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THE RELATIONSHIPS
AMONG THE PRINCIPAL ORGANS
OF THE UNITED NATIONS

*All members of each other are mankind
Since all of one sole ore have been refined
One Member's pain of body, heart or mind
Means each and all no stable peace can find.*

(Translated from Saadi by F. Goolding.)

THE RELATIONSHIPS
AMONG THE
PRINCIPAL ORGANS
OF THE
UNITED NATIONS

by

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*To those who gave up their lives
for a free, orderly, and just world.*

ABBREVIATIONS

<i>A.J.I.L.</i>	= The American Journal of International Law.
<i>B.Y.B.I.L.</i>	= The British Year Book of International Law.
Doc.	= Document.
I.C.J.	= The International Court of Justice.
L.N.	= The League of Nations.
L.N.O.J.	= League of Nations Official Journal.
O.R.G.A.	= Official Records of the General Assembly.
O.R.S.C.	= Official Records of the Security Council.
P.C.I.J.	= The Permanent Court of International Justice.
S.C.J.	= Security Council Journal.
S.F.	= The San Francisco Conference.
U.N.	= The United Nations.
Y.B.U.N.	= Year Book of the United Nations for 1946-47.

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INTRODUCTION

The development of international relations during the last decades on the one hand, and the unprecedented disastrous results of international frictions on the other, reveal to the world the necessity and expediency of creating institutions on the international level.

In fact, many of the political thinkers of recent centuries, even many actual rulers of the different Nations, have defended such institutionalization in various forms. However, what was and still is important, is how to accomplish this aim, and how to make these institutions stable, democratic and efficient.

These institutions, like their elements, are subject to an evolutionary process, a process which links and inter-relates the various advances to each other.

However, one cannot close one's eyes to the fact which is adequately expressed in the following paragraph by Professor Eagleton :

It is characteristic of the average human being that it requires disaster, or the immediate prospect of disaster, to rouse him to doing what his intelligence long ago told him to do, or to thinking of that on which he never before took the trouble to think.¹

Yes, in practice this fact stands out repeatedly. The most costly example, up to 1920, being the first World War, in consequence of which the League of Nations emerged. Apart from any other possible reasons which one may cite, the League received its public support because of its ideal of a better life for humanity.

In addition to the League of Nations, both before and after it, many other international organizations are to be found which were operating on a limited scale and mostly among a limited number of States.

The League of Nations suffered a great deal both from the lack of necessary experiences and from the very nature of the prevailing conditions of the world at that time. The League virtually

¹ M. C. EAGLETON, "The Demand for World Government", *A. J. I. L.*, Vol. 40, 1946, 399.

died in a disastrous way in 1939 following the outbreak of the second World War, but it did leave an interesting page in the world's history.

The call for the establishment of a "wider and permanent system of security", to accomplish what the League of Nations failed to do, was heard from the Atlantic Charter, dated August 14, 1941, and signed by President Franklin D. Roosevelt and Prime Minister Winston Churchill.² The whole idea was subscribed to through the Declaration of the United Nations by the twenty-six original signatory Nations (on January 1, 1942), and twenty-one adhering Nations to this Declaration.³

A more precise term for the establishment of a "general international organization" for "the maintenance of international peace and security", at the "earliest practicable date", was used in the Moscow Declaration on general security⁴ on October 30, 1943, signed by the Foreign Ministers of the U.S.A., United Kingdom, U.S.S.R. and China.

In connection with this study it is important to note the powers and functions of the organization envisaged. The Atlantic Charter, unlike the Moscow Declaration, emphasized many economic and social points in addition to security matters; not, however, as functions of the future world organization, but as "certain common principles in the national policies of their respective countries" on which the signatory powers based their "hopes for a better future for the world".

In the summer of 1944 a concrete step was taken towards this end. From August 21 to September 28, a series of conversations took place at Dumbarton Oaks among the representatives of the U.S.S.R., United Kingdom and United States, and later, from September 29 to October 7, among the representatives of China, the United Kingdom and United States. As a result, the four Powers agreed upon a group of proposals for the establishment of a new world organization. They then submitted them to the governments of the other States—these proposals are known as the Dumbarton Oaks Proposals.⁵

² Y.B.U.N., 2.

³ *Ibid.*, 1.

⁴ *Ibid.*, 3.

⁵ For the text of the Proposals see *Ibid.*, 4-9.

Between the date of the signing of the Atlantic Charter and the convening of the San Francisco Conference, a number of the United Nations' Conferences were held to discuss special social and economic questions, namely: the Conferences of the Food and Agricultural Organization (on May 18, 1943), the Conference of Allied Ministers of Education (in October, 1942), the United Nations Monetary and Financial Conference (on July 1, 1944), and the International Civil Aviation Conference (on November 1, 1944). These Conferences succeeded in drafting the relevant agreements to establish future specialized agencies, and in fact, the agreement creating U.N.R.R.A. was signed by forty-four nations on November 9, 1943.⁶

Therefore, the San Francisco Conference had not only received proposals—the Dumbarton Oaks Proposals—for the future structure of the general world organization, but also had before it some of the structural establishments of the future specialized agencies.

In February, 1945, Prime Minister Winston Churchill, President Roosevelt and Marshal Stalin met at Yalta. The official report of the Conference stated that they had resolved “upon the earliest possible establishment”, with their allies, of “a general international organization to maintain peace and security”.⁷ Moreover, they had agreed on the voting method which would be used in the organization, a formula which was not included in the Dumbarton Oaks Proposals.

Consequently, upon the invitation of four Sponsoring Powers—China, the United Kingdom, U.S.A., and U.S.S.R.—France refused to join them—as agreed to at the Yalta Conference, invitations were sent to the States which had declared war on Germany or Japan by March 1, 1945, and had signed the United Nations Declaration. The Conference began its work in San Francisco on April 26, 1945, and the Dumbarton Oaks Proposals prepared by the sponsoring Powers were introduced at the Conference as the basis of discussion with several relevant amendments and comments from all participating States.⁸

Moreover, during the Conference at San Francisco, an inner

⁶ *Ibid.*, 3-4.

⁷ *Ibid.*, 9.

⁸ For the detail of the procedure of S.F., see *Ibid.*, 12-34.

Committee of the five Big Powers was maintained in order to facilitate agreement among these Powers.⁹

The achievement of the Conference was a multilateral international treaty — the Charter — signed on June 26, 1945, in San Francisco by the Chiefs of the Delegates, and it was then ratified by every member State according to its own constitutional procedure.¹⁰

Upon such a ratification the United Nations Organization was established and assumed its functions.

In connection with this study there is an important aspect of the Charter—its relationship to the second World War.

It has been justly said that one of the great advantages of the Charter of the United Nations over the Covenant of the League of Nations is that the former has no constitutional connection with the peace treaties which are supposed to be concluded after the second World War, while the Covenant was a part of the peace treaties made after the first War. And, in fact, the Charter has no connection with any other documents.

However, it is still a matter for careful study to ascertain why such an important moment in which every effort was being made to win the war should have been chosen to draft and to sign a Charter for a World Organization to maintain the peace.

Among possible reasons for this development might be given : the implementation of the opinion of those who were fighting for peace and order ; the internal policy of President Roosevelt ; and the choice of the best moment to make such an agreement possible.

As far as the influence of the War upon the establishment of the United Nations is concerned, a few examples can be introduced. The bloody and furious conditions of the War definitely affected the emphatic provisions of the Charter with regard to the maintenance of future peace and security. The formula of a centralized body—a Security Council with permanent members—with a responsibility to make prompt action in the case of threat to the peace, breach of the peace and act of aggression, while being assisted by a Military Staff Committee, brings to mind the Allied Chiefs of Staff and the meetings of the Foreign Ministers during the War. Moreover, the successful economic and social co-operation of the Allied Powers

⁹ EVATT, H.V., *The United Nations* (Cambridge, Mass., 1948), 15.

¹⁰ Chapter XIX of the Charter.

during the War period was mostly arranged on a long term basis and was to be extended to the post-war period. In fact, as already mentioned, when the San Francisco Conference began, some of the functional structure of the future Organization in the economic and social fields was being institutionalized.

The aforesaid influences may be considered among the positive influences of the War upon the United Nations Organizations ; however, one should be aware of some disadvantages. War conditions and the task of winning the War left a somewhat unrealistic conception of the situation. It was felt that what proved possible in war should not be impossible in peace. Nevertheless, the practice showed, and will always show, that this is not completely true, because the enemy in a war naturally would be of a different type from enemies in the post-war period. In the post-war period the United Nations would have to fight against many of the impairing elements of the economic, social and cultural developments of the world, and also against would-be peace disturbers, who might be some of the old enemies but might also be new ones.

Thus the Charter of the United Nations, though constitutionally unrelated to the peace treaties of the second War, was influenced, in most cases constructively, by the World War experiences and conditions.

CHAPTER I

Right without Might is weakness. Might without Right is tyranny. We must therefore combine Right and Might, making what is right mighty, and what is mighty right.
PASCAL.

THE GENERAL POWERS AND THE PRINCIPAL ORGANS OF THE UNITED NATIONS

SECTION I

The Basic Elements

The institutionalizing of social efforts on an international, as well as on a national level, in order to provide adequate conditions for the development of civilization is not an end in itself but rather a means to an end. However, on the international level, the so-called civilized world is, from many aspects, so far away from such a desired achievement that in practice this aim seems to be an end in itself.

Setting aside this undesirable status of the question, one may ask what are the most suitable means to be employed to reach the desired end.

Social institutions on the national level are at mature age and are fairly generally, if not quite sufficiently, developed. These national practices can also supply interesting comparative material for students of the international field ; since, in the last analysis, the activities within the international units are those of the same people who compose the Nations. Therefore, they are of the same behaviour, with the same characteristics, but on the different levels of human association.

Thus one may formulate the basic elements of any such institution, and state that they are necessary factors in order to make our social undertakings stable, efficient, and democratic. These can be postulated as follows :

- 1) The existence of certain accepted principles and rules of conduct which provide necessary guidance for the members of the community.
- 2) The existence of an impartial organ of the community to judge the merits of the behaviour of any member, if challenged.

- 3) The existence of an organ to bring the accused member before the tribunal, to punish the wrong-doer, and, in short, to enforce the law whenever that becomes necessary.
- 4) In order to link this protection of the *status quo* with changing conditions, the establishment of a method through which the necessary changes and adjustments may be brought about.

As it is seen here, for such achievements two things are necessary :

- 1) Certain legislative, judicial and executive authority on behalf of the community.
- 2) Effective organs to act.

Moreover, the inter-relations among the said four elements are also very important. One cannot be expected to do right if one knows not what is right and what is wrong. One should not be judged by a judge who shares several kinds of direct interests with the defendant or the victim or with both. Regardless of how good the rules of conduct may be and how well they are applied in rendering a judgment, if they are not backed by force in the case of violation their efficiency is reduced to nothing. One must not be compelled to keep up the *status quo* for ever, if there is no obligatory and lawful procedure to adjust existing injustices. Finally, a judge without a policeman is weak ; a policeman without a judge may become tyrannical ; both of them need a legislator in order to make them competent to act ; and the latter without judge and policeman may not be able to accomplish what he desires. The existence of these lacks of harmony may be cited as the most impairing element upon the desired social achievements.

Turning to U.N. which is the present general organization of the community of Nations¹, it is interesting to see how far it has—or better, is empowered to have—the said kind of authority to act, through what organs it acts, and what the relationships among its component organs are.

In this Chapter only the general aspects of these powers and the establishment of the component organs of U.N. will be dealt with, leaving the detailed examination of the relationships among the Principal Organs of U.N., under the different subject-matters separately to the subsequent chapters.

¹ See the Preamble, and Articles 1 and 2 of the Charter.

SECTION 2

The General Powers of the United Nations

The Legislative Functions

The Charter, like its predecessor—the Covenant of the League of Nations—does not expressly provide any legislative power. Thus U.N. cannot legislate any rule of law to be binding upon the Members. Therefore, whatever its decisions may be they are merely recommendations, with great moral and doctrinal weight.

In spite of this position, the Charter has provided that the General Assembly “shall” initiate studies and make recommendations for the purpose of “encouraging the progressive development of international law and its codification”.² Under this provision the General Assembly has established an International Law Commission whose object is “the promotion of the progressive development of international law and its codification”.³

In view of the fact that the sources of international law are international treaties and customs,⁴ the Charter itself, the treaties made under the recommendations of U.N., and also the daily conduct of the business of U.N. through its different Organs and its specialized agencies⁵ are playing an important role in the development of international law. Further, the different Organs of U.N. and its specialized

² Article 13 (a).

³ Resolution 174 (11), Nov. 21, 1947. Also see R.Y. JENNINGS, “The Progressive Development of International Law and its Codification”, *B.Y.B.I.L.*, 1947, 301-329. LOUIS B. SOHN, “The Development of International Law”, *American Bar Association Journal*, Vol. 33, 1947, pp. 282-284.

⁴ For the present position of international law see: JESSUP, *A Modern Law of Nations*, New York, 1948. LAUTERPACHT, H. *The Function of Law in the International Community*, Oxford 1933. BRIERLY, J.L. *The Outlook for International Law*, Oxford 1944. SMITH, H.A., *The Crisis in the Law of Nations*, London, 1947. A Statement of a Community of Views by a number of North Americans... *The International Law of the Future: Postulates Principles and Proposals*, Washington, 1944. Kelsen, H. *Peace through Law*, Chapel Hill, 1944. DICKINSON, E.D., “International Law: An Inventory”, *California Law Review*, 33 (1945). NIEMEYER, G. *Law without Force*, Princeton, 1941. HERBERT W. BRIGGS, “International Law: World Government and the Role of Law” *American Bar Association Journal*, Vol. 33, No. 7, 1947, 680-3.

⁵ See pages 79-99.

agencies are also requested by the General Assembly to " co-operate with the International Law Commission."⁶

However, when the Security Council acts to enforce the maintenance of peace and security, its decisions are binding upon the Members.⁷ This course might be called a " quasi-legislative act " ⁸ and did not exist under the Covenant of the League of Nations because any decision of the Council of the League had merely a declaratory character.⁹

Nevertheless, such a legislative capacity is not denied to the General Assembly of U.N., and in fact, it exists whenever it is specially provided. Under the provision of Article 17 of the Charter, the General Assembly allocates the share of expenses of the Organization among the Members.¹⁰ Whenever U.N. itself becomes an administering authority for a trust territory, of course it is the General Assembly that may act on behalf of the Organization.¹¹ Under the agreement entered into by U.N. and the U.S.A. with regard to the headquarters of U.N., U.N. may enact regulations making provisions of an administrative character for the zone, and " any such regulation shall prevail over any provisions in the law of the U.S.A. which are inconsistent with it " ¹²

In the absence of such a legislative power, however, U.N. as well as its Members is bound to respect the existing principles of justice and international law.¹³

The Judicial Functions

U.N. has assumed its judicial function through its judicial Organ—I.C.J. However, this Court lacks the very primary condition for successful operation, i. e., compulsory jurisdiction of the Court.¹⁴

Though it is left to the parties to a dispute themselves to decide

⁶ See paragraphs (b) and (c) of the Resolution, 174 (II). Also see pages 140-143.

⁷ Article 25. See pages 75-78.

⁸ See DULLES, J.F. "The General Assembly", *Foreign Affairs*, Vol. 24, No. 1, 1945, 4-5.

⁹ See pages 25-29.

¹⁰ See pages 173-184.

¹¹ See pages 106-113.

¹² Section 16, the text in Y.B.U.N., 104-107.

¹³ See the Preamble, Arts. 1 (1), 2 (3) and 24 (2), of the Charter and Art. 38 of the Statute of I.C.J.

¹⁴ Art. 36 of the Statute of I.C.J. Also see pages 64-65.

to bring the case to the I.C.J., they are bound to refer certain types of their unsettled disputes to the Security Council or to the General Assembly, as the case may be, for peaceful settlement ; therefore, these two political Organs assume a kind of quasi-judicial function.¹⁵

Moreover, the Security Council or the General Assembly, when proceeding to settle the dispute peacefully, may recommend and encourage the parties to refer the case to I.C.J., or they may themselves request the advisory opinion of the Court on any legal matter related to the given case. The opinion of the Court thus rendered may become the substance of the subsequent recommendation of the Security Council or the General Assembly to the parties.¹⁶

The Executive Functions

The executive function of U.N. has a peculiar character because of the existence of two facts : 1) the decisions taken by U.N. are merely recommendations, except in the cases of the Security Council carrying out an enforcement action, or I.C.J. rendering a judgment, and 2) the main execution of decisions rests upon the Members themselves.¹⁷

However, within the Organization itself the Secretariat assumes the executive role.¹⁸ The Economic and Social Council and the Trusteeship Council also, functioning under the authority of the General Assembly, play an important executive and advisory role in carrying out the general policies formulated by the General Assembly.¹⁹ Moreover, the Security Council when acting to enforce peace and security,²⁰ assisted by the Military Staff Committee,²¹ takes on an important executive character.²²

¹⁵ See Chapter II. Also see the view of the Secretary of State, *Department of State Bulletin*, Vol. XII, No. 298, March 11, 1945, 396-97.

¹⁶ See Chapter VI.

¹⁷ See Articles 1 (4), 2 (2,5), 25, 56 and 94 (1) of the Charter.

¹⁸ See Chapter V.

¹⁹ See Chapters III and IV. Also see POLLACZEK, G. "The United Nations and Specialized Agencies", *A.J.I.L.*, 40 (1946), 593.

²⁰ See pages 69-72.

²¹ Art. 46 and 47 of the Charter.

²² See KANE, K., "The Security Council", *Foreign Affairs*, vol. 24, No. 1., 1945, 21. EAGLETON, C., *Covenant of the League of Nations and Charter of the United Nations: Point of Difference*, Department of State Publication 2573 (1946), 43-48. BUEHRIG, E., H. "The Security Council" *Department of State Bulletin*, Vol. XIII, 1945, 825-28.

The Security Council in its executive capacity also holds an important position as an executive organ for the rendered judgment of I.C.J. against a wrong-doer. However, as the position is now, just like the jurisdiction of the Court which is optional, the execution of the rendered judgment of the Court by the executive organ of the community of Nations has become optional too, with the difference that the optional clause in the first case refers to the parties to the disputes themselves, and in the latter case to the Security Council.²³

Conclusion

The general powers of U.N. may be summarized as follows :

- 1) It does not possess general legislative power, though such a capacity is not denied to it by the Charter. However, its Organs play an important indirect role in the progressive development of international law.
- 2) It takes preventive and repressive measures, subject to the use of veto, to maintain peace and security.
- 3) It refers any conflicting points to the judicial Organ ; however, this reference, as well as the execution of the rendered judgments through U.N. is optional.
- 4) It assumes an important conciliatory and mediatory character through its political Organs for the pacific settlement of disputes.
- 5) While the maintenance of international peace and security is obligatory, the decisions of U.N. with regard to the other functions of U.N. including the economic and social fields are recommendations only, though with great doctrinal and moral weight.

Thus, it may be noted that U.N. has mostly a political character for preserving peace, subject to the exigencies of the use of the veto. Nevertheless, U.N. provides an important co-operative centre for the economic, social, and cultural questions in which the Members are required to co-operate.²⁴

It seems predictable that, if confidence grows among the Members, the respective powers of U.N. may also be augmented if not through the formal constitutional procedure, then on the basis of free consent resulting from daily intercourses.

²³ See pages 64-68.

²⁴ See pages 100-101.

SECTION 3

The Principal Organs of the United Nations

The principles of the League of Nations

The Covenant of the League of Nations established only three main Organs,²⁵ namely : an Assembly, a Council, and a permanent Secretariat (Art. 2).

The Council was to formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice (Art. 14).²⁶ This step was taken by the signing of the Protocol of December 16, 1920, to which the Statute of P.C.I.J. was annexed. The Court thus established was outside the structure of the League ; however, it had a few organic relations with the League²⁷, and it was considered as a part of the general machinery of the world institution for peace and the promotion of justice.

²⁵ On the establishment and the work of the League of Nations see :

BARANDON, P. *Le Système Juridique de la Société des Nations pour la Prévention de la Guerre*. Traduit de l'allemand par Labarthe, J., Genève, 1933.

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WRIGHT, QUINCY, *Where the League of Nations Stands Today*, Minneapolis 1934.

KEEN, F.N. *A Better League of Nations*, London, 1934.

REYNOLDS, E., *The League Experiment*, London, 1939.

²⁶ On the establishment of P.C.I.J. see HUDSON, M., *The Permanent Court of International Justice, 1920-1942*, New York, 1943.

²⁷ See Article 33 of the Statute related to the payment of the expenses of the Court by the League, Article 8 related to the election of the judges by the Council and the Assembly, and Article 65 related to the request of the advisory opinion of the Court.

The respective jurisdiction of the Council and the Assembly of the League were so similar that the only difference between the text of Article 3 (3), defining the general jurisdiction of the Assembly, and the text of Article 4 (4), defining the general jurisdiction of the Council, was the substitution of the word "Council" for "Assembly" in the latter. These paragraphs read: "The Council (Assembly in Art 3 [3]) may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world."

This identical jurisdiction and function was also manifested in Article 15 (9, 10) dealing with the principal functions of the League for the maintenance of peace and security.

This lack of demarcation with respect to the jurisdiction of these two Organs caused the Council to take up a position that "where there is no special indication to the contrary, the legal competence of the two organs of the League is identical".²⁸

Towards preventing a major conflict of jurisdiction,²⁹ different devices were employed which in the words of Lord Balfour are described as "on ne pourra éviter de telles difficultés que par des vues claires d'hommes d'état et par une tolérance mutuelle".³⁰ Moreover, the result of such a lack of jurisdictional demarcation between two main Organs of the League (with different composition) was a shifting of responsibility from the shoulders of the great Powers to those of the smaller, a course which Professor Bourquin calls "c'est une erreur dans laquelle il ne fallait pas retomber."³¹

However, in practice, the Council of the League took mostly an executive and political character,³² leaving most other fields to the Assembly. In fact, in spite of the existence of Article 15 (9, 10),

²⁸ See the case of Eupen and Malmédy (Article 34 of the Treaty of Versailles), Procès Verbal, 10th Council Session, 91-97.

²⁹ For a criticism of this method see, HYDE, *Op. cit.*, 217; Argentine and Panama's view on the questions of the application of the Principles of the Covenant, L.N.O.J., Special Supplement, No. 154, p. 62; Gustav POLLACZEK, "The United Nations and Specialized Agencies", *A.J.I.L.* Vol. 40 (1946), 594; KEEN, *Op. cit.*, 4, 63. However, on the undesirability of a sharp demarcation see *The International Law of the Future; Postulate, Principals and Proposals* (Washington, 1944), 90.

³⁰ Dictionnaire Diplomatique, Paris (1933), 778. Also see MORLEY, Felix, *The Society of Nations: Its Organization and Constitutional Development* (Washington, 1932), 404-5.

³¹ Maurice BOURQUIN, *Vers une Nouvelle Société des Nations* (Neuchâtel, 1945), 34, 181.

³² See MORLEY, *Op. cit.*, 432, 404, 516; KEEN, *Op. cit.*, 63.

only three out of forty-four cases brought to the attention of the League of Nations for settlement were referred to the Assembly.³³ It is to be noted that in the system of the League the fact must not be forgotten that besides the requirement of unanimity for the decisions of the Council, the Assembly could exercise more important power with regard to the composition of the Council than under U.N. system.³⁴ Because in the former case, with the approval of the majority of the Assembly, the Council could name additional members for the Council. Moreover, the Assembly could fix by a two-thirds majority the rules dealing with the election of the non-permanent members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility (Art. 4 [2]).

Under the League system no central organ—similar to the Security Council of U.N.—was set up to enforce the maintenance of peace and security, and it was left to every Member itself to carry out sanctionary actions, if there should be any (Art. 16). However, in the case of the economic sanctions against Italy, the Members found it expedient to establish a central co-operative committee to be concerned with certain common functions.³⁵

The Covenant did not establish a principal organ to function and supervise, under the authority of the Assembly or the Council, in the economic and social field. It provided, instead, that the international bureaux and commissions for the regulation of matters of international interest be brought under the direction of the League.³⁶ After a time the need for the organizational development in this field was felt.³⁷ In May 1939, upon the suggestion of the Secretary-General of the League, the Council decided to set up a Special Committee to consider and report on the development of international co-operation in economic and social affairs. The said Committee in

³³ See footnote on page 59.

³⁴ See pages 25-29.

³⁵ For the application of economic sanction against Italy, see RAPPARD, *The Quest For Peace*, 279-317.

³⁶ Art. 24. Also see Art. 23 and 25.

For a detailed structure of the League organization dealing with economic and social fields see : *Essential Facts about the League of Nations, Towards a Better Economic World, The Economic Interdependence of States, and World Health and the League*, published by the League of Nations.

³⁷ See pages 73-74.

its report proposed the establishment of a Central Committee to which would be "entrusted the direction and supervision of the work of the committees dealing with economic and social questions."³⁸

As far as the newly inaugurated mandate system was concerned, the Covenant constituted only a Permanent Commission "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" (Art. 22).

Therefore, as can be seen in this short survey of its structure, though the League of Nations had no constitutional demarcations between the respective jurisdictions of its two main Organs,³⁹ nevertheless, a division of functions was already appearing. Moreover, a completion of the organization was gradually developing within the framework of the League.

Such a division of functions and the completion of the structure seems inevitable in any similar organization. The important aspects of such a development are the segregation of powers, and the relationship among the organs which are to function in the different fields, in order to make the whole machinery stable, efficient and democratic.

The Principles of the Dumbarton Oaks Proposals

Following the experience of the League of Nations, and considering the views of the Sponsoring Governments, the Dumbarton Oaks Proposals suggested that the Organization should have as its Principal Organs: a General Assembly, a Security Council, an International Court of Justice, and a Secretariat.⁴⁰ The Economic and Social Council was not included among the Principal Organs, though its establishment was provided for in another Chapter.⁴¹ With regard to the Trusteeship Council no provision was made in the Dumbarton Oaks Proposals.

In these proposals an important departure from the League system was proposed in connection with the respective jurisdiction of each organ. The Security Council was characterized by definite political and executive functions, by the assignment of "primary

³⁸ See L.N. Official Record, No. : A. 23, 1939, 19-22.

³⁹ See also pages 25-29.

⁴⁰ Chapter IV.

⁴¹ Chapter IX, Section A (1).

responsibility for the maintenance of international peace and security".⁴² The financial, administrative, and co-operative authorities of the Organization were left to the General Assembly and, under its authority, to the Economic and Social Council and the Secretariat.⁴³ However, the Dumbarton Oaks Proposals provided that certain enumerated functions—such as the admission of members, etc.⁴⁴—be acted upon by both Organs (The General Assembly and the Security Council) on a "co-operative" ⁴⁵ basis.

Moreover, these proposals introduced the fixed number of membership in the Security Council and the permanency of seats to five Powers—China, France, United Kingdom, U.S.S.R., and the U.S.A. The unanimity rule of the League was changed into the unanimity rule among the said five Powers in the Security Council (Yalta formula) and the majority rule in the Assembly. Therefore, the new Organization could not be considered, so far as the enforcement of peace and security was concerned, as a mere co-operative machine—as the League was.⁴⁶ This latter principle of U.N. is true with regard to all the other Members save the permanent members of the Security Council.

It is to be noted that an implicit expediency results from the functioning of the Economic and Social Council and the Trusteeship Council "under the authority of the General Assembly", because it increases the force of the decisions of the said Councils—their recommendations—upon the Members or other international units. The situation with regard to the competence of two other Organs, the Security Council and I.C.J., is totally different because their decisions, in many cases, are binding upon the Members regardless of the composition of these Organs.

The Elaboration of the Structure at the San Francisco Conference

At the San Francisco Conference these principles of the structure of U.N. were thoroughly discussed, and in some aspects elaborated on in the light of several other proposals ⁴⁷ and with relation to the

⁴² Chapter VI, Section B (1). Also see Chapter II of this study.

⁴³ Chapter V, Sect. B; Chapter IX and X.

⁴⁴ See pages 190-195.

⁴⁵ OPPENHEIM, *International Law*, Vol. 1, 394-5.

⁴⁶ See pages 25-29.

general powers and functions of the Organization. In fact, at the Conference the creation of any new organ was left to the discretion of the different Committees which were respectively dealing with the different kinds of function of the Organization.⁴⁸ This elaboration led the Conference to : 1) raise the number of the Principal Organs to six ⁴⁹ 2) enlarge the functions of U.N. in economic, social, cultural and trusteeship matters, and 3) especially important, increase the power of the General Assembly with respect to "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".⁵⁰

The Economic and Social Council became one of the Principal Organs

At the San Francisco Conference several Delegates stressed the necessity of including the Economic and Social Council among the Principal Organs⁵¹ in order not to give, in the Charter, the "impression that these objectives ('economic and social co-operation') were in any way subordinate to the other principal objectives of the Organization".⁵² Some of the Delegates went further by proposing to set up a separate Principal Organ with the same status as the Economic and Social Council under the names of "Educational and Cultural Council",⁵³ "The Council of Intellectual Co-operation and Moral Interests",⁵⁴ and "Council of Cultural Relations".⁵⁵ Some others proposed to make mandatory upon the Economic and Social Council

⁴⁷ At the San Francisco Conference nine of the participating Governments had submitted amendments to this part of the Dumbarton Oaks Proposals, S.F., Doc. 1072, 1/2/75, p. 1.

⁴⁸ See the terms of reference of Committee 1/2, *Loc. cit.*

⁴⁹ See page 23.

⁵⁰ See pages 147-149.

⁵¹ See the amendments and suggestions from Australia, Doc. 2, G/14 (1), p. 2 ; Egypt, Doc. 2, G/7 (q), p. 4, and G/7 (q) (1), p. 3 ; Ecuador, Doc. 2, G/7 (p), p. 31 ; Honduras, Doc. 2, G/7 (m), p. 2 ; Mexico, Doc. 2, G/7 (c) (1), p. 3 ; New Zealand, Doc. 2, G/14 (f), p. 2 ; Venezuela, Doc. 2, G/7 (d), p. 7 ; also Report of the Rapporteur of Committee 11/3, Doc. 861, 11/3/55 (1), p. 2, (S.F.).

⁵² Report of the Rapporteur of Commission II to the Plenary Session, S.F. Doc. 1180, 11/18 (1), p. 4. Also Doc. 861, 11/3/55(1), p. 2.

⁵³ Ecuador's proposed amendment, S.F. Doc. 2, G/7 (p), p. 9.

⁵⁴ The Cuban proposal, S.F., Doc. 2, G/14 (g), p. 14.

⁵⁵ The Brazilian proposal, S.F., Doc. 2, G/7(e)(1), p. 2.

the establishment of certain Commissions, like "Educational and Cultural Commission",⁵⁶ or "International Commission on Intellectual Co-operation" with commissions of experts in the different fields of intellectual activities.⁵⁷

After including the Economic and Social Council among the Principal Organs, and enlarging the terms of reference of the Charter in the social, cultural and educational fields, the creation of a separate Council was not considered, in the opinion of the authors of the Charter, to be a necessary requisite. As far as the establishment of the different commissions by the Economic and Social Council was concerned, it was agreed that the language of Article 68 "permits the Council to establish such commissions", while "it would be unwise or premature to make the establishment of such commissions mandatory".⁵⁸

A proposal for the title of the provided "Economic and Social Council" of the Charter came from the Belgian Delegate to the effect that, in order to make this title correspond to "so wide and different competences" of the said Organ, it should be changed to the "International Cooperative Council".⁵⁹

It is to be noted that the adoption of the principle of establishing the United Nations Educational, Scientific and Cultural Organization by the San Francisco Conference had some influence on the question of the explicit reference of the Charter to the commissions.⁶⁰

The Establishment of the Trusteeship Council as one of the Principal Organs

As already mentioned, no arrangement was made in the Dumbarton Oaks Proposals for the mandated and non-self-governing territories.

