the supremacy of the General Assembly, on the one hand, and the supporters of the authority of the Security Council, on the other. From the discussions, it is clear that the General Assembly has the power to examine and discuss[79] very carefully any questions arising from matters contained in the Security Council reports and, subject to the limitations contained in Article 12, to make recommendations thereon. However, it is also clear from discussions at San Francisco that the Assembly does not have the right to make recommendations on the reports themselves, as distinct from the matters reported, since this would amount to approving or disapproving the reports and would violate the principle governing the respective positions of the General Assembly and the Security Council.[80]

Annual Reports. The Security Council submits its annual reports to the General Assembly at each regular session of that body. The Assembly has never expressed approval or disapproval of a report taken

[78] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p 16–8.

[79] See comment on Article 11(1), *supra*, p. 164, on the meaning of the words "consider" and "discuss".

[80] See UNCIO, *Summary Report of Special Joint Meeting of Subcommittees II/2/B and III/1/C, June 11, 1945*, Doc. 921, II/2/B/13, III/1/C/2, (*Documents*, X, p. 433–40); *Summary Report of Twenty-Second Meeting of Committee II/2, June 13, 1945*, Doc. 971, II/250 (*Documents*, IX, p. 183 *et seq.*); *Report of the Rapporteur of Committee III/1*, Doc. 1050, III/1/58, p. 17 (*Documents*, IX, p. 691); *Report of the Rapporteur of Committee II/2*, Doc. 1122, II/2/52(1), p. 4 (*Documents*, IX, p. 243); and *Revised Report of the Rapporteur of Commission II to the Plenary Session*, Doc. 1180, II/18/(1), p. 3 (*Documents*, VIII, p 267).

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as a whole. It customarily passes a resolution stating: "The General Assembly having received and discussed the report of the Security Council resolves to pass to the next item on the agenda." [81]

Special Reports. The special reports of the Security Council deal with specific matters, such as action which has been taken by the Council on applications for membership in the United Nations.[82] It is not made clear in this Article who decides when these special reports shall be submitted. Article 24(3), says this is to be done "when necessary," but also leaves open the question of who is to decide. The General Assembly can ask that a special report be made, but the Security Council appears to retain considerable freedom of action.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

The Secretary-General. Article 98 requires that the Secretary-General shall make an annual report to the General Assembly on the work of the United Nations. Reports cover year periods ending June 30. Rule 42 of the Rules of Procedure of the General Assembly requires that the Secretary-General "shall communicate the annual report to the Members of the United Nations at least forty-five days before the opening of the session." [83] The written reports are supplemented by oral reports given at an early meeting of the annual session of the General Assembly.[84]

Economic and Social Council and Trusteeship Council. Although the Charter does not specifically require these Councils to submit annual reports to the General Assembly, it is within the power of the General Assembly to require that they do so. No such action has been necessary since the Councils have submitted reports on their own responsibility and undoubtedly will continue this practice. Rule 12 of the Rules of Procedure of the General Assembly provides that the provisional agenda of a regular session shall include reports from the Councils. These reports provide the basis for much of the Assembly's work at its annual sessions. The General Assembly may criticize the work of the Councils, make suggestions, and give directions for improvement and amplification.

[81] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . . ,* p. 1133.

[82] See UN, Doc. A/406.

[83] UN, Doc. A/520, p. 9. For first three annual reports, see UN, Doc. A/65; General Assembly, *Official Records of the Second Session . . . ,* Suppl. No. 1, Doc. A/315; and *Official Records, Third Session,* Suppl. No. 1, Doc. A/565.

[84] See, for example, *ibid., Official Records of the Second Part of the First Session . . . , Plenary Meetings . . . ,* p. 693–703.

· *The International Court of Justice.* There is no special provision in the Charter concerning reports from the Court, but the Rules of Procedure of the Assembly provide that the provisional agenda for a regular session shall include a report from the Court. Detailed information concerning the administration of the Court is published annually by the Registrar in the *Yearbook.*

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

See comment on Articles of Chapters XII and XIII, especially Article 85.[85]

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

This Article gives the General Assembly the important power of considering and approving the budget of the United Nations. The Assembly of the League also assumed this power after long discussion between the adherents of giving the right to the League Council and the adherents of giving it to the Assembly, the power not having been given to the Assembly in the Covenant.[86] The power to approve the budget carries with it, of course, the important power of reviewing the work of the Organization and of controlling its activities.

The procedure for the adoption of the United Nations budget may be summarized briefly as follows: (1) The Departments of the Secretariat submit estimates to the Secretary-General on the basis of approved staffing plans and programs. (2) The Secretary-General formulates a budget which he submits, before the regular annual session of the Assembly, to the Assembly Advisory Committee on Administrative and Budgetary Questions, which reviews the estimates and makes recommendations on them. (3) The estimates then go to the Fifth Committee of the General Assembly, which holds hearings at which appropriate officials of the Secretariat and of the International Court of Justice testify, along with members of the Ad-

[85] *Infra,* p. 459.
[86] See Morley, Felix, *The Society of Nations,* Washington, 1932, p. 512–32.

visory Committee. (4) The budget is then reported to the Assembly for final adoption. Provisional Financial Regulations governing the adoption of the budget, appropriation of funds, and expenditure of funds have been adopted by the Assembly.[87] The administration of the budget is the responsibility of the Department of Administrative and Financial Services of the Secretariat, but a board of three auditors has been appointed by the Assembly to control the expenditure of money.

The first two budgets of the United Nations were adopted in their final form during the second part of the first session of the General Assembly. They amounted to U.S. $19,390,000 for 1946 and U.S. $27,740,000 for 1947.[88] The budget for 1948 was adopted at the second session of the Assembly and amounted to U.S. $34,825,195.[89]

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

This paragraph empowers the General Assembly to apportion the expenses of the United Nations among the Members and places the Members under the obligation to bear these expenses.[90] It was considered unwise at San Francisco to attempt to lay down the rules for the apportionment of the expenses of the Organization. It was recognized as a question of considerable difficulty and complexity and was left to the General Assembly for decision, following a precedent established by the League of Nations.

In February 1946, following the recommendation of the Preparatory Commission, the Assembly appointed a Committee on Contributions which was to prepare each year a scale of apportionment of expenses based on capacity to pay. The Committee submitted its first estimates to the Fifth Committee of the General Assembly in November 1946, when considerable controversy arose regarding the scale of contributions. The United States, slated to pay nearly 50% of the budget, argued that no one nation should pay more than one-third in order that it should not have an overwhelming financial interest in the Organization. The United States finally agreed to pay 39.89% of the budget for 1946 and 1947 because normal post-war economic relationships

[87] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 68–75.

[88] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .* , Doc. A/64/Add. 1, p. 128–31.

[89] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 85–90.

[90] Expenses referred to in this paragraph do not include the cost of enforcement action. See Article 49 and comment, *infra*, p. 295.

had not yet been restored, but had a statement included in the records of the General Assembly that under normal circumstances no one nation should pay more than 33⅓% of the budget in an organization of "sovereign equals".[91] At the second session of the General Assembly the United States agreed to accept for one more year (1948) the allocation of 39.89% in view of the present state of world economy. The scale of assessments adopted for 1948 was as follows:

SCALE OF ASSESSMENTS FOR 1948[92]

COUNTRY	PERCENT	COUNTRY	PERCENT
Afghanistan	0.05	Lebanon	0.06
Argentina	1.85	Liberia	0.04
Australia	1.97	Luxembourg	0.05
Belgium	1.35	Mexico	0.63
Bolivia	0.08	Netherlands	1.40
Brazil	1.85	New Zealand	0.50
Byelorussian S.S.R.	0.22	Nicaragua	0.40
Canada	3.20	Norway	0.50
Chile	0.45	Panama	0.05
China	6.00	Paraguay	0.04
Colombia	0.37	Peru	0.20
Costa Rica	0.04	Philippines	0.29
Cuba	0.29	Poland	0.95
Czechoslovakia	0.90	Saudi Arabia	0.08
Denmark	0.79	Siam	0.27
Dominican Republic	0.05	Sweden	2.04
Ecuador	0.05	Syria	0.12
Egypt	0.79	Turkey	0.91
El Salvador	0.05	Ukrainian S.S.R.	0.84
Ethiopia	0.08	Union of South Africa	1.12
France	6.00	U.S.S.R.	6.34
Greece	0.17	United Kingdom	11.48
Guatemala	0.05	United States	39.89
Haiti	0.04	Uruguay	0.18
Honduras	0.04	Venezuela	0.27
Iceland	0.04	Yemen	0.04
India and Pakistan	3.95	Yugoslavia	0.33
Iran	0.45		100.00
Iraq	0.17		

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in

[91] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .* , p. 1310.

[92] *Ibid., Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 60–1

Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

The League of Nations budget included the budgets of such technical organizations as the Economic and Financial Organization, the Health Organization, the Communications and Transit Organization, and the Intellectual Cooperation Organization, as well as the budgets of the two autonomous organizations, the Permanent Court of International Justice and the International Labor Organization. The League system, however, was based on the principle that all international bureaus already established and all commissions for the regulation of matters of international interest "hereafter constituted" should "be placed under the direction of the League." [93] This goal was only in part attained It was consistent, however, with the principle of unified control and direction that the budgets of the technical organizations, commissions and committees developed within the League system, or brought within it, should be included in the League budget and subjected to Assembly control.

The principle of the United Nations as applied to the structure of the Organization is a different one. It is that the numerous technical organizations established to meet highly specialized needs should be autonomous.[94] While the United Nations is given certain functions of initiation, coordination and assistance, relations between the United Nations and the specialized agencies are determined by agreement. The provisions of Article 17(3) recognize on the one hand the essentially autonomous status of the specialized agencies, while making it possible for the Assembly, as the representative organ of the United Nations, to discuss and give full publicity to the administrative practices of these agencies and to make constructive recommendations for their improvement.

When the agreements between the United Nations and the specialized agencies envisaged by Articles 57 and 63 of the Charter were being drawn up, the specialized agency representatives took the position that the General Assembly, in strict conformity with the letter of Article 17 of the Charter, should have the right only to examine budgets, and to make recommendations concerning their form, but not to exercise any control over expenditure estimates. The Economic and Social Council's Negotiating Committee argued in favor of the principle of budgetary consolidation. The language finally evolved merely obliges the agencies to "consult" with the United Nations con-

[93] *Covenant of the League of Nations*, Article 24, *infra*, p. 566.
[94] See Article 57 and comment, *infra*, p. 324.

cerning "appropriate arrangements for the inclusion" of their budgets "within a general budget of the United Nations." The nature of such arrangements is, however, left for determination in a "supplementary agreement." [95]

The agreements between the United Nations and the International Labor Organization, the Food and Agriculture Organization, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, and the World Health Organization contain provisions by which each specialized agency "recognizes the desirability of establishing close budgetary and financial relationships with the United Nations." [96] The agency agrees to consult with the United Nations in the preparation of its budget and to transmit its proposed budget to the United Nations annually for examination by the General Assembly and possible recommendation. Representatives of the agency are allowed to participate, without vote, in the deliberations of the General Assembly when the budget of the agency or general administrative or financial questions affecting the Organization are under consideration, and the agency agrees to conform "as far as may be practicable" to standard practices and forms recommended by the United Nations. The Universal Postal Union, the International Telegraphic Union, the International Monetary Fund and the International Bank for Reconstruction and Development have been even more reluctant to sacrifice any of their autonomy in financial and budgetary affairs than the agencies mentioned above. The agreement with UPU states only that "the annual budget of the agency shall be transmitted to the United Nations and the General Assembly may make recommendations thereon to the Congress of the Union." [97] The agreement with ITU also contains this provision and states that representatives of ITU may participate in Assembly deliberation on their budget.[98] The agreements with the Bank and the Fund provide that each agency will furnish to the United Nations copies of the annual report and the quarterly financial statements prepared by the agency and "the United Nations agrees" that, in the interpretation of paragraph 3 of Article 17 of the United Nations Charter, it will take into consideration that the (agency) does not rely for its annual budget upon contributions from its members, and that "the appropriate authorities of the (agency) enjoy full autonomy in deciding the form and content of such budget." [99]

[95] See Sharp, Walter R., "The Specialized Agencies and the United Nations: Progress Report I," *International Organization*, I(1947), p. 464–5.

[96] For references to texts of agreements and further comments, see *infra*, p. 346.

[97] UN, Doc. A/347.

[98] UN, Doc. A/370.

[99] UN, Doc. A/349.

Since the signing of these agreements, the Economic and Social Council and its Co-ordination Committee have met with little success in persuading the specialized agencies to agree to a consolidated budget or to General Assembly approval of their budgets. With some exceptions the agencies have agreed to certain common budgetary, administrative, and financial practices and controls, and have submitted their budgets to the Assembly for discussion and recommendation.[100]

Voting

Article 18

1. Each member of the General Assembly shall have one vote.

There was one obvious alternative to this rule, namely, the establishment of a system of weighted voting. Such a system has been found more feasible for organizations of a technical nature.[101] Weighted voting in the General Assembly has strong theoretical arguments in its support, but the practical difficulties in the way of getting agreement on any formula which would give proper weight to the many criteria that needed to be taken into account were so great that no serious consideration was given to it either at Dumbarton Oaks or at San Francisco.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

The general rule in international organizations and conferences of a political nature, in so far as substantive decisions were concerned,

[100] See comment on Article 58, *infra*, p. 350, for further discussion of coordination of policies and activities of the United Nations and the specialized agencies.

[101] See, for example, Article XI, Section 5, of the Articles of Agreement for the International Monetary Fund and Article V, Section 3, of the Articles of Agreement for the International Bank for Reconstruction and Development. See also, Sohn, Louis B., "Weighting of Votes in an International Assembly," *American Political Science Review*, XXXVIII, p. 1192.

was that of unanimity until the establishment of the United Nations. This was the rule of the League of Nations, as stated in Article 5 of the Covenant.[102] It has been completely discarded in the Charter, except for the requirement of unanimity of the permanent members of the Security Council for certain decisions.

This paragraph enumerates certain categories of questions upon which decision is to be taken by a two-thirds majority of the members present and voting. Rule 78 of the Rules of Procedure[103] provides that "for the purpose of these rules, the phrase 'Members present and voting' means Members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting."

The rule of two-thirds majority applies also to the adoption of amendments to the Charter by the General Assembly (Article 108) and to the decision fixing the date and place of a General Conference to review the Charter. In these two Articles, however, the words "present and voting" do not appear, which probably means that decisions in connection with these Articles require the approval of two-thirds of all the Members.[104]

"Recommendations with respect to the maintenance of international peace and security" include all recommendations made under the provisions of Articles 10, 11 and 14 relating to the general principles of cooperation in the maintenance of international peace and security and to specific questions brought before the General Assembly. While the majority of recommendations under these Articles are considered to be "recommendations with respect to international peace and security" and require a two-thirds majority, there may be questions considered under these Articles which do not come within the categories listed in Article 18(2), and which could be dealt with by the General Assembly by a majority vote. In the South African case, the General Assembly took a vote on whether the question before it came within one of the categories listed in this paragraph, and it was agreed that such a decision required only a simple majority.[105] Since that time, the President of the Assembly has put questions whose importance was in doubt before the Assembly to decide

[102] Many important exceptions were made in practice in addition to the specific exceptions contained in the Covenant See Riches, Cromwell A., *Majority Rule in International Organization*, Baltimore, 1940; Eles, Georges Thibere, *Le Principe de l'Unanimité dans la Société des Nations et les exceptions à ce Principe*, Paris, 1935; and Koo, Wellington, Jr., *Voting Procedures in International Political Organizations*, New York, 1947.

[103] UN, Doc. A/520, p. 14.

[104] See comment on Articles 108 and 109, *infra*, p. 537 and 539.

[105] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . . ,* p. 1048 *et seq.*

whether a resolution on the matter would require a two-thirds majority or a simple majority.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

All other questions, except those listed in paragraph 2 above, shall be decided by a simple majority. The Assembly can itself, by simple majority, decide to include other questions among those important questions which shall be decided by a two-thirds vote. However, it must be clear that the Assembly cannot make such a decision if the Charter specifically provides that the decision shall be taken by a simple majority, or in any other specified way.[106]

A question which the Charter does not expressly answer is whether the General Assembly, once it has determined by a majority vote additional categories of questions to be decided by a two-thirds vote, can reverse its action by a majority vote. Although categories established by Article 18(2), cannot be abolished except by the method specified for amending the Charter, it is clear that "additional categories" established under paragraph 3 can be abolished or modified by the Assembly by a majority vote of the members present and voting since a session of the General Assembly cannot bind future sessions.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

It was thought desirable, on the basis of the experience of the League of Nations, to provide some penalty for a Member who is seriously in arrears in its financial contributions to the United Nations. It was, therefore, decided that a Member shall have no vote in the Assembly if the amount of its arrears exceeds its contribution for the past two years. The Assembly is given discretionary power, however, to lift this penalty if it is satisfied that the failure is due to conditions beyond the control of the Member. Such conditions are not specified.

[106] As in Article 109(3), *infra*, p. 541.

They might conceivably include natural disasters such as earthquakes or great floods, revolutions or economic depressions.

It is to be noted that there is in the Charter no corresponding provision for denial of the voting privilege to a member of the Security Council, the Economic and Social Council, or the Trusteeship Council.

Procedure

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or a majority of the Members of the United Nations.

Regular Sessions. The Rules of Procedure of the General Assembly provide that it "shall meet every year in regular session commencing on the third Tuesday in September." [107] "Sessions shall be held at the headquarters of the United Nations unless convened elsewhere in pursuance of a decision of the General Assembly at a previous session or at the request of a majority of the Members of the United Nations." [108]

It was the practice of the League of Nations to meet in regular annual sessions, although it was not specifically required by the Covenant.[109] In like manner, the representative organ of the United Nations is given the important opportunity to review the work of the Organization at least once a year and to give expression to world public sentiment.

Those opposing the establishment of the Interim Committee of the General Assembly [110] asserted that the establishment of such a Committee to function continuously would violate Article 20. It was pointed out by several delegates, including Mr. Dulles (United States), that although Article 20 would not permit the General Assembly to meet in continuous session, its work could be and was being carried on by subsidiary organs between sessions.[111]

Special Sessions. The Rules of Procedure of the General Assembly stipulate that "the General Assembly may fix a date for a special session",[112] and that "special sessions of the General Assembly shall be

[107] UN, Doc. A/520, Rule 1.

[108] Rule 2. The third annual session of the Assembly was held in Paris.

[109] League of Nations, *Rules of Procedure of the Assembly*, Geneva, 1937, League of Nations Doc. 1937.1.

[110] See comment on Article 22, *infra*, p. 194.

[111] UN, Doc. A/P.V. 110.

[112] Rule 6.

held within fifteen days of the receipt by the Secretary-General of a request for such a session from the Security Council, or of a request from a majority of the Members of the United Nations, or of the concurrence of a majority of Members as provided in Rule 8",[113] following a request by any Member.

Thus the Secretary-General may convoke a special session of the General Assembly at the request of the Assembly itself, of the Security Council, or of a majority of the Members of the United Nations.[114] The League of Nations Covenant permitted special sessions to be called, and five were held, some for dealing with serious international conflicts and others to admit new members to the League.

The first extraordinary session of the General Assembly of the United Nations was held from April 28 to May 15, 1947, to constitute and instruct a special committee to prepare the Palestine question for consideration at the second session of the General Assembly. This was called at the request of the United Kingdom after a majority of the Members had concurred. A second special session was held April 16–May 14, 1948, at the request of the Security Council, to reconsider the question of Palestine when it was found that the Assembly resolution of November 29, 1947 could not be implemented by peaceful means.

Publicity of Meetings. If world public opinion is to have a chance to express itself at General Assembly meetings, it is clear that the meetings must, for the most part, be open to the public. Such was the case with the League of Nations and with plenary and commission meetings of the United Nations Conference on International Organization. The question was discussed at San Francisco, but it was decided not to inset any definite stipulation on the matter in the Charter. However, upon the recommendation of Committee II/2, the following statement was inserted in the report of Commission II, and was adopted by the Conference:

> The Conference is of the opinion that regulations to be adopted at the first session of the General Assembly shall provide that, save in exceptional cases, the sessions of the General Assembly shall be open to the public and press of the world.[115]

The Rules of Procedure of the General Assembly contain the following rules with regard to publicity of meetings:

[113] Rule 7.

[114] The Interim Committee of the Assembly may also advise the Secretary-General to call a special session.

[115] UNCIO, *Revised Report of the Rapporteur of Commission II to the Plenary Session*, Doc. 1180, II/18(1), p. 2 (*Documents*, VIII, p. 266).

Rule 55. The meetings of the General Assembly and its Main Committees shall be held in public unless the body concerned decides that exceptional circumstances require that the meeting be held in private. Meetings of other committees and sub-committees shall also be held in public unless the body concerned decides otherwise.

Rule 56. All decisions of the General Assembly taken at a private meeting shall be announced at an early meeting of the General Assembly. At the close of each meeting of the Main Committees, other committees and sub-committees, the Chairman may issue a communiqué through the Secretary-General.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

The Preparatory Commission prepared Provisional Rules of Procedure which were submitted to the General Assembly for consideration.[116] The General Assembly operated under these rules, with some modifications, until January 1, 1948, when the Rules of Procedure adopted on November 17, 1947, as amended on November 21, entered into force.[117]

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

Committees and Subsidiary Organs. The Rules of Procedure of the General Assembly provide for various specific committees to assist the General Assembly in the performance of its functions. In addition, the General Assembly is authorized to set up such committees and subsidiary organs as it deems necessary for the performance of its functions.[118] No significant distinction is made in the Rules of the General Assembly, nor has such a distinction been made in practice, between committees and commissions on the basis of whether or not they are subsidiary organs in the sense of Article 22. While certain committees established by the General Assembly, as for example the Interim Committee, have been referred to as subsidiary organs and justified under the terms of Article 22, there has been no suggestion that in the absence of this Article the General Assembly would not have the authority to establish such bodies. The basic rule for all such bodies

[116] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 8–21.
[117] UN, Doc. A/520.
[118] *Ibid.*, Rules 88 and 150.

is that their authority cannot exceed that of the General Assembly from which it is derived.

Committees expressly provided for in the Rules of Procedure of the General Assembly include the following: the Credentials Committee [119] appointed at the beginning of each session to examine the credentials of representatives; the General Committee [120] consisting of the President of the Assembly, the seven Vice-Presidents and the Chairmen of the six Main Committees, which considers and reports on agenda items and assists the President in the coordination and direction of the work of the General Assembly; six Main Committees [121] to which agenda items are referred for discussion and report; the Advisory Committee on Administrative and Budgetary Questions; [122] and the Committee on Contributions.[123] The last two committees are composed of persons selected for periods of years on the basis of qualification and experience to advise the General Assembly.

In addition the General Assembly has established a number of committees and commissions to perform specific functions and to function for limited periods of time, usually determined by the amount of time required to complete the assigned task. Such committees and commissions have included the League of Nations Committee, the Permanent Headquarters Committee, the Special Committee on Palestine, the Special Committee on Greece, the United Nations Temporary Commission on Korea, and the Palestine Commission.

The Interim Committee. The question of the limits within which the power of the General Assembly under Article 22 can be exercised came up for extended discussion during the second session of the General Assembly in connection with the proposal of the United States to establish an Interim Committee or "Little Assembly", with extensive powers in the political field. This proposal was viewed as an attempt to strengthen the role of the General Assembly in the field of international peace and security and in dealing with political questions generally by overcoming in part the handicap under which the General Assembly had previously functioned due to the relatively short periods it had been in session. One important reason back of the proposal was the inability of the Security Council to function effectively because of the "great power veto." [124]

The United States proposal called for the establishment of the Interim Committee to aid the General Assembly in discharging its re-

[119] Rule 24.
[120] Rules 33–37.
[121] Rule 90. See *supra*, p. 46, for names.
[122] Rules 144–146.
[123] Rules 147–149.
[124] See comment on Article 27, *infra*, p. 224.

sponsibilities in the maintenance of international peace and security (Articles 11 and 35), the promotion of international cooperation in the political field (Article 13), and the peaceful adjustment of any situations likely to impair the general welfare or friendly relations among nations (Article 14). The Assembly could not effectively discharge these mounting responsibilities, it was argued, along with its responsibilities in respect to administrative and financial matters, and social, economic, trusteeship, and other matters. Preparatory work and study were needed while the Assembly was not in session. The Interim Committee was designed to consider these matters between sessions and report its conclusions to the General Assembly.[125]

The resolution of the General Assembly establishing the Committee[126] emphasized the character of the Interim Committee as a subsidiary organ of the Assembly, established in accordance with Article 22 of the Charter. Each Member of the United Nations was given the right to appoint one representative to serve on the Committee. It was to be in existence until the opening of the third regular session of the Assembly and was instructed to report at the third session on the advisability of establishing a permanent committee of the Assembly to perform the duties of the Interim Committee, with any changes considered desirable in the light of experience. The Rules of Procedure of the General Assembly were applied to the Committee, so far as they were applicable, but the Committee was given authority to adopt additional rules not inconsistent with those of the General Assembly.[127]

The competence of the Interim Committee fell under three headings:

1. Matters expressly referred to the Interim Committee by the General Assembly. Matters might be assigned to the Committee for preparatory work, as the question of the voting procedure of the Security Council, assigned to the Committee by the Assembly at its second session; or matters might be assigned for follow-up work, as when the Assembly resolution empowered the Temporary Commission on Korea to consult with the Interim Committee with respect to the application of the resolution in the light of developments.

2. Important disputes or situations submitted to the General Assembly under Articles 11(2), 14, or 35 of the Charter. Questions considered by the Committee under this heading were required to satisfy four requirements:

(a) The question must relate to the maintenance of international

[125] UN, Doc. A/C.1/SR 74 and Doc. A/P V. 82, p. 60.

[126] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 15.

[127] Rules of Procedure of Interim Committee, UN, Doc. A/A C 18 5

peace and security (Articles 11(2) and 35 of the Charter) or the impairment of the general welfare or friendly relations among nations (Article 14).

(b) The question must be one which has been proposed for inclusion in the agenda of the General Assembly.

(c) The question must have been brought before the General Assembly by a Member or by the Security Council.

(d) The question must be one which the Interim Committee deems by a two-thirds vote to be important and to require preliminary study, except for matters referred by the Security Council under Article 11(2), for which a simple majority is sufficient.

3. Methods of implementing Article 11(1) and Article 13(1) (a). These duties of the Committee were permissive rather than mandatory and the terms of reference restricted the Committee to a study of the methods to be adopted to give effect to these Articles, rather than a study of the principles themselves.

To enable the Interim Committee to discharge its functions as an advisory body to the General Assembly, two special powers were conferred upon it:

1. The power of investigation. The question whether the Interim Committee should be empowered to conduct investigations and appoint commissions of inquiry was the subject of lengthy debate in the General Assembly. Two main objections were raised to the grant of such power to the Committee: [128]

(a) The power of the General Assembly itself to conduct investigations was questioned. It was successfully argued by proponents of the Interim Committee that the power of the General Assembly to make recommendations necessarily carried with it the power to engage in such investigations as were necessary for the formulation of well-considered recommendations. As stated by the United Kingdom delegate, "surely it would be nonsense if the Assembly were empowered to consider disputes (Article 35), to discuss situations (Article 11(2), and to make recommendations, without being able to verify its premises." [129] Article 13(1), was also cited to prove that the Assembly had power to conduct investigations, as was done in the Palestine and Greek cases. (b) The right of the General Assembly to delegate the power of investigation to a subsidiary body was questioned. Objection to the delegation of the power of investigation hinged on the contention that a commission of inquiry is a subsidiary organ and subsidiary organs should, according to Article 22

[128] See commentary on Articles 11(1) and 13(1)(a), *supra*, p. 164 and 175.

[129] For discussion, see UN, Doc. A/C.1/SR 94; Doc. A/C.1/SR 95; and Doc. A/C.1/SR 96.

of the Charter, be appointed by the General Assembly itself, not another subsidiary organ. The justification advanced for the granting of power of investigation to the Interim Committee was that the Committee had been given certain tasks which could quite properly be delegated to it, and that the establishment of commissions of inquiry by the Committee would be a necessary means for the discharge of these tasks. The force of the objection that the powers of investigation could not be legally granted to the Committee was lessened by three important limitations attached to the power of investigation of the Committee: (*i*) Investigations must remain within the scope of the duties of the Interim Committee; (*ii*) Investigation elsewhere "than at the headquarters of the United Nations shall not be conducted without the consent of the State or States in whose territory it is to take place." Thus, although Members of the United Nations are bound by Article 25 of the Charter to agree to any investigation instituted by the Security Council under Article 34, agreement by Members of the United Nations to an investigation authorized by the General Assembly is a voluntary act. (*iii*) The decision to conduct an investigation requires a two-thirds majority of those present and voting.

2. The power to consider and advise regarding the summoning of a special session of the General Assembly. The Interim Committee's power to consider and advise regarding the summoning of a special session was limited to matters which were actually under discussion within the Committee itself.

The establishment of the Interim Committee was opposed by the Soviet Union and various other states on the grounds that the true purpose of the Committee proposal was to create a new organ "to weaken, circumvent, and act as a substitute for the Security Council, on which the Charter placed primary responsibility for maintaining peace and security." [130] Various steps were taken to preserve some respect for the primary responsibility of the Security Council under Article 24. The Interim Committee was required to take account of those limitations which are imposed by Articles 11(2) and 12(1) of the Charter. In fact, Article 12(1) became a greater limitation upon the Interim Committee than upon the General Assembly. The General Assembly, while it may not make any recommendations concerning any question of which the Council is seized, may discuss that question.[131] However, the Interim Committee could not even discuss any question of which the Council was seized.[132]

[130] UN, Doc. A/C.1/SR 74. See also, Doc. A/P.V. 110.
[131] See comment on Article 12, *supra*, p. 172.
[132] UN, Doc. A/A.C. 18/SC.4/3.

The General Assembly resolution establishing the Committee instructed it to take into account the responsibilities not only of the Security Council, but also the duties assigned by the Charter, by the General Assembly or by the Security Council to other Councils, committees, or commissions. In general, the principle was applied that the Committee was not to trespass within spheres of work already allocated to existing organs of the United Nations.

Those Members opposing the establishment of the Interim Committee asserted that Article 22 envisaged only a subsidiary organ with special limited powers. By giving the Interim Committee such broad and general terms of reference the Assembly was actually delegating all its prerogatives to an organ which was equal in rank with the Assembly itself and with other organs of the United Nations. It was not a subsidiary organ and its establishment would be a violation of Article 7(1) of the Charter which named the principal organs of the United Nations.[133]

In reply, the United States delegate (Dulles) stated that the proposal for the Committee "did not contemplate any delegation by the Assembly of a substantive discretionary authority given by the Charter. The Interim Committee would be only an organ of the Assembly, similar to others already created to study, report and recommend to it and not to Member States or other organs of the United Nations. The only novel authority proposed was that of prior study of possible future agenda items of a plenary session. The authority of a body to equip itself to discharge its responsibilities was a clearly accepted judicial principle. To implement its broad power to recommend, the Assembly could organize its work and set up procedures to enable it to recommend intelligently." [134]

The discussions that occurred and the decisions taken in connection with the establishment and activity of the Interim Committee appeared to establish the principle that the character of a body as a subsidiary organ "is determined by the limitation of its authority, not by precise definition of the subject matter referred to it." [135]

[133] UN, Doc. A/C.1/SR 74.
[134] *Ibid.*
[135] UN, Doc. A/A.C. 18/SC.4/3.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES[1]

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Scope of Obligation. This paragraph is an application of the principle laid down in Article 1(1) and Article 2(3). It imposes upon Members the duty to seek first of all the settlement of their disputes by peaceful means of their own choice. Neither party is to bring a dispute before the Security Council or the General Assembly under Article 35 until peaceful means of settlement have been tried and then *only if the continuance of the dispute "is likely to endanger the maintenance* of international peace and security". Unlike Article I of the Paris Treaty for the Renunciation of War as an Instrument of National Policy (the Kellogg-Briand Peace Pact[2]) by which the parties agreed that the settlement of their disputes should "never be sought except by pacific means", this paragraph of Article 33 and Article 2(3) positively obligates Members of the United Nations to "seek a solution" of their serious disputes by pacific means.

The obligation here stated does not, as it is phrased, apply to all disputes. It applies only to disputes "the continuance of which is likely to endanger the maintenance of international peace and security". This was the phraseology of the Dumbarton Oaks Proposals and was accepted at San Francisco by Committee III/2 and the Conference without change. In the opinion of some, the obligation of the paragraph would have been brought more fully into line with the principle stated in Article 2(3), if the paragraph had been re-phrased to read somewhat as follows:

[1] See, on subject of pacific settlement of disputes under the Charter, Goodrich, Leland M., "The United Nations: Pacific Settlement of Disputes," *American Political Science Review*, XXXIX, p 956 and Eagleton, Clyde, "The Jurisdiction of the Security Council over Disputes," *American Journal of International Law* XL, p 513–33.

[2] United States, *Treaties, Conventions*, etc., IV, 1923–1937, p. 5130.

parties to any dispute shall, first of all, seek a solution by negotiation, y, mediation, conciliation, arbitration, judicial settlement, resort to egional agencies or arrangements, or other peaceful means of their own choice, in such a manner that the maintenance of international peace and security will not be endangered.

This would have established, in the opinion of some, a clear and definite obligation so far as Members were concerned, and would have made clearer the exact stage in the development of a given dispute when the Security Council was to intervene. The paragraph as it stands places upon each Member an initial obligation to do something in a contingency the existence of which only an international agency can properly determine.

In defense of the present phraseology it can be stated that it is consistent with the basic purpose of the Organization to maintain peace and security. The intention is not to require Members to settle all their disputes. The possibility is admitted that certain disputes may continue unsettled until they are forgotten. It is only serious disputes "the continuance of which is likely to endanger the maintenance of international peace and security" with which the Organization is concerned. By Article 12 of the Covenant, members of the League agreed "that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council".

It may of course be difficult to decide whether a dispute is of such a nature that its continuance is likely to endanger the maintenance of international peace and security under Article 2(4). Members obligate themselves not to use force or the threat of force; if they show a readiness to respect this obligation, logically it is difficult to see how any dispute between them could endanger peace and security. However, it must be admitted that disputes can become so persistent and so bitter that they poison international relations and create a political climate that may tempt a peace-loving state to use means of force because the situation becomes unbearable, or that may permit states acting in good faith to become involved in a series of events which lead to the use of force without either party's initially desiring it. It is quite clear that a dispute of this kind ought to be dealt with by an international agency.

It should also be clear that a dispute between a very small and a very powerful state cannot be brushed aside as unimportant or lacking in danger from the point of view of its consequences to the peace. It is not sufficient to say that the small state would never endanger peace nd security by attacking its powerful adversary. If the very strong r, to take a purely theoretical example, should seek to help itself

and intimidate the small state, there would still be present a danger to the peace of the world. The expression "likely to endanger international peace and security" must be understood in relation to the principles of "justice" and of "international law", recognized in the first paragraph of Article 1. This would appear to have been the position taken by the Security Council in the Iranian case. If the Security Council had refused to place on its agenda the Iranian complaint or had removed it as desired by the Soviet Union, the two countries, left to themselves, would probably have come to an agreement without any breach of the peace, in view of the unequal power positions of the two countries. However, such an agreement might easily from the Iranian point of view have been unjust, burdensome and totally unacceptable except as the alternative to continued Soviet military occupation of Iranian territory.

Action by the Security Council The next question which arises is who will decide whether the obligation of the parties under this paragraph has been satisfied and whether the continuance of a dispute is likely to endanger peace and security. It would seem that the opinion of one of the parties ought to suffice. If, however, the other party does not agree, the Security Council can itself decide. During the discussion of this paragraph in Committee III/2 of the Conference, the question was raised as to whether the use of the words "first of all" would be an obstacle to intervention by the Security Council at any time before recourse to the means enumerated in this paragraph were exhausted. The United States Delegate answered categorically that the sole purpose of the words in question was to assure that the parties would first make an endeavor to settle their disputes by peaceful means and that the Security Council should and must intervene in any dispute which threatened world peace.[3]

Disputes have in practice been brought before the Security Council by one party on the allegation that peaceful means of settlement, usually negotiation, have been tried without success.[4] This was true of the Iranian complaint against the Soviet Union, the United Kingdom complaint against Albania and the Egyptian complaint against

[3] UNCIO, *Summary Report of the Fifth Meeting of Committee III/2, May 15, 1945*, Doc. 356, III/2/11, p. 1–2 (*Documents*, XII, p. 31–2).

[4] On question as to when negotiations can be said to have failed, the following observations of the Permanent Court of International Justice in the Mavrommatis Palestine case are pertinent: "Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a deadlock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that *the dispute cannot* be settled by diplomatic negotiation." P.C.I.J., *Publications*, Series A, No. 2, p. 13.

the United Kingdom. Except in the Iranian case, the Council appeared to accept the statement of one party that the parties had fulfilled their obligations under this paragraph. In the Iranian case, following the complaint of January 24, 1946 and a preliminary discussion, the Council deferred further action pending a renewal of direct negotiations. In no case has the Security Council made a formal determination that the continuance of the dispute is "likely to endanger the maintenance of international peace and security". The action of the Council on the complaint of Egypt against the United Kingdom was criticised by one member on the ground that it had misconstrued its proper function by undertaking the consideration of the dispute on its merits before determining after investigation that the continuance of the dispute was "likely to endanger international peace and security".[5] This view, however, of the appropriate limits of Council action apparently has not met with general acceptance.[6]

Means of Peaceful Settlement.[7] The paragraph lists certain generally accepted means of peaceful settlement open to the parties. It is clear that the list is not meant to be exhaustive. With one exception, they may be grouped under the following two heads:

(1) *Those means which do not make use of the element of legal compulsion so far as the terms of settlement are concerned, being based upon the principle of voluntary acceptance.* The enumerated means falling into this category are negotiation, enquiry, mediation and conciliation.

a. *Negotiation* is the first and most commonly used means for the pacific settlement of international disputes. This term covers all kinds of diplomatic discussions, exchanges of notes, etc. By this means the parties seek a solution by direct exchanges between themselves. Diplomatic annals are full of instances where such settlements have been successfully reached.

b. *Enquiry* is, strictly speaking, not a means of settlement at all. It is an effort to find a basis for a settlement. It sometimes happens that a disagreement between the parties can be eliminated if it is only possible to establish the facts. The use of this means was provided

[5] UN, Security Council, *Official Records, Second Year,* No. 32, p. 686–8.

[6] See discussion, *ibid.,* No. 34, p. 727–31. See on general question, Eagleton, *op. cit.*

[7] On general topic, see Eagleton, Clyde, *International Government,* rev. ed., New York, 1948, p. 217–44; Habicht, Max, *Post-War Treaties for the Pacific Settlement of Disputes,* Cambridge, 1931; Hudson, Manley O., *By Pacific Means,* New Haven, 1935; and Dunn, Frederick S., *Peaceful Change: A Study of International Procedures,* New York, 1937. For study of measures and procedures of pacific settlement employed by the League of Nations, see memorandum prepared by the United Nations Secretariat for the Interim Committee of the General Assembly, UN, Doc A/AC.18/68.

for by the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907. The value of an international commission of enquiry was shown in the conflict between Great Britain and Russia over the Dogger Bank incident during the Russo-Japanese War. Such commissions are provided for in a number of treaties.[8]

c. *Mediation* is the action of an outside agency, state or person with a view to getting the parties together and helping them in a more or less informal way to find the basis for the settlement of their dispute. This means of peaceful settlement was also provided for in the Hague Conventions of 1899 and 1907. It has been utilized on important occasions, notably by President Theodore Roosevelt in bringing the Russo-Japanese War of 1904–5 to an end.

d. *Conciliation* is a means of pacific settlement effected through commissions or other international bodies, usually consisting of persons designated by agreement between the parties to the conflict. The efforts of the agency of conciliation are directed towards finding a reasonable solution of the conflict to which the parties can agree. Among the treaties providing for the use of conciliation were the Locarno Treaties of 1925[9] and the General Convention of Inter-American Conciliation signed at Washington, January 5, 1929.[10]

(2) *Those means which make use of the element of compulsion so far as the proposed settlement is concerned.* Arbitration and judicial settlement fall into this category.

a. *Arbitration* is a method of pacific settlement by which the parties obligate themselves in advance to carry out the decision given by the arbitrator or arbitral tribunal. The rules to be applied are determined by the *compromis* or agreement by which the dispute is submitted to arbitration. The parties may stipulate that the decision be based on international law or they may agree that considerations of equity and justice be taken into account. The tribunal to which the dispute is submitted may be specially created under the terms of the agreement or it may be a tribunal already in existence. In any case the procedure of arbitration is essentially of an *ad hoc* character.

b. *Judicial settlement* means settlement by a permanent international tribunal such as the International Court of Justice, in accordance with judicial methods. It was a settled usage in the period between the World Wars to reserve this expression for settlement by reference to the Permanent Court of International Justice. It seems, therefore, only logical to interpret the expression as used in the Charter as referring

[8] See also, comment on Article 34, *infra*, p. 246.

[9] See *The Locarno Conference, October 5–16, 1925*, Boston, World Peace Foundation Publications, IX, No. 1, 1926.

[10] United States, *Treaties, Conventions*, etc., IV, 1923–1937, p. 4763.

to settlement by reference to the International Court of Justice. Such was also the intention of the Committee which drafted this Chapter. However, the Charter usage is not quite clear since Article 92 envisages the possibility of other "judicial" organs.

The Article also makes reference to "resort to regional agencies or arrangements" as a means of peaceful settlement. This expression must be understood in connection with the provisions of Article 52. It was inserted in this paragraph at the request of Committee III/4 of the San Francisco Conference,[11] dealing with regional arrangements, and was part of a compromise worked out at the Conference with a view to integrating regional and global arrangements. It does not add anything to the material content of the paragraph. All the other peaceful means enumerated in the paragraph can at the same time be provided for under regional arrangements or included in regional agencies.

Any attempt at an exhaustive enumeration of peaceful means of settlement in a paragraph of this kind may have serious consequences. It might lead to a restrictive interpretation. This is excluded in the present paragraph by the addition of the words "or other peaceful means of their own choice." It is, thereby, made quite clear that the parties are to have recourse to any conceivable peaceful means which may lead to the settlement of a dispute.

The words "of their own choice" refer not only to the choice of the parties at the moment of the settlement of the conflict, but also to a choice possibly made by them before the dispute has arisen. The words were intended to express the thought that the dispute shall be settled by any peaceful means which the parties choose or may have agreed to use.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

This paragraph possibly should have come after Article 34 and not before it. It cannot properly be understood without a reference to Article 34. The justification of the present arrangement is that the contingency in which the Council is to act is the failure of parties to a dispute to fulfill their obligation under paragraph 1.

It is to be noted by way of explanation of the apparent illogicality of the present arrangement that what is now Article 33 was paragraph 3 of Chapter VIII, Section A, of the Dumbarton Oaks Proposals,

[11] UNCIO. *Report of Dr. V. K. Wellington Koo, Rapporteur of Committee III/4, to Commission III*, Doc. 904, III/4/13(1), p. 1–2 (*Documents*, XII, p. 737–8).

and then followed what have become Articles 34 and 35. The change of order was made on the ground that the statement of general obligation contained in the first sentence of paragraph 3 of Chapter VIII, Section A, of the Dumbarton Oaks text would most appropriately come at the beginning of the Chapter. The second sentence of the paragraph, which might better have been left in its original position, according to one principle of arrangement, was brought up with the first, and became paragraph 2 of Article 33.

The paragraph states that the Council shall "when it deems necessary" call upon the parties to settle their dispute by peaceful means of their own choice. It is clear that this duty of the Council applies to a dispute the continuance of which is likely to endanger international peace and security. If the dispute has no such character, the Council would appear to have no authority or obligation to act under this paragraph. It is also clear that ordinarily the Council should make such a decision after having investigated the dispute under Article 34. However, it may happen that the dispute is so obviously dangerous that the Security Council can decide at once that its continuance endangers the peace of the world without entering into any formal investigation.

The expression "shall, when it deems necessary, call upon the parties", was carefully considered at San Francisco. Some delegates favored the use of the word "may" so as to make it quite clear that this action was left entirely to the discretion of the Council and that the obligation of the parties under paragraph 1 was in no way dependent upon any action that the Security Council might take. Others wanted the word "shall" used without qualification so as to make it quite clear that a duty was incumbent on the Council. The present wording was a compromise between these two extremes. The right interpretation is that it is left to the discretion of the Council to decide when the situation is of such a character that it is necessary to call upon the parties. When the Council has decided that such a necessity exists, it is, however, the absolute duty of the Council to call upon the parties.

The Security Council is to "call upon" the parties to settle their disputes by "such means." The exact meaning to be attached to the words "call upon" is a matter of some doubt since the words are not commonly used in the Charter.[12] Obviously they have a stronger connotation than the word "recommend", and it would also appear that they are not as strong as the words "decide what measures shall be taken" used in Article 39. Apparently the intention is that the Security Council shall remind the parties of their obligations under the first

[12] The expression is used in Articles 40, 41 and 44 in connection with enforcement action. See comment on its use in Article 41, *infra*, p. 277.

paragraph in no uncertain terms. Does the use of the words "by such means" signify that the reminder is to be couched in the phraseology of the first paragraph, or may it be more specific, calling attention to specific means which the parties have agreed to use by agreement between them? The power of the Security Council would certainly appear to be broad enough to permit the second course.

In its practice, the Security Council has not taken a narrow technical view of its powers under the Charter. In the exercise of its Powers under Article 24 and Chapter VI, the Council has considered the substance of disputes brought to its attention, and has discussed recommendations to be made with respect to procedures or methods of settlement even though not always able to take a decision on recommendations to be made, without a preliminary determination whether the continuance of the dispute was likely to endanger the maintenance of international peace and security. Thus the distinction made in the Articles of Chapter VI between disputes not likely to endanger the peace and those of a more serious nature has not been maintained, or if it has, has been so liberally interpreted from the point of view of the Council's competence as to lose practically all its significance. Furthermore, the Council has not been inclined to refrain from the exercise of its powers on the ground that the parties have not made full use of peaceful means of their own choice for the settlement of the dispute.

In two cases, the Council has taken action, in part at least, under this paragraph. In the Iranian case, the Council, having heard statements by the representatives of Iran and the Soviet Union, adopted on January 30, 1946, a resolution requesting the parties, considering that they "have affirmed their readiness to seek a solution of the matter at issue by negotiation," to inform the Council of the results of such negotiations.[13] In the meantime the Council retained the right "to request information on the progress of the negotiations." Following the outbreak of hostilities, in Indonesia, the Security Council adopted a resolution on August 1, 1947, calling upon the parties "to settle their dispute by arbitration or by other peaceful means and keep the Security Council informed about the progress of the settlement."[14] In this case, the Netherlands and the Indonesian Republic had agreed by the Linggadjati Agreement of March 25, 1947, to settle such disputes between them by arbitration. The competence of the Council to consider the matter under Chapter VI was contested by the Netherlands on the ground that the Indonesian Republic was not an independent state and the question was never explicitly decided.

[13] UN, Security Council, *Official Records, First Year: First Series,* No. 1, p. 70.
[14] *Ibid., Official Records, Second Year,* No. 68, p. 1702–3.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Purpose and Significance. In the Dumbarton Oaks Proposals this Article appeared in substance as paragraph 1 of Chapter VIII, Section A (*Pacific Settlement of Disputes*). It was thus regarded as a basic provision of the Charter scheme for the pacific settlement of disputes, both from the point of view of the procedure to be followed and the special functions and powers of the Security Council. At San Francisco, as has been explained, this Article lost its place of primacy in the Charter but it retained its basic importance in the Charter scheme.

The Charter makes a distinction, so far as the conciliatory functions of the Council are concerned, between disputes and situations the continuance of which is likely to endanger the maintenance of international peace and security, and those of a less serious nature. The Security Council, primarily responsible under Article 24 for the maintenance of international peace and security, is limited under Chapter VI, except for the special case of Article 38, to making recommendations for the settlement of disputes or the adjustment of situations of the more serious type. In order to determine whether a dispute or situation is of such a character as to call for further action by the Council, a preliminary inquiry may be necessary. Article 34 empowers the Security Council to make this preliminary investigation.

The Council's Power of Investigation in Practice. The Security Council has not in practice limited its power of investigation to the extent that a literal reading of this Article might suggest. In fact the members of the Council have shown themselves, generally speaking, rather impatient with legal technicalities, and have chosen for the most part to be guided by common sense, practical necessities, and the spirit of the Charter. When attention is called to some restrictive provision of the Charter, such as the final clause of this Article which appears to limit the Council's power of investigation to a particular purpose, the practice commonly is to invoke the more general powers and responsibilities of the Council as set forth in Article 24, or to argue for a liberal interpretation of the provisions of Chapter VI, especially Article 34.

The question of the extent of the Council's power of investigation

under Article 34 came up for extended discussion in connection with the consideration by the Security Council of the United States proposal of June 27, 1947 [15] on the Greek question. This proposal called for the establishment of a commission as a subsidiary organ of the Council to perform certain functions in connection with the implementation of the recommendations made by the Council's Commission of Investigation. These functions were to be investigatory and conciliatory, as was brought out more clearly in amendments proposed by the French representative and accepted by the United States representative. The establishment of the Commission was opposed by the Soviet representatives, and by the representatives of Albania, Bulgaria and Yugoslavia, invited to participate in the discussions, on the grounds that it was proposed to give the Commission power going beyond the terms of Article 34, and that the Commission was also to have the power to enter into the territory of states and summon witnesses, whereas under Chapter VI the Security Council only had the power of recommendation.

The legality of the proposals under the Charter was upheld in carefully prepared statements by other members of the Council, including in particular the representatives of the United States, France, Colombia and Australia. The United States' initial position that authority for the establishment of the Commission was to be found in Article 24 did not receive general support. The more generally accepted view was that in so far as the investigatory powers of the Commission were concerned these could be derived from Chapter VI, and more particularly Article 34. In answer to the objection that the power of investigation under Article 34 had already been exercised by the establishment, under its resolution of December 19, 1946,[16] of a Commission of Investigation whose report was before the Council, the French representative (M. Parodi) expressed the view that this was too literal and narrow an interpretation of the Article. Continuing, he said:

> I feel that if the Security Council has had the power to initiate an investigation for the purpose of obtaining information, and of ascertaining whether a situation endangering peace exists, it is reasonable to suppose that it can continue this investigation when the situation itself seems likely to continue.[17]

With respect to the power of the Security Council to empower the Commission to take decisions binding under Article 25, the Australian representative (Colonel Hodgson) put the case as follows:

[15] *Ibid*, No. 51, p. 1124–6.
[16] *Ibid*, *Official Records, First Year: Second Series*, No. 28, p. 700–1.
[17] *Ibid.*, *Official Records, Second Year*, No. 61, p. 1926.

If you give a body a certain power (the power of investigation) that connotes that you give it authority to carry out that power. Authority is inherent in that power. Otherwise, what point could there be in this Council having the right to investigate, if the investigating body were not clothed with authority to act, authority, for example, to move about the frontiers; authority to examine witnesses; authority to examine officials of the country concerned; the very authority given in this resolution? [18]

Though the resolution was not adopted because of the negative vote of the Soviet Union, the discussion that took place, together with other action of the Council in establishing commissions or committees of investigation, suggests that, acting under Article 34, the Security Council considers itself empowered, apart from the political exigencies of a particular case, to conduct a broad investigation of the facts of any dispute or situation brought before it, not only with a view to determining the seriousness of the dispute or situation, but also with a view to establishing the factual bases for its recommendations under Articles 33, 36 and 37, that in conducting such an investigation the Council may authorize its subsidiary organ to take the steps necessary to its completion, and that the decisions taken in this connection are binding upon Members under Article 25, even though the Security Council under Articles 36 and 37 can only recommend procedures, means and terms of settlement or adjustment. Article 34 thus assumes in practice a most important place in the Charter system for pacific settlement.

Voting Procedure. As we have seen above,[19] the Sponsoring Governments and France agreed at San Francisco to consider the ordering of an investigation as a non-procedural matter requiring the concurrence of the permanent members of the Council. Some members of the Council, however, have taken the view that a decision to establish a subcommittee to take evidence and report is in a different category and can properly be regarded as the establishment of a subsidiary organ under Article 29 and therefore procedural. The Soviet Union has consistently taken the view that a decision to conduct an investigation, collect information, or to take evidence, whether by a commission or by a subcommittee of the Council is a non-procedural matter, and can only be taken with the concurrence of all the permanent members. Thus it exercised its "veto" to prevent the establishment of a subcommittee to take evidence on certain incidents in Czechoslovakia.[20] All decisions thus far taken to conduct investigations or inquiries, whether by commission as in the Greek case, or by

[18] *Ibid.*, No. 61, p. 1419. For discussion extending through several meetings of the Security Council, see *ibid.*, Nos. 51–66.

[19] Comment on Article 27, *supra*, p. 219.

[20] See comment on Article 29, *supra*, p. 231.

subcommittee, as in the Spanish and Corfu Channel cases, have been with the concurrence of all voting permanent members.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

General Significance. Article 35(1), has a significance comparable to that of Article 11, paragraph 2, of the League of Nations, though its phraseology is more restrictive and technical. By the terms of the latter, it was declared to be "the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

Certain differences, however, are at once apparent, particularly when these two paragraphs are considered in relation to other provisions of the instruments of which they form parts. In the first place, the phrase "any dispute or any situation of the nature referred to in Article 34" is more restrictive than the corresponding phrase of the Covenant. While this permits a Member to bring any dispute before the Security Council or the General Assembly, it may only bring a situation "which might lead to international friction or give rise to a dispute." The meaning of these terms will be considered later.

In the second place, while the dispute or situation may be brought before either the Security Council or the General Assembly, these two organs have unequal powers to act under paragraph 3 and the articles there referred to. While the General Assembly may discuss any such matter, if action is required, the Assembly must refer the matter to the Security Council. If the Security Council is in the process of exercising in respect to any dispute or situation the functions assigned to it under the Charter, the General Assembly is not to make recommendations. The League Assembly was not subject to such restrictions.

In general, Article 35(1), has been the door by which disputes and situations have been brought before the Security Council. In some cases, reference has been made to Article 34, where an investigation is particularly desired, but even in those cases, so far as a non-member of the Council is concerned, Article 35 gives the right to bring the matter before the Council in order to request that an investigation be carried out. Furthermore, Article 35 has thus far been used to

bring disputes and situations only before the Security Council, not before the General Assembly. Articles 10, 11 and 14 have been invoked to bring such matters before the Assembly.

Disputes and Situations. The distinction between "dispute" and "situation which might lead to international friction or give rise to a dispute" is made in several articles of the Charter, but in the practice of the Security Council has not been clearly and consistently maintained.[21] The procedure by which the determination is to be made whether a matter before the Council is a dispute or situation has never been settled. The procedure followed by the Council in dealing with matters before it, whether disputes or situations, has been very flexible and governed by considerations of expediency.

It is nevertheless possible, logically, to make a distinction between the two terms. A dispute can properly be considered as a disagreement or matter at issue between two or more states which has reached a stage at which the parties have formulated claims and counter-claims sufficiently definite to be passed upon by a court or other body set up for purposes of pacific settlement.[22] A situation, by contrast, is a state of affairs which has not as yet assumed the nature of a conflict between parties but which may, though not necessarily, come to have that character. A situation may develop into a serious threat to the peace without any formulation of claims and counter-claims such as characterizes a dispute. The Spanish situation was a case in point.

A situation of the kind referred to in Article 35(1) need not be limited, it would seem, to a particular geographical area.[23] While the complaint need not be couched in definite geographical terms, it apparently should contain some definite indications that the situation in question will lead to international friction or give rise to a dispute.[24] There have been strong protests made against the alleged practice of using the Security Council as "a sounding board of unsubstantiated grievances."[25]

Consideration by the Security Council. Disputes and situations of the kind referred to in Article 35 are brought to the attention of the Security Council by a communication addressed to the Secretary-

[21] See comment on Article 27, *supra*, p. 224.

[22] See definition given by Permanent Court of International Justice in Mavrommatis Palestine Concessions case, P.C.I.J., *Publications*, Series A, No. 2, p. 11: "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons."

[23] See discussion of the Soviet proposal of August 29, 1947 that Members of the United Nations submit information regarding location and size of armed forces and installations in the territory of other states, UN, Security Council, *Official Records, First Year: Second Series*, Nos. 17 and 18.

[24] See statement of the Netherlands representative, *ibid.*, No. 17, p. 439.

[25] *Ibid.*, No. 4, p. 33.

General or to the President of the Security Council. The Provisional Rules of Procedure of the Council provide that the Secretary-General shall immediately bring to the attention of all representatives on the Security Council all such communications.[26] Once the matter has been brought to the attention of the members of the Council, it is included in the provisional agenda of the next meeting. This provisional agenda is prepared by the Secretary-General and approved by the President of the Council.[27]

The adoption of the provisional agenda as the agenda of the meeting provides the Security Council with the first opportunity for discussion. As was made clear in the Statement of the Sponsoring Governments at San Francisco, no permanent member of the Council can prevent a matter brought before the Security Council from being discussed or prevent an interested party from being heard.[28] The Council has followed the policy of according the fullest and freest opportunity for statements to be made at this stage of the proceedings with a view to elucidating the nature of the matter before it. As became evident in the Iranian case, discussion of the substance of the matter cannot easily be avoided at this stage. The decision to adopt the agenda is a procedural matter.

The Security Council has maintained the principle that it is master of its agenda. Consequently, even if the Member who originally brought the matter to the attention of the Council, desires to withdraw it, as did Iran in the second phase of the Iranian case, the Council may decide to keep the matter on the list of questions before it. That does not mean that the matter appears on the agenda of each meeting, but it may at any time be added to this agenda, or "working agenda" as it might be called, by procedural vote of the Council. In the discussion which occurred during the Council's consideration of the Iranian question, the Soviet representative took the position that if the Member initially bringing a dispute or situation to the attention of the Council so demanded, the matter must be removed from the agenda. The Secretary-General submitted a memorandum in which it was argued that this automatically followed unless "(a) the Security Council votes an investigation under Article 34 or, (b) a Member brings it up as a situation or dispute under Article 35, or (c) the Council proceeds under Article 36, paragraph 1, which would appear to require a preliminary finding that a dispute exists under Article 33, or that there is a situation of like nature."[29] The Council,

[26] UN, Doc S/96/Rev. 3, Rule 6.
[27] *Ibid.*, Rule 7.
[28] See *supra*, p. 216
[29] UN, Security Council, *Journal* . . . , No. 27, p 522–4

after referring the matter to its Committee of Experts, who were unable to reach an unanimous decision, voted to keep the question on its agenda.[30] Thus the Council took the view that its powers under Article 24 and Chapter VI of the Charter made it full master of its agenda to the point of being able to keep an item before it when the original complainant asked that it be removed.

Once a dispute or situation has been brought before the Security Council, Chapter VI of the Charter appears to envisage a fairly set procedure. The Council makes an investigation under Article 34 "in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." If this determination is not made, the Security Council drops the matter unless the parties to a dispute agree to submit it for recommendation under Article 38. If the determination is made, the Council may take action under Article 33(2), or under Article 36. If the parties to a dispute fail to settle it by peaceful means of their own choice, they are required to bring it before the Council for action under Article 37(1).

In practice Council procedure has not followed this pattern at all closely. Taking a very free view of its powers under Chapter VI and buttressing these by a liberal interpretation of its residual powers under Article 24, the Council has acted with about the same freedom in the choice of means and the timing of its acts as did the League Council under the more flexibly drawn provisions of the Covenant.

The Council has not in practice distinguished clearly between disputes and situations. It has avoided making the distinction for the purposes of Articles 31 and 32 by using Article 31 for Members, and by invoking the spirit of the Charter and Rule 39 of its Provisional Rules of Procedure in the case of non-Members. It has not considered it necessary to make an investigation and determination under Article 34 as a preliminary to recommendations under Articles 33(2) and 36.[31] It has not distinguished clearly between procedures under Articles 36 and 37.

In dealing with the disputes and situations that have been brought before it, the Security Council has utilized the following procedures: (1) oral presentation of factual material and points of view by interested parties; (2) full discussion by members; (3) investigation by a commission or subcommittee, which may take the form of an in-

[30] *Ibid.*, No. 30.

[31] For criticism of Council procedure, see statement of Brazilian representative (Mr. Aranha) in course of Council consideration of Corfu Channel incident, UN, Security Council *Official Records, Second Year,* No 32, p. 686–8

quiry upon the spot (Commission of Investigation Concerning Greek Frontier Incidents and India-Pakistan Commission) or an assembling of information at Lake Success (subcommittees on Spanish and Corfu Channel incidents); (4) discussion of report of commission or committee, with view to assessing seriousness of situation and taking steps to alleviate it; (5) performance of mediatory and conciliatory functions, as in setting up Committee of Good Offices to assist in settlement of dispute between the Netherlands and Indonesia, instructing the United Nations Mediator to perform mediatory functions in Palestine, and establishing a Commission of Investigation and Mediation in connection with the dispute between India and Pakistan; (6) request to parties that they settle disputes by peaceful means of their own choice under Article 33, as was done, in effect, in the Iranian case and in the conflict between the Netherlands and the Indonesian Republic; and (7) recommendation that disputes be submitted by the parties to the International Court of Justice, as in the Corfu Channel case.

The Council, in many cases, has not been able to proceed beyond the stage of discussion or to complete the procedure initially undertaken because of the lack of agreement among the permanent members. This has resulted in a tendency to use the Council as a forum for publicizing points of view and as a means of moral pressure. It has also resulted in two cases (Spain and Greece) in the Council's finally deciding to remove the question from the list of matters before it in order that the General Assembly might be free to take appropriate action.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

The Dumbarton Oaks Proposals in Chapter VIII, Section A, paragraph 2, provided that "any state, whether member of the Organization or not," might bring any such dispute or situation to the attention of the General Assembly or of the Security Council. In so far as the rights of Members were concerned, this proposal was adopted without question at San Francisco (see paragraph 1 of Article 35). Strong objection was raised, however, to placing Members and non-Members on an equal basis in this respect. It was pointed out that this would permit any state which had been an enemy of any of the United Nations in World War II to have recourse to the Security

Council or the General Assembly for the purpose of securing redress for an alleged wrong having its origin in the war or the peace settlement. It was also pointed out that it would permit a non-Member interested in discrediting the United Nations to bring disputes and situations before the Security Council and the General Assembly with that sole object in view.

The whole matter was considered very carefully by the drafting subcommittee of Committee III/2 and the present text incorporates in substance the recommendation of the subcommittee.[32] Three separate cases were envisaged: (1) where a non-Member is party to the dispute; (2) where a non-Member has interests which are directly affected by a situation which might lead to international friction or give rise to a dispute; and (3) where a non-Member neither is a party to the dispute nor has interests directly affected by the situation. It was decided that only in the first case should a non-Member be accorded the right, given generally under paragraph 1 to Members, and then only on condition that the state accept "in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter." These include, notably, the obligation set forth in Article 2(3).

The provisions of this paragraph would appear clearly to apply to all states not Members of the United Nations, including so-called "enemy states". While the whole matter was in process of discussion in Committee III/2 and before a final decision on the recommendation to be made to the Commission had been taken, the Greek Delegate proposed an amendment to Chapter VIII, Section A, paragraph 2, reading as follows:

> It is understood that the enemy states in this war shall not have the right of recourse to the Security Council or the General Assembly before the treaties which end this war have been made effective.

This proposal was referred to Committee III/3 with the statement that Committee III/2 approved the proposal in principle.[33] The proposal was considered by Committee III/3 and the Committee decided against adopting the proposal as an amendment to Chapter XII of the Dumbarton Oaks Proposals,[34] but it was agreed to incorporate in the report of the Rapporteur the following statement:

[32] UNCIO, *Report of the Rapporteur of Committee III/2*, Doc. 1027, III/2/31(1), p 3 (*Documents*, XII, p. 161).

[33] UNCIO, *Summary Report of Fourth Meeting of Committee III/2, May 14, 1945*, Doc. 321, III/2/9, p 3 (*Documents*, XII, p. 24)

[34] UNCIO, *Summary Report of Twenty-first Meeting of Committee III/3, June 19, 1945*, Doc. 1111, III/3/51, p. 2 (*Documents*, XII, p. 547)

It is understood that the enemy states in this war shall not have the right of recourse to the Security Council or the General Assembly until the Security Council gives them this right.[35]

To bring a dispute to the attention of the Security Council or the General Assembly would appear to be one form of having recourse to these bodies. It is highly doubtful if a statement incorporated in the report of a Committee Rapporteur, after refusal of the Committee to adopt the substance of the statement as a formal provision of the Charter, can be regarded as limiting in any way the explicit provisions of the Charter contained in this paragraph.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

See Articles 11 and 12 and comment. The principal point of course is that the division of functions between Security Council and General Assembly there established is to be respected.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

This paragraph deals with both situations and disputes, but only with those "the continuance of which is likely to endanger the maintenance of international peace and security". That is, it does not authorize the Security Council to take action with respect to all disputes and situations, but only those which present a certain degree of danger or seriousness.

If a dispute or a situation presents this serious character, the Security Council can intervene whether or not the parties to the dispute or the states involved in the situation are Members. The phraseology of the paragraph suggests that the Security Council is limited to recommending appropriate methods or procedures of adjustment, and cannot recommend particular terms of settlement or adjustment. Taking a broad view of its responsibilities and powers under the Charter, the Security Council has not considered itself to be limited in this fashion. From the discussions that have taken place in the Council, as well as from decisions taken, it would appear that members of the

[35] UNCIO. *Report of Committee III to Commission III on Chapter XI*, Doc 1095, III/3/50, p. 3–4 (*Documents*, XII, p. 559–60).

Council have been willing, apart from considerations relating to the merits of specific proposals, to support proposals for recommendations of terms of adjustment of situations before the Council.[36] This does not of course mean that the provisions of Article 36(1) are disregarded but rather that the totality of the powers of the Security Council under the Charter, including Articles 24 and 39, have been interpreted in practice as justifying action beyond that expressly authorized by this paragraph.[36a]

The Council may make recommendations "at any stage" of such a dispute or situation. This seems to give very wide power to the Council and conceivably will result in Council intervention while the parties are proceeding with their own efforts at settlement. However, the second paragraph of this Article makes it quite clear that the Council should ordinarily be guided in its action by what the parties have already agreed to or are in process of carrying out. It is clear that the Council will consider itself in a freer position in cases where the parties have not agreed to any procedure in advance.

Under this paragraph, the Council does not make a decision binding on the interested parties. It only recommends procedures or methods of adjustment. The recommendations are not legally binding on the parties, although they may have the greatest political and moral weight. This interpretation was called in question by the United Kingdom in supporting its application to the International Court of Justice for judgment in the Corfu Channel case. The United Kingdom argued that the Security Council resolution of April 9, 1947[37] was adopted under Article 36 of the Charter, that Albania in accepting the invitation to participate in the discussions of the Security Council agreed to accept the obligations of Members, and that under Article 25 Members agreed to accept and carry out recommendations under Article 36. Albania contested the Court's compulsory jurisdiction. In its judgment, the Court did not directly deal with the above contention, basing its jurisdiction on Albanian acceptance by a letter of July 2, 1947 to the President of the Court. Seven out of the fifteen judges who supported the judgment, entered a concurring opinion in which they expressed regret that the Court had not passed upon the claim of jurisdiction under Article 36 and expressed the view that the United Kingdom argument was not convincing.[38]

[36] See, for example, discussion in the Security Council of action to be taken in the Greek case, UN, Security Council, *Official Records, Second Year*, Nos. 51–66.

[36a] See comment on Article 35(1), *supra*, p. 251

[37] UN, Security Council, *Official Records, Second Year*, No. 34, p 726–7.

[38] I.C.J., *Reports of Judgments, Advisory Opinions and Orders, The Corfu Channel Case (Preliminary Objection), Judgment of March 25th, 1948*

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

This paragraph covers two different cases. If the parties have already started to settle their dispute in a certain way, the Council should give great weight to this circumstance in making its recommendation. If the parties can settle the matter among themselves, so much the better. If the International Court of Justice, an arbitral tribunal, a commission of conciliation, or any other body is already working on the case, this body should be allowed to complete its duties if consistent with the maintenance of peace and security.

The other case covered by this paragraph is that where treaties for pacific settlement have been concluded between the parties prior to the actual dispute. They may for instance have accepted the "compulsory jurisdiction" of the International Court of Justice [39] or they may be parties to agreements for obligatory arbitration. Such commitments the Council should take into consideration in making its recommendations.

It should be noted that the wording of the Article is such as to make its provisions hortatory instead of mandatory. It states that the Council "should take into consideration" the procedures adopted by the parties, but it does not say that the Council must be guided in its action by this consideration. It may well be that the Council, after having considered these procedures very carefully, will decide that other methods are more appropriate under the circumstances. The possibility of doing so is left open. The Council is allowed a certain discretion. Here, as elsewhere, a definite effort has been made to keep the provisions of the Charter flexible rather than rigid.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

This paragraph refers to so-called "legal disputes". According to a widely held view there are two chief classes of international disputes.[40] In one group of conflicts the parties are in dispute over conflicting claims of legal right. The answer to such questions is sought in the established rules of international law, as described in Article 38 of

[39] See Article 36 of the *Statute, infra*, p. 619.

[40] For opposing view, see Kelsen, Hans, *Peace Through Law*, Chapel Hill, 1944 and "Compulsory Adjudication of International Disputes," *American Journal of International Law*, XXXVII, p. 397.

the Statute of the International Court of Justice. This kind of conflict is called a legal dispute. For a more detailed definition of a legal dispute, see Article 36 of the Statute of the International Court of Justice.[41]

In the other class of disputes, sometimes referred to as "political", the disagreement relates not to the application of the rules of international law, but rather to the adequacy of the existing legal order. In other words, the disagreement arises from dissatisfaction with the applicability of the rules of law. The answer to the questions posed by the parties will not be looked for in international law, but in "justice" and "expediency".

The third paragraph of Article 36 says that in the case of legal disputes, the Security Council, in making recommendations of procedures to be followed, should, as a general rule, recommend to the parties that they submit their disputes to the International Court of Justice. The paragraph is not mandatory since it is implicitly recognized that circumstances may exist which will make this course inadvisable.

This paragraph is to be understood in relation to the discussion at San Francisco on obligatory jurisdiction of the International Court of Justice. Chapter VIII, Section A, paragraph 6 of the Dumbarton Oaks Proposals provided that "justiciable disputes should normally be referred to the international court of justice." Numerous proposals were made at San Francisco to the effect that this reference should be made obligatory, thus achieving the result of obligatory jurisdiction for the Court over justiciable disputes. On the other hand, it was pointed out that the sentence was open to the interpretation that it envisaged the reference of disputes to the Court by the Security Council, a procedure without precedent since disputes in the past have been brought before international tribunals by the parties themselves. In the course of consideration by Committee III/2 it was decided to revise the provision so as to make it clear that the Security Council action envisaged was a recommendation to the parties, and to harmonize this revised text with the recommendation of Committee IV/1 on the question of the Court's obligatory jurisdiction. Furthermore, it was decided that the word "legal" described more accurately the category of disputes which was in question than the word "justiciable".

The present paragraph states that legal disputes should be referred to the Court "in accordance with the provisions of the Statute of the Court." It should be remembered that the Statute of the Court does not institute obligatory jurisdiction. Any Member of the United Nations may accept obligatory jurisdiction under defined conditions by a declaration made under the terms of Article 36 of the Statute. Obliga-

[41] *Infra*, p. 619.

tory jurisdiction may also be accepted under the terms of treaties and conventions referred to in Articles 36(1) and 37 of the Statute of the Court.

There is no doubt that those responsible for the drafting of the Charter had no intention of introducing obligatory jurisdiction by the back door.[42] Accordingly, it would appear that the meaning of this provision is that the Council will impress upon parties that it is their duty to submit their legal disputes to the Court if they have accepted the Court's compulsory jurisdiction. If they have not done so, it would seem that the Council can only recommend them to take their case to the Court. This paragraph therefore seems to be no more than a special application of the principle laid down in the preceding paragraph. This conclusion would appear to have been adopted by implication in the preliminary judgment of the International Court of Justice on the question of its jurisdiction over the dispute between the United Kingdom and Albania relating to incidents in the Corfu Channel.[43]

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

This paragraph lays a definite duty on the parties to a dispute. The obligation refers only to disputes, not to situations. The obligation is further restricted to disputes "the continuance of which is likely to endanger the maintenance of international peace and security". When this provision was under consideration in Committee III/2 at San Francisco, the question was raised as to whether this provision was to be interpreted to mean that in case of failure of one party to agree to the reference of the dispute to the Council, the other party could so refer it and thus fully seize the Council of the dispute. The interpretation given which appeared to be accepted by the Committee was that this was the meaning intended.[44]

Article 37 was invoked by Egypt, along with Article 35, in its request that the Security Council consider certain disagreements between it and the United Kingdom. It was clearly applicable to the Corfu case.

[42] This follows quite clearly from the change made in the original paragraph 6 in Chapter VIII, Section A, of the Dumbarton Oaks Proposals. See *infra*, p. 578. See also, UNCIO, *Report of the Rapporteur of Committee III/2*, Doc. 1027, III/2/31(1), p. 3 (*Documents*, XII, p. 161).

[43] See comment on Article 36(1), *supra*, p. 255.

[44] UNCIO, *Summary Report of Seventh Meeting of Committee III/2, May 17, 1945*, Doc. 433, III/2/15, p. 1 (*Documents*, XII, p. 47).

In neither case, however, was any action taken by the Council bringing the matter particularly under Article 37. During consideration of the United States proposal of June 27, 1947, for the establishment of a commission to exercise investigatory and conciliatory functions in the Balkans, there was considerable discussion of the applicability of Article 37, but this discussion seemed to lose sight of the special application of Article 37 and suggested that action under Article 36 is conditional on a finding under Article 37(2). The history of the Article does not bear out that interpretation.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

This paragraph corresponds to the second sentence of paragraph 4 of Chapter VIII, Section A, of the Dumbarton Oaks Proposals. In its original form, no distinction was made between the action which the Security Council might take in the situation where it intervened on its own initiative and found that a continuance of the dispute was likely to threaten the maintenance of international peace and security, and that which it might take when the dispute came before it on reference by one or more parties following failure to settle it by means of their own choice. One of the amendments proposed by the Sponsoring Governments had as its purpose to enable the Security Council to recommend terms of settlement in the latter case.[45] This amendment was accepted by the technical committee and without modification of substance came finally to be expressed in the present form.

The difference between the two situations described above which would seem to justify giving the Security Council different authority in the two cases is that in the first situation, arising under Article 36, there has been no admission by one or more of the parties of failure to settle the dispute in accordance with the terms of Article 33. In this situation, the Council is restricted to assisting the parties in finding procedures or methods which will be successful. In the second situation, however, described in the first paragraph of Article 37, there has been failure of the parties to settle their dispute by means of their own choice, attested by the fact that one party has in effect asked the Council to take a hand. There would therefore be less point in the Council's seeking to aid the parties to find a method or procedure acceptable to

[45] UNCIO, *Amendments Proposed by the Governments of the United States, the United Kingdom, the Soviet Union and China*, Doc. 2/G/29, p. 4 (*Documents*, III, p. 625).

them, though that course is open. In such a situation the Council should be able, it was felt, to actually recommend the terms of settlement. In the practice of the Council, however, there has been no recognition of this distinction.[46]

It is clear that the Security Council has only the power to recommend the terms of settlement. There was considerable discussion at San Francisco of the exact implications of this grant of power. The fear was expressed that, particularly in view of the rather broadly phrased provisions of paragraphs 1 and 2 of Chapter VIII, Section B, of the Dumbarton Oaks Proposals, the Security Council might consider itself empowered to impose its recommendations upon the parties as means necessary to the maintenance of international peace and security. The interpretation given and accepted at San Francisco was that the recommendations made under this paragraph have no binding effect and can be given no binding effect by the Council under other provisions of the Charter.[47] This interpretation is given additional support by the phraseology of Article 39 of the Charter.[48]

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

This Article did not exist in the Dumbarton Oaks Proposals but was proposed at San Francisco by the Sponsoring Governments. The idea was to give power to the Council to deal with disputes even before they had assumed such a serious character as to endanger the maintenance of peace and security, if the parties to the dispute so agreed. The Article applies to all disputes irrespective of their character and the parties to them. It is assumed of course that they are international disputes. The only condition is that the parties shall have agreed to ask the Council to consider the dispute or disputes in question and to make recommendations with a view to their peaceful settlement. The Article uses the word "recommendation" which means of course that the terms of settlement proposed will not be binding on the parties. This raises the question whether the Council

[46] See comment on Article 35(1), *supra*, p. 251.

[47] UNCIO, *Summary Report of Ninth Meeting of Committee III/2, May 21, 1945*, Doc. 498, III/2/19, p. 2 (*Documents*, XII, p. 166) and *Report of the Rapporteur of Committee III/2*, Doc. 1027, III/2/31(1), p. 4 (*Documents*, XII, p. 162)

[48] See text of article and comment, *infra*, p. 262.

can assume the powers of an arbitral tribunal if the parties should so agree. In view of League precedents,[49] the action of the Security Council in assuming special responsibilities in relation to Trieste under the treaty of peace with Italy and the residual powers vested in the Security Council under Article 24,[50] there would seem to be little doubt but what this can be done.

[49] The Council of the League of Nations exercised such a power when conferred on it by the terms of the Treaty of Lausanne See Myers, Denys P., *Handbook of the League of Nations*, Boston, 1935, p. 317.

[50] See comment on Article 24, *supra*, p. 206.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

League and United Nations Systems of Peace Enforcement. The provisions of the League of Nations Covenant and the United Nations Charter for enforcement of peace differ in important respects.[1] Under the Covenant, members of the League were obligated to "preserve as against external aggression the territorial integrity and existing political independence of all Members" and to take immediately enumerated economic and financial measures against a member once it had resorted to war in violation of its obligations, without waiting for a decision by any League organ. Under the Charter, while Members of the United Nations agree under Article 2(4) to refrain "from the threat or use of force against the territorial integrity or political independence of any state", they are not obligated to take any action against a state violating this undertaking until the Security Council has taken a decision. It must be added, however, that in practice the League system did not operate as it was clearly intended. The League Assembly on October 4, 1921 adopted a series of rules recommended to it by its International Blockade Committee,[2] by which the principle of the progressive application of sanctions was substituted for that of the immediate and complete application of the measures specified in Article 16. This principle was followed in the application of sanctions against Italy in 1935–1936.[3]

[1] On League system of peace enforcement, see Hindmarsh, Albert E, *Force in Peace*, Cambridge, 1933, p. 111–80 and Rappard, William E., *The Quest for Peace*, Cambridge, 1940, p. 208–334. On United Nations system, see Kirk, Grayson, "The Enforcement of Security," *Yale Law Journal*, LV, p. 1081–96.

[2] League of Nations, *Official Journal, Special Supplement*, No. 6, p. 24.

[3] See Highley, Albert E, "The First Sanctions Experiment," *Geneva Studies*, IX, No. 4 and Royal Institute of International Affairs, *International Sanctions*, New York, 1938

While the Covenant provided for the "automatic" application of economic and financial measures, it left a large measure of discretion to members as to whether they should take military action. Their commitment under Article 10, in addition to being general, was considerably weakened by interpretation. The Council could only recommend to members the military measures they should take in support of the Covenant. The Charter, on the other hand, empowers the Security Council to take a decision, not only regarding diplomatic, economic and financial measures to be taken against an aggressor, but also regarding military measures as well. Under Article 25, this decision is binding upon Members.

