THE UNITED NATIONS: AIMS AND STRUCTURE

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ANY scientific study of the Charter of the United Nations will disclose numerous defects, inconsistencies and weaknesses. It does not signify hostility to the United Nations to note and discuss these weaknesses; their existence is the result of the present inability or unwillingness of sovereign states, and especially of the United States, to make the concessions which must be made if the Charter is to be improved. The Charter is essentially an American production; if it is weak, it is primarily because the United States made it so.¹ In general, it represents an improvement over the League of Nations, though not so great an advance as many had hoped for;² and it is clearly a gain that it now includes the two greatest and most reluctant powers in the world.

It is possible that the United States delegates underestimated the desire of the American people for a strong security system. Many voices in this country now demand that the United Nations be strengthened, and some would go so far as to abandon it, and to build an entirely new system of "world government." It would, however, be a reckless venture to throw away what we have on the chance of being able to substitute something better, and it should be possible to develop and strengthen the present United Nations system within the limits of popular and national acceptance, and to make it more adequate for present needs.

No effort is made in this portion of the symposium to offer proposals for amendment or improvement of the Charter of the United Nations; and if, in the course of the brief explanation of the characteristic features and structure of the system, severe criticisms are made, these are not to be taken as indicating a belief that the United Nations is without value. On the contrary, the United Nations offers the only practicable hope for the community of nations to build for itself a system of law and order. Precisely because it is weak, it should be the more strongly supported, and every effort made to strengthen it. Like all governmental systems, it starts out weak and inadequate; and like

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1. Which is not to say that other states did not also behave like sovereign states. But the United States undoubtedly dominated the Conference; the basic plan was presented by her; it was primarily her influence which shaped the domestic questions clause, the veto, the jurisdiction of the Court, etc.

2. Eagleton, *Covenant of the League of Nations and Charter of the United Nations: Points of Difference* (1945) 13 DEP'T OF STATE BULL. 263-9.

other governments, it will succeed or fail in the measure that those whom it serves do or do not give it support.

CHARACTERISTIC FEATURES

A War Product. The United Nations was not planned as a universal organization, though this lay somewhere in the background of thought as an ultimate objective. Its original membership was limited to those who had sided with the United Nations against the Axis foe, and its chief purpose was to provide security, largely against that same foe. Even more than the League of Nations, the United Nations was the consequence of war and the manufacture of the victors. It was conceived in fear of the enemy and in resentment against those who had not helped against the enemy, and it was prenatally "marked" by this feeling.

Various decisions evidence this directional force. The idea of an international organization was first adumbrated in the Atlantic Charter by the United Kingdom and the United States; the entry of the Soviet Union into the war made them three, and these three Powers (with China added by way of courtesy) laid at Dumbarton Oaks the foundations for the new structure, which was to be an "international security organization." These four invited to the United Nations Conference on International Organization at San Francisco those who had participated in the war to the extent of signing the Declaration by United Nations; and the very name of the organization implies that it is a continuation of the common action against the enemy. Only those who had made the blood sacrifice together could enter as of right, and be original members; neutrals and enemies must seek for admission later.

The predominant position which the Great Powers claimed for themselves was justified on the grounds that they won the war, and that they would be able to contribute most to security against the enemy in the future. Although Article 107 deprives the United Nations of responsibility for the enemy states, the arguments of the Great Powers showed that the aggressors whom they had in mind as they shaped the Charter were Germany, Italy and Japan. The Great Powers made the potentially formidable sanctions of the Security Council inapplicable to themselves, and it is obvious that such an array of power was not needed against any smaller state. Against resurgence of danger from their former enemies they protected themselves in various ways. No new member could be admitted without the approval of the Security Council, in which each Great Power has a veto; and Article 107 gives them complete control over the former enemies. The term "enemy state" is even defined in Article 53. The provisions regarding trusteeship, and even those concerning amendment, doubtless bear some rela-

tion to this preoccupation. The way is not barred, however, to admission of a former enemy state, should the Five Powers agree that it is desirable.

Realism. If security against the former enemy was the first preoccupation of those who made the Charter, security against any aggression was the broader keynote of appeal; and it was in this broader security that the peoples of the world were interested. There was agreement among the four who laid down at Dumbarton Oaks the principles of the new organization that it should have real authority behind it: authority in the sense of adequate armed forces, of decision binding upon all Members to act against a declared aggressor, and of ability to act with flexibility, speed and decisiveness. The three Powers (later five) also agreed, without difficulty, that they had proven their sense of responsibility by winning the war and that they were the ones most responsible and best able to maintain order in the world. Only they, they were sure, could restrain aggression—though they were apparently thinking only of aggression from the former enemy, since it would not require their enormous joint strength to subdue a smaller aggressor and since, in the system proposed by them, the possibility of action against one of themselves as an aggressor was excluded.

The theory upon which this strange security system was based was the "realistic" theory that so long as the Great Powers were in agreement they could achieve any desired result, and that should they fail to be in agreement, it would be impossible to apply sanctions against one of themselves, or even against another state supported by one of themselves. In such a case, it was argued (improperly, it is believed), any effort to apply sanctions would simply mean another great war, and the possible disruption of the United Nations system itself.

It may be granted that there is today an exceptional distribution, or concentration, of power in the hands of a very small number of states, and that any conflict in which some of these states would be upon opposite sides would be a terrible one. It was, however, an unwarranted confession of impotence to refuse to face this situation. The "realistic" theory failed to take into consideration:

(1) the probability of disagreement and therefore of deadlock among those who must agree;

(2) that if a situation became so critical as to call for denunciation of a Great Power as an aggressor and for enforcement measures against that Power, it would be so critical as to mean conflict in any case, whether in or out of the United Nations;

(3) that the combined strength of the other Members, if they were given the opportunity and the responsibility, might be sufficient to turn against such an aggressor a balance which might otherwise be too nearly equal;

(4) that in any case it would be to the gain of the nations who were forced into war against the aggressor to have on their side the immediate support of the other Members, for whatever it was worth, rather than having to renew the desperate game of soliciting allies;

(5) that some advance is made toward law and order if a community has a common moral footing upon which to stand; and finally,

(6) that the United Nations would be as effectively disrupted if it did not even try to handle a desperate situation as if it had tried and failed. It was so that the League of Nations ended.