⁵⁶ The Philippines proposal, S.F., Doc. 2, G/7(k) (1), p. 2. The Haitian proposal, S.F., Doc. 2, G/7 (b) (1), p. 2.

⁵⁷ The Uruguayan proposal, S.F., Doc. 2, G/7(a)(1), p. 9.

⁵⁸ Report of the Rapporteur of Committee 11/3, S.F., Doc. 861, 11/3/55(1) pp. 9-10. Also see the proposals from Canada, Doc. 2, G/14(t) p. 4; New Zealand, Doc. 2, G/14 (f), p. 4, and the United States and the French Delegates' views in Committee 11/3, Doc. 658, 11/3/36, p. 3; Doc. 725, 11/3/42 (S.F.).

⁵⁹ S.F., Doc. WD 163, 11/3/52, p. 1.

⁶⁰ Summary report of the 16th Meeting of Committee 11/3, S.F., Doc. 725, 11/3/42, p. 2-3.

At the San Francisco Conference, the United States,⁶¹ China ⁶² and France ⁶³ separately proposed drafts for the establishment of a Trusteeship Council, to function under the authority of the General Assembly. There were also two proposals: one suggested establishment of a permanent Commission ⁶⁴ as in the League of Nations; and the other would set up a Commission which would have to report to the Economic and Social Council.⁶⁵ However, it is to be noted that in the proposed drafts it was stipulated that the strategic areas be under the authority of the Security Council.

After all the establishment of a Trusteeship Council as one of the Principal Organs was adopted. This Council is to function under the authority of the General Assembly and to assist the latter body in carrying out its functions with regard to the trusteeship matters.

The Action Taken with Regard to the Inclusion of the International Court of Justice Among the Principal Organs

At the opening of the discussion for a new world organization, the experiences of P.C.I.J. left two different conceptions of the matter of the organic relation of the World Court to the new world organization.

There were groups who supported a view according to which the World Court should not be included among the Principal Organs of, or integrated into U.N.,⁶⁶ contrary to the principle adopted in the Dumbarton Oaks Proposals with regard to such integration.

They had raised the following arguments:

1. The World Court would suffer from its organic connection with the general organization, especially from the point of view of

⁶¹ S.F., Doc. 2, G/26 (c), par. 9.

⁶² S.F., Doc. 2, G/26 (e), par. 12.

⁶³ S.F., Doc. 2, G/26 (a), Art. 9.

⁶⁴ See the United Kingdom's proposed draft, S.F., Doc. 2, G/26(d), par. 8., and the Australian proposals, S.F., Doc. 2, G/14(1), par. 18(2).

⁶⁵ The suggestion of the Mexican Delegate which was withdrawn later, S.F., Doc. 241, 11/4/7.

⁶⁶ Report of the Informal Inter-Allied Committee of Jurists on the Future of Permanent Court of International Justice, *A.J.I.L.*, Supplement, Vol. 39, 1945, par Mexican Memorandum of Oct. 31, 1944, pp. 34-37; Paraguay Memorandum of January 17, 1945.

its prestige and its moral authority, and it might be dependent upon the varying fortunes of the world organization.⁶⁷

2) Such an integration might cause some States to be unwilling to become parties to the Statute of the Court.⁶⁸

3) The Court must, as far as possible, enjoy independence in the exercise of its functions, and be free from any predominated political organization.⁶⁹

The Informal Inter-Allied Committee of Jurists even proposed to abandon the organic relations which existed between P.C.I.J. and the League of Nations in case P.C.I.J. be kept up as the World Court of the future.⁷⁰

However, the supporters of the principle of the Dumbarton Oaks Proposals,⁷¹ in this connection, saw great advantages for the Court in being the judicial organ of U.N. Such advantages would be the annexation of the Statute of the Court to the Charter itself, and the identical membership in both the Court and general organization.

It does not appear certain that the independence of the Court is impaired by including it among the Principal Organs of the World Organization. The outstanding record of the past history of the Court, despite having some relations with the League of Nations, supports this view. Especially when it is seen that, as far as the election of the judges is concerned, there is general acceptance that, regardless of the manner of nomination of the judges, the final election be exercised through the world Organization. Furthermore, the World Court, after all, should have a place in the general world organization of the future. Such an inclusion at an early date would make for the development and realization of the principles and rules of practice among different organs of such a universal organization.

⁶⁷ Inter-Allied Committee, *Loc. cit.*; Mexican Memorandum, *Loc. cit.*

⁶⁸ *Loc. cit.*

⁶⁹ Mexican Memorandum, *Loc. cit.*

⁷⁰ Inter-Allied Committee, *Op. cit.*, par. 116.

⁷¹ In favour of this principle see: Inter-American Judicial Committee notes (on Chapter VII), p. 4; Cuba memorandum presented to Inter-American Conference, p. 5; Dominican Republic, p. 5; Venezuela Republic, p. 7; Norway memorandum March 2, 1945, p. 6, in S.F., Jurist 1, G/1. Resolution adopted by the American Association at its annual meeting in Chicago on Sept. 12, 1944, *A.J.I.L.*, Vol. 39, p. 22; The view of the American and Canadian Bar Associations, *A.J.I.L.*, Vol. 39, Hudson, "The Twenty-third Year of the Permanent Court of International and its future", *A.J.I.L.*, Vol. 39, 1945, p. 3.

The Statute of the Court

Having agreed on the principle of the Dumbarton Oaks Proposals to the effect that the Court should be one of the Principal Organs of U.N., the immediate problem was whether the old Court, P.C.I.J., with a somewhat modified Statute was to be included in U.N. as the proposed Organ, or whether a new Court was to be set up with a new Statute in the preparation of which the Statute of P.C.I.J. was to be used as a basis.

The Dumbarton Oaks Proposals was silent on this choice. The United Nations Committee of Jurists, convening in Washington to draft a Statute for the new Court, reported to the San Francisco Conference that in its preparation the Committee based its drafting on the Statute of P.C.I.J. However, the Committee of Jurists did not decide "whether the said Court would be the Permanent Court of International Justice, the Statute of which would be preserved with amendments, or whether it would be a new Court, the Statute of which would be based on the Statute of the existing Court".⁷² Thus, it was left for the San Francisco Conference to determine.

The Committee IV/I referred the case to sub-Committee IV/I/A to report on this matter. The Sub-Committee's report expressed the view that "It is a problem that involves serious difficulties and neither of the two solutions can be perfect", and it recommended, by a vote of 7 to 3, that :

The Court should be a new institution, believing that the consequences of the other solution would be more grave, from the point of view of international law and for practical reasons.⁷³

After thoroughly discussing the issue and weighing the different consequences related to each alternative, the Committee IV/I accepted the establishing of a new Court.

⁷² See Jurists: 86, G/73, p. 1; 25, G/19, p. 1; and 45, G/34, p. 11 (S.F.). The United States proposed draft of the Statute, which was under consideration in the United Nations Committee of Jurists provided that: "Article 1. The Permanent Court of International Justice, established by the Protocol of Signature of December 16, 1920 and the Protocol for the Revision of the Statute of September 14, 1929 shall be, as adopted to the purposes of the United Nations, the chief judicial organ of the United Nations..." S.F., Jurist 5, G/5, p. 3.

⁷³ S.F. Doc. 477, IV/I/A/1.

Besides the legal reasons,⁷⁴ the following part of the said Committee's report to Commission IV on this issue should be noted:

Some of the Members of the First Committee regarded the maintenance of these provisions as essential to the acceptability of the Charter and the Statute by all Members of the United Nations.⁷⁵

In virtue of the adoption of the principle laid down in the Dumbarton Oaks Proposals with regard to the inclusion of the I.C.J. among the principal organs of U.N., two significant steps have been taken, namely: 1) all Members of the Organization *ipso facto* become parties to the Statute of the International Court of Justice;⁷⁶ 2) the Statute of the Court has become a part of the Charter of U.N. It is to be noted that none of these two principles was provided in the Covenant of the League.

The importance of these provisions is not to be overestimated. Because in spite of the acceptance of such principles, the jurisdiction of the Court is still no different from the old one. Thus in order that a case be referred to the Court, the agreement of both parties to the case is necessary.⁷⁷

The International Court of Justice and Non-Member States

A State which is not a member of the United Nations "may become a party to the Statute of I.C.J. on conditions to be determined in each case by the General Assembly upon the recommendations of the Security Council".⁷⁸

⁷⁴ For these questions (the legal continuity of the old Court, the provisions of treaties directly related to the old Court, the cases already pending before P.C.I.J., and membership in the old Court which was different from that in U.N.), see: the Report of the United Nations Committee of Jurists, S.F., Jurist 86, G/73; the Report of Sub-Committee (A) of Committee IV/I, S.F., Doc. 477, IV/I/A/1; the Report of Committee IV/I to Commission IV, S.F., Doc. 913, IV/I/74(1). For the various proposals see: The Inter-American Juridical Committee's Report, *A.J.I.L.*, Vol. 39, 1945; the Joint Views of America and Canadian Bar Association, *Op. cit.*; the report of the Informal Inter-Allied Committee of Jurists, *Op. cit.* For the views of different governments see S.F., Jurists: 1, G/1, p. 9-10; 86, G/73, p. 1; 36, G/26, 10; 45, G/34, 13.

⁷⁵ S.F. Doc. 913, IV/I/74(1), pp. 3-4.

⁷⁶ Article 93, par. 1 of the Charter; par. (4) of Chapter VII of the Dumbarton Oaks Proposals.

⁷⁷ See pages 64-68.

⁷⁸ Article 93 (2) of the Charter. For conditions on which Switzerland became a Party to the Statute see Resolution 91(1) of the General Assembly.

The Security Council, under the provisions of Article 35 (2) of the Statute and subject to the limitations stated in this Article, may lay down the conditions under which I.C.J. can be open to other States which did not see themselves in a position to be party to the Statute of the Court through the acceptance of conditions previously determined by the General Assembly upon the recommendation of the Security Council under Article 93 (2) of the Charter. Neither is the authority of the Security Council, in this connection, limited to "legal" disputes, for it may apply to cases in which parties agree to refer to the Court regardless of their nature. Such a provision may facilitate the employment of the Court in a wider field if the parties agree upon it.⁷⁹

The Effects of Including an Organ Among the Principal Organs of the United Nations

It is felt not irrelevant to say a few words also on the results of the inclusion of an organ among the Principal Organs of the United Nations.

Such an inclusion might advantageously specify :

- 1) The importance placed by the authors of the Charter on the subject matter which will be dealt with by that organ.
- 2) A higher moral and doctrinal authority of the recommendations of that organ.
- 3) More autonomy to the organ with regard to its respective competence, especially from the point of view of its rules of procedure, and the establishment of subsidiary organs.
- 4) Inducement to the Members to send higher qualified representatives to the organ, which fact undoubtedly would carry great weight in the execution of the recommendations of the organ by the Members.

⁷⁹ During the fifth meeting of the United Nations Committee of Jurists, the two following suggestions were made :

1. Article 35(2) should be amended so that when the General Assembly is in session, it should be empowered to determine to whom the Court is to be open, and the Security Council should possess this power when the General Assembly would not be in session (by Ambassador Cordova, Mexico).

2. To add after the words " Security Council " the phrase " in accordance with any principles which may have been laid down by the General Assembly " (by Mr. Fitzmaurice, U.K.), S.F. Jurist 30, G/22, pp. 13-14.

For the conditions fixed by the Security Council for the purpose of Article 35(2) see U.N., S.C.J., 1st year, No. 19, p. 467.

Conclusion

As elaborated in the San Francisco Conference, U.N. carries out its functions through six Principal Organs, namely : ⁸⁰

- 1) The General Assembly
- 2) The Security Council
- 3) The Economic and Social Council
- 4) The Trusteeship Council
- 5) The International Court of Justice
- 6) The Secretariat.

Besides the Principal Organs, U.N. may establish such subsidiary Organs as may be found necessary in accordance with the present Charter.⁸¹

Therefore, from the organizational point of view, U.N. differs from the League of Nations' principles on the three following major points :

- 1) Comparing with the League of Nations, U.N. has increased the number of its Principal Organs in order to correspond to its increased functions in the different fields.
- 2) The division of powers among the Principal Organs of U.N. is more definite than in the League's structure.
- 3) I.C.J. is included among the Principal Organs of U.N. as its judicial organ, while P.C.I.J. was outside the structure of the League of Nations, though associated with it.

⁸⁰ In the same order as stated in Article 7.

⁸¹ See Articles 7(2), 22, 29 and 68 of the Charter, and Article 26 of the Statute of I.C.J. For a detailed consideration of the subsidiary Organs see MYERS, D.P. *Composition of Organs, Commissions, and Committees of the U.N.*, Department of State Publication 2573, pp. 49-57, Washington, 1946.

CHAPTER II

THE RELATIONSHIPS AMONG THE PRINCIPAL ORGANS WITH REGARD TO THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

SECTION I

The General Background

The period immediately following the first World War may be characterized by the idea of collective security, the fundamental principle for the establishment of the League of Nations.

The principle of the collective security of the Covenant was clearly stated in Article 10 which, under the title of "Guaranties Against Aggression" read as follows :

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.¹

In Article 11, again, this aspect of the system is emphasized. This Article declared that "any war or threat of war" was "a matter of concern to the whole League".

However, the effectiveness of the above-mentioned principle of the League was reduced because of the two following provisions of the Covenant.

Firstly, no substantial action, with regard to a dispute brought before the Council, could be decided upon without the unanimous vote of all the Members represented on the Council (Arts. 5 [1], and 15 [6]). Neither such an action could be decided upon by the Assembly, if the case was referred to this body, without the affirmative votes of those Members of the League represented on the Council

¹ On the generality of this article, see the report of M.N. Entezam in the Special Committee set up to study the application of the principles of the Covenant, L.N., C. 366, M. 248, 1937, VII (C.S. p. 19), No. 7, p. 2.

in addition to the majority of the other Members (Art. 15 [10]).²

The only exception to this application of the rule of unanimity was the abstention of one or more of the parties to the dispute³—Article 15 (6 and 10).⁴

Secondly, even if the decision of the Council was unanimously agreed upon, it could not be more than a recommendation to the Members. The Members, according to Article 16, would act to protect the covenants of the League in the manner which they found suitable. Thus the collective security system of the League besides being subject to the exigencies of the rule of unanimity, was a decentralized system of securing peace.⁵

Moreover, it is important to note that the Covenant did not outlaw war. In fact it formally permitted the resort to war if, after three months, an award given by an arbitrator, a judicial decision, or a report by the Council on the given issue had not been complied with.⁶ Nevertheless, as is previously mentioned, it “declared” war a matter of concern to the whole League.⁷

From a survey of the League system related to the maintenance of the peace and security of the world, and with reference to the essential elements mentioned previously, one might come to the

² Cromwell A. RICHES, *The Unanimity Rule and the League of Nations* (Baltimore, 1933); Julius STONE, “The Rule of Unanimity: The Practice of the Council and Assembly of the League of Nations”, *B.Y.B.I.L.* (1933), 18. FISHER Williams, “The League of Nations and Unanimity”, *A.J.I.L.*, Vol 19, 1925.

³ For the observance of this exclusion see the boundary disputes between Austria and Hungary (1922), between Czechoslovakia and Hungary (1922), and between Great Britain and Turkey (1925) on the Iraq boundary; the Greco-Bulgarian dispute (1925); and the Hungarian Optants dispute between Hungary and Roumania (1927). However, in Lithuanian-Polish dispute (1928) and the Sino-Japanese conflict (1931) the respective decisions were not adopted because of the negative votes of one of the parties in each case—Lithuania and Japan—it may hold, nevertheless, that in these two latter cases the League had taken the political aspect of the issue into the consideration.

⁴ For the other exceptions to the general unanimity rule of the League of Nations in both the Council and Assembly (Art. 5 [1]) see Articles 1 (2), 4(2), 5(2), 6(2), 15(4), 15(7), 16(4) and 26(1) of the Covenant.

⁵ For the difference of views between the authors of the Covenant on the co-operative or compulsory basis for the system see: ALEXANDER, F., *Op. cit.*, 2-38; BROOKS, *Op. cit.*, 84-5. Sir Alfred ZIMMERN, *Op. cit.*, 283.

Also see pages 75-6.

⁶ Article 12. See also, RAPPAUD, *International Relations viewed from Geneva*, 119.

⁷ Article 11. On the importance of this Article in connection with the provisions of the Covenant, see CONWELL-EVANS, *Op. cit.*, 240; GREEN, *Op. cit.*, 13-17. Also see the Report of Mr. Uden, submitted to the Special Committee which was set up to study the application of the principles of the Covenant, L.N., C. 362, M. 244, 1937, VII (C.S.P.11).

following conclusions as to the general short-comings of the League system and the gaps within the structure of that system itself as established in 1919 :

1. The League did not provide a direct law-making process though it indirectly contributed to the progress of the law of nations.
2. It did not outlaw war though it provided sanctions against the aggressor.
3. It did not provide compulsory submission of disputes to a judicial organ ; such a submission was left to the choice of the parties themselves.
4. If a case was submitted to arbitration or judicial settlement, no definite measures were provided to enforce an uncomplied with award or judgment.⁸
5. The parties to a dispute which might have been likely to lead to a rupture were bound to refer the case to the Council for pacific settlement ; nevertheless, the said organ could not act if its report was not unanimously accepted—excluding the parties to the dispute.
6. Even in the case where unanimity was secured for the report of the Council, if the party, or parties had not complied with the report and war broke out, the Members were themselves to decide whether their obligations to apply economic sanctions would become operative, and, if they should, then how they would act.
7. As far as the military sanction was concerned, the Council could unanimously recommend measures of non-obligatory character.
8. The disarmament provision of the Covenant, in practice, was felt to be so closely interrelated to security and arbitration matters that in the absence of any one of them, no progress could be achieved in regard to any other of them.
9. The Assembly could only “ advise ” the Members on any adjustment of a situation or on the revision of treaties. Therefore, no immediate effective method for the adaptation of the *status quo* to the changing world could be expected through the League. This state of affairs and the five “ weapons ” of “ publicity, revision of treaties, arbitration, sanctions and disarmament ”,

⁸ See pages 8-12.

⁹ See RAPPARD, W.E., *International Relations viewed from Geneva*, 128. Also see AIREY, W., *Op. cit.*, 87-102 ; ALEXANDER, F. *Op. cit.*, 9.

would have been improved, if the Geneva Protocol of 1924 had been accepted. This Protocol had for its objects a system of arbitration and provisional measures upon the determination of the aggressor and would have obligated the Members to apply the necessary sanctions as a direct result of the decision of the Council, without defining in detail the measures applicable in every concrete case.¹⁰ Lack of general acceptance of the Geneva Protocol, it might be said, gave rise to the signing of the Locarno Treaties of 1925 (on a regional basis) between Germany and her neighbour countries, in order to create security through arbitration, and to guarantee international integrity.¹¹

The year of 1928 witnessed an important evolution in the international field. A general treaty was inaugurated, the Briand-Kellogg Pact, to which 63 States soon became parties, including the great Powers, and which thus obtained the status of being universally accepted international law.¹² This treaty prohibited war as an instrument of national policy; however, it did not lay down an explicit obligation to settle the disputes, and neither did it provide a method of doing so, nor defined the aggressor, if any.¹³ In other words, while the Covenant tried to prevent war without outlawing it, the Briand-Kellogg Pact outlawed war without defining how to prevent it.¹⁴

Even after the failure of the Geneva Protocol to be accepted, the attempts through the League to enlarge the peaceful methods for the settlement of international disputes were not abandoned. In fact on September 26, 1928, the Assembly launched a General Act for the peaceful settlement of international disputes, and invited the States to ratify it. Moreover, it included in that Act three model "bilateral conventions" for the guidance of States themselves in

¹⁰ In connection with this Pact, see: Noel BAKER, *The Geneva Protocol for the Pacific Settlement of International Disputes* (London, 1925); David HUNTER-MILLER, *The Geneva Protocol* (New York, 1925); RAPPARD, *The Quest for Peace*, 156-161, 252-260; ALEXANDER, *Op. cit.*, 81-104.

¹¹ For the background see RAPPARD, *The Quest for Peace*, 162-164, 265-277.

¹² For the text see HUDSON, M., *International Legislation*, 2522.

¹³ See: James T. SHOTWELL, *War as an Instrument of National Policy* (New York, 1929); BARANDON, *Op. cit.*, p. 274. RAPPARD, *The Quest for Peace*, 168-174. See also on the outlawry of war, MORRISON, C., *The Outlawry of War*, (Chicago, 1927), 111-134.

¹⁴ For the relation between this Pact and the Covenant of the League, see BARANDON, *Op. cit.*, 274-277; CONWELL-EVANS, *Op. cit.*, 240-242; also see the Resolution of the Assembly of the League for amending the Covenant, L.N.O.J., Special Supplement, No. 74, 18-19.

making special agreements.¹⁵ The General Act which is too complicated to be outlined in this study was considered a valuable supplement to the Covenant of the League and to the Status of the World Court.¹⁶

Besides these general attempts, many other multilateral and bilateral treaties and conventions were concluded between 1920 and 1940 for the pacific settlement of disputes and the definition of aggression,¹⁷ especially in the Inter-American system.¹⁸

In spite of this development of the methods and instruments of pacific settlement of disputes, when the catastrophe of war fell, or rather, began to develop, this mass of instruments could not prevent it.

Why ? Because there was no harmony among the five " weapons " ; publicity, revision, arbitration, sanction and disarmament. Therefore, it was not possible to overcome the conflict of interests, and desire to employ the peaceful means could not be created. No one could be expected to give up what he owned unless assured that he would get what he lacked.

Soon the envisaged collective security system was doomed to a discarded position, and the individual security system was taken up, a system by which everyone is his own judge and his own executive organ.

Thus one is led again to the importance of the previously mentioned basic means of the achievement of the desired social ends, and to the inter-relations among these means.¹⁹

The following pages deal with the methods employed by the Charter of U.N. to achieve its task in the light of the background presented.

The most important purpose of U.N. is to maintain international peace and security.²⁰ To do so, the Charter prohibits the use of force ;

¹⁵ L.N.O.J., Special Supplement, No. 63.

¹⁶ HUDSON, M., *By Pacific Means* (New Haven, 1935), 83-85. See also RAPPAUD *The Quest for Peace*, 165-167.

¹⁷ For the definition of aggressor see, EAGLETON, C., "The Attempts to Define War", *International Conciliation*, No. 291, June, 1933.

¹⁸ For example, see Inter-American Convention on Arbitration on January 5, 1929, and Inter-American Convention on Conciliation, for the texts see HUDSON *International Legislation*, 2625, 2635, respectively. Anti-War Treaty (Saavedra-Lamas Treaty), October 10, 1935, text in Department of State Publication, Washington, No. 666.

¹⁹ See pages 6-8.

²⁰ See : *A Commentary on the Charter of the U.N.*, presented by the Secretary of State for Foreign Affairs to Parliament (U.K.), Miscellaneous, No. 9., 1945, Cmd. 6666, p. 84. CARLTON SAVAGE, "The Concept of the United Nations", *Department of State Bulletin*, Vol. XII, No. 300, March 25, 1945, 504. Warren Austin, "A More Perfect Union", *Department of State Bulletin*, Vol. XX, No. 505, March 6, 1949, 278.

it then provides the means for conciliation and judicial settlement in case of a dispute. But peace and security, if endangered, under any condition, must be enforced by sanction—subject to the veto of the five big powers.

In this undertaking the three Principal Organs of U.N.—the General Assembly, the Security Council, and I.C.J.,—assume major functions of different natures, but with important interrelations among themselves.

SECTION 2

The Obligations of the Members to Settle their International Disputes by Pacific Means of their Own Choice

First of all, the Charter outlaws the “threat or use of force” by any member in its international relations “against territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations.” (Art. 2[4]). This prohibition does apply to any use of force, even though not considered in the technical sense a “war”,

Secondly the Charter provides the obligation of the Members “to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered” (Art. 2 [3]).

There is also Article 33 (1) which reads as follows :

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.

The existence of these last two paragraphs—the former one of the Principles of U.N. (applicable to all Members and to the Organs) and the latter, found in the beginning of the Chapter dealing with “Pacific Settlement of Disputes” (Chapter VI)—gives rise to two different views: are the Members bound to settle all their international disputes,²¹ or are they bound to settle only those which are

²¹ The opinion of WORTLEY, B.A., “The Veto and the Security Provisions of the Charter, *B.Y.B.I.L.*, 1946.

“likely to endanger the maintenance of international peace and security” referred to in Article 33 (1) ? ²²

These two paragraphs do not seem to be inconsistent with each other. The Members are, according to this interpretation, bound to settle all their disputes by pacific means of their own choice under the provision of Article 2 (3). At the same time they are bound to refer only a certain type of dispute, i.e., “the continuance of which is likely to endanger the maintenance of international peace and security”, to the Security Council (Art. 37 [1]). For it was a predominant principle in the minds of the authors of the Charter that the Security Council should not be involved in non-serious questions if it was possible that they could be settled outside U.N.²³ Of course this does not mean to excuse the Members for non-settlement of non-serious disputes which might be later the origin of many serious situations. In fact at the San Francisco Conference the Australian Delegate had suggested making the obligation of the Members to settle their disputes by peaceful means more precise than in the text of the Dumbarton Oaks Proposals. He proposed that such an obligation be a condition of membership in the Organization. The Delegate of the U.S. “agreed with this interpretation of the terminology used in the Dumbarton Oaks Proposals”, and the respective Committee agreed to refer the text with the given interpretations to the drafting sub-commission.²⁴

It might also be said that it is because of this obligation that in Article 35 (1) the Members may bring only the said qualified dispute to the attention of the Security Council while the non-member States, not bound by such provisions, may bring any dispute to the Council,²⁵ Art. 35 (2).

Moreover, if there were such a difference between the obligation of the parties with regard to the peaceful settlement of serious and

²² The opinion of EAGLETON, C., “The Jurisdiction of the Security Council over Disputes”, *A.J.I.L.*, 40, 1946, 518. See also the similar view expressed by Dr. YUEN-LI LIANG, “The Settlements of Disputes in the Security Council: The Yalta Voting Formula” *B.Y.B.I.L.*, 1947, 336, 338.

GOODRICH and HAMBRO states: “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.” *The Charter of the United Nations*, revised edition (Boston, 1949), 238.

²³ See pages 32-33.

²⁴ See Summary report of 5th Meeting of Committee III/2, S.F., Doc. 356, III/2/11, p. 3.

²⁵ See pages 35-36.

non-serious disputes, it would be impracticable because in international relations, what makes a dispute serious is not only the nature of the subject matter, but also the eagerness of one of the parties to solve this dispute in its own favour, or to make it a pretext for a further demand. This is a course which is practically in the hands of any party to any dispute, and thus enables him to aggravate the dispute so much that it would be likely to endanger international peace and security. Consequently, such an aggravated dispute becomes subject to the obligation of being settled through pacific means.

Summing up the paragraphs 3 and 4 of Article 2, an important result may be deduced. This is that if a "threat or use of force" occurred, it might eventuate in a change of *status quo*, or even the conclusion of an international treaty with its technical ratification under pressure. Such a change and provision will not possess any legal validity, because these actions are the result of a "manner" which is "inconsistent with the Purposes of the United Nations" (Art. 2 [4]), and by employing such a means "international peace and security, and justice" were "endangered" (Art. 2 [3]).

An extensive, if not exhaustive enumeration of means of "their own choice" for the pacific settlement of disputes by the parties is provided in Article 33 (1). The transference of Article 33 (1) at San Francisco from its original place in the Dumbarton Oaks Proposals (third paragraph of the respective Section)²⁶ to the beginning of Chapter VI dealing with the "Pacific Settlement of Disputes" illustrates that the Charter gives a great importance to the settlement of disputes by the parties themselves through means of "their own choice".²⁷ In fact five out of the six Articles of this Chapter refer to these methods of settlement. In doing so, it seems that the Charter seeks the following goals:

1. To respect the parties' "own choice" so long as the concept of the peace, security, and justice are not endangered.
2. To throw a light on the concept of the sovereignty of the Members, however subject to law.
3. To relieve the Security Council of burdensome assignments in the case of disputes.

²⁶ Chapter VIII, Section A.

²⁷ See S.F., Doc. 992, 111/2/27, p. 1.

The observance of this principle of encouraging the parties to a dispute to settle it outside of the League was also the tradition of the League of Nations.²⁸

The existence of the words "first of all" in Article 33 (1) may give rise to a question as to how far the parties are required to use such means before referring the case to U.N. In the Syrian-Lebanese case before the Security Council, Mr. Bidault (France) took up his position on this point with the following words :

If there is a dispute, then it must be settled under Article 33 which recommends that the disputes shall be settled in the first place by means of negotiations and it does not set any limit to the scope of those negotiations. If on the other hand, Article 33 does not apply, then there is no dispute.²⁹

It is true that an obligation upon the parties exists under Article 33 (1) to seek a solution through pacific means of their own choice, but it is not required that all of these means be exhausted. Otherwise a solution might never be reached, and a deadlock might result.³⁰ In such a case the opinion of one of the parties should be sufficient to submit the case to U.N.³¹

It is to be noted that the reference of Article 33 (1) to the means of the parties' own choice includes also the use of the General Assembly (Art. II [2]), the Security Council (Art. 38), and I.C.J. (Art. 36 of the Statute).

In connection with the position of I.C.J.—a Principal Organ of U.N.—one may take note of the lack of express reference to I.C.J. in the language of Article 33 (1).³² The principle embodied in Article 33 (1) has nothing to do with the prestige or the authority of I.C.J., but rather, as already mentioned, it conveys the great respect

²⁸ See RAY, L., *Commentaire du Pacte de la Société des Nations* (Paris, 1930), 381.

²⁹ S.C.J., No. 16, p. 332, 339. For the view of Mr. Stettinius in this case that such a means be sought, see *Ibid*, 291.

³⁰ Referring to this point, Dr. YUEN-LI LIANG states, "... it is obviously not intended that the parties should go through the gamut of all the means enumerated in Art. 33", *Op. cit.*, 336. Also see Summary report of the fifth Meeting of Committee III/2, S.F., Dec. 356 III/2/11, pp. 1-2. See the observations of P.C.I.J. in the Mavrommatis Palestine case, P.C.I.J., Publications Series A, No. 2., p. 13.

³¹ See GOODRICH and HAMBRO, *Op. cit.*, p. 239. The Report of Sub-Committee (2) to the Interim Committee also holds this view, U.N., A/AC.18/48, 1948, p. 4.