Responsibility and Powers of the Security Council. During the drafting of the Charter at San Francisco, it was proposed that the General Assembly be associated with the Security Council in the performance of the functions specified in this Article. It was argued that decisions affecting the interests of all Members of the United Nations should be taken by an organ in which all Members were represented, or at least that some effective control by the representative organ should be provided. The argument against associating the General Assembly with the Security Council was that the effective performance of enforcement functions required that they be vested in a small body. In any case, it was argued, the Members of the United Nations would participate indirectly in the decision since the concurrence of some of the elected members of the Security Council would be required. Furthermore, it was argued that the proposal, if accepted, would break down the differentiation of functions between the General Assembly and the Security Council which was a feature of the Dumbarton Oaks Proposals which had been generally accepted. The Conference finally decided to accept in substance the proposal of the Sponsoring Governments.[4]

There was also strong opposition at San Francisco to giving the Security Council the broad discretionary authority which this Article confers. It was proposed to incorporate in the Charter a definition of aggression which would provide a standard for judging states in their individual conduct and Security Council alike. Some of the smaller states were particularly fearful that the Great Powers would under certain conditions close their eyes to aggressive action as a way of avoiding the obligation to take enforcement measures. Many attempts had in the past been made to define aggression.[5] At the time the Kellogg-

[4] UNCIO, *Report of Mr. Paul-Boncour, Rapporteur, on Chapter VIII, Section B*, Doc. 881, III/3/46, p. 2 (*Documents*, XII, p 503).

[5] See Eagleton, Clyde, "The Attempt to Define War," *International Conciliation*, No. 291 and Royal Institute of International Affairs, *International Sanctions*, *op. cit.*, p. 177–87.

Briand Pact of 1928 was being negotiated the Government of the United States took the position that the definition of aggression was impracticable since it would be impossible to cover every possible case of aggression, and furthermore the effect would be to make it possible for the would-be aggressor to use the definition for its own purposes. This line of argument was advanced at San Francisco. It was also argued that progress in the technique of warfare made a definition difficult, if not impossible. Such arguments, combined with the firm stand taken by the Sponsoring Governments, led Committee III/3 and the Conference to the decision that no definition of aggression should be attempted other than that found in Article 2(4).[6]

While the Security Council is given wide discretion in determining whether a "threat to the peace, breach of the peace, or act of aggression" has been committed, it is restricted by the provisions of this Article as to the measures that it may take. Chapter VIII, Section B, paragraphs 1 and 2 of the Dumbarton Oaks Proposals had left some uncertainty as to the extent of the powers of the Security Council in this respect. Paragraph 1 provided that if the Security Council found that a failure to settle a dispute under Section A (*Pacific Settlement of Disputes*) constituted a threat to the maintenance of international peace and security, "it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization."[7] Paragraph 2 provided that the Security Council "should make recommendations or decide upon the measures to be taken to maintain or restore peace and security." The question arose as to whether these two paragraphs taken together (1) empowered the Security Council to impose the terms of settlement of a dispute or adjustment of a situation upon the interested parties in order to maintain peace; and (2) permitted the Security Council to choose between recommending and deciding upon enforcement measures to be taken with a view to keeping the peace or restoring peace. The smaller powers in particular, with the memory of the Munich settlement fresh in their minds, were opposed to giving to the Security Council any power to impose a particular settlement, while they were equally anxious to make it as difficult as possible for the Security Council to avoid its responsibility for keeping the peace.

As a result of a very thorough consideration of these paragraphs by Committee III/3 of the United Nations Conference, paragraph 1 was omitted and paragraph 2, which later became Article 39, was revised to include a reference to what later came to be Articles 41 and

[6] UNCIO, *Report of Mr. Paul-Boncour, Rapporteur, on Chapter VIII, Section B*, Doc. 881, III/3/46, p. 4 (*Documents*, XII, p. 505).

[7] *See infra*, p. 578.

42, thus limiting decisions to enforcement measures. It was also decided to insert a new paragraph dealing with provisional measures which became Article 40 of the Charter. In the course of the discussion of these proposals, the following observations were made by the Belgian Delegate which, at his request, the Committee voted unanimously to include in its final report:

(1) In using the word "recommendations" in Section B, as already found in paragraph 5, Section A,[8] the Committee has intended to show that the action of the Council so far as it relates to the peaceful settlement of a dispute or to situations giving rise to a threat of war, a breach of the peace, or aggression, should be considered as governed by the provisions contained in Section A.[9] Under such an hypothesis, the Council would in reality pursue simultaneously two distinct actions, one having for its object the settlement of the dispute or the difficulty, and the other, the enforcement or provisional measures, each of which is governed by an appropriate section in Chapter VIII.

(2) It is the Committee's view that the power given to the Council under paragraphs 1 and 2 [10] not to resort to the measures contemplated in paragraphs 3 and 4, [11] or to resort to them only after having sought to maintain or restore peace by inviting the parties to consent to certain conservatory measures, refers above all to the presumption of a threat of war. The Committee is unanimous in the belief that, on the contrary, in the case of flagrant aggression imperiling the existence of a member of the Organization, enforcement measures should be taken without delay, and to the full extent required by circumstances, except that the Council should at the same time endeavor to persuade the aggressor to abandon its venture, by the means contemplated in Section A and by prescribing conservatory measures.[12]

From these observations, and the course of discussion in Committee III/3, it would appear to have been the clear intention of the delegates at the Conference to make it possible for the Security Council to exercise considerable discretion in its choice of the most appropriate methods for dealing with a threat to the peace, breach of the peace or act of aggression, while at the same time leaving no question as to the duty of the Council to take necessary enforcement measures when faced with a flagrant act of aggression. The Council may make recommendations for the peaceful settlement of the dispute. It may call upon the parties to take provisional measures necessary to the creation of an atmosphere favorable to peaceful settlement. It may decide

[8] Corresponding to Article 36(1) of the Charter.
[9] Corresponding to Chapter VI of the Charter.
[10] Corresponding to Articles 39 and 40 of the Charter.
[11] Corresponding to Articles 41 and 42 of the Charter.
[12] UNCIO, *Report of Mr. Paul-Boncour, Rapporteur, on Chapter VIII, Section B*, Doc. 881, III/3/46, p. 6 (*Documents*, XII, p. 507).

upon measures to be taken under Articles 41 and 42, enforcement measures in the strict sense, to put an end to the breach of the peace or act of aggression. The Council is left to decide, on the basis of its evaluation of the situation, which course or which combination of possible courses it should pursue in order to achieve the maintenance of international peace and security.

Application of Article 39. The provisions of Article 39 have been invoked or given consideration in four cases of major importance to date. When the Spanish question was before the Security Council in April 1946, the Polish delegate introduced a resolution under which the Security Council, acting under Articles 39 and 41, would call upon Members to sever diplomatic relations with Spain.[13] The subcommittee, to which the matter was referred, found that the evidence did not justify a finding that the Franco regime in Spain constituted a threat to the peace, a breach of the peace or an act of aggression. It interpreted Article 39 to mean "that the Security Council has to measure the situation at the moment of the proposed action on its part", and that the Security Council should only direct enforcement measures if it was "affirmatively satisfied" that one of the enumerated conditions "had actually come into existence".[14] The subcommittee expressed the view that "a very sharp instrument" had been entrusted to the Security Council which must be careful that "this instrument is not blunted nor used in any way which would strain the intentions of the Charter or which would not be applicable in all similar cases."[15] Though the Security Council was unable to take any substantive decision following the report of its subcommittee, the great majority of its members were clearly of the opinion that the situation in Spain did not constitute a threat to the peace such as would justify Council action under Article 39.[16]

Article 39 was next invoked in connection with the Greek question. The Commission of Investigation Concerning Greek Frontier Incidents, created by the Security Council resolution of December 19, 1946, had submitted its report on May 27, 1946.[17] On June 26, the Greek representative to the United Nations in a statement addressed to the President of the Security Council made the formal charge that a "threat to the peace, breach of the peace, or act of aggression" existed.[18] After

[13] UN, Security Council, *Journal* . . ., No. 28, p. 541.

[14] UN, Doc. S/75, p 11. In the course of discussions in the Security Council, it was made clear that this did not mean that Article 39 was only applicable when "the menace to peace" was "on the point of being realized." UN, Security Council, *Journal* . . ., No. 37, p. 732.

[15] UN, Doc. S/75, p. 12.

[16] For record of discussion, see UN, Security Council, *Journal* . . ., Nos. 37–42.

[17] UN, Doc. S/360 and Doc. S/360/Corr.1.

[18] UN, Doc. S/389.

the failure of the Council on July 29 to adopt a resolution offered by the United States to carry out the majority recommendation of the Commission, due to the negative vote of the Soviet Union, the Greek representative on July 31 repeated the charge of his Government and requested a determination under Article 39.[19] A draft resolution introduced by Australia on August 6 registered the Security Council's determination "that the situation on the northern borders of Greece constitutes a threat to the peace under Article 39."[20] A resolution, introduced by the United States on August 12, found that "Albania, Bulgaria and Yugoslavia have given assistance and support to the guerillas fighting against the Greek Government" and determined "that such assistance and support to the guerillas by Albania, Bulgaria and Yugoslavia constitutes a threat to the peace within the meaning of Chapter VII."[21] Neither resolution was accepted due to the negative vote of the Soviet Union. In each case the vote was 9 to 2 in favor of adoption.

The Security Council was again called upon to take action under Article 39 following the outbreak of hostilities between Netherlands and Indonesian forces on July 20, 1947. By letter dated July 30, the Australian representative on the Security Council asked for Council action, stating that the hostilities in progress "constituted a breach of the peace under Article 39".[22] The question whether Article 2(7) permitted Council action was a complicating factor in the Council consideration of the case.[23] On July 31, the Australian representative presented a draft resolution stating that hostilities in Indonesia constituted a breach of the peace under Article 39 and calling upon the Governments of the Netherlands and the Republic of Indonesia to take certain provisional measures under Article 40.[24] When it appeared that the Council would become involved in interminable debate over the question of jurisdiction under Article 2(7), it was decided by the Council to adopt a resolution calling upon the parties to cease hostilities and settle their dispute by peaceful means, with no references, however, to specific articles of the Charter.[25] No decision was taken as to whether a threat to the peace or violation of the peace under Article 39 existed and it was definitely understood that the question of the competence of the Security Council was left open. However, as was pointed out in the course of the discussions, it is difficult to see how

[19] UN, Doc. S/451.
[20] UN, Doc. S/471.
[21] UN, Doc. S/486.
[22] UN, Doc. S/449.
[23] For further comment on this aspect of the case, see *supra*, p. 117.
[24] UN, Security Council, *Official Records, Second Year*, No. 67, p. 1626.
[25] *Ibid.*, Nos. 67 and 68.

the Security Council could legally adopt the resolution except on the assumption that a threat to the peace or a breach of the peace existed. Subsequently the Council took further steps to secure respect for its "cease-fire order" and to achieve a peaceful settlement of the dispute.[26]

The application of Article 39 was considered in connection with the Palestine question. Here again the situation was confused by the fact that the disturbance was of such a nature that it could be argued that no threat to the peace or violation of the peace of the nature envisaged in Article 39 existed. Palestine was a mandated territory administered by the United Kingdom until its voluntary termination of the mandate on May 15, 1948. Hostilities between Jewish and Arab groups resulted from the inability of the Jewish agency and the Arab Higher Committee to agree on a regime to take the place of the mandate, the inability of the mandatory power to maintain peace and order, and its refusal to assume any responsibility after May 15. The General Assembly, before which the matter was first brought,[27] adopted a resolution on November 29, 1947, accepting with some modifications the recommendations of its Special Committee for partition with economic union.[28] The General Assembly requested the Security Council to take the necessary measures provided for in the Plan for its implementation; to consider whether the situation in Palestine constituted a threat to the peace, and, if it so decided, "to supplement the authorization of the General Assembly by taking measures, under Articles 39 and 41 of the Charter, to empower the United Nations Commission, as provided in this resolution, to exercise in Palestine the functions which are assigned to it by this resolution"; and to "determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution."

When the Palestine Commission, set up under the terms of the Assembly resolution, reported to the Security Council on February 16, 1948, that the situation in Palestine was such that it would be unable to maintain law and order after the termination of the British mandate unless adequate military forces were made available,[29] it became necessary for the Security Council to consider what action it should take in the discharge of its responsibilities. It was clear from the beginning

[26] See *International Organization*, II (1948), p. 80–5, 297–9.

[27] See *ibid.*, I (1947), p. 488–91 and II (1948), p. 53–8.

[28] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 131–50. For text of report of Special Committee on Palestine, see *ibid., Official Records of the Second Session . . .*, Suppl. No. 11, Doc. A/364

[29] UN, Doc. A/AC.21/9

that Council decisions would be profoundly influenced by political considerations and by the fact that no military forces had been made available by agreements under Article 43. The Council was not prepared to undertake the enforcement of the partition plan, nor was it willing to accept the requests of the General Assembly.[30] Nor was it prepared to make a determination that the situation in Palestine constituted a threat to the peace or a breach of the peace. Doubts were raised as to whether such a finding could be made since the disturbances were occurring within a territory for the administration of which the United Kingdom was responsible. While this situation changed as the result of the termination of the mandate on May 15, the proclamation of the State of Israel and its recognition by some Members of the United Nations, it was still argued that there was no threat to or breach of "international peace", such as would make Chapter VII applicable.[31]

As in the Indonesian case, the Security Council sought to bring an end to violence and achieve a peaceful settlement without taking any formal decision under Article 39 regarding either the existence of a threat to or breach of the peace or measures to be taken under Articles 41 and 42. By its resolution of April 1, 1948, it called upon the Jewish Agency and the Arab Higher Committee to make representatives available for the purpose of arranging a truce and called upon Arab and Jewish armed groups in Palestine "to cease acts of violence immediately."[32] After its President had reported the failure of truce negotiations, the Security Council adopted on April 17 a second resolution calling for a truce in Palestine and specifying measures to be taken to that end by all parties concerned.[33] When it became clear that this call for a truce was not being heeded, the Council adopted a resolution on April 23 establishing a Truce Commission consisting of career consuls in Jerusalem to assist in the implementation of the April 17 resolution.[34] On May 22, after the situation had entered a new phase as the result of the termination of the mandate, the proclamation of the state of Israel and the entrance into Palestine territory of Arab armed forces, the Security Council renewed its appeal for a truce, stipulating that the cease-fire order become effective within a fixed time.[35] After failure to get the agreement of both parties to a truce arrangement, the Council on May 29 adopted another resolution call-

[30] See *International Organization*, II (1948), p. 306–9.
[31] See UN, Doc. S/P V. 293, p. 62–3 and Doc S/P.V 296, p 3–5.
[32] UN, Security Council, *Official Records, Third Year*, No 42, p 30–4.
[33] *Ibid.*, No. 58, p 22–41 and UN, *Bulletin*, IV, p 378–80
[34] UN, Security Council, *Official Records, Third Year*, No. 62, p. 7–33.
[35] UN, *Bulletin*, IV, p. 437–44 For Council discussion, see UN, Doc. S/P.V 296–Doc S/P.V 302

ing upon the Governments and authorities concerned to order a cessation of all acts of armed force for a period of four weeks and to assume certain additional undertakings in connection therewith.[36] The Council instructed the United Nations Mediator for Palestine, appointed under a resolution adopted by the General Assembly on May 14,[37] to supervise the observance of the truce undertakings. It decided "that if the present resolution is rejected by either party or both, or if, having been accepted, it is subsequently repudiated or violated, the situation in Palestine will be reconsidered with a view to action under Chapter VII of the Charter." On June 2, the Council decided that its truce proposals had been accepted unconditionally and authorized the United Nations Mediator to fix the time when the cease-fire order would become effective.[38] Thus the Council, at long last, succeeded in bringing at least a temporary end to hostilities, without however at any time taking a formal decision that a threat to the peace or breach of the peace under Article 39 existed.

It would appear that the Council resolutions of April 17, May 22 and May 29 were of the kind envisaged in Article 40 which assumes a determination under Article 39.[39] Nevertheless, the Security Council refused to take formal action under Articles 39 and 40. This was apparently due to the conviction of certain members of the Council that the permanent members were not prepared to agree on enforcement measures, and to the unwillingness of their members to commit themselves to a determination under Article 39, even as the basis for action under Article 40, for fear that it would make necessary decisions under Articles 41 and 42 which were not likely to be forthcoming.[40]

The failure of the Mediator to achieve a negotiated settlement during the truce period, and the refusal of the members of the Arab League to agree to an extension of the truce, even though requested by the Security Council by its resolution of July 7, led to the decision of the Council on July 15 to take action explicitly under the terms of Chapter VII. By the resolution of July 15, the Council determined "that the situation in Palestine constitutes a threat to peace within

[36] UN, *Bulletin*, IV, p. 473–8. For Council discussion, see UN, Doc. S/P.V. 306–Doc. S/P.V. 310.

[37] UN, General Assembly, *Official Records of the Second Special Session . . . , Resolutions*, Doc. A/555, p. 5–6.

[38] For texts of Jewish and Arab replies, see UN, Security Council, *Official Records, Third Year*, No. 78, p. 2–6. For text of Mediator's note fixing date and other conditions, see UN, Doc. S/829.

[39] See comment on Article 40, *infra*, p. 273.

[40] See remarks of Belgian representative, UN, Security Council, *Official Records, Third Year*, No. 69, p. 10–2 and No. 77, p. 13–5, and of Canadian representative, *ibid.*, No. 70, p. 13–5.

the meaning of Article 39 of the Charter", ordered "the Governments and authorities concerned . . ., to desist from further military action", declared that failure to comply "would demonstrate the existence of a breach of the peace within the meaning of Article 39 of the Charter requiring immediate consideration by the Security Council" with a view to further action under Chapter VII, and decided that the truce should remain in force, subject to further decision by the General Assembly or the Security Council, "until a peaceful adjustment of the future situation of Palestine is reached."[41] This resolution, in the nature of an order to cease fire, was accepted by the parties and entered into force on July 18, 1948.[42]

Conclusions. While the provisions of Article 39 are basic to the whole Charter system of peace enforcement, it was recognized from the beginning that there would be relatively few occasions when enforcement action would be taken. This view has been fully substantiated by the practice of the United Nations.

In the majority of cases involving the maintenance of international peace and security that have come before the Security Council, the Council has operated exclusively under the provisions of Chapter VI (*Pacific Settlement of Disputes*). In those cases where Article 39 has been invoked, the Council has made only one formal determination that a threat to the peace or breach of the peace exists. In the Spanish case the majority view was that no threat to or violation of the peace existed. In the Greek case a determination undoubtedly would have been made had a permanent member not interposed its objection. In the Indonesian case, and except as a last resort in the Palestine case, the preliminary question was deliberately by-passed and the Council, without deciding whether it had before it a threat to the peace or a breach of the peace, proceeded to take measures which clearly assumed the existence of such a condition.

While the Security Council has in only one instance declared a "threat to the peace, breach of the peace or act of aggression" to exist, discussions in the Council have on a number of occasions been concerned with the interpretation of the words. In the Spanish case, the Council accepted the distinction made by its subcommittee between a "potential menace to international peace and security" and an existing threat to the peace. In the Greek case, the majority of the members of the Commission of Investigation and of the Council took the position that the continued support of armed bands crossing frontiers or of refusal to aid such bands should be considered "as a threat to the

[41] UN, Doc. S/890; Doc. S/902; and Doc. S/P.V. 338.
[42] UN, Doc. S/908.

peace within the meaning of the Charter of the United Nations.[43] In the Indonesian case, the question arose whether violence within a state may under certain circumstances be regarded as a threat to peace or breach of the peace under Article 39. The French representative answered in these words:

> The events taking place in Java and Sumatra might constitute such a threat either if – being considered to be of an internal nature – they were liable to give rise to international complications, on account of their repercussions on external affairs . . . or if, upon an examination of the facts themselves, we were to consider them as acts of war between two distinct sovereign states.[44]

The American representative earlier expressed the view that "the Council must take cognizance of fighting on such a scale and in such conditions that the peace of that region and ultimately of the world might be put in danger."[45] In the Palestine case, the United Kingdom representative argued that there must be a threat to or a breach of "international peace" and security which he thought did not exist as long as Palestine was not divided into Jewish and Arab states, but this highly technical approach does not seem to have been widely accepted.[46] The fact of a threat to or violation of the peace within the sense of the Charter appears to have been pretty generally accepted but there was hesitance to initiate action under Chapter VII explicitly for reasons given above.

In the two situations where the Security Council has taken action under Article 39 or at least implying the existence of a threat to the peace or a breach of the peace (the Indonesian and Palestine cases), emphasis has been placed on provisional measures intended to prevent the aggravation of the situation and to bring hostilities to an end. Also, the Security Council has sought through appropriate means such as are enumerated in Article 33 to bring about a peaceful settlement. This suggests that the Security Council will, in practice, follow a pattern similar to that used by the League Council with notable success in the Greco-Bulgarian case in 1925.[47] Measures of a preventive and provisional nature intended to prevent breaches of the peace and aggravation of the situation, and to restore peace on the basis of agreement, will be stressed rather than measures of a coercive nature for which Articles 41 and 42 provide.

[43] UN, Doc. S/360, p. 248.
[44] UN, Security Council, *Official Records, Second Year*, No. 68, p. 1677.
[45] *Ibid.*, p. 1658
[46] See, for example, the statement of the French representative, UN, Doc. S/P.V. 298, p. 16 and the text of the resolution of May 29, 1948.
[47] See Conwell-Evans, T. P., *The League Council in Action*, New York, 1929, p. 35–121.

tch and set up an organization which would not have nfavorable psychological attitudes which a revised very likely have to face in some quarters. It was of shr iscovered that it was as impossible as it was unwise to As experience of the League of Nations. Those who carfu preliminary studies leading up to the exchanges of views na ern...ents found it indispensable to the successful accomem their tasks to concern themselves with this experience. ase it was possible in a formal sense to start anew, to give wh ion a different name, and to provide it with what was in the , and to a considerable extent in subs\ance, a new conen st

3. PURPOSES AND PRINCIPLES

poses of the Organization are stated in the Preamble and These indicate the direction which the activities of the Orn are to take and the common ends of its members. The d in general and inclusive terms to make it clear that the Orn is not set up with any narrow end in view but rather for ose of promoting the common interests of Members in peace, and general well-being. The Organization is not exclusively ed with the settlement of international disputes and with the f action to maintain or restore peace in the face of a thr r l use of force. To be sure, the first purpose is stated tain international peace and security" by taking measu hreats to the peace and suppress acts of aggression, ar or settling disputes and situations which might lead h of the peace. But there are also included among the pur the Organization the following: "to develop friendly rela ong nations based on respect for the principle of equal rights lf-determination of peoples, and to take other appropriate mea strengthen universal peace"; "to achieve international cooper solving international problems of an economic, social, cultura a manitarian character, and in promoting and encouraging respect r human rights and for fundamental freedoms for all without disnction as to race, sex, language, or religion"; and "to be a center for rmonizing the actions of nations in the attainment of these common ls." It is difficult to think of a single matter within the sphere f ernational relations or affecting relations between states which t be brought within the scope of these comprehensive purpos wing the statement of purposes, Article 2 contains

matter (Committee I/2), in its report to Commission I, in its opinion a Member would not be bound to remain ganization "if its rights and obligations as such were c Charter amendment in which it has not concurred and whi itself unable to accept."[2]

The treaty character of the Charter is further emphasiz considerations which led another technical committee (C IV/2, Legal Problems) to recommend the omission of any governing the interpretation of the Charter. After pointing c "under unitary forms of national government the final deter of such a question may be vested in the highest court or in so national authority," the Committee's report went on to say:

> However, the nature of the Organization and of its operation would to be such as to invite the inclusion in the Charter of any provisi nature. If two Member States are at variance concerning the cor pretation of the Charter, they are of course free to submit the dis International Court of Justice as in the case of any other treaty.[3]

2. SIMILARITY TO LEAGUE SYSTEM

The Charter as finally adopted contained important modifi f the Dumbarton Oaks Proposals. Entirely new material wa luced, and provisions of the Dumbarton Oaks plan were c n major as well as minor respects. And yet the essential ch f the Dumbarton Oaks plan remains. The Organization wh Charter provides is fundamentally in line with the League of nd Dumbarton Oaks ideas. It is based on the principle of v ooperation between states in the promotion of common obje Like the Covenant and the Proposals, it recognizes the important equalities of states and erects a structure which takes into acco these inequalities. Following the line of the Dumbarton Oaks Pi posals, it recognizes the larger powers as having special rights nc accorded to the smaller, and it places on them correspondingly larger responsibilities. In this respect it departs from the express pattern of the League system though not departing as widely from its plain implications.

Largely for reasons of political expediency and because of certain adverse attitudes and prejudices that had developed, the revision t the League system was never seriously considered as a means of pr viding the desired international organization. Rather it was decide

r force under the direction of the Security Council. This Article is s to be interpreted as in any way restricting the provisions of Ar- d 43. The purpose of Article 45 is to give "supplementary preci- n" to the provisions of Article 43 without in any way limiting its eneral scope.[101] It was because this interpretation was given to the rticle that proposals made at San Francisco to include "mixed con- ingents" or "forces of all arms" were withdrawn.

It is to be noted that this Article envisages giving the Security Council some discretionary power in determining "the strength and degree of readiness" of specified national air force contingents. To this extent the Article would seem to go beyond the provisions of Article 43 and not merely give "supplementary precision" to it. However, it is stated that this power is to be exercised "within the limits laid down in the special agreement or agreements referred to in Article 43". Thus, the "special agreement or agreements" become the ource of any additional authority with respect to national air force ontingents which the Security Council may have.

The Military Staff Committee, in considering the princip s governg the organization of armed forces to be made available to the ecurity Council was unable to agree on general principles relating to the implementation of this Article. The Soviet delegation took the view that the implementation of this Article could only take place after the conclusion of the special agreements when the Security Council, with the assistance of the Military Staff Committee, would determine what portion of the "overall number of national air force contingents made available to the Security Council under the Agreements should be held immediately available for the taking of urgent military measures in case of necessity."[102] The United Kingdom delegation, on the other hand, supported by the other delegations, took the view that the provisions of Article 45 must be taken into account in negotiating the special agreements under Article 43. It considered it necessary, in determining the strength and composition of the total national air force contributions, to take into account obligations under Article 45, and it envisaged that air force contingents for use under Article 45 would be selected from among the national air force contributions made under Article 43.[103]

It is to be noted that the provisions of this Article were considered and adopted before the announcement was made of the use of the atomic bomb and before knowledge was available of the possible consequences of such use.

[101] *Ibid.*, p. 10 (*Documents*, XII, p. 511).
[102] UN, Doc. S/336, p. 38–9.
[103] *Ibid.*, p. 39–40.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

The Military Staff Committee, organized in accordance with the terms of Article 47(2), serves as a general staff responsible to the Security Council for overall strategic planning and technical advice in military matters. It follows closely the precedent of the Combined Chiefs-of-Staff evolved during World War II.[104]

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of force placed at its disposal, the regulation of armaments, and possible disarmament.

The functions of the Military Staff Committee are defined in this paragraph. These functions are threefold: (1) to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, which in effect means in connection with the negotiation of the "special agreement or agreements" referred to in Article 43; (2) to advise and assist the Security Council in the strategic direction of the forces placed at its command for the purposes specified in Article 42 and (3) to advise and assist the Security Council in connection with the preparation of plans for "the establishment of a system for the regulation of armaments" under the terms of Article 26, and the exercise of any powers which may be conferred upon the Security Council in connection with the enforcement of any such system.

It will be seen that, generally speaking, the functions of the Military Staff Committee are of the same kind as those conferred upon the Permanent Military, Air and Naval Commission of the League of Nations by Article 9 of the Covenant. Since, however, the functions of the Security Council in respect to the maintenance of international peace and security are of a more advanced character than those of the League Council, the functions of the Military Staff Committee assume a considerably greater importance than those of the corresponding League organ.

[104] See Announcement of War Department, February 6, 1942, *Documents on American Foreign Relations, IV, 1941–1942*, p. 245.

There are many historical examples which show the importance of such staff discussions in preparing for joint military operations. Such discussions between the British and the French before World War I were an important factor in the successful stemming of the German attack. Under the League system, the French persistently stressed the need of such advance planning to assure the effectiveness of whatever joint military action might be taken under the Covenant. Consultations between the military leaders of the United States and the United Kingdom in World War II took the advanced form of a Combined Chiefs-of-Staff organization, upon which, as has already been pointed out, the Charter provision is largely modelled, and the effectiveness of this staff cooperation was a very important factor in the successful conduct of the war. In fact, without it victory might not have been possible.

The first meeting of the Military Staff Committee was held in London on February 4, 1946. In pursuance of the Security Council's directive of February 16, 1946, it made a study of Article 43 from the military point of view and submitted its report on April 30, 1947.[105]

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

The question of membership was discussed at some length at the United Nations Conference. Considerable pressure was exercised by the smaller powers to secure wider representation upon the Committee. This pressure was successfully resisted. The arguments which appear to have been conclusive, apart from the firm stand taken by the delegates of the Sponsoring Governments and France, were that the Committee must, by the very nature of its functions, be a small compact committee, and that the second sentence of the paragraph adequately safeguards the interests of any state which might have a special reason for representation. In the course of Committee discussion, while an amendment that the Military Staff Committee should be composed of the Chiefs of Staff of all the members of the Security Council was under consideration, numerous explanations were given of the plan proposed by the Sponsoring Governments. These explanations were as follows:

[105] UN, Doc. S/336 For summary and comment, see *supra*, p. 282.

1. Paragraph 9 (Article 47, paragraph 2 of the Charter) provided that members not permanently represented should be asked to join when appropriate.

2. The initiative for expanding the membership to meet a particular situation should be left to the Military Staff Committee; otherwise it might become as large as the Council itself.

3. If the forces of a country were used there was no question but that the military staff of that country would be consulted.

4. Because of the complex duties of the Committee, it was essential that its composition should be limited to the permanent Council members in order to avoid a committee with constantly changing membership.

5. Allied military machinery in this war was of the same type as that proposed in paragraph 9.

6. As a Chief of Staff, the Military Staff Committee's function would be to make decisions, and therefore, it should be a small group. The function of command was a different matter. No committee, large or small, could exercise command; and the selection of individuals for this purpose would be decided upon later.

7. The limitation of membership on the Military Staff Committee to the permanent members of the Council did not conflict with the pending Canadian amendment regarding representation of non-members in Council decisions.[106]

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

This reaffirms, somewhat more specifically, one of the functions conferred under paragraph 1. It makes it clear, as stated in the commen above, that the function of the Military Staff Committee in connection with the employment and command of forces being used under the terms of Articles 39 and 42 is that of strategic direction instead of tactical command.

The Military Staff Committee has considered questions related to command and in its report of April 30, 1947, to the Security Council, made recommendations which, with one exception, were unanimous.[107]

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

[106] UNCIO, *Summary Report of Fourteenth Meeting of Committee III/3, May 26, 1945*, Doc. 628, III/3/33, p. 3–4 (*Documents*, XII, p. 381–2).

[107] UN, Doc. S/336, p. 24–5. For summary and comment, see *supra*, p. 282

This paragraph was inserted at San Francisco with a view to giving opportunities for representation to the small states and, more particularly, with a view to tying up regional arrangements recognized in Chapter VIII with global security arrangements. Before setting up such regional subcommittees, the Military Staff Committee, acting under the authorization of the Security Council, must consult with appropriate regional agencies. However, the Military Staff Committee will have the final decision in each case. These regional subcommittees will conceivably have varied functions. They will assist the Military Staff Committee in the performance of its functions within regional areas. In addition, they may perform in relation to regional agencies for the maintenance of peace and security the functions that the Military Staff Committee performs under Article 47 of the Security Council. The subcommittees can thus make a useful contribution to the proper integration of the plans and activities of the regional agencies and the Security Council.

The Military Staff Committee's report of April 30, 1947, contains no mention of this paragraph. No action has thus far been taken to implement it. Such advisory military committees of a regional character as have thus far been established have been set up by the parties to the regional security arrangements. Thus at the first meeting of the Permanent Consultative Council under the Brussels Treaty of March 17, 1948, it was decided to establish a permanent military committee under the authority of the Council.[108] Article 44 of the Charter of the Organization of American States, adopted at Bogota, provides for the establishment of an Advisory Defense Committee "to advise the organ of consultation on problems of military cooperation that arise in connection with the application of existing special treaties on the subject of collective security."[109] These bodies are not subject to the authority of the Military Staff Committee of the United Nations.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

This Article adds to the flexibility of the enforcement arrangements set up under this Chapter and to the discretionary authority vested in the Security Council in performing its functions. Recognizing the

[108] Department of State, *Bulletin*, XVIII, p. 602.
[109] *Ibid.*, p. 669.

fact that certain Members of the United Nations may be more advantageously situated to take specific action in a particular contingency than others, the paragraph empowers the Security Council to determine whether in a particular case action shall be taken by all the Members of the United Nations or by some of them. Thus in a case where an act of aggression has been committed by a western European state the Security Council might direct that the necessary action be taken by the western European neighbors of that state. Furthermore, it seems to be implied in this paragraph that the Security Council may not only designate certain Members to take action to the exclusion of other Members, but that it may also direct certain Members to take certain kinds of action while other Members are directed to take other appropriate kinds of action. Thus Members in close proximity to the violation of the peace may be required to take military action while those further removed may be required to apply political and economic measures only. This interpretation is supported by the conclusion of the Military Staff Committee that contributions by Members, other than the permanent members of the Security Council, made available by agreement under Article 43, need not necessarily take the form of armed forces, and that their obligations may be fulfilled by furnishing facilities and other assistance.[110]

The question has been raised as to whether in the special agreement or agreements under Article 43 a Member may insist that its armed forces be used only within certain areas.[111] Such a provision might greatly weaken the ability of the Security Council to take effective action under Articles 39, 41, and 42. Furthermore, the phraseology of the paragraph under consideration suggests that the Security Council is to have a wide latitude of decision in determining what Members are to participate in a particular enforcement action. If by agreement in advance Members are permitted to limit the areas in which they may be called upon to participate, the purpose of this Article can be completely nullified.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

One of the problems arising from the fact that international organization is being developed on a functional basis is that of adequate coordination of the activities of the numerous specialized agencies. The

[110] UN, Doc. S/336, p. 10.

[111] See testimony of Mr. John Foster Dulles before Senate Foreign Relations Committee, United States Senate, *Hearings . . . on The Charter of the United Nations . . . July 2, 1945*, p. 653.

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[108] Department of State, *Bulletin*, XVIII, p. 602.
[109] *Ibid.*, p. 669.

In the course of the discussion of this principle in Committee III/3 of the United Nations Conference, concern was expressed by the Delegation of the Union of South Africa with regard to the sharing of expenses of enforcement action. Although accepting the view that no specific provision should be put into the Charter covering this point, the Committee expressed the desire that the Organization should in the future seek to promote a system aiming at the "fairest possible distribution" of expenses incurred as a result of enforcement action.[114]

The question of mutual assistance has been considered by the Military Staff Committee in connection with their examination of the problem of logistical support of armed forces, but no agreement was reached on the applicable principle.[115]

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

The Article provides a specific recourse for any state, whether a Member of the United Nations or not, which finds itself confronted with "special economic problems" as the result of measures taken by the Security Council under Chapter VII. The severance of economic and financial relations with a particular state under Article 41, for instance, may cause certain other states disproportionate loss due to their geographical position or the special characteristics of their trade and financial relations with the state in question. The situation of Yugoslavia during the application of sanctions against Italy in 1935-1936 was a good illustration. Article 49 obligates Members to assist any Member so situated. Article 50 provides a procedure by which a Member so situated may bring its problem to the attention of the Security Council which, if it finds that there is need for special measures, may call upon the Economic and Social Council for assistance under Article 65 and may decide what measures are to be taken by Members under the terms of Article 49. In addition, states not Members of the United Nations that have problems of a like nature have the right to consult with the Security Council, but Members do not under the Charter assume the obligation to give them assistance.

[114] UNCIO, *Report of Mr. Paul-Boncour, Rapporteur, on Chapter VIII, Section B*, Doc. 881, III/3/46, p. 12 (*Documents*, XII, p 513).
[115] UN, Doc. S/336, p. 19, 62–5

Article 51 [115a]

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Background of Article. This Article, although included in the Chapter dealing with enforcement action by the United Nations, was adopted at the United Nations Conference as a part of a plan for harmonizing the operation of regional arrangements and agencies with that of the general provisions of the Charter. More specifically it was the outcome of careful study of the best means of fitting the system of the American Republics into the United Nations, with special reference to obligations which had been assumed under the Act of Chapultepec,[116] concluded at the Mexico City Conference, February 21–March 8, 1945.

In the Dumbarton Oaks Proposals it was provided that the Security Council should, where appropriate, utilize regional arrangements or agencies for enforcement action, but that no enforcement action was to be taken under such regional arrangements or by regional agencies without the authorization of the Security Council. As has already been explained, no agreement was reached at Dumbarton Oaks with regard to the vote necessary to a decision by the Security Council giving such authorization, and consequently the exact manner in which this provision of the original Proposals would operate could not be clearly envisaged although there was a general expectation that unanimity, at least of the Great Powers, would be required. By the Yalta formula which filled this particular gap in the original Dumbarton Oaks Proposals it was provided that a decision of the Security Council giving authorization for the taking of enforcement action

[115a] See Kunz, Josef L., "Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations," *American Journal of International Law*, XLI, p. 872–9

[116] *Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, Mexico City, Mexico, February 21–March 8, 1945*, Department of State, Pub. 2497, Conference Series 85, p. 72–5.

under regional arrangements should be taken by the affirmative vote of seven members, including all of the permanent members of the Council. Thus it would be possible for any permanent member of the Security Council not a party to a regional arrangement to veto any proposal for the taking of enforcement action under it.

Due to the progress that had been made in the development of an Inter-American System for the maintenance of peace and security,[117] a great deal of sentiment existed in the Western Hemisphere in favor of allowing a large measure of autonomy to the operation of such regional arrangements. This Inter-American system was based on a series of agreements which had been reached at Inter-American conferences, notably the Conventions of the Inter-American Conference for the Maintenance of Peace of 1936,[118] the Declaration of Lima of 1938,[119] and Declaration XV of the Second Meeting of Ministers of Foreign Affairs of 1940.[120] The basic principles of this system received their fullest development and expression in the Act of Chapultepec, adopted at the Mexico City Conference of February–March, 1945.[121]

By the provisions of this Act the American Republics agreed that every attack by a state, whether a state of the Western Hemisphere or not, against the integrity or the inviolability of the territory, or against the sovereignty or the political independence of an American state should be considered an act of aggression, that consultation should take place in any case where an act of aggression of this nature had occurred or where there was reason to believe that it was being prepared; and that for the duration of the war and until a permanent treaty had been concluded, the parties to this Declaration should utilize such procedures as might be found necessary, including the use of armed force, to deal with such acts of aggression. It was also stated, as a recommendation, that for the purpose of meeting threats or acts of aggression against any American republic following the establishment of peace, the Governments of the American Republics should consider the conclusion of a treaty "establishing procedures whereby such threats or acts may be met by the use, by all or some of the signatories of said treaty, of any one or more of the following measures: recall of chiefs of diplomatic missions; breaking of diplomatic

[117] See, on the general topic, Ball, Margaret, *The Problem of Inter American Organization*, Stanford, 1944 and Humphrey, John P., *The Inter-American System*, Toronto, 1942

[118] *Report of the Delegation of the United States of America to the Inter-American Conference for the Maintenance of Peace, Buenos Aires, Argentina, December 1–23, 1936*, Department of State, Pub 1088, Conference Series 33, p 116

[119] *Documents on American Foreign Relations, I, 1938–1939*, p 44

[120] *Ibid., III, 1940–1941*, p. 76

[121] *Report of the Delegation of the United States of America to the Inter-American Conference on Problems of War and Peace, op. cit.*, p 72

relations; breaking of consular relations; breaking of postal, telegraphic, telephonic, radio-telephonic relations; interruption of economic, commercial and financial relations; use of armed force to prevent or repel aggression."[122] The announcement of the adoption of this Act by the American Republics brought to the fore the issue of how such a regional system was to be fitted into a general global system with sufficient assurance that the operation of the regional system would not be thwarted at every turn by states outside the Hemisphere.

Consideration of Problem of Regionalism at San Francisco. At the United Nations Conference various amendments were proposed with a view to making it possible for such a regional system for the maintenance of peace and security to enjoy autonomy within the global system. These proposals, advanced principally though by no means entirely by the delegations of the Latin American Republics, followed two lines. One was to secure a modification of the Dumbarton Oaks Proposals which would permit regional arrangements to function freely within certain limits without control by the global organization. The other was to seek changes in the Dumbarton Oaks Proposals, particularly as regards the voting procedure of the Council, which would make it possible for Council authorization for regional action to be forthcoming by something more closely approximating a straight majority vote of that body. These various proposals were referred by Committee III/4 to a subcommittee and in the course of the deliberations of this subcommittee draft texts were evolved which gave satisfaction to the Latin American Republics and to others desiring a greater autonomy for regional arrangements. These, of which one subsequently became Article 51, were approved by the Committee[123] and were later included in the Charter.

The Right of Self-Defense. The Article safeguards the right of self-defense which is referred to as being "inherent". By so doing it follows a long line of precedents where in connection with international agreements of this kind the right of self-defense has been tacitly or explicitly reserved. In connection with the Kellogg-Briand Pact of 1928, which contained no explicit reservation of the right of self-defense, the American Secretary of State, Mr. Kellogg, observed that the right was inherent and that there was no necessity of stating it expressly.[124]

The problem presented is a difficult one since any attempt to main-

[122] *Ibid.*, p. 75.

[123] UNCIO, *Report of Dr. V. K. Wellington Koo, Rapporteur of Committee III/4, to Commission III*, Doc. 904, III/4/13(1), p. 3 (*Documents*, XII, p. 739).

[124] Identic note of the Government of the United States to the Governments of Australia, Belgium, etc., and accompanying Draft Multilateral Treaty for the Renunciation of War, June 23, 1928, in *General Pact for Renunciation of War, Text of the Pact as Signed, Notes and Other Papers*, Washington, 1928

tain international peace and security against disturbance by the unilateral action of one state of necessity involves restricting the right of any state to resort to the use of force. Since states commonly justify the resort to the use of armed force on the ground of self-defense, it becomes clear that as a practical matter the limitation of the right of any state to use force involves a definition of the permissive limits of self-defense. One approach to the problem is to seek to define specifically those acts which are regarded as constituting the unjustifiable use of force, or as it is more commonly termed, "aggression". As we have seen,[124a] the architects of the Charter deliberately decided not to undertake a definition of aggression, leaving it to the Security Council to decide in each case whether a particular act constitutes a threat to the peace or a violation of the peace. The other possible approach is to define the circumstances under which the right of self-defense may be exercised. This Article 51 does. It states that nothing in the Charter impairs the right of self-defense "if any armed attack occurs against a Member of the United Nations", and "until the Security Council has taken the measures necessary to maintain international peace and security." Presumably it is the right of each Member or of Members acting jointly to decide when, and for how long, conditions exist which justify the exercise of this right. To this extent, the Article clearly opens the way for action which may be regarded by other Members as inconsistent with the purposes and principles of the Organization.

Article 51 applies only in case of "an armed attack" against a Member. It is of possible significance that the Charter was written before the successful use of the atomic bomb. The possibility of atomic warfare has conceivably eliminated the possibility of effective defense after the initial overt attack. The query naturally arises whether under conditions of atomic warfare the right of self-defense has any value if limited to cases of armed attack. In its first report to the Security Council, the United Nations Atomic Energy Commission observed:

> In consideration of the problem of violation of the terms of the treaty or convention, it should also be borne in mind that a violation might be of so grave a character as to give rise to the inherent right of self-defense recognized in Article 51 of the Charter of the United Nations.[125]

If Article 51 were clearly open to this interpretation, there might not be much practical advantage in making it possible for the Security Council to take punitive action against a violator of the atomic energy

[124a] See comment on Article 39, *supra*, p. 263.
[125] UN, Doc. AEC/18/Rev. 1, p. 24.

convention without the concurrence of all the permanent members. Collective action could still be taken by Members so desiring under Article 51. The fact that there is some question as to whether all serious violations of such an atomic energy convention could properly be regarded as cases of "armed attack" is one reason why there has been such strong insistence upon the elimination of the "veto" in the above situation.

The provisions of Article 51 do not necessarily exclude the right of self-defense in situations not covered by this Article. If the right of self-defense is inherent as has been claimed in the past, then each Member retains the right subject only to such limitations as are contained in the Charter. By the terms of Article 2(4), Members undertake to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[126] Does this mean that if the United Nations, in the opinion of one or more Members, fails to achieve the Purposes enumerated in Article 1, that Member or those Members may by individual or collective action under Article 51 involving the use of force, seek to implement these purposes? That would seem to open a rather large door for unilateral action with no adequate assurance that the alleged right would not be seriously abused.

The Right of "Collective Self-Defense". The Article goes beyond safeguarding the right of individual self-defense against armed attack. It specifies that this right may be exercised collectively and thereby provides the basis for action such as was envisaged under the Act of Chapultepec and for which, since the adoption of the Charter, provision has been made in the Inter-American Treaty of Reciprocal Assistance of September 2, 1947, and the Brussels Five-Power Pact of March 17, 1948. It is not, of course, necessary that the action be taken by states that are geographically contiguous. Such mutual assistance agreements as the Treaty of Alliance between the Soviet Union and the United Kingdom of May 26, 1942 and the Treaty of Alliance and Mutual Assistance between the Soviet Union and France of December 10, 1944, could easily be brought within the purpose and phraseology of Article 51, but that of course is not necessary since they are expressly permitted under Articles 53 and 107.[127] Nor of course is it necessary that the agreement under which measures of collective defense are to be taken should be restricted to the original signatories. Adherence to the agreement may be declared open to all Members of the United Nations with the result that, if and when accepted by all

[126] See comment, *supra*, p. 103.
[127] See *infra*, p. 315 and 533.

Members of the United Nations, it would serve the purpose of an amendment to the Charter.[128]

The collective action under Article 51 need not be under the terms of a formal agreement. There is nothing in the Charter or in the record of discussions at San Francisco that excludes the possibility of action by two or more states, without any definite commitment in advance, on the basis of common interest in meeting successfully a common danger. In fact, in thus safeguarding the right of collective self-defense the Article provides the opportunity for Members of the United Nations to act together in self-defense if any armed attack occurs and if the Security Council fails to take the measures necessary to maintain or restore peace. Such failure may result from failure of the permanent members of the Security Council to agree. During the consideration of the Greek question by the Security Council, following the failure of the Council to adopt the recommendations of its Commission of Investigation, the deputy representative of the United States expressed the view that "the continued failure . . . of the Security Council to take effective action in the case because of the Soviet veto cannot . . . preclude individual or collective action by states willing to act, so long as they act in accordance with the general purposes and principles of the United Nations." "This is particularly true," he continued, "when such individual or collective action is in support of a policy or course of action which has the clear approval of a clear preponderance of the permanent and non-permanent members of the Security Council".[129] If the validity of this conclusion is to be questioned, it is not because it invokes the right of collective action but rather because it appears to justify the exercise of this right in a situation where there may not be actual "armed attack".

The Article as a Safeguard of the Monroe Doctrine. From the point of view of the United States, this Article has an added importance in that it provides at least a partial basis for the continued application of a traditional policy of that country, namely, the Monroe Doctrine. It is probably open to some question whether under this Article the United States enjoys the full freedom of action to implement this policy which it would enjoy were it not a Member of the United Nations. The Monroe Doctrine originally laid down two principles: one was to the effect that the United States would look with disfavor upon any attempt on the part of European, later interpreted to include all non-American, countries to extend their political systems to the Western

[128] See, for example, proposal by Mr. Hamilton Fish Armstrong of a supplementary protocol based on Article 51, *The Calculated Risk*, New York, 1947, p. 56–60 and "Coalition for Peace," *Foreign Affairs*, XXVII, p. 1–16.

[129] UN, Doc. S/P.V. 180, p 56–65.

Hemisphere; the second placed any attempt on the part of a non-American state to colonize further the Western Hemisphere under a similar ban of disfavor.[130] In recent years the United States has indicated a willingness to place the enforcement of these principles, in the first instance, on a collective basis. By the Declaration of Lima of 1938[131] all the American Republics announced their common concern and their determination to make effective their solidarity in opposing any threat to the peace, security or territorial integrity of any American Republic. At Havana in 1940 the American Republics stated that any attempt on the part of a non-American state against the integrity or the inviolability or against the territorial, the social or the political independence of any American state would be considered an act of aggression against all American states.[132] The provisions of the Act of Chapultepec have already been referred to, and the provisions of the Inter-American Treaty of Mutual Assistance are summarized below.

These agreements, however, have not in effect touched the original right of the United States to take action in case cooperative measures fail of their desired effect. The question which arises under Article 51 is whether by the terms of this Article the United States reserves the right to take necessary measures to resist acts falling into the two categories above referred to in the exercise of the inherent right of self-defense which the Article clearly recognizes within defined limits. The view has been expressed that there is nothing in the Charter which limits our right of self-defense or "that impairs the Monroe Doctrine as a doctrine which has been proclaimed, sustained, and recognized by the world as a doctrine of self-defense"[133] It is possible to accept this interpretation if it means that in case the United Nations fails in its efforts to maintain peace and security, the United States would have the right to take necessary action in self-defense. It would, however, seem clear that by becoming a Member of the United Nations and accepting the commitments of the Charter, even with the reservation contained in Article 51, the United States will not be free to take certain measures in the exercise of self-defense which we have felt free to take in the past. It certainly can be argued that the United States is obligated under the terms of Article 2(4) to refrain from the threat or use of force in meeting any alleged violation of the Doctrine unless this takes the form of "an armed at-

[130] See Perkins, Dexter, *Hands Off*, Boston, 1941 and Clark, J R, *Memorandum on the Monroe Doctrine*, Washington, 1928.

[131] *Documents on American Foreign Relations, I, 1938–1939*, p 44.

[132] *Ibid., III, 1940–1941*, p. 76.

[133] See testimony of Mr. John Foster Dulles, United States Senate, *Hearings . . . , on The Charter of the United Nations , July 2, 1945*, p. 650–1.

tack". According to this interpretation of the Charter, the United States would be obligated, in dealing with threats to or violations of the Doctrine not involving "an armed attack", to use the procedures of the United Nations, and would acquire freedom of action only in case of the demonstrated failure of the United Nations to maintain international peace and security. Of course any permanent member of the Security Council can, if it wishes to take a non-cooperative attitude, assure the failure of that body in the performance of its functions.

Effect on Authority of Security Council. To what extent does this Article limit the power and responsibility of the Security Council? It is to be borne in mind that under the regional provisions of the Dumbarton Oaks Proposals no enforcement action under regional arrangements was to be taken without the Security Council's authorization. Article 51 clearly opens the way to the taking of such measures by individual states or groups of states acting in agreement where the individual state or the members of a group are engaged in resisting an armed attack. This power of independent action exists until the Security Council has taken the measures necessary to maintain international peace and security. In view of the fact that a decision of the Security Council requires the concurrence of all the permanent members of the Council, it thus clearly becomes possible for any permanent member of the Security Council to postpone the taking of such measures if it seems in its interest to do so. The theory of the Article would appear to be that the Security Council will take measures which after a time will supersede those taken in individual or collective self-defense. To maintain the principle of Security Council control and supervision, provision is made that measures taken by individual Members in the exercise of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter. It becomes clear, then, that whether or not this Article opens the way for wholly independent and autonomous action by Members or groups of Members, without effective control by the organ of the United Nations made responsible for the maintenance of international peace and security, will depend in practice upon the good faith shown by Members of the United Nations and their ability to cooperate effectively.

Mutual Assistance Agreements under Article 51. Two mutual assistance agreements have thus far been made under Article 51, the Inter-American Treaty of Reciprocal Assistance of September 2, 1947 and the Brussels Five-Power Treaty of March 17, 1948. Both agreements are in general terms and are expressly brought within

the limits of Article 51. Both agreements are between states having common security interests based on geographical and historical factors. The second of these agreements is, however, open to states outside the original geographical area and is not expressly conceived to the same extent as the first in regional terms.

The Inter-American Treaty of Reciprocal Assistance [134] was drafted at the Inter-American Conference for the Maintenance of Peace and Security held near Rio de Janeiro, Brazil, August 15–September 2, 1947. It is an expression of the principle of inter-American solidarity and cooperation recognized and given concrete application in numerous previous conferences and agreements, notably the Act of Chapultepec of 1945 which specifically anticipated this Treaty. The Treaty is open to all "American states".[135] It distinguishes between "armed attack" and other acts or threats of aggression. It furthermore makes a distinction between aggression, including "armed attack", by an American state against another American state, and aggression by a non-American state against an American state.

An armed attack by a non-American state against an American state is considered "an attack against all the American States" and, consequently, each "undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense" recognized by Article 51.[136] On the request of the state or states directly attacked and until the decision of the Organ of Consultation provided for in the Charter, each party "may determine the immediate measures which it may individually take" in fulfillment of the above obligation.[137] These provisions are made applicable only to cases of armed attack which occur "within the region described in Article 4 or within the territory of an American state." [138] The region as delimited extends from the North Pole to the South Pole and includes substantial parts of the high seas adjacent to the American continents. Other provisions of the Treaty make it clear, however, that this geographical limitation does not impair the right of self-defense against armed attack outside this region.[139] The Organ of Consultation may decide

[134] See Department of State, *Bulletin*, XVII, p. 565–7. For comment on Treaty, see Aranha Oswaldo, "Regional Systems and the Future of U. N.," *Foreign Affairs*, XXVI, p. 415–20; Allen, Ward P., "The Inter-American Treaty of Reciprocal Assistance," Department of State, *Bulletin*, XVII, p. 983–7; and Senate Executive Report No. 11, 80th Cong., 1st sess. Many provisions of the treaty were subsequently explicitly incorporated into the Charter of the Organization of American States, drafted and adopted at Bogota. Department of State, *Bulletin*, XVIII, p. 667–73.

[135] Article 23.

[136] Article 3(1).

[137] Article 3(2).

[138] Article 3(3).

[139] Article 10.

on appropriate measures to be taken ranging from the recall of the chiefs of diplomatic missions to the use of armed forces.[140] The provisions of the Treaty in this respect represent a combination of the measures specified in Articles 41 and 42 of the Charter and the measures listed in the Act of Chapultepec. A decision of the Organ of Consultation, taken by a two-thirds vote, is binding "except that no state shall be required to use armed force without its consent."[141] It is provided that measures of self-defense to meet an armed attack against an American state may only be taken until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.[142] Furthermore, the parties to the Treaty undertake immediately to send to the Security Council information concerning activities undertaken or in contemplation in the exercise of the right of self-defense under Article 51.

"If the inviolability or the integrity of the territory or the sovereignty or political independence of any American state should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America", it is provided that the Organ of Consultation shall meet immediately to agree on measures that must be taken "to assist the victim of aggression" in case of aggression, or "for the common defense and for the maintenance of peace and security of the Continent".[143] In this situation, there is immediate obligation resting on a party to take any action other than to consult, but the Organ of Consultation may decide upon measures which must be taken, and, except for the use of armed force, any party may be required to take measures without its specific agreement. The fact that a party to the treaty is not required to use armed force by decision of the Organ of Consultation avoids a possible conflict with provisions of the United Nations Charter, since the situation envisaged in Article 7 may very clearly fall short of "an armed attack". In case of conflict between two or more American States, the Treaty, "without prejudice to the right of self-defense" under the Charter, prescribes in the first instance measures intended to obtain a suspension of hostilities, the reestablishment of peace and the peaceful settlement of the conflict. Rejection of the pacifying action is to be taken into account in determining the aggressor and in the application of measures that the consultative meeting may agree upon.[144]

It is provided that the Treaty shall be registered with the Secretariat of the United Nations, that it shall remain in force indefinitely

[140] Article 8.
[141] Article 20.
[142] Article 3(4).
[143] Article 6.
[144] Article 7.

subject to the right of denunciation by any party, and that none of its provisions "shall be construed as impairing the rights and obligations" of parties under the Charter.

The Brussels Five-Power Treaty of March 17, 1948[145] differs in important respects from the Inter-American Treaty. It provides for cooperation in economic, social and cultural matters. Article 4 provides for united assistance under Article 51 of the Charter. It reads:

> If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the party so attacked all military and other aid and assistance in their power.

Measures taken under this Article are to be reported immediately to the Security Council and terminated as soon as the Security Council has taken measures necessary to maintain or restore international peace and security. The obligations of parties and the authority and responsibility of the Security Council under the terms of the Charter are expressly safeguarded. The Treaty provides for a Consultative Council to be so organized "as to be able to exercise its functions continuously." Express provision is made for consultations "with regard to the attitude to be adopted and the steps to be taken in the case of a renewal by Germany of an aggressive policy", thus bringing the agreement under Articles 53 and 107, as well as Article 51. Other states may be invited to accede to the Treaty by agreement of the parties. The Treaty is to remain in force for fifty years.

The Pact of the League of Arab States of March 22, 1945[146] was drafted before the United Nations Conference at San Francisco and consequently does not contain any express reference to Article 51. In so far as it is concerned with joint action by the members of the League in the face of armed attack it comes within the permissive limits of Article 51. Article 6 provides as follows:

> In case of aggression or threat of aggression by one state against a member state, the state which has been attacked or threatened with aggression may demand the immediate convocation of the Council.
>
> The Council shall by unanimous decision determine the measures necessary to repulse the aggression.

Unanimous decisions are binding upon all members of the League; majority decisions are binding upon those states which accept them.[147]

[145] Department of State, *Bulletin*, XVIII, p. 600–2.

[146] For text, see *ibid.*, XVI, p. 967–70. For explanatory comment, see *ibid.*, p. 963–6.

[147] Article 7.

While the Pact contains no express provision accepting the superiority of Charter commitments, the Arab States are Members of the United Nations and bound by the provisions of Article 103. The provisions of the Pact and of Article 51 of the Charter were invoked in justification of the use of armed force by the Arab States in Palestine.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

Reasons for Regional Arrangements. The express acceptance in these words of the principle of regionalism was apparently dictated by a number of considerations. In the first place, it recognizes the undoubted fact that national interest and national capacity to exercise power effectively are to an important extent determined, even in the era of air communications and travel, by geographical location and natural barriers. The policies of states must take these fundamental factors into account and it would likewise seem to be prudent to base any international system on the admitted fact that states are less interested in and less capable of influencing the course of events in some parts of the world than in others. In the second place, the fact of gradations of national interests has found expression in national policies. The Monroe Doctrine is a policy of the United States based on a recognition of its special concern with the affairs of the Western Hemisphere. The failure of the United States to join the League of Nations was in large part due to the belief that it was being called upon to assume commitments that far exceeded its interests in certain areas. Finally, in the historical evolution of international organization for purposes of peace and security, emphasis has been placed on co-operation between those similarly situated with respect to interests which are to be served by such arrangements. The treaties of alliance entered into before 1914 were limited to those who faced a common danger of attack. Under the Covenant of the League of Nations, regional arrangements were entered into such as the Little Entente, the Balkan Entente and the Locarno Agreements. Briand's proposal for European Union[1] was a more ambitious attempt along this line.

[1] *Documents Relating to the Organization of a System of European Federal Union*, League of Nations Document 1930. VII. 4.

While the Pact contains no of Charter commitments tended to be primarily concerned with the Nations and bound by Inter-American peace system and the League the Pact and of Arti re in operation at the time the United Nations of the use of arm t San Francisco.

and other considerations can be advanced in support
of regional arrangements in any global system for peace
cy, there are undoubtedly other considerations, likewise
historical experience, which point to the need for great
in admitting such arrangements into a global system. For one
g they have too often in the past been directed against particular
ates and have been the occasion for fear and suspicion instead of inspiring confidence and cooperation. Treaties of alliance were condemned by President Wilson as a weak reed upon which to base international peace and security. Furthermore, they tend to emphasize limited commitments, whereas modern war and the increasing interdependence of the modern world reduce the possibility of thinking realistically in such terms. Recent experience has shown how war spreads to engulf all nations. It therefore becomes increasingly true that peace is indivisible. These considerations, therefore, point to the need of keeping commitments general, while limiting the application of the regional principle to the practical operation of peace machinery or the strategic use of enforcement measures in dealing with a threat to the peace or a violation of the peace.

Certainly this problem of regionalism was one of the most important faced at San Francisco. The exact nature of the balance that was struck and the way that balance is applied in practice may determine the future success of the United Nations.

Meaning of "Regional Arrangements". The exact meaning of "regional arrangements or agencies" is not made clear although the qualifying words which follow and the place that these provisions had in the Dumbarton Oaks Proposals suggest that the regional arrangements or agencies referred to in Chapter VIII have to do with the matters covered by Chapters VI and VII of the Charter. In the course of the discussions at San Francisco a proposal was made by the Egyptian Delegation to introduce a definition of regional arrangements into this Chapter.[3] The amendment proposed read as follows:

There shall be considered as regional arrangements organizations of a permanent nature grouping in a given geographical area several countries which,

[2] Department of State, *Bulletin*, XVI, p. 968–70. See also, Rockefeller, Nelson, "The Inter-American System and the United Nations," *Proceedings of the Academy of Political Science*, XXII (January 1947), p. 12

[3] UNCIO, *Interim Report to Committee III/4 by Subcommittee III/4/A on the Amalgamation of Amendments*, Doc. 533, III/4/A/9, p. 3 (*Documents*, XII, p. 850)

reason of their proximity, community of interests or cultural, linguistic, torical or spiritual affinities, make themselves jointly responsible for the aceful settlement of any disputes which may arise between them and for e maintenance of peace and security in their region, as well as for the safe- uarding of their interests and the development of their economic and cul- ıral relations.

This amendment was considered by a subcommittee of Committee III/4 and by the Committee itself and was rejected on the ground that while it "clearly defined obvious legitimate and eligible factors for a regional arrangement" it probably failed to cover all the situations which might be covered by regional arrangements.[4] The phrase "regional arrangements" as used in this and other articles of the Charter obviously does have a wider scope than the Egyptian amendment would admit. In Article 53, as we shall see, it is made to apply to mutual assistance treaties entered into between states which are wholly lacking in geographical propinquity or in the other common interests enumerated in the Egyptian proposal.

The question of extending the provisions regarding regional arrangements to include regional arrangements with regard to economic and social matters was discussed in the United Nations Conference at San Francisco. The matter was not considered as coming within the competence of the Committee concerned with the drafting of the provisions of this Chapter.[5] The Committee on Economic and Social Cooperation (Committee II/3) decided against the regional approach to the matters with which it was concerned.[6] In practice, however, the regional principle has been applied to economic and social cooperation under the Charter. Examples are the regional economic commissions set up by the Economic and Social Council under Article 68,[7] Inter-American agreements for economic and social cooperation, provisions of the Brussels Five-Power Treaty of March 17, 1948 for economic and cultural cooperation,[8] and certain provisions of the Pact of the League of Arab States.

Regional Arrangements in Operation. The regional arrangements and agencies to which this Article refers include those which were in existence or in process of coming into being at the time the Charter

[4] UNCIO, *Summary Report of Fifth Meeting of Committee III/4, June 8, 1945,* Doc. 889, III/4/12, p. 1 (*Documents,* XII, p. 701).

[5] UNCIO, *Interim Report to Committee III/4 on the Work of Subcommittee III/4/A,* Doc. 335, III/4/A/5, p. 1 (*Documents,* XII, p. 833) and *Summary Report of Third Meeting of Committee III/4, May 15, 1945,* Doc. 363, III/4/7, p. 1 (*Documents,* XII, p. 673).

[6] UNCIO, *Summary Report of the Nineteenth Meeting of Committee II/3, June 4, 1945,* Doc. 780, II/3/53, p. 3 (*Documents,* X, p. 196).

[7] See *infra,* p. 388.

[8] Articles I–III.

entered into force as well as those which have subsequently be established. If we exclude bilateral arrangements directed primari and exclusively against the renewal of aggression by an enemy sta of World War II, referred to in Articles 53 and 107 of the Charte and include arrangements that are embodied in unwritten understand ings as well as written agreements, it is possible to establish at least five such arrangements as being in operation at the present time. These include the Inter-American System, the British Commonwealth of Nations, the League of Arab States, the close association of Western European states in various forms of common action, and the close association of Eastern European states.

The Inter-American System is based on a large number of agreements between the American Republics dealing with a wide range of political, legal, economic, social and cultural matters.[9] At the Bogota Conference of 1948, the Charter of the Organization of American States was adopted, consolidating various agreements that had been concluded between the American Republics.[10] Article 4 of the Charter gives certain aims which the Organization has "in order to fulfill its regional obligations under the Charter of the United Nations." It is specifically stated in Article 102 that "none of the provisions of the Charter shall be construed as impairing the rights and obligations of the member states under the Charter of the United Nations."

The British Commonwealth of Nations is the result of evolutionary development within the Empire. The relations between the members of the Commonwealth are determined by various understandings and agreements which find expression in such documents as the Report of the Inter-Imperial Relations Committee to the Imperial Conference of 1926.[11]

The League of Arab States is based on the Pact signed at Cairo, March 22, 1945, by representatives of Syria, Transjordan, Iraq, Saudi

[9] See Ball, Margaret, *The Problem of Inter American Organization*, Stanford, 1944 and Humphrey, John P., *The Inter-American System*, Toronto, 1942. See also, Masters, Ruth D, *Handbook of International Organizations in the Americas*, Washington, 1945, *International Agencies in Which the United States Participates*, Department of State, Pub. 2699, esp p. 17–24; and comment on Article 51, *supra*, p. 298.

[10] Department of State, *Bulletin*, XVIII, p. 666–73. For comment, see Sanders, William, "The Bogota Conference," *International Conciliation*, No. 442, p. 383–417, Fenwick, Charles G., "The Ninth International Conference of American States," *American Journal of International Law*, XLII, p. 553–67; Kunz, Josef L., "The Bogota Charter of the Organization of American States," *ibid*, p. 568–89; and Furniss, Edgar S., Jr., "Recent Changes in the Inter-American System," *International Organization*, II (1948), p. 455–68.

[11] See Stewart, R. B., *Treaty Relations of the British Commonwealth of Nations*, New York, 1929 and Royal Institute of International Affairs, *The British Empire*, New York, 1937.

bia, the Lebanese Republic, Egypt and Yemen.[12] Membership is n to other independent Arab states. The Pact provides for or-nized cooperation in a wide range of political, economic and ltural matters.

Special relationships between the states of Western Europe and be-ween the states of Eastern Europe have largely developed since the an Francisco Conference and as a by-product of the tension between East and West. The basis of Western European cooperation is the Treaty between the United Kingdom, Belgium, France, Luxembourg and the Netherlands, signed at Brussels, March 17, 1948 for economic, social and cultural collaboration and collective self-defense,[13] taken together with agreements entered into for carrying out the European Recovery Program initiated by the United States. The basis of Eastern European cooperation is the series of bilateral agreements, providing for mutual assistance in case of attack and defining economic relations, concluded by the Soviet Union and other Eastern European states,[13a] strengthened and coordinated by the agreement of Communist parties, announced on October 5, 1947, to establish a Communist Information Bureau (Cominform).

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

This paragraph was introduced at the United Nations Conference as a part of the compromise for fitting a system of regional agencies and arrangements into the general system. It is to be interpreted in relation to the provisions of Article 33. Under Article 33 the Members of the United Nations undertake in the first instance to seek a solution of any dispute whose continuance is likely to endanger the maintenance of international peace and security by peaceful means of their own choice. A number of such peaceful means are listed, including "res to regional agencies or arrangements." Under the provisions of ticle 33, however, no particular order of preference is indicated.

The provisions of the paragraph under consideration, ho h re-its au-

[12] Department of State, *Bulletin*, XVI, p. 967–70. See also, Khadduri, egional Arab League as a Regional Arrangement," *American Journal of Internati* n of the XL, p. 756–77.

[13] Great Britain, Cmd 7367, Miscellaneous No. 2 (1948). See also, ny enemy of State, *Bulletin*, XVIII, p. 600–2. r pursuant

[13a] See "The Soviet Alliance System, 1942–1948," Department of renewal of *ments and State Papers*, I, p 219–49.

specify that Members of the United Nations entering into such arrangements or constituting such agencies, "shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council." It thus gives priority to "resort to regional agencies or arrangements" so far as "local disputes" are concerned. The term "local disputes" is apparently to be interpreted as referring to disputes which exclusively involve states which are parties to such regional arrangements.

By Article 2 of the Inter-American Treaty of Mutual Assistance, signed at Rio de Janeiro, September 2, 1947, the parties undertook "to submit every controversy which may arise between them to methods of peaceful settlement and to endeavor to settle any such controversy among themselves by means of the procedures in force in the Inter-American System before referring it to the General Assembly or the Security Council of the United Nations." Article 20 of the Charter of the Organization of American States repeats the substance of this provision. Article 5 of the Pact of the League of Arab States provides for the arbitration of disputes which do not concern a state's "independence, sovereignty, or territorial integrity" by the Council of the League. The parties to the Brussels Five-Power Treaty agree to settle all disputes falling within the scope of Article 35(2) of the Statute of the International Court of Justice by reference to it. They undertake to submit other disputes to conciliation, but no special procedures are provided.[14]

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

This paragraph obligates the Security Council to encourage the pacific settlement of local disputes by such regional agencies as have been agreed to or set up by the parties. It specifies further that the Security Council is to do this either by encouraging the parties to use such procedures or by direct reference of the disputes to regional agencies. This idea of reference of disputes by the Security Council to regional agencies seems to be a new one, not wholly in accord with the procedures laid down in Chapter VI of the Charter. Under the Articles of Charter VI the Security Council has only to recommend directly to the parties procedures to be followed for the settlement of their disputes, or the actual terms of settlement.

[10] See Stewart, "The Bogotá Conference," *American Bar Association Journal*, New York, 1948, p. 29; Williamson, "The Bogotá Conference," *American Bar Association Journal*, New York, 1948, p. 417; Fenwick, "The Bogotá Conference," *American Political Science Review*, New York, 1948, p. 284; Furniss, Editorial Comment, "Pacific Settlement of Disputes in the Western Hemisphere," *American Political Science Review*, New York, 1948, p. 1111; Fenwick, "The Inter-American Regional System," *American Journal of International Law*, New York, 1949, p. 1; Fenwick, "The Bogotá Charter," *American Journal of International Law*, New York, 1949, p. 92; Furniss, Editorial Comment, "The Bogotá Charter," *American Journal of International Law*, New York, 1949, p. 323; Fenwick, "The Bogotá Charter," *American Journal of International Law*, New York, 1949, p. 559

by ment. It is, therefore, difficult to see how the Security Council can his tually refer a dispute to a regional agency except upon the agree- pe ent of the parties concerned. What is apparently meant is that when th he Security Council has before it a local dispute, which has been b alled to its attention under the provisions of Article 35, it is to refer the matter to the appropriate regional agency, if such exists, on the basis of the undertaking into which the parties have entered under paragraph 2, for such action as the agency in question is empowered to take under the agreement establishing it. See also the provisions of Article 36(2) and (3), and comment.

4. This Article in no way impairs the application of Articles 34 and 35.

Under this Article the power of the Security Council to investigate a dispute either upon its own initiative or upon the initiative of a state, whether a Member of the United Nations or not, for the purpose of determining whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security, is safeguarded. The absence of any reference to Articles 36 and 37 raises the question whether the provisions of this Article are intended to exclude any intervention by the Security Council for the purpose of recommending a procedure for settlement or for the purpose of recommending terms of settlement. The over-all responsibility placed upon the Security Council under Article 24 for the maintenance of international peace and security, taken together with the specific provisions of Articles 36 and 37, would seem to warrant the conclusion that under Article 52 there is no intention to deny to the Security Council the power to exercise its normal functions, if it becomes clear that the dispute is not being settled by regional arrangements or by regional agencies, and that there is a situation in which the maintenance of international peace and security is actually endangered.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of

aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

The General Principle. The first sentence of this paragraph, taken together with the second sentence down to the excepting clause, lays down the general principle that the Security Council shall, where it considers such action appropriate, utilize regional arrangements and agencies for enforcement action under Chapter VII but no enforcement action shall be taken under such regional arrangements or by such regional agencies without the authorization of the Security Council. Such authorization, by virtue of the provisions of Article 27(3), can only be given by a vote of the Security Council concurred in by at least seven members, including all of the permanent members. As we have seen, this would enable a permanent member of the Security Council outside the area where the regional arrangement applies and not a party to the regional arrangement, to prevent action from being taken under the arrangement even though all other members of the Security Council might be in favor. The provisions of Article 51 provide one avenue of escape from this possible situation as well as from any delays that might occur in connection with normal Council action.[15] The provisions of this paragraph, beginning with the words "with the exception of", indicate one other condition under which the general principle is not to apply.

Exception of Measures Taken Against Enemy State. Article 107 is one of the Articles dealing with transitional security arrangements and, by its terms, action in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of the war by the governments having responsibility for such action under Article 106, is declared to be unaffected by and permissible under the present Charter.[16]

The use of the term "regional arrangements" does not seem too appropriate here since the arrangements to which reference is clearly made may be regarded as regional only in the sense that they are limited as to parties and are directed against a particular state. The parties to the arrangement may be far removed in any geographical sense. The arrangements here referred to include the Treaty of Alliance between the Soviet Union and the United Kingdom, signed at London on May 26, 1942,[17] the Agreement of Friendship and Mutual Assistance between the Soviet Union and the Czechoslovak Repub-

[15] See *supra*, p. 297.
[16] See *infra*, p 533.
[17] *Documents on American Foreign Relations, IV, 1941–1942*, p 254.

ment. It is, therefore, difficult to see how the Security Council can actually refer a dispute to a regional agency except upon the agreement of the parties concerned. What is apparently meant is that when the Security Council has before it a local dispute, which has been called to its attention under the provisions of Article 35, it is to refer the matter to the appropriate regional agency, if such exists, on the basis of the undertaking into which the parties have entered under paragraph 2, for such action as the agency in question is empowered to take under the agreement establishing it. See also the provisions of Article 36(2) and (3), and comment.

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of treaties of alliance, should be allowed to operate without effective control by the Security Council.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

This paragraph repeats and makes applicable to paragraph 1 the definition which is to be found in Article 107.[24]

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

This Article was taken over intact from the Dumbarton Oaks Proposals. It provides that the Security Council shall be kept informed with regard to the activities undertaken or in contemplation under the regional arrangements or by regional agencies referred to in Article 52. It places a definite obligation upon Members and upon regional agencies. Such a provision would seem to be necessary to an effective control by the Security Council of the regional arrangements and agencies here referred to.

Article 5 of the Inter-American Treaty of Reciprocal Assistance of September 2, 1947 and Article 5 of the Brussels Five-Power Treaty of March 18, 1948 provide for keeping the Security Council informed of measures taken under the regional agreement in question.

[24] See *infra*, p. 533.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Relation of Economic and Social to Political Provisions of Charter. A question of basic importance is whether or not an organization established primarily for the maintenance of international peace and security should be limited to this function to the exclusion of other functions having to do with the promotion of economic and social well-being and respect for human rights. The decision embodied in the Dumbarton Oaks Proposals was to make the proposed international organization general, not only from the point of view of its membership but also from the point of view of its functions. It was agreed that any organization, established *primarily* for the purpose of maintaining international peace and security, must concern itself with the establishment of those conditions – economic, social and intellectual – which are necessary to the existence of a viable peace. In the absence of such conditions peace and security become precarious things, maintained only by the force which those possessing a selfish interest in the preservation of the *status quo* may be prepared to use.

It is significant that in the setting up of the League system at the conclusion of World War I a similar question arose and was answered in like manner. Part XIII of the Treaty of Versailles, the Constitution of the International Labor Organization, expressly asserted the

dependence of international peace on social justice and provided for organized international cooperation for the improvement of the conditions of labor. The Preamble and Article 23 of the Covenant recognized the need of cooperative action along these lines as part of any effective program for maintaining peace, and provided the basis for the achievements of the League in the economic, social and humanitarian fields which proved in the long run to be the most valuable part of the League's work.[1]

The Preamble, Articles 1 and 13, and Chapters IX and X of the Charter give detailed and explicit expression to this basic idea of the interdependence of international peace and security and the achievement of conditions of economic and social well-being and human freedom. In the Article now under consideration this interrelation among the objectives of the Organization is emphasized.

Scope of Organization's Authority. The Article uses the word "promote" whereas the Dumbarton Oaks Proposals[2] employed a somewhat more cautious phraseology, using the word "promote" in connection with "respect for fundamental rights and freedoms" but otherwise using the words "facilitate solutions of international . . . problems." The discussions at the United Nations Conference made it clear that there were two dominant interests which were sometimes in conflict. On the one hand, there was a general desire to make the United Nations an effective agency for achieving international cooperative action in the attainment of declared purposes. On the other hand, there were some delegations which were obviously concerned lest the words used would provide the basis for intervention by the Organization in affairs regarded by them as being essentially within the domestic jurisdiction of a state.

The statement of purpose contained in Chapter IX, Section A, paragraph 1, of the Dumbarton Oaks Proposals was substantially revised at San Francisco with the result that some delegations feared that the basis was provided for a dangerous extension of the power of the United Nations. To remove any ground for believing that this revised statement would permit interference in the domestic affairs of any Member, the "domestic jurisdiction" provision was transferred to its present place in the Charter where it becomes a limitation on all or-

[1] See League of Nations Secretariat, *Ten Years of World Cooperation*, Geneva, 1930, Myers, Denys P., *Handbook of the League of Nations*, Boston, 1935, p.135–200; *Studies in the Administration of International Law and Administration*, published by the Carnegie Endowment for International Peace, particularly, Hill, Martin, *The Economic and Financial Organization of the League of Nations*, Washington, 1946; and Renborg, B. A., *International Drug Control*, Washington, 1947.

[2] See Chapter IX, Section A, paragraph 1, *infra*, p. 580.

gans of the United Nations. Furthermore, the technical committee dealing with economic and social cooperation (Committee II/3) agreed to include in its report the following statement:

> The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX (Chapters IX and X of the Charter) can be construed as giving authority to the Organization to intervene in the domestic affairs of member states.[3]

However, the question was not finally and conclusively settled at San Francisco. During the discussion by the General Assembly of the question of the treatment of Indians in the territory of the Union of South Africa, for instance, the argument was advanced that the Union of South Africa had violated international obligations arising from the Preamble and Articles 1 (2) and (3), 55 (c) and 56 of the Charter. On the other hand, it was argued that the Charter only commits Members to international cooperation and that in the absence of an international agreement defining "human rights and fundamental freedoms", no international obligation to respect specific rights and freedoms exists.[4] The resolution adopted by the General Assembly on December 8, 1946 was inconclusive on this point, simply expressing the opinion that the treatment of Indians by the Union of South Africa should be in conformity with the relevant provisions of the Charter.[5]

Objectives. The objectives enumerated in Article 55 (a) are in general self-explanatory. There was considerable discussion of the term "full employment" at the Conference. The drafting subcommittee of Committee II/3 originally recommended the use of the words "high and stable levels of employment." These words were defended as being more realistic and as establishing a goal capable of realization in fact. It was decided, however, by vote of the Committee that the words "full employment" should be used[6] since they had come to be widely accepted as defining the desired goal and since they did not imply a willingness to accept in advance the idea that a substantial amount of unemployment is inevitable. The term was subsequently accepted and used in the Report of the Preparatory Commission, by the Economic and Social Council, in determining the terms of refer-

[3] UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55 (1), p. 3–4 (*Documents*, X, p. 271–2).

[4] See, for example, UN, Doc A/C.1&6/1; Doc. A/C.1&6/6; Doc. A/C.1&6/9; Doc. A/C.1&6/17; and Doc. A/C.1&6/23.

[5] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add. 1, p. 69.