The "realistic" theory prevailed because the Great Powers in their current overwhelming strength, were able to impose it upon the many other states which did not like it. It is probably more correct to say that other states accepted the theory but objected to having it carried to the extent demanded of them. As established, the security system of the United Nations can not legally operate against one of the Five Powers (assuming its veto), nor against any state supported by the veto of one of the Five Powers. There seems doubt now that there will be sufficient agreement among the five even to hold in check the resurgence of a former enemy. This "realistic" system thus offers little security to smaller states, and no security whatever to the United States—except in so far as we may delude ourselves into thinking that we are secure because we have reserved our national freedom of action. The veto in this connection means little to us, since the temper of the American people is such that there is little likelihood of our being in the position of an aggressor. On the other hand, the only aggressor whom we need fear is one of the Five Powers, but against it we could not as of legal right demand the assistance of the United Nations.

Great Power Control. The Charter provides, in excessive detail, for the constitutional dominance of the Five Powers within the United Nations. They are given permanent seats on the Security Council, and a right of veto; any one of them (except possibly as a disputant)³ can therefore block any action sought in the Council. While the votes of the Five are not sufficient to achieve a decision, their influence should usually be sufficient to pull in the other two votes required. Any one of them can block the settlement of a dispute (except as a disputant), or the use of enforcement measures against an aggressor. Their power to block by veto extends to the admission of new Members, to suspension of a Member from the exercise of its rights, to expulsion, to the selection of the Secretary-General, and even to the appearance before the Security Council of a state not a member of it. The Five Powers can not be deprived of this special position without the consent of all, since the veto applies also to the amending process.

3. The Charter ostensibly excludes disputants from voting, in cases under Chapter VI, but the effectiveness of the exclusion is as yet uncertain. See discussion *infra* p. 992.

The favored Five thus have vast powers as permanent members of the Security Council, but authority is further channeled into their hands by the provisions of Chapter XVII. Article 106 authorizes them, until the agreements for supply of forces have been made (Article 43), to act "on behalf of the Organization" for the maintenance of international peace and security. In taking such action, they would not be restricted even by the few rules or procedures which bind the Security Council in its actions. The Council itself determines when the period has ended, but in making that determination, the Five Powers must be in concurrence. By Article 107, responsibility for the entire field of action with regard to enemy states is turned over to "the Governments having responsibility for such action." It is not clear, for each particular case, who these governments are; but there is little doubt that they include the Three Powers and that these three will determine which others will participate in decisions. Whether this Article represents gain or loss to the United Nations could be argued with about equal weight on each side.

The special position thus given to the Five Powers was based upon recognition of their exceptional abilities and responsibilities for the maintenance of peace, but no criteria for their selection were stated in the Charter. They were arbitrarily named; no provision was included by which the permanent Members could be changed as the power position of states might change. Furthermore, the principle was not applied to middle-sized states, such as Canada; and finally, no change in the provisions made is possible through amendment, if one of the Big Five objects.

Thus the United Nations is built upon a narrow base. If the Five Powers can agree, they can maintain such order as they wish—but in that case, they could do so without the United Nations. It is doubtless true that within the Charter of the United Nations they must act more circumspectly, and with more respect for the opinion of the world. The organs and procedures of the United Nations can at the least focus attention upon what they are doing, and exercise some degree of restraint, but the system can not be called democratic, nor a legal order. In the reasonable conclusion that security depends upon the Great Powers, other states will be forced to seek the support of one of these Powers. The world is already dividing into rival blocs of power, each consisting of a Great Power and its satellites or supporters. No smaller state can be satisfied as to its future in a system in which it may be compelled to assume obligations through vote of the Security Council while each of the five larger Powers may escape such obligations through use of the veto; in which it cannot hope for protection against one of the Big Five or against another state supported by one of the Big Five; and in which it can be denounced as an aggressor, while no one of the Big Five can be so denounced.

National Sovereignty. Another characteristic feature of the United Nations Charter is the careful protection which it gives to the sovereignty of the Member states. The Organization has no authority to take action binding upon a Member without its consent, with the exception of decisions by the Security Council in the field of enforcement action against an aggressor. No organ has legislative power, in the sense of a majority vote binding those who dissent; new rules must still be developed through treaties and ratification. Even with regard to disputes, though a state may be required to submit to certain procedures, it is not obligated to accept the recommendation of settlement.

To make doubly sure the assurance against diminution of national sovereignty, the clause exempting domestic questions from the jurisdiction of the United Nations (Article 2, Paragraph 7) was refined and relocated. In the Dumbarton Oaks Proposals,⁴ this had been a paragraph limited to the pacific settlement of disputes; at San Francisco, it was moved forward by the sponsoring Powers to become one of the fundamental principles, applicable to the entire Charter. No organ of the United Nations was authorized to decide whether a disputed question is really a domestic question or not; and the phrase requiring that this decision be made in accordance with international law was stricken from the earlier draft. The United States was primarily responsible for this provision, which was intended to give assurance to the Senate that the United Nations would not be able to intervene in what we might regard as our internal affairs. It would appear now that a state has only to assert that a matter is within its domestic jurisdiction in order to exempt it from such small jurisdiction as the United Nations might otherwise have over it. This clause clearly extends to disputes, and leaves one to wonder upon what grounds the Security Council could do anything with regard to Franco in Spain, aside from deciding that he is an aggressor or threat to the peace. It also raises the question whether a state, *e.g.*, the United States, could prevent the General Assembly or the Economic and Social Council from making recommendations upon, or even discussing, such matters as tariffs or immigration. Since the Charter grants no authority to any organ of the United Nations to establish rules binding upon a state without its own consent, it was a somewhat overstretched caution which felt the necessity of protecting sovereignty by making the domestic questions clause applicable to social, economic and other matters. On the other hand, if the limitation was intended to apply even to resolutions adopted by the General Assembly or the Economic and Social Council, or to draft conventions prepared by these organs for submission to states for ratification, or perhaps even to discussion of these subjects, there might be little for the United Nations to do.⁵ The *reductio ad absurdum*