³² See the debate in the General Assembly, Second Session, 113th Meeting, on the resolution for a greater use of I.C.J. (See pages 138-141).

of U.N. for the settlement of disputes through means of " their own choice ".³³

SECTION 3

The Dispute or Situation to be Brought Before the United Nations

Should the parties to a dispute, " the continuance of which is likely to endanger the maintenance of international peace and security ", fail to settle it by the means indicated in Article 33 (1), they " shall " refer it to the Security Council (Art. 37 [1]). However, if the case is submitted in one way or another to the General Assembly, or to I.C.J. as a result of the application of the optional clause of its Statute, the parties are relieved of their obligation under Article 37 (1) ; because for both of these references special provisions are made in the Charter.³⁴

Even if one party to a dispute fails to fulfil its obligation under article 37 (1), the obligation of the other party is not affected because it is an obligation rather than a right.³⁵

Basically, however, the Security Council itself is authorized to interfere upon its own discretion under the provisions of Articles 33 (2), 34 and especially 36 (1) and 37 (2). Although these Articles do not determine explicitly the authority of the Security Council for such interference in, and investigation of any dispute or situation from its beginning to the end, yet, these authorities are implicit in these Articles. It is clear that the right to determine the necessity of a "call-upon" "when it seems necessary", and the right to recommend " at any stage of a dispute ", include the stage and period envisaged in Article 33 (1).

Then, an important aspect of the course is the manner in which a question related to the maintenance of international peace and security may be brought before the respective Organs of U.N.

The following are the provisions for these presentations :

³³ However for the difference see page 12.

³⁴ Article 10, 11(2), 13, 14 and 35(1) of the Charter, and Article 36 of the Statute.

³⁵ See the explanation of the U.S. Delegate in Committee III/2 and the understanding which is recorded in the summary reports of this Committee, S.F., Doc. 356, III/2/11, pp. 2-3, and also Doc. 1016, III/2/29, p. 3.

1. Any dispute or any situation—any “question”—may be brought to the attention of the General Assembly by any Member (Art. 11 [2]).³⁶

2. Any State which is not a member of U.N. may bring to the attention of the Security Council or the General Assembly any “dispute” to which it is a party if “it accepts in advance for the purpose of the dispute, the obligations of pacific settlement provided in the present Charter” (Art. 35 [2] and 11 [2]).

3. Any Member of U.N. may bring any “dispute” or any “situation” which “is likely to endanger the maintenance of international peace or security” to the attention of the Security Council,³⁷ or the General Assembly (Art. 35 [1]).

In comparing the text of Art. 35 (1) with the second paragraph of the same Article, one should not ignore an unsound provision³⁸ which permits a non-member State to bring to the attention of the Security Council and the General Assembly “any dispute to which it is a party”, while the Members are permitted to make such a reference only if the dispute or situation “is likely to endanger the maintenance of international peace and security”. This unsound provision is corrected as far as the General Assembly is concerned by Article 11 (2); however, it still exists with regard to the Security Council, except in the case of Article 38.

4. The parties may bring to the attention of the Security Council any “disputes”, if they agree among themselves to do so (Art. 38).

5. 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 (Art. 99).

The unprecedented provision of Article 99 gives an important and far-reaching political initiative power to the Secretary General. The exercise of this power is left to his own discretion because it is a

³⁶ See pages 49-63.

³⁷ This method has so far been frequently used. See: The Iranian Question, by Iran; Greek Question, by U.S.S.R.; First Indonesian Question, by Ukrainian S.S.R., O.R.S.C., 1946, No. 1, pp. 15-16 respectively; Spanish Question, by Poland (Doc. S/32 and S/34); Ukrainian Complaint against Greece, by Ukrainian S.S.R. (Doc. S/137); Greek Frontier Incidents, by Greece (Doc. S/203); Syrian and Lebanese Question, by Syria and Lebanon (Doc. S/5). Incident in the Corfu Channel, by U.K. (Doc. S/247); Egyptian Question, by Egypt (Doc. S/410); Second Indonesian Question, by India (Doc. S/447 and S/449); India-Pakistan Question, by India (Doc. S/628); and Czechoslovak Question, by Chile (Doc. S/694)

³⁸ However, see page 31.

right but not a duty. However, the Secretary-General does not have the capacity to decide between the Security Council and the General Assembly.³⁹

6. Finally, a dispute regardless of its nature, may go to I.C.J. if both parties agree to such jurisdiction on an *ad hoc* basis (Art. 36 [1] of the Statute of the Court). A dispute must go to I.C.J. if the optional clause of the Statute (Art. 36 [2]) applies to the case.

In this connection what is of interest to this study is consideration of the role of each of the said three Principal Organs of U.N. in the submission of the questions to the others ; and once a case is submitted to one of them, the conditions under which it might be transferred to the other Organ.

In this respect, the Security Council plays an important role because on it is conferred the " primary responsibility for the maintenance of peace and security " (Art. 24). The General Assembly has an ultimate responsibility and a leading position in the Organization as a whole. I.C.J. is the organ which is designed to promote justice and to apply the law in the given issues.

As the security Council has " primary " responsibility in this connection, reference is first made to its functions.

SECTION 4

The Security Council and the Pacific Settlement of Disputes

Preliminary Consideration

Once a case is seized on by the Security Council,⁴⁰ the Council ordinarily proceeds to a preliminary consideration of the issue, which includes the hearing of the case and the statements of the parties. This is a course which, according to the Statement of the Sponsoring

³⁹ See proposal of Venezuela in Committee 1/2 to the effect that the Secretary General be authorized to bring a matter before the Security Council or to the General Assembly upon his own discretion. This proposal was rejected by a vote of 18-11, S.F., Doc. 732, 1/2/50, Doc. 762, 1/2/53. With regard to the nature of the matters brought before the Security Council by the Secretary General, see a proposal of Venezuela to apply it to " any matters which constitute an infringement or violation of the principle of the Charter ", this proposal was also rejected in Committee 1/2 by a vote of 16-13, S.F., Doc. 762, 1/2/53.

⁴⁰ See pages 50-51.

Governments at the San Francisco Conference, should not be barred by the veto power of any permanent member of the Security Council.⁴¹

A comment of Dr. Evatt minimizes the effect of this exception in the following words :

It may be said that, without veto, the Council can only discuss whether a dispute can be discussed and can only investigate whether it should be investigated.⁴²

However, the importance of this step, relatively speaking, is that the general feeling of the members of the Council and the parties of the case can be publicised. In fact, if the procedure were blocked by the use of veto, the view of the majority of the Council might influence the solution of the case, either outside U.N. or even in the General Assembly, which might seize on the case. Moreover, by employing this principle, a rule of justice is applied which in English law is called a rule of natural justice : no party shall be condemned unheard.

Establishment of Competence and the Definition of Dispute or Situation

After the said preliminary discussion, which of course may include some investigations, it may be argued that the Council, before proceeding to discuss the merit of the case and to give recommendations, should take the two following steps for certain specified reasons :

A) To define the nature of the case, i.e., that it is or is not " likely to endanger the maintenance of peace and security ", in order to establish the competence of the Security Council to handle the case. However, in practice, the Security Council has not bound itself to such a restricted interpretation. This course of the Security Council has been challenged on the ground that it proceeds to the consideration of the merit of the case without establishing its competence.⁴³ This practice of the Security Council does not seem to be inconsistent with the provision of the Charter. Firstly, the provision of Article 34 which refers to this determination does not seem to be mandatory upon

⁴¹ S.F., Doc. 852, 111/1/37 (1), p. 3. Also see : Department of External Affairs (Canada), *Report on the United Nations Conference*, 1945, p. 34 ; *Hearings before the Committee on Foreign Relations*, The U.S. Senate Committee on Foreign Relations, 79 Congress, 1st Session, 1945, p. 85 ; Koo, WELLINGTON, JR., *Voting Procedure in International Organizations* (New York 1947), Chapter IV.

⁴² Australian Report on the S.F., 1945, p. 89.

⁴³ See the Iranian case, S.C.J., No. 5, p. 48 ; The Indonesian Case, S.C.J., No. 10, p. 189 ; The Egyptian Case, S.C.J., No. 32, pp. 686-688, and No. 34, pp. 727-731. On the support of this challenge see, EAGLETON, *Op. cit.*, 518-519, 526-527.

the Council. It is rather a permissive procedure which provides the obligation of the parties to give adequate means to the Security Council, if the latter decides to investigate.⁴⁴ Secondly, Articles 36 (1) and 37 (2), which refer to the substance of the function of the Security Council in this respect, do not refer to such an explicit determination in advance. Thirdly, when the Security Council gives recommendations under either Article, it might be said, it is implicit in that decision that the case has a serious nature to which the Security Council has "primary" responsibility and competence.

B) The second step which is contended should be taken by the Security Council before proceeding to the substance of its action, is to define whether the given case is a "dispute" or "situation".⁴⁵ This definition might affect the consideration of the case in the Security Council in the following ways :

1. Under Chapter VI of the Charter :

(a) The Members are bound to refer their unsettled "disputes" of the nature referred to in Article 33 to the Security Council (Art. 37).

(b) A State which is not a Member may bring to the attention of the Security Council only a "dispute", to which it is a party (Article 35 [2]).

(c) 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 method of adjustment" (Article 36 [1]). However, it is authorized "to recommend such terms of settlement as it may consider appropriate" if the case is only a "dispute".

2. Under Chapter V of the Charter :

(a) A State not being a member of the Security Council is entitled to be invited to participate in the discussion of the Security Council without vote, if it is a party to a "dispute" (Article 32).

(b) A member of the Security Council, regardless of being per-

⁴⁴ This obligation of the Members is also emphasized in Article 2(5) and for non-member States through Article 35(2).

⁴⁵ For the use of the term "dispute", the following definition is given by P.C.I.J. in *Mavrommatis Palestine Concession Case* : "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons", Publications Series A, 2, p. 11. For distinction between a "dispute" and "situation" from the technical point of view see WORTLY, *Op. cit.*, p. 100 ; also see GOODRICH and HAMBRO, *Op. cit.*, 249.

manent or non-permanent, is to abstain from voting in the Council in decisions under Chapter VI and under paragraph 3 of Article 52 if it is a party to a "dispute". This type of decision of the Council, of course, includes any request for the advisory opinion of I.C.J. on the case.

The important question in this connection is, who is the competent authority to determine such a distinction in every concrete case? Two theses were advanced in this connection during the discussion of the Syrian-Lebanese Case in the Security Council :

a) The party or the parties themselves are considered as the competent authorities to give such distinction. Thus, according to this interpretation, the declaration is to be taken as granted by the Council. Mr. Bevin, referring to a statement of Mr. Kleffens (Netherlands) said :

If any accuser State says there is a dispute then there is a dispute, and if a State makes a charge against another State, and then the State against which it is made repudiates it or contends it, then there is a dispute, and the Council can make its recommendations.⁴⁶

Mr. Padilla Nervo (Mexico) put it in more precise words by stating that it is a question " that has to be decided and is within the jurisdiction and the criterion of the party that is bringing the matter to the Council ".⁴⁷

b) The party which brings the case to the Security Council has the right to define whether the case is a " dispute " or " situation ". However, the Council is to decide itself, in the light of its consideration, whether it concurs with such a proclamation. Mr. Kleffens, referring to the constitutional consequences of such a distinction stated :

I do not think in the final analysis it can be left to the parties to decide whether a matter is a dispute, or a situation, and that is a question that should be decided by the Council, having heard the developments of the parties' statements.⁴⁸

With latter thesis also the Delegates from Egypt, Brazil, China and U.S.S.R. were in agreement.⁴⁹

⁴⁶ S.C.J., No. 15, 269.

⁴⁷ *Loc. cit.*

⁴⁸ *Ibid.*, 267, 270.

⁴⁹ *Ibid.*, 266-274.

In this connection the Security Council has taken an expedient course by not restrictively binding itself to give such a distinction in a concrete case. However, it is to be noted that the Council possesses the authority of defining a case as being a "dispute" or "situation". This authority of the Council derives from Article 36 as well as from the other articles of Chapter VI which refer to the similar competence in connection with the function of the Council. Because the authority of the Council on the substance of the question presupposes the competence of the Council to define the matter itself.

The danger of the said two kinds of decision of the Security Council, for defining the nature or the type of case, if they should be taken, lies in the fact that in the absence of the Rule of Procedure of the Security Council to define them as being procedural matter, any decision in this direction in the Council might be challenged as being substantive matter.⁵⁰ Therefore, either the actual case, or its determination as a substantial or procedural matter becomes subject to veto. Logically speaking, both of these kinds of decision should be considered procedural matters.⁵¹

As far as the argument for the necessity of defining the case by the Council in connection with the voting procedure in the Security Council (Art. 27 [3]) and the invitation of a non-member to participate in the discussion⁵² (Art. 32) are concerned further explanation should be given here.

The term "dispute" used in Articles 27 (3) and 32 does not convey the same meaning which one might give to this term used throughout Chapter VI, because under the provision of Chapter VI the Security Council functions in a quasi-judicial capacity.⁵³ Therefore, no matter whether the case be proclaimed by the parties or be defined by the Security Council as being a "dispute" or a "situation", the principles embodied in Articles 27 (3) and 32, which are two of

⁵⁰ It is said that during the consideration of the Expert Committee of the Security Council, it was requested by one of the Delegates that any definition given by the Council with regard to a dispute, be subject to the use of veto, see *New York Times*, March 5, 1946. Also see the discussion which took place in the Security Council during the consideration of Syrian-Lebanese case, S.C.J., No. 15, p. 271.

⁵¹ See the same views expressed by EAGLETON, *Op. cit.*, 532; also see the proposal of the U.S. in the Interim Committee to this effect, U.N., Doc. A/AC.18/S.C. 3/4, p. 2.

⁵² See page 38.

⁵³ See pages 8-11.

the essential principles of justice, are to be applied.⁵⁴ These principles were also applied in the League of Nations though the unanimity rule was required for any decision of the Council.⁵⁵

It must now be pointed out why the term "dispute" is used in two different meanings. It seems that this difference comes from the fact that each Chapter of the Charter was drafted by different Committees. As far as the principle of Article 27 (3) which requires the excluding of any party to a case from voting in the Council is concerned, this principle and the provisions of Chapter VI, have their origin in the different documents, drawn up at the different dates, drafted in the different Committees, and approved by the Committees at the different times.

The Dumbarton Oaks' Proposals were submitted on October 7, 1944.⁵⁶ They did not contain any voting formula for the Security Council, and in their corresponding provision to Article 36 (1) of the Charter,⁵⁷ they did not use the term "situation". The voting formula in the Security Council was agreed upon at the Yalta Conference and announced in February 1945.⁵⁸

The Statement of the Sponsoring Governments at the San Francisco Conference, referring to the voting formula, was also issued on June 8, 1945.⁵⁹

These questions—Article 27 (3) (voting formula) and Chapter VI (peaceful settlement)—though so related to each other, were assigned to the different Committees in the San Francisco Conference. Thus when Committee III/1, in its morning session on June 13, 1945,⁶⁰

⁵⁴ See the following comments on this questions: "The rule of paragraph 3 regarding voting on substantive matters is subject to one important provision which apparently was the result of President Roosevelt's insistence that a party should not be judge in its own case", GOODRICH and HAMBRO, *Op. cit.*, 224. In reference to this part of the Yalta Agreement, the Secretary of State of the U.S. said in Mexico City that: "This means that all members of the Security Council, when they are parties to a dispute, will be on the same footing before this Council... and that the equal democratic rights of all Nations will be respected", Department of State Bulletin, Vol. XII, No. 298, 11 March 1945, p. 396. See also Doctor YUEN-LI LIANG, *Op. cit.* The comment of Mr. Stassen (U.S.) in first Meeting of Commission 1, S.F., Doc. 1006, 1/6, pp. 18-19.

⁵⁵ See page 25-29.

⁵⁶ See page 2.

⁵⁷ Chapter VIII, Section A. par. 5.

⁵⁸ See page 3.

⁵⁹ S.F. Doc. 852, III/1/37(1), June 8, 1945, p. 3.

⁶⁰ S.F., Doc. 967, III/1/48.

approved the said voting formula, the text of the Dumbarton Oaks Proposals with regard to the principles of Articles 36 (1) and 37 (2) of Chapter VI of the Charter was not yet changed. The text proposed by the drafting Sub-Committee of Committee III/2 for Chapter VI was drafted by a Sub-Committee (with a limited number of members) during the same morning session or during the afternoon session,⁶¹ when the words "or of a situation in like nature" which appear to-day in Article 36 (1) were added in the text as the result of an Australian proposal. This draft was submitted to the Committee III/2 on June 14, 1945,⁶² and was approved by the latter on June 15, 1945.⁶³

Therefore, the members of Committee III/1, when they discussed and voted upon the principle of Article 27 (3) did not know that such a change of the terminology would appear in the text of the provision referring to the substance of the functions of the Security Council with regard to the settlement of disputes.

Thus, the conclusion is that the reference of Article 27 (3) as well as that of Article 32 to the word "dispute" is intended to refer to any conflicting case before the Security Council, regardless of whether it is defined by the party, or parties, or the Council itself to be a "dispute" or "situation" in a restrictive sense of these terms. These principles of Articles 27 (3) and 32, thus interpreted, are also two essential principles of justice that no one is to be his own judge, and no one is to be condemned before being heard, regardless of the nature of the case.

The Security Council "calls upon" or "recommends"

Under any condition when the Security Council acts under the provision of Chapter VI of the Charter, it may take two kinds of decision which are matters of interest to this study from the point of view of its relations with the General Assembly and the I.C.J. :

- 1) it may "call upon" the parties (Art. 33 [2]), and
- 2) it may "recommend" to them to carry out certain acts (Art. 36 [1] and Article 37 [2]).

⁶¹ The document does not indicate it, S.F., Doc. 958, III/2/B/1, June 13, 1945.

⁶² See Doc. 922, III/2/27.

⁶³ See Doc. 1016, III/2/29.

Both of these two functions of the Security Council may include directly, in the latter case, and indirectly in the former case, reference of the case to the General Assembly,⁶⁴ or to I.C.J.⁶⁵

In this connection an important question arises. What is the extent of the legal force of these two different actions of the Security Council, which, in certain cases, might lead the parties to the dispute to go to I.C.J. ? Do they actually establish some kind of compulsory jurisdiction of I.C.J. ?⁶⁶

The consideration of the legal force of these types of decision of the Security Council is to be approached separately.

The "call upon" is used in Article 33 (2) which reads :

The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Two different interpretations might be given with regard to the binding force of the "call upon" of the Security Council. It might be considered binding upon the parties, or being only a simple recommendation.⁶⁷ But the wording of the relevant paragraphs in Chapter VI reveals that a "call upon" the parties of a dispute by the Security Council has not a binding force, and need not have one. It refers simply to an obligation of the parties to the dispute which, as already mentioned, exists under the first paragraph of the same Article (33 [1]), and under the general provision of Article 2 (3) that "all Members shall settle their international disputes by peaceful means". Therefore, the Security Council does not do anything except calling the attention of the parties to the dispute to their pre-existing obligation.

In this connection, there is a distinct difference between the text of paragraph (3), section A, Chapter VIII of the Dumbarton Oaks Proposals and the provision of the Charter (Article 33 [2]) quoted above.

The Dumbarton Oaks Proposals read as follows :

⁶⁴ See the Statement of the Secretary of State of the U.S. in Mexico City, *Op. cit.*, 395-6.

⁶⁵ *Loc. cit.* Also Art. 36 (3) of the Charter.

⁶⁶ See page 45.

⁶⁷ These two different possible interpretations were given by Dr. Kelsen, "The Old and the New League: the Covenant and the Dumbarton Oaks Proposals", *A.J.I.L.*, Vol. 39, 1945, pp. 60-61.

The Security Council *should* call upon the parties to settle their dispute by such means.

In this proposal the provision to "call upon" the parties to the dispute by the Security Council was mandatory (by using the word "should"), while in the latter, in the Charter, by employing the phrase "when it deems necessary" it is left to the discretion of the Security Council to do so.⁶⁸

If the above-mentioned wording of the Dumbarton Oaks Proposals, was kept in the Charter, as creating an obligation upon the Security Council, it would be one of the cases upon which veto right would not be applicable in the matter affecting pacific settlement of disputes. Dr. Evatt, in his comment on the statement of the Delegation of the Sponsoring Governments on voting procedure in the Security Council at the San Francisco, noted this point. He considered this an obligation of the Security Council, if kept in the text of Article 33 (2), by stating that "the decision of the Council is limited to question of time and method, and could and should fairly be treated as procedural, and therefore not subject to the veto."⁶⁹

However, if the terminology of the Dumbarton Oaks Proposals was kept, there would be a definite course of action to be taken by the Council. Therefore, it seems that such "call upon" legally would be an automatic procedure resulting from explicit or implicit determination by the Security Council of the existence of a dispute "the continuance of which is likely to endanger the maintenance of international peace and security".

As far as the recommendation of the Security Council is concerned, it is argued that its binding force, as a decision of the Security Council,

⁶⁸ The drafting Sub-Committee of the San Francisco Conference justifies it as follows :

"The word 'shall' implied an obligation resting upon the Security Council to 'call upon' the parties to a dispute even though the latter was already making an honest effort to settle the dispute by pacific means. Therefore, it seemed preferable to give the Security Council the power to appeal to the parties rather than require it to do so. Further, if the word 'shall' were retained, it might appear that the parties to a dispute should wait until the Security Council called upon them before they instituted means of pacific settlement of their own choice. It was intended, by the use of the word 'shall' in the first sentence, to indicate that the parties should fulfil their obligations and that the Security Council should be able to call upon them to carry out their obligations. The substitution of the word 'may' for 'shall' in the second sentence had been made with this in mind"; S.F., Doc. 992, 111/2/27, June 15, 1947, p. 3.

⁶⁹ S.F., Doc. 897, III/I/42, Annex A, 9.

is derived from the provision of Article 25 of the Charter which reads :⁷⁰

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

The Corfu Channel case, a dispute arising between the United Kingdom and Albania, may serve as an example. In this case there was a recommendation of the Security Council on April 9, 1947 to the effect that the dispute be submitted to I.C.J. The United Kingdom alone filed the claim against the Albanian Government with the Court, contending that the recommendation of the Security Council to the parties to the dispute allowed the United Kingdom to do so. On the other hand, the Albanian Government, while accepting to appear before the Court, reserved that the application of the United Kingdom alone to the Court was not correct, and her acceptance of the Court's jurisdiction should not be considered a precedent for the future.⁷¹

The importance of such an interpretation, if it becomes accepted,⁷² is that somehow compulsory jurisdiction of the Court, through the action of the Security Council will be established. This is a pro-

⁷⁰ See the discussion of 13th and 14th meeting of Committee 111/1 of the San Francisco Conference in which the Belgian Delegate suggested adding the words "taken under Chapter VII" (in the present order) after the words "decisions of the Security Council" in this Article. The Delegate from the United Kingdom stated that the Council had other duties besides those presented in Chapter VII and called for a careful study of the suggestion. The Delegate from U.S.S.R. expressed a similar view. Thus with the understanding that the Security Council action would be subject to the general provision of the Charter, including the Principles, the Belgian proposal was rejected (by vote of 14 to 13) the present formula was then approved (by a vote of 24 to 0) S.F., Docs. 555, 111/1/27; 597, 111/1/30; also see the Report of Rapporteur of Committee 111/1, Doc. 1050, 11/1/58, p. 6.

⁷¹ Unofficial Communique, No. 16, of I.C.J. For the judgment of I.C.J. on the case see I.C.J., Reports of Judgments, March 25, 1948.

⁷² On the lack of legally binding force of the recommendations of the Security Council under Chapter VI of the Charter see : HANS Kelsen, "Collective Security under Charter of United Nations", *A.J.I.L.*, Vol. 42, No. 2., 1948, p. 789. See his article in *IOWA Law Review*, "Sanction in International Law under the Charter of the United Nations", vol. 31 (1946), 499-543. BUEHRIG, E. H., "The Security Council", *Department of State Bulletin*, XIII, 1945, p. 826. LAWRENCE PREUSS, *The I.C.J. and the Problem of Compulsory Jurisdiction*, Department of State Publication 2573, p. 37. EAGLETON, *Op. cit.*, 514. GOODRICH and HAMBRO, *Op. cit.*, p. 33, 209, 255. SALOMON, *Op. cit.*, 215-219. DR. PASVOLSKY, Hearings before the Foreign Relations Committee of the U.S. Senate, 79 Congress, p. 271-278. The Report to the President on the results of the S.F., Department of State Publication, 2349, Washington, 1946, pp. 83-86. Also see S.F., Docs. : 674, 111/2/24, pp. 1-3; 1029, 111/2/33, p. 4; 992, 111/2/27, p. 4; 1027, 111/2/31 (1) p. 3.

cedure which was hoped,⁷³ even imagined,⁷⁴ to be the case under the Dumbarton Oaks Proposals text,⁷⁵ by many delegates at the San Francisco Conference. The importance of such a procedure would be that, under the provision of Article 27 (3), in the decisions of the Security Council under Chapter VI, for pacific settlement of disputes, even a permanent member, should abstain from voting if it was a party to the case.

With regard to the jurisdiction of I.C.J., as far as the Security Council is required to take it into its consideration, there is Article 36 (2) which reads as follows :

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 follows immediately the paragraph which provides the competence of the Security Council " to recommend appropriate procedure or methods of adjustment " to the parties to the case. This principle, of course, does include the agreement of the parties to a dispute to refer it to I.C.J., through an *ad hoc* agreement or by previously accepting the compulsory jurisdiction of the Court.⁷⁶ Nevertheless in the latter case, two different hypotheses might be stated :

1. Both parties to a dispute are ready to comply with their obligation under the accepted optional clause (Art. 36 [2] of the Statute) to submit the case to the I.C.J.
2. Neither of the parties initiates such a submission, or there is non-compliance on the part of one party.

In the former case, of course, the Security Council should take into account the existence of such compulsory jurisdiction of I.C.J. which exists in virtue not only of a pre-existing agreement, i.e.

⁷³ See the remark of Mr. Benes (Czechoslovakia), Mr. Michael Myers (New Zealand), and Mr. Moneim Riad (Egypt), S.F. Jurists : 34, G/25, pp. 5, 11 ; and 64, G/51, p. 11. For the proposals on this basis see the comments from Brazil, Peru and Venezuela, S.F., Docs. : 2, G/7, (E) (2), 2 ; 2, G/14 (U) 2 ; 2, G/7 (d) (1) 41, respectively.

⁷⁴ See the views expressed in U.N. Committee of Jurist, S.F., Jurist, G/25, pp. 5-11.

⁷⁵ See page 43.

⁷⁶ See also the remark of Judge-Hudson and the explanation given by the Delegate from the U.K. in Committee 11/2, S.F. Doc. 1016, 111/2/29, p. 2.

adhesion to the optional clause of the Statute, but also the present agreement of the parties to comply with it.

As to the second hypothesis, the question arises whether or not the Security Council is bound to take into account the force of the pre-existing compulsory jurisdiction of the Court which is not complied with by one, or both parties to the dispute. The wording of Article 36 (2), which is an obligation upon the Security Council rather than upon the parties to the dispute, does not clarify this point. The answer, it seems, is positive, though the case may be that one or more of the parties to the dispute do not comply with their obligations at the given time. As far as the parties to the dispute are concerned, it is an agreement which is in force between the parties to the dispute and cannot be unilaterally disregarded. As far as the Security Council is concerned, it is bound by all of the provisions and the content of the Charter, including the Statute of the Court, which is an "integral" part of the Charter, since the Security Council is itself one of the Organs of U.N. Of course once the optional clause of the Statute is accepted by a State, it becomes a part of the provisions of the Statute, as far as that State is concerned, subject to the stipulations of the respective declaration.

Justiciable and non-Justiciable Question

Article 36 (3) provides that :

In making recommendation 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.

In this text, the words "as a general rule" were substituted at the San Francisco Conference for the word "normally" which was used in the Dumbarton Oaks Proposals.⁷⁷

The Australian Delegate had suggested that in order not to "leave the Security Council the full breadth of discretion by the word normally", the phrase "act upon the rule" should be substituted for the phrase "take into consideration."⁷⁸ This suggestion was not accepted.

⁷⁷ See Chapter VIII, Section A, paragraph 6 of the Dumbarton Oaks Proposals.

⁷⁸ S.F., Doc. 1016, III/2/29, p. 2.

The Rapporteur of the Drafting Sub-Committee (Chinese Delegate) gave the following reason : ⁷⁹

It had been felt that the original text was sufficiently clear and that it had been given adequate expression to the intent of the Committee.

Also to be noted that the existence of the last phrase of the said paragraph—"in accordance with the provisions of the Statute of the Court"—strengthens the position of the whole principle of such a reference.

Thus through Article 36 the Charter accepts, as did its predecessor—the Covenant—a principle that there are legal disputes ⁸⁰ which are, "as a general rule", to be recommended for their submission to the Court,⁸¹ and there are disputes which are not purely legal and may be handled by the political organs of the Organization.⁸² In this connection, as far as this study is concerned, the important question is, who is competent to decide whether the given case is justiciable or is a political one (non-justiciable) ?

According to the principle of Article 36 (3) of the Charter, it is for the Security Council itself to decide upon such a question. Therefore, the Security Council, a political body in which political rather than legal principles may be applied, is competent to decide not only on the merit of a non-justiciable dispute, but also on the question of whether the given case is justiciable or not, i.e., is there a law of Nations to apply to the case or not ? However, such a competence would better fit the Court itself than a political body in which one

⁷⁹ S.F., Doc. 1029, 111/2/33, p. 4.

⁸⁰ Article 36 of the Statute of I.C.J. enumerates some of them. Also see Article 13 (2) of the Covenant.

⁸¹ For the view that all the disputes are justiciable see Kelsen H., *Peace through Law* (Chapel Hill, 1944) and his article, "Compulsory Adjudication of International Disputes", *A.J.I.L.* vol. 37, 397. See also a declaration, which was introduced by the Delegate from Uruguay in Committee 111/2, S.F., WD 35, 111/2/21. A similar view was expressed by Ambassador Castro (El Salvador) in the United Nations Committee of Jurists, S.F., Jurist 36 (II), G/26, p. 5. Article (1) of the Statute of the Central American Court of Justice (1907 to 1917) had provided this principle, *The U.S. Foreign Relations*, 1907, part 2, pp. 697-701.

⁸² On this view see : Bourquin M. *Vers une nouvelle Société des Nations* (Neuchâtel, 1945), 87-98, 109, and his article, "Stabilité et Mouvement dans l'Ordre Juridique International" *Recueil des Cours*, Académie de Droit International, T. II, 419-455. PULLOX, "The Interpretation of the Charter", *B.Y.B.I.L.*, 1946, p. 66. *International Arbitration Journal* "Voluntary Arbitration Under the United Nations Charter", Vol. 1, 1945, 77.

permanent member may block any decision on the issue. Moreover, the determination of such a competence requires a body with members who have certain qualifications and should be bound to apply the principles of justice and law in their exclusive sense. They are qualifications which are not required for a political organ in which the members are merely represented. Thus it can be said, that the principle of Article 36 (3) is a weak principle of the present Charter.

There was a proposal of the Czechoslovakian Delegate at the San Francisco Conference to the effect that in the case of doubt of "whether a given dispute is justiciable or not, the Court itself should decide by a preliminary statement".⁸³ This principle applies at the present time as far as the cases referred to the Court in virtue of an agreement between the parties themselves are concerned (Article 36 of the Statute), because according to this provision I.C.J. itself is empowered to decide upon its own competence on the cases referred to it.

SECTION 5

The General Assembly and the Pacific Settlement of Disputes

The Competence of the General Assembly and the Security Council

A question may be brought to the attention of the General Assembly by a Member or a non-member State,⁸⁴ as well as by the Security Council (Article 11 [2]). The latter body may even request the holding of a special session of the General Assembly for such a purpose (Article 20).