[6] UNCIO, *Summary Report of Seventh Meeting of Committee II/3, May 16, 1945*, Doc. 381, II/3/16, p. 1–2 (*Documents*, X, p. 39–40).

ence of the Economic and Employment Commission set up under Article 68, and in the subsequent discussions and conclusions of these organs.[7]

The objectives listed under *b* represent an elaboration of the provisions of the Dumbarton Oaks Proposals. While it probably would be agreed that "economic, social and other humanitarian" problems included "cultural," "health," and "educational," it was thought better to have the more detailed enumeration. It was made clear in the course of Committee discussion that the word "economic" was to be interpreted to include, for instance, international trade, finance, communications and transport, and post-war economic reconstruction. It was also agreed that under the head of economic problems should be included the international problems of access to raw materials and capital goods. The Committee also made it clear that it interpreted the words under *b* to include international cooperation in the control of traffic in, and the suppression of the abuse of, opium and dangerous drugs.[8]

The objectives under *c* were taken over from the Dumbarton Oaks Proposals with two changes. One was the addition of the words "for all without distinction as to race, sex, language, or religion." This was one of the proposals of the Sponsoring Governments, and its adoption had the effect of defining more explicitly the application of the principle. The other change consisted of the insertion of the words "and observance of". This was thought by some to strengthen the statement by making it clear that something more than formal respect for the rights and freedoms in question is demanded.[8a]

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

History of Article. The Dumbarton Oaks Proposals contained no such pledge. Apparently it was to be assumed that the commitment of the Organization contained in the statement of purposes was enough. Some of the governments represented at San Francisco felt, however,

[7] See *Yearbook, 1946–47*, p. 472–8.

[8] UNCIO, *Report of Rapporteur of Committee II/3*, Doc. 861, II/3/55 (1), p. 3 (*Documents*, X, p. 271) and *Revised Report of the Rapporteur of Commission II to the Plenary Session*, Doc. 1180, II/18 (1), p. 4 (*Documents*, VIII, p. 268).

[8a] For further explanation of objective *c*, see comment on Article 1 (3), *supra*, p. 96

that a more specific commitment was necessary to reenforce the statement of purposes and to make it clear that the Members obligated themselves to take individually the action necessary to make the cooperation effective. The original text proposed by the drafting subcommittee of Committee II/3 read as follows:

> All Members pledge themselves to take separate and joint action and to cooperate with the Organization and with each other to achieve these purposes.[9]

The United States Delegate reserved her position on the question of phraseology and the matter was referred back to the subcommittee for reconsideration. The subcommittee then recommended the following phraseology:

> All Members undertake to cooperate jointly and severally with the Organization for the achievement of these purposes.[10]

Several delegates objected to this phraseology on the ground that it did not contain the threefold pledge which the Committee had in principle approved, i.e. the pledge to take separate action, to take joint action, and to cooperate with the Organization.[11] It was voted to refer the matter back a second time to the drafting subcommittee. The phraseology which the subcommittee this time recommended was found acceptable.[12]

Nature of Obligation. From this abbreviated account of the history of the Article, it is clear that two opposing points of view were pressed at San Francisco. One was that each Member should pledge itself to take independent, separate national action to achieve the purposes set forth in Article 55. This was the view of the Australian Delegation, for example, and found expression in a proposed amendment which was the original inspiration of the Article. On the other hand, there was the view that such a pledge of separate national action went beyond the proper scope of the Charter, the encouragement of international cooperation, and might infringe upon the domestic jurisdiction of Members. This apparently was the view of the United States Delegation.

The phraseology finally agreed to was a compromise and like most

[9] UNCIO, *Summary Report of Twelfth Meeting of Committee II/3, May 26, 1945*, Doc. 599, II/3/31, p 1 (*Documents*, X, p. 99).

[10] UNCIO, *Summary Report of the Fourteenth Meeting of Committee II/3, May 29, 1945*, Doc. 684, II/3/38, p. 4 (*Documents*, X, p. 130)

[11] UNCIO, *Summary Report of Fifteenth Meeting of Committee II/3, May 30, 1945*, Doc. 699, II/3/40, p. 1–3 (*Documents*, X, p. 139–41).

[12] UNCIO, *Summary Report of Seventeenth Meeting of Committee II/3, June 1, 1945*, Doc. 747, II/3/46, p 1 (*Documents*, X, p. 161).

compromises is capable of more than one interpretation. The question arises with respect to the significance of the qualifying words. "In cooperation with the Organization" presumably refers to the Organization as a separate entity functioning through the appropriate organs, and not to its individual Members; otherwise "joint and separate action in cooperation with the Organization" becomes repetitious. If this is the proper interpretation, it would then appear that Members pledge themselves not only to cooperate with each other, but also to cooperate with the appropriate organs of the United Nations with a view to achieving the purposes in question. It does not mean that recommendations of these organs become binding but it does obligate Members to refrain from obstructionist acts and to cooperate in good faith in the achievement of the purposes of Article 55. Furthermore, if, as the result of the initiative of the United Nations, multipartite agreements are drafted and opened to ratification, Members are pledged to take action in accordance with their constitutional procedures, and, if ratification occurs, to enact legislation and take other measures necessary to give effect to the terms of the agreement. The International Labor Organization has experienced considerable difficulty in getting action with respect to conventions after they have been adopted by the Conference,[13] and this pledge is no doubt intended to stimulate action in a similar situation.

On problem of harmonizing Articles 55 and 56 and Article 2 (7) (domestic jurisdiction), see comment on Article 2 (7), *supra*, p. 118.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

Basic Principles. In this paragraph there is enunciated two basic principles governing the United Nations approach to economic and social cooperation. These are (1) the principle that international organization should develop in response to functional need; and (2) the principle that in the economic and social field the functions of the general international organization should in large part be performed through specialized agencies created by intergovernmental

[13] See Tayler, William L., *Federal States and Labor Treaties*, New York, 1935 and *Report of the Committee of Experts on the Application of Conventions*, International Labor Conference, 27th Session, Paris, 1945, Report VI, Appendix, Montreal, 1945.

agreement and brought into relationship with the United Nations by agreements freely entered into on both sides. This permits the specialized agencies a large measure of autonomy and results in a more decentralized system than was envisaged under the League Covenant.[14]

Agencies with Wide International Responsibilities. What are the "various specialized agencies, established by intergovernmental agreement and having wide international responsibilities" to which the provisions of this Article apply? This phrase did not appear in the Dumbarton Oaks Proposals, though the principle of bringing such organizations into relationship with the United Nations was affirmed. The text recommended by Committee II/3 of the United Nations Conference at San Francisco provided that "the various specialized intergovernmental organizations and agencies having wide international responsibilities in economic, social and other related fields" should be brought into relationship with the United Nations.[15] In its report, it was stated that the phraseology used was not intended to preclude the Economic and Social Council from negotiating at its discretion agreements bringing "other types of intergovernmental agencies into relationship with the Organization."[16]

The Preparatory Commission in its report distinguished between intergovernmental agencies, using the term in its widest sense to include all agencies established by intergovernmental agreement, and specialized agencies as defined in Article 57 (1). After quoting from the report of Committee II/3 (as above), the Commission concluded that the Economic and Social Council may negotiate agreements with the competent authorities "bringing into relationship such other intergovernmental agencies, including those of a regional character, as are not considered as being within the definition of Article 57 but which it is considered desirable to bring into relationship."[17] It thus recognized by implication that a regional organization or agency is not to be regarded as a specialized agency having "wide international responsibilities" within the meaning of this Article.

The question whether the phrase has a functional connotation as well is more difficult. With regard to international bureaus and agencies with specialized functions such as the Universal Postal Union and the International Institute of Agriculture which were in operation before World War II and which were never brought within the League

[14] On advantages of such functional decentralization, see Mitrany, David, *A Working Peace System*, London, 1943.

[15] UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55 (1), p. 13 (*Documents*, X, p 281).

[16] *Ibid.*, p. 4–5 (*Documents*, X, p. 272–3).

[17] *Report of the Preparatory Commission . . .*, Doc PC/20, p. 40.

system, the Preparatory Commission suggested "that more suitable organizational arrangements could be made for the exercise of the functions hitherto entrusted to many of them." It suggested the reduction of the number of agencies and bringing them into "a more rational and unified organizational structure." It listed three possible alternatives: (1) liquidation and transfer of functions to a specialized agency; (2) liquidation and assumption of functions by an appropriate United Nations commission or committee; and (3) merger with another intergovernmental agency.[18] The Commission thus clearly recognized that while the Economic and Social Council might, in its discretion, decide that one or more of these pre-war agencies might be continued with advantage and brought into relationship with the United Nations, nevertheless these agencies because of their highly specialized technical character did not have any claim in principle to being treated as specialized agencies under the terms of this Article.

In practice, two of these "bureaux and agencies functioning before the war" have been brought into relationship with the United Nations and recognized as specialized agencies, i.e., the Universal Postal Union[19] and the International Telecommunications Union.[20] Other agencies falling into this general class, such as the *Office international d' Hygiène public* and the International Institute of Agriculture, have been absorbed into newly created specialized agencies. None of the strictly regional organizations and agencies have been brought into relationship with the United Nations and recognized as specialized agencies. Thus the phrase "wide international responsibilities" appears to have been given in practice both a geographical and a functional connotation.[20a]

Specialized Agencies Established or in Process of Establishment. The specialized agencies, established by intergovernmental agreement and having wide international responsibilities as defined in their basic instruments which have already been or are in the process of being established include the following:

(1) *The International Labor Organization* (ILO).[21] It was estab-

[18] *Ibid.*

[19] UN, Doc. A/347.

[20] UN, Doc A/370 and Doc. A/370/Add. 1. See also, Report of the Temporary Transport and Communications Commission, submitted May 25, 1946, UN, Economic and Social Council, *Official Records, First Year, Second Session*, p. 164–89.

[20a] For list of intergovernmental organizations in the economic, social, cultural, educational, health and related fields, having responsibilities similar to those of the United Nations and the specialized agencies, but presumably not wide enough to justify their being brought into relationship with the United Nations, see UN, Doc. E/818 and Doc. E/818/Add 1.

[21] See *Yearbook, 1946–47*, p. 661–83; Wilson, Francis G., *Labor in the League System*, Stanford Univ., 1934, Hediger, Ernest S., "The International Labor Organization and the United Nations," *Foreign Policy Reports*, June 1, 1946, and

lished at the end of World War I under the terms of the treaties of peace as a part of the League system of international cooperation. The original Constitution [22] provided for the establishment of a permanent organization for the improvement of labor conditions throughout the world, consisting of a General Conference, a Governing Body, and an International Labor Office. In the Governing Body and the General Conference, employers and employees are represented along with governments. In many respects the International Labor Organization was tied into the League of Nations, notably by the provision that its expenses should be paid out of the general funds of the League.

The United States, although never joining the League of Nations, became a member of the International Labor Organization in 1934 by executive agreement. The Organization continued to function on a limited basis during the war. At the 26th meeting of the General Conference held at Philadelphia in 1944, a Declaration of Aims and Purposes, known as the "Philadelphia Charter",[23] was adopted which set forth the broad purposes of the Organization for the future. This Declaration is attached to the revised Constitution as an Annex.

At the United Nations Conference it was proposed that specific reference should be made in the Charter to the International Labor Organization as the agency which would be primarily concerned with promoting "improved labor standards, economic advancement and social security." [24] Though Committee II/3 voted not to include any such statement in its report, it was apparent that, for the most part, the delegations at San Francisco were prepared to recognize the International Labor Organization as the agency primarily responsible for promoting improved labor standards. While the representative of the ILO at the United Nations Conference expressed the desire of the Organization for association with the United Nations, he insisted that the ILO needed enough freedom of action within the new framework to discharge its responsibilities and particularly to assure that the voice which the workers and employers exercised in world affairs through the Organization remained a real one.[25]

The new situation created by the termination of the League of Nations and the establishment of a new general international organization, the United Nations, with a constitution incorporating new provisions

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Fried, John H E, "Relations between the United Nations and the International Labor Organization," *American Political Science Review*, XLI, p 963–77.

[22] Part XIII of the Treaty of Versailles.

[23] Department of State, *Bulletin*, X, p. 482 and *Yearbook, 1946–47*, p. 678–9.

[24] UNCIO, Doc. 157, II/3/5, p. 10, 14 (*Documents*, X, p. 308, 312).

[25] UNCIO, *Summary Report of Sixth Meeting of Committee II/3*, Doc. 346, II/3/13 (*Documents*, X, p. 33) and *Addendum*, Doc 804, II/3/13 (a) (*Documents*, X, p 36).

as far as its relations with the ILO were concerned, made necessary a revision of the Constitution of the ILO. This work of revision was completed at the 27th and 29th sessions of the International Labor Conference, meeting at Paris, October 5–November 5, 1945 and at Montreal, September 19–October 10, 1946. The revised Constitution[26] differs in important respects from the original. In particular, the Organization is required (Article 12) to "cooperate within the terms of this Constitution with any general international organization entrusted with the co-ordination of the activities of public international organizations having specialized responsibilities and with public international organizations having specialized responsibilities in related fields." Article 13 empowers the Organization to "make such financial and budgetary arrangements with the United Nations as may appear appropriate." The ILO was brought into relationship with the United Nations by agreement approved by the International Labor Conference on October 2, 1946 and by the General Assembly on December 14, 1946.[27]

As of June 30, 1948, the Organization had 59 members, of which 10 were not Members of the United Nations. The headquarters of the Organization is in Montreal.

(2) *The Food and Agriculture Organization of the United Nations* (FAO).[28] The Food and Agriculture Organization of the United Nations was the first of the specialized organizations of a permanent character to be established during and after World War II. The first step was the United Nations Conference on Food and Agriculture which convened at Hot Springs, Virginia, May 18–June 3, 1943.[29] Agreement was reached to establish an Interim Commission to draft the constitution of the proposed organization. The Constitution as drafted[30] entered into force on October 16, 1945. At a conference held at Quebec, October 16–November 1, 1945, the work of organization was completed.[31] As of June 30, 1948, the Organization had 57

[26] See *Yearbook, 1946–47*, p. 670–9

[27] UN, Doc A/72 and *Yearbook, 1946–47*, p. 679–83. For comment, see *infra*, p. 345.

[28] See *Yearbook, 1946–47*, p 685–702; Belshaw, Horace, "The Food and Agriculture Organization of the United Nations," *International Organization*, I (1947), p. 291–306, Hambidge, Gove, "The Food and Agriculture Organization at Work," *International Conciliation*, No. 432; and Orr, Sir John Boyd, "FAO. The Year Past, The Year Ahead," UN, *Bulletin*, IV, p. 17–9.

[29] *United Nations Conference on Food and Agriculture, Hot Springs, Virginia, May 18–June 3, 1943. Final Act and Section Reports*, Department of State, Pub. 1948, Conference Series 52.

[30] United Nations, Interim Commission on Food and Agriculture, *First Report to the Governments of the United Nations* . . , August 1, 1944, p. 41

[31] Food and Agriculture Organization of the United Nations, *Proceedings of the First Session of the Conference Held at the City of Quebec, Canada, October 16 to November 1, 1945* and *Report of the First Session of the Conference*

members of which 8 were not Members of the United Nations. The headquarters of the Organization is in Washington.

The purposes of the Organization include the raising of levels of nutrition and standards of living, the securing of improvements "in the efficiency of the production and distribution of all food and agricultural products," and the bettering of the conditions of rural populations, "thus contributing toward an expanding world economy." The functions of the Organization are to "collect, analyse, interpret, and disseminate information relating to nutrition, food and agriculture"; to promote and, where appropriate, recommend national and international action with respect to research, the improvement of education and administration, the conservation of natural resources, the improvement of methods of processing, marketing and distribution, the provision of adequate agricultural credit, and the adoption of international policies with respect to agricultural commodity arrangements; and to furnish such technical assistance as governments may request. The Organization performs these functions through a Conference in which each member has one representative; a Council consisting of representatives of 18 members of the Organization chosen by the Conference (established by the third session of the Conference to replace the Executive Committee for which the original Constitution provided [32]); and a Director-General and staff.

Article XII of the Constitution provides that the Conference may enter into agreements with the competent authorities of "other public international organizations with related responsibilities" defining "the distribution of responsibilities and the methods of cooperation." More particularly, the Director-General may, subject to a decision of the Conference, "enter into agreements with other public organizations for the maintenance of common services, for common arrangements in regard to recruitment, training, conditions of service, and other related matters, and for interchanges of staff." Article XIII provides that the Organization shall "in accordance with the procedure provided for in the following paragraph, constitute a part of any general international organization to which may be entrusted the coordination of the activities of international organizations with specialized responsibilities." The procedure prescribed is as follows:

> Arrangements for defining the relations between the Organization and any such general organization shall be subject to the approval of the Conference. Notwithstanding the provisions of Article XX, such arrangements may, if approved by the Conference by a two-thirds majority of the votes cast, involve modification of the provisions of this Constitution: Provided that no

[32] See Orr, Sir John Boyd, "The New Council of FAO," UN, *Weekly Bulletin*, III, p. 382–4.

such arrangements shall modify the purposes and limitations of the Organization as set forth in this Constitution.

The Organization was brought into relationship with the United Nations by an agreement approved by the second session of the Conference in September 1946, and by the General Assembly during the second part of its first session on December 14, 1946.[13]

(3) *The International Monetary Fund* (Fund).[14] Provision is made for this organization by the Articles of Agreement of the International Monetary Fund, which is Annex A of the Final Act of the United Nations Monetary and Financial Conference, held at Bretton Woods, July 1–22, 1944.[15] 44 states were signatories of the Final Act. In accordance with the terms of Article XX, the Agreement entered into force on December 27, 1945, following the signature of the Agreement and the deposit of instruments of acceptance by 29 governments, signatories of the Bretton Woods Final Act, whose subscriptions to the Fund amounted to 65 percent of the total. The Soviet Union has not as yet signed the Agreement and deposited its instrument of acceptance. As of June 30, 1948, 46 states had accepted the Articles of Agreement, including 2 states which were not Members of the United Nations. The headquarters of the Fund is in Washington.

The principal purposes of the International Monetary Fund are: (1) "to promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems"; (2) "to facilitate the expansion and balanced growth of international trade"; (3) "to promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation"; and (4) "to assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade."

Except where otherwise provided, operations on account of the Fund are limited to transactions for the purpose of supplying a member with currency of another member in exchange for gold or for the currency of the member desiring to make the purchase. The powers

[13] UN, Doc. A/78. For text of agreement, see also, *infra*, p. 626 and *Yearbook, 1946–47*. p 698–702 For comment, see *infra*, p. 345.

[14] See *Yearbook, 1946–47*, p. 766–88; Halm, George N., *International Monetary Cooperation*, Chapel Hill, 1945, Hadsel, Fred L., "Technical Specialized Agencies of the U.N," *Foreign Policy Reports*, November 15, 1947, p 216–8, and Knorr, Klaus, "The Bretton Woods Institutions in Transition," *International Organization*, II (1948), p 19–38

[15] *United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 1 to July 22, 1944, Final Act and Related Documents*, Department of State Pub 2187 Conference Series 55 p 98

vested in the Fund are exercised by a Board of Governors, upon which members are equally represented; by the Executive Directors (not less than 12), to be appointed in such a way as to give the 5 members with the largest quotas permanent representation; and by a Managing Director and staff. Voting power is related to the size of the national quota.

It is expressly provided (Article X) that the Fund shall cooperate "within the terms of this Agreement with any general international organization and with public international organizations having specialized responsibilities in related fields." Any arrangement for cooperation involving a modification of the Agreement can be effected only after amendment of the Agreement according to the terms of Article XVII. The Fund was brought into relationship with the United Nations by an agreement approved by the Board of Governors in September 1947, and by the General Assembly of the United Nations in its second session on November 15, 1947.[36]

(4) *The International Bank for Reconstruction and Development* (Bank).[37] The Bank functions under the terms of the Articles of Agreement constituting Annex B of the Bretton Woods Final Act, referred to above.[38] 44 states were signatories of the Final Act. In accordance with the terms of Article XI, the Agreement entered into force on December 27, 1945, following the signature of the Agreement and the deposit of instruments of acceptance by 29 governments, signatories of the Bretton Woods Final Act, whose subscriptions to the Fund amounted to 65 percent of the total. The Soviet Union has not signed the Agreement and deposited its instrument of acceptance. As of June 30, 1948, the Bank had 46 members, of which 2 were not Members of the United Nations. The headquarters of the Bank is in Washington.

The Bank has the following primary purposes: (1) "to assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes"; (2) to promote private foreign investment, and, when private capital is not available for productive purposes on reasonable terms, to supplement private investments, and (3) "to promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members." The operations of the Bank consist of making or facilitating loans for the specified purposes under conditions set forth in the Articles of Agreement. The

[36] UN, Doc. A/349. For comment, see *infra*, p. 345.

[37] See *Yearbook, 1946–47*, p 747–66, Halm, *op. cit.*; Hadsel, *op. cit.*, p. 214–6; and Knorr, *op cit.*

[38] *United Nations Monetary and Financial Conference . . .*, *Final Act and*

Bank performs its functions through a Board of Governors, on which each member is represented, with voting power largely determined by the number of shares of stock held; the Executive Directors, 12 in number, of whom 5 are appointed by the members having the largest number of shares and the remaining 7 are elected by the Board of Governors in the manner prescribed, and a President, selected by the Executive Directors. Provision is made for an Advisory Council of not less than 7 members, including representatives of industrial, commercial, agricultural and banking interests with as wide national representation as possible.

The relationship of the Bank to other international organizations is governed by provisions identical with those already described in the case of the Fund.[39] In addition, however, it is provided that "in making decisions on applications for loans or guarantees relating to matters directly within the competence of any international organization of the types specified in the preceding paragraph and participated in primarily by members of the Bank, the Bank shall give consideration to the views and recommendations of such organization."[40] The Bank was brought into relationship with the United Nations by an agreement approved by the Board of Governors in September 1947, and by the General Assembly in its second session on November 15, 1947.[41]

(5) *International Civil Aviation Organization* (ICAO).[42] This Organization was established by and operates under the terms of the Convention on International Civil Aviation, signed at Chicago, December 7, 1944.[43] At the same time an Interim Agreement was signed providing for a Provisional International Civil Aviation Organization (PICAO) to perform certain of the functions of the permanent organization pending the entrance into force of the Convention.[44] In accordance with the terms of the Convention, the International Civil Aviation Organization came into being on April 4, 1947, 30 days after the Convention had been ratified or adhered to by 26 states. As of June 30, 1948, the Organization had 48 members, of which 6 were not Members of the United Nations.[45] The headquarters of the Organization is in Montreal.

[39] *Ibid*, Article V, Section 8, paragraph (a), p. 82.

[40] *Ibid.*, paragraph (b).

[41] UN, Doc A/349 For comment, see *infra*, p. 345.

[42] See *Yearbook, 1946–47*, p 723–45; Van Zandt, J. P, "The Chicago Civil Aviation Conference," *Foreign Policy Reports*, February 15, 1945; and Hadsel, *op. cit.*, p. 218–9.

[43] *International Civil Aviation Conference, Chicago, Illinois, November 1 to December 7, 1944. Final Act and Related Documents*, Department of State, Pub. 2282, Conference Series 64, p. 59.

[44] *Ibid.*, p. 44

[45] This number, however, included Spain which, by resolution adopted by the first session of the Assembly of the Organization in May 1947, had been de-

The objectives of this Organization are set forth in some detail in the Convention and include, among others, the following: (1) to ensure the "safe and orderly growth of international civil aviation throughout the world"; (2) to "encourage the development of airways, airports, and air navigation facilities for international civil aviation"; (3) to meet world needs for "safe, regular, efficient, and economical air transport"; (4) to "prevent economic waste caused by unreasonable competition" and to ensure to contracting states "a fair opportunity to operate international airlines"; (5) to avoid discrimination between contracting states; (6) to "promote safety of flight in international air navigation"; and (7) to "promote generally the development of all aspects of international air aeronautics." The functions vested in the Organization with a view to the furtherance of these purposes include investigation and research, the collection and publication of information, reporting on infractions of the Convention, adoption of international standards and recommended practices, and the making of recommendations to members. Provision is made for an Assembly with equal representation and equal voting power for all members; a Council composed of 21 members elected by the Assembly, with adequate representation of states important for purposes of air transport and of the different geographic areas; an Air Navigation Commission; and a Secretariat. The functions of these organs are defined in some detail. The Assembly votes the budget and decides the apportionment of expenses.

The Convention provides (Article 64) that the Organization may, "with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace." The Council, under the terms of Article 65, "may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization." The Organization was brought into relationship with the United Nations by an agreement approved by the General Assembly of the United Nations on December 14, 1946 and subsequently by the first session of the ICAO Assembly.[46]

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barred from membership, in pursuance of the recommendation contained in the United Nations General Assembly resolution of December 12, 1946. The resolution of the ICAO Assembly had not by June 30 obtained the necessary ratifications to become effective.

[46] UN, Doc. A/106; Doc. A/106/Corr.1; and *Yearbook, 1946–47*, p. 741–5. For comment, see *infra*, p. 345.

(6) *United Nations Educational, Scientific and Cultural Organization* (UNESCO).[47] This Organization was established by and operated under the terms of the Constitution signed at London on November 16, 1945. This Constitution was drafted at a conference held in London, November 1–16, which had before it and adopted as the basis of discussion a draft constitution prepared by the Conference of Allied Ministers of Education.[48] The Constitution entered into force on November 4, 1946, when, pursuant to its terms, instruments of acceptance by 20 of its signatories had been deposited with the United Kingdom. As of June 30, 1948, the Organization had 42 members, of which 4 were not Members of the United Nations. The headquarters of the Organization is in Paris.

In the Preamble the Member Governments "on behalf of their peoples" declare "that since wars begin in the minds of men it is in the minds of men that the defenses of peace must be constructed", and "that a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind." For these reasons, the members, "believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth and in the free exchange of ideas and knowledge," declare themselves "agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives."

In Article I of the Constitution the purpose of the Organization is stated to be "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations."

To realize this purpose, the Organization is given the following functions to perform:

(1) To "collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass com-

[47] See *Yearbook, 1946–47*, p. 703–21; Thompson, C. Mildred, "The Educational, Scientific and Cultural Organization of the United Nations," *Foreign Policy Reports*, February 15, 1946, *International Conciliation*, Nos. 415, 431 and 438, and Hadsel, Fred L., "Human Welfare Specialized Agencies of U.N.," *Foreign Policy Reports*, February 1, 1948, p. 277–9.

[48] See *International Conciliation*, No. 415, p. 734–5

munication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image";

(2) To encourage popular education and the spread of culture by collaborating with members "at their request" in the development of educational activities, by collaboration to advance the ideal of equality of educational opportunity, and by suggesting educational methods best suited to prepare children for the responsibilities of freedom;

(3) To "maintain, increase and diffuse knowledge" by assuring the conservation and protection of the world's cultural inheritance; by "encouraging cooperation among the nations in all branches of intellectual activity," including the international exchange of persons active in the fields of education, science and culture and the exchange of publications, objects of artistic and scientific interest and other materials of information; and "by initiating methods of international cooperation calculated to give the people of all countries access to the printed and published materials produced by any of them."

Membership in the United Nations carries with it the right to membership in UNESCO. States which are not Members of the United Nations may be admitted, upon the recommendation of the Executive Board, by a two-thirds vote of the General Conference. If, however, by the terms of the agreement with the United Nations, the Economic and Social Council, to which all such applications for admission must be referred, recommends rejection, this recommendation must be accepted. The functions of the Organization are performed by the General Conference, in which each member is equally represented, the Executive Board, consisting of 18 members elected by the General Conference, and the Director-General and his staff.

Article X of the Constitution provides that the Organization shall be brought into relationship with the United Nations by an agreement made in accordance with the terms of Article 63 of the Charter. This agreement is subject to the approval of the General Conference of UNESCO. It is stated that the agreement shall provide for effective cooperation between the two Organizations in the pursuit of common purposes and "at the same time shall recognize the autonomy of this Organization, within the fields of its competence as defined in this Constitution." It is specifically stated that the agreement may provide, among other things, for the approval of the budget of the Organization by the General Assembly of the United Nations.

Article XI of the Constitution authorizes the Organization to cooperate with other specialized intergovernmental organizations and agencies whose interests and activities are related to its purposes. To this end, the Director-General, acting under the general authority of

the Executive Board, may establish effective working relationships with such organizations and agencies. Any formal arrangements are subject to the approval of the Executive Board. The Organization was brought into relationship with the United Nations by an agreement approved by the first session of the General Conference in 1946 and by the General Assembly of the United Nations on December 14, 1946.[49]

(7) *The World Health Organization* (WHO).[50] The initiative in the establishment of the World Health Organization was taken by the Economic and Social Council under Articles 59 and 62. On February 15, 1946, the Council adopted a resolution setting up a Technical Preparatory Committee to prepare the documentation for an International Health Conference.[51] The Committee met in Paris from March 8 to April 5 and agreed on a draft constitution for a World Health Organization.[52] By resolution of June 11, the Economic and Social Council decided to call a World Health Conference to draft the Constitution of the Organization, and submitted the draft constitution recommended by the Technical Preparatory Committee, along with recommendations, suggestions and observations of Council members, as a basis for Conference action.[53] The Conference met in New York, June 19–July 22, 1946. It adopted the Constitution of the World Health Organization and an agreement providing for the establishment of an Interim Commission to act on behalf of the signatories in the performance of certain specified functions pending the coming into force of the Constitution.[54] On April 7, 1948, the Constitution entered into force as the result of ratification by the requisite number of Members.[55] On June 30, 1948, 54 states were members of the Organization of which 41 were Members of the United Nations and 13 were not Members. The headquarters of the Organization is in Geneva.

[49] UN, Doc. A/77; Doc. A/77/Corr.1; Doc. A/77/Corr.2; and *Yearbook,1946–47*, p 717–21 For comment, see *infra*, p. 345.

[50] See *Yearbook, 1946–47*, p. 789–804, Sharp, Walter R., "The New World Health Organization," *American Journal of International Law*, XLI, p. 509–30, Commission to Study the Organization of Peace, *Uniting the Nations for Health*, New York, 1948, "World Health Organization," *International Conciliation*, No. 439, and Chisholm, Brock, "Achievements of First World Health Assembly," UN, *Bulletin*, V, p. 636–7

[51] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 159–60.

[52] *Ibid., Official Records, First Year. Second Session*, p. 143–61.

[53] *Ibid.*, p. 341–6.

[54] UN, Economic and Social Council, *Final Acts of the International Health Conference Held in New York from 19 June to 22 July 1946*, Doc. E/155. For text of Constitution, see *Yearbook, 1946–47*, p. 793–804.

[55] See UN, Economic and Social Council, *Report of the Interim Commission of the World Health Organization*, Doc E/786.

In the Preamble to the Constitution, the parties recognize certain principles as being basic to "the happiness, harmonious relations and security of all peoples." These include, among others, the following: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"; "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition"; and "the health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States." The objective of the Organization is declared (Article 1) to be "the attainment by all peoples of the highest possible level of health." The functions of the Organization are enumerated in great detail in Article 2 and include, among others, the promotion of cooperation among intergovernmental agencies, governments, and private groups; the rendering of technical assistance to governments and special groups; the drafting and submission of conventions and other forms of international agreements; the promotion and conduct of research; the publication of information; the promotion of improved standards of teaching and training in the health field; the standardization of nomenclatures and diagnostic procedures; and the development of international standards with respect to food, biological, pharmaceutical and similar products.

Membership is open to all states. In addition, territories or groups of territories which are not responsible for the conduct of their international affairs may be admitted as associate members, with such rights and obligations as may be determined by the Health Assembly. The work of the Organization is performed by the World Health Assembly, composed of delegates representing all members; the Executive Board, consisting of 18 persons designated by 18 members chosen by the Assembly; and the Secretariat. The Constitution provides for regional organizations (Chapter XI) incorporated into the Organization as integral parts. Under the terms of the Arrangement establishing the Interim Commission, that body was authorized to take necessary steps for the assumption by the Organization of the functions in the health field of the League Health Organization, the *Office international d'Hygiène public* at Paris, the United Nations Relief and Rehabilitation Administration, and the Pan American sanitary organization and other intergovernmental regional health organizations.

Article 69 provides that the Organization "shall be brought into relation with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations", and that the agreement to this effect "shall be subject to approval by a

two-thirds vote of the Health Assembly." Article 70 provides for "effective relations" and close cooperation with other specialized agencies. An agreement defining the relationship of the Organization to the United Nations was approved by the General Assembly on November 15, 1947,[56] and by the World Health Assembly on July 10, 1948.

(8) *The International Refugee Organization* (IRO).[57] By its resolution of February 12, 1946,[58] the General Assembly, recognizing the immediate urgency of the international problem of refugees and displaced persons, recommended that the Economic and Social Council establish a special committee for examining the problem. A committee so established, the Special Committee on Refugees and Displaced Persons, met in London, April 8–June 1, 1946, and recommended the establishment of a specialized agency of non-permanent character to deal with the problem. After careful study of all aspects of the matter by the Council and by the Governments of Members of the United Nations, the Council by resolution of October 3, 1946 submitted to the General Assembly a Draft Constitution for the International Refugee Organization and proposed Interim Arrangements.[59] On December 15, 1946, the General Assembly approved the Draft Constitution, with some modifications, and the Interim Arrangements, and urged Members to sign both Instruments.[60]

According to Article 18, the Constitution enters into force when 15 Members of the United Nations, whose contributions to the operational budget amount to not less than 75 percent of the total, become parties to it. As of June 30, 1948, 14 Members had ratified the Constitution. The work of the Organization was being carried on by the Interim Commission. The Constitution provides that the headquarters of the Organization shall be in Paris or Geneva, as the General Council may decide.

The Preamble of the Constitution declares the purpose of the Organization to be to assist by international action "genuine refugees and displaced persons" "either to return to their countries of nationality or former habitual residence, or to find new homes elsewhere." The

[56] UN, Doc. A/348; Doc. A/348/Add.1; and Doc. A/348/Add.2. For comment, see *infra*, p. 345.

[57] See *Yearbook, 1946–47*, p. 805–20, Malin, P. A., "The Refugee: A Problem for International Organization," *International Organization* I (1947), p. 443–59; and Hadsel, Fred L., "Human Welfare Specialized Agencies of U.N.," *op. cit.*, p. 281–3.

[58] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 12.

[59] UN, Economic and Social Council, *Resolutions Adopted . . . during its Third Session . . .*, Doc. E/245/Rev. 1, p. 29–47.

[60] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 97–121.

functions of the Organization, "to be carried out in accordance with the purposes and the principles of the Charter of the United Nations", are declared to be: "The repatriation; the identification, registration and classification; the care and assistance; the legal and political protection; the transport; and the re-settlement and re-establishment, in countries able and willing to receive them, of persons who are the concern of the Organization." [61]

Membership in the Organization is open to all Members of the United Nations, and to any other "peace-loving" state, "upon recommendation of the Executive Committee, by a two-thirds majority vote of members of the General Council present and voting". The principal organs of the Organization are the General Council, in which each member has one representative, the Executive Committee consisting of 9 members of the Organization elected by the General Council, and the Director-General. Articles 3 and 14 provide for bringing the Organization into relationship with the United Nations as a "specialized agency". By resolution of March 10, 1948, the Economic and Social Council authorized negotiation of an agreement. An agreement was signed on July 26, 1948, for submission to the third session of the General Assembly.[61a]

(9) *The International Trade Organization* (ITO).[62] One of the objectives of the United Nations in the field of economic and social cooperation, and the one listed first in Article 55 is the promotion of "higher standards of living, full employment, and conditions of economic . . . progress and development." The International Labor Organization, the Food and Agriculture Organization, the Fund and the Bank represent partial approaches to the attainment of these ends. From the time of the United Nations Conference at San Francisco there was recognition of the need of a specialized agency concerned exclusively and comprehensively with problems in this field.

On February 18, 1946, the Economic and Social Council decided to call an International Conference on Trade and Employment "for the purpose of promoting the expansion of production, exchange and consumption of goods." [63] A Preparatory Committee was set up to elaborate a draft convention for the consideration of the Conference. The Government of the United States had already made public "Proposals for Expansion of World Trade and Employment" [64] which in elaborated

[61] Article 2.

[61a] UN, Doc. E/882.

[62] *Yearbook, 1946–47*, p. 821–4; *International Conciliation*, No. 434, and *Havana Charter for an International Trade Organization*, Department of State, Pub. 3117, Commercial Policy Series 113.

[63] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 178–4.

[64] Department of State, Pub. 2598, Commercial Policy Series 93.

form were submitted to the Preparatory Committee. The Preparatory Committee held its first session in London, October 15–November 26, 1946, and a second and concluding session in Geneva, April 10–August 22, 1947. It prepared and adopted a Draft Charter for the International Trade Organization [65] which was submitted as a basis of discussion to the International Conference on Trade and Employment, meeting at Havana, Cuba, November 21, 1947–March 24, 1948.

The Charter (known as "the Havana Charter") adopted by the Conference on March 24, 1948 [66] is a long and complex document incorporating many compromises which were found necessary to the attainment of general agreement. To achieve the objectives set forth in Article 55 (a) of the Charter of the United Nations, the parties pledge themselves "individually and collectively, to promote national and international action designed to attain" enumerated objectives, which include increased production and consumption of goods, industrial and economic development, the international flow of capital, equal access to markets, products and productive facilities, reduction of tariffs and other barriers to international trade, elimination of discriminatory treatment in international commerce, and the solution through methods of consultation and cooperation of problems in the international trade field.[67] To achieve these purposes, the parties recognize certain standards of conduct and accept obligations of varying degrees of definiteness in the fields of employment and production, economic development and reconstruction, commercial policy, restrictive business practices and intergovernmental commodity agreements.[68]

To facilitate the attainment of the objectives set forth and the implementation of the standards of international conduct prescribed, the Charter provides for an International Trade Organization [69] of which states and, under certain conditions, "separate customs territories" may be members. The Organization is empowered to collect, analyze and publish information relating to international trade, to encourage and facilitate consultations among members, to make recommendations to and promote agreements among members for the purposes stated in the Charter, and to cooperate with the United Nations and other intergovernmental organizations, for the achievement of the economic

[65] See UN, Economic and Social Council, *Report . . . Second Session . . . Preparatory Committee of the United Nations Conference on Trade and Employment*, Doc. E/PC/T/186 and Department of State, Pub. 2927, Commercial Policy Series 106. See also, *International Conciliation*, No. 434 and "Geneva Charter for an International Organization," Department of State, *Bulletin*, XVII, p. 603–6, 663–70, 711–4, 787–94, 835.

[66] Department of State, Pub. 3117, Commercial Policy Series 113, p. 3–66.

[67] Article 1 of the Charter.

[68] Chapters II–VI.

[69] Chapter VII.

and social objectives of the United Nations. The proposed Organization consists of a Conference, an Executive Board, and the Director-General and his staff. The Executive Board is to consist of 18 members elected by the Conference, of which 8 are to be members of the Organization determined by the Conference to be of "chief economic importance", special attention being given to "their shares in international trade." It is provided that the Organization shall be brought into relation with the United Nations by an agreement under Articles 57 and 63 of the United Nations Charter, and that this agreement shall provide "for effective co-operation and the avoidance of unnecessary duplication in the activities of these organizations, and for co-operation in furthering the maintenance or restoration of international peace and security." [70] Provision is made for similar working arrangements with other specialized agencies.[71]

The Charter enters into force on the sixtieth day following the deposit of instruments of acceptance by a majority of the signatories, or, if this condition is not fulfilled within a year, on the sixtieth day following the deposit of instruments of acceptance by twenty signatories. The seat of the Organization is determined by the Conference.

(10) *The Intergovernmental Maritime Consultative Organization* (IMCO).[72] The Convention providing for the establishment of this specialized agency was drafted and signed at the United Nations Maritime Conference which met at Geneva, February 19–March 6, 1948.[73] The Conference was convened by the Economic and Social Council which instructed it "to consider the establishment of an intergovernmental maritime organization." [74] The Convention enters into force when 21 states, of which 7 shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties.[75] The headquarters of the Organization is to be in London.

The purposes of the Organization are to provide machinery for cooperation between governments in technical matters, including maritime safety, to encourage removal of discriminatory action and unnecessary restrictions by governments, to provide for consideration

[70] Article 86 of the Charter. The Economic and Social Council authorized the negotiation of an agreement with ITO on March 10, 1948.

[71] Article 87.

[72] See McDonald, Eula, "Toward a World Maritime Organization," Department of State, *Bulletin*, XVIII, p. 99–107, 115, 131–7; Cates, John M., Jr., "United Nations Maritime Conference," Department of State, *Bulletin*, XVIII, p. 495–9; and UN, *Bulletin*, IV, p. 237–9.

[73] UN, Economic and Social Council, *Final Act of the United Nations Maritime Conference*, Doc. E/Conf.4/62 and *Corrigendum*, Doc. E/Conf.4/62/Corr.1; and Department of State, *Bulletin*, XVIII, p. 499–505, 523.

[74] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fourth Session . . .*, Doc. E/437, p. 8

[75] Article 60.

of unfair shipping practices by shipping companies, and to provide for consideration of any matter concerning shipping referred to it by "any organ or Specialized Agency of the United Nations." [76] The functions of the Organization are declared to be consultative and advisory.[77] Membership is open to states. Provision is also made under defined conditions for associate membership for territories not having independent control of their international relations.[78] The Organization consists of an Assembly, a Council, a Maritime Safety Committee, and a Secretariat, together with such subsidiary organs as may be subsequently established.[79] The Council is so constituted as to give representation to states with the largest interest in providing international shipping services and in international seaborne trade.[80] The Convention envisages that the Assembly will in the future perform the functions of *ad hoc* diplomatic conferences on safety of life at sea and that the Maritime Safety Committee will assume functions in connection with the administration of the Convention on Safety of Life at Sea,[81] as revised at the London Conference which met April 23, 1948.

Article 45 of the Convention provides that "the Organization shall be brought into relationship with the United Nations in accordance with Article 57 of the Charter of the United Nations as the Specialized Agency in the field of shipping." The Organization is also to cooperate with other specialized agencies and with intergovernmental organizations which do not have the status of specialized agencies, and may make arrangements for cooperation and consultation with non-governmental international organizations.[82]

(11) *The Universal Postal Union* (UPU).[83] The Union was founded under the terms of a Convention signed at Berne, October 9, 1874.[84] The original name was the General Postal Union, changed in 1878 to Universal Postal Union. The Convention has been revised at successive Postal Congresses, the last of which, the twelfth, was

[76] Article 1.
[77] Articles 2–3
[78] Article 9.
[79] Article 12.
[80] Article 17.
[81] For text of Convention signed at London, May 31, 1929, see Hudson, Manley O., *International Legislation*, IV, p. 2724–70.
[82] Articles 46–48. The Economic and Social Council authorized the negotiation of an agreement with IMCO on March 10, 1948. An agreement was signed on August 12, 1948, UN, Doc. E/955.
[83] See *International Agencies in Which the United States Participates*, Department of State, Pub. 2699, p. 297–303; Schmeckebier, L. F., *International Organizations in Which the United States Participates*, Washington, 1935, p. 31–43; Woolf, L., *International Government*, London, 1916, p. 186–205; and Sly, J. F., "The Genesis of the Universal Postal Union," *International Conciliation*, No. 233.
[84] *British and Foreign State Papers*, Vol. 65, p. 13 *et seq.*

held at Paris, May 6–July 5, 1947.[85] The Union includes all states of the world, together with enumerated colonies or combinations thereof, deemed to have independent postal administrations. By action of the twelfth Congress, in response to the resolution of the General Assembly of December 12, 1946, Spain was temporarily denied the right of participation in the work of the Union.

The purpose of the Union is to promote and facilitate postal communications between states. Its organs consist of a General Congress which meets at least every five years; an Executive and Liaison Commission of 19 members, created by the twelfth Congress, whose chief duties are to assure Union representation at United Nations meetings and to undertake studies of such problems as may require consideration; and an International Bureau. The headquarters of the Union is at Berne, Switzerland.

The Union is one of the pre-war "bureaux and agencies" which it has been thought wise to continue and bring into relationship with the United Nations. This relationship has been established by an agreement approved by the Twelfth Congress of the Universal Postal Union and by the General Assembly of the United Nations during its second session on November 15, 1947.[86]

(12) *International Telecommunications Union* (ITU).[87] The Union developed from the International Telegraphic Union, established under the terms of the Paris Convention of May 17, 1865.[88] Beginning in 1906, the Bureau of the Union was charged with certain responsibilities under the terms of conventions and regulations adopted by the Berlin Radiotelegraph Conference of 1906 and its successors. By resolutions adopted by the International Telegraph Conference, Paris, 1925, and the International Radiotelegraph Conference, Washington, 1927, the two Conferences met in Madrid in 1932 and adopted a single convention covering both radio and telegraph, and establishing the International Telecommunications Union.[89] The Conference of the Union met at Cairo in 1938, and at Atlantic City in 1947,[90] where the Convention was extensively revised.

The Union has 72 members, nearly universal membership, and in-

[85] See Congrès Postal, *Documents*, Berne, 1947 and "Twelfth Congress of the Universal Postal Union," Department of State, *Bulletin*, XVII, p. 585–8.

[86] UN, Doc. A/347. For comment, see *infra*, p. 345.

[87] See Schmeckebier, *op. cit.*, p. 258–69; *International Agencies in Which the United States Participates, op. cit*, p 264–70; Woolf, *op. cit.*, p. 205–16; and Mance, Sir H. Osborne, *International Telecommunications*, New York, 1944.

[88] *British and Foreign State Papers*, Vol. 56, p. 294 *et seq.*

[89] Signed December 9, 1932. Hudson, Manley O., *International Legislation*, VI, p. 109–33.

[90] De Wolf, Francis C., "The Atlantic City Telecommunications Conferences," Department of State, *Bulletin*, XVII, p. 1033–4, 1040–1.

cludes colonial administrations. The Convention, as revised in 1947, provides for a Conference meeting every five years (with administrative conferences meeting at the same time to revise radio, telephone and telegraph regulations); a Council consisting of 18 members, responsible for the management of the affairs of the Union; 3 international consultative committees dealing with technical matters; and a Bureau. The headquarters of the Union is at Geneva.

The Union has been accepted by the United Nations as a specialized agency. The relationship of the Union to the United Nations is determined by an agreement approved by the Atlantic City Conference and by resolution of the General Assembly in its second session on November 15, 1947.[91]

(13) *The World Meteorological Organization* (WMO). Provision for the establishment of the World Meteorological Organization, an intergovernmental organization to be brought into relationship with the United Nations, was made in a Convention adopted by the Conference of Directors of the International Meteorological Organization held in Washington, September 22–October 11, 1947.[92] IMO was initially established in 1878. It was composed of the directors of meteorological services of various states and territories of the world and came to have almost universal membership.

The Convention declares the basic purposes of the Organization to be the coordination, standardization and improvement of world meteorological activities and the exchange of meteorological information. Membership in the Organization is not limited to states but extends under defined conditions to territories having meteorological services. Only members that are sovereign states may vote upon certain reserved subjects. The Convention provides for the usual type of organization and for bringing the Organization into relationship with the United Nations. A draft agreement for this purpose was prepared by the Conference. The Economic and Social Council authorized the negotiation of an agreement on March 10, 1948.

"Shall Be Brought into Relationship". The use of these words makes it clear that the establishment of the relationship envisaged by this Article is not regarded as an optional matter. The Charter makes it obligatory upon the competent organs of the United Nations to establish the relationship "in accordance with the provisions of Article 63." The constitutions of most of the agencies (see above)

[91] UN, Doc. A/370 and Doc. A/370/Add.1. For comment, see *infra*, p. 345.

[92] See *Final Report, Twelfth Conference of Directors, International Meteorological Organization*, Washington, Sept. 22–Oct. 11, 1947, Cates, John M., Jr., "Meeting of International Meteorological Organization: Conference of Directors," Department of State, *Bulletin*, XVIII, p. 43–6, and *International Agencies in Which the United States Participates, op cit.*, p. 122–9.

contain specific provisions obligating or enabling, or both obligating and enabling, the agencies in question to enter into relationships of the kind here referred to.

In its Report, the Preparatory Commission expressed the view that "the various specialized agencies should be brought into relationship with the United Nations at the earliest practicable moment, and that other agencies whose establishment is contemplated should be brought into relationship immediately upon their establishment." [93] In its resolution of February 16, 1946, establishing the Committee on Negotiations with Specialized Agencies,[94] the Economic and Social Council recognized the importance of prompt action.

Content of Agreements. The Charter does not give a detailed and exhaustive listing of the subjects to be covered in the agreements between the United Nations and the specialized agencies. Specific provisions of the Charter which define the functions and powers of the United Nations and its organs, do however suggest some of the matters with which the agreements are expected to deal, together with the general character of the provisions.

The question of the content of the agreements was given careful consideration by the Preparatory Commission. In its Report the Commission listed items which it considered appropriate for inclusion in the agreements or for other appropriate action.[95] Some of these were derived from the provisions of the Charter, and others, though not emanating directly from the Charter, were considered important to the general plan of relationship. Guided to a considerable extent by the Commission's observations, the Economic and Social Council, in its resolution of February 16, 1946,[96] setting up its Committee on Negotiations, gave instructions to include in the preliminary draft agreements appropriate provisions with regard to the following items:

(a) reciprocal representation (Article 70);

(b) exchange of information and documents;

(c) proposal of agenda items,

(d) recommendations of the General Assembly and the Economic and Social Council (Articles 58, 62 and 63);

(e) reports by specialized agencies (Article 64);

(f) assistance in carrying out decisions of the Security Council (Articles 41 and 48);

(g) assistance to the Trusteeship Council (Article 91);

[93] *Report of the Preparatory Commission . . .*, Doc. PC/20, p 40.

[94] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 171–2.

[95] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 40–8.

[96] UN, Economic and Social Council, *Official Records, First Year: First Session*, p 171–2.

(h) requests for information by the International Court of Justice (Article 34 of the Statute of the Court);

(i) statistical services.

In addition, the resolution directed the Committee to consider with the agencies the desirability of including provisions dealing with the following matters:

(a) liaison;

(b) personnel arrangements;

(c) common fiscal services;

(d) common technical services.

The Committee was also instructed to review with each agency alternative methods for giving effect to the Charter provisions concerning budgetary and financial relationships (Article 17, paragraph 3) and to include appropriate provisions in the agreements, and to ascertain the views of the agencies with respect to the possible nature of their requests for advisory opinions, to enable the Council to report to the General Assembly, which under Article 96 (2) may authorize the specialized agencies to request advisory opinions of the Court.

The agreements that have thus far been entered into fall into three general patterns, with some further variations of detail: (1) the agreements with ILO, FAO, ICAO, UNESCO and WHO; (2) the agreements with UPU and ITU; and (3) the agreements with the Bank and the Fund.[97]

The first five agreements contain in general the most detailed and, from the point of view of one who is convinced that effective coordination is important, the most satisfactory definition of the relationship of the United Nations and the specialized agencies. Each agreement recognizes the organization as a "specialized agency". It provides for reciprocal representation without vote at meetings of organs where matters of concern to the organization in question are being considered. It provides for the reciprocal proposal of agenda items, the right of the specialized agencies being limited to the proposal of items for the Economic and Social Council and its commissions, and the Trusteeship Council. It contains provisions for assuring the consideration by the specialized agency of recommendations made by the General Assembly and the Economic and Social Council under Articles 58, 62 and 63, for consultation, and for reports on action taken. Furthermore, the specialized agency agrees to cooperate with any body established by the Council to facilitate the coordination of the activities of the

[97] For text of FAO agreement, see *infra*, p. 626. For texts of ILO, ICAO and UNESCO agreements, see *Yearbook, 1946–47*, p. 679–83, 741–5, 717–21; for WHO, UPU, ITU, Bank and Fund, see UN, Doc. A/348, Doc. A/347, Doc. A/370, and Doc. A/349.

specialized agencies. Subject to proper safeguards, each agreement provides for "the fullest and promptest exchange of information and documents." The specialized agency agrees in particular to transmit a regular report on its activities.

Under these agreements, each specialized agency agrees to cooperate with the Economic and Social Council in furnishing information and rendering assistance to the Security Council, and with the Trusteeship Council in carrying out its functions. Furthermore, each agrees to furnish any information that may be requested by the International Court of Justice in pursuance of Article 34 of its Statute. While there was considerable difficulty in reaching agreement on the point because of the insistence of the Committee on Negotiation on denying to certain of the organizations access to the Court on the liberal terms initially accorded the ILO,[98] all five agreements as finally approved give the specialized agency the right to request advisory opinions on legal questions within the scope of their activities and not concerned with the relationship of the United Nations and the specialized agency.[99]

Each of these five agreements contains detailed provisions for cooperation at the administrative level, particularly with respect to personnel, budgetary and financial procedures. It was with respect to these matters that the greatest divergencies of view appeared in the course of negotiations, reflected in the compromise character of many of the provisions of the agreements. With respect to headquarters, the situation was no longer fluid in the majority of cases when the agreements were reached. Only in the case of FAO was a qualified agreement for a common headquarters possible. Apart from that, the most that could be achieved was an agreement to consult. All five agreements recognize the desirability of "the eventual development of a single unified civil service", and to this end the parties agree to consult concerning the establishment of an International Civil Service Commission and other matters relating to the employment of personnel, and to cooperate in the exchange of personnel and the establishment of machinery for the settling of disputes in connection with personnel matters. All five agreements provide in some detail for the elimination of duplication and the most efficient use of personnel and facilities in preparing and making available statistical information. There is recognition of the desirability of "avoiding, wherever possible, the establishment and operation of competitive or overlapping facilities and services". "The desirability of establishing close budgetary and financial relationships" is recognized. In particular, each agreement

[98] On position taken by FAO, see UN, Doc. A/120, p. 2–5.
[99] See comment on Article 96 (2), *infra*, p. 489.

provides for consultation "concerning appropriate arrangements for the inclusion of the budget of the Organization (the specialized agency) within the general budget of the United Nations." [100] Such arrangements are left to be defined in supplementary agreements. Pending the conclusion of such arrangements, provision is made for consultation at the top administrative level in connection with the preparation of the budget of the specialized agency, the transmission of its budget by the specialized agency to the United Nations annually, and other cooperative arrangements for the consideration of financial matters of common concern.

Each agreement provides that the Secretary-General and the corresponding administrative officer of the specialized agency may enter into such supplementary agreements as may be found desirable for its implementation. Each agreement is subject to revision by agreement of the parties. Furthermore, the General Assembly resolution approving the first four of these agreements definitely instructed the Economic and Social Council to review the progress of collaboration "within the space of three years" in order that the Council and the General Assembly might, if necessary and after consultation with the agencies, "formulate suitable proposals for improving such collaboration." [101]

The agreements with ITU and UPU which provide the second pattern of relationship differ from the five agreements just described, primarily in respect to the generality of their provisions. This is true particularly of the provisions regarding assistance to the organs of the United Nations, personnel arrangements, statistical services, administrative and technical services, and budgetary and financial arrangements. In fact, under the latter head, the Unions simply agree to transmit their annual budgets to the United Nations, and that the General Assembly may make recommendations thereon. Revision of the agreement requires six months' notice. The unique features of these two agreements are largely explained by the special characteristics of the two Unions, highly technical, long established, and until the 1947 revisions of their conventions, not so organized as to face many of the problems or to have the capacity for action of the more recently established specialized agencies.

The agreements with the Bank and the Fund, constituting the third pattern of relationship, differ in important respects from the first five agreements considered. In fact it was strongly contended in the course

[100] See comment on Article 17 (3), *supra*, p. 186.

[101] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 78.

of negotiations and during consideration by the second session of the General Assembly that certain of the provisions insisted upon by the Negotiating Agencies of the Bank and Fund were highly unsatisfactory, if not in violation of the Charter.[102] The agreements emphasize that the Bank and the Fund are required to function as "independent" international organizations. They stress the limitations to which the two agencies are subject "for the safeguarding of confidential information" (Article I). The right of reciprocal representation is accorded to a limited extent, representatives of the United Nations being permitted only to attend meetings of the Board of Governors (Article II). The Bank and the Fund only agree to give "due consideration" to the inclusion of items proposed by the United Nations in preparing the agenda of the Board of Governors (Article III). No recommendations may be presented by the United Nations "without reasonable prior consultation", and with respect to particular loans, the United Nations recognizes that "it would be sound policy to refrain from making recommendations to the Bank" (Article IV). Both the Bank and the Fund agree to have "due regard" for decisions of the Security Council under Articles 41 and 42 (Article VI). The full autonomy of the Bank and the Fund "in deciding the form and content" of their budget are recognized (Article X). Each agreement may be terminated by either party on six months' written notice to the other party (Article XIII). Of all the agreements, the Bank and Fund agreements clearly provide the least satisfactory basis for United Nations coordination of the policies and activities of specialized agencies. Their provisions were justified on the ground that the special character and responsibilities of these two agencies justified and in fact required a measure of autonomy not necessary or desirable for the other agencies.

Inter-Agency Agreements. The Charter provisions also envisage the coordination of the activities of the specialized agencies in their relations to each other. The agreements thus far made between the United Nations and the specialized agencies take cognizance of the matter. By Article XVI of the FAO agreement, for example, the FAO "agrees to inform the Council of the nature and scope of any formal agreement between the Organization and any other specialized agency, intergovernmental organization or non-governmental organization and in particular agrees to inform the Council before any such agreement is concluded."[103] The first of these inter-agency agreements to enter into force was one between the ILO and the FAO which was approved

[102] See UN, General Assembly, *Report of the Joint Second and Third Committee*, Doc. A/449, p. 2–3.

[103] See *infra*, p. 634.

by the Governing Body of the ILO at its 101st session, and by the third session of the FAO Conference.[104]

This agreement provides for close cooperation and regular consultation in regard to matters of common concern, reciprocal representation at meetings, the use of joint committees to consider matters of common interest, the exchange of information and documents, cooperation in personnel matters to avoid competition in recruitment and to facilitate exchange, cooperation in providing common services, notably statistical, and further implementation of the agreement by supplementary agreements between the Directors-General.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

This paragraph gives to the term "specialized agencies" a technical meaning which it does not have under paragraph 1 and which it does not have in general usage. The term is hereinafter made to describe intergovernmental agencies with specialized functions which are brought into relationship with the United Nations. While this is the sense in which the term is to be understood, when used in Articles 58, 59, 62(1), 63, 64, 66(2), 70, 91, and 96(2), there is little doubt but what in practice, including the discussions and documents of the United Nations, the term has been used to include other intergovernmental agencies with specialized functions that have not as yet been brought into relationship with the United Nations.[105]

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Importance of Article. It was recognized in the discussions at San Francisco that the coordination of the policies and activities of the specialized agencies would be an important task of the United Nations.[106] The Charter contains numerous provisions dealing specifi-

[104] For text, see UN, Doc. E/442. Agreements have also been made between FAO and UNESCO and the ILO and UNESCO. See UN, Doc. E/601 and Doc. E/604.

[105] See *Yearbook, 1946–47*, Part II, where the International Refugee Organization, though not yet brought into relationship with the United Nations, is listed as a specialized agency.

[106] See UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55(1) (*Documents*, X, p. 269–79).

cally with the problem.[107] The Preparatory Commission, in its Report, emphasized that

> the objectives of the United Nations in the realm of economic and social cooperation and the effective functioning of the specialized agencies will be more fully achieved if a close relationship and coordination is established between the United Nations and the agencies.[108]

It suggested various means by which this "close relationship and coordination" might be achieved. Of basic importance are the agreements provided for in Articles 57 and 63.[109]

Coordination of the policies and activities of the specialized agencies and the United Nations is necessary for the following specific reasons, among others: (1) In the absence of effective coordination, there is the danger of duplication of activity by the various international agencies, or, what is perhaps even more serious, no activity at all. (2) Lack of coordination may also result in the adoption of conflicting policies by the various agencies. (3) Without effective coordination there is danger that the various international agencies will place unduly heavy, or at least unacceptable, demands upon the financial and personnel resources of members. (4) Without proper coordination, the various agencies are in danger of becoming competitors for funds, personnel and projects, whereas to achieve their common purposes most effectively they should be cooperating partners. (5) Only through some over-all coordination of policies and activities can problems which cut across agency lines in their requirements be effectively handled, and only by such means can necessary decisions be taken with regard to the relative urgency of needs and the necessary priorities to be established.

Powers of the United Nations and Its Organs. The powers of the United Nations and its organs under this and other Articles of the Charter are limited to study, discussion, consultation, negotiation, and recommendation. With respect to particular agencies, additional powers may be conferred by the agreements made under Articles 57 and 63. In general, however, the agreements thus far made do little more than commit the specialized agencies to the principle of cooperation, define the matters in respect to which cooperation is desirable, and indicate the procedures by which the cooperation is to be achieved. There are exceptions to this generalization. For example, the agreement with ICAO gives the General Assembly the power to veto an application for membership in that agency by a state that is not a signatory of the 1944 Convention, a member of the United Na-

[107] Articles 13(1)(b), 17(3), 57, 58, 59, 62(1), 63, 64, 70 and 96(2).
[108] *Report of the Preparatory Commission* . . ., Doc. PC/20, p. 40.
[109] See *supra*, p 324 and *infra*, p. 378.

tions, or a neutral in the last war; [110] and the agreement with UNESCO gives a similar veto to the Economic and Social Council over applications for membership in that agency from states not Members of the United Nations.[111]

While not adding materially to the powers of the organs of the United Nations, the agreements, again with exceptions, do contain important provisions intended to give assurance that the recommendations of the United Nations will be considered and acted upon. The agencies agree to submit such recommendations to their appropriate organs, to enter into consultations with the United Nations with respect to such recommendations, and to report upon the action taken by the agencies, or their members, with respect to such recommendations.[112] The agreements with the Bank and the Fund contain special provisions of a restrictive character which occasioned strong opposition in the General Assembly by delegations which considered the agreements unsatisfactory, if not in violation of the Charter.[113] Both the Bank and the Fund agreements provide that "neither organization, nor any of their subsidiary organs, will present any formal recommendation to the other without reasonable prior consultation with regard thereto". Article IV, paragraph 3, of the Bank agreement reads:

> "The United Nations recognizes that the action to be taken by the Bank on any loan is a matter to be determined by the independent exercise of the Bank's own judgment in accordance with the Bank's Articles of Agreement. The United Nations recognizes, therefore, that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms on conditions of financing by the Bank. The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects.[114]

With respect to the powers of particular organs of the United Nations, the Charter makes it clear that the General Assembly is primarily responsible for the discharge of the responsibilities placed on the United Nations in connection with the coordination of the policies and activities of the specialized agencies. It is expressly given the power to approve agreements with the specialized agencies, including financial and budgetary arrangements, and to discuss and make recommendations with respect to their administrative budgets. The Economic and Social Council is given detailed functions and powers,

[110] Article II. See *Yearbook, 1946–47*, p. 741.
[111] Article II. See *ibid.*, p. 717.
[112] Provisions of agreements with ILO, FAO, ICAO, UNESCO, WHO, UPU and ITU.
[113] See UN, Doc. A/449, p. 2–3, and documents referred to.
[114] UN, Doc. A/349, p 2–3.

but acts always "under the authority of the General Assembly." The responsibilities of the Secretary-General and his staff are stated in general terms applicable to the whole range of activities of the United Nations.[115]

Role of the General Assembly. In practice the General Assembly has exercised its responsibility by making general recommendations and laying down policy directives for the guidance of Members, other organs of the United Nations and the specialized agencies.

The General Assembly has given serious consideration to the problem of coordination. Its discussions have reflected an appreciation of the complexity and urgency of the problem. The problem has been considered both from the budgetary point of view and from the point of view of the effectiveness of the United Nations in achieving its objectives under the Charter. It has been recognized that budgetary questions have policy implications, and *vice versa*. Consequently the directives and recommendations of the General Assembly have dealt with the problem as a whole and in all its interrelated aspects.

When the General Assembly approved the agreements with specialized agencies submitted to it during the second part of its first session, it instructed the Economic and Social Council to follow carefully the progress of collaboration, and to report "within the space of three years, so as to keep the Assembly informed and in order that the Council and the General Assembly may, if necessary, and after consultation with the said agencies, formulate suitable proposals for improving such collaboration."[116] Furthermore, with respect to budgetary and financial relationships, the General Assembly by its resolution of December 14, 1946, requested the Secretary-General, in consultation with the Advisory Committee on Administrative and Budgetary Questions,

1. To continue exploratory discussions with the specialized agencies and to report and make recommendations to the next regular session of the General Assembly;

2. To append, if possible to the United Nations budget for 1948, in the form of informative annexes, the budgets or proposed budgets of the specialized agencies for 1948 with a view to presenting to the General Assembly a comprehensive estimate of expenditures of the United Nations and specialized agencies;

3. To explore possible arrangements by which the budgets of the several specialized agencies might be presented to the General Assembly for approval;

4. To develop, at the earliest possible date, in accordance with the budg-

[115] See particularly Article 97 and comment, *infra*, p 491

[116] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add 1, p. 78.

etary and financial provisions of the agreements with the specialized agencies, arrangements for common fiscal controls and common budgetary, administrative and financial practices.[117]

Pursuant to the terms of this resolution, the 1948 budgets of the four specialized agencies which had entered into agreements with the United Nations were presented to the Advisory Committee on Administrative and Budgetary Questions. This Committee prepared a Report[118] which was adopted with minor changes by the General Assembly in its second session and commended to the attention of the specialized agencies.[119] The recommendations contained in this report included the following: (1) that plenary bodies of specialized agencies authorize their executive authorities to take interim action with regard to General Assembly resolutions if the plenary bodies cannot act themselves "without considerable delay", and (2) that the specialized agencies should ensure that their estimates be subjected to detailed examination by persons specially qualified in the fields of administration and finance, and that the specialized agencies make every effort "to develop the common conditions of service necessary for the creation of an international civil service." The Report emphasized that "the achievement of the *necessary degree of coordination between the United Nations and the specialized agencies* is in the last analysis the *responsibility of Members themselves,*" and that by acting consistently and in conformity with recommendations of the General Assembly "Members can do much to ensure that the international services as a whole operate with efficiency and economy."

A broader and more integrated approach to the problem of coordination was adopted by the General Assembly during its second session. The General Assembly had before it or took cognizance of the report of the Economic and Social Council,[120] the interim report of the Secretary-General on budgetary and financial relationships,[121] and the interim report of the Co-ordination Committee.[122] The interrelation of budgetary, administrative and policy coordination was fully recognized. The resolution adopted on November 20, 1947 provided a comprehensive and integrated set of directives and recommendations for achieving the coordination of the policies and activities of the specialized agencies. The operative provisions of this resolution were as follows:

The General Assembly therefore

1. *Calls upon* Members to take measures to ensure on the national level a

[117] *Ibid.*, p. 148–9.
[118] UN, Doc. A/426.
[119] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 76–87.
[120] UN, Doc. A/382
[121] UN, Doc. A/384/Rev. 1.
[122] UN, Doc. A/404.

co-ordinated policy of their delegations to the United Nations and to the different specialized agencies in order that full co-operation may be achieved between the Organization and the specialized agencies, and, in particular, to instruct their representatives in the governing bodies of the specialized agencies to use every effort to ensure the transmittal of reports, programmes of operation, and budgets or budgetary estimates referred to in paragraph 3 of this resolution;

2. *Commends* the Economic and Social Council, the Secretary-General and the specialized agencies for the steps already taken, including the establishment of a Co-ordination Committee, to achieve programme and administrative co-ordination among the specialized agencies and the United Nations;

3. *Requests* the Council to give constant attention to the factor of the relative priority of proposals, and to consider as a matter of urgency the further steps which should be taken to develop effective co-ordination of the programmes of the United Nations and its subsidiary organs on the one hand and the specialized agencies on the other;

4. *Calls upon* the specialized agencies, as appropriate under the terms of their respective agreements with the United Nations:

(*a*) To present each year, to the session of the Economic and Social Council preceding the opening of the regular session of the General Assembly, their reports on past activities and their programmes of operations for the subsequent fiscal year to enable the Council to promote the most efficient and practical use of the resources of the United Nations and the specialized agencies by recommendations concerning the definition of responsibility for specific projects and concerning priorities for action;

(*b*) To transmit their budgets or budgetary estimates for 1949, and for each year thereafter, to the Secretary-General of the United Nations before 1 July of the preceding year in order that the Secretary-General may incorporate these budgets or budgetary estimates as information annexes in his annual budget estimates for transmittal to the General Assembly, together with such summaries as he may deem appropriate and useful;

5. *Requests* the Secretary-General, in consultation with the specialized agencies through the Coordination Committee and in consultation with the Advisory Committee on Administrative and Budgetary Questions, to prepare a report [122a] for submission to the Economic and Social Council and the third regular session of the General Assembly with recommendations concerning:

(*a*) Measures for achieving greater uniformity in presentation of the budgets of the United Nations and of the specialized agencies with a view to providing a basis for comparison of the several budgets;

(*b*) The fiscal year and schedule of meetings of the specialized agencies in their relation to the procedures envisaged in paragraph 3 above;

(*c*) The feasibility of improved budgetary coordination between the United Nations and the specialized agencies, and

6. *Requests* the Secretary-General, in consultation with the specialized

[122a] For report submitted to the third session of the General Assembly, see UN, Doc. E/847.

agencies through the Coordination Committee and, where appropriate, the Advisory Committee, to promote the development of similar budgetary, administrative and financial practices in the United Nations and the specialized agencies.[123]

Related to a more limited and technical aspect of the problem are the recommendations made to achieve the coordination of the privileges and immunities of the United Nations[124] and the specialized agencies. Pursuant to the recommendation of the Preparatory Commission, the General Assembly adopted a resolution on February 13, 1946 contemplating the unification of privileges and immunities enjoyed by the United Nations and the various specialized agencies.[125] At its second session, on November 21, 1947, it adopted a resolution recommending the maximum application of the provisions of the Convention on the Privileges and Immunities of Specialized Agencies which had been prepared by the Sixth Committee.[126] The Convention consists of standard clauses and special provisions adapted to the needs of particular agencies. Thus, it is hoped that the maximum of uniformity may be achieved.

Role of the Economic and Social Council.[126a] The role of the Economic and Social Council was conceived at San Francisco to be of the first importance. It has been referred to by the Secretary-General as "the pivot of the economic and social organization created under the auspices of the United Nations."[127] Under the Charter, it has important specific powers and responsibilities.[128] It operates, however, under the authority of the General Assembly, and in practice its activities have chiefly been of an executive, and not of a policy-making nature. Much of its work has consisted of initiating measures requiring General Assembly approval and of implementing the recommendations and directives of the General Assembly.

During its two years, the Economic and Social Council was primarily concerned with completing the organizational picture, as regards

[123] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 29–31. For report of Joint Meeting of Joint Second and Third Committees and the Fifth Committee which drafted the resolution, see UN, Doc. A/497.

[124] On privileges and immunities of the United Nations, see Article 105 and comment, *infra*, p. 521.

[125] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session* . , Doc. A/64, p. 33.

[126] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 112–29. For report of Sixth Committee, see UN, Doc. A/503.

[126a] See also comment on Article 63, *infra*, p. 379.

[127] UN, General Assembly, *Official Records of the Second Session . . .* , Supplement No 1, p. 20.

[128] See Article 62–66 and comments, *infra*, p. 370–85.

both its own commissions[129] and the specialized agencies. Acting under the provisions of Articles 59 and 62,[130] the Council has taken the necessary steps, including the calling of international conferences, to initiate the establishment of additional specialized agencies considered necessary to the achievement of the purposes of the Charter. With the structural organization of the economic and social work of the United Nations largely completed, more attention could be devoted to the coordination of policies and activities. The General Assembly resolution of November 20, 1947 was an important stimulus to Council action.

As an organ for coordinating the activities and policies of specialized agencies, the Economic and Social Council obviously suffers from the fact that it is only periodically in session. As a result it cannot be the instrument for achieving the coordination of day-to-day activities and must rely heavily on staff agencies for assistance in performing its task of program planning and policy coordination. The Council has utilized its permanent commissions for advice but these commissions are only concerned with problems arising within particular segments of the total field. They themselves are in need of coordination. Furthermore the commissions, for the most part, do not have operational responsibilities. To provide the Council with adequate staff assistance, the Preparatory Commission recommended the establishment of a Coordination Committee, to consist of the chief executives of the specialized agencies or their deputies, under the chairmanship of the Secretary-General or his deputy.[131]

Pursuant to this recommendation, the Economic and Social Council by resolution of September 21, 1946, requested the Secretary-General of the United Nations "to establish a standing committee of administrative officers consisting of himself, as chairman, and the corresponding officers of the specialized agencies brought into relationship with the United Nations, for the purpose of taking all appropriate steps, under the leadership of the Secretary-General, to insure the fullest and most effective implementation of the agreements entered into between the United Nations and the specialized agencies".[132] The resolution stated also that in order to coordinate effectively the activities of the specialized agencies the Economic and Social Council would undertake, after reference if necessary to an appropriate commission or to an *ad hoc* committee, "(a) to consider and to make recommendations or decisions, as may be suitable, regarding matters

[129] See comment on Article 68, *infra*, p. 386.

[130] See, in particular, Article 62(4) and comment, *infra*, p. 376.

[131] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 42.

[132] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p. 24–5.

referred to it by the Secretary-General from the (standing) committee . . ., and matters arising outside the area of the agreements between the United Nations and the specialized agencies which are or may become the subject of differences of view between the specialized agencies and the United Nations, or between the specialized agencies, or between the specialized agencies and commissions or other subsidiary organs of the Council, and (b) to make recommendations concerning ways and means of improving relations between these bodies."[133] By the terms of the agreements with ILO, FAO, ICAO, UNESCO and WHO, each agency "agrees to participate in, and to cooperate with any body or bodies which the Council may establish for the purpose of facilitating such co-ordination and to furnish such information as may be required for the carrying out of this purpose."[134] The agreements with ITU and UPU provide for cooperation, but not participation.

During its sixth session, the Economic and Social Council gave special attention to the matter of coordination. It had before it reports from all the specialized agencies with which agreements had been made except the Bank and the Fund. These reports were discussed at some length and it was voted to transmit summaries of the Council's discussion to the agencies.[135] In the course of the discussion, the reports were criticized in a constructive spirit. Attention was called to the desirability of including in the reports more information on future work programs. There was general agreement that the reports should be submitted by the special agencies in time for their consideration by the Economic and Social Council at the session preceding the annual session of the General Assembly.

In addition the Council considered the first and second reports of the Coordination Committee (renamed the Secretary-General's Committee on Coordination).[136] These reports provided details regarding the amount of coordination which had been achieved at the administrative level. On March 10, 1948, the Council adopted five resolutions[137] which are significant for the light they throw upon the emerging pattern of Council action. These resolutions may be summarized as follows:

1. The Council requested the specialized agencies, as appropriate under the terms of their respective agreements with the United Nations, to submit to the Council not later than May 15 of each year reports containing information relating to the organization of the agency, a comprehensive account of the activities of the agency for

[133] *Ibid.*

[134] See Article IV(3) of FAO agreement, *infra*, p. 628.

[135] UN, Doc. E/762/Rev 1; Doc. E/784; and Doc. E/785.

[136] UN, Doc. E/614 and Doc. E/625. For third report, see UN, Doc. E/846.

[137] UN, Doc. E/785.

the past year, an account of activities and work programs for the current calendar year, with an indication of priorities established, and an account of the proposed activities and work programs for the subsequent year.

2. The Council requested the Secretary-General after consultation with the specialized agencies (a) to prepare reports [137a] for the seventh session of the Council on action taken to develop effective coordination of the economic and social programs of the United Nations and the specialized agencies, facilities available for the specialized agencies at the seat and regional offices of the United Nations, existing and contemplated liaison arrangements, and intergovernmental organizations in the economic and social field having responsibilities similar to those of the United Nations and the specialized agencies,[137b] (b) from time to time to submit to the Council "a descriptive catalogue of studies or investigations in the economic and social fields by the United Nations and the specialized agencies",[137c] and (c) not later than June 1 of each year, to submit to the members of the Council a report including information on the organization and allocation of personnel of the Economic and Social Departments of the Secretariat and an account of the current work programs of the Economic and Social Departments and of the Commissions of the Council with a description, where applicable, of their relationship to similar activities carried on by the specialized agencies and other organs of the United Nations; [137d] and invited the Secretary-General in transmitting reports to the Council "to bring to the notice of the Council any matters to which its attention should be drawn for decision or other action in relation to its responsibilities under Articles 63 and 64 of the Charter." [137e]

3. The Council requested the Secretary-General's Committee on Coordination

(1) To take note of the Council's resolution on the nature of the reports to be submitted by the specialized agencies;

(2) To transmit to the Council at its seventh session any suggestions or observations it may wish to make on the form and content of these reports;

(3) To examine the possibility of including in the reports of the specialized agencies such budgetary information related to specific work programmes, current and prospective, as will enable the Council to appraise their relative scope;

[137a] See UN, Economic and Social Council, *Comparative Review of the Activities and Work Programmes of the United Nations and the Specialized Agencies in the Economic and Social Fields*, Doc E/848 and Doc. E/848/Add 1.

[137b] For reports, see UN, Doc. E/818; Doc. E/818/Add 1; and Doc. E/842.

[137c] See note by the Secretary-General on implementation of this request, UN, Doc. E/813.

[137d] For text of report for 1948–1949, see UN, Doc. E/844

[137e] See UN, Economic and Social Council, *General Matters Related to Articles*

(4) To draw the attention of the Council to any apparent overlapping or duplication of activities of the United Nations in the economic, social, cultural, educational, health and related fields and the specialized agencies,

(5) To report to the Council at each of its sessions on the work of the Committee.

4. The Council requested the Commissions of the Council to establish priorities of work in their respective programs based on the urgency and importance of the projects in fulfilling the purposes of Article 55 of the Charter and to indicate these priorities in their reports.

5. The Council resolved to appoint a committee to sit during its seventh session to consider matters relating to the coordination of the activities of the specialized agencies and the United Nations.

These resolutions indicate a serious approach on the part of the Council to its task of coordinating the policies and activities of specialized agencies. In addition, however, to this comprehensive approach to the problem, the Council has faced its responsibilities in connection with the consideration of specific substantive questions before it. Thus by resolution of March 1, 1948 it requested the Secretary-General to submit a report on the activities of specialized agencies, inter-governmental and non-governmental organizations and subsidiary organs of the Council in the field of town and country planning, and measures thus far taken toward their coordination.[137f]

Role of the Secretary-General. As the chief administrative officer of the United Nations the Secretary-General has an important and continuing operational responsibility for the day-to-day coordination of the activities of the specialized agencies, as well as an important staff responsibility for making recommendations to the Economic and Social Council and the General Assembly.[138] In both respects, he must lean heavily upon his staff and particularly upon the Departments of Economic and Financial Affairs and Social Affairs. The decision that was taken to create two Departments of the Secretariat in the field of economic and social cooperation has to some extent complicated the Secretary-General's task as it has created an additional problem of coordination within the Secretariat.[138a]

The agreements that have thus far been negotiated with the specialized agencies provide for the negotiation of implementing agreements by the Secretary-General and the chief administrative officers of the specialized agencies. The carrying out of the terms of the

[137f] For report of Secretary-General, see UN, Doc. E/802.

[138] On the question of the Secretary-General's responsibility, see comment on Article 97, *infra*, p. 493 and Laves, Walter H. C. and Donald C Stone, "The United Nations Secretariat," *Foreign Policy Reports*, October 15, 1946.

[138a] See UN, Economic and Social Council, *Organization of the Economic and Social Departments of the Secretariat for 1948–1949*, Doc. E/844/Add 1

agreements and the implementation of the resolutions of the General Assembly and the Economic and Social Council are mainly the responsibility of the Secretary-General.

An important instrument of coordination at the administrative level as well as of staff assistance to the General Assembly and the Economic and Social Council is the Secretary-General's Committee on Coordination (formerly known as the Coordination Committee). This Committee, consisting of the Secretary-General and the administrative heads of the specialized agencies with which agreements defining relationship are in force has been responsible for working out many details of inter-agency collaboration.[139] The Committee has set up Consultative Committees dealing with administrative questions, statistical questions, and public information, and has recently authorized the establishment of a Preparatory Committee of Deputies to undertake special assignments and handle routine matters of coordination.[140]

Conclusions. In the short period that the United Nations has thus far been in operation substantial progress has been made in the coordination of the policies and activities of the United Nations and the specialized agencies.[141] The agreements made with the specialized agencies, together with the Charter provisions, provide the legal framework for this collaboration. Techniques are in the process of development, based on cooperation at the administrative level, which should enable the General Assembly and the Economic and Social Council through processes of discussion, consultation and recommendation to contribute effectively to the better coordination of policies, budgets and work programs. Machinery has been developed and is in operation for the better coordination of administrative activities and services. The intricate organizational structure which the Charter system of decentralization has produced is in process of developing, if not into a streamlined machine, at least into a reasonably workable one.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

[139] See first, second and third reports of the Committee, UN, Doc. E/614; Doc. E/625; and Doc. E/846.