4. DUMBARTON OAKS PROPOSAL, VIII, A, 7, DEP'T OF STATE, CONF. SER. 66 (1944).

5. UNCIO, Doc. 1019, I/1/42 (1945) 1.

arrives in a question raised by the Australian amendment to this paragraph,⁶ which was adopted and is now part of the Charter. The previous domestic questions clause contained an exception covering Chapter VII; the amendment changed this to limit it still further to "the application of enforcement measures under Chapter VII." This change would appear to exclude the determination of the aggressor, which is the only part of Chapter VII not actually to be regarded as the application of enforcement measures, and, therefore, the only part to which the change could apply. Since enforcement measures depend upon the determination of aggression or threat to the peace, application of Article 2, Paragraph 7 would apparently exclude sanctions, as well as settlement of disputes and discussion of desirable changes. It is to be hoped that no such nonsensical interpretation will be followed. In any case, this clause is gravely detrimental to the progress of the organized community of nations. Sovereignty, with such an interpretation as this, is not compatible with a legal order, or even with a system of political security such as the United Nations was planned to be. If this clause is strictly applied, the United Nations can be no more than machinery through which cooperation may be sought in matters upon which all Members agree. It is a gain to have such machinery available, but a system in which each nation has its own veto falls far short of satisfying the needs of the world today.

International Law. It follows from what has been said above that the Charter of the United Nations is not based upon law and indeed pays little respect to law.⁷ The word "international law" was not found in the Dumbarton Oaks Proposals, except for the subsequently deleted provision in the domestic questions paragraph. Numerous amendments were offered to correct this omission, and the Four Powers themselves, upon the initiative of China, offered an amendment to Article 1, Paragraph 1, which requires that disputes be settled "with due regard for the principles of justice and international law." This was changed, for the purpose of strengthening it, to read "in conformity with the principles of justice and international law." It was first proposed that this phrase should follow the words "maintain international peace and security," the idea being to prevent appeasement; this was rejected, on the ground that the first task of the Organization was to prevent the use of force, after which settlement by law could follow. This was reasonable, and so the phrase was limited to the settlement of disputes. The word "justice," after some debate, was also added to Article 2, Paragraph 3, where it is again limited to the settlement of disputes. However, the words "international law" are not to be found in the Chapter on the Pacific Settlement of International Disputes.

6. UNCIO, Doc. 969, I/1/39 (1945); see also *id.*, Doc. 976, I/1/40 (1945).

7. Eagleton, *International Law and the Charter of the United Nations* (1945) 39 AM. J. INT. L. 751-4.

These were the only concessions permitted by the Great Powers in the direction of a system based upon law. The domestic questions clause, in its Dumbarton Oaks form, applied to "situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the states concerned." At San Francisco, the words "by international law" were deleted.⁸ A suggestion that an authority should be named (*e.g.*, the International Court of Justice), capable of determining whether a question was or was not a domestic question was rejected.

The failure of the effort to assure compulsory jurisdiction for the International Court of Justice, for the various types of legal questions listed in Article 36 of the Statute, was another setback for those who had hoped to develop a legal order for the community of nations. Since at various times a large number—making in total a majority—of states had accepted the Optional Clause and compulsory jurisdiction thereunder, it had been hoped that the Charter and the Statute would contain this principle. This hope failed, however, following a speech by the delegate of the United States.⁹ Since states are not obligated to submit their legal disputes to the Court, it was not possible to include in Chapter VI a requirement that legal disputes should be referred by the Security Council to the Court.

The emphasis in the new system, as has been indicated above, lies in security and prevention of the use of force; and it may reasonably be argued that the maintenance of order is prerequisite to the reign of law. Granted this, it still appears that due respect is not paid in the Charter to international law and legal procedures. Article 13 authorizes the General Assembly to "initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification"; weaker words could hardly have been found. More recognition of law was given under the Covenant of the League of Nations, in which judicial settlement was one of two

8. "In reply to the contention that domestic jurisdiction should be determined in accordance with international law, Mr. Dulles again pointed out that international law was subject to constant change and therefore escaped definition. It would, in any case, be difficult to define whether or not a given situation came within the domestic jurisdiction of a state. In this era the whole internal life of a country was affected by foreign conditions. He did not consider that it would be practicable to provide that the World Court determine the limitations of domestic jurisdiction or that it should be called upon to give advisory opinions since some countries would probably not accept the compulsory jurisdiction clause." UNCIO, Doc. 1019, I/1/42 (1945) 2.

9. In spite of valiant efforts on the part of the American Bar Association, led by Judge M. O. Hudson, Judge Ransom, Mr. Mitchell Carroll and others. The United States Delegation was perhaps overcautious in its fear of the Senate, and preferred to leave decision on this point to later use of the Optional Clause, if the Senate so desired. Acceptance of the Optional Clause has now been approved by the Senate, with certain reservations, one of which, relating to domestic questions, is particularly obnoxious.

required means of settling disputes. The Security Council may now ask the Court for advisory opinions, and proper use of this right would strengthen the legal order of the United Nations; but if the mood of the makers of the Charter continues, the Security Council will seek political rather than judicial settlement of disputes.

Social and Economic Objectives. In spite of, or perhaps because of, the emphasis placed upon security, it may well be that the greatest contribution of the United Nations will develop in other fields. The unbalanced system of the Dumbarton Oaks Proposals was at San Francisco given more symmetry (at least if proportionate space in the Charter is a measure) by broader and more specific delineation of functions, and by the provision of additional organs for social, economic and cultural cooperation. Such authority as the United Nations has was given to its political organ, the Security Council, but the stultifying provisions with regard to voting and with regard to domestic questions may in practice nullify this authority. No authority whatever was given to any other organ, in any other field, to impose obligations upon states, but a great deal of enthusiasm was manifested for activity and development in non-political fields, and the General Assembly was given the opportunity through study, negotiation, recommendation and community pressures, to encourage adoption by states of the measures proposed by it and other organs. The Economic and Social Council, with its various subcommissions, represents an emphasis in these fields which is an advance over the League of Nations; and the Trusteeship Council, while stymied thus far, has also under the Charter opportunity to promote and advance the welfare of the individual human being.