However, there are certain limitations upon the competence of the General Assembly with respect to "any dispute or situation" which might be brought before it. These limitations may be summarized as follows :

- 1) A time limitation (Art. 10, 11 [2], 35 [3] and especially Article 12). The General Assembly has no competence while the Security Council is exercising its functions with regard to the given case.
- 2) A limitation on the nature of action to be taken. "Any such question on which action is necessary shall be referred to the

⁸³ S.F. Doc. 2, G/14 (b), 3. Also see a Peruvian proposal, S.F., Doc. 2, G/14 (U), 2.

⁸⁴ See pages 34-35.

Security Council by the General Assembly, either before, or after, discussion " (Article 11 [2]).

These two limitations, as it is said, are the boundary lines designating the respective jurisdictions of these two important Organs of U.N. in handling any dispute or situation.

Thus the definition of the period during which the Security Council is exercising its functions with regard to the given case, and the definition of the term " action " hold special importance.

The Question of the " Agenda " of the Security Council

In connection with the first above-mentioned limitation upon the jurisdiction of the General Assembly, the meaning of the sentence " while the Security Council is exercising... the functions... ", used in Article 12 (1), gives rise to an important question. Does this limitation mean merely the inclusion of a case in the Security Council's " agenda " until the removal of the item from the " agenda ", or must the Council be actively occupied with the case in order that it be excluded from the jurisdiction of the General Assembly ?

This is a question related to the " agenda " of the Security Council. In practice, any question brought to the Security Council is subject to the following procedure :

1. The question is included in the so-called " provisional agenda " which is drawn up by the Secretary-General and approved by the President of the Security Council.⁸⁵
2. If the Security Council has approved the said inclusion, the item is then seized upon by the Council, and is included in the general " agenda " ⁸⁶ of the Council.
3. The said inclusion does not mean that the Council must actually discuss the question in each of its following sessions, though it may remain in the said general " agenda ".
4. Any item may be removed from the " agenda " of the Security Council whenever the Council decides to do so, and then the Council is no more seized with the case.

It is to be noted that the approval ⁸⁷ of the " agenda " and the

⁸⁵ The Rule of Procedure of the Security Council (7).

⁸⁶ *Ibid.* (9).

⁸⁷ Rule of Procedure of the Security Council (9), also see the Iranian case, S.C.J., 1946, p. 885.

removal⁸⁸ of the questions from it are handled as procedural matters ; therefore, seven votes of any members of the Council suffice.

Application of this method of making the "agenda" has given rise to the three following questions :

1. Is the inclusion of an item brought to the attention of the Security Council under the provision of Art. 35 (1, 2) (which would naturally appear in the said "provisional agenda") in the general "agenda" of the Council mandatory ?⁸⁹ Or is the Security Council itself the master of its own "agenda" ? The Security Council, in practice, has justly chosen the latter method, which is also an established principle in other Organs of U.N.⁹⁰

2. If a question is once included in the "agenda" of the Security Council, should it be automatically removed from the "agenda" upon its withdrawal by both of the parties to the case, or is it up to the Security Council itself to decide upon this question ?

In the Iranian case when both the parties—Iran and U.S.S.R.—expressed their wish to withdraw the case, on the ground that they had come to a solution,⁹¹ the Secretary-General suggested the removal of the item from the "agenda" of the Security Council, and he submitted a Memorandum to the Security Council. In this Memorandum he stated :

It is therefore arguable that following withdrawal by the Iranian representative the question is automatically removed from the *agenda* unless : (a) the Security Council votes investigation under Article 34, or (b) a member brings it up as a situation or a 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.

Referring to the argument that "the Council collectively has an interest" in a case once brought to the attention of the Council, he added :

⁸⁸ See Greek case, U.N., Doc. S/PV, 186, 202.

⁸⁹ This principle was proclaimed by the Ukrainian S.S.R. in the Security Council in the Greek Case brought before it by this Government, S.C.J., 1946, No. 7. p. 174.

⁹⁰ See the Rule (14) of Procedure of the General Assembly itself, the Rule (15) of the Economic and Social Council, the Rule (10) of the Trusteeship Council, the Rule (7) of the Atomic Energy Commission, and the Rule (7) of the Commission of Conventional Armament.

⁹¹ S.C.J. 1946, p. 489-498.

This will be true, but it would appear that the only way in which, under the Charter, the Council can exercise that interest, is under Article 34 or under Article 36 paragraph (1) to none of which the Council had referred.⁹²

The question was referred to the Expert Committee of the Security Council. This Committee could not come to an unanimously agreed upon interpretation of the question. However, the majority of the said Committee did not accept the view of the Secretary-General on the issue, on the ground that he had not taken into account the "primordial importance" of the function and the responsibilities of the Security Council which are conferred upon it by the Charter, especially through Article 24.⁹³

In the Security Council the following principle was advocated by Mr. Van Kleffens (Netherlands) :

Who is the master of the Council's *agenda*, the Council or the States who are parties to a dispute or a situation ? Simple logic, it seems to me, is enough to give the answer. It could only be the Council who determined what is and what is not on the *agenda*. Not the parties, but the Council admits a question to the *agenda*, not the parties but the Council alone can strike it off.⁹⁴

The Security Council accepting this principle decided to keep the Iranian question on its "agenda" in spite of the desire of the parties to withdraw the case.⁹⁵ The Security Council likewise applied this principle in the Spanish and Egyptian cases by voting to keep them on its "agenda" for an indefinite time.⁹⁶

Generally speaking, by applying this principle, the Security Council has taken an important evolutionary step in the relation between the community of Nations as a whole and members of this community by making international frictions the concern of the whole community and not just the concern of the directly involved States. This question is especially important from the point of view of any possible diplomatic pressure put upon the weak party to the issue.

⁹² *Ibid.*, 523.

⁹³ U.N., Doc. S/42 April 18, 1946, p. 2. For the view of EAGLETON on this interpretation see *Op. cit.*, p. 531.

⁹⁴ S.C.J., 1946, p. 597. Also see in favour of this view SALOMON, *L'O.N.U. et la Paix*, Paris, 1948, 156.

⁹⁵ Stating that "The discussion of the Iranian question is adjourned until a date in the near future, the Council to be called together at the request of its members", or one of the parties, S.C.J., 1946, pp. 711-712.

⁹⁶ U.N. Doc. S/P.V., September 10, 1947, pp. 101 and 201.

3. The third question related to the "agenda" of the Security Council, is whether a mere inclusion of an item in the "agenda" of the Security Council, excludes that case from the jurisdiction of the General Assembly ?

Article 12, which provides this limitation, does not mention the inclusion of the question on the agenda of the Council ; however, in its second paragraph it provides that :

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.

At the San Francisco Conference, authority for the General Assembly to determine that the Security Council ceases to exercise its functions with regard to any matter was rejected by a vote of 12 in favour and 18 against.⁹⁷

The practice at the present time is that the Secretary-General under the Rule of Procedure (11) of the Security Council informs the Members of the items which the Security Council is seized of as well as the items which are removed from its "agenda". The Spanish⁹⁸ and Greek questions⁹⁹ were brought to the attention of the General Assembly when they were removed from the "agenda" of the Security Council.

The keeping of an item in the "agenda" of the Security Council is also important in connection with the use of the veto by any of the permanent members of the Council. The veto might reduce the action of the Council to inaction with respect to the given case ; thus, such a case obviously cannot be considered as being under the exercise of the security Council though it yet may remain on the "agenda".¹⁰⁰

Even if a restricted interpretation be given that the General Assembly may not "recommend" on a matter which is simply included in the "agenda" of the Security Council, if the issue be

⁹⁷ S.F., Doc. 392, 11/2/17, p. 2. See the amendments of Australia (Doc. 2, G/14(1), 2-3), Chile (Doc. 2, G/7[i](1), 4-6), Iran (Doc. 2 G/14[M], 2), and Philippines (Doc. 2 G/14[K] 2,7) (S.F.).

⁹⁸ U.N., Doc. S/555.

⁹⁹ O.R.G.A., 2nd Session, 498.

¹⁰⁰ See EVATT H., *The United Nations* (Cambridge, Mass., 1948), 48.

somehow frustrated in the Security Council, the General Assembly may recommend its view not on the merit of the case, but on the manner of proceeding of the Council, in order to discharge its own ultimate responsibilities.

However, the time limitation on the competence of the General Assembly does not apply to the right of the General Assembly to discuss a matter which is being dealt with by the Security Council without giving any recommendation of the Assembly. This right of discussion of the General Assembly, besides the fact that it was clearly explained in the respective Committee of the San Francisco Conference, springs from the very characteristic and prerogative right of the General Assembly in virtue of its being the most representative body of U.N. and the "town meeting of the world".¹⁰¹

Of course such a limitation—Article 12 (1)—upon the recommending power of the General Assembly would exist even if the Security Council should make an interim report to the General Assembly on the given question.¹⁰² But the General Assembly, in its future discussion and recommendation is not bound by the decision of the Security Council on the said matter.¹⁰³

If the "Action" Is Necessary

As far as the second limitation upon the acts of the General Assembly is concerned (Article 11 [2]),¹⁰⁴ of course, as the limitation is upon the General Assembly, it must refrain from further action when the procedure has reached a certain level, as intended in Article 11 (2). But the meaning of the word "action" used in this Article is too vague, because it does not determine the nature of "action" within the meaning of this sentence.

One may refer to Article 37 (2) which calls the method envisaged in Article 36, third Article in Chapter VI, as "actions". It might be said that not only the functions and methods envisaged in Chapter VII with the title *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression* are "actions" under the

¹⁰¹ Also see pages 143-146.

¹⁰² See the remark of the Delegate of the U.K. in the 14th Meeting of Committee 11/2, S.F., Doc. 652, 11/2/33, p. 1.

¹⁰³ See the reply of the Delegate from the U.K. in the 8th Meeting of Committee 11/2, S.F. Doc., 392, 11/2/17, 3-4; also see, Doc. 443, 11/2/19, p. 2.

¹⁰⁴ See page 49.

terms of Article 11 (2), but also the methods envisaged in Chapter VI (including any recommendation to the States to refer a case to I.C.J.) are "actions" in the same terms. Consequently they are exclusively within the competence of the Security Council, according to the provisions of Article 11 (2).

This argument, not advanced widely,¹⁰⁶ from the theoretical point of view is not correct. Firstly the Security Council has only "primary responsibility for the maintenance of peace and security". Regardless of how broad a definition one may give to this vague term "primary", included in its meaning is the fact that there is a secondary responsibility which is charged to another organ, the General Assembly; a responsibility which Dr. Evatt justly calls "ultimate" responsibility.¹⁰⁶ Secondly the Security Council is authorized to handle only certain types of disputes or situations—the disputes the continuance of which is likely to endanger the maintenance of international peace and security, or situations of like nature.¹⁰⁷ If the General Assembly were not competent to act under the provisions of pacific settlement of disputes, i.e., Chapter VI, the settlement of disputes and adjustment of situations not of the above-mentioned charter could not be handled through U.N. This position would constitute a great gap. Thirdly the competence of the General Assembly to make recommendations (Articles 10, 11 and 13, 14) is not, from the point of view of its nature, qualified at all, but subject to the general Principles of the Charter. The reference of Article 35, which is included among the articles of Chapter VI and refers to the competence of the General Assembly as well as the Security Council, may be cited as another point in this connection.

Thus a conclusion may be drawn that the type of actions which are the prerogatives of the Security Council, are the actions related to enforcing the maintenance of peace and security which are stated in Chapter VII of the Charter. However, all types of actions referred to in Chapter VII are not excluded from the jurisdiction of the General Assembly. It can be assumed that the General Assembly may recommend precautionary measures though they have been referred

¹⁰⁶ In this connection see the debate of 168th Plenary Meeting of the General Assembly with regard to the function of the Interim Committee.

¹⁰⁶ Dr. EVATT, *Op. cit.*

¹⁰⁷ See pages 30-32.

to in Chapter VII. If an organ possesses the competence to recommend in the settlement of a dispute and the maintenance of peace and security, as the General Assembly has, it must possess the authority to employ necessary ways and means, including the carrying out of investigations of fact finding, and the calling upon the parties for precautionary measures. Otherwise such an organ, the General Assembly in our example, may not find itself enabled to give a recommendation on the substance of the case for which it is constitutionally explicitly empowered. Neither was the Assembly of the League of Nations expressly empowered to call upon the parties for provisional measures ; however, this kind of authority of the Assembly was derived from its competence to act upon the case.¹⁰⁸

The competence of the General Assembly to proceed in the settlement of disputes or situations brought before it, under Articles 10,¹⁰⁹ 11 (2), 14,¹¹⁰ 13 (1), 35 (1,2), and in some cases without referring to any particular article of the Charter,¹¹¹ is already an established fact.

Though the General Assembly has not had, so far, the necessary rules of procedure to conduct the pacific settlement of dispute or the adjustment of situations, however, it has availed itself both of the experiences of the Security Council and of the past.¹¹²

In doing so the General Assembly has accepted various cases on its agenda ; sent invitations to the parties to a dispute ¹¹³ or a situation including even a non-governmental agency ; ¹¹⁴ heard initial state-

¹⁰⁸ See the report submitted by Mr. Uden to the Special Committee of the League of Nations, *Op. cit.*

¹⁰⁹ See the case of treatment of Indians in the Union of South Africa, U.N. A/149, October 21, 1946. Also see the Palestine question, U.N., A/286, April 2, 1947.

¹¹⁰ See the case of Indians in the Union of South Africa.

¹¹¹ See the case of relation of the Members with Spain, U.N. A/BUR/25, February 6, 1946, and A/BUR/45, October 31, 1946. See the case of Threats to the Political Independence and Territorial Integrity of Greece, U.N., A/344, August 21, 1947. Also see the case of the Independence of Korea, U.N., A/BUR/85, September 17, 1947.

¹¹² See the Report of Sub-Committee (2) of the Interim Committee for the desirability of further developments of the Rules of Procedure of the General Assembly, U.N., A/AC, 18/48, p. 12.

¹¹³ See the inviting of Albania and Bulgaria (both non-member States) in the Greek question, U.N., A/C 1/194, Corr. 1, September 25, 1947, and A/C 1/SR, 62, September 27, 1947.

¹¹⁴ The invitation of Jewish Agency in Palestine, O.R.G.A., First Session, vol. 3, p. 367.

ments by the parties ;¹¹⁵ taken precautionary measures with a view to the avoidance or cessation of hostilities ;¹¹⁶ established committee of investigation ;¹¹⁷ recommended to the Members certain lines of conduct ;¹¹⁸ indicated terms of settlement ;¹¹⁹ and established special machinery for peaceful settlement of the disputes.¹²⁰

In the case of the relations of the Members with the present Government of Spain, the General Assembly stepped further by recommending to "all Members of the United Nations immediately to recall from Madrid their Ambassadors and Ministers plenipotentiary accredited there".¹²¹ The content of this resolution is very similar to that which is provided in Article 41, concerning enforcement measures, "not involving the use of armed force". As a matter of fact, during the discussion of this issue, some Delegates questioned the competence of the General Assembly to act upon such a resolution.¹²² However, it is to be noted that there is a difference between the type of action of the Assembly and that of the Security Council. In the latter case, the decision may be binding upon the Members in virtue of Article 25, while in the former case there is merely a recommendation with moral and doctrinal weight.

In the case of the Palestine Participation Plan, the General Assembly requested the implementation of the Plan by the Security Council.¹²³ For in virtue of the development of war in Palestine, the use of force had seemed inevitable.¹²⁴ But the Security Council,

¹¹⁵ According to Rule (61) of Procedure of the General Assembly.

¹¹⁶ See Resolution 107 (S-1) on the Palestine question, Resolution 109 (11) on the Greek question, and Resolution 112 (11) on the Korean question.

¹¹⁷ See the United Nations Special Committee on Palestine (Res. 106 [S-1]), and the Interim Committee (Res. 111 [11]).

¹¹⁸ See the recommendation to the Members concerning their relations with Spain (Res. 32 (1) and 39 [1]); and the Recommendation concerning the future Government of Palestine (Res. 181 [11]).

¹¹⁹ See Res. 44 (1) concerning the treatment of Indians in South Africa, Res. 190 (11) on the Greek question, and Res. 181 (11) concerning the future Government of Palestine.

¹²⁰ See the United Nations Special Committee on Balkans, (Res. 109 [11]), The United Nations Temporary Commission on Korea (Res. 112 [11]), and the United Nations Commission on Palestine, (Res. 181 [11]).

¹²¹ Resolution 39 (1), December 12, 1946.

¹²² O.R.G.A., Second Part of First Session, 1190, 1198-9.

¹²³ U.N. A/AC.14/SR/27.

¹²⁴ U.N. A/AC. 21/9.

considering such a request as merely a recommendation—with a “great moral force”¹²⁵—decided neither to implement the plan nor to act under the provision of Article 39.¹²⁶ Nevertheless, the Council decided to call for an immediate truce in Palestine, and meanwhile to convene another special session of the General Assembly to consider further the question of the future government of Palestine.¹²⁷ The General Assembly in its convened session, affirmed the Security Council’s action for the truce and itself appointed the United Nations Palestine Mediator to use his good offices to promote a peaceful situation in Palestine.¹²⁸

In the case of the establishment of the Atomic Energy Commission by the General Assembly, under the authority provided in Article 11, the General Assembly put the Commission under such a direct authority of the Security Council, “in the interest of peace and security”, that even the recommendations and reports of the Commission are not to be transmitted to the General Assembly unless the Security Council itself decides to do so.¹²⁹ On such authorization, two different opinions were expressed by two of the Delegates, which call for attention. One of them said :

... the proposed Commission is to be established by the General Assembly. Consequently the rights and power of the General Assembly are fully protected.

And referring to the composition and the supervision of the Commission,¹³⁰ he said that this provision “fully corresponds to the power and functions of the Security Council”.¹³¹

The other statement read :

... we could not bring ourselves to agree to the creation of a Commission responsible to the Security Council when by its composition, the Commission was practically the Security Council itself. How would it strike you if in my off moments I decided to create myself and constitute myself into a Commission responsible to my own self to report to my own self. Why not simplify matters by letting the Security Council with the assistance of Canada, handle the questions ?¹³²

¹²⁵ U.N. Bulletin, IV, 1948, pp. 209-210.

¹²⁶ U.N. S/P. V.293 ; and S/P.V.296.

¹²⁷ O.R.S.C., Third Year, N.42, pp. 30-4.

¹²⁸ U.N. A/555, pp. 5-6.

¹²⁹ U.N. A/64, July 1st, 1946, p. 9.

¹³⁰ See Chapter III.

¹³¹ O.R.G.A., 1946, p. 264.

¹³² *Ibid.*, 265.

Considering both of these statements one may see that technically the General Assembly has not acted in a manner inconsistent with the provisions of the Charter ; however, the criticism embodied in the latter statement does not seem irrelevant. It might be said that the General Assembly has considered the importance of the issue and perhaps some expedencies.

The New Development in the Pacific Settlement of Disputes

The above-listed development of the General Assembly's activities in the field of the pacific settlement of disputes or situations,¹³³ reveals that the voting system¹³⁴ of the Security Council has a great influence upon both the submission of a dispute by the parties themselves to U.N. and upon the reference of a case from the General Assembly to the Security Council.¹³⁵ In fact it has happened that when the settlement of a case had been blocked in the Security Council by the use of a veto, the party to the case brought it to the attention of the General Assembly.¹³⁶

An example of this tendency appears in the Pact of Bogota, signed by the American States on April 30, 1948, which, in Article II, provides the obligation of the signatories to settle their international controversies by regional pacific procedures before referring them to the

¹³³ During the League of Nations period, although any dispute submitted to the Council had to be referred to the General Assembly if any party to the dispute during 14 days had requested so, (Art. 15 [9]) only three out of 44 cases were referred to the Assembly, namely: the Sino-Japanese Conflict, February 1932; the Conflict between Bolivia and Paraguay, June 1934; and the conflict between Finland and U.S.S.R., December 1939.

¹³⁴ For the views of the U.S.A., China, U.K., and the French Delegates toward the restrictive use of the veto in connection with the provisions of Chapter VI, see U.N. A/AC. 18/SR, 18, July 13, 1948, pp. 4-6; A/AC.18/SR 12, March 18, 1948, pp. 4-5; A/AC. 18/13, Jan, 14, 1948; A/C.1/202.

Two main principles have been advocated in order to secure a restrictive use of veto: 1) Direct contact among the five Powers following the San Francisco Statement of these Powers, and 2) revising or interpreting of the method of voting. However, the first method in the opinion of some Delegates does not seem satisfactory, because it applies to the improvement of the conduct of some Powers rather than to the improvement of the legal provision of the Charter, see U.N. A/AC.18/SR.17, July 22, 1948 pp. 3-4. Also see the Report of the Interim Committee U.N. A/578. With regard to the legal force of such a commitment, see P.O. HUMBER; *Admission to the United Nations*, 1947, p. 91.

¹³⁵ OPPENHEIM, *International Law*, vol. 1, 304. GOODRICH and HAMBRO, *Op. cit.*, 152-153. EVATT, *Op. cit.*, 125.

¹³⁶ See the discussion of the General Assembly, especially the statement of Dr. Evatt during the 83rd Plenary Meeting, O.R.G.A., 2nd Session, 44-46. See the Korean question.

Security Council¹³⁷. In the original draft text of the Pact of Bogota in its corresponding article to this provision, there was reference to both the General Assembly and the Security Council. Upon a proposal from Ecuador the reference to the General Assembly was omitted by a rollcall vote (14 in favour of omission and 5 against).¹³⁸

The Interim Committee Within the Framework of Article 22

The before-mentioned approach of the Security Council in dealing with the pacific settlement of disputes, may be cited as one of the reasons why the General Assembly has shown great concern for the elaboration of the machinery of U.N. for the pacific settlement of disputes.¹³⁹ The establishment of the Interim Committee of the General Assembly may be called as one of the steps towards this direction.

There is no constitutional limitation upon the length of the regular and the special sessions of the General Assembly. The practice of splitting the period of a session of the General Assembly into two parts is already established. However, the non-continuity of the sessions of the General Assembly was considered a great deficiency in dealing with day to day responsibilities.¹⁴⁰ A method for overcoming this deficiency might be the calling of a special session of the General Assembly (Article 20) which is a costly¹⁴¹ and lengthy procedure. Therefore, the establishment of an Interim Committee of the General Assembly was felt necessary in order to look after the

¹³⁷ For the text see U.N. A/AC. 18/72.

¹³⁸ *Ibid*, 10.

¹³⁹ See the view expressed by Mr. Chamoun (Lebanon), in connection with his proposal for the establishment of a permanent Committee of Conciliation (Doc. A/AC. 18/15), to the effect that there exists a gap in the Charter because of lacking an "Organ whose function was to ensure the atmosphere of conciliation", U.N. A/AC.18/SR. 11, March 8, 1948, 2. For the discussion and conclusion of the Interim Committee on the development of machinery for the pacific settlement of disputes referred to it by the Resolution 111(11) of the General Assembly, see the Report of the Interim Committee, Doc. A/605, also see the proposals of U.K. (A/AC.18/39), Belgium (A/AC. 18/18), Lebanon (A/AC.18/15), with the amendment from the Dominican Republic (A/AC.18/30), and the Joint Proposals of China and the U.S.A. (A/AC.18/24). See the Report (1948) of the Secretary-General to the effect that "the Security Council has not yet been able to act as an agency for the enforcement of peace, but it is achieving increasing success as a mediator and conciliator", p. XII.

¹⁴⁰ See the speech of Mr. Marshall, Secretary of State of the U.S.A., in the General Assembly, on September 17, 1947.

¹⁴¹ The Budget estimate of the establishment of the Interim Committee in 1949 was \$38,500, U.N., A/747, 2.

unfinished business of the General Assembly in the field of the maintenance of international peace and security. This Committee might be established as a subsidiary organ¹⁴² or as a standing committee of the General Assembly, filling the gap between sessions.¹⁴³

The proposal for the establishment of an Interim Committee faced severe opposition on the part of some Members on legal as well as political grounds. This opposition may be summarized in the following questions :¹⁴⁴

1. Does the proposal by-pass the Security Council and infringe upon its jurisdiction regarding the maintenance of international peace and security ?
2. Will the establishment of such a Committee assist in achieving the desired objectives ?
3. Is the General Assembly constitutionally empowered to create a subsidiary organ with the proposed competence ?

This study is mainly concerned with the first question which deals with the relation between the General Assembly and the Security Council.

In order to clarify this point, one must first examine whether the General Assembly also possesses competence in the field of the maintenance of international peace and security, which is the main function of the Security Council.

This question is thoroughly discussed in the present Chapter and the conclusion is reached that such a competence of the General Assembly is already an established fact.¹⁴⁵ Moreover, the General Assembly is competent to entrust certain types of its functions in

¹⁴² The proposal of the U.S. Delegate.

¹⁴³ See the proposal of Bolivian Delegate to divide the 2nd Session of the General Assembly into two parts, to authorize the President of the General Assembly and the Security Council to convoke the second part of the Session upon their discretion and likewise to authorize the President and Secretary-General to convoke the First Committee of the General Assembly before the second half of the Session begins, U.N. A/C.1/214, 1947. Also see the Indian Proposal to the effect that *ad hoc* Committees to be set up instead of the Interim Committee, Doc. A/AC.18/SR.22, July 28, 1948, pp. 7-8, and the remark of the Chinese Delegates on the difficult question of co-ordination of the activities of such *ad hoc* Committees, Doc. A/AC.18/SR.24, August 10, 1948, p. 4.

¹⁴⁴ For a general consideration of the question see the records of 84th, 91st, 168th and 169th Plenary Meetings of the General Assembly. See also : Resolutions 111(11), 196 (111), the Report of the Interim Committee (Doc. A/606), and the Report of the 5th Committee (Doc. A/747).

¹⁴⁵ See pages 56-57.

this field to a subsidiary organ, to a standing committee, or to an *ad hoc* Committee, whatever it be called, to function when the General Assembly itself is not in session

Such a commitment is already generally recognized with regard to the other type of the activities of the General Assembly. The economic and social field is assigned to the Economic and Social Council,¹⁴⁶ the trusteeship field to the Trusteeship Council,¹⁴⁷ while both of these Councils function under the authority of the General Assembly. Information from non-self-governing territories is to be submitted to an *ad hoc* Committee.¹⁴⁸ Budgetary and administrative matters are to be considered by the Advisory Committee and the Secretary General.¹⁴⁹ As a matter of fact, the establishment of the Standing Committee of the General Assembly to look after its unfinished business in the field of the maintenance of international peace and security, was proposed in 1945 by the Netherlands Delegate.¹⁵⁰ This proposal was not rejected, but was perhaps considered as a premature step.¹⁵¹ As a consequence of the before-mentioned development in the activities of the General Assembly, such a step can no longer be considered a premature one. However, a question might arise with regard to the extent of the competence of the envisaged subsidiary organ or Committee. This question is a matter to be defined by the respective Organ of U.N. which establishes such subsidiary organ. If there is opposition on constitutional grounds it is for the respective Organs themselves or for the I.C.J. to decide upon the matter challenged.¹⁵² In the case of the Interim Committee both of these methods of meeting the opposition were rejected by the challenging parties.¹⁵³

The establishment of the Interim Committee as a subsidiary organ (Art. 22) on a year to year basis—"experimental" period—

¹⁴⁶ See Chapter III.

¹⁴⁷ See Chapter IV.

¹⁴⁸ See Pages 101-105.

¹⁴⁹ See Chapter V.

¹⁵⁰ See Report of the Executive Committee to the Preparatory Commission of the United Nations, Doc. AC/EX/113/Res.1., Nov. 12, 1945, p. 36 footnote. GREEN L.C., "The Little Assembly", the *Yearbook of World Affairs*, Vol. 3 (London, 1949), 171.

¹⁵¹ See footnote (2) on page 80 of the said Report.

¹⁵² See U.N. A/C.1/SR.97, pp. 3-4.

¹⁵³ See Report of the *ad hoc* Political Committee, U.N. A/740, Nov. 8, 1948, p. 2. Also see report of sub-committee (4) of the Interim Committee, U. N. A/AC.18/74, p. 19.

was approved by the General Assembly in 1947,¹⁵⁴ as well as in 1948¹⁵⁵ in which each Member of the General Assembly shall have the "right" to appoint one "representative".¹⁵⁶

Conclusion

It may be concluded that the competence of both the General Assembly and the Security Council to handle any questions related to the maintenance of international peace and security for the pacific settlement is already constitutionally and practically established. However, under U.N. system, constitutionally the Assembly is barred from recommending while the Security Council is exercising on the given issue the functions assigned to it under the Charter.

Under the conditions arising from the existing provisions of the Charter, the present practice offers the following advantages :

1. The party or parties have the choice of bringing their case, for pacific settlement, to either Organ—the General Assembly or the Security Council (always subject to the limitations provided in Articles 11 (2) and 12 [1]). Such a choice, in virtue of the fact that the subsequent actions would be conciliatory and mediatory functions, might help the finding of the solution to the conflict.

2. The party or parties may use this practice as an appeal from a more political and limited representative body—the Security Council—to the General Assembly, by transferring the case from the former to the latter.

3. The Security Council itself might seek the solution of the case through the General Assembly whose recommendations may carry more weight upon the parties. This is especially true regarding any situation in which many States are involved,

4. Finally, in virtue of the principle of Article 12—a provision which did not exist in the Covenant—the shift of the responsibility from the Security Council to the shoulders of the General Assembly can be prevented. The Security Council is given full opportunity to discharge its responsibility referred to in the present Charter if it found itself able to do so.

¹⁵⁴ Resolution 111(II).

¹⁵⁵ Resolution 196 (III). This Resolution was adopted by a vote of 40-4 with one abstention, U.N. A/169, Dec. 3 1948, p. 8.

¹⁵⁶ This "right" of the Members to participate eliminates the effect of any absence in the representation, because it is a "right" not a "duty". The relevant decisions of the Interim Committee are to be taken on the basis of the number of the Members "present and voting" (Par. 2 (b) on the Res. 196 [III]). See also Doc. A/C/215. 4

SECTION 6

The International Court of Justice and the Pacific Settlement of Disputes

The Submission of a Case to the International Court of Justice

In addition to the General Assembly and the Security Council, I.C.J. also plays an important part in the maintenance of peace and security by providing a judicial method to settle disputes by pacific means.

For the existence of some difficulties which have seemed to be insurmountable under the present state of affairs,¹⁵⁷ the jurisdiction of I.C.J. does not cover all the conflicts arising among States. The jurisdiction of the Court may be established through *ad hoc* agreements between the parties in any concrete case, or through the adoption in advance of the optional clause by the respective States, with as many reservations as they may desire.¹⁵⁸ This situation must be considered one of the weaknesses of the present international legal system.

Though the Security Council or the General Assembly may "call upon" or recommend to the parties to a dispute to refer it to the I.C.J., it is left to the parties themselves to do so. In fact, the insertion of the words "by the parties" in Article 36 (3) of the Charter was made with this view in mind.¹⁵⁹

Moreover, the Security Council or the General Assembly themselves may request the advisory opinion of I.C.J. on the issue under their consideration, which might also become the substance of the recommendation of these bodies to the parties to the case.

Provisional Measures

Even after the submission of the case for judicial settlement, the Security Council may still be called upon, or it might find it necessary itself to take certain actions (Article 40) for the purpose of preventing

¹⁵⁷ See also pages 47-49.

¹⁵⁸ See Article 36 of the Statute of I.C.J. For the States which have already accepted this optional clause see Year Book of I.C.J., 1947-1948, Chapter X.

¹⁵⁹ S.F. Doc. 1029, 111/2/33, p. 4. Also see pages 46-49.

the aggravation of the situation, and eliminating the use of force by either party while steps are being taken towards judicial settlement.