[140] UN, Doc. E/614, p. 4 For further discussion of role of Secretary-General, see comment on Article 97, *infra*, p. 491.

[141] See Sharp, Walter R., "The Specialized Agencies and the United Nations: Progress Report," I and II, *International Organization*, I (1947), p. 460–74 and II (1948), p 247–67.

One basic assumption of the Charter system, as we have already seen, is that the needs of international economic and social cooperation for certain purposes should be met as they arise by agreement of the interested parties. Certain of these needs had already been met at the time the Charter came into force. Others were in the process of being met. Considerable areas remained where the establishment of specialized agencies might prove desirable. Under the terms of the Charter, the Members of the United Nations recognized the need of cooperative action in these fields, and pledged themselves to take action to this end. It was to be assumed, then, that on the initiative of the Members themselves, new specialized agencies required for the accomplishment of the purposes set forth in Article 55 would be created. In addition, however, the United Nations itself, acting through the General Assembly and the Economic and Social Council, was given the function and power of initiating negotiations among the states concerned with a view to the creation of such agencies.

At the United Nations Conference in San Francisco, there were numerous proposals for the establishment of specialized agencies in particular fields. Committee II/3 recommended, however, that there should be no mention in the Charter of the creation of any particular specialized agency. It was thought that it would be misleading to mention one or two possibilities without mentioning others, and that it would be better to leave the whole matter to the informed judgment of the General Assembly and the Economic and Social Council.[142]

The Preparatory Commission, in its Report, recognized that there were certain fields in which international cooperation and organization were not fully developed and which did not come within the jurisdiction of any specialized agency, existing or in process of formation. The Commission listed the following alternatives as available to the United Nations for handling these matters:

(a) the initiation of negotiations among the states concerned for the creation of a new specialized agency, in accordance with Article 59 of the Charter;

(b) the establishment of a commission or committee by the Economic and Social Council;

(c) the creation of a subsidiary organ by the General Assembly, in accordance with Article 22 of the Charter;

(d) a recommendation by the Economic and Social Council to an existing specialized or other intergovernmental agency to undertake additional functions.[143]

[142] UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55 (1), p 5 (*Documents*, X, p. 273).

[143] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 41.

The Preparatory Commission recognized that there should be a carefully defined relationship between the specialized agencies and the organization of the Economic and Social Council. For areas where specialized agencies existed or were definitely envisaged the establishment of commissions under Article 68 would be justified, if at all, on grounds other than those which would be applicable where specialized agencies did not exist and their need had not yet been recognized. For the purposes of its Report, the Commission assumed that the following subjects would fall within the responsibility of specialized agencies brought into relationship with the United Nations:

(a) relief and rehabilitation
(b) monetary co-operation and international investment
(c) trade policies (including commodity problems and restrictive practices of private international agreements)
(d) food and agricultural policies
(e) labour standards, labour welfare and related social questions
(f) educational and cultural co-operation
(g) health
(h) some aspects of transport
(i) some aspects of communication.[144]

The assumptions of the Commission have been proven reasonably correct in practice. The field of relief and rehabilitation was occupied by the United Nations Relief and Rehabilitation Administration (UNRRA) until the virtual termination of its activities June 30, 1947. Though never brought into relationship with the United Nations as a specialized agency, it functioned as a specialized agency. A part of the field, the handling of refugees and displaced persons, is now occupied, as the result of United Nations initiative, by the Preparatory Commission of the International Refugee Organization, pending the entry into force of the Convention establishing IRO.

The field of monetary cooperation and international investment is covered by the Bank and the Fund. The proposed International Trade Organization, negotiations toward the establishment of which were initiated by the United Nations, will operate in the trade policy area. FAO covers food and agricultural policies. The ILO looks after labor standards, labor welfare and related social questions. UNESCO covers educational and cultural cooperation. Health, broadly defined, is the province of WHO, another of the agencies due to United Nations initiative under this Article.

One phase of international transport – civil aviation – is the responsibility of ICAO. Motor, rail and inland water transport have of necessity been organized on a regional basis and have not been brought

[144] *Ibid*, p. 35.

within the field of operation of a specialized agency. In fact the functions of the European Central Inland Transport Organization have been taken over by the Economic Commission for Europe, one of the commissions of the Economic and Social Council.[145] Maritime transport will be the province of the proposed Intergovernmental Maritime Consultative Organization.[146] The proposed World Meteorological Organization will operate largely in the field of transport.

In the field of communications the United Nations has accepted and brought into relationship with it as specialized agencies two prewar agencies which were well established and efficiently performing their rather limited technical functions. In both cases, however, the basic structure of the organizations was quite extensively revised to bring them more closely into line with other specialized agencies.[147] Between them, these two agencies — UPU and ITU — cover postal, radio, telephonic and telegraphic communications on a world-wide basis.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

In the previous Articles of this Chapter, the functions of the United Nations in respect to international economic and social cooperation are defined. Article 60 lays down the principle that responsibility for the discharge of these functions is vested in the General Assembly and, under its authority, in the Economic and Social Council. This is in contrast to responsibility for the maintenance of international peace and security which, by Article 24, is placed primarily on the Security Council.

The provision for a separate Economic and Social Council represents an important departure from the League system.[148] The Covenant provided for one Council with broad powers which became differentiated in practice from those of the Assembly in such a manner that

[145] See *infra*, p. 388.

[146] See *supra*, p 341.

[147] For preliminary study and recommendations, see *Report of the Temporary Transport and Communications Commission*, submitted May 25, 1946, UN, Economic and Social Council, *Official Records, First Year: Second Session*, p. 178–9.

[148] For discussion of the Economic and Social Council, particularly its place in international economic cooperation, see Finer, Herman, *The United Nations Economic and Social Council*, Boston, 1945.

the Council became in a sense the "executive" organ of the League while the Assembly was the "legislative" body. One result of this arrangement was that since the Great Powers insisted on permanent representation on the Council, because of its political functions, they also acquired a privileged position when that organ was dealing with social and economic questions. This dominance of the Council by the Great Powers was thought by many to constitute a drag on the economic and social work of the League. Furthermore, since the Council was primarily a political organ, its exercise of economic and social functions was open to the objection that its members allowed political considerations to influence them unduly when the Council was called upon to deal with economic and social problems.

Following the collapse of the League security system and the progressive deterioration of the international political situation in the years 1936 to 1939, an attempt was made to salvage the League as an agency for economic and social cooperation by establishing a separate economic and social organization within the League framework. The so-called Bruce Committee, appointed by the Council on May 27, 1939, issued a report on August 22 of that year [149] in which after reviewing the nature and extent of the economic and social work of the League, it recommended that the Assembly should set up a new organ to be known as the Central Committee for Economic and Social Questions, to which would be entrusted the direction and supervision of the work of the League committees dealing with economic and social questions. It was proposed that this Committee should consist of the representatives of twenty-four states chosen by the Assembly and that eight unofficial members should be co-opted on the ground of their special competence and authority. This report was adopted by the Assembly. Circumstances rendered it impossible to constitute the Central Committee, but a meeting of an organizing committee was held in February 1940 at the Hague.

On the basis of League experience up to that time, the Bruce Committee concluded that the establishment of such a Central Committee on Economic and Social Questions, distinct from the Council, would increase the efficiency of the League's work in the social and economic field, and, in particular, would bring this part of the League's work under the supervision of an agency "which should be both effective and representative," would provide more effective coordination of the activities of the different specialized organizations in the field, would "add fresh vigor and efficiency" to the work through increasing public

[149] League of Nations, *Monthly Summary of the League of Nations, Special Supplement*, August 1939, also published as League of Nations Document 1939. General.3.

knowledge of it and making it the primary interest of the directing organ, and would give non-member states the opportunity of the fullest cooperation in the direction and supervision of work in this field. It is obvious of course that not all of these considerations are equally valid today but certain of them were undoubtedly influential in leading to the establishment of a separate Economic and Social Council.

The Economic and Social Council exercises its responsibility for the discharge of the functions of the United Nations in the economic and social field "under the authority of the General Assembly". All the members of the Economic and Social Council are elected by the General Assembly, whereas five members of the Security Council hold their seats independently of the General Assembly, and the concurrence of at least one of these five members is necessary even to a procedural decision. While both the Security Council and the Economic and Social Council must report to the General Assembly, and the General Assembly is free to discuss these reports, the power of the General Assembly to take action on the basis of its discussions and conclusions is definitely limited in the case of Security Council reports.[150] While the Security Council can under certain circumstances take decisions creating substantive obligations for Members, the Economic and Social Council can only make recommendations. Finally, in specific respects, the Council is not free to act without General Assembly authorization or approval, as in the calling of international conferences (Article 62(4)), the making of agreements with the specialized agencies (Article 63), and requesting the Court for advisory opinions (Article 96(2)). Nevertheless, the Charter envisages an important role for the Economic and Social Council as a kind of standing committee of the General Assembly.

[150] See comment on Article 15, *supra*, p. 181.

CHAPTER X

THE ECONOMIC AND SOCIAL COUN

Composition

Article 61

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.

The provisions of this Article should be compared with Article 23 defining the composition of the Security Council. From this comparison, it will be seen that whereas in the Security Council, by the explicit provisions of the Charter, certain states are assured permanent membership, in the case of the Economic and Social Council there is no special provision guaranteeing membership to any Member of the United Nations. This represents an advance over the League system from the point of view of the application of the principle of equality since under the Covenant of the League, the Council, which performed functions of a character comparable to those conferred upon the Economic and Social Council in addition to its political functions, was constituted in such a way as to give the Great Powers permanent membership. As has been explained in the comment on Article 60, one reason why the proposal to establish a separate Economic and Social Council met with such wide support was that it made possible the application of the principle of equality of representation to the composition of the Council dealing with economic and social matters.

Members of the Economic and Social Council are elected by the General Assembly. Not only is there no guarantee of membership to particular states, but also there are no criteria incorporated in the Charter for the guidance of the General Assembly which might be expected to have the effect of assuring certain states membership in the Council. By contrast, Article 7 of the Constitution of the International Labor Organization provides that eight of the governmental representatives on the Governing Body shall be appointed by the member states of chief industrial importance.

At San Francisco a proposal was made by the Canadian and French Delegations which was intended to assure Members of chief industrial importance membership in the Council. These proposals were withdrawn, however, when it became clear that the prevailing view of the

knowledge of it and making formal distinction should be established.[1] organ, and would give non-committee II/3, accepted by the Conference, est cooperation in the direct should be left free in the election of It is obvious of course.cil. It was, however, assumed in the course of valid today but certastrially important states would naturally be elected to the establishmeand, since members of the Council are declared

The Economimediate re-election, the same result in fact can be the discharg if certain members were given permanent membership.[2] and sociala to guide the General Assembly were incorporated in the the mer of the Preparatory Commission of the United Nations or in Genrovisional Rules of Procedure adopted by the General Assembly. th In actual practice, the Great Powers and most of the industrially important states of the world have been elected to membership in the Economic and Social Council. In addition, however, an attempt has been made to give representation to different economic and cultural systems and to a variety of interests. This makes the Council better able to deal intelligently with the wide range of economic and social problems which it has to face.

For the first three years the membership of the Economic and Social Council, grouped by classes, has been as follows: [3]

1946	1947	1948
Belgium	Netherlands	Netherlands
Canada	Canada	Canada
Chile	Chile	Chile
China	China	China
France	France	France
Peru	Peru	Peru
Cuba	Cuba	Brazil
Czechoslovakia	Czechoslovakia	Poland
India	India	Australia
Norway	Norway	Denmark
Soviet Union	Soviet Union	Soviet Union
United Kingdom	United Kingdom	United Kingdom
Colombia	Venezuela	Venezuela
Greece	Turkey	Turkey
Lebanon	Lebanon	Lebanon
Ukraine	Byelorussia	Byelorussia
United States	United States	United States
Yugoslavia	New Zealand	New Zealand

[1] UNCIO, *Summary of Report of Ninth Meeting of Committee II/3*, Doc. 493, II/3/21, p. 2 (*Documents*, X, p. 53).

[2] UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55 (1), p 9 (*Documents*, X, p. 277).

[3] For details as to dates of election and terms, see *supra*, p. 49.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

The Dumbarton Oaks Proposals provided for three-year terms without provision for overlapping memberships. It was thought desirable by the United Nations Conference to have some assurance of continuity of membership, other than that contained in the provision permitting re-election. The Rules of Procedure of the General Assembly giving effect to this paragraph provide: "The General Assembly shall each year, in the course of its regular session, elect six members of the Economic and Social Council . . ." (Rule 134); ". . . The term of office of members of Councils shall begin on 1 January, following their election by the General Assembly and shall end on 31 December following the election of their successors" (Rule 128); and "A retiring member of the Economic and Social Council shall be eligible for immediate re-election" (Rule 135).[4] On the significance of the provision permitting re-election of a member whose term is expiring, see comment on paragraph 1 above.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

In order to carry out the principle of rotation it was necessary to decide upon some mechanism by which the members of the Council after the initial elections might be placed in the three categories. Consideration was given to a plan whereby originally there would be three classes of members, to be elected for terms of one, two, and three years respectively. It was considered desirable, however, that initially all members should be elected without designation as to whether their terms were to run for one, two or three years, and that subsequently arrangement would be made to divide the members elected into the three categories. The drafting subcommittee of Committee II/3 proposed that this determination should be made by drawing lots. It was finally decided, however, that the specific plan to be followed should be determined by the General Assembly.

The practice of the General Assembly in its first session was to elect eighteen members to the Council and then, by simple majority vote,

[4] UN, Doc A/520

to choose six countries out of the eighteen to serve on the Council for three years and six to serve for two years. The remaining members of the Council were to serve for one year only.[5] Rule J of the Supplementary Rules of Procedure adopted by the General Assembly during its first session provided: "Members of Councils elected for one, two and three years during the first part of the first regular session of the General Assembly shall hold office until 31 December 1946, 1947 and 1948, respectively. Their successors shall be elected during the second part of the first regular session and during the second and third regular sessions of the General Assembly respectively, and shall take and continue in office in accordance with rule 87."[6]

4. Each member of the Economic and Social Council shall have one representative.

This paragraph accords with Article 23(3), applying to the Security Council, and Article 86(2), applying to the Trusteeship Council. Rule 16 of the Rules of Procedure of the Economic and Social Council provides that "each representative on the Council may be accompanied by such alternative representatives and technical advisers as he may require."[7]

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

Background. The provisions of the Charter relating to the functions and powers of the Economic and Social Council constitute considerable elaboration of the comparable provisions of the Dumbarton Oaks Proposals. This particular paragraph is a case in point. Under the terms of Chapter IX, Section C, paragraph 1(b) of the Dumbarton

[5] UN, General Assembly, *Official Records of the First Part of the First Session . . . , Plenary Meetings . . .*, p. 96–9. For results of voting, see *supra*, p. 49.

[6] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .*, p. 964 and Doc. A/182, p. 2. Rule 87 of the Provisional Rules of Procedure has been replaced by Rule 128 of the Rules of Procedure.

[7] UN, Doc. E/33/Rev. 4.

Oaks Proposals the Economic and Social Council was to be empowered "to make recommendations, on its own initiative, with respect to international economic, social and other humanitarian matters." At San Francisco this provision was expanded in three respects.

In the first place, the Council was expressly empowered to "make or initiate studies and reports" with respect to such matters. It was felt that this specific grant of authority was needed to provide an adequate basis for the power to make recommendations although it might be argued that it was clearly implied. This power to make and initiate studies and reports was used extensively by the organs of the League of Nations to provide important factual material which was available to League organs and to members.

In the second place, the Article specifies in greater detail the matters with regard to which the Economic and Social Council may make or initiate studies, and make reports and recommendations. The words "cultural", "educational" and "health" were inserted to cover specifically matters which were perhaps covered by implication by the more general phraseology of the Dumbarton Oaks Proposals, but which the delegates to the United Nations Conference were insistent should be included beyond any possibility of doubt. This elaboration was in line with changes made in other Articles of the Charter, notably Article 1(3) and Article 13(1).

In the third place, this paragraph makes it clear that the recommendations to be made by the Economic and Social Council may be directed to the General Assembly, to the Members of the United Nations, or to the specialized agencies concerned. Since the Economic and Social Council functions under the authority of the General Assembly, it might, perhaps, have been assumed in the absence of such particularization that recommendations were to be made only to the General Assembly.

Application. In its first six sessions the Economic and Social Council and its committees and commissions made numerous studies, both on the initiative of the Economic and Social Council itself and on the recommendation of the General Assembly.[8] Studies conducted by the Economic and Social Council have dealt with such subjects as the problem of refugees and displaced persons, the world shortage of housing, the reconstruction of devastated areas, the economic status of women and the problem of transferring League of Nations functions of a non-political character to organs of the United Nations or to specialized agencies. These studies have been carried out through

[8] For detailed summary of Council activity down to July 1948, see *Yearbook, 1946–47*, p. 472–539 and the annual reports of the Economic and Social Council to the General Assembly. See also, summaries in *International Organization.*

the commissions provided for in Article 68, through special *ad hoc* bodies created for the purpose, or through the appropriate departments of the Secretariat.

The fact that the power of the Economic and Social Council to make recommendations to the General Assembly, to the Members of the United Nations or to the specialized agencies extends to all economic, social, cultural, educational, health, and related matters of an international character has been brought out clearly in Council discussions. In September 1946, the Council had before it the proposals of the Yugoslav and Czechoslovak Governments recommending the restoration of Danube vessels and barges belonging to them which had been taken from the German Army and were under the control of the United States. Several delegates argued that the Council had no jurisdiction to deal with the problem if it constituted a political dispute among the parties concerned. The Chairman stated that since the question involved international economic issues, and since there was no doubt as to the ownership of the property to be restored, it was within the competence of the Council to make appropriate recommendations on the matter. The Council finally passed a resolution recommending that a conference be held in Vienna to resolve the basic problems obstructing the resumption of international Danube traffic.[9]

A somewhat similar question was raised before the Economic and Social Council during its sixth session. Differences between the United States and Yugoslavia with respect to the disposition of gold transferred to the United States and deposited with the Federal Reserve Bank of New York during the war, were brought before the Economic and Social Council by Yugoslavia in February 1948. The Yugoslav representative submitted a draft resolution under which the Council would recommend to the United States that it "cease causing damage to Yugoslavia" by further retention of the gold. The United States representative took the position that the Council was not empowered to deal with a dispute between countries either "as an arbitral tribunal, conciliation agency, or judicial court." By a vote of 9 to 7, the Council decided to refer the question of its competence to its Economic Committee.[10] On the basis of the Committee's report, the Council concluded that it was incompetent to deal with the matter on two grounds: (1) because of its being a particular dispute between two states and (2) because of the juridical issues involved.[11]

[9] UN, Economic and Social Council, *Official Records, First Year: Third Session*, No. 5, p. 62–72 and No. 6, p. 73–8.
[10] UN, *Bulletin*, IV, p. 177–8.
[11] UN, Doc. E/764.

The power of the Council to initiate studies under this Article is subject in practice to financial limitations. On December 11, 1946, the General Assembly adopted the following provisional financial regulation (Regulation 25):

> No resolution involving expenditure from United Nations funds shall be approved by a Council unless the Council has before it a report from the Secretary-General on the financial implications of the proposals, together with an estimate of the costs involved in the specific proposal.[12]

Rule 30 of the Council's Rules of Procedure implements this regulation by requiring the Secretary-General, before any proposal which involves expenditure is approved, to prepare and circulate to members a summary report of the financial implications of the proposals and the estimated costs.

The Council has been criticized for undertaking too wide a range of activities without attempting to establish a scale of priorities which would assure timely consideration of the more pressing and urgent problems.[13]

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

It is to be noted that under the terms of this paragraph the Economic and Social Council is not specifically empowered "to make or initiate studies and reports." There is nothing in the record of the discussions in the United Nations Conference at San Francisco to indicate that there was any intention to differentiate between the powers of the Economic and Social Council under paragraph 1 and its powers under paragraph 2. In practice the Council has made and initiated studies and reports on human rights and fundamental freedoms just as it has for the matters listed ir paragraph 1.

In order to perform its functions under this paragraph the Economic and Social Council has set up a Commission on Human Rights. The functions of the Commission are to submit proposals, recommendations, and reports to the Council regarding an international bill of rights; international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; the protection of minorities; and the prevention of discrimination on grounds

[12] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add 1, p 148.

[13] See UN, General Assembly, *Chapter II of the Report of the Economic and Social Council. Report of the Second Committee*, Doc. A/433 and comment on Article 58, *supra*, p. 355

of race, sex, language or religion.[14] The Commission completed, during its third session, May 24 to June 18, 1948, a draft International Declaration on Human Rights which it submitted to the Economic and Social Council for its consideration. The Commission also decided to forward to the Council a draft International Covenant of Human Rights and suggestions for implementation which had been prepared by its Drafting Committee but which it had not considered in detail.[15]

At the request of the General Assembly, the Council organized a United Nations Conference on Freedom of Information which met at Geneva, March 23–April 21, 1948. Using as the basis of its discussions a report of the Subcommission on Freedom of Information and of the Press and statements and proposals of various governments, the Conference adopted three draft conventions dealing with the gathering and international transmission of news, the institution of an international right of correction, and freedom of information.[15a] These draft conventions, together with other conclusions of the Conference, were communicated to the Economic and Social Council which considered them during its seventh session.

At the request of the Economic and Social Council, the Secretary-General prepared a draft convention on genocide. During its sixth session, the Council appointed an *ad hoc* committee to prepare a draft convention based on the Secretary-General's draft and the comments of Member governments. The report of this committee [15b] was considered by the Council during its seventh session.

Neither the Council nor any one of its Commissions has the power to take action in regard to any complaints concerning human rights. The Secretary-General compiles a confidential list of communications received with a brief indication of substance. This list is communicated to the Commission on Human Rights in private meeting. The Secretary-General also furnishes each Member state not represented on the Commission with a brief indication of any complaint against it, without however divulging the identity of the author.[15c] On the basis of such information, the Economic and Social Council can presumably only make recommendations of principles and procedures of international cooperation.

[14] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 163–4.

[15] See UN, Economic and Social Council, *Report of the Third Session of the Commission of Human Rights*, Doc. E/800.

[15a] UN, Economic and Social Council, *Final Act of the United Nations Conference on Freedom of Information*, Doc. E/Conf.6/79.

[15b] UN, Doc. E/794.

[15c] UN, Economic and Social Council, *Communications Concerning Human Rights Received by the United Nations (Memorandum by the Secretariat)*, Doc. E/857.

The Council has also set up a Commission on the Status of Women to prepare recommendations and reports to the Economic and Social Council with a view to promoting women's rights in the political, economic, social, and educational fields.[16]

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its compétence.

No provision for the granting of such power was contained in the original Dumbarton Oaks Proposals. Under the Constitution of the ILO the General Conference is empowered to draw up draft conventions for submission to member states. The Assembly of the League of Nations at its second session declared itself competent to draft conventions by direct action and did so in four instances, although there was no specific grant of such authority in the Covenant.[17]

At the United Nations Conference it was decided not to give the General Assembly the express power to initiate conventions, although, as it has been pointed out in the comment on Article 13,[18] it would appear that such power is implicit in the other powers given to that organ. When the matter of empowering the Economic and Social Council to prepare draft conventions for submission to the General Assembly was considered by Committee II/3, attention was called to the action taken by Committee II/2 on the more general question, but the Committee nevertheless voted unanimously in favor of the substance of this paragraph.

The power conferred by this paragraph has been found extremely useful. In dealing with the question of refugees and displaced persons, the Council first established, by resolution of February 16, 1946, a Special Committee on Refugees and Displaced Persons.[19] This Committee prepared a Draft Constitution of an International Refugee Organization, which, as amended by the Council, was submitted for study to Members of the United Nations and to a special committee on finances.[20] At its third session, the Council reviewed the Draft Constitution in the light of comments received from Members and the report of its Committee on the Finances of the International Refugee Organization, and on October 3, 1946, adopted a resolution transmit-

[16] UN, Economic and Social Council, *Official Records, First Year: Second Session*, p. 405–6.

[17] See Burton, Margaret E., *The Assembly of the League of Nations*, Chicago, 1941, p. 243–66.

[18] See *supra*, p. 174.

[19] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 160–2.

[20] *Ibid.*, *Official Records, First Year: Second Session*, p. 347–60.

ting a revised and completed Draft Constitution for the International Refugee Organization to the General Assembly for approval, along with a proposed draft concerning interim arrangements.[21]

A similar use of the power conferred by this paragraph was made by the Council in dealing with the question of reestablishing an effective international system of narcotics control. On the basis of the report of its Drafting Committee on Narcotic Drugs, the Council adopted a resolution on September 26, 1946, submitting to the General Assembly a draft protocol amending the agreements, conventions and protocols on narcotic drugs which provided the basis of the League system of control in order to transfer this function to the United Nations.[22] The protocol was approved by the General Assembly and opened to signatures. In like manner, the Council by resolution of August 14, 1947, submitted to the General Assembly a draft protocol to amend the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on September 30, 1921, and the Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on October 11, 1933, with a view to the assumption by the United Nations of the functions performed by the League under these agreements.[23]

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

This provision was initially adopted at San Francisco following a proposal of the Australian Delegation to the effect that the Economic and Social Council should be empowered to call a conference in case of an emergency to consider and recommend action for safeguarding and promoting the economic and social purposes of the Charter.[24] In the course of its consideration by Committee II/3 and its drafting subcommittee the view prevailed that there was no good reason for limiting this grant of power to an emergency situation. It was decided that this grant of power to call international conferences should extend to all matters falling within the competence of the Council, but that the power should be exercised according to rules to be prescribed by the United Nations, that is, by the General Assembly. The

[21] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p. 29–47.

[22] *Ibid.*, p. 13–24.

[23] *Ibid.*, *Resolutions Adopted . . . , during Its Fifth Session . . .*, Doc. E/573, p. 45–53.

[24] UNCIO, *Proposed Amendments to the Dumbarton Oaks Proposals*, Doc. 157, II/3/5, p. 21 (*Documents*, X, p. 319).

authority conferred upon the Economic and Social Council by this paragraph is comparable to that vested in the League Council under the more general provisions of the Covenant which made it possible for that body to call international conferences, such as the International Economic Conference held at Geneva in May 1927, when circumstances seemed to warrant it.

No permanent rules governing the calling of international conferences by the Economic and Social Council have yet been adopted by the General Assembly. However, during the first part of its first session, the General Assembly adopted the following rule: "Pending the adoption, under paragraph 4 of Article 62 of the Charter, of definitive rules for the calling of international conferences, the Economic and Social Council may, after due consultation with Members of the United Nations, call international conferences in conformity with the spirit of Article 62 on any matter within the competence of the Council, including the following matters: international trade and employment; the equitable adjustment of prices on the international market; and health." [25] At its second session, the General Assembly invited the Secretary-General to prepare, in consultation with the Economic and Social Council, draft rules for the calling of international conferences to be considered by the Assembly in its third session.[25a]

From the beginning the Economic and Social Council has called international conferences on its own initiative as well as upon instructions from the General Assembly. Acting on the instruction of the General Assembly,[26] the Council called the Conference on Freedom of Information which met at Geneva, March 23, 1948.[27] On its own initiative, the Council called the International Health Conference, which met at New York, from June 19 to July 22, 1946.[28] The Conference adopted the Constitution of the World Health Organization and approved interim arrangements. Other conferences initiated by the Economic and Social Council have been the World Statistical Congress, held in Washington in 1947, the United Nations Conference on Trade and Employment, which convened at Havana on November 21, 1947,[29] and the United Nations Maritime Conference which convened at Geneva on February 19, 1948.

[25] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session* . . . , Doc. A/64, p. 24.

[25a] For text of Draft Rules prepared by the Secretariat, see UN, Doc. E/836.

[26] UN, General Assembly, *Resolutions Adopted . . During the Second Part of its First Session* . . . , Doc. A/64/Add.1, p. 95

[27] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fifth Session* . . ., Doc. E/573, p. 11–20.

[28] UN, Doc. E/100.

[29] UN, Economic and Social Council, *Resolutions Adopted . during Its Fifth Session* . . ., Doc. E/573, p. 1–3.

In discussions in the General Assembly and Economic and Social Council it has been stated that the Council may not call conferences on matters outside its competence, may call only intergovernmental conferences, and may not call them in violation of Article 2(7). In November 1946, the Philippine Delegation submitted a proposal to the General Assembly that a conference of representatives of the peoples of non-self-governing territories be held under the auspices of the United Nations. It was proposed that the Economic and Social Council call the conference.[30] It was argued by the United States and the United Kingdom Delegations that under Article 62 the Economic and Social Council is authorized to convene only intergovernmental conferences, and that the calling of a regional conference without the intermediary of the governments concerned — the governments administering non-self-governing territories — was a violation of Article 2(7) of the Charter.[31] It was also argued that the Economic and Social Council could call conferences only "on matters falling within its competence." The conference in question would be concerned with matters under Chapter XI, matters which were outside the purview of the Economic and Social Council.[32] The French Delegation contended that the resolution would extend the activity of the Council to political matters. It asserted: "The Council may call international conferences only on matters within its competence; but the Economic and Social Council has no competence in political affairs. Furthermore, it is not competent to convene conferences of representatives of territories. It may call conferences only of representatives of States."[33] As finally drafted and adopted, the resolution omitted all reference to the Economic and Social Council.[34]

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

Under the terms of this paragraph, the Economic and Social Council is specifically empowered to represent the United Nations in making

[30] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , General Committee . . .*, p. 89–91.
[31] UN, Doc. A/C.4/74.
[32] UN, General Assembly, *Official Records of the Second Part of the First Session . . , Plenary Meetings . . .*, p. 1327–57.
[33] *Ibid.*, p. 1346.
[34] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . .*, Doc A/64/Add.1, p. 126.

the agreements defining the relationship of the specialized agencies to the United Nations provided for in Article 57. These agreements, however, must be approved by the General Assembly.[35]

On February 16, 1946, in its first session, the Economic and Social Council established a Committee on Negotiations with Intergovernmental Agencies.[36] The Committee was directed to enter into negotiations with enumerated specialized agencies and to submit a report of the negotiations to the second session of the Council, along with preliminary draft agreements. It was also instructed to include within the draft agreements appropriate provisions on enumerated subjects and also to consider with the agencies the inclusion of appropriate provisions on a supplemental list of subjects. The Committee meets with a Negotiating Delegation representing the specialized agency and concludes a draft agreement which is then submitted to the Economic and Social Council for its approval, and then to the General Assembly. All the agreements negotiated to date, with the exception of the agreements with ITU and UPU which contain special provisions made necessary by the simultaneous revision of the basic conventions of these two agencies, specify that they shall enter into force on approval by the General Assembly and the corresponding organ of the specialized agency.

In each case, the Secretary-General and the corresponding official of the specialized agency sign a protocol concerning the entrance into force of the agreement.[37] The agreements are registered with the Secretariat in accordance with the provisions of Article 102(1). Since the United Nations is a party, they are registered *ex officio* by the United Nations.[38]

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

This paragraph is a special application of the principle of Article 58. It is more specific than Article 58 in that it confers power upon a particular organ, the Economic and Social Council, it provides for

[35] For analysis of agreements thus far approved, see comment on Article 57, *supra*, p. 346.

[36] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 171–2.

[37] For text of protocol signed with respect to the ILO agreement, see UN, *Treaty Series*, I, p. 184–5.

[38] "Regulations to Give Effect to Article 102 of the Charter of the United Nations," Article 4, *ibid*, p xxii.

consultations as well as recommendations and it specifies to whom the recommendations can be made. This paragraph, however, adds little to the powers that may be derived by reasonable interpretation from Articles 58 and 60.

For a more detailed discussion of the role of the Economic and Social Council and the methods it has utilized in the exercise of its power under this paragraph, see comment on Article 58.[39]

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

It is to be noted that this empowers the Council to "take appropriate steps" and to "make arrangements" without, however, placing upon the specialized agencies or upon the Members of the United Nations any obligation to cooperate on their side in achieving the desired result. If the agencies do cooperate, "the power of the Economic and Social Council to require and consider reports may be, as the history of national governmental administration has shown, a very potent factor in the development of control over the specialized agencies."[40]

The Preparatory Commission of the United Nations in its "Observations on Relationships with Specialized Agencies" recommended that the agreements with all agencies include an undertaking on their part to report on the steps taken to give effect to all General Assembly and Economic and Social Council recommendations. The Commission stated: "In addition to the special reports referred to . . . above, the agreements with all specialized agencies should include an undertaking by them to furnish regular reports as envisaged in Article 64 of the Charter. The frequency and character of these reports should be provided for in the agreement with each agency."[41]

The agreements actually concluded with the specialized agencies all include articles similar to Articles IV and V of the agreement between FAO and the United Nations, by which FAO agrees to report

[39] *Supra*, p. 356.

[40] Finer, Herman, *The United Nations Economic and Social Council*, Boston, 1945, p. 64–5.

[41] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 43.

on action taken upon United Nations recommendations and to transmit regular reports on its activities.[42]

The nature of the arrangements to be made with the Members of the United Nations to obtain reports on steps taken to give effect to recommendations of the Council and the General Assembly is less clear. Presumably one means, and the most effective means, would be to get Members of the United Nations to agree, under an agreement initiated by the Council, to make the reports in question either at regular intervals or upon request. As yet, neither the General Assembly nor the Council have made these arrangements.

The experience of international organizations in the past, particularly the ILO, shows how important it is that information should be available upon the steps actually taken by members to give effect to recommendations of the kind which are referred to here. The ILO has found that the drafting and adoption of labor conventions to be submitted to members for their consideration as recommendations of the Conference often present fewer difficulties than obtaining subsequent favorable action by members. The Economic and Social Council is given no authority to take coercive action against any Member of the United Nations or against any agency which refuses to carry out its recommendations or those of the General Assembly. It is, however, important to the exercise of any moral suasion that full facts should be available with regard to the steps which have been taken.[43]

2. It may communicate its observations on these reports to the General Assembly.

This empowers the Economic and Social Council to communicate its observations on these reports to the General Assembly for such action as that body may see fit to take. This provision would seem to be unnecessary in view of the fact that the General Assembly, as the organ under whose authority the Economic and Social Council acts, should be able, in the absence of any specific provision, to require such reports from the Council. Such observations have great value in providing the basis for Assembly action.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

[42] See *infra*, p. 627–8. For list of reports submitted for consideration by sixth and seventh sessions of the Council, see UN, Doc. E/815/Rev. 1.

[43] See also, comment on Article 56, *supra*, p. 322.

The substance of this Article was contained in the Dumbarton Oaks Proposals. The phraseology has been somewhat modified. It obligates the Economic and Social Council to assist the Security Council upon its request. This obligation obviously extends to the furnishing of information, but conceivably includes other forms of assistance, though any assistance given would presumably have to be consistent with the Council's general functions and powers under the Charter.

One of the objections commonly made to having two separate councils, as the Charter provides, is that it opens the way to conflicts and lack of cooperation between the two organs in dealing with matters of common concern. This danger is thought to be particularly likely to arise when one of the two organs, as in the case under the Charter, is relatively independent of and not responsible to the representative body to which the other must answer. This Article attempts to deal with that situation in part by assuring the Security Council the cooperation of the Economic and Social Council in matters that come within its competence. Presumably it is left to the Security Council to decide the form of assistance which the Economic and Social Council is to give, and the Economic and Social Council is obligated to give the assistance required unless it finds itself in the position where it cannot so act for lack of authority. The Economic and Social Council, has, however, made provision for carrying out its functions under Article 65 in its Rules of Procedure.[44] Rule 3 provides that a session of the Council shall be held within thirty days of the request thereof by a majority of its members, by the General Assembly, or by the Security Council, "acting in pursuance of Article 41 of the Charter." Rule 4 states that "A session of the Council shall also be held if the Security Council, the Trusteeship Council, or any Member of the United Nations, or a specialized agency requests a session and the President of the Council agrees to the request." Rule 10 provides that the provisional agenda shall include all items proposed by the Security Council.

Since the powers of the Economic and Social Council are limited for the most part to fact-finding and making recommendations, it becomes clear that the assistance which the Economic and Social Council will be called upon to give will be largely of the nature referred to in the first part of this Article. Undoubtedly, the Security Council will, in addition to asking for information, seek advice upon technical matters concerning which the Economic and Social Council will be thought to have special competence, as for example, the application of economic and financial measures under Article 41.

Conceivably, too, the Security Council may ask the Economic and

[44] UN, Doc. E/33/Rev. 3.

Social Council to take such action as it is empowered to take under agreements with the specialized agencies. The agreements between the United Nations and ILO, FAO, ICAO, UNESCO and WHO contain an article by which the specialized agency "agrees to co-operate with the Economic and Social Council in furnishing such information and rendering such assistance to the Security Council as that Council may request including assistance in carrying out decisions of the Security Council for the maintenance or restoration of international peace and security."[45]

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

The reason for this paragraph is not clear. In view of the relationship of the Economic and Social Council to the General Assembly established by Article 60, it would seem obvious that the Council is to perform functions in connection with the carrying out of the recommendations of the General Assembly. The ambiguity of the paragraph is largely the result of last-minute changes by the Coordination Committee of the text recommended by Committee II/3 of the United Nations Conference. The Committee recommendation, following more closely the original Dumbarton Oaks text as to arrangement, placed this general grant of authority at the beginning of the enumeration of the Council's functions and powers. Besides, both in the original Dumbarton Oaks text[46] and in the Committee draft,[47] the power conferred was "to carry out, within the scope of its functions, recommendations of the General Assembly". There is a serious question as to whether the text of the Charter actually conveys the meaning intended by the original Committee text, since the phraseology of this paragraph and its place in the Chapter suggest a more limited purpose than the Committee's text had in view.

The use of the phrase "as fall within its competence" as a limitation upon "such functions" permits a highly restrictive interpretation which would in effect cancel the clear intention of paragraph 3. The fact that the meaning of paragraph 3 is clear, and the fact that the more restrictive interpretation was definitely not the intention of the Committee II/3 of the United Nations Conference justify the conclusion

[45] Article VI of FAO agreement. See *infra*, p. 628–9.
[46] Chapter IX, Section C. See *infra*, p. 581.
[47] UNCIO, *Report of the Rapporteur of Committee II/3*, Doc. 861, II/3/55(1), p. 13 (*Documents*, X, p. 281).

that the phraseology and location of this paragraph are to be regarded as an example of hasty and ill-considered drafting.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

There was no provision of a comparable nature in the Dumbarton Oaks Proposals. This makes it possible for the Economic and Social Council to perform special services at the request of the Members of the United Nations and at the request of the specialized agencies such as were performed by the League of Nations for its members. China, for example, in the thirties received special assistance from the League in connection with the development of its health and communications services.

The General Assembly recommended to the Economic and Social Council on December 15, 1946, that the Council study the question of effective ways and means of furnishing expert economic, social and cultural advice to Member countries, particularly underdeveloped ones, which might desire it.[48] The Council considered this matter at its fourth session and decided to instruct the Secretary-General to establish machinery within the Secretariat to perform the following services for Member Governments.

1. Assistance to Member Governments in obtaining information on expert personnel, research facilities and other resources that the United Nations and specialized agencies can make available to Member Governments on request, and especially to the less developed countries for aiding them in their development;

2. Elaboration of plans and programmes for the most efficient utilization of such personnel, facilities and resources;

3. Assistance to Member Governments which seek expert advice in securing, on terms mutually agreed upon, such advice, particularly in the form of teams of experts who would study specific problems and recommend appropriate practical solutions for the consideration of the Member Governments concerned.[49]

The Council further instructed the Secretary-General to work at every stage in close cooperation with the specialized agencies and to obtain a report on the subject from the Coordination Commission for submission to the Council.[50]

[48] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 79.

[49] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fourth Session . . .*, Doc. E/437, p. 42.

[50] For text of interim report of the Secretary-General, see UN, Economic and Social Council, *Official Records. Second Year: Fifth Session*, Suppl. No 8

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

This paragraph is to be considered in connection with provisions of Article 60. That Article states that the Economic and Social Council in carrying out the functions placed upon it shall "have for this purpose the power set forth in Chapter X." That might be interpreted as restricting the power of the Economic and Social Council and, more particularly, the import of the words "under the authority of the General Assembly." This paragraph makes it clear, however, that the effect of this reference is not restrictive since the Council is specifically authorized to perform such other functions as may be assigned to it by the General Assembly in the exercise of powers and functions vested in it by the Charter.[51]

Voting

Article 67

1. Each member of the Economic and Social Council shall have one vote.

This provision of the Charter is repeated in Rule 39 of the Council Rules of Procedure.[52] Compare with the provisions of Article 18(1), and Article 27(1).

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

This provision of the Charter is stated in Rule 40 of the Council Rules of Procedure. Rules 41 to 46 also apply to Council voting.

While the General Assembly must decide important matters such as those enumerated in Article 18(2), by a two-thirds vote of the members present and voting, decisions that need to be taken in connection with the exercise of its functions under Chapters IX and X can presumably be taken by a majority of those present and voting. The rule of this paragraph is therefore in harmony with the rule governing the voting procedure of the General Assembly.

The Constitution of the ILO provides that, except where there is provision to the contrary, decisions shall be taken by a majority vote. The adoption of proposed labor conventions for submission to mem-

[51] See comment on Article 62(4), *supra*, p. 376.
[52] UN, Doc. E/33/Rev. 4.

bers of the Organization requires a two-thirds vote of the General Conference. It is to be noted that the decisions of the Economic and Social Council will generally be of such a nature as not to create any substantive obligations for Members. The decisions will be on proposals to organize studies, make recommendations, and call conferences.

Procedure

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Background. The Dumbarton Oaks Proposals provided in Chapter IX, Section D, paragraph 1, that the Economic and Social Council should set up an economic commission, a social commission and such other commissions as might be required. This proposal was based in part on the experience of the League of Nations with technical committees and commissions which played an important part in guiding the course of economic and social cooperation.[53] At the United Nations Conference in San Francisco considerable pressure was brought to bear to extend the number of commissions specifically referred to. In particular, the proposal was made that a commission for the promotion of fundamental human rights should be included in the list. It was recognized, however, that it was necessary to leave some discretion to the Council since all specific needs could not be foreseen. As a compromise it was agreed to add a commission for the promotion of human rights to the list of commissions whose establishment was obligatory and to empower the Economic and Social Council to set up such additional commissions as might be required for the performance of its functions. This left a certain amount of freedom to the Economic and Social Council with regard to the specific commissions to be established, not to mention the inevitable latitude which was left to the Council in determining the specific functions which those commissions were to perform in their relation to the other organs of the United Nations and to the specialized agencies.

Recommendations of Preparatory Commission. The Preparatory Commission in its report on the organization of the Economic and

[53] See Greaves, H. R. G., *The League Committees and World Order*, London, 1931 and Morley, Felix, *The Society of Nations*, Washington, 1932, p. 227–60.

Social Council gave careful consideration to the problem of establishing commissions under this Article. In reaching its conclusions regarding the number and character of the commissions which should be set up immediately, it was guided by five major considerations,[54] which can be summarized as follows:

1. The specific fields in which international economic and social cooperation is required are diverse and call for treatment by more or less specialized bodies. In some of these fields international governmental agencies exist or are contemplated. In others, specialized functions might be entrusted to commissions or committees of the Economic and Social Council. Undesirable duplication should be avoided.
2. Complex economic and social problems of the gravest urgency, arising out of the war, will demand immediate attention by the Economic and Social Council.
3. Provision will have to be made for the continuance of certain functions and activities of the League of Nations.
4. There is need for flexibility in the number of commissions, the scope of their activities, the powers delegated to them, the method of selection of personnel, and the duration of their sittings.
5. Due consideration should be given to the importance of coordinating activities in fields which are closely related.

The Preparatory Commission recommended that the Economic and Social Council establish the following commissions at its first session:

(a) Commission on Human Rights
(b) Economic and Employment Commission
(c) Temporary Social Commission
(d) Statistical Commission
(e) Commission on Narcotic Drugs[55]

It recommended that the Council consider the desirability of establishing at an early date, and possibly at its first session, the following commissions:

(a) Demographic Commission
(b) Temporary Transport and Communications Commission
(c) Fiscal Commission[56]

Action of Economic and Social Council.[57] At its first session, the Economic and Social Council established five temporary or nuclear

[54] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 34–6.
[55] *Ibid.*, p. 36.
[56] *Ibid.*, p. 38.
[57] See *Yearbook, 1946–47*, p. 467 *et seq.*

commissions, each consisting of nine persons, the Commission on Human Rights with a Sub-Commission on the Status of Women, the Economic and Employment Commission, the Statistical Commission, the Temporary Social Commission, and the Temporary Transport and Communications Commission, and one permanent commission, the Commission on Narcotic Drugs.[58] The nuclear commissions were instructed to examine their draft terms of reference, study their composition, and make recommendations to the Council at its next session. On the basis of reports received from the five nuclear commissions the Economic and Social Council decided, during its second session in May and June, 1946, to establish the Economic and Employment Commission with subcommissions on Employment, Balance of Payments, and Economic Development, and a Temporary Sub-Commission on the Economic Development of Devastated Areas;[59] a Transport and Communications Commission;[60] a Statistical Commission;[61] a Commission on Human Rights, with subcommissions on Freedom of Information and of the Press, Protection of Minorities, and Prevention of Discrimination;[62] a Social Commission;[63] and a Commission on the Status of Women.[64] During its third session, September to October, 1946, the Council established a Fiscal Commission[65] and a Population Commission.[66] It also directed the Economic and Employment Commission to set up Sub-Commissions on Employment and Economic Stability, and Economic Development.[67]

During its fourth session, February to March, 1947, pursuant to a resolution adopted by the General Assembly on December 11, 1946, the Economic and Social Council established an Economic Commission for Europe. This was the first of the regional commissions to be established. It was authorized to take appropriate action with a view to taking over the essential functions of the Emergency Economic Committee for Europe, the European Coal Organization and the European Central Inland Transport Organization.[68] The Council also estab-

[58] For texts of resolutions, see UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 158–74.
[59] *Ibid.*, *Official Records, First Year: Second Session*, p. 391–3.
[60] *Ibid.*, p. 395–8.
[61] *Ibid.*, p. 398–400.
[62] *Ibid.*, p. 400–2.
[63] *Ibid.*, p. 402–5.
[64] *Ibid.*, p. 405–6.
[65] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p. 2–3.
[66] *Ibid.*, p. 3–5.
[67] *Ibid.*, p. 1–2.
[68] *Ibid.*, *Resolutions Adopted . . . during Its Fourth Session . . .*, Doc. E/437, p. 10–3.

lished an Economic Commission for Asia and the Far East.[69] On the basis of the report of an *ad hoc* Committee, appointed during its fifth session to study the relevant factors, the Council decided at its sixth session to establish an Economic Commission for Latin America.[70] It also created an *ad hoc* Committee to give preliminary consideration to the establishment of an Economic Commission for the Middle East.[71]

Composition. The question of the composition of the commissions was one of the most controversial and difficult to decide. It was agreed at San Francisco to omit one provision contained in the Dumbarton Oaks Proposals. This was the requirement that the commissions should consist of experts. It was felt that it might be desirable to appoint to these commissions persons other than experts and that the Economic and Social Council should be given freedom to decide.

The Preparatory Commission of the United Nations considered the question, and made the following recommendations:

> Most commissions should contain a majority of responsible highly-qualified governmental representatives. Where the work of a commission is likely to result in recommendations for specific action by governments, acceptance of this principle would add realism and responsibility to the advice of the commission and improve the prospects of implementation by governments.
>
> Non-governmental members of commissions, with appropriate qualifications, might be chosen by the Council from among the nationals of any Member of the United Nations. Such members might include government officials chosen by the Council in their personal capacity after the Council had obtained the consent of the government concerned.[72]

The nuclear commissions recommended to the Council at its second session that a certain proportion of the members of the permanent commissions should be persons appointed in their individual capacities. In no case did a nuclear commission suggest that the membership of a permanent commission should be limited to government representatives.

The Economic and Social Council itself referred the matter to a Joint Committee on Composition of Commissions. Several members thought that the commissions should consist of experts chosen in their individual capacities; other delegates felt that the commissions should be composed entirely of government representatives. The Joint Committee decided in June 1946, by a vote of 11 to 5, that the commissions should consist of representatives of governments.[73] This decision was

[69] *Ibid.*, p. 13–5.
[70] UN, Doc. E/712/Rev. 1.
[71] UN, Doc. E/753.
[72] *Report of the Preparatory Commission . . .* , Doc. PC/20, p. 39.
[73] UN, Doc. E/JC/1.

incorporated in the Council resolution of June 21, 1946, which provided that the listed commissions should consist of representatives of Members of the United Nations selected by the Council.[74] The composition of subcommissions was left to the decision of the commissions appointing them. It was later made clear by the President of the Council that a designated government may, if it so desires, select an expert in his individual capacity, who would not be bound by instructions and whose position might not necessarily be that of his government. However, any representative, once chosen, is not considered subject to rotation or change prior to the expiration of his term. It was further decided by the Council that, with a view to securing a balanced representation in the various fields covered by the commissions, the Secretary-General should consult with the governments so selected before the representatives were nominated by the governments and confirmed by the Council.

In the case of two commissions, the Economic and Employment Commission, and the Statistical Commission, the Economic and Social Council may appoint in their individual capacity from ten to fifteen corresponding members from countries not represented on the commission. Such members are appointed with the approval of the governments concerned.

The Narcotics Commission, due to its special functions, is set up on a somewhat different basis. It is composed of fifteen Members of the United Nations, "which are important producing or manufacturing countries or countries in which illicit traffic in narcotic drugs constitutes a serious social problem."[75] The regional economic commissions are constituted on a still different basis. The Economic Commission for Europe includes European Members of the United Nations and the United States. That for Asia and the Far East includes Members situated in or possessing territories in this area. In addition certain enumerated territories not possessing the status of fully self-governing territories may participate under defined conditions as associate members.[76] The Economic Commission for Latin America consists of all Members of the United Nations in North, Central and South America and the Caribbean, plus France, the Netherlands and the United Kingdom.[77]

[74] UN, Economic and Social Council, *Official Records, First Year: Second Session* . . . , p. 406–9. For criticism of this decision, see Loveday, Alexander, "An Unfortunate Decision," *International Organization*, I (1947), p. 279–90.

[75] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 169.

[76] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fifth Session* . . . , Doc. E/573, p. 7–8.

[77] UN, Doc. E/712/Rev. 1, p. 2.

Membership on the functional commissions is for a period of three years; all members of the Commission on Narcotic Drugs were initially elected to serve this term, while in the case of other commissions, the initial terms were staggered. Retiring members are eligible for re-election.

Functions. The Commissions fall into the following three categories in so far as their functions as defined by their terms of reference are concerned:

(1) Those which have been set up primarily, if not exclusively, to make studies, prepare reports and other material, and advise the Council with respect to action to be taken within their special fields. The Commissions falling in this category include the Economic and Employment Commission, the Transport and Communications Commission, the Statistical Commission, the Social Commission, the Commission on Human Rights, the Commission on the Status of Women, the Population Commission, and the Fiscal Commission. A further distinction can be made between those Commissions – the Statistical, Fiscal, and Population – which are primarily concerned with making studies and making available the best technical knowledge, and the others in this general category which are chiefly concerned with advising the Council on questions of policy and in formulating specific proposals. Illustrative of the Commissions with policy responsibilities is the Economic and Employment Commission whose functions are defined as follows:

(a) The Commission shall advise the Economic and Social Council on economic questions in order to promote higher standards of living.

(b) It shall examine such questions as may be submitted to it by the Council, and shall on its own initiative report to the Council on problems which, in its opinion, require urgent attention.

(c) It shall make recommendations to the Council with reference to economic questions involving concerted study and (or) action by more than one specialized agency or commission of the Council, and in particular shall draw the attention of the Council to the probable influence of the policies and activities of other commissions of the Council, the specialized agencies or other international organizations on the issues mentioned in paragraph (d) below.

(d) In particular, it shall be the function of the Commission to advise the Council on:

(i) the prevention of wide fluctuations in economic activity and the promotion of full employment by the co-ordination of national full employment policies and by international action;

(ii) problems of the reconstruction of devastated areas and other urgent problems arising from the war, with a view to developing means of giving real help, which is so necessary, to various Members of the

United Nations whose territories have been devastated by the enemy as a result of occupation and war activities;

(iii) the promotion of economic development and progress with special regard to the problems of less developed areas.

In carrying out the functions set forth above, the Commission shall take account of the close relationship between the short-term problems and the long-term objectives of an expanding and integrated world economy.[78]

(2) Those which have been set up to perform certain of the functions of the Council itself within defined geographical areas for temporary periods. These include the Economic Commissions for Europe, for Asia and the Far East and for Latin America. In all cases, the Council must review by 1951 the work of these Commissions and decide whether they shall be continued, and if so in what form. The functions of the Economic Commission for Europe are defined in its terms of reference as follows:

The Economic Commission for Europe, acting within the framework of the policies of the United Nations and subject to the general supervision of the Council shall, provided that Commission takes no action in respect to any country without the agreement of that country:

(a) Initiate and participate in measures for facilitating concerted action for the economic reconstruction of Europe, for raising the level of European economic activity, and for maintaining and strengthening the economic relations of the European countries both among themselves and with other countries of the world;

(b) Make or sponsor such investigations and studies of economic and technological problems of and developments within member countries of the Commission and within Europe generally as the Commission deems appropriate;

(c) Undertake or sponsor the collection, evaluation and dissemination of such economic, technological and statistical information as the Commission deems appropriate.[79]

The Commission is empowered "to make recommendations on any matter within its competence directly to its member Governments", governments admitted in a consultative capacity, and the specialized agencies concerned. It must submit "for the Council's prior consideration any of its proposals for activities that would have important effects on the economy of the world as a whole". "The Commission may, after discussion with any specialized agency functioning in the same general field and with the approval of the Council, establish such subsidiary bodies as it deems appropriate for facilitating the

[78] UN, Economic and Social Council, *Official Records, First Year: Second Session*, p. 392.

[79] UN, Economic and Social Council, *Resolutions Adopted during Its Fourth Session . . .*, Doc. E/437, p. 10–1.

carrying out of its responsibilities." It must submit to the Council full reports on its activities and plans.

(3) One Commission has important supervisory, as well as advisory, powers – the Commission on Narcotic Drugs. The functions of this Commission are as follows:

(a) assist the Council in exercising such powers of supervision over the application of international conventions and agreements dealing with narcotic drugs as may be assumed by or conferred on the Council;

(b) carry out such functions entrusted to the League of Nations Advisory Committee on Traffic in Opium and other Dangerous Drugs by the international conventions on narcotic drugs as the Council may find necessary to assume and continue;

(c) advise the Council on all matters pertaining to the control of narcotic drugs, and prepare such draft international conventions as may be necessary;

(d) consider what changes may be required in the existing machinery for the international control of narcotic drugs and submit proposals thereon to the Council;

(e) perform such other functions relating to narcotic drugs as the Council may direct.[80]

Coordination of Commission Activity. The Council has the responsibility for coordinating the work of the Commissions themselves. Its task is facilitated by the fact that most of the Commissions of the Council make recommendations to the Economic and Social Council and are not empowered to make recommendations directly to member governments or to specialized agencies.[81] Still the job is a difficult one considering the large number of Commissions and the recent development of regional commissions. One method of achieving such coordination is the periodic meeting between chairmen of Commissions to discuss matters of common interest. At one such meeting on May 22, 1946, the suggestion was made that a special commission be created to coordinate all the Commissions. There was little sympathy for this idea and it was generally agreed that meetings between chairmen of Commissions, the exchange of agenda of Commission meetings and constant liaison between the Economic and Social Departments of the Secretariat would provide the necessary coordination.[82]

The need of clarification of the inter-relations of the commissions, their terms of reference and methods of operation has been urged upon the Council. During its sixth session, as an initial step to this

[80] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 169.

[81] The regional commissions may make recommendations directly to Members or to specialized agencies.

[82] UN, Doc. E/Commissions/6.

end, the Council called upon the Commissions "to establish priorities of work in their respective programs based on the urgency and importance of the projects in fulfilling the purposes of Article 55 of the Charter," while the Secretary-General was asked to submit suggestions as to the form and character of Commission reports.[83]

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

This Article should be compared with Article 31. By the latter, a Member of the United Nations which is not a member of the Security Council may participate without vote in the discussion of any question when the Council considers that the interests of that Member are specially affected. By the Article under consideration, the Economic and Social Council is obligated to invite any Member which is not a member of that body to participate, without vote, in its deliberations on any matter of particular concern to that Member. Thus under Article 31 the Member which is not a member of the Security Council has the right to participate in the discussion, if the Council finds that its interests are specially affected, while under Article 69, in a similar situation, the Economic and Social Council is required to invite a Member to participate. The result would appear to be substantially the same in the two cases.

The Dumbarton Oaks Proposals contained no provision on the subject. The drafting subcommittee of Committee II/3 at the Conference proposed a paragraph reading as follows:

> The Economic and Social Council may invite any Member of the Organization to participate without vote in its deliberations if it considers that the interest of that member may be specially affected by such deliberations.[84]

It was proposed during Committee discussion that the word "shall" be substituted for the word "may". Some delegates took the view

[83] UN, Doc. E/765, p. 3. See UN, Economic and Social Council, *Report of the Secretary-General on Work Programmes of the Economic and Social Departments and of Commissions of the Council for 1948–49*, Doc. E/844 and *Form and Character of Commission Reports: Report by the Secretary-General*, Doc. E/845 and Corr. 1. For further discussion of coordination of work of commissions, secretariat departments and specialized agencies, see comment on Article 58, *supra*, p. 350.

[84] UNCIO, *Summary Report of the Sixteenth Meeting of Committee II/3*, Doc. 725, II/3/42, p. 4 (*Documents*, X, p. 153).

that this would in practice greatly increase the size of the Council since every Member of the Organization would be affected to some extent by the deliberations of the Council. They thought this would in fact destroy the effectiveness of the Council. It was pointed out that any Member could submit written statements. Others argued, however, that it was possible to distinguish between those situations where all were more or less concerned with the matters under discussion, and those situations where there would be matters under discussion of particular concern to certain states. After reconsideration, the drafting subcommittee recommended a new text with substantially the present phraseology.

It thus would appear that the use of the words "of particular concern" is intended to indicate an interest of special magnitude or different in kind from that which the ordinary Member would have. The Council itself decides whether a Member has an interest entitling it to an invitation.

The question of the interpretation of Article 69 first came up on February 8, 1946, while the Council was discussing a resolution regarding an international conference on trade and employment. Ecuador had requested the right to participate without vote in the deliberations of the Council on this matter. The President of the Council suggested that inasmuch as proper precedents had not been established and there had been no official interpretation of Article 69, a committee should be appointed to consider the application of this Article and to draw up a set of principles for the guidance of the Council in determining what constitutes a matter of particular concern to a Member state. He proposed in the meantime, and without creating any precedent, that the delegate from Ecuador be invited to participate in Council discussion on this resolution. This proposal was accepted by the Council. The Ecuadorian representative was admitted to Council discussions, a subcommittee was appointed, and its report was adopted by the Council at its next meeting.[85] No general principles for the guidance of the Council have been adopted.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

[85] UN, Economic and Social Council, *Official Records, First Year: First Session*, p. 62–3, 71–2, 77. For text of the subcommittee report, see UN, Doc. E/10.

The Council thus may arrange for representatives of the specialized agencies to participate, without vote, in its deliberations and those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies. Precedents for this are found in the practice of certain organs of the League of Nations, and more recently in the rules of the San Francisco Conference which permitted representatives of the League of Nations, the International Labor Organization, the Permanent Court of International Justice, the Food and Agriculture Organization and the United Nations Relief and Rehabilitation Administration to participate under certain conditions in the discussions of technical committees of the Conference, without vote. It is a natural and convenient method of establishing liaison, and is an important means of coordinating the activities of the specialized agencies among themselves and with the United Nations.

The Preparatory Commission made the following observations on the matter of reciprocal representation:

> Reciprocal representation as provided for in Article 70 of the Charter is one of the effective means of securing close relationships between the specialized agencies and the United Nations and of furthering the coordination of the activities of the agencies. The Economic and Social Council is empowered by this Article to arrange for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of its commissions, and for its representatives to participate in the deliberations of the specialized agencies. The exact nature of these arrangements will vary according to the nature of the specialized agency and the character of its relationship to the United Nations. Agencies of relatively limited scope might normally participate only in meetings of the appropriate commissions and attend the Council only when specially invited. Arrangements with other agencies of more general scope might provide that they should be represented in the Council when certain classes of questions are being examined. It may also be desirable to provide that a few of the most important agencies whose range of interest is wide should be represented regularly at Council meetings. Provision should also be made in the agreements for representatives of the Economic and Social Council to participate in the meetings of the policy-making and executive bodies or conferences of the specialized agencies.[86]

All the agreements thus far entered into between the United Nations and the specialized agencies provide for reciprocal representation. The provisions of the FAO, ILO, ICAO, UNESCO, WHO, ITU and UPU agreements[87] are similar and provide liberally for reciprocal

[86] *Report of the Preparatory Commission* . . ., Doc. PC/20, p. 42.
[87] For FAO agreement, see *infra*, p. 626.

representation. The Bank and Fund agreements, however, restrict the right of attendance and participation of representatives of the United Nations to meetings of the Board of Governors, and meetings to which they may be invited specially, called to consider the United Nations point of view in matters of concern to the United Nations. Representatives of the Bank and Fund are entitled to attend meetings of the General Assembly "for purposes of consultation" and "to attend, and to participate without vote in, meetings of the committees of the General Assembly, meetings of the Economic and Social Council, of the Trusteeship Council and of their respective subsidiary bodies, dealing with matters in which the Bank (or Fund) has an interest." [88] This provision was strongly criticized in the General Assembly as lacking in reciprocity and falling short of the requirements of Article 70.

The Economic and Social Council has also made arrangements for representatives of less important intergovernmental agencies which have not yet been brought into formal relationship with the United Nations to participate in its meetings and in meetings of its commissions. Representatives of UNRRA, the Inter-Governmental Commission on Refugees, the European Central Inland Transport Organization, the European Coal Organization, and other organizations have all participated in Council meetings.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Background. This Article goes beyond what has been customary in the past in making formal provision for consultation with non-governmental organizations which are concerned with matters under discussion. Such arrangements are to be made with national organizations, however, only after consultation with the Member of the United Nations concerned.

The question of the relation of private organizations to intergovernmental organizations has arisen in the past. The International Association for Labor Organization, organized at Paris in 1900, included private national organizations as well as governments. Under the Constitution of the International Labor Organization, national em-

[88] UN, Doc. A/349, p. 2, 6.

ployer and employee organizations are given representation in the Conference and the Governing Body. The United Nations Conference on International Organization decided not to admit representatives of private international organizations in a consultative capacity. However, the Government of the United States invited some fifty private national organizations to send representatives to the Conference to serve unofficially in the capacity of consultants to the United States Delegation.

Governing Principles. During the first part of the first session of the General Assembly in London, the relationship of non-governmental organizations to the United Nations was fully debated with particular reference to the request of the World Federation of Trade Unions for representation on various bodies to be established by the United Nations. The Ukraine, the Soviet Union, Belgium, and France proposed that the WFTU be admitted in an "advisory capacity," while the United States sought equal status for the American Federation of Labor, which was not a member of the WFTU.[89] After considerable debate, the General Assembly approved a resolution recommending that the Economic and Social Council should, as soon as possible, adopt suitable arrangements under Article 71 of the Charter, and admit the WFTU, the International Cooperative Alliance, the American Federation of Labor, as well as other international, national and regional non-governmental organizations, whose experience the Economic and Social Council might find useful, to consultative status with the Economic and Social Council.[90]

Taking note of the resolution of the General Assembly, the Economic and Social Council, at its first session, created a temporary Committee on Arrangements for Consultation with Non-Governmental Organizations, which was instructed to submit detailed proposals concerning consultation with international, national, and regional non-governmental organizations. The establishment of such a committee had been recommended by the Preparatory Commission.[91]

The Report of the Committee on Arrangements for Consultation with Non-Governmental Organizations, approved by the Council on June 21, 1946,[92] recommended that the following principles be applied in establishing a list of non-governmental organizations eligible for consultation:

[89] UN, General Assembly, *Official Records of the First Part of the First Session . . . , Plenary Meetings . . . ,* p. 326–8, 402–12, 501–35.

[90] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . . ,* Doc. A/64, p. 10.

[91] *Report of the Preparatory Commission . . . ,* Doc. PC/20, p. 29.

[92] UN, Economic and Social Council, *Official Records, First Year: Second Session,* p. 360–5.

1. The organization shall be concerned with matters falling within the competence of the Economic and Social Council with respect to international economic, social, cultural, educational, health and related matters.

2. The aims and purposes of the organization should be in conformity with the spirit, purposes and principles of the Charter of the United Nations.

3. Organizations proved to be discredited by past collaboration in Fascist activities shall not for the present be admitted.

4. The organization shall be of recognized standing and shall represent a substantial proportion of the organized persons within the particular interest field in which it operates. To meet this requirement, a group of organizations may form a joint committee or other body authorized to carry on consultation for the group as a whole.

5. The organization shall have an established headquarters, with an executive officer. It shall have a conference, convention or other policy-making body.

6. The organization shall have authority to speak for its members through its authorized representatives. Evidence of this authority shall be presented, if requested.

7. The organization should be international in its structure, with members who exercise voting rights in relation to the policies or action of the international organization.

8. National organizations should normally present their views through their respective Governments or through international non-governmental organizations to which they belong. It would not, save in exceptional cases, be appropriate to include national organizations which are affiliated to an international non-governmental organization covering the same subjects on an international basis. National organizations, however, may be included in the list after consultation with the Member State concerned if they cover a field which is not covered by any international organization or have special experience upon which the Council wishes to draw.

9. The Committee recommends that the Council, in determining the scope and methods of consultation with each non-governmental organization, take, as a basis, the nature and scope of activities of each organization considering the assistance that may be expected by the Council from this organization in carrying out the tasks set out in Chapter IX of the Charter of the United Nations.

10. The Committee considers that most close consultative connexion should be established with the World Federation of Trade Unions, which has already applied to the Economic and Social Council with a request to establish connexion.

The Report then recommended the establishment of a standing committee of the Council composed of the President of the Council and five members of the Council,[98] who would be assisted by the

[98] The five members elected by the Council on June 21, 1946, were China, France, the Soviet Union, the United Kingdom and the United States.

Assistant Secretaries-General for Economic and Social Affairs respectively. This committee would review applications for consultative status submitted by non-governmental organizations, and make recommendations to the Council. The committee was to be known as the "Committee on Arrangements for Consultation with Non-Governmental Organizations" (Council NGO Committee).

The following principles governing the nature of the consultative arrangements were set forth in the Report:

1. It is important to note that a clear distinction is drawn in the Charter between participation without vote in the deliberations of the Council, and the arrangements for consultation. Under Articles 69 and 70 participation is provided for only in the case of States not members of the Council, and of specialized inter-governmental agencies. Article 71, applying to non-governmental organizations, provides for suitable arrangements for consultation. It is considered that this distinction, deliberately made in the Charter, is fundamental and that the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations.

2. It should also be recognized as a basic principle that the arrangements should not be such as to overburden the Council, or transform it into a general forum for discussion, instead of a body for co-ordination of policy and action, as is contemplated in the Charter.

3. Decisions on arrangements for consultation should be guided by the principle that consultative arrangements are to be made, on the one hand for the purpose of enabling the Council or one of its bodies to secure expert information or advice from organizations having special competence on the subjects for which consultative arrangements are made, and, on the other hand, to enable organizations which represent important elements of public opinion to express their views. Therefore, the arrangements for consultation made with each organization should involve only the subjects for which that organization has a special competence or in which it has a special interest. In general these arrangements should be made for a definite period, reviewable at the end thereof.

4. Consultative arrangements should not be made with an international organization which is a member of a committee or group composed of international organizations with which consultative arrangements have been made, except for different subjects than those for which consultative arrangements have been made with that committee or group.

5. In several of the fields covered by the Council there will exist specialized inter-governmental agencies brought into relationship with the Council, and participating in its deliberations as provided in Article 70. There may be close connection and co-operation between these agencies and the non-governmental organizations whose specific field of interest is the same as or similar to that of the specialized agency. The Council should take this consideration into account.

The Committee Report recognized that the nature of consultations would vary with the character of the organization. Accordingly, it was recommended that in drawing up its list of eligible organizations the Council should, so far as possible, define the field of interest of each and should distinguish between:

(a) Organizations which have a basic interest in most of the activities of the Council, and are closely linked with the economic or social life of the areas which they represent;

(b) Organizations which have a special competence but are concerned specifically with only a few of the fields of activity covered by the Council;

(c) Organizations which are primarily concerned with the development of public opinion and with the dissemination of information.

The Report recommended that:

Organizations in category (a) may designate authorized representatives to sit as observers at all the public meetings of the Council. Representatives of these organizations, which will include organizations of labour, of management and business, of farmers and consumers, will be entitled to circulate to the various members of the Council written statements and suggestions within their competence. Such communications will be addressed to the Secretariat, which will transmit them to the members of the Council.

To ensure effective consultation on matters in which organizations have special competence or knowledge, it is recommended that those included in category (a) may be invited by the Council to consult with a standing committee appointed for that purpose,[94] if the Council so desires or the organization requests such consultation. The chairman of the Standing Committee should be the President of the Council. The representatives of the organizations should be able to participate fully in any consultations of this kind, so that the Committee may report to the Council on the basis of a full exchange of views. Upon recommendation of the Standing Committee, the Council as a whole may receive representatives of organizations in category (a) for the purpose of hearing their views.

Organizations in categories (b) and (c) may designate authorized representatives to sit as observers at public meetings of the Council. They may submit written statements and suggestions on matters within their competence, and the Secretariat will prepare and distribute a list of all such communications briefly indicating the substance of each. On the request of any member of the Council, a communication will be reproduced in full and distributed. Any lengthy communications will be distributed only if sufficient copies are furnished by the organization concerned.

[94] At a meeting of the Council on September 28, 1947, it was decided that the Council NGO Committee would consult with organizations after admission as well as review applications for consultative status from all non-governmental organizations. UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p 26–7.

To insure effective consultation on matters in which organizations have special competence or knowledge, it is recommended that those included in categories (b) and (c) may be invited by the Council to consult with a committee appointed for that purpose, if the Council so desires or the organization specifically requests such consultation. Their representatives should be able to participate fully in any consultations of this kind so that the committee may report to the Council on the basis of a full exchange of views.

To insure effective consultation with Commissions on matters in which non-governmental organizations have special competence or knowledge, the Report recommended that consultation with organizations in category (a) should normally be with the Commission itself, and that organizations in categories (b) and (c) might consult with Commissions through a committee or committees established for the purpose.

During the second part of its first session of the General Assembly, the Joint Second and Third Committee considered the matter of consultative arrangements of the Council with non-governmental organizations,[95] particularly the WFTU, which had requested by a letter of November 12, 1946, that it be granted (a) the right to submit to the Economic and Social Council questions for insertion in the provisional agenda, and (b) the right to present written and verbal statements to the Council on all matters of concern to the Federation. The Committee approved the first part of the request but rejected the second. The General Assembly finally adopted a recommendation to the Economic and Social Council that it give to the WFTU the right to submit to the Economic and Social Council questions for insertion in the provisional agenda in accordance with the procedure now applicable to specialized agencies, and that all non-governmental organizations in category (a) should receive equal treatment in respect of consultative arrangements with the Council.[96]

To carry out the General Assembly recommendation, the Economic and Social Council, during its fourth session, revised its Rules of Procedure and added new provisions, calling for, first, circularization of the provisional agenda of each session to non-governmental organizations in category (a) as well as members of the Council, Members of the United Nations, and specialized agencies; second, preliminary consultation between the Secretary-General and the non-governmental

[95] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Joint Committee of the Second and Third Committees*, p. 1–36.

[96] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . . .* Doc. A/64/Add.1, p. 77.

organization prior to acceptance of an item proposed by the latter for inclusion in the agenda; and, third, the appointment of an Agenda Committee composed of the three officers and two other elected members, to make recommendations as to the priority to be given items in the agenda.[97] During its fifth session, the Council adopted additional resolutions to implement further the General Assembly recommendation.[98] By the first it decided that when the Council discussed a matter proposed by a non-governmental organization in category (a), the organization might present to the Council an introductory oral statement "of an expository nature", and might be invited by the President, with the consent of the Council, to make an additional statement during the course of the discussion for purposes of clarification. In response to a request from the World Federation of Trade Unions that the WFTU be given the right to request the convening of the Council in special session, the Council took the position that in the light of differences between specialized agencies and non-governmental organizations under Articles 70 and 71, and in the light of the consultative arrangements made under the resolution of June 21, 1946, the request could not be granted.[99]

To conform to the resolution of the General Assembly on Spain,[100] the Committee on Arrangements for Consultation with Non-Governmental Organizations recommended, and the Council adopted, a resolution stating that international non-governmental organizations having legally constituted Spanish branches whose policies were determined and controlled by the Franco Government would be barred from consultative status; (2) that such organizations would not be barred (a) if they had only individual members in Spain, (b) if their branches served the interests of the Spanish people rather than the Franco Government, or (c) if the branches were presently inactive.[101]

Non-Governmental Organizations Granted Consultative Status. Applications for consultative status, after being screened by the Secretariat on the basis of criteria adopted by the Council and considered by the Council NGO Committee, are finally acted upon by the Council. As of May 3, 1948, non-governmental organizations had

[97] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fourth Session . . .*, Doc. E/437, p. 46. See Rules 9, 10, 11 and 14 of the *Rules of Procedure of the Economic and Social Council*, UN, Doc. E/33/Rev. 4.

[98] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Fifth Session . . .*, Doc. E/573, p. 89.

[99] *Ibid.*, p. 89–90.

[100] UN, Doc. A/241 and General Assembly, *Resolutions Adopted . . . during the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 63–4.

[101] UN, Economic and Social Council, *Resolutions Adopted . . . during its Fourth Session . . .*, Doc. E/437, p. 47.

been granted consultative status, unconditionally or conditionally, in the following numbers: category (a) — 9; category (b) — 60 (including national organizations); and category (c) — 5.[102]

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

The Provisional Rules of Procedure, recommended by the Preparatory Commission,[103] were adopted provisionally by the Council at its first session, and subsequently amended.[104] The Council has adopted separate Rules of Procedure for its functional Commissions.[105] These rules also apply to subsidiary bodies unless otherwise decided by the Council.[106]

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

This paragraph leaves the time and frequency of meetings entirely to the discretion of the Council. The sole requirement is that the Rules of the Council shall provide for the convening of meetings on the request of a majority of the members. The Rules of Procedure of the Council provide for at least three sessions a year, one to be held shortly before the opening of the regular session of the General Assembly. The date of each session is fixed by the Council at a previous meeting.

A session shall also be held within thirty days of the request thereof

(a) by a majority of its members;
(b) by the General Assembly; or
(c) by the Security Council, acting in pursuance of Article 41 of the Charter.

With certain qualifications, a session is held if the Security Council, the Trusteeship Council, or any Member of the United Nations, or a specialized agency requests it and the President of the Council agrees

[102] For complete list, see UN, Doc. E/C.2/87. See also, *Yearbook, 1946–47*, p. 554–5 and UN, *Weekly Bulletin*, III, p. 290.
[103] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 29–34.
[104] For Rules of Procedure as revised by the Council during its fifth session, see UN, Doc. E/33/Rev. 4. Also published as Doc E/565.
[105] *Ibid.*
[106] Rule 66 of Council Rules of Procedure.

to the request. The President, with the concurrence of the Vice-Presidents, may also call a session of the Council and fix the date thereof. The Rules provide that the Council may suspend its Rules so long as the provisions of the Charter are not violated. The Council decided to hold only two sessions during 1948.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

General. This Chapter establishes the principle of the international accountability of Members of the United Nations for the administration of non-self-governing territories. It differs fundamentally from Chapters XII and XIII in that it establishes the principle of international accountability without providing machinery of international

supervision, while Chapters XII and XIII provide expressly for both accountability and supervision. This Chapter has been referred to as an international charter of colonial administration.[1]

By the terms of Article 73, Members of the United Nations recognize the principle that the interests of the inhabitants of the non-self-governing territories which they administer are paramount, and furthermore accept as a "sacred trust the obligation to promote to the utmost", within the United Nations system of international peace and security, "the well-being of the inhabitants of these territories." To this end, they accept the more specific commitments listed in the Article. This undertaking goes beyond any international agreement that has hitherto been made in the definiteness and scope of its provisions. In comparison, by Article 23 of the Covenant, Members of the League undertook "to secure just treatment of the native inhabitants of territories under their control." While the provisions of Chapters XII and XIII of the Charter, relating to the trusteeship system, are more detailed and specific, in addition to providing for international supervision, they nevertheless depend for their effectiveness upon supplementary agreements, while the provisions of Chapter XI applied from the time the Charter entered into force.[2]

History of Chapter. The Dumbarton Oaks Proposals did not contain provisions specially applicable to non-self-governing territories. At Yalta, it was agreed by Prime Minister Churchill, President Roosevelt and Premier Stalin that the principles and machinery of a trusteeship system should be considered at San Francisco. The provisions of Articles 73 and 74 were the outgrowth of proposals made by the Governments of Australia and the United Kingdom,[3] which were subsequently incorporated into the *Proposed Working Paper*[4] used as the basis for discussion in Committee II/4 of the United Nations Conference. The text recommended by Committee II/4 consisted of two parts: (a) Declaration, to be made applicable to all non-self-governing territories; and (b) International Trusteeship System, to be applied to such territories as might be placed under it by subsequent agreement. In the final draft of the Charter, these became Chapter XI and Chapters XII and XIII.

Scope of Application. In the *Proposed Working Paper* of the Conference, the Declaration was made applicable to "territories inhabited

[1] Bunche, Ralph J., "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations," Department of State, *Bulletin*, XIII, p. 1040.

[2] See UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[3] See UNCIO, Doc. 2, G/14 (1) (*Documents*, III, p. 543–53) and Doc. 2, G/26 (d) (*Documents*, III, p. 609–14).

[4] See UNCIO, Doc. 323, II/4/12 (*Documents*, X, p. 677–83).

by peoples not yet able to stand by themselves under the strenuous conditions of the modern world." This phraseology, copied without change from Article 22 of the Covenant, was not acceptable on the grounds that the words were outmoded, that from the military point of view few countries could defend themselves, that few countries, if any, were economically self-sufficient, and that the words were highly objectionable to some people. The words "territories whose peoples have not yet attained a full measure of self-government" met these objections and were accepted.

When the General Assembly was considering the implementation of the provisions of Article 73 during its first session, the question of the further definition of non-self-governing territories was raised. Various suggestions were made. The Government of the United States suggested that the term included any territories administered by a Member of the United Nations which did not enjoy the same measure of self-government as the metropolitan area of the Member. The Representative of the Soviet Union proposed that the term be defined as including all possessions, protectorates and territories the people of which had not yet attained self-government and did not possess the right to elect local self-governing bodies, or to take part in the legislative bodies of the governing country on the same terms as the people of the governing country. It was finally decided, however, that any attempt at further definition was unwise.[5] The resolution of the General Assembly which was adopted following this discussion listed the territories regarding which information had been transmitted or promised under this Article.[6] It was tacitly admitted that the question of the meaning of the term would be considered in relation to the facts of each case.

The provisions of Chapter XI were considered applicable, from the time the Charter entered into force, to all territories administered under League mandates or for which at a later time trusteeship agreements might be negotiated. By its resolution of February 9, 1946, the General Assembly declared that obligations of Members under Chapter XI were in no way contingent upon the conclusion of trusteeship agreements or upon the bringing into being of the Trusteeship Council.[7] Once a trusteeship agreement enters into force, the obligations of the agreement and of Chapters XII and XIII become applicable to the territory in question. However, the principle set

[5] UN, General Assembly, *Report of Sub-Committee 2 to the Fourth Committee . . .*, Doc. A/C.4/68, p. 3.