This viewpoint was brought forward by Prime Minister Attlee at the opening session of the General Assembly in the following words:

"In the purposes of the United Nations we have linked with the achievement of freedom from fear, the delivery of mankind from the peril of want. To the individual citizen the spectre of economic insecurity is more constant, more imminent than the shadow of war. Every individual can be brought to realize that the things that are discussed in conference here are the concern of all and affect the home life of every man, woman and child. Without social justice and security there is no real foundation for peace, for it is among the socially disinherited and those who have nothing to lose that the gangster and aggressor recruit their supporters.

"I believe, therefore, that important as is the work of the Security Council, no less vital is it to make the Economic and Social Council an effective international instrument. A police force is a necessary part of a civilized community, but the greater the social security and contentment of the population the less important is the police force."¹⁰

10. See 2 JOURNAL OF THE GENERAL ASSEMBLY (January 11, 1946) 25.

STRUCTURE AND FUNCTIONS

While the League of Nations and the United Nations have some similarities, they are architecturally different. The League had two organs of coordinate rank and authority with little differentiation of function; it had connected with it two autonomous organs, the Permanent Court of International Justice and the International Labour Organization. The United Nations has six principal organs, well differentiated in function. The General Assembly is a central organ to which all others are related; the Security Council, Economic and Social Council, and Trusteeship Council each have limited functions and each reports to the General Assembly, which covers all fields. The International Court of Justice is highly independent, but depends upon the Assembly for certain purposes. The Secretariat was made the backbone of the system in both cases. The League of Nations made an effort to gather all activities under one roof;¹¹ the United Nations plans to have "specialized agencies," such as the Food and Agriculture Organization, each independent in statute and membership, but all coordinated in some way with the central body through agreements to be made. The International Labour Organization will presumably become one of these specialized agencies. It has been said that the League of Nations represented centralization, whereas the United Nations represents decentralization; it would be more correct to say that the United Nations itself covers the same fields as did the League, but that in addition a number of independent institutions will carry on specialized functions.

Membership. It has been noted above that the United Nations was a coalition of victors who transformed their alliance into an international organization of general scope, and that only those states could be original Members who had at least formally supported the war against the Axis enemies. The states which had been invited to the San Francisco Conference by the Four Powers, or who had previously signed the Declaration by United Nations (Article 3), were apparently without question "peace-loving states"; "other" peace-loving states may be admitted by a two-thirds vote of the General Assembly, provided their admission is recommended by the Security Council. Thus, any one of the Five Powers can block the admission of a state which it considers as having been insufficiently inimical to the Axis, or which, for any other reason, it does not wish to see admitted.

Such animosities, it is to be hoped, will fade away; and it is doubtless true that most of the delegates who drafted the Charter were thinking in terms of membership ultimately to be universal. Some, indeed, would have made the membership of all nations automatic or required; but it would have been necessary to give to the United Nations much

11. See Art. 24, COVENANT OF THE LEAGUE OF NATIONS.

more power than was possible at the time, if it was to be able to coerce into unwilling membership a state such as the United States or Russia. A long step in the direction desired was taken in Article 2, Paragraph 6, which imposes the rules of the United Nations upon non-members in so far as the settlement of disputes and threats to the peace are concerned. Since these are the only fields in which the United Nations can exercise control over its Members, there is little advantage in refusing to be a Member. A broad interpretation was given to the word "state" by the admission of the Philippines, the Byelorussian and Ukrainian Republics, India, Egypt, Syria and Lebanon.

The Covenant of the League contained no such provision for suspension as is found in Article 5 of the Charter. Suspension is limited to Members against which "preventive or enforcement action has been taken"; and the suspension is not from membership but from "exercise of the rights and privileges of membership." Since this is a security measure, it is invoked upon recommendation by the Security Council and adoption by the General Assembly; the right can be restored only by the Security Council. This provision was intended as a sanction, though it would appear to be a lesser penalty following a greater one; and expulsion is also included (Article 6) as a sanction. Since expulsion would deprive the Organization of jurisdiction over the expelled state, and since it is contrary to the idea of universality held by many, there was strong opposition to this clause; and it was retained only because of the determined fight made for it by the Soviet Union.¹² Expulsion can be used only against a Member "which has persistently violated the Principles" of the Charter. Since the United Nations may exercise control over non-members for security purposes (with which the Principles are chiefly concerned), the effects of suspension and of expulsion would appear to be little different.

Mention must also be made of withdrawal, concerning which there is not a word in the Charter. In the absence of specific provision, is there a right to withdraw? The question was discussed at length, and became of importance as delegates realized that they might be bound by an amendment to which they might object, or on the other hand, that it might be impossible to obtain changes in an unsatisfactory Charter because of the veto of one of the permanent Members of the Security Council. It would probably have been impossible to secure the necessary two-thirds majority for a statement in the Charter either affirming or denying a right of withdrawal, and it was decided to omit any reference to it from the Charter, but to adopt an interpretative resolution more or less conceding a right of withdrawal.¹³ This result permits the international lawyers to debate again the value of *travaux*

12. UNCIO, Doc. 1178, I/2/76 (2) (1945).

13. *Ibid.*; Report to the President, DEP'T OF STATE CONF. SER. 71 (1945) 47-50.

préparatoires and the sanctity of treaties. It seems clear that the Conference—a body of great authority—intended to permit but also to discourage use of a right of withdrawal; on the other hand, in the absence of any provisions in the Charter by which obligations under it can be terminated, it may be argued that the rule *pacta sunt servanda* applies, and that no such unilateral abrogation of obligations under the Charter is possible.¹⁴

The General Assembly. The General Assembly emerged from the debates at San Francisco a stronger organ than it appeared to be in the Dumbarton Oaks Proposals, and must be regarded as the central organ of the system. It is the organ to which are related all the other organs of the United Nations; it is the only organ which is itself authorized to consider the whole, rather than a specialized, field of function of the United Nations; it is therefore the only organ constitutionally capable of serving as a supervisory body. This function is definitely assigned to it. By Article 15, it is to "receive and consider annual and special reports from the Security Council," and also reports "from the other organs of the United Nations." The General Assembly elects the non-permanent Members of the Security Council and, while it is given no directive powers over the Security Council, the right of criticism of reports required from that body will doubtless (as was true under the League of Nations) lead to some degree of influence over its actions. The General Assembly chooses the members of the Economic and Social Council and the elected members of the Trusteeship Council and has definite authority over these two Councils under Chapter X and Articles 16 and 85. Through its control of finances (Article 17) it has a broad control over all the activities of the Organization, including the International Court of Justice. The Secretariat, except for the choice of the Secretary-General in which the Security Council participates, is exclusively under its control (Chapter XV). The Assembly has also a wide authority to establish such subsidiary organs as may be necessary for the performance of its functions, thus enabling it to carry on in fields in which other organs may decline to operate. The Assembly has no legislative power and cannot create obligations binding upon Members without their consent, but it is clearly the chief organ and the directing agency so far as there is one, of the United Nations.