Such a principle is not only recognized in all modern national legal systems,¹⁶⁰ but in a somewhat similar way it is also referred to in the Statute of I.C.J. in Article 41 which reads as follows :

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.

Of course such provisional measures must not interrupt the regular procedure of the case before the Court. This point was also clarified in the respective Committee of the San Francisco Conference.¹⁶¹

The Execution of the Rendered Judgments

Effectiveness of any legal system depends on the existence of a machinery to execute known law, and in the case of doubt, to apply what the court considers law.

The lack of this machinery was one of the weaknesses of the international legal system. Any State itself had to obtain compliance to a judgment rendered in its favour, as well as to protect its rights recognised by international law whenever obligations were not met.

The League of Nations' step toward the execution of the rendered judgment of P.C.I.J. was provided in Article 13 (4) of the Covenant which read :

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.

This paragraph established a principle which not only had a

¹⁶⁰ For the position of P.C.I.J., with regard to this matter see the Report of Mr. Uden given in the Special Committee of the League of Nations, *Op. cit.*, part 111, p. 6. Also see L.N.O.J. Special Supplement, No. 53, p. 23.

¹⁶¹ See the discussions and explanations which took place at the 10th Meeting of Committee 111/2 (S.F., Doc. 530, 111/2/20, 1-2) as a result of a Turkish proposal (S.F., Doc. 2.G/14 [e] [1], 2).

great effect on the solution of international disputes, but also had increased the prestige and weight of the dicta of P.C.I.J.

The Dumbarton Oaks Proposals were silent on this point. The report of the United Nations Committee of Jurists in this connection stated :

The importance of this suggestion was not contested, but the remark was made that it was not the business of the Court itself to insure the execution of its decisions, that the matter concerns rather the Security Council...¹⁶²

At the San Francisco Conference, as well as in the United Nations Committee of Jurists, it was pointed out that in principle a judgment without a sanction was of little value and that it would be desirable to see an express provision empowering the Security Council to take necessary steps to enforce the judgments of I.C.J. if the parties did not comply with them.¹⁶³ A fear was expressed that if a great power should refuse to give effect to a judgment of I.C.J. rendered against it, and if a provision required the Security Council to enforce such a judgment, the dispute might lead to war. In the light of past experience such a provision also seemed unnecessary, since there had been no case in which a judgment of P.C.I.J. was not executed by the parties themselves. Moreover, it was stated that the public opinion would play a large part in the enforcement of the Court's judgment, if this should be insufficient, and if the dispute should give rise to a threat to peace, the matter would fall within the jurisdiction of the Security Council.¹⁶⁴

The consideration of an Australian amendment ¹⁶⁵ on this matter, led to the unanimous adoption of the principle embodied in the Article 94 (1) of the Charter by Committee IV/I of the San Francisco Conference stipulating as follows :

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.

A Cuban amendment was also considered that if a State should

¹⁶² S.F., Jurist 86, G/73, 31.

¹⁶³ See the discussion during the 10th meeting of the United Nations Committee of Jurists. Also see the view of the American and Canadian Bar Associations, A.J.I.L. Vol. 39, 1945, Suppl. p. 154.

¹⁶⁴ See, S.F., Doc. 864, IV/I/71.

¹⁶⁵ S.F., Doc. 626, IV/I/47.

fail to comply with a decision of the Court, the Security Council should make recommendations or decide on the necessary measures for enforcement.¹⁶⁶ Consequently, the following text was approved by Committee IV/I by a vote of 26 to 5, which read :

In the event of States' failure 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 make recommendations or decide measures to be taken to give effect to the judgment.¹⁶⁷

This provision which would create an obligation upon the Security Council either to " make recommendations ", or to " decide measures to be taken to give effect to the judgment " was changed in principle, by inserting in it the words " if it deems necessary ". This change took place upon the recommendation of the Advisory Committee of Jurists to Committee IV/I.¹⁶⁸ Thus, after inserting this phrase in the present Article 94 (2), it became permissive, rather than obligatory, upon the Security Council to take action on the given case.

This authority of the Security Council, and the right of any party to the dispute to bring a non-complied judgment of the Court to the attention of the Security Council, may also be considered to fall under the provision of Article 37, as being an unsettled dispute.

It is evident that the execution of the judicial decisions, under the provision of Article 94 (2), applies only to the decisions rendered by I.C.J. and not to any other means indicated in Article 33 (1) for peaceful settlement of disputes. This is contrary to the provision of Article 13 of the Covenant which had referred to all international tribunals. This distinction is a natural result of having I.C.J. in the United Nations Organization as the principal judicial organ ; but, of course, this provision does not exclude the possible consideration of the judgments rendered through other tribunals by the Security Council.

However, with regard to the meaning of the term " recommendation " employed in Article 94 (2), especially when compared with Article 36 (1), a question may arise whether the Security Council, in the given case, is entitled to make recommendations merely on the implementation of the pronounced judgment of the Court or can it

¹⁶⁶ S.F., Doc. 948, IV/I/61 ; also see the Proposal (17) in *The International Law of the Future*, *Op. cit.*, 143.

¹⁶⁷ S.F., Doc. 864, IV/I/71, 3.

¹⁶⁸ *Loc. cit.*

make recommendations on the substance of the matter, regardless of the rendered judgment ? ¹⁶⁹

This question may be answered, firstly in the light of the provision of Article 33 (1). This Article recognizes the validity of any means of pacific settlement of disputes, including I.C.J., as chosen by the parties to a dispute themselves.

Secondly, once a dispute is referred to I.C.J. and a judgment is rendered, the dispute no longer exists. However, a dispute might arise on the implementation of the rendered judgment of the Court. Therefore, any recommendation of the Security Council should not change the substance of the dispute.

Thirdly, the judgment of I.C.J.—the principal judicial organ of the United Nations—is binding, not only upon the parties to the dispute, but also upon U.N. itself. In a true sense, the Organization is the renderer of the judgment through its judicial organ—I.C.J.

Fourthly, the obligation of the Members under Article 94 (1) to be bound by the judgment of the Court if they are the parties to the case submitted to I.C.J. is specific. While the obligation created by Article 25 which calls for compliance with the recommendation of the Security Council (supposing that the recommendation of the Security Council has binding force) is general.

Thus the reference of Article 94 (2) should not be interpreted to authorize the Security Council to make any recommendation except for the implementation of the rendered judgment of I.C.J.

In virtue of the fact that the authority of the Security Council to handle this type of dispute is derived from Article 94 (2) as well as from Articles 33 and 34, it seems that the Council is relieved of limitation referred to in Articles 33 and 34 with regard to the nature of the dispute (i.e., to be competent to handle the “dispute or situation” which is likely to endanger the maintenance of international peace and security).¹⁷⁰

It is to be noted that the voting formula of Article 27 (3) for the abstention of any party to a dispute applies also to the cases brought

¹⁶⁹ See H. Kelsen, “Collective Security and Collective Self-Defense Under the Charter of the United Nations”, *A.J.I.L.*, Vol. 42, No. 4, 1948, 790.

¹⁷⁰ However, see the view expressed by Dr. Pasvolksy before the U.S. Senate Foreign Relation Committee, *Hearings...*, *Op. cit.*, 287. Also see, *Message du Conseil fédéral à l'Assemblée fédérale concernant l'adhésion de la Suisse au Statut de la Cour internationale de justice*, Berne, July 8th, 1947.

to the Security Council under Article 94, because the Council's actions in this respect are also to be taken under the provisions of Chapter VI.

Conclusion

There are weaknesses in the present international legal system to some of which reference has been made in this study. However, the Security Council and the General Assembly—two important Organs of U.N.—may play, under the provisions of the Charter, an important role in strengthening the position of law within the community of Nations as well as in assisting the promotion of the judicial methods employed. These roles as far as the relationship between these two Organs and I.C.J. is concerned, may be summarized as follows :

1. The General Assembly may be concerned with the general activities of I.C.J. within the machinery of U.N. and may encourage a greater use of the Court by the Members as well as by the other Organs of U.N. and its specialized agencies.
2. The General Assembly or the Security Council may seek the advice of I.C.J. on any legal points with regard to the case already under their consideration.
3. The General Assembly or the Security Council, acting for the pacific settlement of disputes, may " call upon " or " recommend to the parties to refer the dispute to I.C.J. for judicial settlement.
4. The Security Council or the General Assembly may take provisional measures if it seems necessary, while the case is pending before I.C.J. for definite settlement.
5. The Security Council and the General Assembly may use their influence to give effect to a non-complied judgment of I.C.J., if there is complaint by either party.

SECTION 7

Enforcing the Maintenance of the International Peace and Security

The main part of this Chapter has dealt with the obligations and the position of the Members, and with the possible attempts of U.N. machinery to function with regard to the pacific settlement of the

questions which might affect the maintenance of international peace and security. If all these attempts have failed or seem to fail, and "a threat to the peace, breach of the peace, or act of aggression" exists (Art. 39), the Security Council is charged to act on behalf of the Members, in order to carry out its "duties" under this "responsibility" (Article 24 [1]). In doing so, the Security Council has a free hand to determine the existence of such a state of affairs (Article 39) without being bound to define the aggressor; however, in discharging these duties, the Security Council is bound to act in accordance with the Purposes and Principles of the present Charter (Article 24 [2]).

The competence of the Security Council in connection with the enforcement of international peace and security, is provided in Chapters VII, and VIII and in the relevant articles of the other Chapters. The unprecedented characteristic of this system of collective security is that it is set up in a centralized manner and the decisions of the Security Council in this respect have binding force upon the Members (Article 25).¹⁷¹ While, as is mentioned previously the collective security system established under the League of Nations was on a decentralized and co-operative basis.

However, such preventive and repressive sanctions which are enforceable through the action of the Security Council¹⁷² are subject to an impairing factor, i.e., the use of veto, even if one of the permanent members of the Council itself is a party to the case. This fact may reduce the role of the Security Council to inaction, i.e., convert the collective security system into "collective self-defence" or individual "self-defence" which in practice mean freedom to judge and to act. These defence measures are authorized under the principles of Article 51 of the Charter, if an "armed attack" occurs.

In this connection an important discussion took place in the Security Council during the consideration of the Report of the Military Staff Committee. At this meeting the Delegate from the United

¹⁷¹ See: Kelsen, H., "Sanctions in International Law under the Charter of the United Nations". *Iowa Law Review*, vol. 31, 1946, 499-543. His article, "The Old and the New League: the Covenant and the Dumbarton Oaks Proposals", *A.J.I.L.*, vol. 39, 1945, 65, 73. Also his article, "Collective Security and Collective Self-Defence under the Charter of the United Nations", *A.J.I.L.*, vol. 42, 1948, 783-796.

¹⁷² See Articles 41 and 42 of the Charter.

Kingdom, Sir Alexander Cadogan, referring to the provision of Article 51 of the Charter, expressed the following view :

If any one of the permanent members, guilty of a breach of the peace or of an act of aggression, were to call a halt to the United Nations forces, the remainder of the United Nations would be entitled, under that Article, to take action against that Member. Their forces, already made available to the Security Council,¹⁷³ could legitimately be jointly employed to that end for so long as the Security Council failed to take the measures necessary to maintain international peace and security. Thus, the plan which we aim at formulating will, we may hope, go as far as is possible towards organizing against an aggressor the forces of the rest of the United Nations.¹⁷⁴

Mr. Johnson (U.S.), referring to a remark of the Belgian Delegate on the said Report of the Military Staff Committee, said that he did not find in the Report that " the armed forces made available to the Security Council may not be used in case of aggression by one of the Great Powers ".¹⁷⁵

In this connection, what is interesting to this study is, in the case of the operation of such a principle, the role of the General Assembly under the provision of Articles 10, 11 and 14, and its ultimate responsibility.

The Working of the Whole Machinery

Because of the importance of the maintenance of international peace and security to the entire machinery of U.N., once the wheels of this machinery begin to operate for that purpose, all Organs and the specialized agencies are required to give their assistance to the operating Organ. Article 65 provides that the Economic and Social Council to " furnish information " to the Security Council and to " assist " the latter upon its request.¹⁷⁶ These principles are reflected in the agreements made between U.N. and its specialized agencies¹⁷⁷—with due attention paid to the position of each agency.¹⁷⁸

¹⁷³ Chapter VII of the Charter.

¹⁷⁴ See O.R.S.C., No. 45, June 10, 1947, 995.

¹⁷⁵ See O.R.S.C., No. 47, June 18, 1947, 1026. Also see his statement in the Interim Committee, U.N., A/AC. 18/SR. 17, July 22, 1948, 5-6.

¹⁷⁶ See the Rules (3, 4, 7, 10) of Procedure of the Economic and Social Council for holding its meetings and inclusion of the items in its Agenda.

¹⁷⁷ For example see Article 6 of the agreement with the Food and Agricultural Organization.

¹⁷⁸ See Article 6 of the agreements with the Bank, the Fund, U.P.U., and I.T.U.

Article 83 (3) provides the possible assistance of the Trusteeship Council to the Security Council while the latter performs "those functions of the United Nations under the trusteeship system" which are entrusted to it.¹⁷⁹

The same principle has been applied to I.C.J. to the effect that "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".¹⁸⁰ This principle has been reflected in the respective agreements of U.N. with the specialized agencies.¹⁸¹ Nevertheless, in the agreements with the Bank, the Fund, the U.P.U., and the I.T.U., restrictive interpretation of this principle has been applied.¹⁸² Also with regard to the Councils of U.N. itself, the Rules of Procedure of the Councils¹⁸³ for their confidential records provide no exception in connection with the request of I.C.J. Of course, it might be said that for each request of the Court a decision of the respective Councils may be taken upon its submission.

¹⁷⁹ See Rules (2, 9) of Procedure of the Trusteeship Council with regard to the holding of its sessions and the inclusion of items in its Agenda; also see Rules 76, 85 and 104. Also see Chapter IV.

¹⁸⁰ Articles 34 (2) of the Statute of the Court.

¹⁸¹ For example see Article 9 (1) of the agreement with I.L.O.

¹⁸² See pages 85-102.

¹⁸³ Rules (51, 50, 49 respectively) of the Security Council, the Economic and Social Council, and the Trusteeship Council.

CHAPTER III

THE RELATIONSHIP AMONG THE PRINCIPAL ORGANS WITH REGARD TO ECONOMIC AND SOCIAL QUESTIONS

SECTION I

The General Aspect of the Question

With regard to the economic and social fields, in comparing the function and the organization of the League of Nations with the United Nations' system, a functional and structural increase in the case of the latter can be seen.

This is due, perhaps, to the fact that the respective approaches of the two systems were somehow different with regard the specific cases of economic, social and cultural matters.

As may be seen in the constitutional provisions, the League of Nations began to handle economic and social questions mainly through international contractual obligations in the given cases. However, with the experimental years of the system the values of a co-operative approach to the questions were also felt.¹

During the years of the second World War the importance of the approach to the maintenance of world peace and security through the functional international organizations and by co-operative helps were strongly suggested.² Also, the co-operative basis of many of the Allied Powers' activities during the War period, and the necessity of extending such co-operation for solving the inevitable post-war

¹ See the Report of Special Committee of the League of Nations, Official, No. A. 23, 1939, p. 11. Also see page 16.

² See the following publications :

Wendell WILLKIE, *One World* (London, 1943) ;

David MITRANY, *Working Peace System* (London, 1943) ;

Henry WALLACE, *The Century of the Common Man* (1943) ;

Eric JOHNSON, "America's World Chance", *Reader's Digest*, June, 1945, p. 592-619 ;

POLLACZEK, G., "The U.N. and Specialized Agencies", *A.J.I.L.*, 40, (1946) ;

FREEMAN M.A., "International Administrative Law: a functional approach to Peace" *Yale Law Journal*, Vol. 57, 1947-1948, pp. 976-993.

economic problems exercised, it may be said, an important influence in shaping the future structure of U.N.³

On this background, the Charter provided very specific references to economic, social and cultural questions.

Article 56 of the Charter reads as follows :

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

This Article, which was not found in the Dumbarton Oaks Proposals, is a compromise formula between two different views with regard to the scope of the obligation of the Members in economic and social fields.

While this article provides the obligation of Members to take "joint" and "separate" action by themselves with regard to the purposes set forth in Article 55, it also embodies the Members' "pledge" to co-operate in this connection with the Organization—with its respective Organs. However, the latter "pledge" of the Members does not mean that the decisions of the respective Organs of U.N. in economic and social fields carry binding force upon the Members. Nevertheless, it seems to be a specific application of the principle embodied in Article 2 (5) with regard to the assistances to be given to U.N. by Members any action it takes in accordance with the present Charter. For example, on the part of the Governments, it might be said, that Article 56 requires to facilitate the constitutional procedure for the consideration of the conventions submitted by the respective Organ of U.N. on economic and social matters.⁴

Moreover the Charter has embodied among its Principal Organs, an Economic and Social Council.⁵

Contrary to the cases related to the maintenance of international peace and security, which are acted upon independently by the respective Organs,⁶ the discharging of the responsibilities of the

³ Also see pages 2-6.

⁴ See the discussion of Committee II/3, S.F. Docs. 699, 11/3/40, 1-3; and 747, 11/3/46.

See also POLLACZEK, G., "The United Nations and Specialized Agencies", *A. J. I. L.*, vol. 40 (1946), 608; GOODRICH and HAMBRO, *Op. cit.*, 324.

⁵ See page 24.

⁶ See Chapter II.

Organization with regard to economic and social matters is “ vested in the General Assembly, and, under the authority of the General Assembly, in the Economic and Social Council ” (Art. 60).

SECTION 2

The Competence of the General Assembly and the Economic and Social Council

The Provisions of the Respective Chapters

From the point of view of the relations between the Economic and Social Council, and the General Assembly, the textual arrangement of the relevant Chapters and Articles of the Charter deserves full attention.

Chapter IX, under the title of “ International Economic and Social Cooperation ”, defines the scope of the responsibilities of the Organization in this field (subject to the general Principles and Purposes of U.N.). Article 60, the last Article of this Chapter, provides the respective Organs of U.N. to discharge the said responsibilities. This Article reads as follows :

Responsibilities 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.

After Article 60, Chapter X begins with a title of “ The Economic and Social Council ”. This Chapter defines the “ powers ” of the Council, in the language of Article 60 ; however, it defines the “ Functions and Powers ” of the Council in the language of the sub-title of Chapter X itself.

This term of “ Functions and Powers ”, was used as a sub-title of Chapters in the Dumbarton Oaks Proposals ; it is also used similarly in the Charter.

It is notable that the words “ functions ” and “ powers ” are used separately in the text of Article 60. Therefore, two conclusions may be drawn :

1) Article 60 makes only the functions of the Economic and Social Council, but not its "powers", subject to the authority of the General Assembly.

2) The last sentence of Article 60, referring to the "powers" of the Economic and Social Council, seems a restrictive provision, i.e., it makes the "power"—"competence"—of the Council referred to in Chapter IX lesser than the "Powers" of U.N. itself. Of course, the "Powers" of U.N. in these fields come totally under the jurisdiction of the General Assembly. This restrictive interpretation can be also supported by the provision of Article 66 (1) which reads :

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 use of the words "its competence" in this paragraph of Article 66 also links the provision of Article 60—that the Council functions "under the authority of the General Assembly"—to the above said restricted interpretation of the "powers" of the Council. Therefore, it is a limitation on the "carrying out of the recommendations of the General Assembly".⁷ However, the specific provision of Article 66 (3) fills this gap by providing that :

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.

The General Assembly and the Economic and Social Council

In virtue of this general position of the General Assembly and the Council toward each other, the following relations are established under the provisions of the Charter between the General Assembly and the Economic and Social Council :

1. The Economic and Social Council carries out the "recommendations of the General Assembly" (Article 66 [1,3]). These recom-

⁷ See the following comment on this paragraph :

"The reason for this paragraph is not clear." Then referring to Report of the Rapporteur of Committee II/3 (S.F. Doc. 861, II/3/55 [1], p. 13) it states: "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 that the phraseology and location of this paragraph are to be regarded as an example of hasty and ill-considered drafting", GOODRICH and HAMBRO, *Op. cit.*, 383-384.

mendations create a regular stream to bring economic and social questions into the Economic and Social Council's machinery.⁸

2. It makes "recommendations" to "the General Assembly, to the Members of U.N., and to the specialized agencies concerned", with respect "to international, economic, social, cultural, educational, health and related matters" (Article 62 [1]), and more specifically on the question of "human rights and fundamental freedoms for all" (Article 62 [2]).

3. It "submits" draft conventions to the General Assembly with respect "to matters falling within its competence" (Article 62 [3]).

4. It may call, "in accordance with the rules prescribed by the United Nations",⁹ international conferences (Article 62 [4]).¹⁰

5. It enters into agreements with any of the agencies (Article 57) "subject to approval by the General Assembly" (Article 63 [1]).

6. It coordinates the activities of the specialized agencies "through consultation with and recommendation to such agencies" and "through recommendation to the General Assembly and to the Members of the United Nations" (Article 63 [2]).

7. It may make arrangements to obtain reports (in addition to the regular reports) from the specialized agencies and from the Members on the steps taken "to give effect to its own recommendations

⁸ The Delegate of U.S.S.R. replying to a question on the meaning of the corresponding sub-paragraph of the Dumbarton Oaks proposal (Sub-paragraph a, section c, Chapter IX) commented that it "was intended to indicate that the General Assembly should assign economic and social questions to the Economic and Social Council in the same way as it assigned appropriate matters to the Security Council and to the Secretariat", S.F., Doc. 422, II/3/18, p. 2. Also see a Brazilian proposal to the effect that the United Nations Organization should take cognizance on all questions related to the activities of the specialized agencies through "the intermediary of and after consideration by the Economic and Social Council", S.F., Doc. G/7 (e) (4), p. 3.

⁹ This rule has been, provisionally, adopted by the General Assembly; therefore an interpretation is given to the words "by the United Nations" to mean "by the General Assembly", Resolution XIII (1) of the General Assembly, U.N., Doc. A/64, p. 24; Doc. E/836. However, from the beginning the Economic and Social Council has, in addition to those referred to it from the General Assembly, called international conferences on its own initiative, like the International Health Conference (1946), the World Statistical Congress (1947), the United Nations Conference on Trade and Employment (1947), and the United Nations Maritime Conference (1948).

¹⁰ In the case of the Philippines proposal to the General Assembly that a conference of representatives of the non-self-governing territories be held, under the auspices of the United Nations, the competence of the Council on this type of matter was challenged in virtue of Article 2 (7), O.R.G.A. Second Part of the First Session, 1327-1357; the resolution was passed after omitting the reference to the Council, see Doc. A/64/Add.1. p. 126.

and to recommendations on matters falling within its competence made by the General Assembly" (Article 64 [1]), and it "may communicate its observations on these reports to the General Assembly" (Article 64 [2]). In this connection, a question may arise whether or not this "competence" applies to both the "powers" of the Council provided in Chapter X and the specific competence given by the General Assembly (Article 66 [3]). The answer seems positive because both of them, regardless of their origin, are the "power" —"competence"—of the Council.

Under the provisions of Chapter X there is a wide range of questions to be dealt with by the Economic and Social Council on its own initiative, and to make recommendations respecting them to the General Assembly as well as to the Members. The right to prepare draft conventions is constitutionally granted to the Economic and Social Council (Article 62 [3]), while this authority was not granted to the General Assembly at the San Francisco Conference ;¹¹ however, the General Assembly does practice this authority as an implicit power.¹² It is to be noted that no rule has been drawn up in connection with the competence of the Council to initiate and to draft conventions with regard to the matters falling within the jurisdiction of each specialized agency.

The Economic and Social Council and the Settlement of Disputes Related to Economic and Social Matters

It remains to refer to the relation between the respective Organs with regard to conflicts arising from concrete economic and social matters.¹³ This question was lengthily debated in the Economic and Social Council in connection with :

1. the restoration of Danubian vessels and barges,¹⁴ and

¹¹ Summary Report of the 18th meeting of Committee II/3, S.F., Doc. 769, II/3/50, p. 3.

¹² A similar position was taken by the Assembly of the League of Nations even though there was no exact provision in the Covenant for this competence ; see BURTON, MARGARET E., *The Assembly of the League of Nations* (Chicago, 1941), 243-266.

¹³ See the comment of the Norwegian Delegate on the Dumbarton Oaks Proposals on the desirability of some provisions in connection with disputes in the economic field, S.F., Doc. 2, G/7(n), 10-11.

¹⁴ This case was brought before the Economic and Social Council in September 1946 by the Yugoslav and Czechoslovak Governments requesting the recommendation of the Council on restoration of Danube vessels and barges belonging to them which were under the control of the United States as taken from the German Army.

2. the disposition of Yugoslavian gold which was transferred to the United States.¹⁵

The Economic and Social Council taking note of the fact that in the former case there was no doubt as to the ownership of the property to be restored, adopted a resolution recommending the holding of a conference to resolve the basic problems interrupting the normal functioning of international Danube traffic. In the second case—the Yugoslavian Gold—the United States Delegate challenged the competence of the Council to deal with a dispute either as “an arbitral tribunal or conciliation agency”, or as a “judicial court”. Finally the Council declared its incompetence on the issue on the ground that the case was a particular dispute between two States and that it had a judicial issue involved in it.¹⁶

SECTION 3

The United Nations and the Specialized agencies

The General Aspects

Among the important characteristics of U.N. is its close relationship with a certain type of intergovernmental organization. Each one of these organizations functions in a special economic or social field, and upon the establishing of the said relationship with U.N. becomes one of the specialized agencies of U.N.¹⁷ In fact, as will be explained later, U.N. itself may play an important role in the creation and development of each particular specialized agency. The main aim of U.N. in the establishing of these relationships is the effective application of the emphatic provisions of the Charter with regard to the promotion of the economic and social advancement of all peoples.

¹⁵ U.N. Economic and Social Council, Official Records, First Year, Third Session, No. 5, pp. 62-72 and No. 6, pp. 73-78.

¹⁶ U.N., Doc. E/764, also U.N. Bulletin IV, p. 177-8. With regard to a procedure respecting complaints concerning humanitarian questions see GOODRICH and HAMBRO, *Op. cit.*, 374-375.

¹⁷ For the definition given to the term “specialized agency” see Article 57 (2) of the Charter, and the report of the Preparatory Commission of the United Nations, U.N., Doc. P.C./20, 1945, p. 40 (footnote).

Thus, it may be said, U.N. itself and its specialized agencies compose a general machinery in which U.N. takes a central and leading position and its specialized agencies serve as *ad hoc* agencies.

The constitutional position of this general set up, according to the Charter of U.N., may be summarized as follow :

- 1) The specific social and economic activities of U.N. are mainly handled on a decentralized and functional basis, through *ad hoc* intergovernmental organizations (Art. 57).
- 2) A certain type of these intergovernmental organizations " shall " be brought into relationship with U.N. (Art. 57 [1]). The organizations thus brought into relationship with U.N. are thereafter referred to as specialized agencies (Art. 57 [2]).
- 3) The said relationships between U.N. and its specialized agencies, as a result of the legal entity of each of these organizations (see No. 4 below), can be established through " agreements " concluded between U.N. and each of the said type of intergovernmental organizations (Art. 63). The content of these relationships is very important for the whole enterprise. Because in virtue of the establishment of these relationships, U.N. exercises its constructive leading power among its specialized agencies through study, discussion, consultation, negotiation, and finally recommendation to them.
- 4) In spite of the said relationships, U.N. and each specialized agency—an intergovernmental organization— has its own legal entity and independence. Each has its own constitution—an international treaty—concluded among their respective member States. Therefore, there is no common identity of membership among them, though each Member of U.N. may take part in different specialized agencies, in fact, it may be said that the Members are expected to do so (Art. 2 [5] and 56).
- 5) As another result of each of the organizations being independent of the others—including U.N.—the administrative and functional expenses of each organization are paid out by their own respective members (however subject to the stipulation of Article 17 [3]).

Thus, the structure of this general machinery of the present community of Nations may be characterized as being highly decentralized, with world-wide territorial jurisdiction, and working towards some common purposes—though differentiated on the functional basis.

In such a set up obviously the question of the co-ordination of the policies and activities of the different component organizations, on different levels, becomes—as it has already become—one of its most important concerns.

Though this study deals mainly with the relationships among the Principal Organs of U.N., however, it has seemed suitable, especially from the point of view of the functions of the General Assembly, the Economic and Social Council, and the Secretariat, that some further explanation of the constitutional and factual relationships between U.N. and the specialized agencies be given here.

Two Criteria

Section A, Chapter IX of the Dumbarton Oaks Proposals dealing with the question of the specialized agencies had not mentioned any distinction between the already existing agencies, like I.L.O., and those which might have been created later. The authors of the Charter also did not find it expedient to refer, in the text of the Charter, to any specific agencies ;¹⁸ however, the Committee II/3 expressed its desire for the establishment of relationship between U.N. and I.L.O.¹⁹

Article 57 of the Charter which refers to the establishment of relationship with the specialized agencies reads as follows :

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.

Thus Article 57 provides three general criteria for the agencies which might become one of the specialized agencies of U.N., namely :

1. To be “ established by intergovernmental agreement ”.²⁰ Therefore, none of the non-governmental organizations, regardless

¹⁸ Summary Report of the 7th Meeting of Committee II/3, S.F., Doc. 381, II/3/16, p. 2 ; also Doc. 346, II/3/13 with regard to I.L.O.

¹⁹ Summary Report of the 18th Meeting of Committee II/3, S.F., Doc. 769, II/3/50, p. 1.

²⁰ On the question of the difference between intergovernmental and inter-States Organizations see Wilfred JENKS, “ Some Constitutional Problems of International Organizations ”, *B.Y.B.I.L.*, 1946, 18-20.

of the scope of their activities can be included in this category. A question may arise whether or not the General Assembly is competent to create such specialized agencies merely by resolution? Once, the Delegate of New Zealand called the attention of the General Assembly to the expediency and "elasticity" of such a method.²¹ The question depends on whether or not such an agency still is an intergovernmental establishment? Moreover, Article 57 refers to it as "established by intergovernmental agreement". Does it mean an *ad hoc* agreement, or pursuant to a general or previously made agreement, in this case the Charter? It seems the question is also closely related to the purposes of the creation of such an agency. U.N. of course cannot establish for, or assign to an agency a type of activity which U.N. itself has no power to undertake.

2. "Having wide international responsibilities", "as defined in their basic instruments". This vague formula leaves it open to future practice to determine whether or not it applies to both functional and geographical elements. The preparatory Commission of U.N., taking note of the respective Committees' report at the San Francisco Conference, interprets it as follows:

The Economic and Social Council may, at its discretion, negotiate agreements with the competent authorities, bringing into relationship such other inter-governmental 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.²²

Thus, as is also the practice now, the criterion has been given a functional and geographical basis, upon the discretion of the Economic and Social Council.

3. To function "in economic, social, cultural, educational, health and related fields". This, in addition to being a criterion for such an agency, is also related to the general competence of the Economic and Social Council itself.²³

The following intergovernmental organizations have so far concluded (or are in the process of concluding) their respective agreements

²¹ See O.R.G.A., 2nd part of 1st Session, 782.

²² Report of the Rapporteur of Committee II/3, S.F., Doc. 861, II/3/55 (I) 4-5.