[6] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 124.

[7] *Ibid., Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

forth in Article 73 of the paramountcy of the interests of the inhabitants and the obligations accepted in Articles 73 and 74, with the exception of 73(e), apply also to the trust territories, "due account being given to the terms of the Trusteeship agreements and the different status of the two categories of Non-Self-Governing Territories." [8]

Obligations of Members. The specific obligations which Members accept for the promotion of the well-being of the inhabitants of non-self-governing territories are enumerated under subheads (a) to (e).

(a) The obligation to ensure the "political, economic, social, and educational advancement" of these people is qualified by the obligation to show "due respect for the cultures of the peoples concerned." The qualifying clause is intended to safeguard native cultures which have often, particularly under systems of direct rule, been pushed to one side in favor of the cultures of the colonizing powers. This practice, while it has sometimes led to more rapid advances in certain material respects than could be achieved under practices more respectful of native cultures, has weakened the basis for autonomous development and ultimate self-government.

The second obligation under (a) is to ensure "the just treatment" of the inhabitants of these territories. Obviously, this is a very general term which will lend itself to a variety of interpretations. It follows very closely the phraseology of Article 23(b) of the Covenant. Presumably it is intended to protect the people in question against arbitrary and discriminatory treatment. The term is presumably to be interpreted in the light of the general purposes and principles of the Charter.

The third obligation is "to ensure . . . their protection against abuses." There is no specification of particular abuses. The Covenant of the League of Nations provided that in territories to be placed under B and C mandates, "abuses such as the slave trade, the arms traffic and the liquor traffic" were to be prohibited. In the course of the committee discussion at San Francisco, the Netherlands Delegate drew attention to three grievances which were acutely felt by dependent peoples: (1) failure to protect their land, particularly arable land; (2) forced labor; and (3) the humiliation caused by the assertion of racial superiority. He asked the Delegate of the United States to give an assurance that the provisions of this Article implied an obligation to deal with these abuses. The United States Delegate stated in reply that he would regard it as clear "that the abuses you refer to are included in the abuses against which the people concerned are to be protected and the obligation referred to in para-

[8] UN, General Assembly, *Report of Sub-Committee 1 of the Fourth Committee . . .*, Doc. A/C.4/69, p. 5.

graph 1 (corresponding to Article 73) covers this situation." These statements were included in the Report of the Rapporteur.[9]

(b) This obligation was the subject of long discussion at the United Nations Conference and the phraseology finally accepted was adopted only after considerable difficulty. In the *Proposed Working Paper*, the phraseology used was: "to develop self-government in forms appropriate to the varying circumstances of each territory." The Delegate of China proposed in Committee II/4 that the following phraseology be substituted: "To promote development toward independence or self-government as may be appropriate to the particular circumstances of each territory."[10] In support of this change it was argued that independence was an aim of many dependent peoples and that its attainment should not be excluded from the terms of the Charter. Attention was called to the fact that the goal was recognized in Article 22 of the Covenant and that certain territories placed under League mandates had actually become independent states. The hopes of dependent peoples would receive a heavy blow, it was argued, if independence was not recognized as a possible objective. Furthermore, it was pointed out, the right of self-determination is recognized in Article I of the Charter.

Against the proposed change it was argued that the word "independence" means different things to different peoples, that its use would lead to confusion and uncertainty, that the ultimate result would be the creation of a large number of small states when the emphasis should be on the interdependence of peoples, and that the use of "self-government" alone did not exclude the possibility of independence. Following informal consultations, the Chinese Delegate agreed to withdraw his amendment on condition that independence be included among the objectives of the trusteeship system.[11] In the discussion the Delegate of the United Kingdom stated that his Government had never ruled out independence as a possible goal for dependent territories in appropriate cases but objected to putting it forward as a universal co-equal alternative goal for all territories. The present phraseology was unanimously accepted.

While the Charter obligates Members "to develop self-government" among the peoples of their non-self-governing territories, to take

[9] UNCIO, *Summary Report of Fifteenth Meeting of Committee II/4, June 18, 1945*, Doc. 1090, II/4/43, p. 3–4 (*Documents*, X, p 563–4) and *Report of the Rapporteur of Committee II/4*, Doc. 1115,II/4/44 (1) (a), p. 13 (*Documents*, X, p. 619).

[10] UNCIO, *Summary Report of Sixth Meeting of Committee II/4, May 17, 1945*, Doc. 404, II/4/17, p. 2 (*Documents*, X, p. 453).

[11] UNCIO, *Summary Report of Eleventh Meeting of Committee II/4, May 31, 1945*, Doc. 712, II/4/30, p. 1–2 (*Documents*, X, p 496–7).

account of "the political aspirations" of these peoples, and "to assist them in the progressive development of their free political institutions", Members are not obligated, as in the case of trust territories, to report on political conditions in the territories under their control, more specifically on the progress made toward the realization of these objectives, nor do they expressly accept any system of international control or supervision with the achievement of these purposes in view. The suggestion of an obligation to place these territories under trusteeship has been resisted by the colonial powers and has not been accepted by any organ of the United Nations.[12] With respect to the transmission of information on the political advancement of non-self-governing peoples, the General Assembly has simply expressed the view that the voluntary submission of such information is entirely in conformity with the spirit of Article 73 and should "be therefore duly noted and encouraged."[13]

During the second part of its first session, the General Assembly considered a proposal which would have empowered the Economic and Social Council together with the administering authorities of non-self-governing territories to organize regional conferences of representatives of non-self-governing territories to give the peoples of these territories the opportunity to express their wishes and aspirations. This proposal was attacked on the ground that it violated the Charter, not only by seeking to give the Economic and Social Council power it did not possess, but also by intervening in a matter essentially within the domestic jurisdiction of states.[14] The resolution as finally adopted contained a recommendation to the Members "having or assuming responsibilities for the administration of Non-Self-Governing Territories to convene conferences of representatives of Non-Self-Governing Peoples chosen or preferably elected in such a way that the representation of the people will be ensured to the extent that the particular conditions of the territory concerned permit, in order that effect may be given to the letter and spirit of Chapter XI of the Charter and that the wishes and aspirations of the Non-Self-Governing Peoples may be expressed."[15]

(c) The obligation "to further international peace and security" applies here to the administration of non-self-governing territories. It requires no special comment.

[12] See comment on Article 77 (1) (c), *infra*, p. 434.

[13] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 56. For further comment, see *infra*, p. 412.

[14] For General Assembly discussion, see UN, General Assembly, *Official Records of the Second Part of the First Session . , Plenary Meetings . . .* , p. 1327–56.

[15] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session .* , Doc. A/64/Add.1, p 126–7.

(d) The obligations set forth in (d) are related to those contained in (a) but refer more particularly to the use of methods of scientific inquiry and cooperation between national administrations and international bodies in the development of programs for the achievement of broad social and economic purposes. It is to be noted that the Charter uses the term "specialized international bodies" instead of "specialized agencies" suggesting that the cooperation envisaged is not to be limited to the specialized agencies referred to in Article 57. The Caribbean Commission established by agreement of October 30, 1946 [16] as a continuation of the Anglo-American Caribbean Commission, and the South Pacific Commission, established under the terms of the agreement of February 6, 1946,[17] are examples of such cooperation at the regional level. In this connection, it is to be noted that the General Assembly, in inviting its Fourth Committee to constitute a special committee to examine the information transmitted under Article 73(e), authorized the special committee "to avail itself of the counsel and assistance of the specialized agencies . . ." and "to establish liaison with the Economic and Social Council." [18]

(e) This obligation represents a great advance over previous international practice. While such information has been generally available since most colonial administrations have followed the practice of making reports to their national legislative bodies and their own people, the acceptance of the obligation to make such information available to an international organ is new.

The obligation is subject to a two-fold limitation. In the first place, it is limited to information "of a technical nature relating to economic, social, and educational conditions." It was argued by the Soviet Representative in the second part of the first session of the General Assembly that since the United Nations was also interested under this Article in the political advancement of non-self-governing people, reports should include political information in order that progress in these matters might be noted. It was generally recognized that it was not mandatory to include information on political progress in the reports, though such information was of great importance and its inclusion was greatly to be desired.[19] During the second session of the General Assembly the question was again discussed. The Fourth Committee adopted by a

[16] Caribbean Commission Press Release, October 30, 1946 and *International Organization*, I (1947), p. 251–6.

[17] South Seas Commission Conference Paper P/18, February 6, 1947 and *International Organization*, I (1947), p. 419–27.

[18] UN, Doc. A/385, p. 20 and General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p 57.

[19] UN, General Assembly, *Report of Sub-Committee 2 to the Fourth Committee . . .* , Doc. A/C.4/68, p. 6.

close vote a resolution by which the General Assembly would recommend the transmission of such information.[20] In the General Assembly the view prevailed that this proposal went beyond the terms of the Charter and the resolution as finally adopted simply stated that "the voluntary transmission of such information" should be "duly noted and encouraged." [21]

In the second place, the obligation does not apply to territories to which the provisions of Chapters XII and XIII apply. This is understandable since for such territories the administering authorities are under the obligation to make annual reports of a more comprehensive and detailed nature than those provided for in this Article.

Article 73(e) does not specify the period which the report is to cover, the frequency of reports, or their form. In the General Assembly discussion it was pointed out that due to variations of administrative practice, it would be difficult for administering authorities to submit reports covering identical periods of time. It was agreed in the discussion that while some colonial administrations might have difficulty in meeting any deadline that might be set, it was necessary that the bulk of the reports be in by a set date in order that the Secretariat have the time to prepare a summary of them for submission to the General Assembly. Consequently, the General Assembly resolution of December 14, 1946 invited "Members transmitting information to send to the Secretary-General by 30 June of each year the most recent information which is at their disposal." [22] The reports that have been submitted show a basic similarity as to topics covered. The second session of the General Assembly, on the basis of recommendation of its *ad hoc* Committee, adopted a resolution recommending that Members transmitting information under this Article "be invited to undertake all necessary steps to render the information as complete and up to date as possible", and for this purpose, to ensure that specified items in an attached standard form "be covered in so far as they apply to the territories concerned." [23]

International Consideration of Information. The Charter does not expressly state that any action is to be taken on the information submitted under Article 73(e). However, under Article 10, the General Assembly "may discuss any questions or any matters within the scope

[20] UN, General Assembly, *Information from Non-Self-Governing Territories: Report of the Fourth Committee*, Doc. A/424, p. 14.

[21] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p 56.

[22] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .* , Doc. A/64/Add 1, p. 124–6.

[23] UN, General Assembly, *Information from Non-Self-Governing Territories: Report of the Fourth Committee*, Doc. A/424, p 5–13 and *Official Records of the Second Session . . , Resolutions . . .* , Doc. A/519, p 48–55.

of the present Charter . . . and may make recommendations to the Members of the United Nations . . ." This would seem to provide adequate legal basis for the General Assembly to discuss information submitted under this Article and make appropriate recommendations, and it has been so interpreted.

In its resolution of February 9, 1946, the General Assembly requested the Secretary-General to include in his annual report on the work of the United Nations a statement summarizing such information as may have been transmitted to him under Article 73(e).[24] During the second part of the first session, two proposals were made for additional steps to assure careful consideration of the information submitted. One was that the information should be submitted to the Trusteeship Council for examination and report to the General Assembly. This was opposed on the ground that the Trusteeship Council did not have this power under the Charter. The other was that a special *ad hoc* committee should be created by the General Assembly to aid it in considering the information received. This proposal, too, was resisted on constitutional grounds and as being unnecessary and unwise, but was accepted. The resolution of the General Assembly as finally adopted on December 4, 1946,[25] in addition to recommending a summarization of the information by the Secretary-General as did the resolution of February 9, invited the Secretary-General to convene some time before the opening of the second session of the General Assembly "an *ad hoc* Committee composed in equal numbers of representatives of the Members transmitting information under Article 73(e) of the Charter and of representatives of Members elected by the General Assembly at this session, on the basis of an equitable geographical distribution." Furthermore, the resolution invited the *ad hoc* Committee "to examine the Secretary-General's summary and analysis of the information with a view to aiding the General Assembly in the consideration of this information, and with a view to making recommendations to the General Assembly regarding the procedures to be followed in the future and the means of assuring that the advice, expert knowledge and experience of the specialized agencies are used to best advantage."

In addition the General Assembly resolution provided for cooperation by the specialized agencies in the consideration of this information. It recommended that the Secretary-General make all information submitted under this Article available to the specialized agencies, and

[24] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[25] See UN, General Assembly, *Report of Sub-Committee 2 to the Fourth Committee . . .*, Doc. A/C.4/68, p. 7–13 and *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 124–6.

invited the Secretary-General to request certain enumerated agencies to send representatives "in an advisory capacity" to the meetings of the *ad hoc* Committee.

The provisional agenda of the *ad hoc* Committee, prepared by the Secretariat on the basis of the General Assembly's resolution, called for the examination of the Secretary-General's analyses of the information transmitted by Members on education, labor, public health and agriculture, the Secretary-General's summaries by territories, and recommendations to be made concerning procedures to be followed in the future. The Committee decided on its own initiative to place these additional items on its agenda: the examination of the standards of living of the local European and other populations; the examination of birth and death rates; the examination of "such information as may be transmitted on participation of local populations in local organs of government"; and the analysis of economic information.[26] A Soviet proposal to add the examination of petitions received from peoples of non-self-governing territories was defeated.

The Committee considered that the information transmitted to date did not give a sufficiently clear picture of conditions of life in the non-self-governing territories. In order to make available to the General Assembly a more complete picture, the Committee recommended that a standardized form should be followed in the preparation of reports and that the Secretary-General, subject to certain qualifications, use official publications of Members administering such territories in addition to reports submitted, and documents published by inter-governmental or scientific bodies on matters relating to non-self-governing territories.[27]

To assist the General Assembly in reaching conclusions on the information submitted, the Committee recommended that "for purposes of comparison the Secretary-General should be authorized in addition, to include in his summaries and analyses all relevant and comparable official statistical information as is available in the statistical services of the Secretariat and as may be agreed upon between the Secretary-General and the Member concerned, giving appropriate citation of sources."[28] When the draft resolution containing this recommendation came before the Fourth Committee of the General Assembly, an amendment was adopted, on the proposal of the Soviet Delegate, to insert after the words "for purposes of comparison" the words "between data relating to the various Non-Self-Governing Territories and their

[26] UN, General Assembly, *Information Transmitted under Article 73(e) of the Charter: Report of the Ad Hoc Committee*, Doc. A/385, p. 2–3.
[27] *Ibid.*, p. 14–7.
[28] *Ibid.*, p. 17.

metropolitan areas." [29] The General Assembly, however, voted to adopt the recommendation of the *ad hoc* Committee.[30]

The General Assembly also adopted a resolution, following the recommendation of the *ad hoc* Committee and its Fourth Committee, inviting the Secretary-General to enter into relations with the secretariats of the specialized agencies which would permit them to assist the Secretary-General in preparing analyses of the information required, to make recommendations to the General Assembly through the appropriate channels with respect to the form and content of the information, and to bring to the notice of the General Assembly "conclusions based on this information and supplemental information as to conditions, within their respective fields of interest, of Non-Self-Governing Territories generally and particularly as to the services which the specialized agencies might make available to the administering nations in improving these conditions." [31]

With respect to the future procedure of the General Assembly, the *ad hoc* Committee recommended that the Fourth Committee be invited to "constitute a special committee to examine the information transmitted under Article 73(e) of the Charter on the economic, social and educational conditions in the Non-Self-Governing Territories, and to submit reports thereon for the consideration of the General Assembly with such procedural recommendations as it may deem fit, and with such substantive recommendations as it may deem desirable relating to functional fields generally but not with respect to individual territories"; that the special committee be authorized to avail itself of the counsel and assistance of the specialized agencies, to establish liaison with the Economic and Social Council, and to invite governments to provide such supplemental information as may be desired "within the terms of Article 73(e)"; and that the special committee be composed of Members of the United Nations transmitting information under Article 73(e) and an equal number of members elected by the Fourth Committee "on as wide a geographical basis as possible". [32] The Fourth Committee proposed instead a special committee of the General Assembly, with more general terms of reference, including the power to make "such recommendations as it may deem appropriate." [33] Objection was made to this proposal on the ground that it would establish a body similar to the Trusteeship Council and

[29] UN, Doc. A/424, p. 2.

[30] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 55–6.

[31] UN, Doc. A/385, p. 19; Doc. A/424, p. 14–5; and General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 56–7.

[32] UN, Doc. A/385, p. 20.

[33] UN, Doc. A/424, p. 15.

would go beyond the terms of the Charter. The General Assembly finally adopted the draft proposed by the *ad hoc* Committee.[84]

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

While Article 73 obligates Members to recognize the interests of the inhabitants of non-self-governing territories as paramount and to promote their well-being, this Article commits them in respect to these territories to the "general principle of good neighborliness." Obviously this is at most a guiding principle of policy without any specific legal content. It recognizes in a general way that other countries have interests in these territories which if adversely affected by policies followed by the administering state give them legitimate ground for complaint. It requires Members to take these interests into account in formulating policies for the territories in question, but it does not give to other countries any legal protection against policies and practices which might be generally regarded as unneighborly.

The Article would appear to be directed particularly against discriminatory policies such as the closed-door in commercial policy, imperial preference, discriminatory immigration restrictions, and exclusion of or discrimination against the nationals of countries other than the administering state in the granting of concessions.

[84] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .* , Doc. A/519, p. 57.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

This Article provides for the establishment of an international trusteeship system comparable to the mandates system which was established under Article 22 of the League Covenant.[1] It places on the United Nations the definite obligation to establish such a system and indicates broadly the area of its application, leaving to subsequent Articles the detailed implementation of the obligation.

The Dumbarton Oaks Proposals contained no provisions on this matter. It was understood that this was one of the questions left over for further study and subsequent negotiation, and that it was to be placed on the agenda of the United Nations Conference. The matter was considered at the Yalta Conference by the Heads of the Governments of the Soviet Union, the United Kingdom and the United States, and an agreement was reached which was subsequently announced as follows:

> It was agreed that the five Nations which will have permanent seats on the Security Council should consult each other prior to the United Nations Conference on the question of territorial trusteeship.
>
> The acceptance of this recommendation is subject to its being made clear that territorial trusteeship will only apply to (*a*) existing mandates of the League of Nations; (*b*) territories detached from the enemy as the result of the present war; (*c*) any other territory which might voluntarily be placed under trusteeship; and (*d*) no discussion of actual territories is contemplated at the forthcoming United Nations Conference or in the preliminary consultations, and it will be a matter of subsequent agreement which territories within the above categories will be placed under trusteeship.[2]

[1] On the League mandate system, see Wright, Quincy, *Mandates under the League of Nations*, Chicago, 1930 and League of Nations, *The Mandates System, Origin – Principles – Application*, Geneva, 1945.

[2] Department of State, Press Release 239, March 24, 1947.

When the United Nations Conference convened, the Sponsoring Governments had as yet reached no agreement on a set of proposals covering the establishment of a trusteeship system to be submitted to the Conference. Proposals were submitted by the Governments of Australia,[3] China,[4] France,[5] the Soviet Union,[6] the United Kingdom,[7] and the United States.[8] Subsequently, at the request of the Chairman of Committee II/4, and in order to expedite its work, the Delegate of the United States (Stassen) presented a *Proposed Working Paper for Chapter on Dependent Territories and Arrangements for International Trusteeship*, with the understanding that the acceptance of this document by the Committee as the basis for discussion did not constitute an approval by the Committee of the substance of the Paper or affect in any way positions taken by delegates. The *Working Paper* was accepted by the Committee with these understandings.[9]

On the basis of the *Working Paper*, the Committee, with the assistance of a drafting subcommittee, drafted its recommendations for the Charter provisions relating to the establishment of an international trusteeship system, and the related *Declaration Regarding Non-Self-Governing Territories*.[10] The text recommended by the Committee was extensively revised by the Coordination Committee as to the arrangement of material but not as to substance.

The Preparatory Commission gave consideration to the establishment of the trusteeship system. It called attention to the serious consequences of delay and recommended that the General Assembly call upon states administering territories under League mandate to undertake practical steps for the conclusion of trusteeship agreements which when approved by the General Assembly would permit the establishment of the Trusteeship Council.[11] Declarations were made by the Governments of Australia, Belgium, New Zealand and the United Kingdom before the General Assembly during the first part of its first session indicating their readiness to conclude agreements with respect to certain mandated territories under their control. The French Government made a declaration indicating a qualified readi-

[3] UNCIO, Doc. 2 G/14 (1), p. 6 (*Documents*, III, p. 548).
[4] UNCIO, Doc. 2, G/26 (e) (*Documents*, III, p. 615–7).
[5] UNCIO, Doc. 2, G/26 (a) (*Documents*, III, p. 604–6).
[6] UNCIO, Doc. 237, G/26 (f) (*Documents*, III, p 618–9).
[7] UNCIO, Doc. 2, G/26 (d) (*Documents*, III, p. 609–14).
[8] UNCIO, Doc. 2, G/26 (c) (*Documents*, III, p. 607–8).
[9] UNCIO, Doc. 323, II/4/12 (*Documents*, X, p. 677–83) and *Summary Report of the Fifth Meeting of Committee II/4, May 15, 1945*, Doc 364, II/4/13, p. 2 (*Documents*, X, p. 447).
[10] UNCIO, *Report of the Rapporteur of Committee II/4*, Doc. 1115, II/4/44 (1) (a), p. 8–12 (*Documents*, X, p. 614–8)
[11] *Report of the Preparatory Commission* . . . , Doc. PC/20, p. 49.

ness. The General Assembly gave full consideration to the matter and adopted a resolution welcoming the declarations made and inviting States administering mandated territories "to undertake practical steps, in concert with the other States directly concerned" to conclude trusteeship agreements and submit them to the General Assembly for its approval, not later than the second part of its first session.[12]

During the interval between the first and second parts of the General Assembly's first session, draft agreements for eight former mandated territories were prepared. These were submitted to the General Assembly which, on December 13, 1946, after careful consideration of the proposals by its Fourth Committee, approved them with some minor changes to which the initiating governments had agreed.[13] The following day, December 14, the Assembly proceeded to the constitution of the Trusteeship Council,[14] which had its first meeting on March 26, 1947.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice,

[12] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[13] *Ibid., Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 122. For texts of agreements approved together with text of Nauru agreement approved during the second session, see UN, Doc. T/Agreement/1 – Doc. T/Agreement/9.

[14] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 122–3.

without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Comparison with Objectives of League Mandates System. The purposes of the League mandates system[15] were not brought together in one place and generalized as is done in the Charter. The well-being and development of "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" was recognized as a general over-all purpose. For Class A mandated territories, the attainment of independence was obviously a principal objective. For territories to be administered under Class B mandates, other objectives were set forth: "freedom of conscience and religion," "the prohibition of abuses such as the slave trade, the arms traffic and liquor traffic," "the prevention of the establishment of fortifications of military and naval bases and of military training of the natives for other than police purposes and the defense of territory," and securing "equal opportunities for the trade and commerce of other Members of the League." In the case of territories to be placed under Class C mandate, only those purposes relating to the interests of the indigenous populations were recognized. Furthermore, by the terms of Article 23(b) of the Covenant, the Members of the League undertook "to secure just treatment of the native inhabitants of territories under their control."

The Charter obviously goes considerably beyond the League in its definition of the basic purposes of the trusteeship system. This Article follows rather closely the statement of fundamental obligations set forth in Article XI (*Declaration Regarding Non-Self-Governing Territories*). There are, however, important differences to be noted, due in large measure to the fact that the *Declaration* applies primarily to non-self-governing territories which are not placed under international trusteeship arrangements, and which are and for a long time may remain parts of the territorial domain of the governing state and subject to its jurisdiction, while Article 76 applies to territories which are placed under an international regime with the administering authority exercising only the powers of trustee as defined in the trusteeship agreement.

Objectives Analyzed:[15a] a. *International Peace and Security.* The objective stated in *a* requires no detailed comment. Article 84 provides for the implementation of this purpose.[16] Provisions of trusteeship agreements intended to achieve this purpose are considered in the comment on this Article.

b. *Political, Economic and Social Advancement.* This objective i

[15] See Article 22 of the *Covenant of the League of Nations* and Wright, *op* ations
[15a] See also, comment on Article 81, *infra*, p. 447. 1–81.
[16] For text and comment, see *infra*, p 457

ness. The General Assembly gave full consideration to the matter and adopted a resolution welcoming the declarations made and inviting States administering mandated territories "to undertake practical steps in concert with the other States directly concerned" to conclude trusteeship agreements and submit them to the General Assembly for its approval, not later than the second part of its first session.[12]

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c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice,

[12] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[13] *Ibid., Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 122. For texts of agreements approved together with text of Nauru agreement approved during the second session, see UN, Doc. T/Agreement/1 – Doc. T/Agreement/9.

[14] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 122–3.

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[15a] See also, comment on Article 81, *infra*, p. 447. 3–81.
[16] For text and comment, see *infra*, p. 457.

first stated in general terms and is particularly notable for the emphasis which it places upon the positive approach to the welfare of non-self-governing peoples. This new emphasis is also found in the trusteeship agreements themselves which, as in the case of the Tanganyika agreement,[17] stress the obligation of the administering authority to develop adequate educational facilities for the native inhabitants and in other specific ways advance their economic, social, and educational welfare. On the other hand, this Article and the agreements, for the most part, do not deal specifically with abuses. By way of exception, the Western Samoan agreement obligates the administering authority to:

1. prohibit all forms of slavery and slave trading;
2. prohibit all forms of forced or compulsory labor, except for essential public works and services as specifically authorized by the local administration and then only in times of public emergency, with adequate remuneration and adequate protection of the welfare of the workers;
3. control the traffic in arms and ammunition;
4. control, in the interest of the inhabitants, the manufacture, importation and distribution of intoxicating spirits and beverages; and
5. control the production, importation, manufacture, and distribution of opium and narcotic drugs.[18]

The agreement for the former Japanese Mandated Islands contained provisions of a similar, though more general, nature. It was explained in the course of committee consideration in the General Assembly, that the agreements for the five African territories did not include such provisions for the reason that they were already contained in international treaties and conventions in force.[19]

It furthermore is to be borne in mind that the obligations of Articles 73 and 74 are applicable to trust territories, and consequently administering authorities are bound by the provision of Article 73(a) to protect the peoples of non-self-governing territories against abuses.

The second part of *b* is in the nature of a particularization of the more general objective first stated. It corresponds to Article 73(b). The difference of phraseology is to be particularly noted, however, as these two texts were the result of a compromise referred to above,[20] and were intended to express somewhat different ideas. Under Article 73(b) Members are obligated to develop "self-government" and "to assist them (the peoples of non-self-governing territories) in the progressive development of their free political institutions." This is

[17] See *infra*, p. 635.
[18] UN, Doc. T/Agreement/1, Article 6.
[19] UN, General Assembly, *Fourth Committee: Report of Sub-Committee 1, T/AC.4/69*, p. 8
[20] *of its Fi... supra*, p. 410.

not an obligation to give independence to these peoples at some future time, but only an obligation to develop "self-government" and "free political institutions" which may, but will not necessarily, take the form of "independence", using that term in the sense of the severance of all political ties with another state, or at least the right to do so. Under Article 76(b), however, the basic objective of the trusteeship system is declared to be the "progressive development towards self-government or independence" [20a] of the peoples of the trust territories. Thus, "self-government", which may take the form of independence but does not necessarily, and "independence" become equal alternative objectives. The factors determining which of these objectives should be pursued are "the particular circumstances of each territory and its people," "the freely expressed wishes of the peoples concerned," and "the terms of each trusteeship agreement."

The trusteeship agreements thus far made contain detailed provisions with respect to the attainment of these objectives. These provisions, however, did not fully satisfy some Members of the United Nations who, in the course of General Assembly consideration of draft proposals, and of Security Council consideration of the United States draft proposal for the Japanese Mandated Islands, were openly critical and succeeded in marshalling substantial support for proposed modifications. Some changes were made in the draft agreements with the consent of the proposing states as the result of these discussions, and on some points where the proposing states were unwilling to accept the suggested changes, explanations were given which, in the case of the General Assembly, were included in the Report of the Fourth Committee.

Six of the agreements — those for New Guinea, Ruanda-Urundi, the Cameroons under French mandate, Togoland under French mandate, the Cameroons under British mandate, and Togoland under British mandate — permit the administrative authority to treat the territory for administrative purposes as an integral part of the territory of the administering state, subject to the provisions of the Charter and the agreement. This provision was strongly criticised on the ground that it constituted, in effect, annexation, and was inconsistent with the idea of progressive development toward self-government or independence. The Delegates of Belgium and France stated that it was the interpretation of their governments that the words "as an integral part" were necessary as a matter of administrative convenience and were not considered as granting the power to diminish the political individuality of the trust territory. The United Kingdom Delegate stated that the

[20a] See Sayre, Francis B., "Legal Problems Arising from the United Nations Trusteeship System," *American Journal of International Law*, XLII, p 279–81.

retention of the words did not involve the administration of the territories as integral parts of the United Kingdom itself and did not imply British sovereignty in these areas.[21]

The provisions of the agreements with respect to "progressive development towards self-government or independence" vary considerably. Article 8(c) of the Agreement for New Guinea (Australia) assures to "the inhabitants of the Territory, as may be appropriate to the particular circumstances of the territory and its peoples, a progressively increasing share in the administrative and other services of the Territory."[22] By Article 6 of the Agreement for Ruanda-Urundi (Belgium), the administering authority assures the inhabitants "an increasing share in the administration and services, both central and local of the territory; it shall further such participation of the inhabitants in the representative organs of the population as may be appropriate to the particular conditions of the territory."[23] Article 5 of the agreements for the territories of the Cameroons and Togoland, formerly under French mandate, provides that the administering authority shall take measures "to ensure the local inhabitants a share in the administration of the territory by the development of representative democratic bodies, and, in due course, to arrange appropriate consultations to enable the inhabitants freely to express an opinion on their political regime and ensure the attainment of the objective prescribed in Article 76b."[24] Article 5 of the Agreement for Western Samoa (New Zealand) obligates the administering authority to assure to the inhabitants "a progressively increasing share in the administrative and other services of the territory", to develop participation "in advisory and legislative bodies and in the government of the territory", and to "take all other appropriate measures with a view to the political advancement of the inhabitants" in accordance with Article 76(b).[25] The relevant provisions of the agreements for the administration by the United Kingdom of Tanganyika and of the Cameroons and Togoland formerly under British mandate are very similar to those of the Western Samoan agreement.[26] The agreement for the administration by the United States of the former Japanese Mandated Islands as a strategic area specifically recognizes "self-government or independence" as the goal of political development and indicates in much the same

[21] UN, General Assembly, *Report of the Fourth Committee*, Doc. A/258, p. 5-6.

[22] UN, Doc. T/Agreement/8. The agreement for Nauru contains a similar provision. See UN, Doc. T/Agreement/9, Article 5(c).

[23] UN, Doc. T/Agreement/3.

[24] UN, Doc. T/Agreement/5 and Doc. T/Agreement/7.

[25] UN, Doc. T/Agreement/1.

[26] UN, Doc. T/Agreement/2, Article 6; Doc. T/Agreement/4, Article 6; and Doc. T/Agreement/6, Article 6.

phraseology as the New Zealand and British agreements the specific means by which the goal is to be attained.[27]

In the consideration of draft proposals of the first eight agreements by the General Assembly, attempts were made to get amendments accepted by which the administering authority would be more definitely committed to the realization of "self-government or independence." These attempts took the form of proposals to include these as specific objectives in each agreement, to provide specifically the means by which the inhabitants of a territory might express their opinion to set a time limit to the agreement and thus to require the reconsideration of its terms at the end of a fixed time, and to require that upon the termination of the agreement all powers and property rights would revert to the people of the territory. These proposals, some of which were accepted by the Fourth Committee, were not acceptable for the most part to the administering governments. A common argument was that they either went beyond the terms of the Charter or were implicit in the terms of the Charter, and therefore did not require repetition.

Criticism was made of provisions in some of the trusteeship proposals permitting the administering authorities to constitute the trust territories into customs, fiscal or administrative unions or federations with adjacent territories under their sovereignty or control.[28] It was argued that such a provision pointed in the direction of political union or outright annexation, not self-government or independence. The Delegates of Australia, Belgium, France and the United Kingdom gave assurance that they did not consider the terms of the articles in question "as giving powers to the administering authority to establish any form of political association between the Trust Territories respectively administered by them and adjacent territories which would involve annexation of the Trust Territories in any sense or would have the effect of extinguishing their status as Trust Territories."[29]

c. *Human Rights and Fundamental Freedoms.* The phraseology used in the first part of Article 76(c) is taken from Article 1. There is apparently no special significance to be attached to the somewhat abbreviated form used, i.e. "to encourage" in place of "to promote and encourage." As we have already seen, Article 22 of the Covenant

[27] UN, Doc. S/318, Article 6(1).

[28] See Article 5(b) of the trusteeship agreements for Tanganyika, the Cameroons and Togoland, under British administration.

[29] UN, General Assembly, *Report of the Fourth Committee,* Doc. A/258, p. 7. This question was considered by the Trusteeship Council in connection with the United Kingdom Order in Council linking Tanganyika administratively with Kenya and Uganda. See UN, Trusteeship Council, *Report of the Drafting Committee on Report on the Administration of Tanganyika for 1947,* Doc. T/204 and discussions in third session of the Council.

provided only for the guarantee of freedom of conscience and religion, and that only in territories to be placed under Class B and C Mandates, though the provisions of Class A Mandates did incorporate like guarantees. See comment on Article 1(3),[30] for discussion of meaning of the terms "human rights" and "fundamental freedoms."

The trusteeship agreements without exception contain provisions intended to give effect to this clause. Thus Article 8(d) of the New Guinea agreement guarantees, "subject only to the requirements of public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and of worship and freedom of religious teaching."[31] In other agreements, different phraseology is used, but the same basic rights and freedoms are guaranteed.

d. *Equality of Treatment.* Under *d* are listed two objectives which relate to the interests of the Members of the United Nations, as distinguished from the interests of the indigenous populations. In territories under trusteeship agreements "equal treatment in social, economic, and commercial matters" and in "the administration of justice" is to be ensured to all Members of the United Nations and their nationals.[31a] The principle of equality of economic opportunity was applied to the Congo Basin by the Berlin Convention of 1885.[32] It was recognized in Article 22 of the Covenant in so far as territories placed under Class B Mandates were concerned and was also included in Class A Mandates though this was not specifically required by the provisions of the Covenant.[33] As for Class C mandated territories this guarantee was omitted, with the result that the territories were in this respect assimilated to colonial areas. In principle, then, this provision represents a considerable advance over previous practice.

The qualification at the end of subparagraph *d* needs a word of comment. The words "without prejudice to the attainment of the foregoing objectives" are apparently intended to make it possible for discriminatory policies to be pursued, as, for example, bilateral trade arrangements providing for the entrance of the goods of one Member into the trust territory on more favorable terms than those of another, in return for special favors granted, if such arrangements seem to be necessary to the economic development of the country.

The second qualification contained in *d* declares the objectives here set forth "subject to the provisions of Article 80" which conserves existing rights pending the making of trusteeship agreements. Since

[30] See *supra*, p. 96.
[31] UN, Doc. T/Agreement/8.
[31a] See Sayre, *op. cit*, p. 281–3.
[32] *British and Foreign State Papers*, Vol. 76, p. 4–20.
[33] See Wright, *op cit.*, Chaps. XV and XVI. For texts of Class A Mandates, see Hudson, Manley O., *International Legislation*, I, p. 99–126.

the objectives of this Article apply only to territories which have been made trust territories as the result of such agreements, this reservation has the effect of saying that only to the extent agreed upon in individual trust agreements shall existing rights be affected by the provisions of this Article. This reservation was intended in particular to protect the position of states administering Class C mandated territories who under the terms of the mandate were not required to apply the principle of equal treatment.[34]

Of the nine agreements for non-strategic areas now in effect, the agreements for New Guinea and Nauru are the only ones which do not include a specific guarantee of equal treatment. In the course of Assembly consideration of the New Guinea draft agreement the Australian Delegate argued that specific mention was not necessary since the agreement made general reference to the obligations set forth in the Charter.[35] The Western Samoan agreement repeats the provision of the Charter. The agreements for the six African territories follow a common formula, exemplified by Article 9 of the agreement for Ruanda-Urundi:

> Subject to the provisions of the following article,[36] the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all Members of the United Nations and their nationals and to this end:
>
> 1. Shall secure to all nationals of Members of the United Nations the same rights as are enjoyed by its own nationals in respect of entry into and residence in Ruanda-Urundi, freedom of transit and navigation, including freedom of transit and navigation by air, the acquisition of property, movable and immovable, the protection of person and property, and the exercise of professions and trades;
> 2. Shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of natural resources of the Territory and shall not grant concessions having the character of a general monopoly,
> 3. Shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.
>
> The rights conferred by this article on the nationals of States Members of the United Nations apply equally to companies or associations controlled by such nationals and formed in accordance with the law of any Member of the United Nations.[37]

By the terms of Article 8 of the trusteeship agreement for the former Japanese mandated islands, the United States, as administering au-

[34] See comment on Article 80, *infra*, p. 445.

[35] UN, *Journal* . . , No. 60. Suppl. No 4 — A/C.4/86, p. 106.

[36] Permitting organization of essential public services and creation of monopolies under certain conditions.

[37] UN, Doc. T/Agreement/3

thority, undertakes to accord nationals of each Member treatment no less favorable than is accorded to nationals of other Members "except the administering authority."[38] The principle of Article 76(d) is applied, however, as regards the administration of justice.

The agreements of Ruanda-Urundi, Tanganyika, and the territories of the Cameroons and Togoland, formerly under British mandate, make express provision for the creation of monopolies under certain conditions, including monopolies under private control. There is provision, however, that the administering authority, in the selection of private agencies for this purpose "shall not discriminate on grounds of nationality against Members of the United Nations or their nationals." When these provisions were before the General Assembly for consideration, considerable skepticism was expressed with respect to the wisdom and propriety of permitting such monopolies, both because of possible violation of the equality principle and because of the adverse effects they might have on the economic development of the territories. The Governments of Belgium and the United Kingdom declared that they had no intention of using grants of private monopolies as normal instruments of policy, that such private monopolies would be granted only when essential to economic development in the interests of the inhabitants, and that in these special cases they would be granted for limited periods and promptly reported to the Trusteeship Council.[39]

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

This paragraph indicates the categories of territories to which the trusteeship system is applicable. However, the system did not become automatically applicable to these territories once the Charter entered into force. It became applicable only following the negotiation and approval of trusteeship agreements as provided in Article 79.

Territories under Mandate. Falling in the category of territories

[38] Doc. S/318, p. 3.

[39] General Assembly, *Report of the Fourth Committee,* Doc. A/258, p. 6.

held under mandate were all territories placed under mandate in accordance with the terms of Article 22 of the Covenant and for which the mandates had not been terminated at the time the Charter entered into force. Territories originally placed under mandate included the following:

Class A Mandates

Territory	*Mandatory*
The Lebanon	France
Syria	France
Palestine	United Kingdom
Transjordan	United Kingdom
Iraq	United Kingdom

Class B Mandates

Togoland	United Kingdom
The Cameroons	United Kingdom
Tanganyika Territory	United Kingdom
Togoland	France
The Cameroons	France
Ruanda-Urundi	Belgium

Class C Mandates

South West Africa	Union of South Africa
The Marianas, Caroline, and Marshall Islands	Japan
New Guinea (Northeastern part), New Ireland, New Britain and the Solomon Islands	Australia
Nauru	British Empire through Australia
Western Samoa	New Zealand

The independence of Iraq was established on October 10, 1932, following approval by the Council of the League of Nations of an agreement between the United Kingdom and Iraq.[40] In 1936, treaties of friendship and alliance were negotiated between France, and Syria and Lebanon, for application when the independence of these two countries was established.[41] While the French Government had not recognized at the time that its responsibilities under the League mandates system were ended, both Syria and Lebanon were admitted to participation in the San Francisco Conference, were among the signatories of the Charter, and, by the terms of Article 78, were placed outside the categories of territories to which the trusteeship system

[40] League of Nations, *Treaty Series*, Vol. 136, p. 381.
[41] Royal Institute of International Affairs, *Documents on International Affairs, 1936*, p. 690.

might apply. By the Anglo-French agreement of December 13, 1945 the complete independence of Syria and Lebanon was confirmed by France, and it was agreed that both British and French troops would be evacuated from those countries.[42]

As regards Transjordan, the Secretary of State for Foreign Affairs of the United Kingdom announced before the General Assembly on January 17, 1946, the intention of his Government to take steps to terminate the mandate. On March 22, a Treaty of Alliance was concluded between the United Kingdom and Transjordan which recognized the independence of Transjordan and provided for financial and military assistance to that country.[43] By resolution adopted on April 18, the League Assembly welcomed the termination of the mandate.[44] Subsequently, Transjordan filed an application for membership in the United Nations, but the Security Council has thus far failed to take favorable action upon it.

After failing to reach an agreement with representative Arab and Jewish organizations on the future of Palestine, the United Kingdom on April 2, 1947, requested the Secretary-General to place the question of Palestine on the agenda of the next regular session of the General Assembly. The British Government stated that it would submit to the General Assembly an account of its administration of the mandate, and would ask the General Assembly to make a recommendation concerning the future government of Palestine under Article 10. In order that a preliminary study of the question might be made, the United Kingdom requested that a special session be called to constitute and instruct a special committee.[45] The General Assembly at the close of its special session of April 28–May 15, 1947, adopted a resolution constituting a special committee and authorizing it to conduct an investigation and make a report.[46] The report of the Committee to the General Assembly contained majority and minority recommendations for the attainment of independence.[47] The majority recommended termination of the mandate, and partition into independent Jewish and Arab states, with Jerusalem placed under an international regime, with the Trusteeship Council acting as administering authority, while the minority favored an independent Palestine with the Jewish and Arab parts enjoying extensive autonomy. The report was carefully considered by the General Assembly in its second annual session. On No-

[42] See Hansard, *Parliamentary Debates*, Vol. 417, cols. 473, 627 *et seq.*
[43] United Kingdom, *Treaty Series*, No. 32 (1946).
[44] League of Nations, *Official Journal, Special Supplement*, No. 194, p. 58.
[45] UN, Doc. A/286.
[46] UN, Doc. A/309.
[47] UN, General Assembly, *Official Records of the Second Session . . .*, Suppl. No. 11, Doc. A/364.

vember 29, 1947 a resolution was adopted providing for the acceptance of the majority recommendations in modified form.[48] Following failure to implement the recommendations of the General Assembly, the Security Council on April 1 voted to convoke a special session of the General Assembly on April 26, 1948, to consider the question further.

The United States delegation submitted a plan for a temporary United Nations trusteeship for Palestine.[49] The General Assembly finally decided, however, to limit its action to mediation,[50] thus recognizing that in the absence of any willingness on the part of the permanent members of the Security Council to make adequate forces available for enforcement purposes, any attempt to impose a plan of settlement would be futile. With the termination of the mandate by the United Kingdom on May 15, Jewish elements in Palestine proclaimed the independent state of Israel which was recognized by some Members of the United Nations. The United Nations was therefore faced with a situation where groups within Palestine, aided from without, were striving to determine the political future of the country. The function which the United Nations assumed in practice was to keep the struggle within non-violent limits, while claiming for itself no authority to impose a solution.[50a]

Of the eleven territories held under Class B and Class C Mandates, ten have been placed under the trusteeship system in accordance with the terms of trusteeship agreements approved by the General Assembly. For eight of these territories – all the Class B mandated territories, plus the New Guinea group and Western Samoa – the draft agreements were presented and with some modifications approved by the General Assembly during the second part of the first session. Nauru was brought under trusteeship by General Assembly approval, during its second session, of the draft agreement presented by Australia, New Zealand and the United Kingdom.

The Marianas, Marshall and Caroline Islands constituted the only mandated territory held by an "enemy state." The mandate for these islands was never regarded by the League as terminated or affected in any way by Japan's withdrawal from the League in March 1935, or by the outbreak of World War II. The islands were occupied by United States armed forces in the course of the war. By signing the Instrument of Surrender of September 2, 1945,[51] the Japanese Emperor

[48] *Ibid., Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 131.

[49] UN, Doc. A/C.1/277.

[50] UN, General Assembly, *Official Records of the Second Special Session . . . , Resolutions . . . ,* Suppl. No. 2, Doc. A/555, p. 5–6.

[50a] See also, comment on Articles 10 and 39, *supra,* p. 153 and 268.

[51] Department of State, *Bulletin,* XIII, p. 364.

and Government accepted the terms of the Potsdam Proclamation of July 26, 1945 [52] and the Cairo Declaration of 1943 [53] with respect to the disposition of these islands. The Cairo Declaration provided that Japan should be "stripped" of them. The United States, as the administering power in fact, proposed that the islands be designated as a strategic area, under the terms of Article 82 and that the United States be made the administering authority. A draft trusteeship agreement was prepared and submitted on February 17, 1947 for consideration by the Security Council.[54] Some governments took the position that action should not be taken until after the peace treaty with Japan had entered into force. The United States, however, took the position that the islands never belonged to Japan, and that it was simply carrying out the recommendation of the General Assembly of February 9, 1946,[55] which called upon "those Members of the United Nations which are now administering territories held under mandate" to undertake practical steps for the implementation of Article 79 of the Charter.[56] The draft agreement submitted by the United States was approved by the Security Council with minor changes.[57]

Only in the case of South West Africa has no action thus far been taken by the mandatory power or the state in administrative control with a view to independence or transfer to trusteeship. At the United Nations Conference at San Francisco and in the first part of the first session of the General Assembly in London the Delegate of the Union of South Africa reserved the position of his Government. The General Assembly in the second part of its first session, considered a proposal by the Union of South Africa that the territory be incorporated as an integral part of the Union. The General Assembly refused to give its approval to this proposal, recommended that the territory be placed under the trusteeship system, and invited the Union to submit a proposal for a trusteeship agreement.[58] The Government of the Union of South Africa, while agreeing not to proceed with the incorporation of the territory, took the position that it was under no legal obligation to propose a trusteeship agreement for the territory and stated that it

[52] *Ibid.*, p. 137.

[53] Released to the press on December 1, 1943. *Ibid.*, IX, p 393.

[54] UN, Doc. S/281.

[55] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[56] For statement of United States representative on Security Council, see UN, Security Council, *Official Records, Second Year*, No. 20, p. 408.

[57] For further details, see Robbins, Robert R., "The United States Trusteeship for the Territory of the Pacific Islands," Department of State, *Bulletin*, XVI, p. 783–90; UN, Doc S/318; and UN, Security Council, *Official Records, Second Year*, No. 31, p. 680.

[58] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add 1, p. 123–4.

would continue to maintain the *status quo*, to administer the territory in the spirit of the mandate, and to transmit to the United Nations for its information an annual report on the administration of the territory.[59] The matter was again considered during the second session of the General Assembly. In the Fourth Committee, the position of the Union of South Africa was further elaborated. It was explained that the annual report would contain the type of information required for non-self-governing territories under Article 73(e), and that the right of petition could no longer be exercised since no right of supervision or control by the United Nations existed.[60] In the course of the general discussion in the Committee the view was advanced that there was a moral and legal obligation to submit a trusteeship agreement for a mandated territory. Though strongly opposed, this view was incorporated in the resolution which the Committee finally adopted, which, in addition to reaffirming the earlier General Assembly resolution, stated that it was the "clear intention of Chapter XII" that all territories held under mandate "until granted self-government or independence, shall be brought under the International Trusteeship System."[61] The resolution maintained the recommendation that South West Africa be placed under the trusteeship system, urged the Government of the Union of South Africa to propose a trusteeship agreement for the consideration of the General Assembly at its third session, and authorized the Trusteeship Council to examine the report on the territory submitted by the Union of South Africa and to submit its observations to the General Assembly. The General Assembly, however, before adopting the resolution, deleted the "clear intention" paragraph and substituted the expression of a hope that an agreement be submitted for the more insistent phraseology of the Committee resolution.[62] The General Assembly thus appears to have taken the view that while the placing of a mandated territory under trusteeship is desirable and assists in achieving the general purpose of the Charter, there is no legal obligation to do this.[62a]

Territories Detached from Enemy States. It is not expressly stated that this category is limited to territories that were non-self-governing before the war. The territories to which application of the trusteeship system has thus far been considered can however be thus described.

Proposals were made to the Council of Foreign Ministers for the administration of the Italian colonies of Tripoli, Eritrea and Somaliland by the United Nations and by individual states under trusteeship

[59] UN, Doc. A/334 and Doc. A/334/Add 1.
[60] UN, General Assembly, *Report of the Fourth Committee*, Doc. A/422, p. 2.
[61] *Ibid.*, p. 6.
[62] UN, Doc. A/P.V. 105.
[62a] See Sayre, *op. cit.*, p. 272–3.

agreements. The Council could not reach any final agreement, however, on the disposition of the territories. By the terms of Article 23 of the Treaty of Peace with Italy, Italy renounced all right and title to these possessions, they were to continue under British administration pending final disposal, and if agreement could not be reached between the Governments of the Soviet Union, the United Kingdom and France on final disposition of any of the territories within one year from the coming into force of the treaty, the matter was to be referred to the General Assembly for recommendation, and the four Governments agreed to accept the recommendation.[63]

As regards territories detached from Japan, excepting of course the mandated islands, only with respect to Korea has a proposal for trusteeship thus far been made. The Cairo Declaration of 1943[64] stated the determination of the three Governments (United States, United Kingdom and China) that Korea "in due course" become "free and independent." At the Moscow meeting of the Council of Foreign Ministers, December 16–26, 1945, it was agreed that a joint commission of representatives of the United States and Soviet commands in Korea be created to prepare proposals for the joint consideration of the Governments of the United States, the United Kingdom, China and the Soviet Union "for the working out of an agreement concerning a four-power trusteeship of Korea for a period up to five years."[65] The Joint Commission having failed to agree on any proposals, the United States brought the Korean question before the General Assembly at its second session, and the General Assembly adopted a resolution providing for the appointment of a Temporary Commission to facilitate and supervise elections in Korea and to assist in forming a national government, thus making possible the withdrawal of American and Soviet troops and the reestablishment of Korean independence.[66]

Territories Voluntarily Placed under System. The third category includes all territories without further qualification which are "voluntarily" placed under the system by the states responsible for their administration. In a sense, the use of the word "voluntarily" here is misleading since it is by voluntary agreement that all territories, including those falling into the first two categories, are brought under the trusteeship system. There is, it may be argued, the implication that in the case of territories in the first two categories, the states di-

[63] Department of State, Pub. 2743, p. 13, 88–9.
[64] *Ibid.*, *Bulletin*, IX, p. 393.
[65] *Ibid.*, XIII, p. 1030.
[66] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 16–8.

rectly concerned are at least morally obligated to enter into the agreements necessary to bring them under the system, while in the case of territories in the third category, there is no suggestion whatever of obligation. While the door is open to any Member which possesses a colony to agree to place it under the trusteeship system, there can be no allegation of breach of faith or violation of the spirit of the Charter if it refuses to do so.

During the second session of the General Assembly the question of the interpretation of Article 77 (1) (c) was raised by an Indian proposal inviting Members to place territories not ready for self-government under the trusteeship system. In committee discussion it was argued, on the one hand, that this did not violate the principle of voluntary submission, while, on the other, it was claimed that the adoption of this resolution would amount to a rewriting of the Charter.[67] In the resolution adopted by the Fourth Committee it was stated that "at the time of the creation of the United Nations it was intended that non-self-governing territories be voluntarily placed under the International Trusteeship System" and the hope was expressed that Members responsible for the administration of non-self-governing territories would propose trusteeship agreements under Article 77 (1) (c) for all or some of the territories not ready for self-government.[68] The resolution was adopted by a vote of 25 to 23. The General Assembly, after deciding that the adoption of the resolution required a two-thirds vote, defeated it by a tie vote, 24 to 24.[69]

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

The provisions of Article 22 of the Covenant, while not committing the Members of the League of Nations in any legal sense to placing specific territories under mandate, did by the specific references contained in paragraphs 4, 5 and 6 commit Members, at least in a moral sense, to place these territories under the mandates system. The provisions of Article 77, however, emphasize the fact that the trusteeship system shall apply only to the extent determined by subsequent agreement. While the difference from a strictly legal point of view between the Covenant and Charter provisions is not apparent, it would seem that the Charter places greater emphasis on the agreement stage and makes the conclusion of these agreements appear to

[67] UN, *Weekly Bulletin*, III, p. 574–6.
[68] *Ibid.*
[69] *Ibid.*, p. 629

be a voluntary matter subject to less moral compulsion than was implied in the Covenant.

This conclusion would appear to be supported by practice to date. The General Assembly resolution of February 9, 1946, following the recommendation of the Preparatory Commission, welcomed declarations that had been made of intention to negotiate trusteeship agreements, and invited States administering territories held under mandate "to undertake practical steps, in concert with the other States directly concerned, for the implementation of Article 79 of the Charter." [70] As we have seen, only the Union of South Africa, of the mandatory powers, took a definite position against placing a mandated territory under trusteeship agreement. When the matter was subsequently discussed in the second part of the first session and in the second session of the General Assembly, the South African representative argued that his Government was under no legal obligation to propose a trusteeship agreement, that by the terms of the Treaty of Versailles South Africa was accorded full power of legislation and administration, subject only to the terms of the mandate, that the South African delegation had formally stated its position at the United Nations Conference in San Francisco, and that the administration of the territory had been fully in conformity with the terms of the mandate and with the spirit of the Charter. It was argued by other delegations that the Union of South Africa was under a legal, or at least moral, obligation to place the territory under trusteeship. For account of action taken by the General Assembly, see comment on paragraph 1.[71] It would appear that in this case the General Assembly upheld the view that even for mandated territories it is entirely a matter of voluntary agreement whether a particular territory is to be placed under the trusteeship system. The resolutions adopted, however, registered the view that such action is desirable.

As regards non-self-governing territories not falling in the first two categories of the first paragraph of this Article, there can be no question, in the light of the action of the second session of the General Assembly on the Indian proposal,[72] but what submission of a trusteeship agreement for a particular territory is to be regarded as purely voluntary. In fact, it is apparently not even a generally accepted principle of policy that such action is necessarily desirable in order to achieve the purposes of the United Nations.

[70] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 13.

[71] See *supra*, p. 432.

[72] See comment on paragraph 1, *supra*, p. 435.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

This Article specifically excludes from the application of the trusteeship system territories which have become Members of the United Nations. It would appear to be obvious that a Member entitled to the benefit of the principle of sovereign equality under Article 2 (1) cannot at the same time be a trust territory. Nevertheless, it was thought desirable to make this explicit for the reassurance of certain participants in the San Francisco Conference whose international status had not been completely clarified.

Lebanon and Syria, though participants in the Conference and signatories of the Charter, were still regarded by France as technically subject to League Class A Mandates. Ethiopia, following its conquest by Italy in 1936, was proclaimed a part of the Italian Empire. British troops invaded Ethiopia in June 1940, when Italy declared war, and the Emperor, Haile Selassie, returned to his capital on May 5, 1941. Ethiopia adhered to the Declaration by United Nations on October 9, 1942, and participated in the United Nations Conference at San Francisco, becoming an original Member of the United Nations. By Article 33 of the Treaty of Peace with Italy, "Italy recognizes and undertakes to respect the sovereignty and independence of the State of Ethiopia."

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

This Article is of basic importance to the United Nations trusteeship system since it determines how individual territories are to be brought under its operations. The agreements here provided for correspond to the mandates under which League mandated territories were administered. Article 22, paragraph 8, of the Covenant provided that "the degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members

of the League, be explicitly defined in each case by the Council." As a matter of fact the mandates were allotted and drafted by the Principal Allied and Associated Powers and submitted to the Council for subsequent approval.[73]

Parties to the Agreements. There was no agreement at San Francisco on the meaning of the phrase "the states directly concerned."[73a] It was understood, as is specifically stated in this Article, that in the case of mandated territories the mandatory power was to be regarded as a state "directly concerned."[74] It was generally assumed that in the case of territories falling in category c of Article 77(1), the state responsible for the administration of the territory was also "directly concerned." And presumably in the case of a territory detached from an enemy state as a result of the Second World War, the state in actual occupation would be "directly concerned." Beyond that there was little agreement.

In the case of mandated territories, were states which constituted the Principal Allied and Associated Powers at the time the original assignments were made to be regarded as "states directly concerned"? What about members of the League Council, the organ responsible under the Covenant for securing observance of the terms of the mandates? What about Members of the League? In the case of territories detached from enemy states as the result of World War II, were all states at war with the enemy state in question to be regarded as "states directly concerned", or only those who had assumed the major role in defeating the enemy? Was geographical propinquity a factor to be taken into account? Once the Trusteeship Council was established, would membership in that organ be a factor to consider? These and other questions, actually raised in the course of discussions, suggest the complexity of the problem.

In the discussions in London, in the Preparatory Commission and during the first part of the first session of the General Assembly, no agreement was reached on the meaning of the phrase. With respect to mandated territories, the mandatory powers in general argued for a restrictive interpretation and certain other states, notably the Soviet Union, argued for a wider interpretation. The resolution adopted by the General Assembly on February 9 invited mandatory powers to submit agreements without indicating how in its judgment the phrase "states directly concerned" was to be interpreted.

[73] See Wright, *op. cit.*, p. 43 *et seq.*

[73a] See Wolfe, George W., "The States Directly Concerned: Article 79 of the United Nations Charter," *American Journal of International Law*, XLII, p. 368–88 and Sayre, *op. cit.*, p. 283–5

[74] UNCIO, *Draft Report of the Rapporteur of Committee II/4*, Doc. 1091, II/4/44 (*Documents*, X, p. 574–86).

As a result, each mandatory in drafting an agreement, made its own decision as to the meaning of the phrase.[75] Australia exchanged views regarding the terms of the agreement for New Guinea with New Zealand, the United Kingdom, the United States and France.[76] The same was done by New Zealand in respect to Western Samoa. Belgium, in preparing an agreement for Ruanda-Urundi, submitted its draft to the United Kingdom as a state "directly concerned", and communicated it "for their information" to China, the United States, France and the Soviet Union.[77] France submitted draft agreements for Togoland and the Cameroons to the United Kingdom for its approval as a state "directly concerned," and communicated the terms "for information purposes" to the other permanent members of the Security Council and to other states holding mandated territories on the African continent.[78] The United Kingdom submitted draft agreements for Tanganyika, Togoland, and the Cameroons to France, Belgium and the Union of South Africa for comment, and to other permanent members of the Security Council for information purposes.[79] India claimed to be a state "directly concerned" with respect to Tanganyika.[80]

When the first eight draft agreements were brought up for discussion in the Fourth Committee of the General Assembly during the second part of its first session, it was voted to refer them to a subcommittee (Subcommittee 1) for detailed consideration. In Subcommittee 1 the Soviet representative proposed that the phrase "states directly concerned" be defined to include permanent members of the Security Council and the Trusteeship Council and other Members under specified conditions. Failing any real possibility of agreement, the United States representative, Mr. Dulles, proposed that approval of any terms of trusteeship at the first session should be on the following understanding with respect to "states directly concerned":

> All Members of the United Nations have had an opportunity to present their views with reference to the terms of Trusteeship now proposed to the General Assembly for approval. There has, however, been no specification by the General Assembly of "states directly concerned" in relation to the proposed Trust Territories. Accordingly, the General Assembly in approving the terms of Trusteeship does not prejudge the question of what states are or are not "directly concerned" within the meaning of Article 79. It recognizes that no state has waived or prejudiced its right hereafter to claim to be such a "state directly concerned" in relation to approval of

[75] See UN, Doc. A/117.
[76] *Ibid.*, p. 4.
[77] *Ibid.*, p. 5.
[78] *Ibid.*, p. 6.
[79] Hansard, *Parliamentary Debates*, Vol. 418, col. 150.
[80] UN, Doc. A/C.4/Sub.1/56.

subsequently proposed Trusteeship agreements and any alteration or amendment of those now approved, and that the procedure to be followed in the future with reference to such matters may be subject to later determination.[81]

This proposal was adopted and later accepted by the Fourth Committee and the General Assembly. The French Delegation stated that it considered approval by the General Assembly would "necessarily imply recognition of the fact that these agreements comply with the conditions of Article 79 of the Charter of the United Nations."[82] The Soviet Delegation took the position that the provisions of Article 79 had not been complied with, and that the agreements in question could not be considered agreements under this Article.[83] In the beginning, the Soviet Union refused to participate in meetings of the Trusteeship Council as set up on the basis of these agreements.

The draft trusteeship agreement for the former Japanese mandated islands, as prepared by the Government of the United States, was made public on November 6, 1946 and copies were transmitted for information to the other members of the Security Council and to New Zealand and the Philippines. Copies were later transmitted to the newly elected members of the Security Council.[84] The trusteeship agreement for Nauru was unique in that it provided for joint administration by the Governments of Australia, New Zealand and the United Kingdom. It was submitted as an agreement between these three Governments, on behalf of whom the territory had been administered under League mandate by Australia.[85]

One result of the practice that has thus far been followed in the making of trusteeship agreements is that there is no effective check on the state in actual possession of the territory in determining the agreement to be submitted to the General Assembly, since it alone determines what other states, if any, are "directly concerned". Since it can withdraw a proposal that it has made, the control of the General Assembly, or the Security Council in the case of strategic areas, is limited. On the other hand, the practice followed has the result that, except for agreements for strategic areas, no single state except the state in possession of the territory is in the position to prevent an agreement being made simply because it does not approve of the terms.

Approval of Agreements. As stated in Articles 83 and 85, to which

[81] UN, General Assembly, *Report of the Fourth Committee*, Doc. A/258, p. 13.
[82] *Ibid.*, p. 13–4.
[83] *Ibid.*, p. 15 and *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .*, p. 1276–83.
[84] Department of State, *Bulletin*, XVI, p. 786.
[85] UN, Doc. A/402.

reference is here made, the terms of trusteeship must be approved by the General Assembly or, in the case of strategic areas, by the Security Council.

The practice thus far has been for the state or states responsible for the administration of the territory at the time, to submit proposals in the form of a proposed or draft trusteeship agreement. The submission takes the form of a letter to the Secretary-General with enclosure. In the General Assembly, proposed agreements are referred to the Fourth Committee for detailed consideration and report. The Fourth Committee in turn has thus far followed the practice of referring them to a small subcommittee. Consideration by both the General Assembly and the Security Council has thus far been thorough and has led to many proposals for amendment. Some of the amendments proposed have been accepted, and others have led to explanations by the state submitting the agreement which have to some extent at least met the objections raised. Other amendments proposed, even though adopted by majority vote, have been unacceptable to the submitting state. In all such cases without exception, the proposed amendment has been dropped rather than run the risk of having the submitting state or states withdraw the draft agreement. Thus the power of approval of the General Assembly, or the Security Council, is always exercised with due regard to the consequences of going too far in opposing the wishes of the state in actual possession of the territory. This was particularly true during the first year of the United Nations when there was great eagerness to have trusteeship agreements in operation in order that the Trusteeship Council might be constituted.

Entry into Force of Agreements. Articles 79, 83 and 85 provide for approval by the General Assembly or the Security Council, as the case may be, but do not say in so many words that the agreements enter into force immediately following approval. However, that has been the practice with respect to all the agreements save one.

The agreement for the former Japanese mandated islands has been an exception. This was not due to the fact of its applying to a strategic area. Article 16 of the agreement as approved by the Security Council provided that "the present agreement shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process."[86] Secretary of State Marshall, in testifying before the Senate Foreign Relations Committee, described the agreement as one "between the Security Council and the United States of America."[87] After approval by the Security Council, a joint resolution was introduced in Congress and passed

[86] UN, Doc. S/318, p. 4.
[87] *Hearings before the Committee on Foreign Relations . . , July 7, 1947,* p. 8.

by both Houses authorizing the President to approve the agreement on behalf of the United States.[88] The President gave his approval on July 18 and instructed the Secretary of State to notify the proper organs of the United Nations that the agreement entered into force as of that date.[89]

Termination of Trust Agreement. Neither in this Article nor in any other Article of the Charter is there any provision regarding the termination of trusteeship or covering the cases of the withdrawal from the United Nations of a state acting as administrative authority under a trusteeship agreement, or of the commission of an act of aggression by such a state. The League Covenant contained no express provision applicable to these situations.

As regards the termination of a mandate the practice of the League was to permit this on two conditions: (1) the existence in the territory concerned of *de facto* conditions justifying the presumption that the country had reached the stage of development where it was able "to stand by itself under the strenuous conditions of the modern world"; and (2) the provision of certain guarantees.[90] In the case of Iraq, which was the only mandated territory to have its status officially terminated and to be admitted to the League, the guarantees took the form of a treaty between the mandated territory and the mandatory, and of a declaration signed by the Government of Iraq.

When the question arose of the consequences for the Japanese mandated territories of the Japanese invasion of Manchuria in 1931 and subsequent Japanese withdrawal from the League, a course of inaction was followed. In this case, there was the aggravating circumstance that Japan, in addition to committing an act of aggression and withdrawing from the League, clearly failed to live up to her obligations under the terms of Article 22 and the mandate.

In the course of Committee consideration at the United Nations Conference in San Francisco, the Delegate of Egypt moved that provisions embodying the following principles be included in this Chapter:

> That in all trust territories, within its competence, the General Assembly shall have the power to terminate the status of trusteeship, and declare the territory to be fit for full independence, either at the instance of the Administering Authority, or upon the recommendation of any member of the Assembly.
>
> That whenever there is any violation of the terms of the trusteeship arrangements by the administering authority, or when the administering power

[88] *Congressional Record*, vol. 93, p. 8905–7, 9027.
[89] Department of State, *Bulletin*, XVII, p. 178.
[90] League of Nations, *The Mandates System, Origin – Principles – Application*, *op. cit.*, p. 118.

has ceased to be a Member of the United Nations, or has been suspended from membership, the Organization shall take the necessary steps for the transfer of the territory under trusteeship to another administering authority, subject to the provisions of Articles 2 and 6 above.[91]

It was argued against this proposal that a provision for the termination or transfer of a trusteeship without the consent of the administering authority would be contrary to the voluntary basis upon which the system was to rest. It was contended that on the basis of League experience a provision for the termination of trusteeship through recognition of independence was unnecessary and might be left to individual agreements. With regard to the matter of termination as a penalty for maladministration or as a consequence of the administering authority's ceasing to be a Member, it was argued that the case was covered by other provisions of the Charter, notably by the provisions empowering the Security Council to deal with disputes and situations likely to endanger the peace. Moreover, it was pointed out that there were great practical difficulties in the way of enforcing penalties.

As a result of this discussion the Chairman of Committee II/4 (the Delegate of New Zealand) asked the Delegates of the United States and the United Kingdom to prepare a statement for inclusion in the Rapporteur's report on two questions which the discussion had suggested. In the light of this action, the Delegate of Egypt withdrew his motion, and no formal vote was taken on it. The statement which was submitted by the Delegates of the United States and Great Britain was as follows:

1. *If a State administering a trust territory commits an act of aggression, what consequences will follow in relation to its trust?* — The powers of the Security Council as defined in Chapter VIII[92] of the Charter are not limited to dealing with acts of aggression. The Security Council may investigate any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security. Any Member of the United Nations may bring any such situation to the attention of the General Assembly or of the Security Council. If the Security Council should in any particular case decide that the continuance of the situation is in fact likely to endanger the maintenance of international peace and security it may recommend appropriate procedures or methods of adjustment. In this way a Trustee State which showed signs of aggressive intentions or had committed an aggression could be dealt with, whether it were

[91] UNCIO, *Summary Report of Fourteenth Meeting of Committee II/4, June 15, 1945*, Doc. 1018, II/4/38, p. 5 (*Documents*, X, p. 547). Articles 2 and 6, here referred to, became Articles 76 and 81 of the Charter.

[92] Chapter VIII of the Dumbarton Oaks Proposals. This was broken down into Chapters VI, VII and VIII of the Charter as finally adopted.

still a Member of the Organization or not. In general, however, the same considerations apply as are explained in reply to Question 2, namely that the action to be taken in such a case can only be decided upon at the time and in the light of all relevant circumstances.

2. *If a State withdraws from the United Nations Organization and continues to hold a trust territory under the Charter, how is the Organization to continue to exercise its responsibilities with respect to the administration of that trust territory?* — If a State withdraws for reasons which reflect no discredit upon it, and if it declares its willingness to continue to abide by the terms of the Trusteeship system, although itself ceasing to be a member of the General Assembly or Trusteeship Council, there should be no reason for transferring the trust territory. There is no inherent reason why the system of annual reports, petitions, periodic visits, etc. could not continue in such circumstances and the Administering Authority could be given the opportunity (though not compelled) to attend meetings of the Trusteeship Council when matters affecting its Trust Territories are under consideration. Moreover, if after ceasing to be a Member of the United Nations, the Administering Authority committed violations of the Trust, any measures which are provided elsewhere in the Charter against Member States could be invoked equally against the State in question. If, however, the State were allowed to withdraw for other reasons, or were expelled, and did not voluntarily consent to the transfer of the Trust to another authority, the resulting situation could only be judged by the General Assembly and the Security Council on its merits in the light of all the circumstances prevailing at the time. It is impossible to make provision in advance for such a situation.[93]

It was decided that while this statement should not be regarded as an expression of the views of the Committee, it should be appended to the Rapporteur's report.[94]

The agreements thus far made have not contained provisions with respect to termination. In most cases they have contained a reference to the Charter provisions regarding alteration and amendment.[95] When the eight draft agreements submitted during the first session of the General Assembly were under consideration by the Fourth Committee, a proposal was made that a new article be inserted fixing a period of ten years for which the agreement would remain in force and at the end of which the agreement would be reviewed and modified according to the degree of attainment of the purposes stated in Article 76. This amendment was not accepted by the states submitting the agreements, and was consequently dropped.[96] The draft agreement proposed by

[93] UNCIO, *Report of the Rapporteur of Committee II/4*, Doc. 1115, II/4/44 (1) (a), p. 14–5 (*Documents*, X, p. 620–1).

[94] UNCIO, *Summary Report of Sixteenth Meeting of Committee II/4, June 20, 1945*, Doc. 1143, II/4/46, p. 1 (*Documents*, X, p. 601).

[95] See comment on Article 81, *infra*, p. 450.

[96] UN, Doc. A/258, p. 3–4.

the United States for the administration as a strategic area of the former Japanese mandated islands contained an article stating that the terms of the agreement should not be "altered, amended or terminated without the consent of the administering authority."[97] The Soviet Representative proposed that this article be amended to read "The terms of the present agreement may be altered, supplemented or terminated by decision of the Security Council."[98] While this would not have permitted amendment or termination of the agreement without United States consent, the United States Representative refused to accept it, and the article as originally proposed by the United States was adopted.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

The purpose of this Article is conservatory, that is, to safeguard existing rights pending the entrance into force of the trusteeship agreements provided for in Articles 77, 79 and 81. It was intended to apply particularly to rights in mandated territories.

The question of the protection of existing rights was the subject of extensive discussion at the United Nations Conference. The original proposal contained in paragraph 5 of Section B of the *Working Paper* was that "except as may be agreed upon in individual trusteeship arrangements, placing each territory under the trusteeship system, nothing in this chapter should be construed in and of itself to alter in any manner the rights of any state or any peoples in any territory."[99] This was criticized by some delegates on the ground that it protected the rights of mandatory powers and was a deviation from the basic purpose of the trusteeship system which was to further the welfare of dependent peoples. As regards the inhabitants of certain mandated territories, it was argued that the proposal did not go far enough in protecting rights enjoyed under the mandate system, particularly the right of communities referred to in paragraph 4 of Article 22 of the Cove-

[97] UN, Doc. S/281, p. 5.
[98] UN, Security Council, *Official Records, Second Year*, No 20, p. 415.
[99] UNCIO, Doc. 323, II/4/12, p 2 (*Documents*, X, p. 678).

nant to have their independence provisionally recognized and to have their wishes treated "as a principal consideration in the selection of the mandatory." Other delegates took the view that the mandatory power equally had rights which should be protected.

The Delegate of the United States stated that the proposal under consideration was intended to mean "that all rights, whatever they may be, remain exactly the same as they exist – that they are neither increased nor diminished by the adoption of this Charter. Any change is left as a matter for subsequent agreements." [100] To meet some of the objections that had been raised, though not all, a new draft was presented toward the end of the Conference, in substance, the text of the Charter. The United States Delegate, who presented the draft, stated that among the "rights" protected were included any rights set forth in paragraph 4 of Article 22 of the Covenant.[101]

The Committee, in adopting the present text, accepted the interpretation given by the Delegate of the United States. It thus appears that among the rights to be protected in mandated territories are to be included the rights of mandatory powers,[102] the rights of other states, and the rights of peoples other than the inhabitants of the mandated territory. Such rights as the peoples of particular mandated territories have, as for example under paragraph 4 of Article 22 of the Covenant, are equally protected.

The provisions of Article 80 have been invoked by the Union of South Africa to conserve its rights under the mandate for South West Africa and by the Arab High Committee and the members of the Arab League in support of their advocacy of independence for a united Palestine.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

The meaning of this paragraph is apparent. It was intended to prevent a mandatory from using the protection of its rights as an excuse for refusing to enter into a trusteeship agreement. There is no sanction provided, however, and no means of coercing a mandatory into concluding a trusteeship agreement. Furthermore, as appears to have been recognized by the General Assembly in the case of the territory

[100] UNCIO, *Summary Report of Tenth Meeting of Committee II/4, May 24, 1945*, Doc. 580, II/4/24, p. 2 (*Documents*, X, p. 486).

[101] UNCIO, *Summary Report of Thirteenth Meeting of Committee II/4, June 8, 1945*, Doc. 877, II/4/35, p. 3 (*Documents*, X, p. 515).

[102] See Article 73(d) and comment, *supra*, p. 420 and 426.

of South West Africa, there is no legal obligation resting on a mandatory to conclude an agreement.[103]

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Nature of Administering Authority. It is to be noted that whereas under the League system, according to the provisions of Article 22, the practice was for single states to act as mandatories, this Article permits an alternative method. The administering authority for a given territory may be one or more states or the United Nations itself. It is to be noted that it is not specifically stated that the administering authority, if a state, must be a Member. There was some objection at the United Nations Conference to permitting the Organization to act as administering authority on the grounds that this was likely to prove ineffective in practice. The point was not pressed, however, and under the terms of the Article, direct administration by the Organization is permissible.

Under nine of the ten trusteeship agreements in force, the administering authority is declared to be the Government of a Member. The trusteeship agreement for Nauru designates the Governments of Australia, New Zealand and the United Kingdom as "the Administering Authority," i.e. "the joint authority which will exercise the administration of the territory."[104] Article 4, as interpreted by the Government of Australia speaking for the three Governments, provides that "the Government of Australia will administer the territory until it is agreed that one other of the three Governments will assume this function."[105] In the course of consideration by the Council of Foreign Ministers of the future of the Italian colonies, the United States proposed a trusteeship arrangement with the United Nations as the administering authority. The decision of the Ministers of Foreign Affairs of December 1945 with respect to Korea envisaged trusteeship with the United States, the United Kingdom, China and the Soviet Union acting as the administering authorities.[106]

[103] See *supra*, p. 432.
[104] UN, Doc. T/Agreement/9.
[105] UN, General Assembly, *Report of the Fourth Committee*, Doc. A/402, p. 1–2.
[106] See *supra*, p. 434.

Terms of Trusteeship. As in the case of the League mandates system, the Charter alone gives an incomplete picture of the terms under which a particular territory is to be administered. The Covenant stated that "the character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances." It set forth certain principles that should govern the administration of each of the three classes of mandated territories, but the detailed implementation of these principles, and, in general, the definition of the authority and responsibilities of the mandatory was left to each mandate.[107] The trusteeship system is essentially the same, save that the governing principles are more extensively set forth in the Charter. For discussion of general principles, see Article 76 and comment.

Of the ten trusteeship agreements thus far in force, nine[108] are for territories which have not thus far been designated as strategic. The discussion here is limited to these, the agreement for the former Japanese mandated islands being considered in connection with Article 82. Each agreement contains a definition of the territory placed under trusteeship together with the designation of the administering authority. Each contains a general undertaking by the administering authority to administer the territory in accordance with the provisions of the Charter and in such a manner as to achieve the basic purposes of the system as set forth in Article 76. The administering authority is made responsible for the maintenance of peace and order as well as the good government and defense of the territory, and for ensuring that the territory will play its part in the maintenance of international peace and security (Article 84 of the Charter). For the attainment of these purposes, the administering authority is specifically given "full powers of legislation, administration and jurisdiction." In some of the agreements this grant of powers is set forth in greater detail to include the power to administer the territory "as an integral part" of the territory of the administering power, to constitute the territory into "a customs, fiscal or administrative union or federation with adjacent territories"[109] under the sovereignty of the administering power, to establish common services between such territories, and to establish military bases, erect fortifications, station its own armed forces and raise voluntary contin-

[107] See Wright, *op. cit.*

[108] For texts of nine trusteeship agreements approved by the General Assembly, see UN, Doc. T/Agreement/1–Doc. T/Agreement/9. The agreements have been published as General Assembly documents and the first eight are given in *Yearbook, 1946–47*, p. 188–205. For text of Tanganyika agreement, see *infra*, p 635.

[109] Agreements for Tanganyika, Ruanda-Urundi, and Togoland and the Cameroons (under British and French mandates).

gents therein, all subject to the provisions of the Charter and the agreement.

The agreements contain detailed provisions with respect to the political advancement of the native populations. The phraseology varies widely.[110]

With variations in phraseology which are significant, the agreements provide for the application of international agreements and conventions in force, and, under specified conditions, of recommendations of the United Nations and the specialized agencies. This has special importance for the African territories which come under the operation of the General Act of the Berlin Conference of 1885[111] and the General Act and Declaration of the Brussels Conference of 1890,[112] as revised by the Convention of Saint Germain-en-Laye of 1919.[113]

The agreements contain provisions protecting native rights in land. In general they require that in framing laws relating to the ownership of land and rights over natural resources, "native laws and customs" shall be taken into consideration and that the rights and interests of the native populations shall be respected and safeguarded. The obligation is placed on the administering authority to ensure freedom of thought and the free exercise of all forms of religious worship and of religious teaching, which are consistent with public order and morality, and to guarantee freedom of speech, of the press, of assembly and of petition, subject only to the requirements of public order. All the agreements place on the administering authority the obligation to provide for the educational advancement of the native peoples. In some cases, as in the cases of Nauru and New Guinea, the obligation is stated in the most general terms, while in others the obligation is set forth in greater detail. Thus, the Tanganyika agreement requires the administering authority to "continue and extend a general system of elementary education designed to abolish illiteracy and to facilitate the vocational and cultural advancement of the population, child and adult," and to "provide such facilities as may prove desirable and practicable, in the interest of the inhabitants, for qualified students to receive secondary and higher education".[114] The agreements for Togoland and the Cameroons under French mandate obligate the administering authority to "continue to develop elementary, secondary and technical education for the benefit of both children and adults," and to "afford to qualified students the opportunity to receive higher general or professional education."[115]

[110] For detailed provisions, see comment on Article 76(b), *supra*, p. 422.
[111] *British and Foreign State Papers*, Vol. 76, p. 4.
[112] *Ibid.*, Vol. 82, p. 55.
[113] United States, *Treaty Series* 779.
[114] Article 12
[115] Article 10.

Only the agreement for Western Samoa contains detailed provisions for the elimination of abuses with a view to social advancement of the native population.[116] In the case of the other territories, the elimination of these specific abuses is provided for in varying degree under the terms of international agreements in force. This is particularly true of the African territories to which the provisions of the Convention of Saint Germain-en-Laye of 1919 apply. All the agreements include, at least by reference, the general obligation to promote the social advancement of the native peoples as provided in Article 76(b).