The United Nations is "based on the principle of the sovereign equality of all its Members" (Article 2, Paragraph 1); and while the phrase is a mockery in some parts of the Charter, it is applicable to the General Assembly, in which Members have equal representation (not more than five each) and one vote per state. The idea of graded repre-

14. See Briggs, *Power Politics and International Organization* (1945) 39 AM. J. INT. L. 664.

sentation, somewhat vaguely included for the Security Council, was hardly considered for the General Assembly.¹⁵ A great advance over international voting procedure in the past was made when the rule of unanimity was abandoned. All voting in the Assembly is by majority, a two-thirds majority for certain matters specified as "important," a bare majority for others; and there is no veto. The Assembly has one regular annual session, but may hold special meetings. Consideration of the range of its work and its importance as the nexus of the system lead to the suggestion that it might have been better to have the General Assembly, rather than the Security Council, "so organized as to be able to function continuously" (Article 28).

The General Assembly, then, is the representative body of the United Nations, the only organ in which all Members can participate and exchange views. As a forum for discussion of any matters of interest to the community of nations, it will probably perform the most useful function of the United Nations. Article 10 gives to the Assembly the right to "discuss any question 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 for the limitation in Article 12) to make recommendations on any such subject. Although the Soviet Union succeeded in defeating the phrase "any matter within the sphere of international relations,"¹⁶ it is believed that the text as adopted, and as particularized in following articles, is as broad as the rejected words and sufficient for the needs of the Assembly.

It was made quite clear by Articles 11 and 35 that the competence of the General Assembly includes the settlement of disputes and the maintenance of peace. It may (Paragraph 1) "consider the general principles of cooperation in the maintenance of international peace and security," including those for the regulation of armaments; it may, more specifically (Paragraph 2), take up individual questions or disputes. Thus it has—when it is free to exercise it—as much authority in the settlement of disputes as does the Security Council itself, which is in either case no more than the power to make recommendations; and the Assembly is not embarrassed in its operation by a veto. However, the supremacy of the Security Council in the field of security is upheld by the provisions of Article 11, Paragraph 2, which require the General Assembly to abstain from recommendations on a question "on which action is necessary";¹⁷ and by the provisions of Article 12, under

15. Graded representation is a topic which should be kept in mind when one considers modifying or abandoning the veto.

16. UNCIO, Doc. 686, II/2/34 (1945).

17. The meaning of this phrase is not clear. The Security Council itself can do no more than "recommend" in the case of a dispute. If this is the "action" referred to, it would seem inconsistent to endow the Assembly with the right to recommend in such cases and then

which the Assembly can make no recommendation upon a dispute or situation concerning which the Security Council is exercising the functions given it by the Charter. Furthermore, the Council itself decides and notifies the Assembly when it is dealing with a matter and when it ceases to deal with it.

While a differentiation of function is thus made between the Security Council and the General Assembly which was missing under the Covenant of the League of Nations, the Assembly may always "consider and discuss"; it may bring a matter to the attention of the Security Council (Article 10, Paragraph 3); a Member may bring a dispute or situation before the General Assembly (Article 35, or 33); and the Security Council may refer a matter to the General Assembly for recommendation (Article 11, Paragraph 2). Thus the General Assembly may have an important, but not the primary, role in the maintenance of peace, and can, if not excluded under Article 12, do as much as the Security Council itself can do in the settlement of a dispute—since both are limited to recommendations. It may, indeed, be able to operate more efficiently than the Security Council, since it is not hampered by the veto. It may, perhaps, be able to make recommendations to the Security Council with regard to enforcement action, but it has no further authority in this sphere. It is probable that the Assembly will greatly develop its importance in the field of settlement of disputes. It will at the least be able to prod the Security Council into action, and it may become a sort of reserve authority for situations with which the Security Council is unable to cope.¹⁸

Aside from security matters, the General Assembly has under its jurisdiction—for discussion or recommendation only—almost any phase of international life. The exercise of this jurisdiction depends, however, upon the interpretation to be given to Article 2, Paragraph 7. The Assembly may not, under this clause, "intervene" in domestic matters; and if discussion and recommendation are to be interpreted as intervention in this sense, any Member could prevent almost any subject from coming before the Assembly. Such an interpretation is so nonsensical that it will doubtless not arise; if it should be accepted, there would be little use for the General Assembly or any other organ of the United Nations. Making exception for this possibility, the General Assembly is authorized by Article 13 to make recommendations for promoting cooperation in political, economic, social, cultural, educational and health fields, and, in the same style of weasel words, is

forbid it to use this authority when "action" is necessary. If the word refers to enforcement measures, the General Assembly would have no authority to act.

18. It is not believed that the General Assembly will permit the Security Council to maintain indefinitely upon its agenda a matter which it does not wish itself to act upon, and which it might seek in this fashion to keep out of the hands of the General Assembly, pursuant to Art. 12.

authorized to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law, and to assist in the realization of human rights and fundamental freedoms for all. Article 14 expands and further particularizes the general grant of Article 10. It is intended to deal with situations before they become conflicts, to attack the causes of war rather than war itself. Although Article 14 does not mention revision of treaties, the phrase "regardless of origin" makes this article the only substitute in the Charter for Article 19 of the Covenant of the League of Nations.¹⁹

The Security Council. It has been observed above that the Security Council was conceived of as the most important and authoritative organ of the United Nations. It is, in fact, the only organ able to make decisions binding upon Member states. It was given "primary responsibility" for the security function; it was constituted so as to be able to be in continuous session and to act with flexibility and rapidity; its importance was recognized by the insistence of the Great Powers on a favored position in it which they did not ask in other organs.