²³ For a list of the intergovernmental Organizations working in these fields see U.N., Docs. E/818 and E/818/Add.1.

with U.N. and thus are recognized as being specialized agencies, namely : ²⁴

I.L.O. F.A.O. I.C.A.O., Fund, Bank, U.N.E.S.C.O., W.H.O., I.R.O., I.T.O., I.M.C.O., U.P.U., I.T.U., W.M.O.²⁵

The Agency " Shall " be Brought into Relationship with the United Nations

Regardless of the date of the establishment, pre-war or post-war, and regardless of their initiators—U.N. Organization itself (Article 59) or the interested States—if an agency possesses the qualifications referred to in Article 57, it " shall be brought into relationship with the United Nations in accordance with the provisions of Article 63 " (Article 57 [1]). Thus, the bringing of the said types of agencies into relationship with U.N. is mandatory—" shall ". But upon whom ? Upon U.N. ? Or upon the agency itself ? Or upon both ?

In practice, the preambles of the concluded agreements between different specialized agencies and U.N., refer simply to the text of Article 57 of the Charter and corresponding provisions of the agency's constitution. Nevertheless, the preamble of the agreement with the Universal Postal Union reads as follows :

In consideration of the obligations placed upon the United Nations Organization by Article 57 of the Charter of the United Nations, the United Nations and the Universal Postal Union agree as follows :

However, the bringing of an agency into relationship with U.N. cannot be legally an obligation upon U.N. Organizations unless the agency itself agrees. Because the latter has its own legal entity and

²⁴ For the naming of the present specialized agencies, the following abbreviations are used : The International Labour Organization (ILO) ; The Food and Agricultural Organization (FAO) ; The International Civil Aviation Organization (ICAO) ; The International Monetary Fund (Fund) ; The International Bank for Reconstruction and Development (Bank) ; The United Nations Educational, Scientific and Cultural Organization (UNESCO) ; The World Health Organization (WHO) ; The International Refugee Organization (IRO) ; The International Trade Organization (ITO) ; The Intergovernmental Maritime Consultative Organization (IMCO) ; The Universal Postal Union (UPU) ; The International Telecommunications Union (ITU) ; The World Meteorological Organization (WMO).

²⁵ For the text of agreements with I.L.O., F.A.O., I.C.A.O., UNESCO., see Year Book of the United Nations, 1946-1947, pp. 679-83, 698-702, 741-45, 717-721 ; for those of W.H.O., U.P.U., I.T.U., see U.N. A/348, A/347, A/370 ; and for the agreements with the Bank and Fund see A/349 (respectively).

is not subject to the legal authority of U.N. Organization. For the same reason it cannot be an obligation upon the agency itself. Then, in virtue of Articles 2 (5), 56 and 103 of the Charter, the obligation rests upon the Members of U.N. who are going to establish such an agency, to make the necessary provision in the instrument of the agency; and if the agency is already established, to take the necessary measures to make such an arrangement possible. In the case of non-member States, in pursuance of the provision of Article 103, it is left to the Members to arrange for practicable actions in this respect.

As far as the initiating of the agreement between U.N. and a specialized agency is concerned, the respective organs of both of them are competent to act. In fact, the phrase "such agreement should be initiated by the Economic and Social Council" as found originally at the end of Article 57, was deleted with this view in mind.²⁶

In connection with the mandatory character of Article 57 (1) —"shall"—a question may arise whether or not, the agreements concluded between U.N. and the specialized agencies are terminable? And, if so, under what conditions such termination may take place? It seems obvious that such an agreement, subject to legal requirements, is revisionable, terminable, and subject to supplementary agreements.²⁷ But, the requirements for a new agreement will be the same as they were for the first.

The Extent of the Relationships with the Specialized Agencies

The relevant articles of the Charter do not determine the extent or the degree of the "relationship" which is to be established between U.N. and a specialized agency. However, some direction as to this extent would be preferable, especially with regard to the agencies which are a part of political and military regional organizations,²⁸ or where the nature of their functions warrant less supervision over

²⁶ See Summary Report of the 17th Meeting of Committee II/3 and the Report of its Rapporteur, S.F., Doc. 725, II/3/42, pp. 1-2, and Doc. 861, II/3/55(1), respectively.

²⁷ See the respective article of the "agreements" with the specialized agencies which for any revision, make it subject to agreement between both parties. But Article 13 (2) of the "agreements" with the Bank and Fund, in order to terminate the agreement, makes it subject to a six months written notice by either party.

²⁸ No action has been so far taken with regard to this type of agencies.

them on the part of U.N. This gap has already appeared in the cases of Bank, Fund, and also to some extent about U.P.U. The agreement with Bank and Fund, make them less subject to the supervisory position of U.N. than the other agreements.²⁹ For example, the United Nations' representative is permitted only to attend meetings of the Governing Board of the Bank (Article II), and the latter is required only to give "due consideration" to a proposed item by U.N. to be included on its agenda (Art. III). A more pronounced difference from the other agreements is that no recommendations may be presented by U.N. "without reasonable prior consultation", and, with respect to a specific loan, it is "recognized" by U.N. that "it would be sound policy to refrain from making recommendations to the Bank" (Art. IV), (the "agreement" with the Fund is a similar one).

These particularities about the agreements with Bank and Fund were, in the view of some Delegates in the General Assembly, highly unsatisfactory, if not violating the provisions of the Charter.³⁰

In fact, the Resolution (89V) of the Economic and Social Council with regard to the agreement concluded with U.P.U. refers itself to the existence of the "special circumstances" which have made it "impossible" for the time being to make a better agreement with the Union; and, moreover, it states that this agreement "should not be regarded as a precedent" for the future.³¹

As concerning the general nature of the relationship between U.N. and a specialized agency, the Economic and Social Council, upon the observations made by the Preparatory Commission of U.N.,³² resolved on February 16, 1946, that the following items be incorporated in the agreements concluded with the specialized agencies.³³

- (a) reciprocal representation (Art. 70);
- (b) exchange of information and documents;
- (c) proposal of agenda items;

²⁹ For a detailed classification of these "agreements" see GOODRICH and HAMBRO, *Op. cit.*, 324-50.

³⁰ See Report of the Joint Second and Third Committee, U.N., Doc. A/449, pp. 2-3.

³¹ U.N., Doc. E/488.

³² *Ibid.*, p. 41.

³³ The Economic and Social Council, Official Records, First Year, First Session, pp. 171-2.

- (d) recommendations of the General Assembly and the Economic and Social Council (Art. 58, 62 and 63) ;
- (e) reports by specialized agencies (Art. 64) ;
- (f) assistance in carrying out the decisions of the Security Council (Art. 41 and 48) ;
- (g) assistance to the Trusteeship Council (Art. 91) ;
- (h) requests for information by the International Court of Justice (Art. 34 of the Statute of the Court) ; and
- (i) statistical services.

In addition to these items, it was resolved that consideration be given to the following questions :

- (a) liaison,
- (b) personnel arrangement,
- (c) common fiscal services,
- (d) common technical services,
- (e) budgetary questions, and
- (f) requesting the advisory opinion of I.C.J. by the agencies.

The constitutional powers of U.N. in connection with the specialized agencies are limited to study, discussion, consultation, negotiation, and, finally, recommendation. However, in spite of this generality, additional power may be exercised with respect to every agency under the term of the relevant agreement. This is also a reason that in practice the authority of U.N. in dealing with different specialized agencies has various scopes,³⁴ and the utilisation of the so called " model " agreement, or possibly several " model " agreements has appeared to be a " difficult " and probably " harmful " guide for standardization.³⁵

The Competent Organ of the United Nations to Deal with the Specialized Agencies

Among the Principal Organs of U.N., the General Assembly, and under its authority the Economic and Social Council deal with the

³⁴ For example see Article II of the agreement with ICAO and Article II of the agreement with UNESCO for a sharp difference with the others. According to these Articles the respective agency " shall " transfer any application for membership in the agency from non-members of the United Nations to the United Nations for consideration, and in the case of any recommendation from the latter on the subject, the respective agency " shall " accept it.

³⁵ For detail see U.N. Doc. A/497, Second Session of the General Assembly.

specialized agencies ; moreover the role of the Secretary-General should be mentioned.³⁶ In this connection, in practice the General Assembly makes general recommendations and outlines some directive principles to the other organs, agencies, and the Members ; while the Economic and Social Council has taken on an executive character in the light of the said directive principles.

The Economic and Social Council enters into agreements with the specialized agencies referred to in Article 57. The agreements are negotiated through the Committee on Negotiation With Specialized Agencies of this Council.³⁷ However, such agreements " shall " be subject to approval by the General Assembly (Art. 63 [1]). This Council may take concrete steps for coordinating the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to General Assembly and to the Members (Art. 63 [2]). The Economic and Social Council may obtain regular reports from the specialized agencies, and also make arrangement to obtain reports from them 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 (Art. 64). The Council may communicate its observations on these reports to the General Assembly (Art. 64 [2]). The Council may, with the approval of General Assembly, perform services at the " request " of the specialized agencies (Art. 66 [2]).³⁸

Question of Coordination of the Policies and Activities of the Specialized Agencies

As mentioned previously, in such a decentralized system the question of coordination among the various organs and agencies becomes vital. This is a question which must be dealt with in policy making, planning, financing, administering, and executing levels. The authors of the Charter have noted the importance of this point, and without giving detailed direction, have provided explicit reference to the necessity of coordination among various specialized agencies (Arts. 58 and 63).

³⁶ See Chapter V.

³⁷ See the Resolution of the Economic and Social Council, Official Records, 1st year, 1st session, 171-2.

³⁸ Also see pages 75-77, 108-109.

U.N. has, in practice, taken important steps towards achieving some unity in this connection in the following direction : ³⁹

1. Processes of co-ordination,
2. Administration and budgetary co-ordination, and
3. Programme co-ordination.

The Economic and Social Council ⁴⁰ in its third session, requested the Secretary-General to establish a Co-ordination Committee ⁴¹ which consisted of the Secretary-General as Chairman and the corresponding administrative officers of the specialized agencies. This Committee holds periodic consultations on problems of mutual interest. It has set up the following subsidiary bodies : ⁴²

- 1) three Consultative Committees (on questions of administrative, statistical and public information),
- 2) the United Nations Film Board,
- 3) the Inter Library Committee,
- 4) two technical Working Groups (fellowship and housing), and
- 5) one Regional Consultative Committee (at Geneva).

Each of these subsidiary bodies, having as Chairman the appropriate department or bureau head of the United Nations Secretariat, is composed of the respective technical officers of the various agencies. But all of them report to the Co-ordination Committee.

The very characteristic of this type of co-ordinating body is, be it noted, that they are not composed of the Members' representatives, but rather of the respective Secretariat members of different levels.⁴³ While this arrangement may have great executive, admin-

³⁹ For detail see U.N., Doc. A/625, p. 69. For an extensive study on this subject see "Coordination of Economic and Social Activities" published by Carnegie Endowment for International Peace, N.Y., 1948. See also, POLLACZEK, "The United Nations and Specialized Agencies", *A.J.I.L.*, 40 (1946), 592-619.

⁴⁰ See Resolution 50 (I), 125 (II), and, 165 (II) of the General Assembly; also see U.N., Docs. A/382 and A/394/Rev. I, and the Resolution of the Economic and Social Council adopted on March 10, 1948 during the Sixth Session.

⁴¹ See for the origin of the proposal, The Report of the Preparatory Commission of the United Nations, *Op. cit.*, 42.

⁴² For the evolution of the machinery, see the Annual Reports of the Secretary-General on the Work of the Organization in 1947 and 1948, U.N., Docs. A/315, p. 48, and A/565, p. 87.

⁴³ During the Second Session of the General Assembly the Delegate from Greece proposed that the task of the co-ordination of the activities of all the Commissions and Sub-Commissions of the Economic and Social Council in the economic field and of the activities of the related specialized agencies of the United Nations be entrusted

istrative and technical advantages, however, it might in the future suffer from the lack of policy-making authority.

For co-ordinating among the policy-making bodies, the Economic and Social Council itself seems to be the suitable Organ, especially if in the election of the members of this Council by the General Assembly, this question be taken into consideration that the Members who take active parts in the activities of the specialized agencies be represented in the Council. Also it might be cited as a reason to increase the number of the seats of the Economic and Social Council.⁴⁴ It be noted, however, that the non-continuous functioning of the Economic and Social Council may be considered an impairing element with regard to an effective co-ordination. Otherwise this Council might be regarded as a permanent standing committee of the General Assembly; in fact there was a motion at the San Francisco Conference to this effect.⁴⁵

Moreover, from the point of view of co-ordination among the policy-making authorities, the Members of U.N. themselves can play an important role by arranging a harmonized and co-ordinated policy among their own delegates while represented in the different organs and agencies.

It is to be noted, however, the danger lies not only in the lack of co-ordination among the different organs and agencies, but also in the creation of too many organs and rules of co-ordination, which might need further regulations in order to co-ordinate the co-ordinating bodies.

The Co-ordination of Planning and Execution

One of the important aspects of co-ordinating is the establishment of appropriate priorities in the planning and execution of the different policies which are already made, or are in the process of being

to a Committee of seven experts selected on a regional basis by the Economic and Social Council, and to be in operation continuously; U.N., Docs: A/C. 2/112; A/C. 2/SR.36; A/C. 2/SR.44; while the French Delegate proposed to utilise to a greater degree the Economic and Employment Commission, its Sub-Commissions, and the Fiscal Commission as bodies for co-ordinating the work of regional commissions, specialized agencies and States, U.N., Doc. A/C. 2/SR.44. But both of the proposals were opposed on the grounds of increasing expenditure and making for more complexity, U.N., Doc. A/497.

⁴⁴ See pages 151-175.

⁴⁵ See the Australian proposal to this effect in the San Francisco Conference, S.F., Doc. 2, G/14(1), p. 6.

made, by the different authorities. The corner-stone of U.N. procedure in this connection may be found in Resolution 125 (II) of the General Assembly, and in pursuance of that, in the Resolution of March 10, 1948 of the Economic and Social Council with special reference to the transmittal by agencies of reports on their activities and work programme. This requirement has been accompanied, as the Secretary-General reports, ⁴⁶ by an arrangement for a comparative review of reports submitted by agencies to the Council, which take into account also the activities and programmes of the United Nations. Such a reporting and comparison provides, as is stated, a "useful basis for determining gaps or overlapping in programmes". Of course, it must be admitted that in this system of programme co-ordination the time element will carry considerable weight, especially from the point of view of the calendar of conferences and the schedule of the meetings of the respective Assembly of the different organizations.

The consideration of the Budgets and the Questions of Co-ordination

As mentioned previously, one of the methods by which the United Nations has approached the question of the co-ordination of the different agencies' activities, is through its budgetary control ; this authority is derived directly from the provision of Article 17 (3) of the Charter which reads :

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.

It is to be noted that the separation of this paragraph from the other articles of the Charter which are related to the establishment of, and relations with, the specialized agencies (Art. 57-59 and 63-64) and its inclusion in Article 17, may be cited as a reason that it has a relatively budgetary and administrative character.⁴⁷ However, the meaning of this paragraph is somewhat vague and a great part of its mission must be elaborated in practice. In this connection, the first difficulty appeared on the extent of the meaning of the word

⁴⁶ *Op. cit.*, 1948, p. 88.

⁴⁷ See also HYDE, L.K., *Specialized Intergovernmental Agencies*, Department of State Publication 2573 (Washington, 1946), 11-13.

“examine”, employed in this paragraph (Art. 17 [3]), when negotiations were initiated between U.N. and the specialized agencies. The consideration of this question led to the adoption of a formula according to which the respective agency agrees to “consult”⁴⁸ with U.N. in the “preparation” of its budget (Art. XIV [4]) and 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 recommendations” to the respective agency concerning “any item or items contained therein” (Art. XIV [4]); provided that, representatives of the agency “shall be entitled” to participate, without vote, in the deliberations of the General Assembly when the budget or general administrative or financial questions affecting the agency are under consideration (Art. XIV [5]).

The agreements with Bank and Fund provide that U.N., taking into consideration that these agencies do not rely their annual budget upon the direct contributions from their members, agrees that these agencies furnish to U.N. only copies of their annual report and of their quarterly financial statements.⁴⁹ The agreement with the U.P.U and I.T.U. provide that they will transmit to U.N. their “annual budget” and U.N. “may make recommendation thereon” to their respective Conference.⁵⁰

In the agreements concluded between U.N. and the specialized agencies, there is also given an interpretation of the word “budget” used in Article 17 (3) of the Charter. They provide that the budget of the agency be presented to the General Assembly at the same time as such budget is transmitted to the members of the respective agency.⁵¹ Otherwise, if it meant an “approved” budget of the agency by the respective authority of each agency, then what changes could the General Assembly recommend on an already approved budget?⁵²

⁴⁸ These quotations come from the agreement with ILO which is similar to those in the agreements with FAO, UNESCO, ICAO and WHO.

⁴⁹ U.N., Doc. A/349.

⁵⁰ U.N., Docs. A/347 and A/370.

⁵¹ The Preparatory Commission of the United Nations gives a similar view, see its Report, *Op. cit.*, 45.

⁵² In spite of the above mentioned provision, the budget of ILO, ICAO and WHO for 1949 were submitted to the United Nations when they had already been approved by their annual Conferences, U.N., Doc. A/675, October 9, p. 3.

However, the said formula (Art. XIV [4] in the case of I.L.O.), in referring to the possibility of recommendations given by the General Assembly, states that it shall examine "the budget or proposed budget of the Organization". Then, does it mean that the General Assembly may make recommendation with regard to an approved budget of the agency? And what will be the process of implementation of such a recommendation?

In any case, the said point relates the budgetary authority of the General Assembly to the calendar of the meetings of the specialized agencies' respective organs which deal with their budget. Because in order to make it possible for the General Assembly of U.N. to examine properly the budget of the specialized agencies, there must be an arrangement, on the part of the specialized agencies, to implement the view of U.N. Organization on the question of the schedule of their meetings. This type of arrangement has not been directly provided for in the "agreements" concluded with the specialized agencies. Resolution 125 (II)⁵³ of the General Assembly, on November 20, 1947, called upon the specialized agencies in the following words:

To transmit their budget 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...

Nevertheless, the Conferences of the different specialized agencies are, at the present time, being held at different times of the year, since the implementation of this recommendation of the General Assembly will depend on additional arrangements.⁵⁴

Although Article 17 (3) authorizes the General Assembly to examine the administrative budget of the specialized agencies, however, it does not preclude the former from "obtaining the advice of the Economic and Social Council" on that matter.⁵⁵ A precedent has been followed that the budgets of the specialized agencies which are transmitted to the Secretary-General of U.N. are referred to the Advisory Committee on Administrative and Budgetary Questions.⁵⁶

⁵³ See page 93.

⁵⁴ U.N., Doc. A/675, October 9, 1948, p. 3.

⁵⁵ Report of Rapporteur of Committee II/3 of the San Francisco Conference, S.F., Doc. 861, II/3/55(1), p. 6.

⁵⁶ See pages 176-188.

The latter body examines them in detail on behalf of the General Assembly, and then submits these examined budgets to the Fifth Committee of the General Assembly.⁵⁷ The question of the authority of the Advisory Committee to call the attention of the Fifth Committee to matters of policy which, in its opinion, have far-reaching budgetary implications, has not been settled as yet and there seem to be some differences of opinion.⁵⁸

Meanwhile, the General Assembly in its Resolution 125 (II) has requested the Secretary-General in consultation with the specialized agencies through the Co-ordination Committee and in consultation with the Advisory Committee on Administrative and Budgetary Questions, to prepare a report with recommendations for submission to the Economic and Social Council and the General Assembly. This report is to deal with the following questions: 1) achieving greater "uniformity in presentation" and a "basis for comparison" of the several budgets; 2) the fiscal year and the schedule of meetings of the specialized agencies; and 3) more "improved budgetary coordination".

The so-called Consolidated Budget

In considering the budgetary arrangement of U.N. with its specialized agencies, the systems of the so-called "consolidated budget" or "common budget" has been debated frequently⁵⁹, and there exists a wide difference of opinion among the delegates on this matter.⁶⁰ In connection with this idea the system of a central collection of contributions has been also advocated.

The great obstacles to this end are the absence of common membership in the different Organizations, and differences in the nature

⁵⁷ For the origin of the procedure see the Report of the Preparatory Commission of the United Nations, *Op. cit.*, 45.

⁵⁸ U.N. Doc., A/494, Second Session of the General Assembly.

⁵⁹ The Report of the Preparatory Commission gives a meaning to this term as being "much closer integration" and which "would confer on the General Assembly the responsibility for voting their (specialized agencies') budgets", see its Report, *Op. cit.*, 45. However, the Delegates from Brazil and the U.S.A. pointed out in the Joint Meeting of the Joint 2nd and 3rd Committee and the Fifth Committee that a "common budget" would be structurally unified whereas a "consolidated budget" would be a grouping of independently prepared budgets, see U.N. Doc. A/497, Second Session of the General Assembly, par. 14.

⁶⁰ See the Report of the Preparatory Commission of the United Nations, *Loc. cit.*, also U.N., Docs. A/259, A/497 and A/714.

of their activities. In order to overcome the said first difficulty a formula had been presented in the report of the Preparatory Commission to the effect that the "section of the budget relating to each specialized agency would initially be voted in the General Assembly by those States which are members of that agency".⁶¹ However, a difficulty still arises with regard to constitutional amendments to the respective instrument of the agencies and the question of the participation in budget voting of States which are not members of U.N. On these grounds the respective "agreements" with the specialized agencies follow a flexible formula in order that it be marked out in the future. This formula merely obliges the agency "to co-operate" with U.N. in achieving this "end", and for the final step it makes it subject to "supplementary agreement".⁶² However, the following statement of the Secretary-General in his annual Report for 1948, does not seem encouraging from this point of view :

The Secretary-General has explored the whole problem with the administrative heads of the specialized agencies and has concluded that, apart from any question of desirability, the constitutional and political pre-requisites for a consolidated budget are not capable of immediate fulfilment.⁶³

The Link between Policy-making and Co-ordination

Returning to the important question of the co-ordination of the activities of the organs of U.N. and the specialized agencies, U.N. has already achieved a substantial success. The Secretary-General calls this achievement an "adequate" machinery and he emphasizes that "at the present stage of development, there would seem to be no significant duplication of work in U.N. and the specialized agencies".⁶⁴ This view has been shared by the Economic and Social Council.⁶⁵

However, it must be accepted that the more important is the positive aspect of the question, i.e., the guidance and the leadership of U.N. in developing the activities and planning of its specialized agencies—to work and then to co-ordinate the relevant activities.

⁶¹ *Op. cit.*, p. 46.

⁶² See Article XIV of the agreement with I.L.O.

⁶³ *Op. cit.*, p. 89.

⁶⁴ See his annual Report for 1948, *Op. cit.*, 87.

⁶⁵ See the Report of the Council to the General Assembly, 1948, U.N., Doc. A/265 pp. 71-74.

Here is the point which links policy-making and planning to the administrating and budgetary procedures. Does the whole machinery of U.N. and its specialized agencies require one, and only one, competent centre, to initiate and discuss the needed projects, to decide upon them and their relative priority, and to allocate them to the appropriate agencies ?

The answer seems to be “yes” ; but how can such a centre be organized within the theoretical, legal, and administrative framework of the whole present machinery ? One of the possibilities seems to hold a joint session of the Economic and Social Council and the Assemblies of all or a great part of the specialized agencies, prior to the presentation of the budgets for the following fiscal year to the Members. The holding of such a joint session, in spite of some difficulties, may have the following advantages :

1. It may be a body which possesses the legal authority of the Assembly of each agency.
2. In such a body the non-members of U.N. who are members of one or more agencies may participate.
3. The number of the members of such a conference will not, at any rate, be very large, because the States which are members in different agencies can be represented by only one mission.
4. It may relieve some of the agencies of the need for holding a separate annual session of their Assembly ; therefore, it will economize the time and personnel for the Members.
5. It may discuss any projects ; to decide upon them and their relative priority, and to allocate them—through recommendation to the appropriate agency, or subsidiary organ, or the Secretariat of U.N., subject to a separate vote of the members of each agency on the particular project allocated to it.
6. Then, it may, through the Economic and Social Council, report to the forthcoming meeting of the General Assembly on the whole procedure including the appropriate project of each specialized agency.

The Question of the Headquarters of the Specialized Agencies

From the point of view of policy and administrative co-ordination, as well as from the point of view of the budgetary implications of

the questions, the location of the headquarters of the specialized agencies in different parts of the world has played, and will play, a negative role. The situation becomes more aggravated when it is accompanied by a tendency to hold the Conferences of each specialized agency or subsidiary organs of U.N. in different parts of the world, not only away from their own headquarters, but also away from U.N. headquarters.⁶⁶ The holding of a Conference away from the headquarters has a direct cost of \$65,000 to \$290,000 for each agency,⁶⁷ in addition to the expenses of their member governments for their missions. As a matter of fact this might be mentioned as a reason that the member governments, in order to avoid some extra expenditures, may decide to be represented in such a conference by some less qualified officials who are already on the spot for other purposes beside the proposed one. This factor definitively would bring a great weight to bear upon the qualification of the decisions of the conference and the acceptability of them by the respective members.

Moreover, as far as the location of the headquarters of the agencies away from the headquarters of U.N. itself is concerned,⁶⁸ it makes any personnel contact among the executive and planning officers of the different agencies and the Secretariat of U.N. costly and difficult—this negative factor applies also to the previously mentioned Co-ordination Committee and to its subsidiary bodies.⁶⁹

It might be said that such a decentralization in the location of the headquarters has some functional as well as political and psychological advantages. While these reasons have in some concrete cases—like the choice between Lake Success and Atlantic City ⁷⁰—little value, however these advantages might be realized in some other ways. For example, by setting up all headquarters of the specialized agencies at the headquarters of the United Nations, and by establishing

⁶⁶ During 1947 and 1948 the following Conferences had been held in the following places :

UNESCO with HQs in Paris held its 1947 meeting in Mexico City ;
UNESCO with HQs in Paris held its third meeting in Beirut ;
ILO with HQs in Geneva held its 1948 meeting in San Francisco ;
FAO with HQs in Washington held its 1947 meeting in Geneva ;
ICAO with HQs in Montreal held its 1947 meeting in Geneva.

⁶⁷ See U.N., Doc. A/675, October 9, 1948, p. 6.

⁶⁸ See U.N. Docs. A/16, A/675 and A/474.

⁶⁹ See page 92.

⁷⁰ The Plenipotentiary Conference of ITU met at Atlantic City from May to October 1947—its headquarters in Berne.

one, or more, continental headquarters of U.N. and its specialized agencies in each part of the world. These branches might serve for different purposes of U.N.—for general studies, giving information to the public, holding conferences, recruiting, etc. Moreover a great advantage of such a structure might be to encourage the Members to establish permanent missions at the headquarters of U.N. and, as the occasion might require, in the continental headquarters in order to handle all their relations with U.N. as well as with its specialized agencies. The establishment of the permanent missions undoubtedly will lead to saving in time and money, towards training more qualified personnel, and towards more co-ordination in the activities of any member Nation in different organizations,⁷¹ though it does not deprive a Member of being represented in each particular conference by different statesmen.

Loans to the Specialized Agencies

The provision of Article 17 (3) of the Charter does not prevent U.N. from giving subsidies or loans to its specialized agencies.⁷² If such a loan was granted it seems that it would promote the further development of the General Assembly's budgetary power in this field.⁷³ In fact, in virtue of the provision of Articles 59 and 62 which authorize the Organization to "initiate negotiations among the States concerned for the creation of any new specialized agencies", such a loan becomes necessary ⁷⁴ in order to enable the agency thus created to begin its operation.

The expenses in this connection may be summarised as follows :

⁷¹ With regard to the question of permanent missions to the United Nations, see Bolivian Proposal (Docs. A/608; A/609, and A/C.6/304) and the Persian Proposal (Doc. A/C.6/306) in the Sixth Committee (Doc. A/748), and their adoption after minor changes in the General Assembly's 169th Plenary Meeting, U.N. Doc. A/PV 169, December 3, 1948, p. 36. Also see Doc. A/AC.18/SR.27, pp. 4-7; Annex IV to the Report of the Interim Committee, Doc. A/606; and THORP, W. "Significant Development in the United Nations", *Department of State Bulletin*, Vol. XX, No. 499, 1949, 95-98.

⁷² See Summary Report of the 11th Meeting of Committee II/I of the San Francisco Conference, Doc. 594, 11/1/28, p. 4. Also Article X of the Constitution of UNESCO.

⁷³ U.N. Doc. A/268, Second Part of the First Session of the General Assembly,

⁷⁴ For the authority of the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions in this respect, see Resolution 166(II) of the General Assembly on November 20, 1947.

1. The expenses in connection with technical preparatory committees established by the Economic and Social Council.

2. The expenses of the first general conference which is usually called to frame the constitution of an agency.

3. The expenses of interim commissions ordinarily created by the said constitution, in order to prepare the beginning of the work.

Owing to the fact that all Members of U.N. do not become members of the proposed agency, it is unfair to charge the expenses of all these three periods to the budget of U.N. itself. On the other hand, all of these expenses cannot be reimbursed by the new agency because it would constitute a loan somewhat retroactive in character. Moreover, the said first and second type of expenses are really related to the execution of the decisions of the Organs of U.N. under Articles 59 and 62, though they might result in the establishment of an agency.

The Fifth Committee with regard to the expenses related to the creation of W.H.O., I.R.O., and especially I.T.O.,⁷⁵ took the position that while the first kind of the previously mentioned expenses are to be borne by U.N., the second type may also be paid out of the United Nations' purse "in appropriate circumstances", but the third part of the expenses had to be paid by the States ratifying the constitution of the agency. This principle was adopted in the Fifth Committee by a vote of 17-15 with 7 abstentions.⁷⁶ The application of this principle in the General Assembly, on a \$ 779,642⁰⁰ expense of the creation of I.T.O. (up to the creation of the Interim Commission of I.T.O.) gained 28 votes against 8 with 7 abstentions.⁷⁷

Because of such a close relationship between U.N. and its specialized agencies, many items of expenditure related to the mutual services of U.N. and these agencies may be found that can be reimbursed to the organization which has rendered the service.⁷⁸ This principle has been adopted in all the respective "agreements". They provide for the reimbursement of such expenditures "adequately".⁷⁹

⁷⁵ For the total amount of the loans advanced to these three enterprises up to 31 May 1948—\$2,950,137—by the United Nations, see Report of the Secretary-General, 1948, *Op. cit.*, p. 89.

⁷⁶ See U.N. Doc. A/717, November 15, 1948, p. 2.

⁷⁷ See U.N. Doc. A/PV 159, 3rd Session of the General Assembly, pp. 36-43.

⁷⁸ Also see the Resolution 210(II) of the General Assembly on November 18, 1948; and U.N. Doc. A/714, p. 3.

⁷⁹ This word is used intentionally in the relevant documents instead of the word "fully" for the adoption of the practicable arrangements, see U.N. Doc. A/714, p. 3.

Nevertheless, as far as the available sources indicate, the reimbursing of the expenses for services rendered by the different Departments or Sections of the Secretariat of U.N. to the specialized agencies is made to the whole budgetary pool of the Organization, without returning it to the jurisdiction of the Section which has rendered such services. This method, though technically it may appear to be simple, might, however, discourage the mutual aids between U.N. and its agencies on the departmental level.

CHAPTER IV

THE RELATIONSHIPS AMONG THE PRINCIPAL ORGANS WITH REGARD TO MATTERS RELATED TO NON-SELF- GOVERNING AND TRUST TERRITORIES

SECTION I

The General Background

The Covenant of the League of Nations recorded in its Article 22 an evolutionary principle to the effect that the well being and development of peoples "not yet able to stand by themselves under the strenuous conditions of the modern world", form a "sacred trust of civilisation". However, the territorial application of this principle was limited to the Mandate territories under the same Article.