All the agreements recognize by reference to Article 76 of the Charter, that one of the purposes of administration is to ensure equal treatment in social, economic and commercial matters, and in the administration of justice, for all Members of the United Nations. The six agreements for African territories contain detailed provisions for equality of treatment. The Belgian agreement for Ruanda-Urundi is typical.[117]

Either by general reference to the relevant Articles of the Charter, or by specific provision in addition to a general reference, the agreements provide for full collaboration by the administering authority with the General Assembly and the Trusteeship Council in the discharge of their functions as defined in Article 87 of the Charter. Furthermore, under the agreements for the African territories, the administering authority undertakes to facilitate such periodic visits as may be decided upon by the General Assembly or the Trusteeship Council under the terms of Article 87(c), to decide jointly with these organs the dates on which such visits shall take place, and also to agree "jointly with them" on all questions concerning the organization and accomplishment of these visits. The administering authority also undertakes, under the terms of these agreements, to make an annual report on the basis of the questionnaire drawn up under Article 88, such reports to include information regarding the measures taken to carry out the suggestions and recommendations of the General Assembly and the Trusteeship Council, and to appoint an accredited representative to attend meetings of the Trusteeship Council at which the report is examined.

The agreements for the African territories state specifically that the terms of each agreement are not to be altered or amended except as provided in the Charter, and that the administering authority reserves the right to propose at some future date that the whole or part of the territory be designated a strategic area. It is further provided that any dispute with respect to the interpretation or application of the agree-

[116] See *supra*, p. 422.
[117] See *supra*, p 427

ment between the administering authority and another Member of the United Nations which cannot be settled by negotiation shall be submitted to the International Court of Justice.[118]

Comparison with League Mandates. A comparison of the trusteeship agreements in force with the League mandates under which these territories were administered [119] leads to the following general conclusions: (1) the agreements, taken together with the Charter provisions, place much greater emphasis upon positive action than did the mandates, taken together with the provisions of the Covenant; (2) the trusteeship agreements vary as greatly in their provisions as did the mandates, and considered alone would seem to permit as wide variation in administrative practices as did the mandates, but taken together with the provisions of the Charter they add up to a more uniform and forward-looking system; (3) the agreements do not expressly provide and in as great detail for the elimination of abuses which have in the past too often characterized the administration of colonial areas, but this result is generally envisaged in the terms of the Charter to which reference is made and in most cases is expressly required by other international agreements in force; (4) the agreements give to the administering authority the practically unrestricted right to maintain naval, military and air establishments for "defense" purposes, whereas the mandate expressly prohibited the establishment of bases or the creation of fortifications; (5) the Charter and the trusteeship agreements provide for a more promising system of international supervision than did the League Covenant and the mandates; [120] (6) whether in practice the lot of non-self-governing peoples will be improved under the trusteeship system will depend more on the spirit in which the administering authority performs its task, the seriousness with which Members of the United Nations take their responsibilities as members of the organs of international control, and the alertness of public opinion generally, than upon detailed provisions of the Charter and the agreements. The Charter and the agreements provide a legal basis for the enlightened administration of non-self-governing territories. The rest is in the hands of governments and peoples.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to

[118] The Australia agreements constitute an exception, presumably for the reason that Australia had already accepted the compulsory jurisdiction of the Court.

[119] For texts of League mandates, see Hudson, Manley O., *International Legislation*, I, p. 42–126

[120] See Articles 87 and 88 and comments, *infra*, p. 465–73.

which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Background. This Article, taken together with Article 83, provides a special régime for those areas in which a Member or Members of the United Nations, or the United Nations, may have special interests of a strategic character. Presumably the interest in question may result either from the defense requirements of a particular state or states or from the needs of the Organization for maintaining peace and security.

The situation which apparently gave rise to this differentiation between territories placed under trusteeship agreements, subject to the authority of the General Assembly, and those placed under the authority of the Security Council because of their designation as strategic areas, was the need of finding some device by which the principle of non-aggrandizement laid down in the Atlantic Charter might be harmonized with the special security requirements of certain Members of the United Nations. The United States, for example, after the experience of attack without warning at Pearl Harbor, was insistent upon control over areas in the Pacific in the interest of national defense. However, by the terms of the Atlantic Charter the United States Government was committed to the principle of territorial non-aggrandizement.

The special significance of the designation of a particular area as strategic is made clear in Article 83. It means that functions of the United Nations, including the approval of the terms of the agreement and their alteration or amendment, are to be performed by the Security Council. On the Security Council any one of the permanent members will be in a position to veto any action by that organ. It is interesting in this connection to note that when the United States proposal for the administration of the former Japanese mandated islands was before the Security Council, the United States Representative announced that he would abstain from voting on proposed amendments, thereby not exercising the veto, though if an amendment to which the United States objected were adopted, the United States might be obliged "in view of its responsibilities, to withdraw the tender of an agreement."[121] A permanent member will consequently be in a better position to protect its special national interests on the Security Council than in the General Assembly where decisions are taken by a majority, or a two-thirds majority vote.

The provisions of Articles 82 and 83 harmonize with the peace and security system of the Charter since they place on the Security Council,

[121] UN, Security Council, *Official Records, Second Year*, No. 31, p. 665.

primarily responsible for the maintenance of international peace and security, the responsibility for the exercise of United Nations trusteeship functions in those areas which are of strategic value in the organization of international peace and security. In principle it is recognized that the areas in question should be administered with due regard to the requirements of enforcement action under Chapters VII and VIII.

Application. The trusteeship agreement for the former Japanese mandated islands [122] is the only example to date of the application of this Article. By the terms of this agreement, "the Territory of the Pacific Islands consisting of the islands formerly held by Japan under mandate" is designated as a strategic area.[123] It is significant that though the territory consists of some 98 islands and island clusters, with a total land mass of only 846 square miles, scattered over an area almost equal to that of Australia, it was not considered possible by the United States to limit the designation as strategic area to any part of the territory in question. The location of the islands across the lines of communication between the United States and Asia and the Pacific, the use made of the islands in World War II, and uncertainties with respect to the use which might be made of them in a future war apparently led the United States Government to insist that the whole territory be treated as a strategic area.[124]

The agreement follows in most respects the other trusteeship agreements. In fact it goes farther than the other agreements in making detailed provision for the political, economic, social and educational advancement of the native people.[125] On the other hand, the agreement contains certain provisions which are clearly intended to give the administering authority full power, free of any outside interference, to provide for its security. As under the other agreements, the administering authority has "full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement." [126] Also in order "that the Trust Territory shall play its part . . . in the maintenance of international peace and security," the administering authority is entitled "to establish naval, military and air bases and to erect fortifications in the Trust Territory," and "to station and employ armed forces in the territory." [127] But the agreement does

[122] UN, Doc. S/318 and *Yearbook, 1946–47*, p. 398–400. See also, Robbins, *op. cit.*

[123] Article 1.

[124] See testimony of Hon. James Forrestal, Secretary of the Navy, *Hearings before the Committee on Foreign Relations . . . , July 7, 1947*, p. 14–5.

[125] See Articles 6 and 7.

[126] Article 3.

[127] Article 5.

not stop with these concessions to security. It is provided that the administering authority in discharging its obligations under Article 76(d) is only required to accord most favored nation treatment and not national treatment, i.e. it may discriminate in favor of its own nationals.[128] It is expressly stated that "nothing in this Article shall be so construed as to accord traffic rights to aircraft flying into and out of the Trust Territory." Furthermore, the agreement provides that, while the terms of Articles 87 and 88 of the Charter shall be applicable to the trust territory, "the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons." [129] Finally it is expressly stated that the terms of the agreement "shall not be altered, amended or terminated without the consent of the administering authority."

The terms of the agreement clearly give the administering authority necessary power to provide for its security needs. In testifying before the Senate Foreign Relations Committee, Secretary Marshall said:

> Mr. Chairman, I think the terms of the agreement have been so carefully drafted from the security point of view that there is no doubt in my mind that our security and our responsibility for general security are fully provided for. . . . I think under the terms of this agreement we are not limited at all (so far as the use of these islands for security purposes is concerned).[130] I might put it this way: We must observe forms, but we have provisions in the agreement which allow us almost complete liberty of action.[131]

It was also made clear in testimony before the Committee that the obligation assumed by the administering authority towards the Security Council to ensure that the trust territory play its part in the maintenance of international peace and security [132] is not regarded as a particularly onerous one, considering that the United States is a member of the Security Council and that the obligation only arises after preliminary measures for the implementation of the enforcement provisions of the Charter have been taken.[133]

[128] Article 8.

[129] Article 13. It was announced by the United States Atomic Energy Commission on December 1, 1947 that Eniwetok Atoll was to be used as a proving ground for atomic weapons and beneficial nuclear products, and that the area of the installations would be closed as a safeguarding measure as provided for in the trusteeship agreement. The Security Council was so informed. UN, Doc. S/613.

[130] Qualification contained in question asked by Senator Vandenberg.

[131] *Hearings before the Committee on Foreign Relations . . . , July 7, 1947*, p. 5.

[132] Article 84 of the Charter; Article 5(3) of the Trusteeship Agreement.

[133] *Hearings before the Committee on Foreign Relations . . . , July 7, 1947*, p. 11–3.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

This paragraph provides for the substitution of the Security Council for the General Assembly in the performance of the functions of the United Nations in respect to strategic areas. The reasons and consequences of this were explained in the comment on Article 82.

While the Security Council is substituted for the General Assembly as the organ responsible for the performance of the functions of the United Nations relating to strategic areas in trust territories, there is nowhere in the Charter a specific grant of powers to be used in carrying out these functions comparable to that contained in Article 87 for the General Assembly. It would seem that the possession of such powers would be necessary to the effective exercise by the Security Council of its functions under this Article, and furthermore, by a reasonable interpretation might be implied from the wording of this Article.

Article 15 of the United States draft for a trusteeship agreement for the former Japanese mandated islands as submitted to the Security Council specified that the terms of the agreement should not be "altered, amended or terminated without the consent of the administering authority."[134] Extended debate took place in the Security Council on this proposal. The Soviet Representative proposed an amendment which would make the Article read as follows: "The terms of the present agreement may be altered, supplemented or terminated by decision of the Security Council."[135] A Polish amendment would have modified the Article to read: "The terms of the present agreement shall not be altered, amended or terminated except as provided by the Charter."[136] The United States Representative had earlier indicated willingness to accept the following text as a compromise: "The terms of the present agreement shall not be altered, amended or terminated, except by agreement of the administering authority and the Security Council."[137] After the rejection of the Soviet and Polish amendments, the United States Representative announced that its compromise proposal had been withdrawn, and the text as originally proposed was approved. Under the Charter as it stands acceptance

[134] UN, Doc. S/281, p. 5.
[135] UN, Security Council, *Official Records, Second Year,* No. 20, p. 415.
[136] *Ibid.*, No. 31, p. 676.
[137] *Ibid.*, No. 23, p 477.

of the Soviet or Polish texts would have left the United States with the power of veto. However, the possession of this power would have been made conditional upon the retention of the existing rules (Article 27) governing Security Council voting procedure. The terms of Article 15 of the agreement as approved [138] would appear to be consistent with the provisions of Articles 79 and 83 of the Charter. The requirement of Article 83 that any alteration or amendment must be approved by the Security Council remains operative.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

The meaning of this is self-explanatory. Article 4 of the agreement for the former Japanese mandated islands expressly obligates the administering authority to apply these basic objectives.[139]

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

By the terms of this paragraph the Security Council is to avail itself of the assistance of the Trusteeship Council in performing those functions of the United Nations relating to political, economic, social and educational matters in the strategic areas designated under the terms of Article 82. There was some discussion in the technical committee at the United Nations Conference as to whether this should be made obligatory or facultative. It was argued that the Security Council must be given some discretion in the matter and in recognition of this need two safeguards were inserted. One states that this obligation is subject to the provisions of the trusteeship agreements and the other that it is "without prejudice" to security considerations. This would indicate that security considerations within the special areas designated are to be paramount even to the neglect of other purposes stated in Article 76. This interpretation is borne out by the provisions of the trusteeship agreement for the former Japanese Mandated Islands which while declaring that Articles 87 and 88 of the Charter shall be applicable, i.e. that the Trusteeship Council may perform the functions there defined, reserve to the administering authority the right to "determine the

[138] UN, Doc. S/318, p. 4.
[139] *Ibid.*, p. 2

extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons."

The implementation of this paragraph was not undertaken until after the trusteeship agreement for the former Japanese Mandated Islands entered into force on July 18, 1947. On November 7, the Secretary-General notified the Security Council that "procedures should now be formulated" to govern the detailed application to this strategic area of Articles 87 and 88.[140] On November 15, the Security Council voted unanimously to refer the whole question to its Committee of Experts.[141] The Committee reported on January 12, 1948.[142] The majority of its members favored a plan under which the Security Council would request the Trusteeship Council to perform, in accordance with its own procedures and on behalf of the Security Council, the functions of considering reports, examining petitions, providing for periodic visits, and formulating questionnaires. The Trusteeship Council would of course perform its functions subject to the provisions of strategic trusteeship agreements, and to the decisions of the Security Council. A minority group, including the Soviet Union, took the position that all functions should be exercised by the Security Council, and that the assistance of the Trusteeship Council should be requested only as the Security Council might decide in specific cases. This group argued that the majority position involved an improper derogation from the responsibilities of the Security Council under the Charter.[142a]

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

This Article[142b] places upon the administering authority the obligation to ensure that the trust territory plays its part in the maintenance

[140] UN, *Weekly Bulletin*, III, p. 687–8.
[141] *Ibid.*
[142] UN, Doc. S/642.
[142a] For discussion of report in Security Council, see UN, Security Council, *Official Records, Third Year*, No 87.
[142b] See UN, General Assembly, *The Question of Fortification and Volunteer Forces in Trust Territories (Article 84): (Memorandum Prepared by the Secretariat)*, Doc. A/C 4/40, November 3, 1946.

of international peace and security and to this end empowers the administering authority to make use of "volunteer forces, facilities and assistance from the trust territory" in carrying out any obligations undertaken toward the Security Council. These obligations would presumably be defined in the special agreements provided for in Article 43. These forces and facilities may also be used for the purposes of local defense and the maintenance of law and order within the trust territory.

Under the League mandates system, insofar as territories under Class B and Class C mandates were concerned, mandatories were obligated to prevent "the establishment of fortifications of military and naval bases" and "military training of the natives for other than police purposes and the defense of territory." The meaning of the words "defense of territory" was not clear and led to disagreement between the Members of the League as to whether natives given military training might be used for defense of the territory of the mandatory power.[143] Nothing was said about their use in connection with carrying out League obligations.

The Charter makes it clear that while compulsory military training cannot be instituted, volunteer forces may be recruited and trained and used not only for local defense and police purposes but also for carrying out commitments under the Charter entered into by the administering authority for the maintenance of peace. It would seem then that such forces cannot be used by the administering authority for defense of its own territory, except by decision of the Security Council.

The trusteeship agreements thus far made incorporate these provisions by a general reference or by repetition of the detailed provisions. In addition, however, the British agreements for Tanganyika and Togoland and the Cameroons under British mandate, the French agreements for Togoland and the Cameroons under French mandate, the Belgian agreement for Ruanda-Urundi, and the United States agreement for the Japanese mandated islands expressly authorize the administering authority to establish military, naval and air bases, erect fortifications, and station and employ its national forces in the territory.

The inclusion of such provisions in trusteeship agreements for nonstrategic areas was strongly opposed by the Soviet and other delegations when the agreements were before the General Assembly for approval. The Soviet Delegation argued that the utilization of trusteeship territories for the support of international peace and security was only admissible where the administering authority assumed this obligation before the Security Council, and that if conditions required

[143] See Wright, *op. cit.*, p. 39, 115.

the establishment of military bases and the keeping of armed forces of the administering power on a trust territory, then the situation provided for in Articles 82 and 83 existed, and the agreement should be submitted to the Security Council for approval. Otherwise, it was argued, the administering power would be able to utilize a trust territory for its military purposes without being subject to any control by the United Nations. The Soviet Delegation submitted a proposal that the construction of bases and the maintenance of national armed forces within a trusteeship territory should not be permitted except as an obligation of the administering power to the Security Council, as defined by a special agreement concerning strategic areas, and subject to the approval of the Security Council in conformity with Article 83.[144]

Other delegations rejected this view, arguing, as did the Australian Delegation, that it was not necessary to base the exercise of power by the administering authority on any specific article of the Charter except where the Charter placed restrictions on the administering authority, that the Charter had abandoned the concept of the mandates system which made it illegal for the mandatory power to maintain bases and erect fortifications, and that Article 84 made it the duty, not merely the right, of the administering authority to ensure that the trust territory played its part in the maintenance of international peace and security. Article 84, it was argued, was not a restriction on the powers of the administering authority, but an extension of them. Furthermore, the argument was rejected that it was necessary to designate all military installations as strategic areas. The Charter left it to the discretion of the state or states submitting the agreement whether the territory should be subject to the Security Council or not.[145] The view of the Soviet and other delegations was not accepted by the General Assembly, or by its Fourth Committee, and the articles in question were approved as submitted.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

This paragraph represents a change from the method of control provided in the Covenant of the League. The terms of Article 22 of

[144] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .* , p. 1279–83.

[145] UN, Doc. A/C.4/Sub.1/36, p. 9–10.

the Covenant provided that the Council should define the terms of the mandates except where previously determined by agreement of the Members of the League. In practice the agreements were invariably submitted to the Council for its approval. Furthermore, it was to the Council that the mandatory power reported on its administration of the mandated territory, and the Council was the organ responsible under the Covenant for performing League functions in respect to mandated territories. However, the Assembly had the opportunity in connection with its consideration of the Secretary-General's report to review the administration of mandated territories, and did not hesitate to criticize it and make recommendations.[146]

Under the Charter system it is the General Assembly which is made responsible for the performance of these functions except for those areas designated as strategic, where the functions are to be performed by the Security Council. This places the United Nations control of the operation of the trusteeship system on a broader basis than was the case with the League mandates system, and gives to the smaller nations which are likely to be more disinterested a relatively greater share in the international supervision that is established.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

Under the League system a Permanent Mandates Commission was established to advise the Council on all matters relating to the observance of the mandate. Under the Charter system the Trusteeship Council is primarily responsible to the General Assembly although, according to the terms of Article 83(3), the Security Council is to make use of it.

This paragraph is interpreted in the Rules of Procedure of the Trusteeship Council as placing on that organ the duty to make recommendations to the General Assembly concerning the functions of the United Nations with respect to trusteeship agreements.[147]

Functions and Powers outside the Trusteeship System. Article 85(2) states that the Trusteeship Council shall assist the General Assembly in carrying out trusteeship functions, and Articles 87 and 88 enumerate the powers which the Trusteeship Council has in performing this function. "Can the Trusteeship Council constitutionally exer-

[146] See Wright, *op. cit.*, p. 133–5 and Burton, Margaret E., *The Assembly of the League of Nations*, Chicago, 1941, p. 214–220.

[147] UN, Trusteeship Council, *Rules of Procedure* . . . , Doc. T/1/Rev. 1, Rule 104.

cise functions and powers with respect to non-trust ministering trust therefore not included within the grant of power under not. This of and 88?"[148] Apparently the question was not considere variable, Francisco. The General Assembly has on two different occasi ust terri- during its second session, answered the question in the affirma

By its resolution of November 1, 1947, on the question of Sc dis- West Africa, the General Assembly authorized the Trusteeship Coun il cil "to examine the report on South West Africa recently submitted by the Government of the Union of South Africa and to submit its observations thereon to the General Assembly."[149] The Council, before examining the report, informed the Union Government that if it wished to send a representative to be present during the examination he would be welcome. The Union Government replied that it did not intend to send a representative but would, if requested, transmit further information in writing. This the Council asked it to do. The report which the Council finally adopted for transmission to the General Assembly contained many critical observations.[150]

In the second case, the Trusteeship Council was assigned the responsibility, as part of the General Assembly plan for Palestine, for administering the City of Jerusalem on behalf of the United Nations.[151] The plan called for the administration of Jerusalem not as a trust territory, but as a *corpus separatum* under a special international regime. Though the plan was not put into force, the adoption of the resolution indicated that the General Assembly entertained no doubt regarding the propriety under the Charter of giving this special function to the Trusteeship Council.

[148] For brief comments on this question as stated, see Sayre, *op. cit.*, p. 295–7

[149] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 47–8.

[150] See UN, *Bulletin,* V, p. 645–6, 667 and Trusteeship Council, *Report of the Drafting Committee . . . ,* Doc. T/209.

[151] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . . ,* Doc. A/519, p. 146–50.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL

Composition

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

a. those Members administering trust territories;

b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

A Principal Organ. Under the Covenant, the Permanent Mandates Commission served in an advisory capacity to the League Council. Its members consisted of experts appointed by the Council, the majority being nationals of non-mandatory powers. Though it acquired great influence, both with the Council and members of the League, it remained to the end a subsidiary advisory body.

The Trusteeship Council is organized on a different principle. Like the Economic and Social Council and the Security Council, it consists of Members of the United Nations. The persons who serve on it are designated by the states who are members of it. Though it functions under the authority of the General Assembly and is therefore responsible to that body for the exercise of its functions, it is referred to as a principal organ of the United Nations (Article 7). The majority of its members do not hold their positions by virtue of election by the General Assembly.

Composition. The Trusteeship Council consists of three categories of members: (1) Members of the United Nations administering trust territories; (2) Members of the United Nations named in the Charter (Article 23) as permanent members of the Security Council which are not administering trust territories; and (3) as many additional members elected for three-year terms by the General Assembly as may be

necessary to equalize the number of members administering trust territories and the number of members which do not. This of course means that the total number of members will be variable, depending on the number of members which administer trust territories.

The *Working Paper* adopted by Committee II/4 as the basis for discussion at the United Nations Conference provided that the Council should consist of specially qualified representatives "designated (*a*) one each by the states administering trust territories, and (*b*) one each by an equal number of other states named for three-year periods by the General Assembly."[1] In operation this arrangement could have resulted in one or more of the permanent members of the Security Council not having representation on the Trusteeship Council. Of course this possibility exists in the case of the Economic and Social Council. The nature of the matters with which the Trusteeship Council would be dealing, however, apparently led to a demand that a modification be introduced which would assure membership to the permanent members of the Security Council at all times. A revised text was submitted by the Delegate of the United States.[2] This provided for constituting the Council in the manner provided in Article 86. A proposal was then made in committee to reintroduce the original idea of an equal balance between elected and non-elected members. It was argued that the permanent members of the Security Council resembled the administering states in that they were interested parties, and that the peoples of the trust territories would be better protected if half of the members of the Trusteeship Council were elected by the General Assembly. Against this proposal it was argued that there was "no distinction in humanitarian purpose" between the three categories but only "of practical experience," and that "what was required on the Trusteeship Council was the greatest possible sum of knowledge and wisdom." The proposal was defeated by a vote of 31 to 8.[3]

Establishment of the Council. The initial establishment of the Trusteeship Council presented a serious difficulty. It was obviously impossible to constitute the Council in the manner prescribed by the Charter until one or more trusteeship agreements were in force. To perform the functions assigned to the Trusteeship Council pending its establishment under this Article, the Executive Committee of the Preparatory Commission recommended that the General Assembly, acting under Article 22 of the Charter, establish "a temporary Trus-

[1] UNCIO, Doc. 323, II/4/12, p. 3 (*Documents*, X, p. 679).
[2] UNCIO, *Summary Report of Thirteenth Meeting of Committee II/4, June 8, 1945*, Doc. 877, II/4/35, p 4 (*Documents*, X, p. 516).
[3] *Ibid.*, p 5 (*Documents*, X, p. 517).

teeship Committee to perform certain of the functions assigned by the Charter to the Trusteeship Council, pending its establishment."[4] The recommendation was not adopted unanimously. It was strongly opposed by certain delegations on the ground that it was not authorized by the Charter and would have the effect of delaying the establishment of the trusteeship system. The proposal was dropped by Committee IV of the Preparatory Commission.[5] With a view to expediting the establishment of the Trusteeship Council, the Preparatory Commission recommended that the General Assembly call upon Members of the United Nations administering mandated territories to undertake practical steps for the implementation of Article 79 in order that agreements might be submitted for approval by the General Assembly 'preferably not later than during the Second Part of the First Session."[6] This recommendation was accepted and carried out by the General Assembly by its resolution of February 9, 1946.

Following the approval of eight trusteeship agreements during the second part of its first session, the General Assembly adopted a resolution establishing the Trusteeship Council with Mexico and Iraq as its elected members.[7] The Council held its first session from March 26 to April 28, 1947. When the trusteeship agreement for the former Japanese mandated islands entered into force on July 18, the United States became a member administering a trust territory, thus destroying the balance required by this Article. In its second session, the General Assembly elected Costa Rica and the Philippines for three-year terms to restore the balance. At the same time, the Assembly Rules of Procedure were amended to permit the two newly elected members to take office immediately.[8]

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

The members of the Permanent Mandates Commission were persons appointed by the Council on the basis of their individual qualifications. The members of the Trusteeship Council are states, each of which is obligated by this paragraph to "designate one specially qualified person to represent it." It is left to the discretion of each member to decide what qualifications the position requires.

[4] *Report by the Executive Committee . . .*, Doc. PC/EX/113/Rev. 1, p. 55.
[5] *Journal of the Preparatory Commission*, No. 27, p. 125–32.
[6] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 13.
[7] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 122–3.
[8] See UN, Doc. A/520, Rule 136.

THE TRUSTEESHIP COUNCIL

The representatives of the members of the Trusteeship Cou the first session were the following:

Australia	Norman J. O. Makin
Belgium	Pierre Ryckmans
China	Liu Chieh
France	Roger Garreau
Iraq	Ali Jawdat
Mexico	Luis Padilla Nervo
New Zealand	Sir Carl August Berendsen
Soviet Union	———
United Kingdom	Ivor Thomas.
United States of America	Francis B. Sayre [9]

Rule 18 of the Rules of Procedure [9a] permits each representative to be accompanied by such alternates and advisors as he may require. An alternate or advisor may act as a representative when so designated by the representative. Members of the United Nations which are not members of the Council and specialized agencies are to be invited to send representatives to attend meetings, and to participate without vote in its deliberations, under conditions determined by the Rules of Procedure (Rules 12 and 13).

Functions and Powers

Article 87

1. The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a. consider reports submitted by the administering authority;

b. accept petitions and examine them in consultation with the administering authority;

c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

This Article gives to the General Assembly and, under its authority, to the Trusteeship Council those powers which under the Covenant of the League of Nations were vested in the Council and the Perma-

[9] T.N., owing the election of Mr. Sayre as President, Mr. Benjamin Gerig served as UN y Representative for the United States.
[9a] *Ibid.* Doc. T/1/Rev. 1.
[18] Wrig
[19] *Ibid.*

nent Mandates Commission.[10] In addition, the United Nations organs have the power to make periodic visits to the trust territories which the League organs did not have. It was the contention of the mandatory powers that inquiries on the spot conducted under the direction of the Permanent Mandates Commission would have the effect of weakening the authority of the mandatory. The withholding of this power deprived the Commission of an important means of establishing the facts which were necessary to the adequate performance of its duties. It made the Commission largely dependent upon the reports and oral explanations of the representatives of the mandatory powers.

Reports by Administering Authority. Paragraph 1(a) empowers the General Assembly and the Trusteeship Council to "consider" reports which the administering authority is obligated under Article 88 to submit. In addition, the trusteeship agreements, expressly or by reference to the Charter provisions, require the submission of reports. The League system was similar. The mandatory powers were obligated to submit annual reports to the Council. In practice, reports were first considered by the Permanent Mandates Commission which advised the Council on action to be taken by that organ.[11]

The power to "consider" reports includes the powers of examination, discussion and recommendation.[12] The administering authority is required by the terms of the trusteeship agreements [13] and permitted by the Rules of Procedure [14] to designate and have present a representative well informed on the territory in question. The representative may participate without vote in an examination and discussion of a report, "except in a discussion directed to specific conclusions concerning it." [15]

The pattern thus far set by the Trusteeship Council in its consideration of reports has been that of serious and searching inquiry, and forthright and constructive criticism. The reports adopted by the Council at its third session for submission to the third session of the General Assembly on New Guinea, Ruanda-Urundi and Tanganyika consisted of a review of conditions in each territory, observations of members of the Council during the examination of the Administering

[10] On powers vested in the League Council and the manner in which these powers were exercised, see Wright, Quincy, *Mandates Under the League of Nations*, Chicago, 1930, p. 126 *et seq.*

[11] See *ibid.*, p. 137–55.

[12] On meaning of word "consider" as used in the Charter, see Pollono, Deput. UN, 164.

[13] See Article 16 of the Tanganyika agreement, *infra*, p. 640

[14] UN, Doc. T/1/Rev. 1, Rule 74.

[15] *Ibid.*, Rule 75.

Authority's report, and the Council's conclusions and recommendations.[15a]

The power of the General Assembly under this Article, reinforced by the provisions of Article 10 of the Charter, extends to the discussion of these reports and the making of recommendations with respect to them, as well as to the review of the work of the Trusteeship Council itself on the basis of reports submitted by the Council under Article 15, paragraph 2, of the Charter. The Council's Rules of Procedure, in conformity with Article 15, paragraph 2 of the Charter, require that the Council present to the General Assembly an annual general report on its activities and the discharge of its responsibilities.[16] It is also specified that sections of the annual report dealing with specific trust territories shall take into account the annual reports of the administering authorities and other sources of information. The Council's report shall also include the conclusions of the Trusteeship Council regarding the execution and interpretation of the provisions of Chapters XII and XIII of the Charter and of the trusteeship agreements, and "such suggestions and recommendations concerning each Trust Territory as the Council may decide." [17]

Petitions. The Covenant made no provision for the receipt and examination of petitions or statements of grievance by either the Council or the Permanent Mandates Commission. Early in its existence, however, the Council adopted a procedure under which petitions from inhabitants of a mandated area would be received if submitted through the mandatory, which was requested to append comments before sending it to the Permanent Mandates Commission.[18] Petitions from other sources were to be sent to the Chairman of the Mandates Commission who would decide whether they were of sufficient importance to demand the attention of the Commission. In practice the term "petition" was given a broad definition to include "memoranda, memorials or other communications." [19] Petitions were treated primarily as a source of information. The Commission refused to consider petitions that opposed the mandate itself or its principles. Anonymous petitions were also refused.

The Charter provisions with respect to the reception of petitions, taken together with the Rules of Procedure of the Trusteeship Council, are considerably more liberal than League practice. Rules 76 to

[15a] For summaries of the Council's reports, see UN, *Bulletin*, V, p. 638–44. For reports of drafting committees on which reports as finally adopted were based, see UN, Doc. T/197; Doc. T/202; and Doc. T/204.

[16] UN, Doc. T/1/Rev. 1, Rule 100.

[17] *Ibid.*, Rule 101.

[18] Wright, *op. cit.*, p. 169 *et seq.*

[19] *Ibid.*, p. 170.

93 of the Rules of Procedure [20] are devoted to the matter. Petitions may be accepted and examined by the Trusteeship Council if they concern "the affairs of one or more Trust Territories or the operation of the International Trusteeship System as laid down in the Charter," except that with respect to strategic areas the powers and functions of the Council are governed by Article 83 of the Charter and the relevant trusteeship agreements.[21] Petitions may be presented in writing or orally.[22] A written petition may be in the form of "a letter, telegram, memorandum or other document".[23] Petitioners may be inhabitants of the trust territories or "other parties".[24] Written petitions may be addressed directly to the Secretary-General or be transmitted to him through the administering authority.[25] Representatives of the Trusteeship Council engaged in periodic visits to the trust territories or on other official missions may also receive petitions.[26]

No provision is made in the Rules of Procedure for the preliminary screening of petitions to economize the time of the Council.[27] Rule 81 states that "normally petitions shall be considered inadmissible if they are directed against judgments of competent courts of the Administering Authority or if they lay before the Council a dispute with which the Courts have competence to deal." It is expressly provided, however, that this rule is not to be interpreted to prevent consideration by the Council of petitions against legislation on the ground of its incompatibility with the provisions of the Charter or of the trusteeship agreement. It is not made clear whether this rule will prevent consideration of petitions against alleged "denial of justice" or violations of provisions of the Charter or of trusteeship agreements by decisions of the courts. It would seem that this rule might properly be interpreted restrictively as intended to require petitioners to exhaust judicial remedies and to prevent calling in question the internal validity of court decisions. The Rules of the Council do not declare inadmissible petitions which seek modification of the provisions of the Charter or which

[20] UN, Doc. T/1/Rev. 1.

[21] *Ibid.*, Rule 76.

[22] *Ibid.*, Rule 78. Rules 87 to 91 provide, however, that requests to present petitions orally shall be submitted to the Trusteeship Council or to visiting missions of the Council. The Council, or the visiting mission, decides whether the request is to be granted.

[23] *Ibid.*, Rule 79.

[24] *Ibid.*, Rule 77.

[25] *Ibid*, Rule 82

[26] *Ibid.*, Rules 84 and 89.

[27] The revised text of Article 85 of the Rules of Procedure adopted at the second session of the Council permits the Secretary-General to screen petitions in so far as prompt circulation to the members of the Council is concerned. It expressly provides, however, that original documents of "manifestly inconsequential" petitions are to come before the Trusteeship Council and be finally disposed of by it. UN, Doc. T/P.V. 34.

relate to matters not within the competence of the Council. When such petitions have been presented to it, the Council has noted that its functions are limited to matters relating to the operation of the trusteeship system, and has invited the Secretary-General to advise the petitioners of the appropriate procedure to be followed.[28]

The Rules of Procedure of the Council provide that a written petition will "normally be placed on the agenda" of a regular session if it has been received by the administering authority, directly or through the Secretary-General, at least two months before the date of the session. It may be considered by the Trusteeship Council at shorter notice if the administering authority agrees, or in case of urgency, if the Council so decides, in consultation with the administering authority.[29] The Rules establish no time limit for oral petitions.[30] The Council may appoint an *ad hoc* committee to undertake a preliminary examination of petitions on the agenda. No appraisal of the substance of the petition may be made by this committee.[31] The Council appointed an *ad hoc* Committee on Petitions at the beginning of its second session. This Committee classified the petitions received, and made recommendations as to which should be declared inadmissible.[32] In the examination of the petition, the administering authority is entitled to designate and have present a special representative "who should be well informed on the territory involved." [33]

The action of the Trusteeship Council on a petition takes the form of a resolution adopted by majority vote. The Council may refuse to take any action, postpone action, reaffirm an earlier decision, enunciate a general principle, welcome some action taken by the administering authority, recommend that the administering authority pursue a specified policy, invite the authority to take specific steps, decide that the Council will send a visiting mission or take some other appropriate action, or direct the Secretary-General to take appropriate administrative steps.[34]

Visits to Trust Territories. Under the law and practice of the League mandates system, the Mandates Commission had no power to visit or send committees of investigation to mandated territories without express authorization by the Council.[35] The mandatory powers were

[28] See, for example, UN, Doc. T/104.
[29] UN, Doc. T/1/Rev. 1, Rule 86.
[30] See *ibid.*, Rules 87–91.
[31] *Ibid.*, Rule 90.
[32] UN, Doc. T/70.
[33] UN, Doc. T/1/Rev. 1, Rule 92.
[34] For resolution exemplifying the possible range of Council action, see Resolution No. 13 on petition from All-Ewe Conference and others, UN, Doc. T/109, December 18, 1947.
[35] Wright, *op. cit.*, p. 183.

strongly opposed to the practice because of the effect it might have in undermining their authority.

The Charter provides for "periodic visits" but makes these conditional upon agreement between the Trusteeship Council and the administering authority with respect to their time. This makes it possible for the administering authority to prevent any such visits from taking place, but in view of the probable reaction to such refusal, it is unlikely that an administering authority will resort to such an extreme measure. The agreements obligate the administering authority to cooperate with the General Assembly and the Trusteeship Council in the discharge of their functions under this Article. Some go further. The trusteeship agreement for Ruanda-Urundi, for example, obligates the administering authority "to facilitate such periodic visits to the Trust Territory as the General Assembly or the Trusteeship Council may decide to arrange, to decide, jointly with these organs, the dates on which such visits shall take place and also to agree jointly with them on all questions concerned with the organization and accomplishment of these visits." [36]

The Rules of Procedure of the Trusteeship Council provide that the Council shall make provision for periodic visits in accordance with the provisions of Article 87(c) and Article 83, paragraph 3, and may, in agreement with the administering authority, conduct special investigations or inquiries when it considers that conditions in a trust territory make such action desirable.[37] The Council selects the members of each visiting mission, defines its terms of reference and issues such special instructions as it may consider appropriate.[38] The mission is required to act on the basis of the instructions of the Council and "be responsible exclusively to it." [39] The mission is required to submit a report to the Council, a copy of which is to be "promptly transmitted" to the administering authority. The report may be published by the Council in such form as may seem appropriate, and observations on the report by the Council and by the administering authority may be similarly published.[40] Such reports are covered of course by the general reports of the Council to the General Assembly, and the information and recommendations contained in them can be considered by the General Assembly as well as by the Trusteeship Council.

During its first session, the Trusteeship Council decided, in response to a petition received from native officials in Western Samoa, to authorize the sending of a visiting mission "to investigate the petition", "to

[36] UN, Doc. T/Agreement/3, Article 3.
[37] UN, Doc. T/1/Rev. 1, Rules 94 and 97.
[38] *Ibid.*, Rules 95 and 96.
[39] *Ibid.*, Rule 96.
[40] *Ibid.*, Rule 99.

visit Western Samoa for this purpose, to remain in the territory for a sufficient period to ascertain all the relevant facts and to report back to the Trusteeship Council".[41] The Mission as established consisted of two members of the Trusteeship Council and a non-member, Senator Eduardo Cruz-Coke of Chile. The Mission was in Western Samoa during July and August, 1947, and had the full cooperation of the New Zealand Government. Its report[42] contained a detailed survey of conditions and recommendations for the advancement of self-government. Due to the unusual circumstance that the New Zealand Government was making an independent study of the matter with a view to new legislative proposals, the Mission kept New Zealand officials and Samoan leaders informed of the general trend of its thinking. The plans outlined by the New Zealand Government in a statement in Parliament on August 27, 1947[43] were closely in line with the recommendations contained in the Visiting Mission's Report.[44] The Trusteeship Council on December 5, 1947 adopted a resolution expressing the hope that the people of Western Samoa would be encouraged to assume increasing responsibilities of self-government, and noted with satisfaction the declared policy of New Zealand.[45]

Beginning in its second session, the Council gave consideration to the organization of periodic visits. For budgetary and other reasons, visits at periodical intervals of a few years, not annually, are envisaged. It was decided that a visit should be made in 1948 to Tanganyika and Ruanda-Urundi.[46] During its third session, on July 13, 1948, the terms of reference for this visiting mission were adopted.[47] They directed the mission "to observe the developing political, economic, social and educational conditions in the Trust Territories of Ruanda-Urundi and Tanganyika, their progress toward self-government and independence, and the efforts of the respective Administering Authorities to achieve this and other basic objectives of the International Trusteeship System", and "to give attention, as may be appropriate in the light of discussions in the Trusteeship Council and resolutions adopted by the Council, to issues raised in and in connexion with" the annual reports on the administration of the territories and in petitions received relating to the territories. The mission was re-

[41] UN, Doc. T/43, p. 2. See Finkelstein, Lawrence S., "Trusteeship in Action: The United Nations Mission to Western Samoa," *International Organization*, II (1948), p. 268–82.

[42] UN, Doc. T/46 and Doc. T/46/Add.1.

[43] UN, Doc. T/46/Add.1, p. 96–102. For subsequent legislative action, see UN, Doc. T/78.

[44] UN, Doc. T/46, p. 78.

[45] See UN, Doc. T/62 and Doc. T/P.V. 37.

[46] See UN, Doc. T/P.V. 33 and *Weekly Bulletin*, III, p. 771.

[47] UN, Doc. T/195.

quested to transmit a report on its findings to the Council, along with such observations and conclusions as the mission might wish to make. As appointed, the mission consisted of nationals of France (chairman), Australia, China and Costa Rica, thus maintaining the principle of equality of representation of Members administering and Members not administering trust territory.

"Take These and Other Actions". This clause might be interpreted in two ways. It can be regarded as adding to the powers of the two organs by providing that the powers enumerated in this Article may be extended by the terms of the trusteeship agreements. If this was the intention, it is not clear why "in conformity with" should be made to condition "these" as well as "other actions," as is clearly the case. On the other hand, this clause can be interpreted as having definitely restrictive effect, as saying that actions of the two organs under this Article and other Articles of the Charter, in trusteeship matters, must conform to the terms of the individual trusteeship agreements in individual cases. The second interpretation would appear to be warranted by the history of the text. The original *Working Paper* closed the enumeration of the powers of the two organs with the words "and to take other action in conformity with the trusteeship arrangements."[48] This was subsequently revised in the United States draft by the insertion of a comma after "action," thereby making the qualifying phrase apply to all the powers enumerated.[49] It would thus appear that the purpose of the clause is to make it clear that the General Assembly and the Trusteeship Council in performing the trusteeship functions of the United Nations in respect to any given trust territory must act in conformity with the terms of the trusteeship agreement.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

By the terms of this Article each administering authority is obligated to make an annual report to the General Assembly upon the administration of the territories for which it is responsible. This differs from

[48] UNCIO, Doc. 323, II/4/12, p. 3 (*Documents*, X, p. 679).
[49] *Ibid.*, p. 7 (*Documents*, X, p. 683).

the League system in that the report goes to the Assembly directly instead of to the Council. However, in the case of areas designated as strategic the practice will follow that of the League since it will be to the Security Council that the administering authority will presumably report in such cases.

In order to secure uniform reports and to be certain that all the points upon which information is desired are covered, the Trusteeship Council is given the power, in fact, is required, to formulate a questionnaire upon which the report of the administering authority is to be based. This represents a considerable advance not only over the legal requirements of the League system but over League practice as well. The League Permanent Mandates Commission sought to achieve a measure of uniformity and greater completeness in the reports of mandatory powers by the use of a questionnaire. The Commission achieved only partial success. The mandatory powers were under no obligation to use the questionnaire as the basis of their reports.[50]

The Trusteeship Council gave consideration at its first session to the preparation of a questionnaire. The content of the questionnaire is specified in some detail in the Article. This detailed description was inserted largely upon the insistence of the smaller powers with a view to giving still another guarantee that full publicity would be given to the record of each administering authority in carrying out its trust under the trust agreement. On April 25, 1947, the Council approved a report from an *ad hoc* committee which it had appointed to formulate a basic questionnaire.[51] In adopting the report, the Council emphasized the provisional character of the questionnaire, and agreed that the practical experience gained in the preparation of the first annual reports on the basis of the Provisional Questionnaire would lead to later necessary revisions and adaptations. The Provisional Questionnaire consisted of 247 separate items with a statistical appendix. It covered the status of the territory and its inhabitants, international and regional relations, maintenance of international and domestic peace and security, and political, economic, social and educational advancement, all in great detail. Comments and suggestions were invited from the administering authorities of trust territories, from the Economic and Social Council and the specialized agencies for its improvement. These suggestions were incorporated by the Secretariat into a memorandum[52] which was submitted to the Trusteeship Council at its second session. No action was taken on the question of revision at that time.

[50] Wright, *op. cit.*, p. 160–1.
[51] UN, Doc. T/44.
[52] UN, Doc. T/63.

Voting

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

The Rules of Procedure provide that "decisions or recommendations" shall be made in this manner. "Members who abstain in particular votes shall not in those instances be counted as voting." [53]

Procedure

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

The Preparatory Commission drafted Provisional Rules of Procedure of the Trusteeship Council which were included in its report.[54] The General Assembly in the first part of its first session requested the Secretary-General to transmit these to the Trusteeship Council as soon as it was constituted. The Trusteeship Council devoted the major part of its first session in March and April, 1947, to the preparation of its Rules of Procedure. As finally adopted, [55] these constituted an extensive and thorough revision of the Provisional Rules. The Rules were further modified in minor respects at the second session.[56]

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

While leaving a certain measure of discretion to the Trusteeship Council this Article makes it the duty of the Council to avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively

[53] UN, Doc. T/1/Rev. 1, Rule 37.
[54] *Report of the Preparatory Commission* . . . , Doc. PC/20, p. 50–6.
[55] UN, Trusteeship Council, *Rules of Procedure* . . . , Doc. T/1/Rev 1
[56] UN, Doc. T/P V 34.

concerned. The desirability of such a practice is obvious. The Article represents another attempt to secure proper coordination of the activities of the organs of the United Nations and of the specialized agencies in their relations with the United Nations.

The Rules of Procedure of the Trusteeship Council, as originally adopted, permitted agenda items to be proposed by the Economic and Social Council, or by a specialized agency "under the terms of its agreement with the United Nations." [57] They further provided that representatives of the specialized agencies should be invited to attend meetings of the Council and "to participate without vote, in its deliberations in the circumstances indicated in the respective agreements." [58] They provided for making use of the assistance of the Economic and Social Council in preparing the questionnaire under Article 88 [59] and made provision for the transmission to the Council, the specialized agencies and other bodies of such annual reports of administering authorities and other documents as might be of special concern to them.[60] The Rules of Procedure of the Economic and Social Council and the agreements made with the specialized agencies under Articles 57 and 63 contain provisions for rendering assistance to the Trusteeship Council.

Early in 1947, the Economic and Social Council and the Trusteeship Council appointed committees to constitute a joint committee to consider arrangements for cooperation in matters of common concern. The report of the committee [61] was approved by the Trusteeship Council on November 25, 1947. It recommended cooperation in the following respects: reciprocal notification of meetings; reciprocal communication of provisional agenda, privilege of each Council to request that meetings of the other be called; [62] reciprocal representation at meetings of Councils, their committees and commissions, at least at secretarial level, special cooperative relations between Trusteeship Council and Commission on Human Rights, agreed delimitation of responsibilities as regards studies and recommendations between the Trusteeship Council and the Economic and Social Council and its Commissions; the exchange of documents; appointment from time to time of joint *ad hoc* committees on questions of procedure and substance; and full consideration of the interests and views of the Trusteeship Council in the making and implementing of agreements with the specialized agencies.

[57] UN, Doc. T/1/Rev.1, Rule 9.
[58] *Ibid.*, Rule 13.
[59] *Ibid.*, Rule 70.
[60] *Ibid.*, Rule 105.
[61] UN, Doc. E&T/C.1/2/Rev. 1.
[62] See revision of Rule 3, UN, Doc T/P.V. 34.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice [1] and forms an integral part of the present Charter.

History of the Chapter. No attempt was made in the Dumbarton Oaks Conversations to draft the statute of an international court. It was agreed that there should be an international court of justice which would constitute the principal judicial organ of the Organization, but it was not decided whether it should be a new court or the old Permanent Court of International Justice with its Statute revised. Shortly after the Crimea Conference in February 1945, when the date of the San Francisco Conference was set, the Sponsoring Governments invited the Members of the United Nations to send representatives to a preliminary meeting in Washington to prepare a draft of a statute for the proposed court to be submitted to the Conference as a basis for discussion. Thus was constituted the United Nations Committee of Jurists which met in Washington from April 9 to 20, 1945.[2]

This Committee, taking into account the Statute of the Permanent Court of International Justice and the experience of that tribunal, prepared a report for submission to the Conference.[3] This report included a Draft Statute following closely the arrangement and, in the main, the substance of the Statute of the Permanent Court. On points where there were differences of opinion which the Committee was unable to

[1] For text of revised Statute, see *Publications of the Permanent Court of International Justice*, Series D, No. 1 (4th ed.), p. 13–28. On the organization, procedure and work of the Court, see Publications, Series A to E. See also, Hudson, Manley O., *The Permanent Court of International Justice, 1920–1942: A Treatise*, New York, 1943

[2] An informal expert committee called by the British Government had met in London, in 1943, and held nineteen meetings between May 1943 and February 10, 1944 to consider the future of the Court The Committee consisted of experts belonging to Belgium, Canada, Czechoslovakia, France (National Committee), Great Britain, Greece, Luxembourg, Netherlands, New Zealand and Poland.

[3] The United Nations Committee of Jurists, Jurist 86, G/73, April 25, 1945 (*Documents*, XIV, p. 821).

United Nations mittee presented alternative texts. This draft was used
the question ha discussion by Committee IV/1 of the United Nations
lishment of the his Committee, which included among its members
Statute propos De Visscher of the Permanent Court of International
League Counc addition the benefit of the advice of two other judges of
provision for Court (Judge Gustavo Guerrero, the President of the
Council and Ag ge Manley O. Hudson), who were invited by the Com-
some members d its meetings.

Consequently, *s a Principal Organ.* Article 92 states that the Interna-
provided for of Justice shall be "the principal judicial organ" of the
it a protocol th s. This means, first of all, that the Court is one of the
upon the Cou United Nations,[4] and secondly, that the connection be-
conditione Court and the United Nations is organic. Thereby the
them of whether or not the Court is to be a separate and independent body is solved. It is not separate. Its fate is intimately linked with that of the other organs of the United Nations. This is a realization of the oneness of international organization. Respect for law and order is a condition for the functioning of any political organization. Even an international court cannot operate in a political vacuum. If the political climate of the world is bad, the Court will suffer as well as other international institutions.

This first sentence of Article 92 also implies that the International Court shall not, of necessity, be the only judicial organ of the Organization. The Charter leaves the door open for other – and subsidiary – judicial organs of a regional or functional character.[5]

A New Court. Opinions were sharply divided on the question whether the Permanent Court of International Justice should be continued or a new court set up.[6] The Dumbarton Oaks Proposals had left the question open.[7] Certain delegates felt that it was desirable to maintain the continuity of international judicial institutions as much as possible. They were of the opinion that the Permanent Court of International Justice had represented such a great advance in international organization that it must be retained. They felt also that the Permanent Court was a living organism and for that reason should be kept. Hundreds of international conventions referred to this Court and recognized it as the tribunal to which parties were to refer their disputes. Furthermore its record justified its continuance.

Other delegates, while admitting the importance of these arguments, felt nevertheless that it was better to start with a clean slate. They

[4] See *Charter of the United Nations*, Article 7(1).
[5] See *ibid.*, Articles 52 and 95.
[6] See UNCIO, *Report of the Rapporteur of Committee IV/1*, Doc. 913, IV/1/74 1), p. 3 (*Documents*, XIII, p 383)
[7] See Chapter VII, paragraph 3, *infra*, p 577

argued that the proposed Court would be so intima
the United Nations that it should preferably be a ne
by it. Their chief argument was that the old Court co
in any case. Elections had not been held for a long
machinery for elections could not be employed again.
was laid on the membership of the Court. Certain sta
not Members of the United Nations were members of
Court and would not belong, in the beginning at le
court. There were also Members of the United Natio
accepted the Permanent Court of International Justice.
fore, better to have a completely new court. A subsi
was that the traditions and experience of the Perma
International Justice were already a part of the world inherit
would live on in the new court and be utilized just as if the Perm
Court had been continued.[8]

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Consequently, it was decided to create a new court to function in accordance with a statute, based on that of the Permanent Court of International Justice, and forming an integral part of the Charter of the United Nations. This is not the place to give an extensive commentary on the Statute. It is so like the old Statute that studies of that document provide a necessary introduction to the understanding of the new.[9]

The Permanent Court of International Justice held its final session in October 1945. It adopted decisions intended to facilitate the continuity of the work of the Court and its successor, the International Court of Justice.[10] On January 31, the judges of the Permanent Court submitted their resignations. The Permanent Court was dissolved by resolution of the Assembly of the League of Nations, April 18, 1946.[11] On February 6, the judges of the International Court of Justice were elected by the General Assembly and the Security Council, voting concurrently. The Court held its first meeting on April 3, 1946 and on May 6 adopted its Rules,[12] which were based on the Rules of the Permanent Court of International Justice.

The Question of Obligatory Jurisdiction. The question of obligatory jurisdiction was extensively discussed at the United Nations Conference in San Francisco. It had earlier been considered by the

[8] For report of Committee discussion, see UNCIO, *Report of the Rapporteur of Committee IV/1,* Doc. 913, IV/1/74 (1), p. 3 (*Documents,* XIII, p. 383)

[9] See in particular, Hudson, *op. cit.* For detailed comparison of the two instruments, see Hudson, Manley O., "The Twenty-Fourth Year of the World Court," *American Journal of International Law,* XL, p. 1–52.

[10] See I.C.J., *Yearbook, 1946–47,* p. 26.

[11] *Ibid.,* p. 28–9.

[12] I.C.J., Series D, No. 1.

United Nations Committee of Jurists in Washington. Furthermore, the question had been carefully considered at the time of the establishment of the Permanent Court of International Justice. The Draft Statute proposed by the Committee of Jurists,[13] appointed by the League Council under Article 14 of the Covenant, had contained a provision for obligatory jurisdiction. In discussions in the League Council and Assembly, it was argued that this went too far in that some members would be unwilling to accept compulsory jurisdiction. Consequently, the Statute, as submitted to the members of the League, provided for voluntary jurisdiction in principle, but had appended to it a protocol the acceptance of which conferred obligatory jurisdiction upon the Court as between states accepting it and subject to specified conditions.

The decision taken on this question at the Conference and the reasons therefor can best be summarized in the words of the Report of the Rapporteur of Committee IV/1 to Commission IV:

> The debate revealed a sharp division of opinion on the general question. On one side stress was placed on the progress made since 1920 under the Statute of the Permanent Court of International Justice, at one time or another 45 states exercised the option to confer compulsory jurisdiction on the Court, though in instances this was for limited periods of time and subject to reservations. The discussion in the First Committee showed, in the words of a subcommittee, "the existence of a great volume of support for extending the international legal order by recognizing immediately throughout the membership of the new Organization the compulsory jurisdiction of the Court."
>
> On the other side, the delegates of some states stated that their governments might find it difficult or impossible at this time to accept the compulsory jurisdiction of the Court, and they expressed their preference for the maintenance of the optional feature of Article 36. They felt that the adoption of this course would leave the way open for substantial advance toward the goal of universal jurisdiction, and that the Court would be placed on a firmer basis if the acceptance by states depended on their willing exercise of the option.
>
> In an endeavor to reconcile the two points of view represented by the alternative texts proposed by the Committee of Jurists, much support was given to the third draft above mentioned, providing for immediate acceptance of compulsory jurisdiction subject to stated reservations. Some of the delegates supporting optional jurisdiction were, however, unable to accept this compromise. Other suggestions were made for amending the text of Article 36 in the optional form by incorporating permitted reservations, with or without liberty to add others. These suggestions were also rejected.
>
> A subcommittee which made a report on the subject recommended the

[13] World Peace Foundation, *League of Nations*, III (1920), Special Number.

retention of the text in the Statute of the Permanent Court of International Justice with two changes designed to take into account the various views expressed by members of the Committee. The reference to "any of the classes" of legal disputes in paragraph 2 of Article 36 was omitted. A new paragraph 4 was inserted to preserve declarations made under Article 36 of the old Statute for periods of time which have not expired, and to make these declarations applicable to the jurisdiction of the new Court. In concluding its report, the subcommittee made the following statement.

"The desire to establish compulsory jurisdiction for the Court prevailed among the majority of the Subcommittee. However, some of these delegates feared that insistence upon the realization of that ideal would only impair the possibility of obtaining general accord to the Statute of the Court, as well as to the Charter itself. It is in that spirit that the majority of the Subcommittee recommends the adoption of the solution described above."

The following statement from the subcommittee's report should also be noted

"The question of reservations calls for an explanation. As is well known, the article has consistently been interpreted in the past as allowing states accepting the jurisdiction of the Court to subject their declarations to reservations. The subcommittee has considered such interpretation as being henceforth established. It has therefore been considered unnecessary to modify paragraph 3 in order to make express reference to the right of the states to make such reservations." [14]

Furthermore, Committee IV/1 adopted unanimously a resolution asking the Conference to recommend to Members of the United Nations that they proceed as soon as possible to make declarations under Article 36, recognizing the obligatory jurisdiction of the Court.[15] The Conference agreed to this action at its plenary session of June 25, 1945.[16] At the end of 1947, the compulsory jurisdiction of the Court had been accepted by 27 Members of the United Nations by declaration made under the terms of Article 36 of the Statute.[17] In addition, provision has been made in a large number of international instruments, including the great majority of the trusteeship agreements, for giving the Court compulsory jurisdiction over disputes relating to their interpretation.[18] The declaration by which the United States accepted the compulsory jurisdiction of the Court on August 14, 1946, excluded

[14] UNCIO, *Report of the Rapporteur of Committee IV/1*, Doc. 913, IV/1/74 (1), p. 10 . (*Documents*, XIII, p. 390–2).

[15] UNCIO, *Recommendation Adopted by Committee IV/1*, Doc. 870, IV/1/73 (*Documents*, XIII, p. 413).

[16] UNCIO, *Verbatim Minutes of the Ninth Plenary Session, June 25, 1945*, Doc. 1210, P/20, p. 16 (*Documents*, I, p. 627).

[17] I.C.J., *Yearbook, 1946–47*, p. 111–2 and Hudson, Manley O., "The Twenty-Sixth Year of the World Court," *American Journal of International Law*, XLII, p. 10–1.

[18] I.C.J., *Yearbook, 1946–47.*

"disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America".[19] By resolution adopted on November 17, 1947, during its second session, the General Assembly drew the attention of states which had not accepted the compulsory jurisdiction of the Court by declaration under Article 36 of its Statute "to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible." [20]

The Election of Judges. The procedure for electing judges was considered very carefully at the Conference. Two alternative methods were discussed: (a) election by the Security Council and the General Assembly, voting concurrently; and (b) election by the General Assembly. The first was the method used under the Statute of the Permanent Court of International Justice and was finally adopted for the International Court of Justice for reasons which can best be given in the words of the Rapporteur of Committee IV/1:

> Some delegates wished to retain the method that prevailed in the old Court so that Judges would be elected by the General Assembly and the Security Council, each acting independently of the other. It was believed that this method had worked well in the past, and that it would tend to secure the election of the best judges, irrespective of their nationality. Some delegates, on the other hand, held that this method gave double votes to states represented both in the General Assembly and in the Security Council. Therefore it was proposed that the elections should be by the General Assembly alone. The Committee finally reconciled these two views by deciding that both bodies should take part in the election, that an absolute majority should be required in each body, and that no distinction should be made between permanent and non-permanent members in the voting in the Security Council.[21]

The details of the method of election finally adopted are given in Articles 2–15 of the Statute.[22] On February 6, 1946, the General Assembly and the Security Council, voting concurrently, elected the 15 judges of the Court.[23] During the election of judges, the question arose as to the meaning of the word "meeting" as used in Articles 11 and 12(1) of the Statute. Article 11 provides that "if, after the first meet-

[19] UN, *Treaty Series*, I, p. 9–13. See also, Wilcox, F. O., "The United States Accepts Compulsory Jurisdiction," *American Journal of International Law*, XL, p. 699–719 and Preuss, Lawrence, "The International Court of Justice, the Senate, and Matters of Domestic Jurisdiction," *ibid.*, p. 720–36.

[20] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 103–4.

[21] UNCIO, *Verbatim Minutes of Second Meeting of Commission IV, June 15, 1945*, Doc. 1007, IV/12, p. 3–4 (*Documents*, XIII, p. 55–6).

[22] See *infra*, p. 611–4.

[23] For names of judges and their terms of office, see *supra*, p. 52.

ing held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place." Article 12(1) prescribes the procedure to be followed in case one or more places remain to be filled after the third meeting. Both the General Assembly and the Security Council took the view that a "meeting" meant the same as a balloting. The Secretariat had proposed that, following League practice, a meeting should be interpreted to cover a series of ballotings.[24] This view was later accepted, and incorporated into the Rules of Procedure of the two organs.[25]

Amendment of the Statute. The question of the process by which the Statute is to be amended was given careful consideration at San Francisco. The Statute of the Permanent Court of International Justice did not contain any rule for its own revision. For that reason, a new conference had to be held at any time when it was desired to amend the Statute and the changes had to be ratified by all the signatories. The new Statute has avoided this pitfall by stating in Article 69 that the Statute shall be amended in the same way as the Charter of which it is a part,[26] subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the Statute but not Members of the United Nations. The Statute does not state specifically whether the provisions of Article 109 of the Charter, under which a General Conference may be called to review the Charter, also apply to the Statute, but since this Article is included in Chapter VIII (Amendments), it is to be assumed that all provisions of the Chapter are equally applicable. Article 70 of the Statute gives the Court itself the power to propose amendments. In the words of the Rapporteur of Committee IV/1, the provision "gives an opportunity for the Statute of the Court to be watched and developed by those best able to understand the nature of the work of the Court and to adapt the Statute to the changing needs of the times." [27]

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

Under this provision, a state cannot be a Member of the United Nations without at the same time being a party to the Statute of the

[24] UN, Doc. A/25.

[25] UN, Doc. A/314. For discussion, see Pollux, "The Interpretation of the Charter," *British Yearbook of International Law*, 1946, p. 58–60

[26] See *Charter of the United Nations*, Articles 108 and 109.

[27] UNCIO, *Verbatim Minutes of Second Meeting of Commission IV, June 15, 1945*, Doc. 1007, IV/12, p 5 (*Documents*, XIII, p. 57)

Court. This was possible under the Covenant of the League of Nations and the Statute of the Permanent Court.

After the Committee of Jurists had prepared the Draft Statute for the Permanent Court, the question was raised in Council and Assembly discussions whether the Statute might be adopted and made binding on members of the League without their individual consents. It was decided to submit the Statute as an international instrument to be adhered to by eligible states. The Soviet Union became a member of the League in 1934 without ever adhering to the Statute of the Permanent Court.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

This makes it possible for a state which is not a Member of the United Nations to become a party to the Statute. The General Assembly, acting on the recommendation of the Security Council, is to determine "in each case" the conditions under which this can be done. This paragraph recognizes the desirability of extending as widely as possible the specific commitments of the Statute and the use of the procedures there laid down for the peaceful settlement of disputes. It recognizes, too, in its requirement that the General Assembly act upon the recommendation of the Security Council, the special responsibility of that body for the maintenance of international peace and security.

The Swiss Government inquired in 1946 under what conditions Switzerland could become a party to the Statute. By resolution adopted by the General Assembly during the second part of its first session upon recommendation of the Security Council, the following conditions were laid down:

> Switzerland will become a party to the Statute of the Court on the date of the deposit with the Secretary-General of the United Nations of an instrument, signed on behalf of the Government of Switzerland and ratified as may be required by Swiss constitutional law, containing:
>
> (a) Acceptance of the provisions of the Statute of the International Court of Justice;
>
> (b) Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter;
>
> (c) An undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time after consultation with the Swiss Government.[28]

[28] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session* , Doc. A 64/Add 1, p 182–3.

Article 35(2) of the Statute of the Court[29] provides that the Court shall also be open to States not parties to the Statute under conditions to be laid down by the Security Council. By resolution adopted on October 15th, 1946, the Security Council fixed these conditions as follows:

(1) The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

(2) Such declaration may be either particular or general. A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen, or which may arise in the future.

A State, in making such a general declaration, may, in accordance with Article 36, paragraph 2, of the Statute, recognize as compulsory, *ipso facto*, and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relied upon *vis-à-vis* States parties to the Statute, which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice.

(3) The original declarations made under the terms of this resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this resolution, and to the Secretary-General of the United Nations.

(4) The Security Council of the United Nations reserves the right to rescind or amend this resolution by a resolution which shall be communicated to the Court, and on the receipt of such communication and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

(5) All questions as to the validity or the effect of a declaration made under the terms of this resolution shall be decided by the Court.[30]

[29] See *infra*, p 618

[30] UN, Security Council, *Official Records, First Year: Second Series*, No. 19, p 467

The Polish Government proposed at that time that Franco Spain should be excluded from appearing before the Court.[31] This proposal was, however, defeated.[32] This action indicated an intention to keep the Court as free as possible of political influences.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

It is an established principle of international law that the decision of an international court is binding upon the parties. This paragraph is a special application of this principle and of the general principle laid down in the second paragraph of Article 2 of the Charter. This principle is again enunciated in Article 60 of the Statute. Neither the Charter nor the Statute contains any provision regarding the conditions, if any, under which a judgment may be regarded as not binding. The validity of certain arbitral decisions has been contested in the past on such grounds as excess of power. Article 60 of the Statute says that the judgment is "final and without appeal." Article 61 provides, however, for revision of the judgment by the Court itself under certain conditions.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Judging from past experience, this paragraph is not likely to have great importance in practice. It has happened very rarely that states have refused to carry out the decisions of international tribunals. The difficulty has always been in getting states to submit their disputes to a tribunal. Once they have done so, they have usually been willing to accept even an adverse judgment.[33] In no case did the parties refuse to carry out a judgment of the Permanent Court of International Justice. Of course if the compulsory jurisdiction of the Court is generally accepted the situation may be changed since the willingness of parties

[31] *Ibid.*, p. 468.
[32] *Ibid.*, p. 482.
[33] See Hambro, Edvard, *L'exécution des sentences internationales*, Liége, 1936. See also, Stuyt, A. M., *Survey of International Arbitration, 1794–1938*, The Hague, 1939.

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[31] *Ibid.*, p. 468.
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[33] See Hambro, Edvard, *L'exécution des sentences internationales*, Liége, 1936. See also, Stuyt, A. M., *Survey of International Arbitration, 1794–1938*, The Hague, 1939.

to accept court judgments and arbitral awards in the past has been without doubt related to the fact of voluntary submission.

It was argued at the United Nations Conference that the principle of respect for judgments was of the highest importance to the new international order and ought to be implemented by the Charter. Article 13, paragraph 4 of the Covenant provided that in the event of any failure to carry out an arbitral award or judicial decision, "the Council shall propose what steps should be taken to give effect thereto." Even though there was objection in Committee IV/1 to the inclusion of a similar provision in the Charter on the ground that the matter was outside the competence of the Committee, the proposal received strong support and was adopted.[34]

The phraseology of the paragraph raises an important question of interpretation. Does it confer upon the Security Council power additional to that conferred under the terms of Chapter VII? Does it, in other words, empower the Security Council to take appropriate action, upon the request of one of the parties to a dispute, to obtain respect for the judgment of the Court by the other party, even though there may be no threat to the peace or violation of the peace?

Dr. Leo Pasvolsky, in his testimony before the Senate Committee on Foreign Relations, expressed the view that the grant of power to the Security Council in this paragraph is subject to other provisions of the Charter defining the Council's power. In other words, according to this interpretation, the Security Council can act under this paragraph only within the scope of its powers as defined in Chapters V, VI and VII of the Charter. Quoting Dr. Pasvolsky:

> The Council may proceed, I suppose, to call upon the country concerned to carry out the judgment, but only if the peace of the world is threatened, and if the Council has made a determination to that effect. It is the party, not the Court, that goes to the Council. It is the aggrieved party, the party which is willing to abide by the determination of the Court when the other party is not willing to so abide. The Council is not a sheriff in the sense that the Council enforces the Court's decision when the Court asks it to enforce it. The Council simply handles a political situation which arises out of the fact that the judgment of the Court is not being carried out by one of the parties.[35]

From the record of the discussion in Committee IV/1 of the Conference it is not clear what was the interpretation placed upon the words of this paragraph by the members of the Committee. Their

[34] UNCIO, *Summary Report of Twentieth Meeting of Committee IV/1, June 7, 1945*, Doc. 864, IV/1/71, p. 2–3 (*Documents*, XIII, p. 297–8).

[35] *Hearings . . . on The Charter of the United Nations . . . , July 2, 1945*, p. 287.

principal concern seems to have been to make sure that the aggrieved party had recourse to the Security Council.[86] The words used, however, would seem to suggest action beyond that which might be required to keep the peace or restore peace, since in the situation where the provisions of this paragraph would likely be invoked, the state refusing to carry out the terms of a judgment would not necessarily be threatening the peace in any way, except in so far as the refusal to carry out a legal obligation might be so interpreted.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

This paragraph contains an affirmation of the general principle laid down in the first paragraph of Article 33. The Members of the United Nations are at complete liberty to solve their disputes as they deem fit so long as they do so in a way that does not endanger the maintenance of international peace and security.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

This paragraph gives to the Security Council and to the General Assembly a very broad authority to ask the Court for legal advice. Such is the character of an "advisory opinion". Such an opinion will have the greatest prestige and moral force, but neither the Security Council nor the General Assembly will be under any obligation to follow the advice given. In spite of the great weight to be attached to such an opinion, it may happen that political expediency makes it unwise to accept it or that it has been possible to settle the matter by a compromise in such a way that the parties are satisfied. The experience of the League shows that such opinions may be of the greatest usefulness, and that they are not likely to be lightly disregarded.

The question upon which the advisory opinion is requested may relate to a dispute which is before the Security Council under the pro-

[86] UNCIO, *Summary Report of Twentieth Meeting of Committee IV/1, June 7, 1945*, Doc. 864, IV/1/71, p 2–3 (*Documents*, XIII, p 297–8).

visions of Chapter VI, especially Articles 37 and 38. In the case of a legal dispute, the Council might well make the advisory opinion of the Court its recommendation to the parties, and such a recommendation would undoubtedly have greater weight than one not supported by the authority of the Court. In fact, judging by the experience of the League the parties will be prepared to show essentially the same deference to recommendations of that nature as to judgments of the Court, largely because of the safeguards contained in Chapter IV of the Statute in respect to the Court's procedure in advisory cases.[37] The International Court of Justice has adopted a rule enabling the Court to accelerate proceedings if it should be considered that an advisory opinion is urgently required.[38]

During its first two years, the Court has only been asked to give one advisory opinion. During its second session, the General Assembly adopted a resolution requesting the Court to give an opinion on a question relating to the interpretation of Article 4 of the Charter.[39] Other proposals that advisory opinions be requested have been made. At the time of the election of the judges of the Court by the General Assembly and the Security Council, a disagreement arose over the meaning of the word "meeting" as used in Articles 11 and 12(1) of the Statute of the Court. A tentative decision was reached to request the Court to give an advisory opinion but instead the Council and Assembly finally agreed upon rules of procedure based on the interpretation advanced by the Secretariat.[40] Proposals have been made in connection with the consideration of the South African and Indonesian cases by the General Assembly and Security Council respectively to ask the Court for an advisory opinion on the application of Article 2(7) but the proposals were not adopted. In these cases, the prevailing view seemed to be that the question was essentially a political one. During its second session, the General Assembly adopted a resolution recommending that greater use be made of the advisory opin-

[37] On experience with advisory opinions under the League system, see Hudson, Manley O., *The Permanent Court of International Justice, 1920–1942, op. cit.*, Chap. 22. See also, Goodrich, Leland M., "The Nature of the Advisory Opinions of the Permanent Court of International Justice," *American Journal of International Law*, XXXII, p. 738, De Visscher, Charles, "Les avis consultatifs de la Cour permanente de Justice internationale," *Cours de l'Académie de Droit international*, Tome 26 (1929), p 5, and Negulesco, Démetre, "L'évolution de la procédure des avis consultatifs de la Cour permanente de Justice internationale," *Cours de l'Académie de Droit international*, Tome 57 (1936), p. 5.

[38] Article 82, paragraph 2, of the Rules of Court: "If the Court is of the opinion that a request for an advisory opinion necessitates an early answer, it shall take the necessary steps to accelerate the procedure."

[39] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc A/519, p 18–9. For comment, see *supra*, p. 131.

[40] See *supra*, p 481.

ion procedure in settling questions of principle, especially questions relating to the interpretation of the Charter.[41] It appears probable that limited use will be made of the advisory opinion procedure so long as questions of Charter interpretation are viewed in a predominantly political light.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

This paragraph is a complete innovation. Under the League system only the Council and the Assembly could ask for advisory opinions. By this paragraph the specialized agencies and the organs of the United Nations, other than the General Assembly and the Security Council, are given the right to ask for opinions on legal questions arising within the scope of their activities, if they are so authorized by the General Assembly. The text does not make it clear whether the authorization is to be specific or general. The logic of experience would seem to indicate that the authorization should be general. Committee action at San Francisco supports this interpretation.[42] Committee IV/1 refused to adopt a proposal to substitute the words "in each case" for the words "at any time". Furthermore, if that were not the proper interpretation, it might as well be provided, as in the League Covenant, that only the Council or the Assembly have the right to ask for an opinion, since each case would have to be considered separately anyway. In practice, the authorizations that have been given have been general in nature.

Under the League system, the Council in many cases acted as a go-between in transmitting to the Court requests for advisory opinions relating to matters within the competence of specialized agencies. This was particularly true of requests for advisory opinions on questions of concern to the International Labor Organization. Of the twenty-seven requests for advisory opinions addressed to the Court, six originated with the Governing Body of the ILO. A system of general authorizations under which specially designated organs of the United Nations, other than the General Assembly and the Security Council, and the specialized agencies may apply to the Court directly for advisory opinions would appear to be the purpose of this paragraph.

The Preparatory Commission, after quoting the Report of Commit-

[41] UN, General Assembly, *Official Records of the Second Session . . . , Resolutions . . .*, Doc. A/519, p. 103.

[42] UNCIO, *Summary Report of Twentieth Meeting of Committee IV/1, June 7 1945*, Doc. 864, IV/1/71, p. 3–4 (*Documents*, XIII, p. 298–9).

tee IV/1 of the San Francisco Conference, concluded that it would be for the General Assembly to decide

> Whether a general authorization, if requested, should be given to any of the specialized agencies to enable them to make requests for advisory opinions directly to the International Court of Justice without recourse to the General Assembly in each instance.[43]

It thought the General Assembly should also consider whether a provision relating to general authorization should be included in the agreements with the agencies concerned. It assumed that the General Assembly could at any time revoke an authorization extended. It assumed, too, that the General Assembly would be able to attach such conditions as it desired.

During the second part of its first session, the General Assembly adopted a resolution authorizing the Economic and Social Council "to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the activities of the Council".[44] A like authorization has been given to the Trusteeship Council.[45] The agreements with the specialized agencies that have thus far been concluded, with one exception,[46] contain authorizations to request advisory opinions from the Court. The phraseology varies somewhat but generally authorizes the specialized agency to request advisory opinions on legal questions arising within the scope of its competence or activities, other than questions concerning the relationship of the agency to the United Nations or other specialized agencies.[47] It is also provided that whenever a request is made, the Economic and Social Council is to be informed.[48]

[43] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 44.

[44] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 176. See also, I.C.J., *Yearbook, 1946–47*, p. 201–2

[45] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 103.

[46] The agreement with the Universal Postal Union.

[47] See Article IX of the FAO agreement, *infra*, p. 629.

[48] The agreement with UNESCO gives the Council a veto over such requests, subject to final decision by the General Assembly.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

The Secretary-General. The League of Nations Secretariat was headed by the Secretary-General. Partly because of the personality of the first occupant of the office, the Secretary-General of the League of Nations never assumed important responsibilities of direction and leadership.[1] The weakness of the office was indeed suggested by its title. Most of the specialized international organizations which have been established in recent years have given their chief administrative officers more forceful titles such as "Director-General". The Charter of the United Nations follows the League precedent, though clearly envisaging that the Secretary-General for which it provides shall have more important powers and responsibilities than his League counterpart.

Appointment. The League of Nations Covenant in Article 6, paragraph 2, provided that "The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly." The first Secretary-General, Sir James Eric Drummond, held the post until 1933, when he was succeeded by M. Joseph Avenol. Article 97 of the Charter provides that the Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. The use of the word "appointed" instead of the word "elected" is intended to emphasize the administrative character of his

[1] On organization and functioning of the League of Nations Secretariat, see Ranshofen-Wertheimer, Egon F., *The International Secretariat: A Great Experiment in International Administration*, Washington, 1945; Purves, Chester, *The Internal Administration of an International Secretariat*, London, 1945; Royal Institute of International Affairs, *The International Secretariat of the Future: Lessons from Experience by a Group of Former Officials of the League of Nations*, London, 1944; and Basdevant, Suzanne, *Les fonctionnaires internationaux*, Paris, 1931.

tee IV/1 of the San ommendation of a candidate to the General As- for the General A curity Council an affirmative vote of seven members, oncurring votes of the permanent members is required. Whether a cordance with Article 27 of the Charter, any one of the the specialit members may prevent the nomination of a particular can- ions dire For the appointment of the candidate by the General As- Gener bly a simple majority of the members of that body present and voting is sufficient. The same rules apply to the renewal of an appointment as to the original appointment. The General Assembly may reject a candidate recommended to it by the Security Council; but if the Assembly does so, it cannot appoint a Secretary-General of its own choice. It must wait for the Council to make a new recommendation.

The Preparatory Commission thought "it would be desirable for the Security Council to proffer one candidate only for the consideration of the General Assembly, and for debate on the nomination in the General Assembly to be avoided." [2] The Preparatory Commission also observed that both nomination and appointment should be discussed at private meetings, and that a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot.[3] These recommendations have been approved by the General Assembly [4] and followed in actual practice.

The first Secretary-General of the United Nations, Mr. Trygve Lie, was appointed to his office on February 1, 1946. Inasmuch as the nomination of a Secretary-General required the unanimous vote of the permanent members in the Security Council, the choice of a candidate meant considerable negotiation between representatives of the permanent members before a person acceptable to each could be found. After the permanent members had accepted Mr. Lie, the Security Council unanimously recommended him to the General Assembly which "appointed" him Secretary-General, on a secret ballot, by a vote of 46 to 3.[5]

Term. The Covenant of the League of Nations contained no stipulation as to the term of office of the Secretary-General. In 1931 the Assembly fixed the normal term of office at ten years, the Council being given the right to lengthen the appointment, subject to the approval of a majority of the Assembly. The first Secretary-General resigned in June 1933, after thirteen years of service, and the second resigned in 1940.

The Charter does not specify the length of the term of office of the

[2] *Report of the Preparatory Commission* . . ., Doc. PC/20, p. 87.
[3] *Ibid.*
[4] UN, General Assembly, *Official Records of the First Part of the First Session* . . ., *Plenary Meetings* . . ., p. 610.
[5] *Ibid.*, p 304.

Secretary-General of the United Nations. At the San Francisco Conference the Sponsoring Governments proposed a three-year term with re-election permitted. This proposal was accepted by Committee I/2 until it was learned that in another committee the decision had been taken that the recommendation of the Security Council would require concurrence of all the permanent members. When Committee I/2 had originally accepted the three-year term for the Secretary-General, it had been understood that the Security Council, in recommending a candidate for the position, would be governed by the rule of a majority of any seven members. When it was learned that it would be possible for a permanent member of the Security Council to veto a proposed candidate, Committee I/2 rescinded its earlier proposal for a three-year term for the Secretary-General and voted for the omission of any provision on this point. The argument advanced in support of this action was that the necessity of unanimous agreement of the permanent members of the Security Council for re-election every three years would either deprive the Secretary-General of his independence or force him to leave his office at a time when his experience would be most useful to the Organization.[6]

The General Assembly, following closely the recommendations of the Preparatory Commission, adopted a resolution on January 24, 1946, providing: (a) that the term of appointment of the Secretary-General should be such as to enable a man of eminence and high attainment to accept and maintain the position; (b) that the first Secretary-General should be appointed for five years, appointment being open at the end of that period for a further five-year term; (c) that, there being no stipulation on the subject in the Charter, the General Assembly and the Security Council were free to modify the term of office of future Secretaries-General in the light of experience; and (d) that because of the confidential character of the Secretary-General's work, it was desirable that no Member should offer him, at any rate immediately upon retirement, any governmental position in which his confidential information might be a source of embarrassment to other Members, and on his part a Secretary-General should refrain from accepting any such position.[7]

Functions. The principal functions of the Secretary-General has ecommen- United Nations, either implicitly or by inference, were der six headings by the Preparatory Commission:[8] ge collection,

[6] UNCIO, *Report of the Rapporteur of Committee I/2 on . . . during Its Secretariat*), Doc. 1155, I/2/74 (2), p. 2–4 (*Documents*, VII, ession . . ., Reso-

[7] UN, General Assembly, *Official Records of the Fir* Assembly, *Report of the . . ., Plenary Meetings . . .*, p. 268 and *Resolutior* and the Fifth Committee, *First Part of its First Session* , Doc. A/64, p. 1

[8] *Report of the Preparatory Commission . . .*, I

trative and executive functions; technical functions; financial functions; the organization and administration of the Secretariat; representational functions; and political functions. Many of the functions assigned to the Secretary-General by the Charter or by the other organs of the United Nations are delegated to the members of his staff, but the Secretary-General must supervise and direct the work of the Secretariat and assumes full responsibility for its acts.[9]

1. *Administrative and Executive Functions.* Article 97 of the Charter states that the Secretary-General is the "chief administrative officer of the Organization." As chief administrative officer of the United Nations as a whole, the Secretary-General is the channel of communication between Members and the United Nations or any of its organs and he is responsible for the preparation of the work of the various organs and for the execution of their decisions in cooperation with the Members. Finally, he must integrate the activities of the whole complex of United Nations organs and see that the Organization functions efficiently.