While there were some who wished a larger Council—so that more could have seats upon it—it was agreed without great difficulty that there should be eleven seats, of which five should belong permanently to the Five Powers, thus leaving a bare majority to the non-permanent Members. It is a fact which cannot be disregarded that certain Powers have much more strength than others, and correspondingly greater responsibility; this had earlier been taken into consideration in the composition of the League Council. There was much debate, however, as to the extent of the special position which these stronger Powers should have. The theoretical basis for this special position was that the states which had such exceptional power and responsibility should have decisive voices; but no criteria were stated for determining which were these Powers, and no provision was made for changing them in accord with future changes in the power status—except by the process of amendment, in which each of them would have a veto. There was little objection to giving the Big Five a special position, but much dislike for the extent of special powers demanded, and for the arbitrary

19. See *Hearings before Senate Committee on Foreign Relations on The Charter of the United Nations*, 79th Cong., 1st Sess. (1945) 250 *et seq.*, especially the words of Senator Vandenberg at 251: "When this Article was originally written, it specifically included reference to the revision of treaties. There was objection to the specific identification of revision of treaties lest it seem to be an invitation to take apart these international contracts, the integrity of which necessarily goes to the very roots of sound international relationships. Properly the objection was made that the reference to the revision of treaties might seem to be an invitation for the revision of the peace treaties with our enemies. Therefore, since the objective was not the revision of treaties, but the revision of conditions, this substitute language was agreed upon, referring to the peaceful adjustment of any situations, regardless of origin, 'which it deems likely to impair the general welfare of friendly relations among nations,' and so forth."

naming of these five. It was especially disliked that their temporary positions of power, due to the war, should be frozen by the Charter into permanent power.

The theoretical basis above mentioned was not applied elsewhere. Certain of the medium-sized states, led by Canada, claimed that their contribution to the war effort or to the future maintenance of peace entitled them to a position in the system (for example, to semi-permanent seats on the Security Council) correspondingly better than that of other states not able to contribute so much. This claim was pushed back into a few words in Article 23 which suggests to the General Assembly that in its choice of non-permanent Members of the Council due regard should be given "in the first instance to the contributions of Members of the United Nations to the maintenance of international peace and security and to the other Purposes of the Organization." Secondly, the Assembly should attempt to obtain "equitable geographical representation." Of course, the vote of the General Assembly is final, whether or not it pays attention to these suggestions. The non-permanent Members of the Security Council are elected by the General Assembly for two-year terms, three each year, and cannot be immediately reelected.

In order that the Security Council may be able to function continuously, its Member states have chosen delegates who are to reside permanently at its headquarters. The Council will doubtless be occupied for some time in working out plans for the regulation of armaments and for the supply of forces (Article 43), the two being closely related, and for a time with the settlement of disputes; it is to be hoped that, when these jobs are done and some degree of order is restored in the world, the need for continuous functioning will diminish. This desirable objective would be much aided by wide acceptance of the Optional Clause and the resultant increased range of the compulsory jurisdiction of the International Court of Justice.

The functions of the Security Council are for the most part laid down in Chapters VI and VII, and will be described below. It should be noted, in this connection, and as a large advance over the League of Nations system, that Articles 24 and 25 authorize the Security Council to act on behalf of the Members of the United Nations (with regard to the maintenance of peace and security) and bind the Members to carry out its decisions.

The great problem of the Security Council is of course its voting procedure. It is a decided gain over the League of Nations that the rule of unanimity is abandoned in all the organs of the United Nations, and it is perhaps a gain that only five, rather than all, of the members of the Security Council have a veto. On the other hand, the veto here represents discrimination, and is the chief manifestation of an exaggerated Great Power control; it embarrasses the settlement of disputes; it

makes impossible enforcement action against a Great Power or against any state supported by a Great Power; it leaves each Great Power unprotected against the only states it has reason to fear. The United Nations thus, through incorporating the veto, declares itself impotent to prevent a world war. Article 27, Paragraph 3, almost by itself takes the security out of what was once planned and advertised as a security organization.

The word "veto" is not found in the Charter, and where used in the Four Power reply to the questionnaire concerning the voting procedure it is put into quotation marks. The concept was an affirmative one, and is better understood in this sense. In theory it means not so much that each of the five is able to block decisions but rather that, in the present distribution of power among nations, nothing of importance can be accomplished unless the Great Powers are in agreement. On the other hand, the delegation of the United States, which was mostly responsible for the veto, had in mind the Senate, to whom it sought to be able to say that the veto power protected our national freedom of action. The rule of unanimous concurrence among the Five Powers applies to all decisions not strictly procedural (an undefined term), with the exception that a party to a dispute must abstain from voting in his own case.²⁰

The Pacific Settlement of Disputes. The settlement of disputes is regarded as part of the function of security, for which the Security Council is given primary responsibility. The Charter, as has been said above, puts more emphasis upon the maintenance of peace and security than upon the establishment of a legal order, and pays full respect to national sovereignty. These characteristics are manifest in the provisions for the settlement of disputes in Chapter VI. Five of the six Articles in the Chapter are devoted to settlement by the parties themselves; and only by the addition of four words²¹ to the Dumbarton Oaks Proposals was the Security Council enabled to do more than recommend to the parties the procedures which should be employed by them. The "gap" in the League of Nations system was not closed; no settlement can be imposed upon the parties by an outside authority and without their own consent. It is even maintained that such a settlement cannot be imposed upon them after enforcement action has been taken under Chapter VII.²²

20. The complications of the voting procedure cannot be explained here. The questions asked concerning it, and the answers given by the Four Powers are to be found in UNCIO, Doc. 855, III/1/B/2 (a) (1945) and Doc. 852, III/1/37 (1) (1945); also in GOODRICH and HAMBRO, *CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS* (1946) 126-30.