The Dumbarton Oaks Proposals contained no reference to this matter. At the Yalta Conference it was agreed that the five permanent members of the Security Council "should consult each other prior to the United Nations Conference on the provision of machinery in the World Charter for dealing with territorial trusteeships" which would apply to some specific categories of territories.¹

At the San Francisco Conference some proposals and amendments on this matter were submitted by the United States of America,² China,³ France,⁴ United Kingdom,⁵ U.S.S.R., and Australia.⁶

The result of the consideration of the matter at the San Francisco Conference was the inclusion of three chapters (out of a total of

¹ See Y.B.U.N., pp. 11-12.

² S.F., Doc. 2, G/26(c).

³ S.F., Doc. 2, G/26(e).

⁴ S.F., Doc. 2, G/26(a).

⁵ S.F., Doc. 2, G/26(d).

⁶ See Russian amendment to the U.S. proposed draft, S.F., Doc. 2, G/26(f). Also see Australian amendment to the Dumbarton Oaks Proposals, S.F., Doc. 2, G/14(1).

nineteen Chapters) in the Charter related to the status of dependent peoples, with the following titles :

CHAPTER XI : Declaration Regarding Non-Self-Governing Territories.

CHAPTER XII : International Trusteeship System.

CHAPTER XIII : The Trusteeship Council.

Thus, the Charter, contrary to the Covenant of the League of Nations, does not limit its concern for the position of the dependent people only to the people of the trust territories, but, rather, is it concerned with the well-being of all dependent peoples.

However, the type of concern of the Charter differs with regard to non-self-governing territories on the one hand (Chapter XI), and the trust territories on the other hand (Chapter XII). The Charter records a " Declaration " of principles with regard to the former, while it sets up an " International Trusteeship System " under the " authority " of U.N. itself for the latter (Article 75). This is a compromise formula which was accepted in the Charter as the intermediate view between the advocates of putting all dependent peoples under close international supervision, and advocates of the old mandate system.⁷

In connection with the matters related to the position of non-self-governing territories, different Organs of U.N. are assigned important functions, mainly the General Assembly, the Security Council, and the Trusteeship Council.

SECTION 2

The Non-Self-Governing Territories and the United Nations

The Conception of the Provision of Chapter XI

The distinction found in the Charter with regard to the concern of the international community toward non-self-governing territories

⁷ In this connection see :

Fabian Colonial Bureau, *International Action and the Colonies : Report of a Committee of Fabian Colonial Bureau* (London, 1943) ; Speech of Mr. Arthur Creech Jones in Oxford, 1942, printed in *Freedom for Colonial Peoples* (Peace Aims Pamphlet), No. 11, London, National Peace Council ; The Colonies : *The Labour Party's Post War Policy for the African and Pacific Colonies* (London, 1943) ; Anti-Slavery and Aborigines Protection Society, *An International Colonial Convention* (London, 1943) and SUMNER WELLES, *The Time for Decision* (New York, 1944). (Also see Mr. Dulles statement in the General Assembly, 106th Plenary Meeting, O.R.G.A., 659.

and trust territories has raised differences of opinion among the Members of U.N. about the general conception of Chapter XI of the Charter, especially with regard to its relation to the provision of Article 2 (7). This divergence of opinion was once illustrated during the General Assembly's debate on the proposed draft resolution of the Fourth Committee⁸ for the establishment of a regional conference of representatives of non-self governing territories. This Conference was to be convoked by the Economic and Social Council "together with administering authorities" in order "to give the people of non-self-governing territories the opportunity of expressing their wishes and aspirations". In this debate some of the Delegates referring to the provision of Chapter XI took up the position that U.N. had no such authority to intervene in the affairs of the non-self-governing territories. They questioned whether the Charter itself provides an organ for the supervision of the application of Chapter XI. Therefore, it was said, the Economic and Social Council's competence under Article 62 could not apply to cases of this category.⁹ The advocates of the proposed principle found the Economic and Social Council a competent Organ to deal with this matter on the grounds that in addition to the provision of Article 62, it would act under the instructions of the General Assembly. Also they thought that this Council, in virtue of the words "together with administering authorities", found in the draft resolution, might be considered a third party to bring the administering authorities together to do the task.¹⁰ Finally the General Assembly voted the deletion of any reference to the Economic and Social Council from the proposed text by a vote of 23 to 14 with 17 abstentions, and then approved it by a vote of 31 to 1 with 21 abstentions.¹¹

⁸ The resolution was originally proposed by the Sub-Committee by a vote of 9-3 with 6 abstentions (U.N., Docs. A/C.4/68, and A/C.4/64/Corr.1). Fourth Committee after giving some changes submitted it to the General Assembly by a vote of 18-15 with 2 abstentions (U.N., Doc. A/251).

⁹ See the Statements of the Delegate from the U.S., U.K., Belgium and France in the 64th Plenary Meeting of the General Assembly, O.R.G.A., 1332, 1336, 1350. Also see the debate of the 106th and 107th Plenary Meetings.

¹⁰ See the Statement of Indian Delegate on the 64th Plenary Meeting, *Op. cit.*, 1337-41.

¹¹ O.R.G.A., Second Part of 1st Session, pp. 1356-1357. Resolution 67 (1).

The aforementioned debates and others similar to them have dealt with another aspect of the provisions of Chapter XI, the legal status of this Chapter within the framework of the Charter. In this connection the Delegate from France stated that : " Chapter XI is not in the same form as the provisions of the Charter. It is entitled ' Declaration ' ; it contains a unilateral declaration by a certain number of States and the Charter merely confines itself to record it." ¹² This interpretation, which deals directly with the competence of U.N., mainly with the competence of the General Assembly, regardless of what legal force once may give to international declarations, does not seem to be what Chapter XI conveys, for the reasons listed below :

Firstly, the Charter, including the Statute of I.C.J., is a whole and unified legal instrument. Therefore, no reason can be seen to embody a " declaration " in the Charter which would be legally different from the Charter itself. As a matter of fact, during the drafting of the Charter any references to the Atlantic Charter were rejected with this general principle in mind.¹³

Secondly, Chapter XI although it is entitled " Declaration ", cannot be merely a declaration, since in addition to some general principles—which usually become the subject of a declaration—it contains a certain rule of conduct (Article 73 [e]). Moreover, it contains the " agreement " of all " Members of the United Nations " 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 neighbourliness " (Article 74). This principle is a mutually applicable agreement—to administering and non-administering Members—therefore, Chapter XI is not agreed upon by merely a " certain number of States ", but rather by all Members of U.N.

Thirdly, Chapter XI applies to the Members of U.N. who already have responsibilities for the administration of the said territories as well as to the Members who may become administering powers in the future (Article 73). Therefore, this Chapter could not be considered only a unilateral declarative instrument on the part of a " certain

¹² *Ibid.*, 1351.

¹³ See Report of Rapporteur of Committee I to Commission I, S.F., Doc. 944, I/1/34(1).

number of States", because no one knew who would assume such responsibilities in the future. Thus the only possible solution was that Chapter XI be accepted by all "Members".

Fourthly, in Article 73, the administering powers not only "recognize" certain principles, but they also "accept" them; this latter act has a more far-reaching mission than a mere recognition.

Finally the charter has been signed by all Members without any remarks or observations with regard to the different provisions of it, and as explained in the Report of the Commission and approved by the Plenary Session of the San Francisco Conference, all parts of the Charter have similar force and legal status.¹⁴

Therefore, the provision of Chapter XI has as much legal status as the other Chapters of the Charter and the competence of U.N. with regard to all non-self-governing territories derived from Chapter XI has as much legal basis as the other type of the powers of this Organization provided for in the Charter.

The Information Received from the Non-Self-Governing Territories

As far as the non-self-governing territories¹⁵ are concerned, the function of U.N. is to receive regularly, "for information purposes", from the Members who have responsibilities for the administration of such territories "statistical and other information of a technical nature relating to economic, social and educational conditions" (Art. 73). This information is to be submitted to the Secretary-General, not to the Trusteeship Council.

However, the principle embodied in Article 73 (e) leaves a great deal to be developed in practice. It does not define the purposes of such information. Neither does it determine the final authority which might decide upon the content of this information, if there must be one. At the present time, upon the instructions of the General Assembly, such information is to be submitted in a standard form¹⁶ to the Secretary-General, who is to include summaries and analyses

¹⁴ See *Ibid.*, 2. Also in the favour of the legal force of this reference see: Dr. EVATT, *The United Nations* (Cambridge, Mass, 1948), 41; BUNCHE R.J. *Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations*, Department of State Publication, No. 2573, Washington, 1946, p. 23.

¹⁵ For the definition of the term "self-governing territories" see the debate of 155th Plenary Meeting of the General Assembly, U.N. Doc., A/PV 155.

¹⁶ See annex to Resolution 142 (11), November 3, 1947.

of these reports annually in his report to the General Assembly.¹⁷ Moreover, the Secretary-General is requested to use in his summaries supplementary information obtainable from the "official publications of the Members responsible for the administration of non-self-governing territories" and "documents published by inter-governmental or scientific bodies". This supplementary information, nevertheless, would consist of publications which are "transmitted or notified to the Secretary-General by the administering Members or Member concerned".¹⁸ The Secretary-General is also authorized to "include in his summaries and analyses all relevant and comparable official statistical information which is available in the statistical services of the Secretariat and which may be agreed upon between the Secretary-General and the Member concerned, giving appropriate citation of sources".¹⁹

Upon the instruction of the General Assembly, the Fourth Committee has constituted a special committee composed of Members of U.N. transmitting information, and an equal number of Members elected by the Fourth Committee on behalf of the General Assembly, on as wide a geographical basis as possible,²⁰ which meets as the General Assembly may decide.²¹ This *ad hoc* Committee is entrusted to "examine" the information thus submitted under Article 73 (e) and to "submit report thereon for the consideration of the General Assembly with such procedural recommendation as it may deem desirable relating to the functional fields generally but not with respect to individual territories".²²

The Charter does not expressly provide any procedure to be followed by the General Assembly in this connection. Nevertheless it seems obvious that the General Assembly's authority to consider

¹⁷ *Ibid.*, par. 2.

¹⁸ See Resolution 143 (II) of the General Assembly, Nov. 3, 1947.

¹⁹ *Ibid.*, par. 6.

²⁰ The following Members are the States transmitting information under Article 73 (e): Australia, Belgium, Denmark, France, Netherlands, New Zealand, U.K., and U.S.A.; and those elected by the Fourth Committee in 1946: China, Colombia, Cuba, Egypt, India, Nicaragua, Sweden and U.S.S.R., U.N., Doc. A/519, p. 57.

²¹ The Fourth Committee recommended that the *ad hoc* Committee to convene at a date to be fixed by the Secretary-General, not less than two weeks before opening of the next regular session of the General Assembly, *Ibid.*, 58.

²² See Resolution 146(II) of the General Assembly, Nov. 3, 1947; compare with Resolution 66(1), December 14, 1946.

these reports—including its authority to give recommendations on the issues—may be derived from Articles 10 and 14.

It seems that no constitutional difficulty exists—though political ones might—to prevent the General Assembly from assigning the examination of the information submitted under Article 73 (e) to the Trusteeship Council instead of establishing a special committee to do so. This would be a better procedure because the Trusteeship Council is functionally better equipped and from a representative point of view better qualified to handle this business. Such an examination by the Trusteeship Council might give better results in virtue of the fact that all other similar data obtained from trust territories are accumulated in this Council, and can be used as good material for comparison.

In the above mentioned development with regard to the consideration of the reports submitted to the General Assembly under Article 73 (e), an important role has been assigned to the specialized agencies. These agencies are invited by the General Assembly²³ to assist the Secretary-General in “preparing analyses of the information required under Article 73 (e)”. Moreover, they are authorized to make recommendations to the General Assembly “with respect to the form and content of the information²⁴ with a view to incorporating therein the informational needs of the specialized agencies”, and to bring to the notice of the General Assembly conclusions based on this information within respective fields and particularly in relation “to the services which the specialized agencies might make available to the administering nations in improving these conditions”.

SECTION 3

The Trust Territories

The Strategic and non-Strategic Areas

With regard to the trust territories (Article 77) the Charter provides the establishment of an “international trusteeship system”

²³ See Resolution 143(11), pars. 4-5, and Resolution 145(11), both adopted on November 3, 1947.

²⁴ This information, submitted to the Secretary-General, as well as the supplementary information are to be communicated to the specialized agencies, see Resolution 143(11), par. 5.

under the "authority" of U.N. itself, for "the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements" (Article 75).

It is to be noted that the Charter, unlike the Covenant of the League of Nations, does not provide any distinction such as "A", "B" and "C" trust territories. However, the Charter makes a distinction between the so-called "strategic" areas and ordinary trust territories (Article 82), though the basic objectives of the system (Article 76) in both types of territory are the same (Article 83 [1]).

This last distinction is another manifestation of one of the dominant principles of the Charter—the importance of the maintenance of international peace and security. Thus the Charter assigns a role to the trust territories in the maintenance of international peace and security. But, the extent of the role of these territories varies according to their strategic position—Article 82 and 84 for the strategic areas and Article 84 for the ordinary trust territories.²⁵

The Trusteeship Agreement

The trust territories are to be placed under the trusteeship system by subsequent individual agreements (Article 75). The trusteeship agreement in each case "includes the terms under which the trust territories will be administered and designate the authority which will exercise the administration of the trust territories". Such authority, which is called the "administering authority" may be "one or more States or the Organization itself" (Article 81). The said agreements, "including any alteration or amendment, shall be agreed upon by the States directly concerned,"²⁶ including the mandatory power in the case of territories held under mandate by a Member of the United Nations", and shall be approved by the appropriate Organ of U.N. (Article 79). Therefore (in each trust territory (strategic or non-strategic) two controlling agencies are concerned, the administering authority and the appropriate Organ of U.N.

As has been seen in the above-mentioned quotations from Articles 75 and 79, each instrument according to which a territory is placed under a trusteeship system is called an "agreement". In Article 79 two different steps are provided for the conclusion of these

²⁵ For the part of non-self-governing territories, see Article 73(c).

²⁶ For the question of "States directly concerned", see the Report of the Fourth Committee, U.N., Doc. A/258.

agreements. Firstly, the terms of trusteeship for each territory, including any alteration or amendment, "shall be agreed upon by the State directly concerned", and, secondly, these terms shall be "approved" by U.N. This procedure has been put in practice in such a way that the administering authority submits its "agreed upon" instrument of placing the territory under its trustee to the respective Organ of U.N.,²⁷ and the latter "approves" it as a resolution.²⁸ This process of approval of the submitted instrument implies also the right of U.N. to reject or to amend the said submitted instruments.²⁹ Moreover, this process of course does not prejudice the legal status of the said instruments, defined in Article 75 as "agreements" concluded between U.N. and the "administering authorities". Consequently, they are subject to all legal provisions of international agreements.

The functions of U.N. Organization with respect to the trust territories which are not designated as "strategic" areas are assigned to the General Assembly, under whose "authority" the Trusteeship Council functions (Article 85). However, the said function, including the approval of the terms of the trusteeship agreements, with regard to "strategic" areas is entrusted to the Security Council (Article 83 [1]).³⁰

In spite of the distinction provided in the Charter, both of these two kinds of territory are subject to the provisions of Article 43 regarding special agreements concerning the contribution of the Members towards the maintenance of peace and security (Article 82).

Two important points

This division of the specific responsibilities of U.N. between its Principal Organs—The Security Council and the General Assembly,

²⁷ The instrument submitted by the United States of America to the Security Council with regard to the Pacific Islands made it, however, subject to the final approval of the Senate.

²⁸ See Resolutions 63(1), and 140(11) of the General Assembly; and with regard to the Security Council's action for the "strategic" areas see Doc. S/318.

²⁹ See the second report of the Rapporteur of Committee II/I of the San Francisco Conference, Doc. 1092, 11/1/39, p. 2-3.

³⁰ See the proposed drafts of China (Doc. 2, G/26[e] par. 10), France (Doc. 2, G/26[a], Art. 7) and the U.S.A. (Doc. 2, G/26[c], par. 7) (S.F.); the proposals of the U.K. had made no distinction between strategic and non-strategic areas, however, it provided a difference between civil and security functions, and had made the latter functions in the territories (when the Security Council, on the advice of the Military Staff Committee, may require) subject to report to that body (Doc. 2, G/26[d], pp. 4-6).

“assisted” by the Trusteeship Council—in the Charter, has left the two following important points without clarification.

I. Who is entitled to designate the “strategic” areas—the General Assembly, the Security Council, or the States directly concerned? Article 82, which brings this principle into the Charter, states that “there may be designated” such a strategic area or areas without determining the competent authority to do so. Such was the wording found in a proposed amendment to the working papers of Committee II/4 of the San Francisco Conference, and was unanimously approved.³¹ There was likewise a proposal that “on recommendation of the Security Council, there should be designated in the trusteeship agreement a strategic area...”³² This vague formula of Article 82 raises a similar question with respect to the status of a territory which is already designated partly or wholly as a non-strategic area. With changing conditions such a territory may reach a position of being an important strategic area.

The following statement of the Delegate of U.S.S.R. in the General Assembly illustrated one aspect of this question :

The utilization of Trust Territories for the maintenance of international peace and security is only admissible where the Administering Authority assumes this obligation before the Security Council, which is the competent body for these most important questions. Therefore, if conditions require the establishment of military bases and the maintenance of the armed forces of the administering authorities in the Trust Territories then we will have the situation provided for in Article 82 and 83 because the erection of fortifications and the establishment of military bases in trust territories by the administering authority will thus transform these territories into strategic regions.³³

Although this principle was rejected in the Fourth Committee,³⁴ after hearing the view of administering authorities that such military activities may take place according to the accepted principle of

³¹ S.F., Doc. 552, II/4/23, p. 4.

³² See Russian proposal, S.F., Doc. 2, G/26(f), to par. 6 of the United States draft. Also see the Australian amendment to the Dumbarton Oaks Proposals, S.F., Doc. 2, G/14(1), par. 18(6).

³³ See O.R.G.A., Second Part of First Session, pp. 1279-1280; also see A/PV/104, Nov. 1, 1947, p. 31 in the case of approval of the trusteeship agreements for Nauru. On the question of fortifications and volunteer forces in trust territories, see a memorandum prepared by the Secretariat of the United Nations, Doc. A/C.4/40, November 3, 1946.

³⁴ See Report of the Fourth Committee, O.R.G.A., Second Part of First Session, Annex 72, pp. 1555-1556.

Article 84,³⁵ the question does not seem settled. None of the territories can be considered "strategic" or non-strategic for a long time, since the conditions which render an area "strategic" are closely related to many other changing conditions of the world.

II) The second important point with respect to the trust territories is the relation between the Security Council and the Trusteeship Council with regard to the "strategic" areas. At the San Francisco Conference it was felt that in spite of the fact that the functions of U.N. with regard to the strategic areas would be handled by the Security Council, the humanitarian questions in the said areas "should" be handled by the Trusteeship Council.³⁶ The United States Delegate proposed that such assistance of the Trusteeship Council to the Security Council should be available at the discretion of the latter.³⁷ Against this proposed principle it was stated that it would not be always possible to draw a line between security and humanitarian questions, and that it was essential to avoid laying a basis for future jurisdictional conflicts between the Security Council and the Trusteeship Council.³⁸ Finally, the present formula Art. 83(3), upon the joint move of the Delegates from the United States and Egypt, was unanimously accepted. It reads :

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.

The United States trusteeship agreement for the Pacific Islands, in virtue of its being related to "strategic" areas, was submitted to

³⁵ See the rejected amendment (by a vote of 2-20) of the Delegate from Egypt in Committee II/4 of S.F., to the effect that the words "under the control of the Security Council" be inserted in Article 84 after the words "to this end the administering authority", S.F., Doc. 580, II/4/24, p. 4.

³⁶ See the views expressed by the Delegate from Egypt in the 9th meeting of Committee II/4, and by the Delegate from Netherlands in the 3rd meeting of the said Committee, S.F., Doc. 552, II/4/23, p. 4., and Doc. 260, II/4/48, p. 1. (respectively). Also see the explanatory note of the U.K. Delegation on his proposals, S.F., Doc. 2, G/26(d), pp. 4-5.

³⁷ See Summary Records of the 9th meeting of Committee II/4, *Loc. cit.* ; also see Summary of the 4th meeting of Committee II/4, S.F., Doc. 310, II/4/11, p. 2.

³⁸ See summary records of the 9th meeting of Committee II/4, *Loc. cit.*

and approved by the Security Council.³⁹ Article 13 of this agreement provides that the provisions of Articles 87 and 88 of the Charter shall be applicable to trust territories except that the right of "visit" to the said territory might be suspended in the "closed" part of the area for "security reasons".⁴⁰

The approval of this trusteeship agreement for the Pacific Islands brought up the question of relationship between the Security Council and the Trusteeship Council, and the attention of the former to this matter was called by the Secretary-General.⁴¹ This issue was referred by the Security Council to its Expert Committee, whose consideration revealed differences of opinion of the Members as to whether or not the provisions of Article 83 (3) make it mandatory upon the Security Council to avail itself of the assistance of the Trusteeship Council with regard to the functions determined in the said paragraph. Finally, the Expert Committee recommended to the Security Council that it should avail itself of the assistance of the Trusteeship Council. It also recommended that the Trusteeship Council should be requested to send to the Security Council a copy of the formulated questionnaire one month before its submission to the administering authority, and also to submit to the Security Council its recommendations and views on the replies.⁴² The following view of Mr. Francis B. Sayre, the United States representative to the Trusteeship Council, stresses the importance of the question :

The issue depends in part upon procedural relationships between the Security Council and the Trusteeship Council, but it involves very delicate issues between sovereign States which if mishandled could produce the most unhappy consequences.⁴³

The functions of the Organization, in respect to all other trust territories not designated as strategic, are assigned to the General Assembly (Article 85 [I]) which is assisted by the Trusteeship Council

³⁹ For the text of draft agreement submitted by the United States Government to the Security Council see U.N., Doc. S/281 and for the approved agreement see U.N. Doc. S/318, April 2, 1947.

⁴⁰ The United States has notified the Security Council that the Eniwetok Atoll was "closed for security reason" since December 1947, U.N., Doc. S/613, December 2, 1947.

⁴¹ See U.N. Doc. S/599.

⁴² See U.N., Doc. S/642, January 2, 1948, pp. 3-4.

⁴³ "Legal Problems Arising from the United Nations Trusteeship System", *A.J.I.L.*, 1948, vol. 42, No. 2, p. 292.

operating under the authority of the General Assembly (Article 85 [2]).

The said functions of the General Assembly and the Trusteeship Council are designated in Articles 87 and 88, namely: to consider reports submitted by the administering authority, to accept petitions and to examine them, to provide for periodic visits to the respective trust territories, and to formulate questionnaires on the political, economic and social conditions of the trust territories. However, the approval of the trust agreement, provided in Article 85 of Chapter XII—not in Chapter XIII which deals with the Trusteeship Council—is exercised directly by the General Assembly. The Trusteeship Council itself, owing to its composition,⁴⁴ could not exist before some of the agreements were approved.

It is to be noted that besides the explicit powers granted to the General Assembly and to the Trusteeship Council in the Charter, the trusteeship agreements themselves, as they stand now, or as they may be amended later, may be a basis for additional functions of the General Assembly and, under its authority, the Trusteeship Council. This principle is clearly embodied in Article 87 (d) of the Charter which states that the Trusteeship Council may “take these and other actions in conformity with the terms of the trusteeship agreements”.⁴⁵ One of the examples of this class of development is the agreement for cooperation of a trust territory with a regional advisory or technical commission. As far as the Trusteeship Council itself is concerned, there have been assigned to it in the past by the General Assembly certain functions which were not related to an established trust territory. For example, on November 1, 1947, the General Assembly directed the Trusteeship Council to examine the report of the Union of South Africa on South West Africa.⁴⁶ Moreover, in the Palestine Question the Trusteeship Council was assigned by the General Assembly with the administration of Jerusalem on behalf of U.N., not as a trust territory, but as *corpus separatum* under a “special international regime”.⁴⁷

The Charter also in Article 91 provides that the Trusteeship Council “shall, when appropriate, avail itself of the assistance of the

⁴⁴ See pages 155-156.

⁴⁵ For two different interpretations see GOODRICH and HAMBRO, *Op. cit.*, 472.

⁴⁶ See U.N., Doc. T/52; for the discussion of the case see Docs. A/C. 4/SR., 33, 38, 39 and 40, and A/PV/105.

⁴⁷ See U.N. Doc. A/516, November 25, 1947.

Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned".⁴⁸ A concrete example of the application of this Article was the request of the Commission on the Status of Women of the Economic and Social Council to cooperate with the Trusteeship Council and particularly to participate in the drafting of the questionnaire⁴⁹ of the Council. This request of the said Commission was complied with by the Trusteeship Council.⁵⁰

However, with regard to the function of the General Assembly in respect to the non-self-governing and trust territories, one should not neglect a dangerous course which might develop during the General Assembly's or the other bodies' debates which might ensure not for the betterment of the conditions of the inhabitants of the said territories, but for political antagonism.⁵¹ If such a practice develops, undoubtedly it would have a negative effect on the development of the principle of the trusteeship system envisaged in the Charter.

⁴⁸ See the relevant provisions in the "agreements" concluded between the U.N. and the specialized agencies.

⁴⁹ U.N., Doc. E/281, Chapter VI.

⁵⁰ See pars. 132-135 of the provisional Questionnaire.

⁵¹ See "The Advancement of Dependent Peoples", *International Conciliation*, November 1947. Also see D. DUNCAN HALL, "The Trusteeship System", *B.Y.B.I.L.* 1947, pp. 33-71.

CHAPTER V

THE SECRETARIAT SERVES THE OTHER ORGANS

SECTION I

The Organization of the Secretariat

In spite of the political importance of the role of the Secretary-General especially with regard to the provision of Article 99,¹ the main feature of this office, i.e., the "chief administrative officer of the Organization" (Art. 97) is untouched.

The Secretary-General in this capacity, and those under his direction in the Secretariat, serve all other Organs of U.N. Under Article 101 (2) "appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council and, as required, to the other organs of the United Nations". This provision, of course, includes the subsidiary organs of each Principal Organ of U.N. Organization. It is to be noted, however, that one of the Principal Organs—I.C.J.—"appoints its Registrar and may provide for the appointment of such other officers as may be necessary" (Art. 21 [2] of the Statute). Nevertheless, Articles 5 and 13 of the Statute provide for certain functions of the Secretary-General.

At the San Francisco Conference, the proposal of the Sponsoring Governments to the effect that express provision for four deputy secretaries be embodied in the Charter was not accepted on the ground that the administrative requirements of the Secretariat should be left to the future experience of the Organization.²

This constitutionally centralized body, however, is decentralized within the Secretariat itself on a functional basis. Thus the separate functions of the different Principal Organs are reflected within the framework of the Secretariat.

¹ See pages 36-38.

² S.F., Doc. 1155, I/2/14 (2), 4.

During the organizational period of the Secretariat, upon the recommendation of the Preparatory Commission of U.N.,³ the General Assembly resolved⁴ that the principal units of the Secretariat be (as they now are) :

- a) Department of Security Council Affairs,
- b) Department of Economic Affairs,
- c) Department of Social Affairs,⁵
- d) Department of Trusteeship and Information from Non-Self-Governing Territories,
- e) Department of Public Information,
- f) Legal Department,
- g) Department of Conference and General Services, and
- h) Department of Administrative and Financial Services.

Each of these Departments serves one special type of function corresponding to the authority and functions of one or several Organs, without destroying the unifying principle of the whole Secretariat. To divide the Secretariat on a departmental basis with each department serving exclusively one Principal Organ, would cause great duplication of work, overlapping, rivalry, confusion and waste of time—disadvantages inherent in a highly decentralized system. Moreover, such an arrangement, in virtue of Articles 101 (2) and 97 of the Charter,⁶ would seem constitutionally doubtful.

The Secretary-General when establishing the Departments, under the authorisation obtained in the above-mentioned Resolution of the General Assembly, has appointed eight Assistant Secretaries-General, each having "responsibility for and supervision of Departments and Services". The said Resolution also authorizes the Secretary-General to "make such changes in the initial structure as may be required to the end that the most effective distribution of respon-

³ U.N., PC/20, December 23, 1945, pp. 81-84.

⁴ U.N., A/64, July 1, 1946, p. 14.

⁵ The existence of these two Departments (for social and economic affairs) has already created the necessity for suitable coordination within the Secretariat, in addition to the general question of coordination, See U.N., Doc. E/844/Add.1 with regard to the position in 1948-1949.

⁶ From the point of view of the provision of Article 101, a distinction was suggested in Committee 1/2 of the San Francisco Conference between the "Secretariat" and the staff of the Councils. This motion was rejected by a vote of 26-6 on the ground that the "Secretariat" applies to the Secretariat of the whole Organization, S.F., Doc. 789, I/2/57, pp. 2-3.

sibilities and functions among the units of the Secretariat may be achieved ”.

With time, and as the activities of the Secretariat increase, new developments and reorganization take place. The most noticeable one that has already taken place, is that the Executive Office of the Secretary-General now keeps not only the Secretary-General's personnel in contact with the other bodies, but also has assumed to some extent a coordinating function on both the departmental level and between the Secretariat and the specialized agencies. The establishment of a new Assistant Secretary-General post to this Office can be cited as a clear sign of such a development.⁷

The general duties of the Secretary-General, and, consequently, the functions of the Secretariat under his direction, are enumerated in Articles 97, 98, 99 and 102, with some other certain functions derived from the different articles of the Charter, e.g., Articles 12, 20 (Charter), 5 and 13 (Statute). All these political, administrative, executive and technical activities of the Secretary-General are annually summarised and reported to the General Assembly (Art. 98).

In order to enable the Secretary-General to fulfil these duties he himself appoints all staff members (Art. 9), under regulations established by the General Assembly (Arts. 17, 101); and they are assigned by the Secretary-General to the various Organs (Art. 101[2]).

In addition to the regular functions of the Secretariat, the following activities are also to be taken into consideration: publication of series of studies⁸ which are useful to the policy-making organs as well as to outsiders; preparation of primary and research studies on the background of certain issues under consideration by other organs, and even the preparation of draft conventions⁹ or working papers; the supply of information to the Delegates from various countries, at their request, on the issues under discussion; the supply of technical advisors and assistance to the member coun-

⁷ See the Secretary-General's Report (1948), *Op. cit.*, 122.

⁸ Some valuable publications of this kind can be cited: *Salient Features of the World Economic Situation (1945-1947)*, *Survey of Current Inflationary and Deflationary Tendencies*, *Economic Development in Selected Countries*, and *The Survey of the Economic Situation and Prospects of Europe*.

⁹ First draft Convention on genocide, prepared by the Secretary-General upon the request of the Economic and Social Council, became the basis for drafting of the Convention of the *ad hoc* Committee, U.N., Doc. E/794.

tries if they so desired ;¹⁰ the establishment of administrative training for under developed countries ; the supply of information respecting the facilities and resources of the Secretariat to the other international agencies and advising them on the relative urgency and priority¹¹ of projects on the basis of data collected by the Secretariat.