The coordination of the work of the United Nations is one of the most important functions of the Secretary-General. If consistent policy-decisions followed by concerted action are to be achieved within the framework of the United Nations, there must be effective coordination of the policies and activities of the Members and organs of the United Nations. The Secretariat is the only place where problems, programs and policies can be consistently viewed in United Nations terms.

One particular phase of this duty of the Secretary-General is his responsibility for seeing that the specialized agencies brought into relationship with the United Nations function as a unified whole.[10] Inasmuch as the specialized agencies have been set up with a considerable degree of independence and autonomy and are subject to little direct control by United Nations, and because of the fact that they are all operating in social and economic fields where no clear demarcation between functions is possible, there is danger of policy confusion, overlapping of function, waste and conflict unless strong coordinating influences are brought to bear. "Co-ordination is particularly required with respect to policy formulation, program and administrative and budgetary approval of activities."[11]

signed in Jun[illegible]ssion of the functions of the Secretary-General, see Kunz, Josef L., signed in 1940[illegible]on of the Secretary-General of the United Nations," *American* The Charter[illegible]*itional Law*, XL, p. 786 and Laves, Walter H. C. and Donald C. [illegible]d Nations Secretariat," *Foreign Policy Reports*, October 15, 1946.

[2] *Report of the [illegible] the United Nations*, Article 58 and comment, *supra*, p. 350 and

[3] *Ibid.* [illegible]d Stone, *op. cit.*, and Sharp, Walter R., "The Specialized

[4] UN, General Assembly, [illegible]ons: Progress Report I and II," *International Organi-*
*. . . , Plenary Meetings . . .*nd II (1948), p. 247–67.

[5] *Ibid.*, p 304. p. 186.

With a view to obtaining periodic consultation between the United Nations and the specialized agencies on problems of mutual interest, the Secretary-General, as requested by the Economic and Social Council at its third session,[12] has established a Coordination Committee, which, with its Consultative Committees, is called upon to ensure the fullest and most effective implementation of the agreements entered into between the United Nations and the specialized agencies. The Coordination Committee consists of the Secretary-General as Chairman, and the corresponding administrative officers of the specialized agencies with which the United Nations has concluded agreements. In its resolution of November 20, 1947, the General Assembly stressed the importance of the role of the Secretary-General in achieving the coordination of the activities of the United Nations and the specialized agencies by promoting similar budgetary, financial and administrative practices.[13] All the agreements bringing the specialized agencies into relationship with the United Nations require continuous positive action by the Secretary-General for their implementation. He must meet with the directors of those organizations, provide personnel for liaison purposes, arrange for the interflow of documents and information, consult on the division of work and perform many other tasks of like nature.

By the terms of Article 98 the Secretary-General has administrative and executive duties in connection with each of the principal organs of the United Nations, except the International Court of Justice which has its Registrar. These duties are discussed in detail in connection with Article 98. The Secretary-General also has specific administrative responsibilities under other Articles of the Charter. For example, under Article 102, every treaty and international agreement entered into by any Member of the United Nations must be registered with the Secretariat and published by it.

2. *Technical Functions.* The administrative function of preparing the work of the various organs of the United Nations gives rise to the technical functions performed by the Secretary-General and his staff. The Secretariat constantly provides technical assistance, undertakes studies, and gives expert advice to the other organs of the United Nations and to the Members of the Organization. Upon recommendation of the Economic and Social Council, the Secretary-General has established a statistical unit within the Secretariat for the collection,

[12] UN, Economic and Social Council, *Resolutions Adopted . . . during Its Third Session . . .*, Doc. E/245/Rev. 1, p. 24.

[13] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 29. See also, UN, General Assembly, *Report of the Joint Meeting of the Joint Second and Third Committee and the Fifth Committee*, Doc. A/497.

critical examination, evaluation and analysis of statistics from Member Governments, specialized agencies and other sources. This unit publishes such statistics and coordinates the statistical activities of the specialized agencies. During its second session, the General Assembly adopted a resolution drawing the attention of the Councils and their Commissions to the desirability of utilizing to the utmost the services of the Secretariat and recommending to the organs of the United Nations "to consider carefully, before the creation of special commissions and sub-committees, whether the task to be carried out could not usefully be entrusted to the Secretariat." [14]

3. *Financial Functions.* The Secretary-General has wide responsibilities in connection with the financial administration of the United Nations. Subject to the authority of, and under Provisional Financial Regulations adopted by the General Assembly,[15] he is primarily responsible for preparing the budget of the United Nations, for allocating funds, for controlling expenditures, for collecting contributions from Members and for the custodianship of all funds. When the annual budget has been prepared by the Secretary-General, it is submitted to the Advisory Committee on Administrative and Budgetary Questions of the General Assembly. This committee examines the budget, criticizes it, and reports on it to the Fifth Committee of the General Assembly, the Administrative and Budgetary Committee. The Advisory Committee also makes recommendations to the Secretary-General on the preparation of the budget and other financial matters.

The Secretary-General has been delegated the responsibility by the General Assembly to consult with the specialized agencies and develop at the earliest possible date, in accordance with the budgetary and financial provisions of United Nations agreements with the specialized agencies, arrangements for common fiscal controls and common budgetary, administrative and financial practices, and to explore possible arrangements by which the budgets of the specialized agencies might be presented to the General Assembly for approval This function of the Secretary-General is another important means of coordinating the work of the specialized agencies.[16]

4. *Functions Connected with the Organization and Administration of the Secretariat.* The Secretary-General is the head of the Secretariat. Under the provisions of Article 101 he appoints all his staff under regulations established by the General Assembly and assigns appropriate

[14] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 153.

[15] See UN, Doc A/495 and General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p 21–2.

[16] See *supra*, p 355

staffs to the various organs of the U ination of staff members politi-
Commission said in its Report:

> He alone is responsible to the other princ all the members of the staff
> work; his choice of staff – more particularly of international civil servants.
> ship will largely determine the character and proposed amendment and
> as a whole. It is on him that will mainly fall the d
> taining a team spirit in a body of officials recruited provision is made for
> His moral authority within the Secretariat will depe a department.[18]
> example he gives of the qualities prescribed in Article
> confidence shown in him by Members of the United Nat.

5. *Representational Functions.* The Secretary-Gener
anyone else, stands for the United Nations as a whole. H meetings of
official within the Organization who represents all its o nomic and
Members. Therefore, he has a special responsibility for secu perform
implementation of the purposes and principles of the Charter. The
the Secretary-General represents the United Nations in all its ne mbly
ations with outside agencies and with the governments of Memb
and non-Members alike. He is the official spokesman of the Unitec
Nations. Mr. Lie visited over twenty countries during his first two years
in office to become acquainted with their leaders and to stimulate inter-
est in the United Nations.

6. *Political Functions.* The Charter affords the Secretary-General numerous opportunities to exercise political influence. In fact it places on him definite political responsibilities. Acting under Article 99 he may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.[19] He may make recommendations to the United Nations organs. The General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council have provided in their Rules of Procedure that the Secretary-General or his deputy may make oral or written statements to them.[20] He is responsible for drawing up the provisional agenda of the above-named organs and may propose items for the agenda of the Security Council, the General Assembly and the Trusteeship Council. He presents to the General Assembly, in his annual report, his conclusions regarding the work of the United Nations and its future program.[21] He has a major responsibility for coordinating the work of the specialized agencies. While the acts which this entails may be considered as administrative, they involve the exercise of initiative and influence in the field of policy

[17] For text of Provisional Staff Regulations, see UN, Doc. A/435.
[18] *Report of the Preparatory Commission . . .*, Doc. PC/20, p 86.
[19] See Article 99 and comment, *infra*, p. 502.
[20] See comment on Article 98, *infra*, p. 500.
[21] See *ibid.*

critical examination, evaluation eneral. Finally, in addition to his for-
Governments, specialized agenary-General must provide the informal
lishes such statistics and coy through to a successful conclusion the
specialized agencies. Durigram. He is responsible for seeing that the
adopted a resolution dra; as effectively as possible, and to succeed in
Commissions to the dest to bring about a common point of view among
of the Secretariat and roversial issues. The Secretary-General's role of
tions "to consider cliator is especially important when the more influ-
and sub-committind agreement difficult. His ability or inability to
usefully be ents may be one of the determining factors in the success

3. *Financi*he Organization.

bilities in c*secretaries-General.* It will be noticed that Article 97 con-
Nations. Sference to Deputy or Assistant Secretaries-General, but pro-
Regulatily for "such staff as the Organization may require." The ques-
sponsilf including in this Article a provision for Deputy Secretaries-
ing eral and of specifying their number was discussed at great length
fr San Francisco.[22] The Sponsoring Governments introduced amend-
ments to Chapter X of the Dumbarton Oaks Proposals providing that there should be four or possibly five deputies to be elected by the General Assembly on recommendation of the Security Council for a period of three years. Those who supported the amendments admitted that the Secretary-General would hold a position of great political authority and maintained that the higher posts in the Secretariat would also be of considerable political importance and should be treated as political positions. The Sponsoring Governments imagined one deputy acting as alternate to the Secretary-General and one serving each of the four principal organs, and they were anxious to secure political control of these high functionaries.

These proposals were strongly opposed, particularly by the delegates of Belgium, Canada, the Netherlands, New Zealand and Norway, who, while recognizing the need for deputies, were against fixing either their number or their terms of office in the Charter. They felt that it was impossible at that date to know how many Deputy Secretaries-General would be needed and that any Charter provision on the subject would later have to go through the cumbersome process of amendment. They also thought that the deputies should be appointed by the Secretary-General like the other members of the staff. It would, they claimed, undermine the authority of the Secretary-General if his immediate subordinates were elected or appointed in the same manner as he. This would destroy the homogeneous character of the Secretariat. Finally, those opposing the amendments of the Sponsoring

[22] UNCIO, *Repor. of the Rapporteur of Committee 1/2 on Chapter X (The Secretariat)*, Doc 1155, I/2/74 (2) (*Documents*, VII, p. 386).

Governments did not want the nomination of staff members politically controlled. They desired to have all the members of the staff from the top down behave and feel like international civil servants. For these reasons they fought against the proposed amendment and defeated it.

In the actual organization of the Secretariat, provision is made for eight Assistant Secretaries-General, each heading a department.[23]

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

The language of this Article was kept sufficiently broad to cover all the functions of the Secretary-General under other Articles. It was the unanimous opinion of the subcommittee which drafted the Article and of Committee I/2 of the San Francisco Conference that the Secretary-General could delegate his powers to members of his staff as occasion required. This has, of course, been done in actual practice, and is sanctioned by the Rules of Procedure of the various organs.

Functions as Secretary-General of the Principal Organs. The rules of procedure of the General Assembly,[24] the Security Council,[25] the Economic and Social Council[26] and the Trusteeship Council[27] define the position of the Secretary-General as secretary-general of those bodies and set forth his legal functions. These functions may be divided into two classes: (1) those concerning administrative and technical services not involving the exercise of any discretionary power of a political nature by the Secretary-General; and (2) those which do involve the exercise of such discretionary power.

Duties falling within the first category include: (a) the calling of special sessions on the request of the appropriate authority, except in the case of the Security Council; (b) routine notifications to Members; (c) handling credentials; (d) keeping the records of meetings; (e) providing and directing the necessary staff, (f) receiving, trans-

[23] See Article 101 and comment, *infra*, p. 509.

[24] UN, General Assembly, *Rules of Procedure . . .*, Doc. A/520.

[25] UN, Security Council, *Provisional Rules of Procedure . . .*, Doc. S/96/Rev. 3.

[26] UN, Economic and Social Council, *Rules of Procedure . . .*, Doc. E/33/Rev. 4.

[27] UN, Trusteeship Council, *Rules of Procedure . . .*, Doc. T/1/Rev. 1.

lating, printing and distributing all documents, reports and resolutions, interpreting speeches, and having the custody of all documents; and (g) performing routine functions required by the Charter, such as informing the General Assembly of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council, in accordance with Article 12(2).

The duties of the Secretary-General requiring the use of political discretion include the following:

(a) Drawing up the provisional agenda of each organ and proposing items for the provisional agenda of the General Assembly, the Security Council and the Trusteeship Council. The Rules of Procedure of the General Assembly [28] and the Trusteeship Council [29] specify that the agenda shall include all items which the Secretary-General deems it necessary to put before the organ in question. In the case of the Security Council, the Secretary-General may bring to the attention of the Council any matter which in his opinion may threaten international peace and security under Article 99,[30] which means that he may propose an item for the Council agenda. In the case of the Economic and Social Council, the Secretary-General is not given the right to propose an item for the agenda,[31] but the General Assembly, the Security Council and the Trusteeship Council are given this right, and the Secretary-General may make his influence felt through them.

(b) Making oral or written statements to these organs. In connection with this power, the Rules of Procedure of the General Assembly,[32] the Security Council,[33] the Economic and Social Council,[34] and the Trusteeship Council [35] provide that the Secretary-General, or his deputy acting on his behalf, may make either oral or written statements to each organ concerning any question under consideration by it. The requirement that the statement of the Secretary-General, or his deputy, must concern a question under consideration by the particular organ is waived in the case of General Assembly committees or subcommittees, where the Secretary-General may make any oral or written statement which he considers desirable.[36] In the Economic and Social Council and the Trusteeship Council the Secretary-General may make oral or written statements only upon the invitation of the President of the Council or of the chairmen of committees or subsidiary bodies,

[28] Rule 12.
[29] Rule 9.
[30] Rule 3. See comment, *infra*, p. 502.
[31] Rule 10.
[32] Rule 63.
[33] Rule 22.
[34] Rule 28.
[35] Rule 26.
[36] Rule 103 of the Rules of Procedure of the General Assembly.

but in the General Assembly and the Security Council such an invitation is not necessary.

The power to propose items for the agenda of each of the various organs and the power to make oral or written statements before them give the Secretary-General an opportunity to exercise considerable influence on programs of policy within those bodies.

Annual Report. The last sentence of Article 98 places upon the Secretary-General the obligation to make an annual report to the General Assembly on the work of the Organization. This is to be considered in connection with the provisions of Article 15 which states that the General Assembly "shall receive and consider" reports from the Security Council and the other organs of the United Nations.[87]

The practice of the League of Nations was for the Secretary-General to report annually to the Assembly on all aspects of the League's work. The annual report was of the greatest value in that it provided the General Assembly with the factual basis for an intelligent discussion and review of the work of the League. A considerable part of each regular Assembly session was devoted to this general review of the work of the past year.

The reports of the Secretary-General have thus far been far more than mere factual summaries of the accomplishments of the United Nations. They have been detailed descriptions of the numerous activities of the Organization and have contained the Secretary-General's personal evaluation of this work and his recommendations to the General Assembly, to the other organs, and to Members. Thus, Mr. Lie has made these reports comparable to the "State of the Union" messages to Congress by the President of the United States, and has attempted to influence General Assembly policy.

The first annual report of the Secretary-General covered the initial period of the activity of the United Nations down to June 30, 1946.[88] The written report submitted to the General Assembly was supplemented by an oral report made by the Secretary-General at the beginning of the second part of the first session.[89] Subsequent annual reports have covered year periods ending June 30[40] and have been supplemented in like manner.

Although the reports of the Secretary-General have covered the

[87] See comment, *supra*, p. 181.

[88] UN, Doc. A/65; Doc. A/65/Add.1; and Doc A/65/Corr.1.

[89] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . .*, p 17.

[40] For annual report covering period July 1, 1946 to June 30, 1947, see UN, General Assembly, *Official Records of the Second Session . . .*, Suppl. No. 1, Doc. A/315. For report covering period July 1, 1947 to June 30, 1948, see UN, General Assembly, *Official Records Third Session*, Suppl. No. 1, Doc. A/565.

work of the three Councils of the United Nations, these organs have submitted individual annual reports to the General Assembly dealing with their activities in greater detail.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

As was pointed out by the Preparatory Commission, this Article gives the Secretary-General "a special right which goes beyond any power previously accorded to the head of an international organization." [41] In case no state desires to do so, the Secretary-General has the right to bring to the attention of the Security Council any matter (not merely any dispute or situation) which, in his opinion may threaten international peace and security. Herein lies the chief source of the Secretary-General's political power. This power under Article 99 far exceeds the powers granted to the Secretary-General of the League of Nations, who had only the right to call a meeting of the Council when asked to do so by a member.

It is left entirely to the Secretary-General's discretion whether he shall exercise his power under Article 99 or not. In the course of subcommittee consideration of the matter at San Francisco, it was proposed that the word "may" be changed to "shall". This proposal was withdrawn when a majority agreed that the right in question should be exercised at the discretion of the Secretary-General and should not be imposed upon him as a duty.[42]

It was also proposed at the San Francisco Conference that this Article be amended to give the Secretary-General the right to bring such a question to the attention of the General Assembly as well. This proposal was rejected because it had already been decided that the Security Council should have the primary responsibility for the maintenance of international peace and security, and the amendment would violate this principle.[43] However, the Secretary-General may bring matters threatening international peace and security to the attention of the General Assembly through the annual reports which he is required under Article 98 to make to the General Assembly on the work of the United Nations, and in the exercise of the right accorded him by Rule 12 of the Rules of Procedure to include in the provisional

[41] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 87.

[42] UNCIO, *Report of the Rapporteur of Committee I/2 on Chapter X (The Secretariat)*, Doc. 1155, I/2/74 (2) (*Documents*, VII, p. 392).

agenda of the General Assembly all items which he deems necessary to put before that body. An important example of such action was his calling the attention of the General Assembly to the Spanish situation in his supplementary report to the second part of the first session of the General Assembly.[43a] Now that the General Assembly is assuming more and more responsibility for the maintenance of peace and security, it is to be expected that the Secretary-General will more frequently call to the attention of that body those matters affecting world peace.

The Secretary-General has not hesitated to use the powers conferred upon him under Article 99. When the Iranian question was before the Security Council, Mr. Lie took an initiative which was clearly in the spirit of Article 99. When the Council was called upon to decide whether it could and should remain seized of the case when both parties had requested that the question be removed from the agenda, the Secretary-General intervened by submitting a memorandum to the President of the Council setting forth his own views on the legal aspects of the question.[44] When the Greek question was being considered by the Security Council in September 1946, before the vote was taken on a resolution proposed by the United States, the Secretary-General made the following statement: "Should the proposal of the United States representative not be carried, I hope that the Council will understand that the Secretary-General must reserve his right to make such enquiries or investigations as he may think necessary, in order to determine whether or not he should consider bringing any aspect of this matter to the attention of the Council under the provisions of the Charter." [45]

These two cases illustrate the active role which the Secretary-General has assumed in political affairs, in accordance with the clear intent of Article 99. The Security Council decided in June 1946, to give him the power under its Provisional Rules of Procedure to make either oral or written statements to the Security Council or its committees, including the Military Staff Committee and the Atomic Energy Committee, concerning any question under consideration, or to act as rapporteur for a specified question before the Council.[46]

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall

[43a] UN, General Assembly, *Official Records of the Second Part of the First Session . . . , Plenary Meetings . . . ,* p. 700.

[44] UN, Security Council, *Journal . . .*, No. 27, p. 524.

[45] UN, Security Council, *Official Records, First Year: Second Series,* p. 404.

refrain from any action which might reflect on their position as international officials responsible only to the Organization.

This paragraph is divided into two parts. The first prohibits members of the staff from seeking or receiving instructions from any government or other authority outside the Organization. The second part of the paragraph states the rule that the Secretary-General and the members of his staff shall not commit any action which may reflect on their position as international officials responsible only to the Organization. The aim of the whole paragraph is to create a real international civil service in the best sense of the word.[47]

The Provisional Staff Regulations [48] provide for the implementation of this paragraph as follows:

Regulation 1. The Secretary-General and all members of the staff of the Organization are international civil servants, and their responsibilities are not national but exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the United Nations only in view. In the performance of their duties they shall not seek nor receive instructions from any government or from any other authority external to the Organization. All members of the staff are subject to the authority of the Secretary-General, and are responsible to him in the exercise of their functions.

Regulation 2. Upon accepting their appointment, all members of the staff shall subscribe to the following oath or declaration:

"I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as a member of the international service of the United Nations, to discharge those functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization."

. . . . . .

Regulation 5. Members of the staff shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any unpublished information known to them by reason of their official position except in the course of their duties or by authorization of the Secretary-General.

Regulation 6. Members of the staff shall avoid any action, and in particular any kind of public pronouncement or activity which may adversely reflect on their position as international civil servants. They are not expected to give up their national sentiments or their political and religious convictions; but they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status.

[47] For a detailed discussion of League practice, see Ranshofen-Wertheimer, *op. cit.*, Part IV

[48] UN, Doc A/435

Regulation 7. No member of the staff shall accept, hold, or engage in any office or occupation which in the opinion of the Secretary-General is incompatible with the proper discharge of his duties with the United Nations.

Regulation 8. Any member of the staff who becomes a candidate for a public office of a political character shall resign from the Secretariat.

Regulation 9. No member of the staff shall accept any honour, decoration, favour, gift or fee from any Government or from any other source external to the Organization during the period of his appointment, except for war services.[42]

Because they are international and not national functionaries, members of the staff presumably will be able to continue in their posts even if the country whose citizenship they claim should be expelled or if its rights and privileges of membership should be suspended.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

This paragraph expresses the reverse side of the principle of the first paragraph. The Secretary-General and the staff must promise not to seek or accept instructions from the outside. The natural and necessary complement of this rule is that Members must agree to respect the "exclusively international character of the responsibilities of the Secretary-General and the staff".

A special problem is raised by the fact that in the performance of his duties a staff member might be required to engage in action which, under the laws of his state, would be deemed treasonable. Such, for example, might be the case if a staff member engaged in the preparation of plans for military action against the state of his nationality under the enforcement provisions of the Charter. The seriousness of the problem was recognized in Committee discussion at San Francisco. This paragraph is clearly intended to cover that situation, but in practice the individual might find himself in an unenviable position.

The paragraph also states that Members shall not seek to influence the Secretary-General and the staff in the performance of their duties. This is also a consequence of the first paragraph. The rule does not necessarily preclude the government of a Member from conferring with its nationals on the staff. That is entirely a question of discretion. The cardinal principle is, however, that the members of the staff owe loyalty exclusively to the Organization.

[42] Ibid. p. 3–5

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

The Covenant of the League provided [50] that the secretaries and staff of the Secretariat should be appointed by the Secretary-General "with the approval of the Council." In practice, however, the control of staff matters came to be shifted to the Assembly as the result of making the Supervisory Commission, originally appointed by the Council, a committee of the Assembly.[51] The General Assembly of the United Nations is given the power by Article 101(1) to adopt staff regulations for the guidance of the Secretary-General in the appointment of his staff. This has been interpreted broadly to cover conditions of appointment and service.

The Executive Committee of the Preparatory Commission, when considering the implementation of this paragraph, recommended detailed staff regulations which, if adopted, would have seriously limited the discretionary power of the Secretary-General.[52] The Preparatory Commission, however, decided that it was unwise to limit in this manner the Secretary-General as the officer responsible for the internal administration of the Secretariat and recommended instead that only "the fundamental rights and obligations of the staff" should be embodied in Staff Regulations, and that Staff Rules should be made by the Secretary-General for the implementation of these Regulations. The Draft Provisional Staff Regulations which it recommended [53] were adopted by the General Assembly substantially as presented in the first part of its first session.[54] These were amended by the General Assembly during the second part of its first session,[55] and again during the second session.[56] While the Secretary-General reported at the second session that the Regulations had been found satisfactory, he recommended that they remain provisional until a later session of the General Assembly.[57] Staff Rules to implement these Regulations have been issued by the

[50] Article 6, paragraph 3.

[51] See Ranshofen-Wertheimer, *op. cit.*, p. 21.

[52] See *Report by the Executive Committee . . .*, Doc. PC/EX/113/Rev. 1, p. 88–95.

[53] *Report of the Preparatory Commission . . .*, Doc. PC/20, p 81, 95–7.

[54] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . .* , Doc. A/64, p. 18–9 and *Official Records of the First Part of the First Session . . ., Plenary Meetings . . .*, p. 615.

[55] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session .* , Doc. A/64/Add.1, p. 150, 163–4.

[56] See UN, General Assembly, *Official Records of the Second Session . . ., Resolutions .* , Doc. A/519, p. 66–8.

[57] UN, Doc. A/435, p 1

Secretary-General from time to time.[58] These Rules were in the first instance those recommended by the Preparatory Commission.

The first chapter of the Provisional Staff Regulations deals with the loyalties, duties and obligations of the Secretariat.[59] The second chapter deals with the appointment, probation and promotion of personnel, and establishes the following principles:

1. Men and women are equally eligible for all posts in the Secretariat.
2. So far as practicable, appointments to posts in the Secretariat shall be made on a competitive basis.
3. Persons appointed to permanent posts in the Secretariat shall serve such probationary period as may be prescribed by the Secretary-General.
4. The Secretary-General shall provide facilities to train members of the staff in subjects relating to their duties.
5. With due regard to the maintenance of the staff on as wide a geographical basis as possible[60] and without prejudice to the inflow of fresh talent, vacancies shall be filled by promotion of persons already in the service of the United Nations in preference to appointment from outside.
6. The Secretary-General shall provide machinery through which staff members may participate in the discussion of questions relating to appointment and promotion.

The other sections of the Regulations establish general principles governing salaries, hours of work, leave, disciplinary measures, termination of appointments, travelling expenses and allowances, a staff provident fund, special indemnities and children's allowances and education grants.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

Basic Principles of Organization. The language of this paragraph is vague and misleading and fails to describe the organization of the Secretariat as it has actually developed. The wording of the paragraph grew out of the Dumbarton Oaks Proposals, Chapter XI (*Arrangements for International Economic and Social Cooperation*), which

[58] For Staff Rules effective July 1, 1948, see UN, Doc. A/551 and Doc. SGB/81.
[59] See *supra*, p. 504.
[60] See Article 101(3) and comment, *infra*, p. 510.

provided that the Economic and Social Council should have a permanent staff which was to constitute a part of the Secretariat of the Organization. Committee I/2 at San Francisco adopted the proposal and incorporated it in its recommendation to the Conference. Similarly, Committee II/4 dealing with trusteeship matters recommended that there should be a permanent staff of the Trusteeship Council which should constitute a part of the Secretariat of the Organization. When these two recommendations came before the Coordination Committee, it was decided to combine them into one paragraph to be included in this Article. The phraseology reflects the original concern with providing separate staffs for the principal organs of the United Nations, although the experience of the League seemed to point to the need of an opposite emphasis.

The Secretariat of the League of Nations was divided into a number of sections and services for administrative purposes.[61] These were organized on the basis of subject matter and the nature of the services to be rendered. The Council and the Assembly made use of the services of all sections, but the specialized organs and agencies of the League naturally were serviced primarily by particular sections of the Secretariat. For example, the Mandates Commission was serviced by the Mandates Section. This form of organization was a natural development not prescribed by any provision of the Covenant.

The most important issue in the early planning for the Secretariat of the United Nations was whether there should be a single integrated Secretariat, organized on a functional basis, serving the needs of all organs, or whether there should be separate secretariats serving each organ. In the preliminary planning stages, a minority favored the organizational scheme of separate secretariats for each of the principal organs, but the majority were in favor of an integrated secretariat.[62] The Preparatory Commission recommended that the Secretariat be set up, for the most part, as a single working body and stated that "Paragraph 2 of Article 101 of the Charter is interpreted to mean that the Secretary-General has full authority to move staff at his discretion within the Secretariat but must always provide the Economic and Social Council, the Trusteeship Council, and other organs with adequate permanent specialized staffs forming part of the Secretariat."[63]

Organization of Secretariat. The Secretariat has been organized in accordance with a plan recommended by the Preparatory Commission

[61] See *Essential Facts About the League of Nations*, Geneva Information Service, 1939, p. 95 and Ranshofen-Wertheimer, *op. cit.*, p. 99.

[62] *Report by the Executive Committee . . .*, Doc. PC/EX/113/Rev. 1, p. 72, 84.

[63] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 88.

and endorsed by the General Assembly on February 13, 1946.[64] It comprises an Executive Office of the Secretary-General and eight departments, each headed by an Assistant Secretary-General. These include the Department of Security Council Affairs, the Department of Economic Affairs, the Department of Social Affairs, the Department of Trusteeship and Information from Non-Self-Governing Territories, the Department of Public Information, the Legal Department, the Department of Conferences and General Services and the Department of Administrative and Financial Services.[65]

Although each of the eight departments has functions which give it a distinctive character, they have been organized so that each may serve any organ of the United Nations which needs its services. For example, the Security Council will be served primarily and continuously by the Department of Security Council Affairs on matters particularly connected with its peculiar functions in the maintenance of peace and security. But it will also be served by the Department of Economic Affairs, the Legal Department, the Department for Trusteeship and Information from Non-Self-Governing Territories and other Departments. Conversely, the Department of Economic Affairs, for example, will serve primarily the Economic and Social Council, though it will also serve the General Assembly, the Security Council, and other organs.

There is one exception to the rule that all departments may at any time be called upon to do work for any organ. Owing to the fact that the Security Council has exclusive powers to deal with military and enforcement measures, it is provided that the special units of the Department of Security Council Affairs concerned with these measures shall serve the Security Council exclusively.

The principal reason for setting up the Secretariat as a single working body was that all the organs it serves have their responsibilities in the common task of promoting the purposes of the United Nations. Another reason was that by organizing the Secretariat as an integrated whole, and not in departments tied exclusively to particular organs, duplication, overlapping and waste of time can better be avoided. Again, the creation of departments attached exclusively to single organs

[64] UN, General Assembly, *Official Records of the First Part of the First Session . . . , Plenary Meetings . . .*, p. 442.

[65] On organization of Secretariat, see UN, Advisory Group of Experts on Administrative Personnel and Budgetary Questions, *First Report . . . to the Secretary-General of the United Nations*, London, March 8, 1946 and *Second Report . . .*, Lake Success, October, 1946; annual reports of the Secretary-General, *op. cit.*; and General Assembly, *Report of the Management Survey on United Nations Headquarters*, Doc A/C 5/160. For detailed description of organization of Secretariat, June 30, 1946, see *Yearbook, 1946–47*, p. 613–38.

would give rise to divided loyalties and undesirable rivalry between departments.

Assistant Secretaries-General. The eight Assistant Secretaries-General who head the operating departments of the Secretariat have the following functions: [66]

1. Each is responsible for the department placed under his supervision.

2. Each serves as an advisor to the Secretary-General in respect of policies and problems arising in the general field over which he has responsibility.

3. Each assists or deputizes for the Secretary-General in discharging his functions as Secretary-General of the several organs and in maintaining the necessary working relationship with the other organs and with the specialized agencies brought into relationship with the United Nations. The Assistant Secretaries-General take turns deputizing for the Secretary-General when he is absent or unable to perform his functions.

The Assistant Secretaries-General have been appointed by the Secretary-General for terms of five years. It is to be noted that there is an Assistant Secretary-General of the nationality of each of the permanent members of the Security Council, in spite of the fact that the small powers opposed such a development at San Francisco.[67]

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

This paragraph establishes the general principle that the paramount consideration in recruiting personnel and in determining the conditions of service is to be the efficient performance of staff duties and not political expediency. In other words, those specific qualities of personnel which are usually demanded in the organization of an efficient national administrative service are to be given proper recognition. Positions are not to be regarded as "spoils" to be divided among the more influential Members with a view to advancing the national interests of those states.

It is also stated that the staff should be recruited on as wide a geographical basis as possible. This principle may conflict with the principle enunciated in the first sentence of this paragraph. In a sense it is a concession to political considerations, but it is stated here as a con-

[66] See Laves and Stone, *op. cit.*, p. 187.

[67] See *supra*, p. 498.

sideration of a secondary nature. The geographical factor was taken into consideration in the recruitment of the Secretariat of the League of Nations.[68]

During the first part of its first session the General Assembly passed a resolution stating that in order to give effect to Article 101(3), "An International Civil Service Commission shall be established by the Secretary-General, after consultation with the heads of the specialized agencies brought into relationship with the United Nations, to advise on the methods of recruitment for the Secretariat and on the means by which common standards of recruitment in the Secretariat and the specialized agencies may be ensured." [69] The General Assembly also recommended that in the selection of staff, the Secretary-General should follow the suggestions of the Preparatory Commission,[70] which included recommendations that: (a) suitable written examinations be used as widely as possible except in the higher posts; (b) written examinations should be supplemented by an appraisal of temperament, character and the general capacity of the candidate; (c) a system of in-service training be established; and (d) machinery should be set up to ensure the participation of the staff in questions affecting appointment, promotion and such matters. The General Assembly recommended that the Secretary-General draw up a permanent classification plan and assign salaries to the posts created. Finally, the Assembly authorized the Secretary-General to draft for submission to the General Assembly a statute for an administrative tribunal to deal with the interpretation of employee contracts.

The establishment of an International Civil Service Advisory Board has been under consideration by the Co-ordination Committee, consisting of the Secretary-General and the administrative heads of specialized agencies brought into relationship with the United Nations. The Board, expected to hold its first meeting early in 1949, will have as its purpose the improvement of recruitment and related phases of personal administration in all the international organizations, including of course the Secretariat of the United Nations.[71] Generally speaking, the other specific recommendations and authorizations of the General Assembly have been carried out, and commendable progress has been made, within a relatively short period, in meeting the basic requirements of an international civil service.[71a]

[68] See Ranshofen-Wertheimer, *op. cit.*, p. 351–64.

[69] UN, General Assembly, *Official Records of the First Part of the First Session . . ., Plenary Meetings . . .*, p. 611.

[70] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 91.

[71] UN, General Assembly, *Official Records: Third Session*, Suppl. No. 1, Doc. A/565, p. 130.

[71a] See annual reports of the Secretary-General, *op. cit.*, and UN, General Assembly, *Codification of Staff Rules*, Doc. A/551

The staff of the Secretariat has grown rapidly in size. By June 1947 it numbered well over three thousand persons.[72] The task of building an efficient and truly international Secretariat was immensely complicated from the beginning by the speed with which the recruitment of staff had to be accomplished, the strain which was placed upon it by the multiplicity of United Nations meetings during the first two years, successive transfers of its working quarters and the reluctance of Members to release highly qualified and skilled persons for service in the Secretariat.

The Secretariat has been slow in becoming international in composition. There has been a preponderance of United States nationals on the staff while other nationalities have been inadequately represented or not represented at all. At the second session of the General Assembly a number of delegations expressed grave concern that the staff of the Secretariat had not yet become more effectively representative of different cultures and nationalities. The Fifth Committee of the Assembly rejected a proposal by the delegation of Colombia that geographical distribution within the Secretariat should be based on a quota system related to the financial contribution of each Member,[73] but the General Assembly adopted a resolution requesting the Secretary-General to examine the recruitment policy with a view to improving the geographical distribution of the posts within the Secretariat and to take all practicable steps to engage staff members from those countries nationals of which are not yet included in the Secretariat.[74]

[72] See Carnegie Endowment for International Peace, "The Budget of the United Nations," *United Nations Studies*, No. 1, p. 9.

[73] UN, Doc. A/464.

[74] UN, General Assembly, *Official Records of the Second Session . . .*, *Resolutions . . .*, Doc. A/519, p. 62–3.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

The League of Nations Covenant contained a similar provision, Article 18, which read as follows:

> Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it . . .[1]

The Charter requirement that registration be "as soon as possible" would seem to be somewhat weaker than the Covenant requirement that it be done "forthwith". Nevertheless, the obligation to register is clear in both cases, and since it is an obligation placed upon the parties, it is perhaps somewhat more realistic to use the Charter language. The Charter, like the Covenant, uses the phrase "entered into" to describe the agreement to be registered, which implies the completion of the procedure prescribed in the agreement for its entrance into force, or in the absence of such prescription, the deposit or exchange of ratifications by the parties. The treaties and agreements thus registered are published by the Secretariat.[2] This means that the excellent work begun by the League of Nations is continued.[3]

On November 8, 1945, in response to an invitation contained in the Report of the Executive Committee,[4] the Executive Secretary of the United Nations Preparatory Commission sent a circular letter to Members of the United Nations informing them that treaties and international agreements concluded after the entry into force of the Charter on October 24, 1945, would be received and filed on a provisional basis until the adoption of detailed regulations prescribing the procedure to be followed. He also invited Members to transmit to the Secre-

[1] See Hudson, Manley O., "The Registration and Publication of Treaties," *American Journal of International Law*, XIX, p. 273.

[2] See UN, *Treaty Series*, I, 1946–47, and succeeding volumes.

[3] League of Nations, *Treaty Series*, 204 vols.

[4] *Report by the Executive Committee . . .*, Doc. PC/EX/113/Rev. 1, p. 68.

tariat for filing and publication treaties and international agreements not included in the League *Treaty Series* and entered into recently, before the entrance into force of the Charter.

During the first part of its first session, the General Assembly, following the recommendations of the Preparatory Commission,[5] adopted a resolution [6] instructing the Secretary-General:

1. To submit to the General Assembly proposals for detailed regulations and other measures designed to give effect to the provisions of Article 102 of the Charter;

2. To invite the Governments of Members of the United Nations to transmit to the Secretary-General for filing and publication, treaties and international agreements entered into in recent years, but before the date of entry into force of the Charter, which had not been included in the League of Nations treaty series, and to transmit for registration and publication treaties and international agreements entered into after the date of the entry into force of the Charter;

3. To receive, from the Governments of non-member States,[7] treaties and international agreements entered into both before and after the date of entry into force of the Charter, which have not been included in the League of Nations treaty series and which they may voluntarily transmit for filing and publication. . . .[8]

The Secretary-General prepared draft regulations on the registration and publication of treaties which were submitted to the second part of the first session of the General Assembly.[9] On the basis of this draft the General Assembly adopted regulations for the registration and publication of treaties and international agreements [10] which contained the following provisions:

Article 1. 1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.

2. Registration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto.[11]

[5] *Report of the Preparatory Commission* . . ., Doc. PC/20, p. 59.

[6] UN, General Assembly, *Official Records of the First Part of the First Session* . . ., *Plenary Meetings* . . ., p. 377.

[7] The resolution excepted states such as Spain whose government had been established with the support of the Axis powers.

[8] *Ibid.*, p. 593.

[9] UN, Doc. A/138.

[10] UN, General Assembly, *Official Records of the Second Part of the First Session* . . ., *Plenary Meetings* . . ., p. 1389 and *Treaty Series*, I, p. xx–xxxi.

[11] The Sixth Committee of the General Assembly stated in its report to the General Assembly that "a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto," UN, Doc. A/266, p. 3.

3. Such registration may be effected by any party [12] or in accordance with article 4 of these regulations.

4. The Secretariat shall record the treaties and international agreements so registered in a Register established for that purpose.

Article 2. 1. When a treaty or international agreement has been registered with the Secretariat, a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat.

. . . . . .

Article 4. 1. Every treaty or international agreement subject to article 1 . . . shall be registered *ex officio* by the United Nations in the following cases:

(a) Where the United Nations is a party to the treaty or agreement;

(b) Where the United Nations has been authorized by the treaty or agreement to effect registration.

. . . . . .

Article 10. The Secretariat shall file and record treaties and international agreements, other than those subject to registration under article 1 of these regulations, if they fall in the following categories:

(a) Treaties or international agreements entered into by the United Nations or by one or more of the specialized agencies;

(b) Treaties or international agreements transmitted by a Member of the United Nations which were entered into before the coming into force of the Charter, but which were not included in the treaty series of the League of Nations;

(c) Treaties or international agreements transmitted by a party not a member of the United Nations which were entered into before or after the coming into force of the Charter which were not included in the treaty series of the League of Nations. . . .[13]

. . . . . .

Article 12. 1. The Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered, or filed and recorded, in the original language or languages, followed by a translation in English and in French. The certified statements referred to in article 2 of these regulations shall be published in the same manner.

. . . . . .

Article 13. The Secretariat shall publish every month a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month, giving the dates and numbers of registration and recording.[14]

. . . . . .

[12] Registration by one party relieves the other party of obligation to register (Article 3).

[13] Exception made of Spain by reference to General Assembly Resolution of February 10, 1946.

[14] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 190–3.

In recommending these regulations to the General Assembly, the Sixth Committee (Legal Committee) was influenced by the following considerations: [15]

1. The importance of the orderly registration (or filing) and publication of treaties and international agreements and of the maintenance of precise records.

2. The desirability of clearly drawing a distinction between registration (applicable only to treaties and international agreements subject to Article 102) and filing (applicable to other treaties and international agreements covered by the regulations).

3. The undesirability of attempting at this time to define in detail the kinds of treaties or international agreements requiring registration under the Charter, it being recognized that experience and practice would aid in giving definition to the terms of the Charter.

The Secretary-General, in a report to the second session of the General Assembly,[16] stated that up to August 12, 1947, the Secretariat had received 344 treaties or international agreements, of which 100 had been registered and 45 filed and recorded. 199 treaties or international agreements, including 151 transmitted prior to the adoption of the regulations, were said to be in abeyance pending adjustment with the governments concerned of the conditions stipulated in the regulations for registration or filing and recording.

The Secretary-General also reported that the exact meaning of the term "treaties and international agreements" had been the subject of considerable discussion. In this connection, the Secretariat thought it necessary to conform to the interpretation of the term "agreement" given in the report of Committee IV/2 at the San Francisco Conference – that the term includes unilateral engagements of an international character which have been accepted by a state in whose favor such an engagement has been entered into.[17] Thus, the Secretariat has registered *ex officio* instruments of accession transmitted by new Members of the United Nations and declarations made by the states parties to the Statute of the International Court of Justice accepting the compulsory jurisdiction of the International Court of Justice.

In regard to the technique of registration the Secretary-General expressed the view that it would be desirable that a multilateral agreement be presented for registration by the government or the authority having the custody of the original document.

[15] UN, Doc. A/266.
[16] UN, Doc. A/380.
[17] UNCIO, *Report of the Rapporteur of Committee IV/2*, Doc. 933, IV/2/42 (2) (*Documents*, XIII, p. 705). See also, UN, *Treaty Series*, I, p. xvi.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 18 of the League Covenant stated broadly that no treaty was binding until it had been registered. This Article was never applied, but it created certain theoretical difficulties. The second paragraph of Article 102 of the Charter is more modest. It states only that an unregistered treaty may not be invoked before an organ of the United Nations.

Interpreted strictly, this paragraph does not exclude the possibility that an unregistered treaty or agreement to which a Member is a party may have considerable effect in any situation where it is not actually invoked by one of the parties. It would, for example, appear to be possible for the Security Council in the performance of its functions to take account of such a treaty or agreement on its own initiative. Furthermore, the use of the term "before any organ of the United Nations" suggests the possibility that such a treaty or agreement can actually be invoked by one of the parties before a special arbitral tribunal set up under the terms of Articles 33 or 52 of the Charter. This, of course, depends on the interpretation that is given to the words in question. However, it is clear that the paragraph lays down a much more limited rule than did the corresponding text of the Covenant. It represents a more modest approach to the problem and states an attainable objective.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

This Article deals with the situation where the obligations of a Member under the Charter are in conflict with the obligations of that Member under another international agreement. This situation may conceivably exist (1) where there is conflict between the obligation of a Member under the Charter and the obligation of that same Member resulting from an agreement with another Member, contracted before the entrance into force of the Charter; (2) where there is conflict between the obligation of a Member under the Charter and the obligation of that same Member under an agreement with another Member contracted after the entrance into force of the Charter; and

(3) where there is conflict between the obligation of a Member under the Charter and the obligation of that same Member under an agreement contracted with a non-Member state, whether before or after the entrance into force of the Charter.

Under the terms of the Covenant of the League of Nations [18] the members agreed that the Covenant abrogated "all obligations or understandings *inter se*" which were inconsistent with its terms, and they undertook not to enter into any engagements in the future inconsistent with the terms thereof. This provision covered the first two situations referred to above where the parties concerned were members of the League. It did not, however, fully cover the situation where one party to the special agreement was not a member and was therefore not bound by the terms of the Covenant. To take care of this situation more particularly, the second paragraph of Article 20 provided that in case any member of the League, before becoming a member, contracted obligations inconsistent with the terms of the Covenant, it was the duty of that member "to take immediate steps to procure its release from such obligations."

The Dumbarton Oaks Proposals contained no provisions relative to this matter. The whole problem was carefully considered by the Committee on Legal Problems (Committee IV/2) at the United Nations Conference and agreement was reached on a text, which after some revision as to phraseology by the Coordinating Committee, was adopted by the Conference.

So far as the first situation referred to above is concerned, the Article applies the established principle of international law that a later agreement between the same parties supersedes an earlier agreement. Thus obligations under the Charter clearly supersede obligations which Members have contracted among themselves before the Charter's entrance into force.

The Article clearly covers the second situation by stating that obligations under the Charter shall prevail over obligations "under any other international agreement" without qualification as to time of contracting. This is recognition of the principle that the obligation of a multipartite agreement prevails over an obligation under an agreement between certain of the parties, even though later in time, since parties to a multipartite agreement cannot modify their obligations thereunder except with the consent of the other parties or by the procedure prescribed in the agreement itself.

The Article also applies in the third situation. While the Committee recognized that according to international law it is not ordinarily possible to provide in any convention for rules binding on third parties, it

[18] Article 20.

felt that it was of the highest importance to the Organization that the performance of Members' obligations under the Charter in specific cases should not be hindered by obligations assumed to non-Member states.[19] The Charter thus assumes the character of basic law of the international community. Non-Members, while they have not formally accepted it, are nevertheless expected to recognize this law as one of the facts of international life and to adjust themselves to it.

It is to be noted that this Article does not provide for the automatic abrogation of obligations inconsistent with the terms of the Charter. The rule is put in such form as to be operative only when there is an actual conflict. The nature of the conflict has not been defined but "it would be enough that a conflict should arise from the carrying out of an obligation of the Charter. It is immaterial whether the conflict arises because of intrinsic inconsistency between the two categories of obligations or as the result of the application of the provisions of the Charter under given circumstances." [20]

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

The question of the legal capacity of international organizations is one that has long concerned students and practitioners of international law.[21] It is obvious that an international organization may be seriously hampered in the performance of its functions by not being able to enter into contracts, hold property, institute legal proceedings in national courts and perform other acts having legal validity in the territory of its members. The League Covenant contained no explicit provisions on the matter. By the terms of the *modus vivendi* between the League of Nations and the Swiss Federal Council of September 18, 1926, the Swiss Federal Government recognized the League of Nations as possessing "international personality and legal capacity." [22]

Article 104 obligates each Member of the United Nations to accord the Organization within its territory "such legal capacity as may be

[19] UNCIO, *Report of the Rapporteur of Committee IV/2*, Doc. 933, IV/2/42 (2) (*Documents*, XIII, p. 703).

[20] *Ibid.*

[21] See Kunz, J. L., "Privileges and Immunities of International Organizations," *American Journal of International Law*, XLI, p. 828–62.

[22] League of Nations, Doc. C.555.1926.V, printed in *Official Journal*, VII, p. 1422. See also, terms of 1921 *modus vivendi*, reproduced in Hill, Martin, *Immunities and Privileges of International Officials*, Washington, 1947, Annex I.

necessary for the exercise of its functions and the fulfillment of its purposes." The standard is similar to that adopted in Article 105 to determine the extent of privileges and immunities to be enjoyed by the Organization, its officials and representatives of Members. The Article clearly envisages further implementation by national legislation or administrative action, or by further international agreement, or both. Much of this has already been achieved.

The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on February 13, 1946[23] on the basis of recommendations made by the Preparatory Commission, further defines the meaning and intent of Article 104 by providing as follows:

> The United Nations shall possess juridical personality. It shall have the capacity:
> (a) to contract;
> (b) to acquire and dispose of immovable and movable property;
> (c) to institute legal proceedings.[24]

It also empowers the United Nations to "hold funds, gold or currency of any kind and operate accounts in any currency" and "to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency." This Convention, however, binds only Members who accede to it. By the International Organizations Immunities Act, signed by the President, December 29, 1945, the United States recognized international organizations, coming within the terms of the Act and to the extent consistent with the instrument creating them, as possessing the capacity "(i) to contract; (ii) to acquire and dispose of real and personal property; (iii) to institute legal proceedings."[25] By the Interim Arrangement on Privileges and Immunities of the United Nations between the United Nations and the Swiss Federal Council, signed on June 11 and July 1, 1946, the Swiss Federal Government "recognizes the international personality and legal capacity of the United Nations."[26]

The basic instruments of the specialized agencies contain provisions regarding the legal capacity of these organizations which vary considerably as to phraseology but are similar in meaning. The Constitution

[23] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . .* , Doc. A/64, p 25–7 See also, *infra*, p. 652.

[24] Article I.

[25] United States, *Statutes-at-Large*, Vol. 59, Part I, p. 669. For comment on Act, see Preuss, Lawrence, "The International Organizations Immunities Act," *American Journal of International Law*, XL, p. 332–45.

[26] UN, *Treaty Series*, I, p 164

of the ILO, and the Articles of Agreement establishing the Bank and the Fund contain provisions identical with those of the Convention on the Privileges and Immunities of the United Nations.[27] The basic instruments of the other specialized agencies contain provisions of a more general order, identical with or similar to those of Article 104 of the Charter.[28]

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

This paragraph refers to the Organization considered as a distinct entity, including all the organs established under the Charter and all the bodies and organs which may subsequently be established by virtue of the powers conferred by the Charter.[29] Not included are the specialized agencies, whose privileges and immunities are determined by the agreements constituting them. The Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on November 21, 1947, is directed toward the achievement of greater coordination of the privileges and immunities of the specialized agencies and of the United Nations.[30]

Article 7, paragraph 5 of the League Covenant provided that "the buildings and other property occupied by the League or its officials or by representatives attending its meetings shall be inviolable." Detailed arrangements concerning the privileges and immunities of the League were worked out in agreements concluded between the Secretary-General and the Swiss Government.[31] The 1926 *modus vivendi* granted the League immunity from suit before Swiss courts except with its express consent, recognized the inviolability of the archives of the League and the premises in which the services of the League

[27] Article 39 of the Constitution of the ILO, Article IX of the Articles of Agreement establishing the Fund; and Article VII of the Articles of Agreement establishing the Bank.

[28] See Article XV of the Constitution of FAO; Article XII of the Constitution of UNESCO; Article 47 of the Convention establishing ICAO; Chapter XV of the Constitution of WHO, and Article 13 of the Constitution of IRO.

[29] UNCIO, *Report of the Rapporteur of Committee IV/2*, Doc. 933, IV/2/42 (2) (*Documents*, XIII, p. 703).

[30] UN, General Assembly, *Official Records of the Second Session . . .*, *Resolutions . . .*, Doc. A/519, p. 112. See also, UN, General Assembly, *Coordination of the Privileges and Immunities of the United Nations and of the Specialized Agencies: Report of the Sixth Committee*, Doc. A/503.

[31] *Modus vivendi* of 1921, reproduced in Hill, *op. cit.*, Annex I and *modus vivendi* of 1926, League of Nations, Doc. C.555.1926.V, printed in *Official Journal*, VII, p. 1422.

were installed, and granted exemption from customs to League property and complete fiscal exemption to bank assets and securities.[32]

The Preparatory Commission in its Report, after instructing its Executive Secretary to call the attention of Members of the United Nations to the fact that the provisions of paragraphs 1 and 2 of Article 105 became operative as soon as the Charter entered into force, recommended that the General Assembly, at its first session, make recommendations with a view to determining the details of application of these paragraphs.[33] It submitted a study and Draft Convention for consideration.[34] On February 13, 1946, the General Assembly adopted a Convention on the Privileges and Immunities of the United Nations [34a] which contained provisions for the implementation of paragraph 1. By Article II of this Convention, the United Nations, its property and assets "shall enjoy immunity from every form of legal process" except where there is express waiver, and the premises and archives of the United Nations are declared inviolable. The United Nations may hold funds, gold or currency of any kind, operate accounts in any currency and transfer funds to other countries free of national restriction. The assets, income and other property of the United Nations are exempt from direct taxes and customs duties and regulations. By the terms of Article III the communications and correspondence of the United Nations are exempted from censorship, and are in general accorded the privileges and immunities of diplomatic communications.

The location of the temporary and permanent headquarters of the United Nations in the United States makes the action of the United States under this paragraph particularly important. By the International Organizations Immunities Act, signed by the President on December 29, 1945, the United States accords to the United Nations in substance the privileges and immunities for which the General Convention provides. The Headquarters Agreement, signed by the Secretary of State of the United States and the Secretary-General of the United Nations on June 26, 1947 and approved by the General Assembly on October 31 [35] further implements this paragraph. The provisions of this Agreement are declared to be "complementary to the provisions of the General Convention." [36] The headquarters district

[32] Articles I–VI.

[33] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 60.

[34] *Ibid.*, p. 61–74.

[34a] Cited *supra*, note 23, p. 520.

[35] UN, Doc. A/427, p. 9–18 and General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 91–102.

[36] Section 26. At the time the Headquarters Agreement entered into force the United States had not acceded to the General Convention.

is declared to "be under the control and authority of the United Nations as provided in this agreement." [37] The United Nations has the power "to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions." [38] The district is declared to be "inviolable" and federal, state or local officers of the United States may not enter "to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General." [39] However, except as otherwise provided, "the federal, state and local law of the United States shall apply" within the district, and federal, state and local courts "shall have jurisdiction over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws." [40] The Agreement provides for adequate communications facilities for the United Nations [41] and assures to representatives of Members, officials of the United Nations and specialized agencies, experts on missions for the United Nations and the specialized agencies, representatives of the press, radio or other informational agencies accredited by the United Nations, representatives of non-governmental organizations under Article 71 of the Charter, and other persons invited to the headquarters district on official business, freedom from any impediment to transit to or from the headquarters district by federal, state or local authorities of the United States.[42] The Agreement also provides that "the appropriate American authorities" will provide police protection and supply public services, to the extent requested by the Secretary-General.[43]

The Interim Arrangement concluded between the Secretary-General of the United Nations and the Swiss Federal Council and effective July 1, 1946, made necessary by the succession of the United Nations to the assets of the League of Nations, contains provisions with respect to the privileges and immunities of the United Nations which are very similar to those contained in the General Convention.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Article 7, paragraph 4 of the League Covenant provided that "representatives of the Members of the League and officials of the League when engaged in the business of the League shall enjoy diplomatic privileges and immunities". The Covenant thus expressly accepted an

[37] Section 7 (a).
[38] Section 8.
[39] Section 9 (a).
[40] Section 7 (b) and (c).
[41] Section 4.
[42] Section 11.
[43] Sections 16 and 17.

established international law standard. There is a large measure of agreement on the nature and extent of these privileges and immunities, the result of international agreements and developing international practice.[44] Article 19 of the Statute of the Permanent Court of International Justice made similar provision for the judges. Further definition of these privileges and immunities, so far as the countries where the headquarters of the League and the seat of the Court were located, was contained in the *modi vivendi* of 1921 and 1926 between the Swiss Federal Council and the League of Nations and the 1928 Agreement between the Court and the Netherlands Government.[45] The immunities granted to League and ILO officials were subject to waiver by the Secretary-General or the Director of the International Labor Office and this waiver was exercised freely. The Staff Regulations of the League Secretariat provided that "the diplomatic privileges and immunities attaching to officials of the League of Nations . . . are conferred upon them in the interest of their duties." [46]

The Charter rule is different from that of Article 7, paragraph 4 of the Covenant, though it corresponds closely to the practice of the League. It accepts the functional principle, relating the enjoyment of privileges and immunities by representatives of Members and officials of the Organization to what is "necessary for the independent exercise of their functions in connection with the Organization." The Preparatory Commission in its Report recommended that full diplomatic immunity should be confined "to the cases where it is really justified" and that the principle be adopted that privileges and immunities are only given to officials "in the interest of the Organization in whose service they are, and in no way for the benefit of the individual concerned." [47] The Preparatory Commission also expressed the view that the privileges and immunities of the United Nations and its officials might be regarded as a maximum within which the various specialized agencies and their officials might enjoy such as the proper fulfillment of their functions might require.[48]

The Convention on the Privileges and Immunities of the United Nations gives a detailed enumeration of the privileges and immunities

[44] See Harvard Research in International Law, "Diplomatic Privileges and Immunities," *American Journal of International Law*, XXIX, Doc. Suppl., p. 89 *et seq.* and Satow, Sir E., *A Guide to Diplomatic Practice*, London, 1922, 2d and rev. ed., I, p 249 *et seq.* On subject of privileges and immunities of international organizations and personnel, see Kunz, *op. cit.*

[45] For analysis of League experience, see Hill, *op. cit.* and Ranshofen-Wertheimer, Egon F., *The International Secretariat: A Great Experiment in International Administration*, Washington, 1945, p. 265–73.

[46] Quoted by Hill, *op. cit.*, p. 24.

[47] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 62.

[48] *Ibid.*

to be enjoyed under this paragraph. According to Article IV, representatives [49] of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, while exercising their functions and while going to and from the place of meeting, enjoy the following privileges and immunities:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) inviolability for all papers and documents;

(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(g) such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.[50]

It is stated that these privileges and immunities are accorded not for the personal benefit of the individuals themselves but to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member of the United Nations is under an obligation to waive immunity for a representative where the immunity would impede the course of justice and the waiver would not prejudice the purposes for which the immunity is granted.

The provisions of the Convention with respect to officials of the United Nations follow a somewhat different pattern. In the first place, the Secretary-General is made responsible for specifying the categories of officials who are to enjoy the privileges and immunities enumerated in Articles V and VII of the Convention. He is furthermore made responsible for waiving the immunity of any official, it being made clear

[49] The term "representatives" includes all "delegates, deputy delegates, advisers, technical experts and secretaries of delegations." UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .*, Doc. A/64, p. 26.

[50] *Ibid.*, p. 25.

that such waiver should be made where the course of justice would otherwise be impeded and the interests of the United Nations are not prejudiced. In the second place, the Secretary-General and the Assistant Secretaries-General, together with their wives and children, enjoy, in addition to the privileges and immunities listed in Section 18, "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law." Finally, with respect to "officials of the United Nations," as listed by the Secretary-General, the Convention provides that they shall:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
(c) be immune from national service obligations;
(d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the government concerned;
(f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question." [51]

Article VII of the Convention authorizes the United Nations to issue *laissez-passer* to its officials, to be accepted as valid travel documents by Members. Experts on missions for the United Nations are given privileges and immunities similar to, though somewhat more limited than, those accorded to representatives of Members under Article IV.

The privileges and immunities granted by the United States to officials of international organizations and the representatives of Members engaged in the activities of these organizations by the International Organizations Immunities Act of December 29, 1945 were less extensive than those subsequently included in the General Convention.[52] The ratification of the General Convention by the United States was delayed by Senate reservations. These provided that officials of the United Nations who were nationals of the United States should not be

[51] *Ibid.*, p. 26.
[52] For analysis and criticism of Act, see Preuss, *op. cit.* On application of Act, see Preuss, Lawrence, "Immunity of Officers and Employees of the United Nations for Official Acts: The Ranallo Case," *American Journal of International Law*, XLI, p. 555–78.

exempt from taxation on United Nations salaries and emoluments,[53] and that United Nations officials should be in possession of national passports and subject to visa requirements.[54]

The Headquarters Agreement between the United Nations and the United States signed June 26, 1947 and approved by the General Assembly October 31, provided that its provisions were "complementary" to the provisions of the General Convention.[55] It therefore assumed the provisions of the General Convention to be operative which as a matter of fact was not the case because of the delay caused by Senate reservations. In addition to the terms of the General Convention incorporated by reference,[56] the Agreement provides that resident representatives of Members of the United Nations and resident members [57] of their staffs, and resident representatives of members of the specialized agencies and resident members of their staffs, "whether residing inside or outside the headquarters district," are entitled within the territory of the United States to "the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it." [58]

The Interim Arrangements concluded between the Secretary-General and the Swiss Federal Council on July 1, 1946 incorporated the provisions of the General Convention on Privileges and Immunities.[59]

Though the International Court of Justice is a principal organ of the United Nations, Article 19 of the Statute makes special provision regarding the privileges and immunities of its members. When engaged in the business of the Court, they enjoy "diplomatic privileges and immunities." Article 42 of the Statute accords to agents, counsel and advocates of parties before the Court the privileges and immunities necessary to the independent exercise of their duties. The Exchange of Notes of June 26, 1946, between the President of the Court and the Netherlands Minister of Foreign Affairs reaffirms these provisions, and in addition specifies that the Registrar and Deputy-Registrar,

[53] Insistence of the United States on this position has caused the United Nations considerable inconvenience in connection with the provision of equitable salary schedules for its officials of American nationality The General Assembly on November 20, 1947, adopted a resolution authorizing the Secretary-General to reimburse staff members for national income taxes paid on salaries and allowances during 1946, 1947 and 1948. For report of Administrative and Budgetary Committee, see UN, Doc. A/487.

[54] Senate Report No. 559, 80th Cong, 1st sess.

[55] UN, Doc. A/427, Section 26.

[56] As of the time the United States accedes.

[57] In each case to be designated by agreement.

[58] *Ibid.*, Section 15 (4). In the case of Members whose governments are not recognized by the United States the privileges and immunities are more narrowly defined.

[59] UN, *Treaty Series*, I, p 168.

when acting for the Registrar, shall be accorded these privileges and immunities and that other officials of the Court shall be accorded privileges and immunities appropriate to officials of comparable rank attached to diplomatic missions at the Hague.[60] The General Assembly, by its resolution of December 11, 1946, approved this agreement and made recommendations to members with respect to the privileges and immunities to be enjoyed by the members and officials of the Court, and agents, counsel and advocates appearing before it.[61]

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

The Preparatory Commission made a detailed study of the application of paragraphs 1 and 2, which, together with recommendations, was submitted to the General Assembly.[62] Acting on the basis of these recommendations, the General Assembly, during the first part of its first session in London, took certain important decisions. It approved a Convention on the Privileges and Immunities of the United Nations and proposed it for accession by the Members of the United Nations.[63] It approved a draft headquarters agreement for use by the Secretary-General and the special negotiating committee as a basis for discussion in negotiations with the United States.[64] It postponed consideration of the privileges and immunities of the Court until after receipt of the recommendations of the Court.[65] Finally, considering the advantages of the greatest possible unification of the privileges and immunities of the United Nations and the specialized agencies, it instructed the Secretary-General to open negotiations with a view to the reconsideration of the privileges and immunities of the specialized agencies in the light of the provisions of the General Convention.[66]

Following the decision of the General Assembly on December 14, 1946, to establish the permanent headquarters of the United Nations in New York City, it was possible to proceed immediately to the negotiation of a headquarters agreement. The selection of a site in a metro-

[60] I.C.J., *Yearbook, 1946–47*, p. 88–91.

[61] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .* , Doc. A/64/Add.1, p. 176–82.

[62] *Report of the Preparatory Commission . . .*, Doc. PC/20, p. 60–80.

[63] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .* , Doc. A/64, p. 25–7 and *Treaty Series*, I, p. 15–33.

[64] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .* , Doc. A/64, p. 27–33.

[65] *Ibid.*, p. 33.

[66] *Ibid.*

politan area rather than a site in a relatively sparsely populated area necessitated certain modifications in the original draft, apart from those on which the Government of the United States insisted. A final Headquarters Agreement was signed on June 26, 1947 by the Secretary-General of the United Nations and the Secretary of State of the United States.[67] The Agreement was approved by the General Assembly on October 31, 1947. The fact that the United States had not at the time acceded to the General Convention on Privileges and Immunities, raised certain difficulties in connection with the proper safeguarding of the position of the United Nations which were not however regarded as too serious and as requiring delay in the activization of the Headquarters Agreement.[68]

As regards the privileges and immunities of members and officials of the International Court of Justice and agents, counsel and advocates appearing before it, the General Assembly approved the Agreement of June 26, 1946 between the Court and the Netherlands Government. It also recommended, in line with the conclusions which the Court had forwarded to it,[69] that Members accord to the members and officials of the Court and agents, counsel and advocates appearing before it privileges and immunities similar to those provided for in the Agreement.[70]

Though the question of the coordination of the privileges and immunities of the United Nations and the specialized agencies is closely related to the subject matter of Article 105 and has been considered in that connection, the General Assembly's power to make recommendations on this subject derives from Articles 58 and 60 of the Charter. The matter is considered in the comment on Article 58.[71]

[67] Agreement between the United Nations and the United States of America Regarding the Headquarters of the United Nations. For text, see UN, General Assembly, *Report of the Sixth Committee*, Doc. A/427, p. 9–15 and *International Organization*, II (1948), p. 164–72.

[68] See UN, General Assembly, *Report of the Sixth Committee*, Doc. A/427, p. 6–7.

[69] UN, Doc. A/105.

[70] UN, General Assembly, *Resolutions Adopted . . . During the Second Part of its First Session . . .*, Doc. A/64/Add.1, p. 176–82.

[71] See *supra*, p. 356.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

This Article must be considered along with Article 107 which is intimately linked with it. It provides the basis for the necessary action to maintain international peace and security during the period when the Security Council is incapable of assuming its full responsibilities.

Length of Transitional Period. The powers and duties of the Security Council with respect to enforcement action to maintain peace and security are laid down in Chapter VII and specifically in Articles 39, 41 and 42. The taking of action under Article 42 depends upon the existence of special agreements concluded under the terms of Article 43. A considerable period of time was bound to elapse between the entrance into force of the Charter and the entrance into force of the special agreement or agreements provided for in Article 43. While the United Nations would be in existence, the Security Council, primarily responsible for the maintenance of peace and security, would not have the means at its disposal for performing its function to maintain international peace and security. Article 106 makes provision for the maintenance of peace and security during this period. The special responsibilities placed upon the signatories of the Moscow Declaration and France are operative until such time as the Security Council deems that enough agreements under Article 43 have come into force to "enable it to begin the exercise of its responsibilities under Article 42". The decision of the Security Council as to whether it is able to begin the exercise of its responsibilities under Article 42 will be a decision of substance that must be taken under

the provisions of the third paragraph of Article 27, and will consequently require unanimity of the permanent members.

The Charter specifies that the Security Council shall make the decision as to when the transitional period is to end. The original proposal of the Sponsoring Governments was that the transitional arrangement should remain in operation "pending the coming into force of the special agreement or agreements referred to in Chapter VIII, Section B, paragraph 5" of the Dumbarton Oaks Proposals. The question was raised in the course of the discussion of Committee III/3 at San Francisco whether this meant that all the special agreements would have to come into force.[1] Delegates of certain of the Sponsoring Governments explained that the intention of the framers was that the Council should be able to undertake its responsibilities and that all of the agreements need not be in force. It was finally decided, however, to clarify the meaning of the text by specifying that the Security Council shall decide when the situation is such that it can assume responsibility.

Responsibilities of "The Big Five". The Article states that during this transitional period the parties to the Moscow Declaration[2] and France shall, in accordance with the provisions of paragraph 5 of that Declaration, "consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security." Article 5 of the Declaration reads as follows:

> That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other Members of the United Nations with a view to joint action on behalf of the community of nations.

The phraseology of Article 106 follows very closely that of the Declaration.

In the course of the Committee discussions at San Francisco there was special interest expressed by many delegates as to the meaning of the words "joint action on behalf of the Organization." Would the Security Council during this transitional period be responsible for the pacific settlement of disputes or would that also be a responsibility of the signatories of the Moscow Declaration and France? What would be the role of the Security Council during this period?

[1] UNCIO, *Summary Report of Sixteenth Meeting of Committee III/3, May 30, 1945*, Doc. 704, III/3/36, p. 3 (*Documents*, XII, p. 402).

[2] For text, see *infra*, p 571. The parties were the United States, the United Kingdom, the Soviet Union and China.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

This Article must be considered along with Article 107 which is intimately linked with it. It provides the basis for the necessary action to maintain international peace and security during the period when the Security Council is incapable of assuming its full responsibilities.

Length of Transitional Period. The powers and duties of the Security Council with respect to enforcement action to maintain peace and security are laid down in Chapter VII and specifically in Articles 39, 41 and 42. The taking of action under Article 42 depends upon the existence of special agreements concluded under the terms of Article 43. A considerable period of time was bound to elapse between the entrance into force of the Charter and the entrance into force of the special agreement or agreements provided for in Article 43. While the United Nations would be in existence, the Security Council, primarily responsible for the maintenance of peace and security, would not have the means at its disposal for performing its function to maintain international peace and security. Article 106 makes provision for the maintenance of peace and security during this period. The special responsibilities placed upon the signatories of the Moscow Declaration and France are operative until such time as the Security Council deems that enough agreements under Article 43 have come into force to "enable it to begin the exercise of its responsibilities under Article 42". The decision of the Security Council as to whether it is able to begin the exercise of its responsibilities under Article 42 will be a decision of substance that must be taken under

not be considered as applying. These provisions refer definitely to formal Council decisions.

Application. Article 106 has not fulfilled in practice the function it was intended to perform. This has not been due to quicker action than was anticipated in the concluding of special agreements under Article 43. Failure to make any important progress in the conclusion of these agreements has left the void anticipated by the Charter, but the inability of the permanent members of the Security Council to cooperate has rendered ineffective the provisions of Article 106 for filling that gap. In fact the basic cause of the weakness of the Security Council has been the inability of its permanent members to agree, not the absence of firm commitments on the part of Members to provide forces and facilities under the terms of the special agreement or agreements envisaged in Article 43.

In the Greek case where joint action under Article 106 might have been justified the possibility of such action was ruled out by the fact that certain of the permanent members of the Security Council held each other responsible for the situation that existed. In the Palestine case,[7] the Security Council voted to refer to the five permanent members for recommendation the question of action to be taken to implement the General Assembly recommendations. One of the permanent members refused to participate in the discussions except to give information and mutual suspicion prevented any agreement on action to implement the recommendation or to keep the peace other than an appeal against further resort to violence. Even more than the Security Council, the signatories of the Moscow Declaration and France have been rendered impotent as an instrumentality for the maintenance of international peace and security during the transitional period by mutual suspicion and disagreement.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

General Scope. The purpose and effect of this Article is to leave to those governments primarily responsible for the defeat of any enemy state the determination of the terms of peace and in general the taking of necessary control measures. This does not preclude the pos-

[7] See *supra*, p. 63.

sibility of placing on the Organization responsibilities of this kind, if the states at war with and responsible for the military defeat of the enemy state so agree. The San Francisco Conference, however, adopted the Article with full realization that the action here referred to would probably be taken, at least for an initial period of uncertain length, by the governments chiefly responsible for the military defeat of the enemy and without any limitation being placed upon them in respect to such action by the terms of the Charter. It is quite clear that other Members are not bound in any way to support measures taken under this Article as the measures here in question are not being taken "on behalf of the Organization" as is the case under Article 106.

Discussion at San Francisco. This Article, like the preceding one, was extensively discussed in Committee III/3 of the Conference. The phraseology of the text proposed by the Sponsoring Governments was criticized on the ground that its meaning was not clear. It read as follows:

> No provision of the Charter should preclude action taken or authorized in relation to enemy states as a result of the present war by the Governments having responsibility for such action.[8]

While those who objected to this text were not able to get the Delegates of the Sponsoring Governments to agree to a new text giving complete satisfaction to them, they did obtain interpretations which were included in the report of the Committee. These interpretations, given by the Delegate of the United Kingdom, were as follows:

1. *Enemy States* are those which, on the day of the signature of the Charter, are still at war with any one of the United Nations.
2. *The present war* is to be understood as a series of wars which began on or before September 3, 1939 and which are still in progress.
3. *"Action taken or authorized."* It would be impossible to limit this action, as proposed by the Australian Delegate, to that decided upon in an armistice, a peace treaty, or a joint declaration like the Declaration of Moscow, because responsibility, as envisaged in paragraph 2, could fall upon a State which is party to none of these acts.

As to the exact meaning of the expression "action taken or authorized," the Delegate of the United Kingdom declared that, in his opinion, the distinction is made between "positive" and "negative" action; that is to say, between action with respect to enemy States by the governments responsible for this action, and the action which the responsible governments had authorized other governments to take.[9]

[8] Chapter XII, paragraph 2, of the Dumbarton Oaks Proposals. See *infra*, p. 582.
[9] UNCIO, *Report of Committee 3 to Commission III on Chapter XII*, Doc. 1095, III/3/50, p 4 (*Documents*, XII, p. 560).

The Committee report states that "after these explanations" the text of paragraph 2 was adopted.[10] Subsequently the text was revised by the Coordination Committee in the interest of greater clarity and in conformity with this interpretation.

The phraseology of the Article leaves many questions open. Who are "the governments having responsibility for such action"? Does the phrase include all Members of the United Nations at war with a particular enemy state? How long does this freedom in dealing with the enemy state last? Will it end at the latest with the admission of the enemy state as a Member of the United Nations? Certainly it would seem that the answer to this question must be in the affirmative.

Application. The League of Nations set up as a part of the peace settlement at the end of World War I had no part in the initial making of the peace though it had important responsibilities in connection with the execution of the peace settlement. The United Nations, set up in advance and independently of the peace settlement to follow World War II, was not intended to assume responsibilities for the making of the peace nor was the Charter to "invalidate or preclude" any action which members of the war-time coalition might take in their relations with the enemy states. In other words, the making of the peace following World War II was to proceed as independently of the Charter as if it did not exist.

The first important decision with respect to the procedure of peace-making after World War II[11] was taken at the Berlin Conference of July 17–August 2, 1945, where it was agreed to establish the Council of Foreign Ministers "to draw up, with a view to their submission to the United Nations, treaties of peace with Italy, Rumania, Bulgaria, Hungary and Finland and to propose settlements of territorial questions outstanding on the termination of the war in Europe."[12] For the discharge of these tasks, the Council was to be composed of those states which were signatories of the terms of surrender imposed upon the state concerned, except that for the purpose of the peace settlement with Italy, France was to be deemed a signatory. A state not represented on the Council was to be invited to participate in the discussion of any question in which it might have a direct interest. After the Council had become deadlocked in its initial meeting in London on the question of treaty-making procedure, the Foreign Ministers of the United States, the United Kingdom and the Soviet Union meeting in Moscow in December 1945, reaffirmed the Berlin decision, and

[10] *Ibid.*

[11] On general topic, see Mosely, Philip E., "Peace-Making, 1946," *International Organization*, I (1947), p. 22–32.

[12] For text of Report on the Tripartite Conference of Berlin, see Department of State, *Bulletin*, XIII, p. 153–61.

agreed in addition that, following the preparation of drafts by the Council of Foreign Ministers, the Council would convoke a conference for the purpose of considering the treaties of peace with Italy, Rumania, Bulgaria, Hungary and Finland. The conference was to consist of the five members of the Council and Members of the United Nations "which actively waged war with substantial military force against European enemy states." [13] It was, furthermore, agreed that "after the conclusion of the deliberations of the conference and upon consideration of its recommendations, the States signatory to the terms of armistice with Italy, Rumania, Bulgaria, Hungary and Finland – France being regarded as such for the purposes of the peace treaty with Italy – will draw up final texts of peace treaties." [14] It was also agreed that the treaties should enter into force immediately after ratification by the Allied States concerned in drafting the final texts.

This in general was the procedure followed in the making of the treaties of peace with the five enemy states listed above.[15] The treaties entered into force on September 15, 1947.[16] No agreement has thus far been reached on procedures for making the German and Japanese peace treaties. None of the enemy states in World War II have thus far been admitted to membership in the United Nations.[17]

In connection with the consideration of the Korean question by the General Assembly,[18] it was argued by the Soviet delegation that consideration was barred by Article 107 which was designed to leave to the victors in the war the determination of the terms of peace and the taking of necessary control measures to implement the peace. The position taken by the General Assembly was that Article 107 was permissive and did not bar General Assembly action.[19]

[13] *Ibid.*, p. 1027–8.
[14] *Ibid.*, p. 1028.
[15] For further details, see Mosely, *op. cit.*
[16] For texts, see Department of State, Pub. 2743, European Series 21.
[17] See comment on Article 4, *supra*, p. 128.
[18] See *supra*, p. 180.
[19] See UN, Doc. A/C.1/SR 87; Doc. A/C.1/SR 88; and Doc. A/P.V. 90.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and 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.

Normal Amendment Procedure. This Article provides that the normal procedure for amending the Charter shall consist of two steps, adoption of the proposed amendment by the General Assembly, and ratification by two thirds of the Members of the United Nations, including all the permanent members of the Security Council. The General Assembly may adopt such proposals without any recommendation being made by the Security Council. This rule did not create any great difficulty at the United Nations Conference although certain delegates spoke in favor of a three-fourths vote and others favored a simple majority.

It is to be noted that the vote required in the General Assembly is "two thirds of the members" as compared with "two-thirds majority of the members present and voting" required on "important questions" by the terms of Article 18. The difference in phraseology between Article 108 and Article 18 was probably intentional, and had as its purpose assurance that the proposed amendment would have sufficient support to make likely its ratification by two thirds of the Members.[1]

The rule that amendments thus adopted shall enter into force when ratified by two thirds of the Members, including the Members with permanent seats on the Security Council, is a change from the Dumbarton Oaks Proposals.[2] The Proposals stipulated that amendments, adopted by a two-thirds majority vote of the General Assembly, should enter into force when ratified by the states with permanent seats on the Security Council and by a majority of the other Members of the

[1] It must be admitted, however, that the records of the San Francisco Conference contain no indication of the reasons for this difference.

[2] Chapter XI, *infra*, p. 582.

United Nations. However, the requirement of "two thirds of the Members", including the permanent members of the Council, was finally adopted by the United Nations Conference as being more democratic and reducing somewhat the privileged position of the permanent members. It was also argued in support of the change that it would reduce the chance of a Member's being put in the position where it would have to accept an amendment it had opposed or withdraw from the United Nations.

Special Position of Permanent Members of Security Council. The proposal which created the greatest difficulty was that by which ratification by all the five permanent members of the Security Council would be necessary to the entrance into force of any amendment. Here the same arguments were repeated which had already been used in Committee III/1 of the United Nations Conference concerning the "veto right" or "priority of concord" of the "Great Powers".[3]

The arguments in Committee I/2 were even stronger at times, since certain states claimed that they had agreed to – or abstained from voting against – the stipulations of Article 27 in the belief that the privileged position of the permanent members of the Security Council would be of short duration. They claimed that the present Article perpetuated this position of inequality and they stated that because of this they must contemplate the possibility of withdrawal.[4] The practice of the United Nations has confirmed these fears as it has proven impossible to alter by amendment provisions giving special prerogatives to the permanent members which in the eyes of many Members of the United Nations have been proven unworkable.

Position of Non-Ratifying Members. The provision which requires the ratification of a proposed amendment by all the permanent members of the Council as a condition of its entering into force makes the process of amendment difficult. The provision that amendments shall enter into force when adopted by a two-thirds vote of the Assembly and ratified by two thirds of the Members, including the permanent members of the Security Council, may from the point of view of non-ratifying Members make the process too easy. This imposes rather serious obligations on Members who have not voted in favor of, and have refused to ratify, the amendment in question. The provision taken by itself actually means that all Members, except the five permanent members of the Security Council, endorse a blank check obligating themselves to accept in advance certain international commitments which their duly accredited representatives have voted against and which the constitutional authorities of the state after mature con-

[3] See comment on Article 27, *supra*, p. 215

[4] See comment on question of withdrawal, *supra*, p. 142

sideration have refused to ratify. The rule was the desire to make the United Nations a living ganism.

Other solutions short of the requirement of co. were possible. The League of Nations Covenant ticle 26 that amendments should enter into effect v ...d by the permanent members of the Council and by a majori..y of the Members of the League whose representatives composed the Assembly, provided, however, that a member which signified its dissent would not be bound, but would cease to be a member of the League. Article XX of the Constitution of the Food and Agriculture Organization of the United Nations provides:

1. Amendments to this Constitution involving new obligations for Member nations shall require the approval of the Conference by a vote concurred in by a two-thirds majority of all the members of the Conference and shall take effect on acceptance by two-thirds of the Member nations for each Member nation accepting the amendment and thereafter for each remaining Member nation on acceptance by it.