21. Art. 37, Par. 2: "such terms of settlement,"

22. See the *Hearings before Senate Committee on Foreign Relations on the Charter of the United Nations*, 79th Cong., 1st Sess. (1945) 276-9 and particularly the following colloquy:

"Senator Austin: . . . Can you say, then, that the use of military authority which is granted by Chapter VII, is not intended by this treaty to be used to en-

The first step in the procedure is the requirement (Article 33) that parties to a dispute must "first of all" seek a settlement through means of their own choice, and this is as much a right of the parties as an obligation. The requirement applies only to a "dispute, the continuance of which is likely to endanger the maintenance of international peace and security," thus excluding domestic questions and minor international affairs. If the parties agree that they have a dispute of this type (or not of this type—Article 39) and proceed by adequate measures toward its settlement, there would be no reason for interference by the Security Council. The Security Council may at any stage investigate any dispute or situation (Article 34), but only for the purpose of determining whether the dispute or situation is one the continuance of which might endanger peace, and which therefore would establish an obligation to settle. Such a question may be brought before the Council by any Member (Article 35, Paragraph 1), by a non-Member (Article 35, Paragraph 2), by the General Assembly (Article 11, Paragraph 3), or by the Secretary-General (Article 99); and a Member or non-Member state may put the dispute before the General Assembly.²³ The Security Council may decide whether the dispute is one of the type establishing the obligation, and must so decide before it has any jurisdiction of its own.²⁴

Should the Security Council decide that a dispute exists, it can do no more than recommend to the parties that they use certain procedures for the settlement of their difficulty; and only when the parties have failed to settle the dispute through means of their own choice is the Security Council permitted to suggest terms of settlement (Article 37). In such a situation, the parties are obligated to refer the matter to the Security Council, and the interpretation was given, at San Francisco that should a party fail to do so, the Security Council would nevertheless have jurisdiction to recommend terms of settlement.²⁵ It can only recommend; it cannot impose these terms upon the parties.

Vigorous efforts were made to include in the Charter provisions for the reference of legal disputes to the International Court of Justice, but

force in this indirect way, that is spoken of here on page 84 [of the REPORT TO THE PRESIDENT, Dep't of State Pub. 2349 (1945)], the recommendation of the Security Council, but is used only for the purpose of preventing hostilities?

"Mr. Pasvolksy: I would say that; certainly.

"Senator Austin: All right. Let us have the record rest there. . . . It is not my disposition in asking these questions to develop the fact that this expansion of the authority of the Security Council was intended to combine in the Security Council both the powers of judgment and the powers of execution of the judgment. I think that would be a grave mistake and a step backward instead of forward."

23. In this case, the General Assembly is governed by Art. 12. See p. 1294.

24. Eagleton, *The Jurisdiction of the Security Council over Disputes* (1946) 40 AM. J. INT. L. 513.

25. UNCIO, Doc. 1016, III/2/29 (1945) 2.

this was regarded as impossible after the rejection of compulsory jurisdiction for the Court. The Security Council cannot itself refer a legal dispute to the Court (though it may of course ask an advisory opinion from the Court), nor is it required to recommend such procedure to the parties. It should, however, "take into consideration that legal disputes should as a general rule be referred by the parties" to the Court. Article 38 is superfluous, being already included in Article 33.

The provisions for the settlement of disputes are inadequate, due largely to fear of the United States Senate; and the difficulties of the Security Council in this field are further increased by the voting procedure. It was agreed, after one of the crises of the Conference, that "a party to a dispute shall abstain from voting"; and that, "further, no individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention under paragraph 2, Section A, Chapter VIII."²⁶ It was not, however, made clear that in the vote deciding whether a dispute exists, the veto should not apply, and that question has recently been raised in cases before the Security Council.²⁷ If, in this preliminary determination, the veto can be used to say that there is no dispute, the putative disputant has his veto—and, indeed, a more effective one—in spite of the above rule. The veto is at least as absurd in the field of the settlement of disputes as in the field of security; and there can be little chance for progress by the United Nations until it is modified or abandoned.

Enforcement Action. Chapter VII of the Charter contains the provisions by which the United Nations is to deal with threats to the peace or aggression. In some respects, these provisions are efficient; in others, they are, so contingent or self-contradicting as to defeat their own ends.

The authority of the Security Council to determine the *casus foederis* is much more clear and unrestricted than was that of the Council under the Covenant of the League of Nations. It is a further gain over the Covenant that Members of the United Nations, under Articles 24 and 25 of the Charter, are obligated to act in accordance with the decisions of the Security Council in this field. Article 39 requires that the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression"; and it sets no criteria for guidance and no restrictions upon the determination, except for the vague statements earlier found in the Purposes and Principles. No definition of aggression is provided, and the authority of the Security Council reaches back to situations which threaten the peace

26. See citations *supra*, note 20.

27. The last words of the statement on the voting formula are: "... the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members." UNCIO, Doc. 852, *supra* note 20 at 4.

as well as to actual breaches of the peace. The Council may call almost any situation a threat to or breach of the peace, and may take drastic measures against one state or against all parties concerned.²³ This is a very large authority, and there was opposition to granting to it such authority. There was, however, a feeling that wars arise out of intangibles, and that action by the United Nations should not have to wait until there was a declaration of war, or judicial determination of violation of a legal phraseology; delegates were eager that the Council should be able to take quick and decisive action when needed. It is believed, however, that it would be difficult, particularly because of the veto, to secure agreement upon an unjust or arbitrary decision by the Security Council.²⁹

When a decision has been taken by the Security Council that a threat to or breach of the peace or act of aggression exists, the Council may for the fourth time (it has had three opportunities under Chapter VI) make recommendations to the parties as to what they should do—a last desperate effort to allow sovereign states to solve their own problems—or it may proceed to more vigorous action. Article 40 permits it to impose provisional measures upon the parties, in order to prevent aggravation of the situation. It is free to call for non-military measures (Article 41) or to proceed at once to military measures (Article 42). It may call upon all or some of the Members to carry out its decisions (Article 48); and Members promise (Article 49) to assist each other in carrying out these measures.