2. Other amendments shall take effect on adoption by the Conference by a vote concurred in by a two-thirds majority of all the members of the Conference.

The United Nations Conference adopted Article 108 in full awareness of these and other alternatives and after having discussed the matter very fully. There can be no doubt whatever that Members which vote against proposed amendments and refuse to ratify them are bound by them if they are ratified by two thirds of the Members, inclusive of the states with permanent membership on the Council. This explains why the question of amendment procedure was so intimately linked up with the question of withdrawal from the Organization in the deliberations at San Francisco.[5]

Article 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.

There are differences of opinion concerning the results of any international conference, as indeed concerning any human enterprise.

[5] See *supra*, p. 143.

United Nations Conference was no exception. Most delegates were of the opinion that the Conference was a success and that the Charter did not fall short of what might have been expected. Some delegates, however, were frankly disappointed. The feature that was found particularly objectionable to them was the special position accorded to certain so-called "Great Powers". Certain delegates even went so far as to say that they could not bring the Charter back to their countries with any hope of obtaining its ratification if it were not made quite clear that the Charter in its present form was a first step and that revision with a view to eliminating its most objectionable features and in general strengthening it would be undertaken within a reasonable time. For this reason it was decided to set up machinery for a complete revision of the Charter at a future date. Such conferences are known in the constitutional life of certain states. Such a special conference would give the opportunity to review the whole Charter in the light of the experience gained in the intervening period.

There was no great opposition to the idea as such. A proposal of the Sponsoring Governments to implement this idea was given general support in principle, but certain questions of detail evoked the most lively discussion. These questions will be treated under the second and third paragraphs of this Article.

The date and place of the General Conference are to be fixed by agreement of the General Assembly and the Security Council. The Assembly must take its decision by vote of two thirds of its members. The Sponsoring Governments had proposed a three-fourths vote but acceded to the demand of some of the smaller states for a smaller majority. It is to be noted that the requirement is different from that of Article 18(2), which speaks of "a two-thirds majority of the Members present and voting."[6] The Security Council takes its decision by a vote of any seven members, which means that the "Great Power" veto does not apply. This was also a concession to the smaller states. It is stated specifically that each Member of the United Nations shall have one vote in the General Conference. A proposal to hold such a conference was made by the Government of Cuba during the second part of the first session of the General Assembly[7] but was defeated in the First Committee.

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

[6] See comment on Article 108, *supra*, p. 537.
[7] UN, Doc. A/102 and Doc. A/C.1/58.

Members of the United Nations including all the permanent members of the Security Council.

Decisions of the General Conference recommending alterations of the Charter shall be taken by a two-thirds majority. However, such proposed changes do not take effect until they have been ratified by the requisite number of Members. The problem of ratification created the chief difficulty at San Francisco. The "Big Five" demanded that ratification by all the permanent members of the Security Council should be required. This was the logical consequence of the stand taken by them when the voting procedure of the Council was being considered. It is clear that the special power which they enjoy under the terms of Article 27 might be destroyed if it were possible for amendments to enter into force following ratification by a part of the total membership with no special requirement of ratification by each permanent member of the Council.

It was, consequently, decided that no alteration of the Charter recommended by a General Conference should enter into force without being ratified by all the permanent members of the Security Council. It was also decided that ratification by two thirds of the Members of the United Nations should be required, the permanent members included. The requirement thus corresponds to that for amendments under Article 108. This means in fact that the process of amending the Charter is substantially the same whether amendments are voted in a session of the General Assembly, according to Article 108, or in a General Conference, according to Article 109. Consequently, the General Conference procedure would seem to have greater psychological than substantive importance.

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.

It was quite clear to the Delegates at the United Nations Conference that the proposal for a General Conference submitted by the Sponsoring Governments did not give any real guarantee that the Charter would be amended if such a Conference were held. Moreover, it was not even certain that a Conference would meet. Several of the delegates thought that the Charter should contain additional guarantees. In particular they proposed that the Charter should con-

tain a provision that a Conference would be held by a certain time if no decision to hold one earlier had been taken. Public opinion could then be convinced that there was a real and practical chance that the Charter would be revised in the near future. Some delegates proposed that the General Conference should be held within five years of the entry into force of the Charter; others proposed seven; and still others proposed ten years.

On the other hand, certain of the delegates were very much against fixing a date. They claimed that it was impossible to know in advance when it would be wise to hold such a Conference. Only in the light of future events could it be decided when it was desirable to undertake revision of the Charter. An acceptable compromise was finally found in the text of this paragraph. In the first place, this introduces a time limit of a kind. It is not stated that a Conference will necessarily be called at the end of any period of time. The only thing that is definitely stated is that the question of calling a General Conference shall be put on the agenda of the tenth annual session of the General Assembly following the coming into force of the Charter. Strictly speaking this in itself gives little additional assurance since any Member can request that an item be placed on the provisional agenda and the General Assembly adopts its agenda by a majority vote.[8]

However, there is in this paragraph one concession which may have some importance. If a General Conference is not held before the tenth annual session of the General Assembly, the question of holding one is not only automatically placed on the agenda of the Assembly, but the Assembly may decide in favor of holding one by a majority vote of its members, as contrasted with a two-thirds vote required under paragraph 1. It is to be noted, however, that the majority vote required in the Assembly is not the same as that provided for in Article 18. This paragraph specifies "a majority vote of the members of the General Assembly" while Article 18(3), uses the words "a majority of the members present and voting."

The decision of the General Assembly to hold a General Conference, taken under this paragraph, must be concurred in by a decision of the Security Council, taken by the affirmative vote of any seven members. This of course means that no permanent member, by its sole opposition, can prevent a General Conference from being held. Nor can a permanent member block a Conference recommendation.

[8] See UN, Doc. A/520, Rules 12(e) and 14. This also was the practice of the League of Nations, it being stated in the Rules of Procedure of the Assembly that "all items proposed by a Member of the League" should be included in the agenda; League of Nations Document C.144.M.92. 1937, Rule 4, Section 2.

However, no revision of the Charter recommended by a General Conference can, under the terms of paragraph 2 of this Article, enter into force unless ratified by all the permanent members of the Security Council. As we have seen, there was strong opposition to this at the United Nations Conference on the part of the delegates of certain of the smaller states. These delegates proposed that it be left to the General Conference to decide the method of ratification of the amendments it might adopt. The representatives of the Sponsoring Governments and France, however, took the position that their governments could not enter upon the great responsibilities and obligations of membership which they were prepared to accept if forced to take the risk that these responsibilities might be increased without their consent.[9]

The question of the right of withdrawal from the Organization came under consideration in this connection, since certain delegates pointed to the need of reserving the right of withdrawal if the provisions regarding revision of the Charter did not prove to be effective in practice.[10]

[9] UNCIO, *Report of the Rapporteur of Committee I/2 on Chapter XI (Amendments)*, Doc. 1154, I/2/73(2), p. 8 (*Documents*, VII, p. 468).

[10] See comment, *supra*, p. 142.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

Ratification is the act by which the proper authority of the state sanctions an international agreement. The procedure is determined by the constitution of each state. The Charter expressly recognizes this fact. In the United States the ratification of all treaties is an executive act requiring approval by a two-thirds vote of the Senate. Other international agreements may be entered into by executive action alone, or by executive action coupled with Congressional authorization or approval by a majority vote of both Houses.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

A similar provision is customarily included in multipartite agreements.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

The Charter, together with the Statute of the International Court of Justice, came into force on October 24, 1945.[1] A Protocol of Deposit of Ratification was signed by the Secretary of State of the United

[1] Department of State, *Bulletin*, XIII, p. 679.

States on that day.[2] Facsimile copies of the Protocol were furnished by the Government of the United States to the other signatories of the Charter.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members[3] of the United Nations on the date of the deposit of their respective ratifications.

Deposit of ratifications by all the signatories was completed on December 27, 1945. The dates of ratifications and the dates of deposits of ratifications are given in the following table:

SIGNATORY	RATIFIED	RATIFICATION DEPOSITED
Argentina	Sept. 8, 1945	Sept. 24, 1945
Australia	Oct. 4	Nov. 1
Belgium	Dec. 19	Dec. 27
Bolivia	Oct. 17	Nov. 14
Brazil	Sept. 8	Sept. 21
Byelorussian S.S.R.	Aug. 30	Oct. 24
Canada	Nov. 1	Nov. 9
Chile	Sept. 18	Oct. 11
China	Aug. 24	Sept. 28
Colombia	Oct. 24	Nov. 5
Costa Rica	Aug. 9	Nov. 2
Cuba	Oct. 13	Oct. 15
Czechoslovakia	Sept. 19	Oct. 19
Denmark	Sept. 11	Oct. 9
Dominican Republic	Aug. 24	Sept. 4
Ecuador	Dec. 14	Dec. 21
Egypt	Oct. 13	Oct. 22
Ethiopia	Oct. 11	Nov. 13
France	Aug. 14	Aug. 31
Greece	Sept. 28	Oct. 25
Guatemala	Oct. 15	Nov. 21
Haiti	Aug. 17	Sept. 27
Honduras	Dec. 13	Dec. 17
India	Oct. 18	Oct. 30
Iran	Sept. 23	Oct. 16
Iraq	Nov. 1	Dec. 21
Lebanon	Sept. 4	Oct. 15
Liberia	Oct. 17	Nov. 2
Luxembourg	Sept. 11	Oct. 17

[2] *Ibid.*

[3] See Article 3 and comment, *supra*, p. 122.

SIGNATORY	RATIFIED	RATIFICATION DEPOSITED
Mexico	Oct. 17	Nov. 7
Netherlands	Nov. 16	Dec. 10
New Zealand	Aug. 7	Sept. 19
Nicaragua	July 6	Sept. 6
Norway	Nov. 16	Nov. 27
Panama	Oct. 27	Nov. 13
Paraguay	Sept. 28	Oct. 12
Peru	Oct. 15	Oct. 31
Philippines	Sept. 21	Oct. 11
Poland	Oct. 16 [4]	Oct. 24
El Salvador	July 12	Sept. 26
Saudi Arabia	Sept. 30	Oct. 18
Syria	Aug. 30	Oct. 19
Turkey	Aug. 24	Sept. 28
Ukrainian S.S.R.	Aug. 22	Oct. 24
Union of South Africa	Oct. 19	Nov. 7
Union of Soviet Socialist Republics	Aug. 20	Oct. 24
United Kingdom	Sept. 20	Oct. 20
United States	Aug. 8	Aug. 8
Uruguay	Dec. 15	Dec. 18
Venezuela	Nov. 2	Nov. 15
Yugoslavia	Aug. 24	Oct. 19

Article 111

The present Charter, of which the Chinese, French Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

The League of Nations Covenant was drawn up in two languages. The two texts were equally authentic. In practice, certain discrepancies were found to exist between them. The United Nations Charter was signed in five languages. This Article states that the five texts are equally authentic. This will create difficulties of interpretation if discrepancies appear between the different texts. It is reasonable to expect such discrepancies when we bear in mind the great pressure under which the work of translation was done in the closing days of the San Francisco Conference [5] as well as the inevitable difficulty of ex-

[4] Signed *Charter of the United Nations*, October 15, 1945.

[5] Kirk, Grayson and Lawrence Chamberlain, "The Organization of the San Francisco Conference," *Political Science Quarterly*, LX, p. 340.

pressing the same exact shades of meaning in different languages. It will then become necessary to make a choice between the possible interpretations.

The Permanent Court of International Justice, in the Mavrommatis Case,[6] took the view that where there is more than one language text, each possessing equal authority, and it is found that the different texts do not exactly correspond, the most restricted interpretation, that is to say, the one which can be made to harmonize with all the others, should be adopted.

This conclusion, however, would not seem entirely satisfactory in so far as the Charter is concerned. Though the five texts of the Charter are equally authentic, the languages in which the work of drafting was done were English and French. Accordingly, in the interpretation of the Charter, it would seem that more weight should be attached to the English and French texts and, in the event of any discrepancy between these two texts, the interpretation most likely to be correct would be that based on the language text which was originally adopted. It must of course be recognized that this method is, strictly speaking, inconsistent with the formal equality of all the official languages; but it is also a recognized principle of treaty interpretation that where the meaning of a treaty provision is not clear, resort may be had to the *travaux préparatoires* for the purpose of determining the intention of the parties. Considering that the English text of the Charter was the one first completed and that the other language texts were prepared from it, there would appear to be sound reasons for giving special weight to the English text in case of conflict.[7]

The Problem of Charter Interpretation

The Charter is an instrument the provisions of which will be constantly applied by the different organs of the United Nations and whenever a provision of the Charter is applied it will to some extent be interpreted. Each such interpretation may modify the existing law and form the starting point of a new constitutional development. All the various organs of the United Nations will simultaneously be engaged in thus interpreting different provisions of the Charter and will build up a practice which will gradually assume the character of customary law, so that the Charter will eventually be more in the nature of a framework imposing certain limits and laying down cer-

[6] P.C.I.J., Series A, No. 2, p. 19.

[7] This method of interpretation is not inconsistent with the views of the P.C.I.J. and has been to some extent adopted by it. See, in particular, P.C.I.J., Series A/B, No. 50, p. 379.

tain directives. But cases may of course arise in which there is a definite conflict of opinion regarding the interpretation of the Charter.[8]

Many international treaties and agreements contain special stipulations regarding their interpretation. This was true, for instance, of the Constitution of the International Labor Organization, though not of the Covenant of the League of Nations. Article 423 of the I.L.O. Constitution provided that "any question or dispute relating to the interpretation" of the Constitution should be referred for decision to the Permanent Court of International Justice. This provision proved, however, in practice to be largely a dead letter though questions of interpretation did come before the Court under the advisory opinion procedure. The Agreements for the establishment of the International Monetary Fund (Article XVIII) and the International Bank for Reconstruction and Development (Article IX) contain provisions with respect to interpretation, giving the power to the Executive Directors. The Convention on International Civil Aviation, signed at Chicago on December 7, 1944, contains provisions (Articles 84 and 86) giving the power of interpretation to the Council, with right of appeal to an arbitral tribunal or the Permanent Court of International Justice. Article XV of the Constitution of the United Nations Food and Agriculture Organization provides for the reference of any matter of interpretation to "an appropriate international court or arbitral tribunal in the manner prescribed by rules to be adopted by the Conference."

The Charter, however, contains no such rules. Under these circumstances, what procedure is to be followed in order to obtain an authoritative interpretation? According to what principles is the Charter to be interpreted? With regard to the first of these questions, one possible method is for the parties to a dispute to refer it to the International Court of Justice. This is not ruled out by any provision of the Statute. If done, it must be by agreement of the parties to the dispute. If they have accepted the Optional Clause, one party alone could bring the question before the Court. Other states may intervene according to the rules laid down in Articles 62 and 63 of the Statute of the Court. Since, however, any question relating to the interpretation of the Charter will concern all Members, it is unlikely that questions of interpretation will be handled in this manner.[9]

[8] On the general problem of interpretation of the Charter, see Pollux, "The Interpretation of the Charter," *British Yearbook of International Law*, 1946, p. 54–81.

[9] The declaration of the United States accepting the compulsory jurisdiction of the Court contains the proviso that it is not to apply to "disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction." UN, *Treaty Series*, I, p. 10–3.

Another solution is for the appropriate organ of the United Nations to request an advisory opinion of the Court, according to the terms of Article 96 of the Charter. This suggests that the question of interpretation will normally be raised before an organ of the United Nations and that that organ will in the first instance have the function and responsibility of making a decision. It would certainly be appropriate for the organ to ask the Court to give an advisory opinion on the question since it would undoubtedly be a question of a legal nature.[10] In the one case where a request has been addressed to the Court for an advisory opinion, the request was made by the General Assembly and related to the right of a Member, either as a member of the Security Council or of the General Assembly, to make its consent to the admission of a state to membership dependent on conditions other than those enumerated in Article 4(1).[11] Other proposals have been made that advisory opinions be requested from the Court on points of Charter interpretation, notably on the interpretation of Article 2(7), but none of these have been adopted. During its second session, the General Assembly adopted a resolution[12] recognizing the "paramount importance" of having the interpretation of the Charter of the United Nations based on "recognized principles of international law", and recommending that organs of the United Nations "review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations" and, if authorized, refer these questions to the Court for an advisory opinion. By the terms of Article 96(1) of the Charter the General Assembly and the Security Council may request advisory opinions of the Court, and acting under the authority conferred by paragraph 2, the General Assembly has authorized the Economic and Social Council and the Trusteeship Council to request opinions on matters within their competence.

As against the purely judicial approach, it is argued that the interpretation of the Charter is as much a political as a juridical function, and that therefore it must be left to the various organs of the United Nations and to Members to determine the meaning of the document in the light of circumstances. Every organ naturally would have to decide questions of its own competence and procedure, and Members, in their individual capacities and as members of organs, would find it necessary to express judgments on questions of interpretation. Differ-

[10] See comment on Article 96, *supra*, p. 487.

[11] UN, General Assembly, *Official Records of the Second Session . . ., Resolutions . . .*, Doc. A/519, p. 18.

[12] *Ibid.*, p. 103.

ences of opinion as to what particular parts of the Charter mean might require formal amendments for their settlement.

The question of interpretation was discussed at considerable length at the United Nations Conference at San Francisco, but no real solution was found. The following statement was included in the final report of Committee IV/2:

> In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council, or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle.
>
> Difficulties may conceivably arise in the event that there should be a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter. Thus, two organs may conceivably hold and may express or even act upon different views. Under unitary forms of national government the final determination of such a question may be vested in the highest court or in some other national authority. However, the nature of the Organization and of its operation would not seem to be such as to invite the inclusion in the Charter of any provision of this nature. If two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Should the General Assembly or the Security Council prefer another course, an *ad hoc* committee of jurists might be set up to examine the question and report its views, or recourse might be had to a joint conference. In brief, the Members or the organs of the Organization might have recourse to various expedients in order to obtain an appropriate interpretation. It would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients.
>
> It is to be understood, of course, that if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment.[18]

[18] UNCIO, *Report of the Rapporteur of Committee IV/2*, Doc. 933, IV/2/42 (2), p. 7–8 (*Documents* XIII, p. 709–10).

With regard to the question of principles governing the interpretation of the Charter, it must be borne in mind that the Charter is a multipartite treaty dealing with matters of vital concern to Members of the United Nations and that it is imperfectly drafted. These considerations considerably augment the difficulties of interpretation, but do not affect the nature of the task. The aim must be to render the Charter as effective as possible on the basis of its provisions and the intentions of its framers.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

PART III
DOCUMENTS

(1) *Covenant of the League of Nations*[1] *with Amendments in Force, June 26, 1945*

THE HIGH CONTRACTING PARTIES,

In order to promote international cooperation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

Article 1

MEMBERSHIP AND WITHDRAWAL

1. The original members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accessions shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guaranties of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its

[1] Entered into force on January 10, 1920. The texts printed in italics indicate the amendments. Article 6 as amended has been in force since August 13, 1924, Articles 12, 13 and 15 as amended since September 26, 1924, and Article 4 as amended since July 29, 1926.

international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.[2]

Article 2

EXECUTIVE ORGANS

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Article 3

ASSEMBLY

1. The Assembly shall consist of representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time, as occasion may require, at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly each Member of the League shall have one vote and may have not more than three Representatives.

Article 4

COUNCIL

1. The Council shall consist of representatives of the Principal Allied and Associated Powers [United States of America, the British Empire, France, Italy and Japan], together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece and Spain shall be Members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League, whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

2. *bis. The Assembly shall fix by a two-thirds' majority the rules dealing with the election of the non-permanent Members of the Coun-*

[2] Withdrawals and expulsions from the League listed on p. 568.

cil, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one representative.

Article 5

VOTING AND PROCEDURE

1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article 6

SECRETARIAT AND EXPENSES

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staffs as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and the staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5. *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

Article 7

SEAT, QUALIFICATIONS OF OFFICIALS, IMMUNITIES

1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Article 8

REDUCTION OF ARMAMENTS

1. The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every 10 years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programs and the condition of such of their industries as are adaptable to warlike purposes.

Article 9

PERMANENT MILITARY, NAVAL AND AIR COMMISSION

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

Article 10

GUARANTIES AGAINST AGGRESSION

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Article 11

ACTION IN CASE OF WAR OR THREAT OF WAR

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article 12

DISPUTES TO BE SUBMITTED FOR SETTLEMENT

1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration *or judicial settlement* or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision*, or the report by the Council.

2. In any case under this Article the award of the arbitrators *or*

the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article 13

ARBITRATION OR JUDICIAL SETTLEMENT

1. The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration *or judicial settlement*, and which can not be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*.

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

Article 14

PERMANENT COURT OF INTERNATIONAL JUSTICE

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article 15

DISPUTES NOT SUBMITTED TO ARBITRATION OR JUDICIAL SETTLEMENT

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavor to effect a settlement of the dispute, and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the Members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dis-

pute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within 14 days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article 16

SANCTIONS OF PACIFIC SETTLEMENT

1. Should any Member of the League resort to war in disregard of its convenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are cooperating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League

by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article 17

DISPUTES INVOLVING NON-MEMBERS

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of Membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article 18

REGISTRATION AND PUBLICATION OF TREATIES

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article 19

REVIEW OF TREATIES

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world.

Article 20

ABROGATION OF INCONSISTENT OBLIGATIONS

1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article 21

ENGAGEMENTS THAT REMAIN VALID

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Article 22

MANDATORY SYSTEM

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as inde-

pendent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications of military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as Southwest Africa and certain of the South Pacific islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Article 23

SOCIAL AND OTHER ACTIVITIES

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavor to secure and maintain fair and humane conditions of labor for men, women and children, both in their own countries and in all countries to which their commercial and indus-

trial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will intrust the League with the general supervision over the execution of agreements with regard to traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will intrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavor to take steps in matters of international concern for the prevention and control of disease.

Article 24

INTERNATIONAL BUREAUS

1. There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article 25

PROMOTION OF RED CROSS AND HEALTH

The Members of the League agree to encourage and promote the establishment and cooperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Article 26

AMENDMENTS

1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX

1. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS, SIGNATORIES OF THE TREATY OF PEACE

*United States of America
Belgium
Bolivia
Brazil
British Empire
Canada
Australia
South Africa
New Zealand
India
China
Cuba
†Ecuador
France
Greece
Guatemala
Haiti
*Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panama
Peru
Poland
Portugal
Rumania
Serb-Croat-Slovene State [Yugoslavia]
Siam
Czechoslovakia
Uruguay

* Never accepted membership by ratification of treaty of peace.
† Did not accept membership by ratification of treaty of peace, but was admitted in 1934.

STATES INVITED TO ACCEDE TO THE COVENANT

Argentine Republic
Chile
Colombia
Denmark
Netherlands
Norway
Paraguay
Persia [now Iran]
Salvador
Spain
Sweden
Switzerland
Venezuela

2. FIRST SECRETARY-GENERAL OF THE LEAGUE OF NATIONS, THE HONORABLE SIR JAMES ERIC DRUMMOND, K.C.M.G., C.B.[3]

STATES ADMITTED TO MEMBERSHIP

Afghanistan	Sept. 27, 1934	Germany	Sept. 8, 1926
Albania	Dec. 17, 1920	Hungary	Sept. 18, 1922
Austria[4]	Dec. 15, 1920	Iraq	Oct. 3, 1932
Bulgaria	Dec. 16, 1920	Irish Free State[5]	Sept. 10, 1923
Costa Rica	Dec. 16, 1920	Latvia	Sept. 22, 1921
Dominican Republic	Sept. 29, 1924	Lithuania	Sept. 22, 1921
Ecuador	Sept. 28, 1934	Luxembourg	Dec. 16, 1920
Egypt	May 26, 1937	Mexico	Sept. 12, 1931
Estonia	Sept. 22, 1921	Turkey	July 18, 1932
Ethiopia	Sept. 28, 1923	Union of Soviet Socialist Republics[6]	Sept. 18, 1934
Finland	Dec. 16, 1920		

WITHDRAWALS AND EXPULSIONS FROM MEMBERSHIP IN THE LEAGUE OF NATIONS

Country	*Notification of Withdrawal*	*Ceased to be a Member*
Brazil	June 14, 1926	June 13, 1928
Chile	June 2, 1938	June 1, 1940
Costa Rica	Dec. 24, 1924	Jan. 1, 1927
Germany	Oct. 21, 1933	Oct. 20, 1935
Guatemala	May 26, 1936	May 25, 1938
Honduras	July 10, 1936	July 9, 1938
Hungary	Apr. 11, 1939	Apr. 10, 1941
Italy	Dec. 11, 1937	Dec. 10, 1939
Japan	Mar 27, 1933	Mar. 26, 1935
Nicaragua	June 27, 1936	June 26, 1938
Paraguay	Feb 24, 1937	Feb. 23, 1939
Peru	Apr. 9, 1939	Apr. 8, 1941
Rumania	July 11, 1940	July 10, 1942
Salvador	Aug. 10, 1937	Aug. 9, 1939
Spain	May 9, 1939	May 8, 1941
Union of Soviet Socialist Republics		Dec. 14, 1939
Venezuela	July 11, 1938	July 10, 1940

[3] Served until June 30, 1933; succeeded by Joseph Avenol, who resigned in June, 1940. Sean Lester of Ireland became Acting Secretary-General.

[4] The German Government informed the League on March 18, 1938, that Austria ceased to be a member owing to the joining of Austria with the Reich.

[5] The new constitution, which became effective December 29, 1937, designates the Gaelic name "Eire" for Ireland.

[6] Expelled from membership on December 14, 1939.

(2) *Declaration of Principles, Known as the Atlantic Charter, by the President of the United States and the Prime Minister of the United Kingdom, August 14, 1941* [7]

JOINT DECLARATION of the President of the United States of America and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them;

Fourth, they will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.

[7] In Message of the President (Roosevelt) to the Congress, August 21, 1941, House Doc. No. 358, 77th Cong., 1st sess.; *Documents on American Foreign Relations, IV, 1941–1942*, p 10.

(3) *Declaration by United Nations, January 1, 1942* [8]

A JOINT DECLARATION *by the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa, Yugoslavia.*

The Governments signatory hereto,

Having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland dated August 14, 1941, known as the Atlantic Charter,

Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world,

DECLARE:

(1) Each Government pledges itself to employ its full resources, military or economic, against those members of the Tripartite Pact and its adherents with which such government is at war.

(2) Each Government pledges itself to cooperate with the Governments signatory hereto and not to make a separate armistice or peace with the enemies.

The foregoing declaration may be adhered to by other nations which are, or which may be, rendering material assistance and contributions in the struggle for victory over Hitlerism.

DONE at Washington *January First, 1942*

[The signatories to the Declaration by United Nations are as listed above.

The adherents to the Declaration by United Nations, together with the date of communication of adherence, are as follows:

Mexico	June 5, 1942	Peru	Feb. 11, 1945
Philippines	June 10, 1942	Chile	Feb. 12, 1945
Ethiopia	July 28, 1942	Paraguay	Feb. 12, 1945
Iraq	Jan. 16, 1943	Venezuela	Feb. 16, 1945
Brazil	Feb. 8, 1943	Uruguay	Feb. 23, 1945
Bolivia	Apr. 27, 1943	Turkey	Feb. 24, 1945
Iran	Sept. 10, 1943	Egypt	Feb. 27, 1945
Colombia	Dec. 22, 1943	Saudi Arabia	Mar. 1, 1945
Liberia	Feb. 26, 1944	Syria	Mar. 1, 1945
France	Dec 26, 1944	Lebanon	Mar. 1, 1945]
Ecuador	Feb 7, 1945		

[8] *Executive Agreement Series* 236, *Documents on American Foreign Relations, IV, 1941–1942*, p. 203.

(4) *Declaration of Four Nations on General Security, Moscow, October 30, 1943* [9]

THE GOVERNMENTS of the United States of America, the United Kingdom, the Soviet Union and China:

united in their determination, in accordance with the Declaration by the United Nations of January 1, 1942, and subsequent declarations, to continue hostilities against those Axis powers with which they respectively are at war until such powers have laid down their arms on the basis of unconditional surrender;

conscious of their responsibility to secure the liberation of themselves and the peoples allied with them from the menace of aggression;

recognizing the necessity of ensuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world's human and economic resources for armaments;

jointly declare:

1. That their united action, pledged for the prosecution of the war against their respective enemies, will be continued for the organization and maintenance of peace and security.

2. That those of them at war with a common enemy will act together in all matters relating to the surrender and disarmament of that enemy.

3. That they will take all measures deemed by them to be necessary to provide against any violation of the terms imposed upon the enemy.

4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.

5. That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations.

6. That after the termination of hostilities they will not employ their military forces within the territories of other states except for the purposes envisaged in this declaration and after joint consultation.

7. That they will confer and cooperate with one another and with

[9] Department of State, *Bulletin*, IX, p. 308; *Documents on American Foreign Relations, VI, 1943–1944*, p. 229.

other members of the United Nations to bring about a practicable general agreement with respect to the regulation of armaments in the post-war period.

V. MOLOTOV
ANTHONY EDEN
CORDELL HULL
FOO PING-SHEUNG

(5) *Proposals for the Establishment of a General International Organization, Dumbarton Oaks, Washington, October 7, 1944* [10]

THERE SHOULD BE established an international organization under the title of The United Nations, the Charter of which should contain provisions necessary to give effect to the proposals which follow.

CHAPTER I. PURPOSES

The purposes of the Organization should be:

1. To maintain international peace and security; and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means adjustment or settlement of international disputes which may lead to a breach of the peace;

2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in the solution of international economic, social and other humanitarian problems; and

4. To afford a center for harmonizing the actions of nations in the achievement of these common ends.

CHAPTER II. PRINCIPLES

In pursuit of the purposes mentioned in Chapter I the Organization and its members should act in accordance with the following principles:

1. The Organization is based on the principle of the sovereign equality of all peace-loving states.

2. All members of the Organization undertake, in order to ensure to all of them the rights and benefits resulting from membership in the

[10] Department of State, *Bulletin*, XI, p. 368. See also, *Dumbarton Oaks Documents on International Organization*, Department of State, Pub. 2192, Conference Series 56. The text of provisions relative to voting procedure in the Security Council (chap. VI, sec. C) as agreed upon at the Crimea Conference and announced by the Secretary of State on March 5, 1945 is included.

Organization, to fulfill the obligations assumed by them in accordance with the Charter.

3. All members of the Organization shall settle their disputes by peaceful means in such a manner that international peace and security are not endangered.

4. All members of the Organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization.

5. All members of the Organization shall give every assistance to the Organization in any action undertaken by it in accordance with the provisions of the Charter.

6. All members of the Organization shall refrain from giving assistance to any state against which preventive or enforcement action is being undertaken by the Organization.

The Organization should ensure that states not members of the Organization act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

CHAPTER III. MEMBERSHIP

1. Membership of the Organization should be open to all peace-loving states.

CHAPTER IV. PRINCIPAL ORGANS

1. The Organization should have as its principal organs:
   a. A General Assembly;
   b. A Security Council;
   c. An international court of justice; and
   d. A Secretariat.

2. The Organization should have such subsidiary agencies as may be found necessary.

CHAPTER V. THE GENERAL ASSEMBLY

Section A. Composition. All members of the Organization should be members of the General Assembly and should have a number of representatives to be specified in the Charter.

Section B. Functions and Powers. 1. The General Assembly should have the right to consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments; to discuss any questions relating to the maintenance of international peace and security brought before it by any member or members of the Organization or by the Security Council; and to make recommendations with regard to any such principles or questions. Any such questions on

which action is necessary should be referred to the Security Council by the General Assembly either before or after discussion. The General Assembly should not on its own initiative make recommendations on any matter relating to the maintenance of international peace and security which is being dealt with by the Security Council.

2. The General Assembly should be empowered to admit new members to the Organization upon recommendation of the Security Council.

3. The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter.

4. The General Assembly should elect the non-permanent members of the Security Council and the members of the Economic and Social Council provided for in Chapter IX. It should be empowered to elect, upon recommendation of the Security Council, the Secretary-General of the Organization. It should perform such functions in relation to the election of the judges of the international court of justice as may be conferred upon it by the statute of the court.

5. The General Assembly should apportion the expenses among the members of the Organization and should be empowered to approve the budgets of the Organization.

6. The General Assembly should initiate studies and make recommendations for the purpose of promoting international cooperation in political, economic and social fields and of adjusting situations likely to impair the general welfare.

7. The General Assembly should make recommendations for the coordination of the policies of international economic, social, and other specialized agencies brought into relation with the Organization in accordance with agreements between such agencies and the Organization.

8. The General Assembly should receive and consider annual and special reports from the Security Council and reports from other bodies of the Organization.

Section C. Voting. 1. Each member of the Organization should have one vote in the General Assembly.

2. Important decisions of the General Assembly, including recom-

mendations with respect to the maintenance of international peace and security; election of members of the Security Council; election of members of the Economic and Social Council; admission of members, suspension of the exercise of the rights and privileges of members, and expulsion of members; and budgetary questions, should be made by a two-thirds majority of those present and voting. On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority vote.

Section D. Procedure. 1. The General Assembly should meet in regular annual sessions and in such special sessions as occasion may require.

2. The General Assembly should adopt its own rules of procedure and elect its President for each session.

3. The General Assembly should be empowered to set up such bodies and agencies as it may deem necessary for the performance of its functions.

CHAPTER VI. THE SECURITY COUNCIL

Section A. Composition. The Security Council should consist of one representative of each of eleven members of the Organization. Representatives of the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Republic of China, and, in due course, France, should have permanent seats. The General Assembly should elect six states to fill the non-permanent seats. These six states should be elected for a term of two years, three retiring each year. They should not be immediately eligible for re-election. In the first election of the non-permanent members three should be chosen by the General Assembly for one-year terms and three for two-year terms.

Section B. Principal Functions and Powers. 1. In order to ensure prompt and effective action by the Organization, members of the Organization should by the Charter confer on the Security Council primary responsibility for the maintenance of international peace and security and should agree that in carrying out these duties under this responsibility it should act on their behalf.

2. In discharging these duties the Security Council should act in accordance with the purposes and principles of the Organization.

3. The specific powers conferred on the Security Council in order to carry out these duties are laid down in Chapter VIII.

4. All members of the Organization should obligate themselves to accept the decisions of the Security Council and to carry them out in accordance with the provisions of the Charter.

5. In order to promote the establishment and maintenance of international peace and security with the least diversion of the world's human and economic resources for armaments, the Security Council, with the assistance of the Military Staff Committee referred to in Chapter VIII, Section B, paragraph 9, should have the responsibility for formulating plans for the establishment of a system of regulation of armaments for submission to the members of the Organization.

[*Section C. Voting.*[11] 1. Each member of the Security Council should have one vote.

2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A, and under the second sentence of Paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting.]

Section D. Procedure. 1. The Security Council should be so organized as to be able to function continuously and each state member of the Security Council should be permanently represented at the headquarters of the Organization. It may hold meetings at such other places as in its judgment may best facilitate its work. There should be periodic meetings at which each state member of the Security Council could if it so desired be represented by a member of the government or some other special representative.

2. The Security Council should be empowered to set up such bodies or agencies as it may deem necessary for the performance of its functions including regional subcommittees of the Military Staff Committee.

3. The Security Council should adopt its own rules of procedure, including the method of selecting its President.

4. Any member of the Organization should participate in the discussion of any question brought before the Security Council whenever the Security Council considers that the interests of that member of the Organization are specially affected.

5. Any member of the Organization not having a seat on the Security Council and any state not a member of the Organization, if it is a party to a dispute under consideration by the Security Council, should be invited to participate in the discussion relating to the dispute.

[11] See footnote 10, *supra*, p. 572.

CHAPTER VII. AN INTERNATIONAL COURT OF JUSTICE

1. There should be an international court of justice which should constitute the principal judicial organ of the Organization.

2. The court should be constituted and should function in accordance with a statute which should be annexed to and be a part of the Charter of the Organization.

3. The statute of the court of international justice should be either (*a*) the Statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable, or (*b*) a new statute in the preparation of which the Statute of the Permanent Court of International Justice should be used as a basis.

4. All members of the Organization should *ipso facto* be parties to the statute of the international court of justice.

5. Conditions under which states not members of the Organization may become parties to the statute of the international court of justice should be determined in each case by the General Assembly upon recommendation of the Security Council.

CHAPTER VIII. ARRANGEMENTS FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY INCLUDING PREVENTION AND SUPPRESSION OF AGGRESSION

Section A. Pacific Settlement of Disputes. 1. The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.

2. Any state, whether member of the Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council.

3. The parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security should obligate themselves, first of all, to seek a solution by negotiation, mediation, conciliation, arbitration or judicial settlement, or other peaceful means of their own choice. The Security Council should call upon the parties to settle their dispute by such means.

4. If, nevertheless, parties to a dispute of the nature referred to in paragraph 3 above fail to settle it by the means indicated in that paragraph, they should obligate themselves to refer it to the Security Council. The Security Council should in each case decide whether or not the continuance of the particular dispute is in fact likely to endanger the maintenance of international peace and security, and, accordingly,

whether the Security Council should deal with the dispute, and, if so, whether it should take action under paragraph 5.

5. The Security Council should be empowered, at any stage of a dispute of the nature referred to in paragraph 3 above, to recommend appropriate procedures or methods of adjustment.

6. Justiciable disputes should normally be referred to the international court of justice. The Security Councils should be empowered to refer to the court, for advice, legal questions connected with other disputes.

7. The provisions of paragraphs 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned.

Section B. Determination of Threats to the Peace or Acts of Aggression and Action With Respect Thereto. 1. Should the Security Council deem that a failure to settle a dispute in accordance with procedures indicated in paragraph 3 of Section A, or in accordance with its recommendations made under paragraph 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.

2. In general the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security.

3. The Security Council should be empowered to determine what diplomatic, economic, or other measures not involving the use of armed force should be employed to give effect to its decisions, and to call upon members of the Organization to apply such measures. Such measures may include complete or partial interruption of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic and economic relations.

4. Should the Security Council consider such measures to be inadequate, it should be empowered to take such action by air, naval, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade and other operations by air, sea or land forces of members of the Organization.

5. In order that all members of the Organization should contribute to the maintenance of international peace and security, they should undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements concluded among themselves, armed forces, facilities and assistance necessary for

the purpose of maintaining international peace and security. Such agreement or agreements should govern the numbers and types of forces and the nature of the facilities and assistance to be provided. The special agreement or agreements should be negotiated as soon as possible and should in each case be subject to approval by the Security Council and to ratification by the signatory states in accordance with their constitutional processes.

6. In order to enable urgent military measures to be taken by the Organization there should be held immediately available by the members of the Organization national air force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action should be determined by the Security Council with the assistance of the Military Staff Committee within the limits laid down in the special agreement or agreements referred to in paragraph 5 above.

7. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in cooperation or by some of them as the Security Council may determine. This undertaking should be carried out by the members of the Organization by their own action and through action of the appropriate specialized organizations and agencies of which they are members.

8. Plans for the application of armed force should be made by the Security Council with the assistance of the Military Staff Committee referred to in paragraph 9 below.

9. There should be established a Military Staff Committee the functions of which should be to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, to the employment and command of forces placed at its disposal, to the regulation of armaments, and to possible disarmament. It should be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. The Committee should be composed of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any member of the Organization not permanently represented on the Committee should be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires that such a state should participate in its work. Questions of command of forces should be worked out subsequently.

10. The members of the Organization should join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

11. Any state, whether a member of the Organization or not, which finds itself confronted with special economic problems arising from the carrying out of measures which have been decided upon by the Security Council should have the right to consult the Security Council in regard to a solution of those problems.

Section C. Regional Arrangements. 1. Nothing in the Charter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The Security Council should encourage settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council.

2. The Security Council should, where appropriate, utilize such arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.

3. The Security Council should at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX. ARRANGEMENTS FOR INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Section A. Purpose and Relationships. 1. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms. Responsibility for the discharge of this function should be vested in the General Assembly and, under the authority of the General Assembly, in an Economic and Social Council.

2. The various specialized economic, social and other organizations and agencies would have responsibilities in their respective fields as defined in their statutes. Each such organization or agency should be brought into relationship with the Organization on terms to be determined by agreement between the Economic and Social Council and the appropriate authorities of the specialized organization or agency, subject to approval by the General Assembly.

Section B. Composition and Voting. The Economic and Social

Council should consist of representatives of eighteen members of the Organization. The states to be represented for this purpose should be elected by the General Assembly for terms of three years. Each such state should have one representative, who should have one vote. Decisions of the Economic and Social Council should be taken by simple majority vote of those present and voting.

Section C. Functions and Powers of the Economic and Social Council. 1. The Economic and Social Council should be empowered:

a. to carry out, within the scope of its functions, recommendations of the General Assembly;

b. to make recommendations, on its own initiative, with respect to international economic, social and other humanitarian matters;

c. to receive and consider reports from the economic, social and other organizations or agencies brought into relationship with the Organization, and to coordinate their activities through consultations with, and recommendations to, such organizations or agencies;

d. to examine the administrative budgets of such specialized organizations or agencies with a view to making recommendations to the organizations or agencies concerned;

e. to enable the Secretary-General to provide information to the Security Council;

f. to assist the Security Council upon its request; and

g. to perform such other functions within the general scope of its competence as may be assigned to it by the General Assembly.

Section D. Organization and Procedure. 1. The Economic and Social Council should set up an economic commission, a social commission, and such other commissions as may be required. These commissions should consist of experts. There should be a permanent staff which should constitute a part of the Secretariat of the Organization.

2. The Economic and Social Council should make suitable arrangements for representatives of the specialized organizations or agencies to participate without vote in its deliberations and in those of the commissions established by it.

3. The Economic and Social Council should adopt its own rules of procedure and the method of selecting its President.

CHAPTER X. THE SECRETARIAT

1. There should be a Secretariat comprising a Secretary-General and such staff as may be required. The Secretary-General should be the chief administrative officer of the Organization. He should be elected by the General Assembly, on recommendation of the Security Council, for such term and under such conditions as are specified in the Charter.

2. The Secretary-General should act in that capacity in all meetings of the General Assembly, of the Security Council, and of the Economic and Social Council and should make an annual report to the General Assembly on the work of the Organization.

3. The Secretary-General should have the right to bring to the attention of the Security Council any matter which in his opinion may threaten international peace and security.

CHAPTER XI. AMENDMENTS

Amendments should come into force for all members of the Organization, when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by the members of the Organization having permanent membership on the Security Council and by a majority of the other members of the Organization.

CHAPTER XII. TRANSITIONAL ARRANGEMENTS

1. Pending the coming into force of the special agreement or agreements referred to in Chapter VIII, Section B, paragraph 5, and in accordance with the provisions of paragraph 5 of the Four-Nation Declaration, signed at Moscow, October 30, 1943, the states parties to that Declaration should consult with one another and as occasion arises with other members of the Organization with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

2. No provision of the Charter should preclude action taken or authorized in relation to enemy states as a result of the present war by the Governments having responsibility for such action.

NOTE

In addition to the question of voting procedure in the Security Council referred to in Chapter VI, several other questions are still under consideration.

(6) *Charter of the United Nations, Signed at the United Nations Conference on International Organization, San Francisco, California, June 26, 1945* [12]

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

[12] Department of State, Pub. 2368, Conference Series 76.

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I. PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. 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.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II. MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International

Organization at San Francisco, or having previously signed the Declaration by the United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III. ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV. THE GENERAL ASSEMBLY

Composition

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Artiele 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session. immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (*b*) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

VOTING

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (*c*) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member

to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V. THE SECURITY COUNCIL

Composition

Article 23

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

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.

PROCEDURE

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI. PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, concilia-

tion, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute

is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII. ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it

may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII. REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in Paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such times as

the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in Paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX. INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X. THE ECONOMIC AND SOCIAL COUNCIL

Composition

Article 61

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of Paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommenda-

tions with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendation to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Voting

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

Procedure

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provisions for the convening of meetings on the request of a majority of its members.

CHAPTER XI. DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-

being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII. INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world, and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII. THE TRUSTEESHIP COUNCIL

Composition

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

a. those Members administering trust territories;

b. such of those Members mentioned by name in Article 23 as are not administering trust territories, and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a. consider reports submitted by the administering authority;

b. accept petitions and examine them in consultation with the administering authority;

c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

1. Each member of the Trusteeship Council shall have one vote.

2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV. THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV. THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI. MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of Paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and im-

munities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of Paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII. TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of Paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII. AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and 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.

Article 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.

CHAPTER XIX. RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

(7) *Statute of the International Court of Justice, Signed at the United Nations Conference on International Organization, San Francisco, California, June 26, 1945* [18]

Article 1

THE INTERNATIONAL COURT OF JUSTICE established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I. ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Per-

[18] *Ibid.* See also, International Court of Justice, Series D, No. 1 (Second Edition), May 1947.

manent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, Paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, Paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the

main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of

the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave

or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chamber provided for in this Article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in Paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in Paragraphs 2, 3, ard 4 of this Article shall fulfill the conditions required by Articles 2, 17 (Paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II. COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such

conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono,* if the parties agree thereto.

CHAPTER III. PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV. ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be

sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in Paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard, and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open Court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, or other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V. AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

(8) *Agreement between the United Nations and the Food and Agriculture Organization of the United Nations, Signed at Lake Success, February 4, 1947* [14]

ARTICLE 57 of the Charter of the United Nations provides that specialized agencies, established by inter-governmental agreement and having wide international responsibilities as defined in their basic instruments in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations.

Article XIII of the Constitution of the Food and Agriculture Organization of the United Nations provides that the Organization shall constitute a part of any general international organization to which may be entrusted the co-ordination of the activities of international organizations with specialized responsibilities.

Therefore, the United Nations and the Organization agree as follows:

ARTICLE I

The United Nations recognizes the Food and Agriculture Organization of the United Nations as a specialized agency and as being responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein.

ARTICLE II

Reciprocal representation

1. Representatives of the United Nations shall be invited to attend the meetings of the Conference of the Food and Agriculture Organization of the United Nations and its committees, the Executive Committee, and such general, regional or other special meetings as the Organization may convene, and to participate, without vote, in the deliberations of these bodies.

2. Representatives of the Food and Agriculture Organization of the United Nations shall be invited to attend meetings of the Economic and Social Council of the United Nations (hereinafter called the Council) and of its commissions and committees and to participate, without vote, in the deliberations of these bodies with respect to items on their agenda relating to matters within the scope of its activities.

3. Representatives of the Food and Agriculture Organization of the United Nations shall be invited to attend meetings of the General

[14] Draft agreement signed June 10, 1946, approved by the General Assembly, December 14; final text signed, February 4, 1947. UN, Doc. A/78, September 30, 1946.

Assembly for purposes of consultation on matters within the scope of its activities.

4. Representatives of the Food and Agriculture Organization of the United Nations shall be invited to attend meetings of the main committees of the General Assembly when matters within the scope of its activities are under discussion and to participate, without vote, in such discussions.

5. Representatives of the Food and Agriculture Organization of the United Nations shall be invited to attend the meetings of the Trusteeship Council and to participate, without vote, in the deliberations thereof with respect to items on the agenda relating to matters within the scope of its activities.

6. Written statements of the Food and Agriculture Organization of the United Nations shall be distributed by the Secretariat of the United Nations to all Members of the General Assembly, the Council, and its commissions and the Trusteeship Council as appropriate.

Article III

Proposal of agenda items

Subject to such preliminary consultation as may be necessary, the Food and Agriculture Organization of the United Nations shall include on the agenda of the Conference or Executive Committee items proposed to it by the United Nations. Similarly, the Council and its commissions and the Trusteeship Council shall include on their agenda items proposed by the Conference or Executive Committee of the Organization.

Article IV

Recommendations of the United Nations

1. The Food and Agriculture Organization of the United Nations, having regard to the obligation of the United Nations to promote the objectives set forth in Article 55 of the Charter and the function and power of the Council, under Article 62 of the Charter, to make or initiate studies and reports with respect to international, economic, social, cultural, educational, health and related matters and to make recommendations concerning these matters to the specialized agencies concerned, and having regard, also to the responsibility of the United Nations, under Articles 58 and 63 of the Charter, to make recommendations for the co-ordination of the policies and activities of such specialized agencies, agrees to arrange for the submission, as soon as possible, to the appropriate organ of the Organization, of all formal recommendations which the United Nations may make to it.

2. The Food and Agriculture Organization of the United Nations agrees to enter into consultation with the United Nations upon request with respect to such recommendations, and in due course to report to the United Nations on the action taken by the Organization or by its members to give effect to such recommendations, or on the other results of their consideration.

3. The Food and Agriculture Organization of the United Nations affirms its intention of co-operating in whatever further measures may be necessary to make co-ordination of the activities of specialized agencies and those of the United Nations, fully effective. In particular, it agrees to participate in, and to co-operate with any body or bodies which the Council may establish for the purpose of facilitating such co-ordination and to furnish such information as may be required for the carrying out of this purpose.

ARTICLE V

Exchange of information and documents

1. Subject to such arrangements as may be necessary for the safeguarding of confidential material, the fullest and promptest exchange of information and documents shall be made between the United Nations and the Food and Agriculture Organization of the United Nations.

2. Without prejudice to the generality of the provisions of paragraph 1:

(*a*) the Food and Agriculture Organization of the United Nations agrees to transmit to the United Nations regular reports on the activities of the Organization;

(*b*) the Food and Agriculture Organization of the United Nations agrees to comply to the fullest extent practicable with any request which the United Nations may make for the furnishing of special reports, studies or information, subject to the conditions set forth in article XV;

(*c*) the Secretary-General shall, upon request, consult with the Director-General regarding the provision to the Food and Agriculture Organization of the United Nations of such information as may be of special interest to the Organization.

ARTICLE VI

Assistance to the Security Council

The Food and Agriculture Organization of the United Nations agrees to co-operate with the Economic and Social Council in furnish-

ing such information and rendering such assistance to the Security Council as that Council may request including assistance in carrying out decisions of the Security Council for the maintenance or restoration of international peace and security.

Article VII

Assistance to the Trusteeship Council

The Food and Agriculture Organization of the United Nations agrees to co-operate with the Trusteeship Council in the carrying out of its functions and in particular agrees that it will, to the greatest extent possible, render such assistance as the Trusteeship Council may request in regard to matters with which the Organization is concerned.

Article VIII

Non-self-governing territories

The Food and Agriculture Organization of the United Nations agrees to co-operate with the United Nations in giving effect to the principles and obligations set forth in chapter XI of the Charter with regard to matters affecting the well-being and development of the peoples of non-self-governing territories.

Article IX

Relations with the International Court of Justice

1. The Food and Agriculture Organization of the United Nations agrees to furnish any information which may be requested by the International Court of Justice in pursuance of Article 34 of the Statute of the Court.

2. The General Assembly authorizes the Food and Agriculture Organization of the United Nations to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies.

3. Such request may be addressed to the Court by the Conference or by the Executive Committee acting in pursuance of an authorization by the Conference.

4. When requesting the International Court of Justice to give an advisory opinion the Food and Agriculture Organization of the United Nations shall inform the Economic and Social Council of the request.

Article X

Headquarters and regional offices

1. The permanent headquarters of the Food and Agriculture Organization of the United Nations shall be situated at the permanent seat of the United Nations subject to:

(*a*) the permanent headquarters of the United Nations being situated at a place where the Food and Agriculture Organization of the United Nations can effectively and economically discharge its duties and maintain effective liaison with those specialized agencies with which it is particularly concerned;

(*b*) satisfactory arrangements being made in a subsequent agreement between the Food and Agriculture Organization of the United Nations and the United Nations regarding the provision of a site and necessary facilities for the establishment of such headquarters.

The United Nations shall provide the Food and Agriculture Organization of the United Nations with appropriate assistance in the establishment of the permanent headquarters of the Organization at the permanent seat of the United Nations.

2. Any regional or branch offices which the Food and Agriculture Organization of the United Nations may establish shall, so far as practicable, be closely associated with such regional or branch offices as the United Nations may establish.

Article XI

Personnel arrangements

1. The United Nations and the Food and Agriculture Organization of the United Nations recognize that the eventual development of a single unified international civil service is desirable from the standpoint of effective administrative co-ordination, and with this end in view agree to develop common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate interchange of personnel in order to obtain the maximum benefit from their services.

2. The United Nations and the Food and Agriculture Organization of the United Nations agree to co-operate to the fullest extent possible in achieving these ends and in particular they agree to:

(*a*) consult together concerning the establishment of an International Civil Service Commission to advise on the means by which common standards of recruitment in the secretariats of the United

Nations and of the specialized agencies may be ensured;

(*b*) consult together concerning other matters relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scales and allowances, retirement and pension rights and staff regulations and rules with a view to securing as much uniformity in these matters as shall be found practicable;

(*c*) co-operate in the interchange of personnel when desirable on a temporary or permanent basis, making due provision for the retention of seniority and pension rights;

(*d*) co-operate in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters.

ARTICLE XII

Statistical services

1. The United Nations and the Food and Agriculture Organization of the United Nations agree to strive for maximum co-operation, the elimination of all undesirable duplication between them, and the most efficient use of their technical personnel in their respective collection, analysis, publication and dissemination of statistical information. They agree to combine their efforts to secure the greatest possible usefulness and utilization of statistical information and to minimize the burdens placed upon national governments and other organizations from which such information may be collected.

2. The Food and Agriculture Organization of the United Nations recognizes the United Nations as the central agency for the collection, analysis, publication, standardization and improvement of statistics serving the general purposes of international organizations.

3. The United Nations recognizes the Food and Agriculture Organization of the United Nations as the appropriate agency for the collection, analysis, publication, standardization and improvement of statistics within its special sphere, without prejudice to the right of the United Nations to concern itself with such statistics so far as they may be essential for its own purposes or for the improvement of statistics throughout the world.

4. The United Nations shall in consultation with the specialized agencies develop administrative instruments and procedures through which effective statistical co-operation may be secured between the United Nations and the agencies brought into relationship with it.

5. It is recognized as desirable that the collection of statistical information should not be duplicated by the United Nations or any of

the specialized agencies whenever it is practicable for any of them to utilize information or materials which another may have available.

6. In order to build up a central collection of statistical information for general use, it is agreed that data supplied to the Food and Agriculture Organization of the United Nations for incorporation in its basic statistical series or special report should so far as practicable be made available to the United Nations.

ARTICLE XIII

Administrative and technical services

1. The United Nations and the Food and Agriculture Organization of the United Nations recognize the desirability, in the interest of administrative and technical uniformity and of the most efficient use of personnel and resources, of avoiding, whenever possible, the establishment and operation of competitive or overlapping facilities and services among the United Nations and the specialized agencies.

2. Accordingly, the United Nations and the Food and Agriculture Organization of the United Nations agree to consult together concerning the establishment and use of common administrative and technical services and facilities in addition to those referred to in articles XI, XII and XIV, in so far as the establishment and use of such services may from time to time be found practicable and appropriate.

3. Arrangements shall be made between the United Nations and the Food and Agriculture Organization of the United Nations in regard to the registration and deposit of official documents.

ARTICLE XIV

Budgetary and financial arrangements

1. The Food and Agriculture Organization of the United Nations recognizes the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and of the specialized agencies shall be carried out in the most efficient and economical manner possible, and that the maximum measure of co-ordination and uniformity with respect to these operations shall be secured.

2. The United Nations and the Food and Agriculture Organization of the United Nations agree to co-operate to the fullest extent possible in achieving these ends and, in particular, shall consult together, concerning appropriate arrangements for the inclusion of the budget of the Organization within a general budget of the United Nations. Such

arrangements shall be defined in a supplementary agreement between the two organizations.

3. Pending the conclusion of such agreement, the following arrangements shall govern budgetary and financial relationships between the Food and Agriculture Organization of the United Nations and the United Nations:

(*a*) The Secretary-General and the Director-General shall arrange for consultation in connection with the preparation of the budget of the Food and Agriculture Organization of the United Nations.

(*b*) The Food and Agriculture Organization of the United Nations agrees to transmit its proposed budget to the United Nations annually at the same time as such budget is transmitted to its members. The General Assembly shall examine the budget or proposed budget of the Organization and may make such recommendations as it may consider necessary.

(*c*) Representatives of the Food and Agriculture Organization of the United Nations shall be entitled to participate, without vote, in the deliberations of the General Assembly or any committee thereof at all times when the budget of the Food and Agriculture Organization of the United Nations or general administrative or financial questions affecting the Organization are under consideration.

(*d*) The United Nations may undertake the collection of contributions from those members of the Food and Agriculture Organization of the United Nations which are also Members of the United Nations in accordance with such arrangements as may be defined by a later agreement between the United Nations and the Organization.

(*e*) The United Nations shall, upon its own initiative or upon the request of the Food and Agriculture Organization of the United Nations arrange for studies to be undertaken concerning other financial and fiscal questions of interest to the Organization and to other specialized agencies with a view to the provision of common services and the securing of uniformity in such matters.

(*f*) The Food and Agriculture Organization of the United Nations agrees to conform as far as may be practicable to standard practices and forms recommended by the United Nations.

Article XV

Financing of special services

1. In the event of the Food and Agriculture Organization of the United Nations being faced with the necessity of incurring substantial extra expense as a result of any request which the United Nations may make for special reports, studies or assistance in accordance with

articles V, VI, VII, or with other provisions of this agreement, consultation shall take place with a view to determining the most equitable manner in which such expense shall be borne.

2. Consultation between the United Nations and the Food and Agriculture Organization of the United Nations shall similarly take place with a view to making such arrangements as may be found equitable for covering the cost of central administrative, technical or fiscal services or facilities or other special assistance provided by the United Nations.

Article XVI

Inter-agency agreements

The Food and Agriculture Organization of the United Nations agrees to inform the Council of the nature and scope of any formal agreement between the Organization and any other specialized agency, intergovernmental organization or non-governmental organization and in particular agrees to inform the Council before any such agreement is concluded.

Article XVII

Liaison

1. The United Nations and the Food and Agriculture Organization of the United Nations agree to the foregoing provisions in the belief that they will contribute to the maintenance of effective liaison between the two organizations. They affirm their intention of taking whatever further measure may be necessary to make this liaison fully effective.

2. The liaison arrangements provided for in the foregoing articles of this agreement shall apply as far as appropriate to the relations between such branch or regional offices as may be established by the two organizations as well as between their central machinery.

Article XVIII

Implementation of the agreement

The Secretary-General and the Director-General may enter into such supplementary arrangements for the implementation of this agreement as may be found desirable in the light of the operating experience of the two organizations.

ARTICLE XIX

Revision

This agreement shall be subject to revision by agreement between the United Nations and the Food and Agriculture Organization of the United Nations.

ARTICLE XX

Entry into force

This agreement shall come into force on its approval by the General Assembly of the United Nations and the Conference of the Food and Agriculture Organization of the United Nations.

(9) ***Trusteeship Agreement for the Territory of Tanganyika as Approved by the General Assembly on December 13, 1946*** [15]

Whereas the territory known as Tanganyika has been administered in accordance with Article 22 of the Covenant of the League of Nations under a mandate conferred on His Britannic Majesty; and

Whereas Article 75 of the United Nations Charter, signed at San Francisco on 26 June 1945, provides for the establishment of an International Trusteeship System for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements; and

Whereas under Article 77 of the said Charter the International Trusteeship System may be applied to territories now held under mandate; and

Whereas His Majesty has indicated his desire to place Tanganyika under the said International Trusteeship System; and

Whereas, in accordance with Articles 75 and 77 of said Charter, the placing of a territory under the International Trusteeship System is to be effected by means of a trusteeship agreement.

Now, therefore, the General Assembly of the United Nations hereby resolves to approve the following terms of Trusteeship for Tanganyika:

ARTICLE 1

The territory to which this Agreement applies comprises that part of East Africa lying within the boundaries defined by article 1 of the British mandate for East Africa, and by the Anglo-Belgian Treaty of 22 November 1934, regarding the boundary between Tanganyika and Ruanda-Urundi.

[15] UN, Doc. T/Agreement/2, June 9, 1947.

ARTICLE 2

His Majesty is hereby designated as Administering Authority for Tanganyika, the responsibility for the administration of which will be undertaken by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 3

The Administering Authority undertakes to administer Tanganyika in such a manner as to achieve the basic objectives of the International Trusteeship System laid down in Article 76 of the United Nations Charter. The Administering Authority further undertakes to collaborate fully with the General Assembly of the United Nations and the Trusteeship Council in the discharge of all their functions as defined in Article 87 of the United Nations Charter, and to facilitate any periodic visits to Tanganyika which they may deem necessary, at times to be agreed upon with the Administering Authority.

ARTICLE 4

The Administering Authority shall be responsible (*a*) for the peace, order, good government and defence of Tanganyika, and (*b*) for ensuring that it shall play its part in the maintenance of international peace and security.

ARTICLE 5

For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary, the Administering Authority:

(*a*) Shall have full powers of legislation, administration, and jurisdiction in Tanganyika, subject to the provisions of the United Nations Charter and of this agreement;

(*b*) Shall be entitled to constitute Tanganyika into a customs, fiscal or administrative union or federation with adjacent territories under his sovereignty or control, and to establish common services between such territories and Tanganyika where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this Agreement;

(*c*) And shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ his own forces in Tanganyika and to take all such other measures as are in his opinion necessary for the defence of Tanganyika and for ensuring that the territory plays its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities and assistance from Tanganyika in carry-

ing out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within Tanganyika.

ARTICLE 6

The Administering Authority shall promote the development of free political institutions suited to Tanganyika. To this end, the Administering Authority shall assure to the inhabitants of Tanganyika a progressively increasing share in the administrative and other services of the Territory; shall develop the participation of the inhabitants of Tanganyika in advisory and legislative bodies and in the government of the Territory, both central and local, as may be appropriate to the particular circumstances of the Territory and its peoples; and shall take all other appropriate measures with a view to the political advancement of the inhabitants of Tanganyika in accordance with Article 76 b. of the United Nations Charter.

ARTICLE 7

The Administering Authority undertakes to apply, in Tanganyika, the provisions of any international conventions and recommendations already existing or hereafter drawn up by the United Nations or by the specialized agencies referred to in Article 57 of the Charter, which may be appropriate to the particular circumstances of the Territory and which would conduce to the achievement of the basic objectives of the International Trusteeship System.

ARTICLE 8

In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests, both present and future, of the native population. No native land or natural resources may be transferred, except between natives, save with the previous consent of the competent public authority. No real rights over native land or natural resources in favour of non-natives may be created except with the same consent.

ARTICLE 9

Subject to the provisions of article 10 of this Agreement, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all Members of the United Nations and their nationals and to this end:

(*a*) Shall ensure the same rights to all nationals of Members of the United Nations as to his own nationals in respect of entry into and residence in Tanganyika, freedom of transit and navigation, including freedom of transit and navigation by air, acquisition of property both movable and immovable, the protection of person and property, and the exercise of professions and trades;

(*b*) Shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of the natural resources of Tanganyika and shall not grant concessions having the character of a general monopoly;

(*c*) Shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.

The rights conferred by this article on nationals of Members of the United Nations apply equally to companies and associations controlled by such nationals and organized in accordance with the law of any Member of the United Nations.

Article 10

Measures taken to give effect to article 9 of this Agreement shall be subject always to the overriding duty of the Administering Authority, in accordance with Article 76 of the United Nations Charter, to promote the political, economic, social and educational advancement of the inhabitants of Tanganyika, to carry out the other basic objectives of the International Trusteeship System, and to maintain peace, order and good government. The Administering Authority shall in particular be free:

(*a*) To organize essential public services and works on such terms and conditions as he thinks just;

(*b*) To create monopolies of a purely fiscal character in order to provide Tanganyika with the fiscal resources which seem best suited to local requirements, or otherwise to serve the interests of the inhabitants of Tanganyika;

(*c*) Where the interests of the economic advancement of the inhabitants of Tanganyika may require it, to establish, or permit to be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control; provided that, in the selection of agencies to carry out the purposes of this paragraph, other than agencies controlled by the Government or those in which the Government participates, the Administering Authority shall not discriminate on grounds of nationality against Members of the United Nations or their nationals.

ARTICLE 11

Nothing in this Agreement shall entitle any Member of the United Nations to claim for itself or for its nationals, companies and associations the benefits of article 9 of this Agreement in any respect in which it does not give to the inhabitants, companies and associations of Tanganyika equality of treatment with the nationals, companies and associations of the State which it treats most favourably.

ARTICLE 12

The Administering Authority shall, as may be appropriate to the circumstances of Tanganyika, continue and extend a general system of elementary education designed to abolish illiteracy and to facilitate the vocational and cultural advancement of the population, child and adult, and shall similarly provide such facilities as may prove desirable and practicable, in the interests of the inhabitants, for qualified students to receive secondary and higher education, including professional training.

ARTICLE 13

The Administering Authority shall ensure, in Tanganyika, complete freedom of conscience and, so far as is consistent with the requirements of public order and morality, freedom of religious teaching and the free exercise of all forms of worship. Subject to the provisions of article 8 of this Agreement and the local law, missionaries who are nationals of Members of the United Nations shall be free to enter Tanganyika and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools and hospitals in the Territory. The provisions of this article shall not, however, affect the right and duty of the Administering Authority to exercise such controls as he may consider necessary for the maintenance of peace, order and good government and for the educational advancement of the inhabitants of Tanganyika, and to take all measures required for such control.

ARTICLE 14

Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of Tanganyika freedom of speech, of the press, of assembly and of petition.

ARTICLE 15

The Administering Authority may arrange for the co-operation of Tanganyika in any regional advisory commission, regional technical

organization or other voluntary association of States, any specialized international bodies, public or private, or other forms of international activity not inconsistent with the United Nations Charter.

ARTICLE 16

The Administering Authority shall make, to the General Assembly of the United Nations, an annual report on the basis of a questionnaire drawn up by the Trusteeship Council in accordance with Article 88 of the United Nations Charter. Such reports shall include information concerning the measures taken to give effect to suggestions and recommendations of the General Assembly and the Trusteeship Council. The Administering Authority shall designate an accredited representative to be present at the sessions of the Trusteeship Council at which the reports of the Administering Authority with regard to Tanganyika are considered.

ARTICLE 17

Nothing in this Agreement shall affect the right of the Administering Authority to propose, at any future date, the amendment of this Agreement for the purpose of designating the whole or part of Tanganyika as a strategic area or for any other purpose not inconsistent with the basic objectives of the International Trusteeship System.

ARTICLE 18

The terms of this Agreement shall not be altered or amended except as provided in Article 79 and Article 83 or 85, as the case may be, of the United Nations Charter.

ARTICLE 19

If any dispute whatever should arise between the Administering Authority and another member of the United Nations relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice, provided for in Chapter XIV of the United Nations Charter.

(10) ***Agreement between the United Nations and the United States of America Regarding the Headquarters of the United Nations, Signed June 26, 1947*** [16]

[Effective November 21, 1947]

THE UNITED NATIONS AND THE UNITED STATES OF AMERICA:

Desiring to conclude an agreement for the purpose of carrying out the resolution adopted by the General Assembly on 14 December 1946

[16] UN, Doc. A/427, October 27, 1947, p. 9-18

to establish the seat of the United Nations in the City of New York and to regulate questions arising as a result thereof;

Have appointed as their representatives for this purpose:

The United Nations:

Trygve LIE, Secretary-General, and

The United States of America:

George C. MARSHALL, Secretary of State,

Who have agreed as follows:

ARTICLE I. DEFINITIONS

Section 1

In this agreement:

(*a*) The expression "headquarters district" means:

(1) the area defined as such in Annex 1;

(2) any other lands or buildings which from time to time may be included therein by supplemental agreement with the appropriate American authorities;

(*b*) the expression "appropriate American authorities" means such federal, state, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the state and local government involved;

(*c*) the expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946, as acceded to by the United States;

(*d*) the expression "United Nations" means the international organization established by the Charter of the United Nations, hereinafter referred to as the "Charter";

(*e*) the expression "Secretary-General" means the Secretary-General of the United Nations.

ARTICLE II. THE HEADQUARTERS DISTRICT

Section 2

The seat of the United Nations shall be the headquarters district.

Section 3

The appropriate American authorities shall take whatever action may be necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district, except as provided in Section 22 in the event that the United Nations ceases to use the same, provided that the United Nations shall reimburse the appro-

priate American authorities for any costs incurred, after consultation with the United Nations, in liquidating by eminent domain proceedings or otherwise any adverse claims.

Section 4

(*a*) The United Nations may establish and operate in the headquarters district:

(1) its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radio-telegraph, radio-teletype, radio-telephone, radio-telephoto, and similar services;

(2) one point-to-point circuit between the headquarters district and the office of the United Nations in Geneva (using single sideband equipment) to be used exclusively for the exchange of broadcasting programmes and inter-office communications;

(3) low power, micro wave, low or medium frequencies, facilities for communication within headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communications to the same extent and subject to the same conditions as committed under applicable rules and regulations for amateur operation in the United States, except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the headquarters district provided by Section 9(*a*);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

(*b*) The United Nations shall make arrangements for the operation of the services referred to in this section with the International Telecommunication Union, the appropriate agencies of the Government of the United States and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters.

(*c*) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the headquarters district. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the United Nations of appropriate premises for such purposes and the inclusion of such premises in the headquarters district.

Section 5

In the event that the United Nations should find it necessary and desirable to establish and operate an aerodrome, the conditions for the location, use and operation of such an aerodrome and the conditions under which there shall be entry into and exit therefrom shall be the subject of a supplemental agreement.

Section 6

In the event that the United Nations should propose to organize its own postal service, the conditions under which such service shall be set up shall be the subject of a supplemental agreement.

ARTICLE III. LAW AND AUTHORITY IN THE HEADQUARTERS DISTRICT

Section 7

(*a*) The headquarters district shall be under the control and authority of the United Nations as provided in this agreement.

(*b*) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district.

(*c*) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws.

(*d*) The federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the headquarters district, shall take into account the regulations enacted by the United Nations under Section 8.

Section 8

The United Nations shall have the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this section,

shall be promptly settled as provided in Section 21. Pending such settlement, the regulation of the United Nations shall apply, and the federal, state or local law or regulation shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities.

Section 9

(*a*) The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General.

(*b*) Without prejudice to the provisions of the General Convention or Article IV of this agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavoring to avoid service of legal process.

Section 10

The United Nations may expel or exclude persons from the headquarters district for violation of its regulations adopted under Section 8 or for other cause. Persons who violate such regulations shall be subject to other penalties or to detention under arrest only in accordance with the provisions of such laws or regulations as may be adopted by the appropriate American authorities.

Article IV. Communications and Transit

Section 11

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members of officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials; (2) experts performing missions for the United Nations or for such specialized agencies; (3) representatives of the press, or of radio, film, or other information agencies, who have been accredited by the United Na-

tions (or by such a specialized agency) in its discretion after consultation with the United States; (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter; or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

Section 12

The provisions of Section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.

Section 13

(*a*) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible.

(*b*) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11 and, specifically, shall not be applied in such manner as to require such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in Section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(1) No proceedings shall be instituted under such laws or regulations to require any such persons to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General or the principal executive officer of the appropriate specialized agency in the case of any other person referred to in Section 11;

(2) A representative of the Member concerned, the Secretary-General or the principal Executive Officer of the appropriate specialized agency, as the case may be, shall have the right to appear in any such proceedings in behalf of the person against whom they are instituted;

(3) Persons who are entitled to diplomatic privileges and immunities under Section 15 or under the General Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States.

(*c*) This section does not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by Section 11 come within the classes described in that section, or the reasonable application of quarantine and health regulations.

(*d*) Except as provided above in this section and in the General Convention, the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there.

(*e*) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas valid only for transit to and from the headquarters district and sojourn therein and in its immediate vicinity.

(*f*) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons or property into the headquarters district and to prescribe the conditions under which persons may remain or reside there.

Section 14

The Secretary-General and the appropriate American authorities shall, at the request of either of them, consult as to methods of facilitating entrance into the United States, and the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters district and do not enjoy the rights referred to in this Article.

ARTICLE V. RESIDENT REPRESENTATIVES TO THE UNITED NATIONS

Section 15

(1) Every person designated by a Member as the principal resident representative to the United Nations of such a Member or as a resi-

dent representative with the rank of ambassador or minister plenipotentiary,

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,

(3) Every person designated by a Member of a specialized agency, as defined in Article 57, paragraph 2, of the Charter, as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States, and

(4) Such other principal resident representatives of members of a specialized agency and such resident members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned, shall whether residing inside or outside of the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries.

Article VI. Police Protection of the Headquarters District

Section 16

(*a*) The appropriate American authorities shall exercise due diligence to ensure that the tranquility of the headquarters district is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity and shall cause to be provided on the boundaries of the headquarters district such police protection as is required for these purposes.

(*b*) If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons requested under the authority of the United Nations. The United Nations shall, if requested, enter into arrangements with the appropriate American authorities to reimburse them for the reasonable cost of such services.

ARTICLE VII. PUBLIC SERVICES AND PROTECTION OF THE HEADQUARTERS DISTRICT

Section 17

(*a*) The appropriate American authorities will exercise to the extent requested by the Secretary-General the powers which they possess with respect to the supplying of public services to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, et cetera. In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly, to ensure that the work of the United Nations is not prejudiced.

(*b*) Special provisions with reference to maintenance of utilities and underground construction are contained in Annex 2.

Section 18

The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district. The United Nations on its part shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters district are not prejudiced by any use made of the land in the headquarters district by the United Nations.

Section 19

It is agreed that no form of racial or religious discrimination shall be permitted within the headquarters district.

ARTICLE VIII. MATTERS RELATING TO THE OPERATION OF THIS AGREEMENT

Section 20

The Secretary-General and the appropriate American authorities shall settle by agreement the channels through which they will communicate regarding the application of the provisions of this agreement and other questions affecting the headquarters district, and may enter into such supplemental agreements as may be necessary to fulfill the

purposes of this agreement. In making supplemental agreements with the Secretary-General, the United States shall consult with the appropriate state and local authorities. If the Secretary-General so requests, the Secretary of State of the United States shall appoint a special representative for the purpose of liaison with the Secretary-General.

Section 21

(*a*) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(*b*) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

ARTICLE IX. MISCELLANEOUS PROVISIONS

Section 22

(*a*) The United Nations shall not dispose of all or any part of the land owned by it in the headquarters district without the consent of the United States. If the United States is unwilling to consent to a disposition which the United Nations wishes to make of all or any part of such land, the United States shall buy the same from the United Nations at a price to be determined as provided in paragraph (*d*) of this section.

(*b*) If the seat of the United Nations is removed from the headquarters district, all right, title and interest of the United Nations in and to real property in the headquarters district or any part of it shall, on request of either the United Nations or the United States be assigned and conveyed to the United States. In the absence of such a request, the same shall be assigned and conveyed to the sub-division of a state in which it is located or, if such sub-division shall not desire it, then to the state in which it is located. If none of the foregoing

desire the same, it may be disposed of as provided in paragraph (*a*) of this Section.

(*c*) If the United Nations disposes of all or any part of the headquarters district, the provisions of other sections of this agreement which apply to the headquarters district shall immediately cease to apply to the land and buildings so disposed of.

(*d*) The price to be paid for any conveyance under this section shall, in default of agreement, be the then fair value of the land, buildings and installations, to be determined under the procedure provided in Section 21.

Section 23

The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.

Section 24

This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connection with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein.

Section 25

Wherever this agreement imposes obligations on the appropriate American authorities, the Government of the United States shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate American authorities.

Section 26

The provisions of this agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this agreement and any provisions of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this agreement shall prevail.

Section 27

This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently to discharge its responsibilities and fulfill its purposes.

Section 28

This agreement shall be brought into effect by an exchange of notes between the Secretary-General, duly authorized pursuant to a resolution of the General Assembly of the United Nations, and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of the Congress.

In witness thereof the respective representatives have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and French languages, both authentic, at Lake Success, this twenty-sixth day of June, 1947.

ANNEX 1

The area referred to in Section 1(*a*) (1) consists of:

(*a*) the premises bounded on the East by the westerly side of Franklin D. Roosevelt Drive, on the West by the easterly side of First Avenue, on the North by the southerly side of East Forty-Eighth Street, and on the South by the northerly side of East Forty-Second Street, all as proposed to be widened in the Borough of Manhattan, City and State of New York, and

(*b*) an easement over Franklin D. Roosevelt Drive, above a lower limiting plane to be fixed for the construction and maintenance of an esplanade, together with the structures thereon and the foundations and columns to support the same in locations below such limiting plane, the entire area to be more definitely defined by supplemental agreement between the United Nations and the United States of America.

ANNEX 2

Maintenance of Utilities and Underground Construction

Section 1

The Secretary-General agrees to provide passes to duly authorized employees of the City of New York, the State of New York, or any of their agencies or sub-divisions, for the purpose of enabling them to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters district.

Section 2

Underground constructions may be undertaken by the City of New York, or the State of New York, or any of their agencies or sub-divi-

sions, within the headquarters district only after consultation with the Secretary-General, and under conditions which shall not disturb the carrying out of the functions of the United Nations.

(11) *Convention on the Privileges and Immunities of the United Nations, Approved by the General Assembly, February 13, 1946* [17]

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connection with the Organization:

Consequently the General Assembly by a resolution adopted on 13 February 1946 approved the following convention and proposes it for accession by each Member of the United Nations.

Article I. Juridicial Personality

Section 1. The United Nations shall possess juridicial personality. It shall have the capacity:

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property;

(*c*) to institute legal proceedings.

Article II. Property, Funds and Assets

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4. The archives of the United Nations, and in general all

[17] UN, General Assembly, *Resolutions Adopted . . . During the First Part of its First Session . . .* , Doc. A/64, p 25–27.

documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

(*a*) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(*a*) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(*c*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III. Facilities in Respect of Communications

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government, including its diplomatic mission, including the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for in-

formation to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV. The Representatives of Members

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(*b*) inviolability for all papers and documents;

(*c*) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*d*) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

(*e*) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

(*g*) such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

Section 16. In the article of the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V. Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nations shall:

(*a*) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(*c*) be immune from national service obligations;

(*d*) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(*e*) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the government concerned;

(*f*) be given, together with their spouses and relatives dependent

on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

Article VI. Experts on Missions for the United Nations

Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(*c*) inviolability for all papers and documents;

(*d*) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags,

(*e*) the same facilities in respect of currency or exchange restric-

tions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII. United Nations *Laissez-Passer*

Section 24. The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of section 25.

Section 25. Applications for visas (where required) from the holders of United Nations *laissez-passer,* when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not holders of United Nations *laissez-passer,* have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII. Settlement of Disputes

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

(*a*) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;

(*b*) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or ap-

plication of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

Section 31. This convention is submitted to every Member of the United Nations for accession.

Section 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

Section 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

Section 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

Section 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

Section 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

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division (E/CN.1 etc.) may have symbols (Agenda – agenda, INF – information series, or SR – summary record of meetings) added (E/Agenda and E/CN.1/Agenda) as indication of content. Finally each series may have: Add. – addendum, Corr. – corrigendum, and Rev. – revision (E/25/Add.1 – Economic and Social Council, document 25, add.1).

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ABBREVIATIONS

ECAFE – Economic Commission for Asia and the Far East
ECOSOC – Economic and Social Council
ERP – European Recovery Program
FAO – Food and Agriculture Organization
GA – General Assembly
ICAO –International Civil Aviation Organization
ILO – International Labor Organization
IMCO – Intergovernmental Maritime Consultative Organization
IRO – International Refugee Organization
ITO – International Trade Organization
ITU – International Telecommunications Union
PICAO – Provisional International Civil Aviation Organization
SC – Security Council
TC – Trusteeship Council
UN – United Nations
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNO – United Nations Organization
UNRRA – United Nations Relief and Rehabilitation Administration
UNSCOP – United Nations Special Committee on Palestine
UPU – Universal Postal Union
WFTU – World Federation of Trade Unions
WHO – World Health Organization
WMO – World Meteorological Organization

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