With regard to military measures—the ultimate test of an organization designed to stop aggression—the possibility of action by the Security Council is made contingent and indeed, for an indefinite period of time, the Council will be impotent. No international armed force independent of the national armed forces of its Members is provided; there is no “international police,” though it is believed that the Security Council, with the financial assistance of the General Assembly, could constitutionally create one if it wished to do so. As things now stand, the Security Council must depend for armed forces to be used against an aggressor upon contingents from the armed forces of its Members. The pledge taken by Members in Article 43 becomes practically operative only when agreements have been made specifying the obligations of each Member with respect to the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. The making of these agree-

28. Assuming, as is hoped, that the interpretation suggested at p. 992 above will prove to be incorrect.

29. The cases which have been brought before the Security Council thus far show that political and propaganda purposes influence the action sought, and that efforts will not be lacking to misuse the arbitrary power of the Council. They show also, however, that it will be very difficult to secure agreement in the Council for such misuse of its power.

ments will obviously be a very difficult matter, involving many complicated and technically difficult calculations, and offering much opportunity for disagreement and controversy; indeed, when one considers the long and completely vain efforts of the League of Nations to secure agreement upon reduction of armaments, one may justifiably wonder whether these doubly difficult agreements will ever be made. Each must be approved by the Security Council and by each Member through its own constitutional processes.³⁰

This situation is recognized in Article 106, which authorizes and perhaps requires the Five Powers to take such measures "on behalf of the Organization" as they may wish in order to maintain international peace and security, until a sufficient number of the agreements under Article 43 have been made. It would appear that these Powers could, during this period, prevent any action by the Security Council in the way of enforcement (perhaps even non-military?) measures; in any case, the Council would have no armed forces which it could use if it did have constitutional power to act. And it is to be recalled that, when the Security Council votes as to whether sufficient agreements have been made so that it may itself take over enforcement action, each of the Five Powers has a veto which it can use to prevent the transfer of authority.

Realism was carried into farce by the provision that each of the permanent Members of the Security Council has a veto in any decision of the Security Council under Chapter VII—whether disputant or not, and even if aggressor; consequently, no measures of enforcement can be taken against those states against which such measures will most be needed. In so far as military protection to the United States is concerned, the United Nations is useless; it can protect us only against those states against which we do not need protection. The security provisions of the Charter cancel each other out. The Security Council and the General Assembly will be of great importance in discouraging the development of wars—provided Members wish to use the Organization in this fashion; but the United Nations cannot offer assurance of protection to any Member, especially to the Big Five, until important changes have been made in the system. First among these is the modification or abandonment of the veto in the whole field of security.

The Economic and Social Council. The Dumbarton Oaks Proposals with regard to economic and social matters were greatly elaborated at San Francisco. More functions were specified, and more agencies suggested. No authority, however, was given to any organ in this field, in the sense of power to make laws or regulations binding upon a Member without its consent; the majority rule applied to resolutions within

30. Thus raising novel questions as to legal personality and the capacity to make treaties. See also Art. 63 and Art. 85.

an organ, but not to ratifications by states themselves of treaty law proposed and submitted to them. No international instrument had ever gone so far in recognizing the duty of states, singly or jointly, to advance the welfare of individual human beings; but measures in that direction are to be taken by states, not by the Organization. The United Nations may collect and distribute information, study, negotiate and recommend to the Member states, and this will doubtless become the most important of its functions; but the sovereignty of each Member is in no way infringed.

The chief agency through which this work is to be done is the Economic and Social Council, consisting of the representatives of eighteen states, chosen by the General Assembly, six each year, for three-year terms. It is in general subordinate to the General Assembly, but has much freedom of action. It may study problems in the wide field assigned to it: "international economic, social, cultural, educational, health, and related matters"; it may make reports and recommendations to the General Assembly, to Members, or to the specialized agencies; it may draft conventions, which must be submitted to the General Assembly; it may summon international conferences, in accordance with the General Assembly; and it may create such subordinate agencies as it wishes.³¹ One such agency, a commission on human rights, is called for by Article 68 of the Charter.

The Economic and Social Council has another important function. The United Nations does not seek, as did the Covenant of the League of Nations, to bring all international activities into one system. Rather, it encourages the development of "specialized agencies," such as the Food and Agriculture Organization, each independently constructed upon a separate treaty basis and working expertly in its own particular field. Each such agency is expected to make an agreement with the United Nations defining the relationship between it and the United Nations, and it is the function of the Economic and Social Council to negotiate these agreements (which must be approved by the General Assembly). The Council is also authorized to "coordinate the activities" of these various bodies, but only through consultation and recommendation. It may be reasonably expected, since members of each specialized agency usually will also be members of the General Assembly, that a large degree of coordination will actually be achieved. An enormous structure of international organization is thus being built through which, in various ways, standards of living may be improved.

The Trusteeship Council. The United Nations lifted to a higher rank

31. An outline of the various organs and commissions of the United Nations and their composition is to be found in a summary prepared by Denys Myers for (1946) 14 DEP'T OF STATE BULL. 467-75. For the specialized agencies and their functions see (1946) 14 DEP'T OF STATE BULL. 882-83 (from UN Doc. E/TSC/19).

the successor of the Mandates Commission of the League of Nations, by making the Trusteeship Council one of the principal organs. Great difficulties were encountered in making the arrangements concerning trusteeship, and these difficulties are reflected in the composition of the Trusteeship Council. It is to be composed of (1) those Members administering trust territories, (2) those of the Five Powers who do not happen to be administering trust territories, and (3) an equal number of non-administering states, elected by the General Assembly for three-year terms. The number of members in the Trusteeship Council is therefore uncertain, and their choice is partly automatic and partly elective. At this writing, it is not known what territories are to be put under trust, or who is to administer them. The Trusteeship Council, therefore, is not yet in existence.

The functions of the Trusteeship Council are somewhat limited, and are exercised under the authority of the General Assembly (Article 87). Certain principles and exhortations are laid down in Chapter XII. The Council may consider reports from administering authorities reporting the extent to which they have respected these principles; it may receive petitions concerning trust areas; it may visit such areas; and it is to formulate a questionnaire to serve as a basis for the annual report which each administering authority is required to make.

CONCLUSION

The Charter of the United Nations probably reflects with considerable accuracy the state of public opinion in the world, and particularly that in the United States. The American people are eager for an international organization which can relieve them of the perils of war and do good in other ways, but they are unwilling to make the specific concessions from national pride and sovereignty which are necessary to give to the Organization the specific grants of authority which it must have in order to be able to accomplish the desired purposes. They wish to have their cake and eat it, too; and the Charter correspondingly gives with one hand and takes away with the other. The United Nations furnishes opportunity rather than achievement; its success will depend upon how far people, and primarily the American people, will support and strengthen it. At the moment, there seems little evidence of intent on their part to do either.