SECTION 2

The Secretariat and new Developments

Three new developments in the field of the activities of the Secretariat should be mentioned here :

First there was a proposal from the Secretary-General himself to establish a small United Nations Guard Force (From 500 to 1,000 men) to be at the disposal of the Organs of U.N. to serve on certain occasions. Later he revised his proposal by recommending the creation of a Field Service and a Field Reserve Panel.¹² The question was considered by and reported to the Fourth Session of the General Assembly by a Special Committee.¹³

As far as the creation of the Field Service (composed of maximum 300 regularly employed men) was concerned, the majority of the Special Committee justly found that this Service could not be considered as an armed force under Article 43 of the Charter, nor could it ever be used for enforcement purpose under Chapter VII ; because, the Committee said, " the sole function of the proposed service would be to render technical services to missions operating under the provisions of the Charter and it stood therefore on precisely the same legal basis as any other unit of the Secretariat." ¹⁴ Therefore, it was recognized that the Secretary-General, in virtue of being the chief admin-

¹⁰ In pursuance of Resolution 52(1) of the General Assembly and Resolution of the Economic and Social Council, Doc. E/437, p. 42.

¹¹ See the Report of the Economic and Social Council to the 3rd Session of the General Assembly, U.N., A/625, p. 76 ; U.N., A/534, par. 12 ; also the discussion of the Council in its meetings (173rd, 174th and 224th).

¹² Report of the Secretary-General (1948), *Op. cit.* p. XVIII. Also see his substantive report on 28 Sept. 1948 to the General Assembly, U.N., A/656. For the revised proposal see Annex I to U.N., A/959.

¹³ Resolution of the General Assembly 270(III). For the report see, U.N., A/959.

¹⁴ See U.N., A/959, p. 3. For the opposing view of the Delegates from U.S.S.R., Poland and Czechoslovakia see part three of the report.

istrative authority of U.N., possesses the authority to establish the said Field Service, subject, however, to the budgetary limitations and normal administrative control of the General Assembly. This view of the majority of the Special Committee was accepted also by the General Assembly on 22 November 1949 by a vote 46 in favour, 5 against and 3 abstentions.¹⁵

With regard to the creation of the Field Reserve Panel, also the majority of the Special Committee justly held the opinion that in no way it contravenes the Charter; because the Panel "would be created for the sole purpose of assisting missions engaged in functions of observation and supervision, and in no case could the member of the Panel be considered an 'armed force' under Article 43 of the Charter".¹⁶ The General Assembly accepted this view of the majority of the Special Committee, and taking note of the intention of the Secretary-General to undertake the administrative arrangements for the proposed Panel, requested him to establish this Panel under the name "The United Nations Panel of Field Observers". This resolution was approved in the General Assembly on 22 November, 1950, by a vote 38 in favour, 6 against and 11 abstentions.¹⁷ This Panel, according to the view expressed by the Special Committee, should consist of qualified persons selected by the Secretary-General in consultation with national Governments, on the basis of equitable geographical distribution, and they will be called upon to take part in field observations whenever necessary.

An important point in this connection is that according to the present wording of the relevant Resolution of the General Assembly the services of both the Field Service and United Nations Panel of Field Observers are to be available to any competent Organ of the United Nations, and not exclusively to one Organ (the Security Council). The significance of this reference of the Resolution of the General Assembly can be better seen if one notes that the Special Committee's report had called the attention of the General Assembly to the definite determination of the said competent Organ if there should be only one.¹⁸

¹⁵ Resolution 297(IV).

¹⁶ See its report, U.N., A/959, p. 4.

¹⁷ Resolution 297(IV).

¹⁸ *Loc. cit.*

The second type of the development within the Secretariat is the tendency to entrust the Secretariat with greater responsibilities with regard to the function of each Principal Organ of U.N. This idea is well illustrated in the operative part of the Resolution (183 [II])¹⁹ of the General Assembly adopted on October 20, 1947 by a vote of 45-1 with 9 abstentions, upon the proposal of the Swedish Delegate, that :

The General Assembly...

Draws the attention of the three Councils and their Commissions as well as of the Commissions appointed by the Assembly itself, to the desirability of utilising to the utmost the services of the Secretariat, and

Recommends specifically to the respective 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.

The observance of this principle not only saves the time and money of the Organization itself, but is also advantageous to the Members who are to be represented in different commissions, committees, and sub-committees by qualified representatives. Moreover, it may be a good means of collecting the detailed experiences gained in the examination of assignments in the technical bodies of the Secretariat itself which in the last analysis is that of the Members.

The third development is the tendency to charge the Secretariat with some functions similar to those of the respective specialized agencies.²⁰ This suggestion was advanced by the Secretary-General himself in his address to the General Assembly in its 35th meeting, on 24 October, 1946, in the following language :

The time is perhaps now approaching when it may be proper to ask ourselves whether the family of specialized agencies is not already large enough. The larger the number of agencies the greater is the financial burden on Member Governments and the greater are the dangers of overlapping and duplication.

As new problems arise it would be well to consider whether it would not be better to assign them either to the Secretariat of the United Nations or to one of the organizations which now exist, rather than to create new machinery.²¹

¹⁹ U.N., A/519, p. 153.

²⁰ See O.R.G.A., Second Part of the First Session, Plenary Meetings, p. 852, see also the view of the Canadian Delegate in p. 828.

²¹ *Ibid.*, 695-696.

The Economic and Social Council, during its seventh Session in 1948, took a further step in this direction by adopting a resolution, with the view to "achieving, if possible, some reduction in the number of such organizations²² in order to avoid overlapping and to diminish governmental expenditure". This resolution recommends that the member States and the specialized agencies submit by February 1, 1949, their views regarding :

- a) The possible termination, absorption or integration of any of these organizations into U.N. or the specialized agencies.
- b) A relationship which might be established between any of the listed organizations and U.N. or the specialized agencies.²³

Following the above mentioned resolution of the Economic and Social Council, the Secretary-General submitted a consolidated report to the Council based on the views thus communicated ;²⁴ accordingly the Council adopted the Resolution 262 (IX) A to Q in 1949 with regard to seventy-two inter-governmental organizations.

It is interesting to note that the Council's resolution refers to the possible absorption of the said organizations into "the United Nations" ; this of course includes the Secretariat. However, the conclusion of the Preparatory Commission of U.N. in 1946, as an "alternative arrangement", suggested that the function of these agencies be handled by "appropriate commissions or committees within the United Nations".²⁵ This new tendency might be useful since a committee should not be given a permanent constitution unless it becomes clear that the permanency of the business is definite.

In view of the above-mentioned various functions of the Secretariat of U.N., one is inevitably led to remark that the confusing idiosyncrasy about this relatively speaking most successful Organ of U.N. lies in its being called the "Secretariat", instead of being titled by a name to correspond to the various assignments of this Organ.

²² Intergovernmental organizations with responsibilities similar to those of the United Nations and specialized agencies in the economic and social, cultural, educational, health and related fields.

²³ U.N., Doc. A/625, Third Session of the General Assembly, p. 71.

²⁴ Doc., U.N., E/1318 and Add. 1, Corrs. 1-3.

²⁵ See the Report of the Commission, *Op. cit.*, 40.

SECTION 3

Two Criteria

In virtue of the provisions of Articles 100 and 101 (3), the number and quality of the service rendered by the Secretariat to any Organ of U.N. may increase considerably. These provisions of the Charter, like many others, are unprecedented when compared with the Covenant. According to these provisions the Secretary-General and the staff members "shall not seek or receive instructions from any other authority external to the Organization" (Article 100 [1]).²⁶ Equally, the Members are required to "respect the exclusively international character of the responsibilities" of the said officials (Article 100 [2]). Moreover, in recruiting the staff members and in the determination of the conditions of service "the highest standards of efficiency, competence, and integrity" are to be secured, and "due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible" (Article 101 [3]).

The effect of these two criteria—personal qualifications and geographical distribution—upon each other and upon the function and the success of the whole U.N. Organization calls for special attention.

While the said first criterion raises the standard of the integrity and efficiency of the staff members, the second criterion brings into the organization of the Secretariat various types of culture and civilisation and the sentiments of peoples of various parts of the world. Moreover, in the daily functions of U.N., the existence of highly qualified personnel from different parts of the world in the Secretariat provides a direct access to the conditions and customs of the various countries which is so essential for the policy-making and executing bodies, especially in social, economic, educational and cultural fields. It relieves the administering officials of the Secretariat of frequent inquiries about routine things related to a given country. Thus, the Secretariat of U.N. has become the first and the most

²⁶ Usually a formal oath is to be taken before any official of the Secretariat takes his office. This formal declaration of their impartiality and action in the interest of the Organization has been in practice since 1932, the League of Nations period.

important body in the world's history in which so many people from so many countries work together—a melting pot—with little noticeable difficulty. And, in fact, some observers say that staff members of the Secretariat get along better with each other than with their colleagues from the same country. This is due perhaps to political and social differences which might exist between members from the same country.

There is no certain regulation to prevent the geographical distribution of the staff members in the various Departments and their sub-divisions or in the Secretariat's overseas missions. However, the administrative and technical character of the terms of reference of the respective Organs and the competence of the individual staff member, appear to affect this position. The General Assembly is especially concerned that the geographical distribution be realised in the lower and higher grades of the Secretariat as well as in the overseas missions.²⁷

The 5th Committee of the General Assembly, in 1947²⁸, rejected a Colombian proposal²⁹ to the effect that the scale of contributions of the Members to the budget of U.N. be a basis for the geographical distribution of the staff members. Since that time no exact criterion has been adopted in this connection (as far as the available sources indicate). For practical reasons today the rule of geographical distribution does not apply strictly to a great percentage of the posts listed under the eighth grade (secretarial, clerical and manual workers, whose numbers amount to 1497 out of 2865 established posts at headquarters) and to the technical posts including linguistic positions.³⁰ Thus the principle of geographic distribution applies to about one-third of the whole number of the Secretariat members—the established posts of the Secretariat in headquarters, up to June 1948, were 2,865.³¹

²⁷ For the grading and the classification plan of the posts of the Secretariat see the First and Second Reports of the Advisory Group of Experts on Administrative, Personnel and Budgetary Questions to the Secretary-General (1946), pp. 62-74, 4-6 respectively; The Report of the Preparatory Commission of the United Nations, PC/20, 1945, pp. 90-91; also the Reports of the Secretary-General (1946, 1947 and 1948), U.N., Doc. No. A/63, A/315 and A/565, p. 34, 75 and 128 respectively.

²⁸ U.N., Doc. A/C, 5/W, 28.

²⁹ U.N., Doc. A/464.

³⁰ The Secretary-General's Report (1948), *Op. cit.*, p. 128.

³¹ *Loc. cit.*

As to the relation between the number of the staff members and the ranks of their office,³² evidently both are included under the constitutional term of the "geographical basis". In this connection, because of the absence of any definitive formula, the following method of application might be suggested. Grade points might be determined for all the posts of the Secretariat which are in one way or another brought under the application of the principle of geographical distribution. Supposing that there are 1,000 posts with different grade points. If the average grade point were 12, the total grade points of these posts would amount to (1000×12) 12,000. Dividing this total figure among the Members or regions according to whatever scale (contribution or other) is used, each member Nation or region would hold a certain number of grade points. For example Cuba, might be entitled to 40 grade points. If, upon the introduction of this system, Cuba actually held only 32 grade points, a post with a grade point equivalent to the difference of these two last figures, i.e. $(40 - 32 = 8)$ would be assigned to a Cuban national. To avert prejudice against countries from which the highly qualified administrators of the Secretariat come, the two highest graded ranks could be excepted from the application of this formula. However, they would be subject to the present vague formula of the application of the rule of geographical distribution.

Regarding the geographical distribution of the staff members of the Secretariat, the relation between this criterion and the time element will be discussed below.

SECTION 4

A Permanent Secretariat

From the very beginning of the organization of the Secretariat a definite view, on a sound administration basis, has been developed with regard to the creation of a permanent Secretariat. In the words of the Report of the Preparatory Commission of U.N. "the bulk of the staff should consist of persons who will make their career in the Secretariat".³³

³² See Resolution 153(II).

³³ *Op. cit.*, 92.

Pursuant to this principle, the General Assembly has authorized the Secretary-General to establish this permanency in the Secretariat by giving "contracts for an indeterminate period".³⁴ Consequently, the staff members of the Secretariat from the point of view of their employment status, fall within two important categories, 'temporary' and "indeterminate" (permanent), with different status and employment privileges. This division applies to the posts above the eighth grade as well as below, which are not subject, to a great degree, to the geographical rule.

Two theoretical legal questions may be raised with regard to this division. First, does the rule of geographical distribution apply also to the above-mentioned division of the staff members into temporary and permanent (indeterminate) positions? The answer obviously seems to be affirmative.

Secondly, is it expedient and constitutional to make so many permanent appointments within the Secretariat,³⁵ in addition to the posts which must be permanently filled? No doubt the policy of permanent appointments, subject to its respective procedures, has many great advantages; ³⁶ however, if the Secretariat becomes too numerous in permanent posts, disadvantages might develop.

It is very doubtful that the spirit of the Charter's provisions was merely to bring staff members with different passports, but rather the real purpose was to bring to the Secretariat different cultures and civilizations, and different systems of administration and work.³⁷ The Charter has plainly defined this principle in Article 9 of the Statute of I.C.J., with regard to the different legal systems of the world. It is very doubtful that the Charter neglected this principle in the administrative and social field.

The degree and the extent of the different cultures and social positions change with time, and citizens permanently away from their own country are doubtless no longer spiritually citizens of their homeland. As a matter of fact, it is a generally recognized practice

³⁴ The General Assembly's Resolution XII.

³⁵ The number of the indeterminate appointments up to June 1948 was 539 out of the 1,368 of the all posts with grade above 8, and 865 out of the total established posts of the Secretariat, see the Report of the Secretary-General, *Op. cit.*, 128.

³⁶ The Report of the Preparatory Commission of the United Nations, *Op. cit.*, 92.

³⁷ See the views expressed by the different Delegates in the Fifth Committee of the General Assembly, Second Session, U.N., A/464.

that the Foreign Ministries of different countries do not usually allow their officials to hold office continuously for more than a certain period of time outside their own country, especially in one single post. Moreover, with the passage of twenty or more years it is doubtful what percentage of these types of citizen would be willing, or materially or physically able, to go back to their homeland, after a long term of office with the United Nations.

With the limited number of posts available in the Secretariat it seems preferable to give to a larger number of the intellectuals of the different "people of the United Nations" the opportunity to learn about U.N. and to understand it. This opportunity might be very advantageous to the underdeveloped countries, since a larger number of their intellectuals of such Members might be appointed to the Secretariat and upon the expiration of their term of service would return to their homeland with a better training and wider knowledge which would be extremely useful to their own needy society.

It should be mentioned, however, that the Resolution of the General Assembly, in order to stress the importance of personal qualities, puts a ceiling of five years on the term of indeterminate appointments, making reappointment subject to review on the "basis of reports by their superior officers".³⁸

This explanation is not intended to be prejudicial to the many permanent appointments of the Secretariat which are to be made because of the definite administrative or executive necessities.

³⁸ Resolution XII(VII), par. 25.

CHAPTER VI

THE FUNCTIONS OF THE ORGANS OF THE UNITED NATIONS AND THE ADVISORY OPINIONS OF THE INTERNATIONAL COURT OF JUSTICE,

SECTION I

The General Background

Since the establishment of P.C.I.J. the rendering of advisory opinions of the Court was established. This type of advisory jurisdiction of a court which has originally found its root in some national courts has been considered a fruitful development in the international field.

Article 14 of the Covenant of the League of Nations referred to this matter as follows :

The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

However, there was no reference to the competence of the Court to render advisory opinions in the original Statute of P.C.I.J., on the ground that such provision was found in the Covenant, despite the fact that the Statute and the Covenant were different international agreements with non-identical memberships.¹ This position was altered in an amending process of the Statute of P.C.I.J. in 1936, by providing four articles concerning advisory opinions (Articles 65 to 68).

It is to be noted that the Court, from the beginning, did not hesitate to entertain any request, as stipulated in the Article 14 of the Covenant, for advisory opinions, and in fact the Articles 71 to 74 of its Rules of Procedure of 1922, 1926 and 1931 were concerned with this matter.

¹ See Article 36 of the draft scheme of the 1920 Committee of Jurists which had made such a provision for advisory opinions of the Court, but it was rejected by the First Assembly of the League of Nations, Records of First Assembly, Committee 1, p. 401.

Between the years of 1920 and 1936, P.C.I.J. rendered twenty-seven advisory opinions under this provision, only once declining to give an opinion. Some of these requests originated from inter-governmental organizations with the consent of the Assembly, others came from such organizations as the Danube River Commission, the Greek-Bulgarian Exchange of Populations Commission, and I.L.O.

In the formative period of the new world Organizations, there seems to have been a tendency to use the provision for advisory opinions more often than previously for the reasons which follow :

1. The increasing number of inter-governmental organizations are denied appearance before the Court as a party to a case.²
2. In some cases, at least in minor cases, the States seem to be reluctant to take a case into Court thereby making another State a defendant, a procedure which might involve political consequences.

Paragraph 6 of Chapter VIII of the Dumbarton Oaks Proposals, which was the only reference to this matter, had provided that "the Security Council should be empowered to refer to the Court, for advice,³ legal questions connected with other disputes".

During the discussion of the jurisdiction of the I.C.J. in the United Nations Committee of Jurists it was observed that the provision for an advisory opinion of the Court would not become necessary if the Court were given compulsory jurisdiction. It was also stated that even if States were obligated to refer all cases to the Court, they might in certain situations prefer to settle their differences at

² See the memorandum annexed to a letter dated April 13, 1944, addressed by the I.L.O. to the member governments, which, with regard to "recourse to an international tribunal for an authoritative decision", states :

"In many cases, the provisions of Conventions are designed to be incorporated (either textually or more frequently in substance) in the municipal law of the countries which are parties to them. Municipal courts are accordingly called upon from time to time to determine questions involving the interpretation of the provisions of international labour conventions. If the decisions of such courts are based on divergent principles, as in a few cases they already are, the measure of uniformity achieved by international Conventions will be progressively destroyed as judicial interpretation in different countries proceeds on different lines.", I.L.O., Official Bulletin, Vol. XXVI, No. 2, page 195. It also requested "to give favourable consideration" to the possibility of giving I.L.O. "the right of direct access to the Court".

³ The attention of the Committee III/2 was called by Mr. Manly O. Hudson, to the use of the words "advisory opinion" instead of "advice", on the ground that the former has a more established connotation, S.F., Doc. 530, III/2/20, p. 3.

an early stage by the device of an advisory opinion, and thus might avoid actual litigation.⁵

As the result of the consideration of the question at the San Francisco Conference, the competence of I.C.J. to render advisory opinions was accepted in Article 65 (1) of the Statute of the Court which reads as follows :

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.

SECTION 2

The Competence to Request an Advisory Opinion of the Court

The Court has no power to give an advisory opinion *proprio motu*, it must act when it receives a request for such action from a competent authority. Five different principles were considered by the United Nations Committee of Jurists to determine these competent authorities :

- a) Only the Security Council would be empowered to do so.⁶
- b) The Security Council as well as the General Assembly would possess such authority.⁷
- c) In certain cases inter-governmental organizations also would be able to submit such requests.⁸

⁵ See Report of the Informal Inter-Allied Committee of Jurists, A.J.I.L. Vol 39, 1945, supplement, pp. 1-41, 64-68.

⁶ The Provision of the Dumbarton Oaks Proposal referred only, in paragraph 6, Chapter VIII, to the authority of the Security Council ; but the interpretation of the United Nations Committee of Jurists read "... the Committee believed, however, that it might presume that not only the Security Council but also the General Assembly would have this function...", Jurist 86, G/73, Chapter IV.

Article 65 of the U.S. proposed draft for the Statute likewise provided for only the authority of the Security Council, and the Secretary General under instruction from the Security Council to request advisory opinions of the Court. The U.S. Delegate in the United Nations Committee of Jurists explained that the General Assembly had been omitted on the ground that it would not function in an executive capacity and its decision would rather be advisory in character ; however, he saw no object for such inclusion, Jurist 45, G/34.

⁷ See the memorandum from Guatemala and Mexico presented to the Inter-American Conference, S.F., Jurist 1, G/1, p. 61 ; Norway, memorandum of March 2, 1945, S.F. Jurist 1, G/1, p. 61-2, also, S.F., Doc. 2, G/7(n)(1) p. 6 ; Netherlands amendment to the Dumbarton Oaks Proposals, S.F., Doc. 2, G/7(J)(1), p. 6 ; United Kingdom memorandum, S.F., Doc. 633, II/2/30 ; Lebanon proposed revision of Article 65 of the Statute, S.F., Doc. 285, IV/1/25 ; Venezuela, proposed draft, S.F., Doc. 283, IV/1/23 ; Colombia-Cuba, amendment, S.F., Doc. 714, IV/1/57, p. 1.

⁸ See the note from I.L.O., *Op. cit.*

- d) International organizations, which have close relation with U.N., would be enabled to do so under authorization from the General Assembly.⁹
- e) Inter-States organizations as well as two or more States, acting in agreement, would be authorized, in certain cases, to request the Court for such an opinion.¹⁰

Against the proposals to grant authority to the inter-States organizations or a group of States to request directly advisory opinions from the World Court it was stated that :

- 1. If such a rule were established there would be danger that the Court might become overloaded by individual applications and would scatter its efforts on minor matters ; moreover, the function of the Court was not to play the part of a general adviser.¹¹
- 2. In the necessary instances, the possibility of applying to the Court through the General Assembly would be always open to any individual State. Besides, such a direct access to the Court might hamper the work of the Security Council and the General Assembly on important procedures dealing with international disputes.
- 3. The Court's advisory opinions were at any rate in effect judgments, since they had always been carried out, and hence the jurisdiction to render them should be restricted.

Finally, the question of authorization of the inter-State organizations or a group of States to request directly advisory opinions of the Court was adopted neither at the United Nations Committee of Jurists¹² nor at the San Francisco Conference.¹³

⁹ United Kingdom, memorandum, S.F., Doc. 633, 11/2/30.

¹⁰ See report of the informal Inter-Allied Committee of Jurists, *A.J.I.L.*, Vol. 39, 1945, supplement, pp. 1-42. Belgian memorandum dated February 13, 1945, reads : " ... before a project for the settlement of a difference, drawn up by the Council or by any other body becomes final, each of the States concerned should be able to ask an advisory opinion from the Court of Justice (I.C.J.) as to whether the decision respected its independence and vital rights." S.F., Jurist 1, G/1, p. 61. Also see Venezuela, proposed draft, S.F., Doc. 283, IV/1/23.

¹¹ See the views expressed by Mr. Novikov (U.S.S.R.), Mr. Hackworth (U.S.), and Mr. Fitzmaurice (U.K.), S.F., Jurist 45, G/34, 7-8.

¹² S.F., Jurist 86, G/73, Chapter IV (this principle was rejected in this Committee by a vote of 16 to 4, Jurist 45, G/34, p. 9).

¹³ See S.F., Doc. 701, IV/1/54, pp. 2-3.

Then Article 96 of the Charter was adopted which reads :

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.

Owing to the fact that normally the General Assembly meets once a year and that to apply for such an authorization in each case would be a difficult process, the General Assembly gives such authorization to each of the specialized agencies at once, instead of "in each case",¹⁶ under the provision of the respective agreements concluded between the United Nations and the specialized agencies.

A typical form for this authorization reads as follows :

2. The General Assembly authorizes the International Labour Organization 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 Governing Body acting in pursuance of an authorization by the Conference.
4. When requesting the International Court of Justice to give an advisory Opinion, the International Labour Organization shall inform the Economic and Social Council of the request.¹⁷

A similar provision is made in the agreements concluded between other specialized agencies and U.N.¹⁸

The General Assembly has authorized the Economic and Social Council¹⁹ as well as the Trusteeship Council,²⁰ to request advisory opinions of the Court "on legal questions arising within the scope of its activities." In the case of the Trusteeship Council no request

¹⁶ In Committee IV/I it was proposed that the words "in each case" be substituted for the words "any time" in Article 96(2), but this was not adopted by the Committee, S.F., Doc. 864, IV/I/71.

See also the Report of the Preparatory Commission, *Op. cit.*, 44.

¹⁷ Article 9(2) of the agreement between I.L.O. and U.N.

¹⁸ For the texts see the reference of the footnote on page 83.

¹⁹ See Resolution 89(1), on December 11, 1946.

²⁰ See Resolution 171(11)(B), on November 14, 1947.

for such authorization was made by the Council itself, but it was considered only a "question of authorizing the Council" and therefore "a prior request was not essential."²¹

In the case of the Economic and Social Council, this competence includes the "legal questions concerning mutual relationships of the United Nations and the specialized agencies", a course which has been denied to the specialized agencies.

The General Assembly has likewise authorized the Interim Committee of the General Assembly—a subsidiary organ of the General Assembly—to submit such a request to the Court on questions related to its functions.²² The legality of such an authorization was challenged in the General Assembly on the ground that the General Assembly is competent to give such an authorization only to the Organs of U.N. and specialized agencies, but not to the subsidiary organs.²³ In order to clarify this point one must determine to which bodies of U.N. applies the term "organ", employed in Article 96 (2). Chapter III is entitled "Organs", and the text of this Chapter contains provisions for the establishment of two groups of organs "principal organs" and "subsidiary organs". Neither of these groups, in the text of this Chapter, has been called merely an "organ", but both groups are labelled by the qualifying words "principal" or "subsidiary", as the case may be. Therefore, a conclusion may be drawn that the term "organ", used also in Article 96 (2), conveys the meaning of all the organs of U.N. regardless of whether they are "principal" or "subsidiary". Consequently, if this interpretation is correct, the General Assembly's competence to authorize to request an advisory opinion of I.C.J. applies to the principal as well as to the subsidiary organs.

A question might arise as to whether or not a request for an advisory opinion of I.C.J. by either of these Organs—the General Assembly or the Security Council—is permissible after a refusal for such action by one of them. This question was raised in the League of Nations in connection with the Vilna dispute between Lithuania and Poland

²¹ See U.N., Doc. A/459.

²² See pages 60-63.

²³ See the debate during the 168th Plenary Meeting of the General Assembly, U.N., A/PV. 168, p. 32. Also see M. HUDSON, *Permanent Court of International Justice*, 1929-1942, p. 487.

in 1923. In this case the Lithuanian Government appealed to the Assembly to request an advisory opinion after the Council had refused such an action. The view was adopted that a request by the Assembly was excluded after a refusal by the Council.²⁴ This matter appears to be also closely related to the proper competence of each of the said Organs on the issue under consideration.²⁵

Shifting such a request for advisory opinion on any legal question from the Security Council to the General Assembly might be affected by the voting rule of each of these Organs on such request. If such a request through the Security Council should be, as it is now, subject to the veto of one of the Powers, the party who submits such a request might proceed through the General Assembly which does not require unanimity vote.²⁶

A liberal voting method in both the Security Council and General Assembly seems to be desirable in connection with request for an advisory opinion on any legal aspect of a case under consideration by any of the said bodies.²⁷ This is advisable, since the advisory opinion is neither a final decree with regard to the case under consideration, nor is it binding upon the requesting Organ; however, its content might ease the comprehension and solution of solving the problem. It might eliminate a possible veto or dissenting opinion in the Security Council during the taking of the decision.

SECTION 3

Subject Matter of an Advisory Opinion

The subject matter of an advisory opinion is especially important with regard to the relationship between an actual judgment of the

²⁴ Records of Fourth Assembly, Plenary, p. 367.

²⁵ See also the view expressed by Judge Anzilotti, P.C.I.J., Series B, N. 18.

²⁶ Even in the Council of the League of Nations the unanimity of all members of the Council was required for any substantial decision of the Council; however, the amendment proposed by the Committee of eleven, as well as by many of the Governments, called for a majority rule to request the Council for an advisory opinion of the P.C.I.J., see Annex 4 to Report of the Special Committee, L.N.O.J., No. A7, 1938 VII, p. 78.

²⁷ U.N., Doc. A/459, 1947.

Also see the Report of Sub-Committee (3) to the Interim Committee, U.N., Doc. A/AC, 18/62, June 3, 1948, p. 7; and the Summary records of the 16th meeting of the Interim committee, U.N. A/AC, 18/ST.16.

Court rendered on a case, and an advisory opinion of the Court.

The Covenant of the League of Nations (Art. 14) provided that :

The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.²⁸

The Dumbarton Oaks Proposals, in paragraph 6, Chapter VIII, provided as follows :

Justiciable disputes should normally be referred to the International Court of Justice. The Security Council should be empowered to refer to the Court, for advice, legal questions connected with other disputes.

This provision seems to rest on a sounder basis²⁹ than the provision of the present Charter, which provides that any legal question might be a subject for request of an advisory opinion. The Dumbarton Oaks Proposal had taken into account a theory according to which some questions, though having legal aspect, would not be considered justiciable. Nevertheless, if these questions were justiciable, they would " normally " be referred to I.C.J. in spite of the fact that the Security Council itself would be authorized to determine such matters.

The application of this theory would reduce the danger of a case coming before the Court once as a subject for an advisory opinion and another time as a contested case.

The present Charter (Article 96) provides capacity to both the Security Council and the General Assembly to make such a request on " any legal question ". But with regard to the other organs of U.N. and specialized agencies, it authorizes them to request advisory opinions of the Court only on legal questions arising within the scope of their activities.³⁰ This excludes the possibility of the specialized agencies requesting an opinion of the Court on a case against any State ; ³¹such a case, is of course different from that of a case arising between two or more States with regard to that agency.

²⁸ The French text reads " sur tout différend ou tout point ".

²⁹ For a similar proposal see *The International Law of the Future...*, Washington, 1944, p. 149.

³⁰ The United Kingdom memorandum had referred to this subject " on questions of a constitutional or judicial character arising within the scope of their activities " S.F., Doc. 633, II/2/30.

³¹ The possibility of such an inclusion was opposed by the different members of the United Nations Committee of Jurists, Jurist 30, G/22, p. 9.

SECTION 4

The Effect of an Advisory Opinion of the Court

The advisory opinions of I.C.J. under the provision of the Charter, as was the case previously under the provision of the Covenant, are not binding upon the parties. However, the practice is that under certain treaties an advisory opinion becomes legally binding upon the parties. Some examples of this are the obligations undertaken by the British and French Governments in the Nationality Decrees in Tunis and Morocco in 1923 ; ³² Article 5 of the unsuccessful Geneva Protocol of October 2, 1924 ; the Convention on the Privileges and Immunities of U.N. (Section 30, Article 8) ; the Convention on the Privileges and Immunities of the specialized agencies ; ³³ and Article 37 (2) of the new Constitution of the I.L.O.³⁴

Despite the existence of the provisions of these treaties, the general charter of the Court's opinions still remains advisory, but the binding force of their content comes from the respective treaty.³⁵

Comparing the provisions of this type treaty concluded between Members of U.N. with the provisions of the Charter which call such opinion of the Court an " advisory opinion ", i.e., without binding force, one can see a conflict between these two kinds of treaty—Charter and these treaties. This conflict may be more clearly appreciated when attention is drawn to the fact that at the San Francisco Conference the principle allowing only States to appear before the Court was accepted. Even the principle by which international organizations could have direct access to the Court to request an

³² Both Governments agreed upon the opinion of the Court as " it is not solely a matter of domestic jurisdiction, the whole dispute will be referred to arbitration or judicial settlement ". P.C.I.J., Publications Series A, No. 24, and Series A/B, No. 64.

³³ These two Conventions dated February 13, 1946 and November 21, 1947 state that the advisory opinions rendered by the Court " shall be accepted as decisive by the parties ".

³⁴ " Any applicable judgment or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph ".

³⁵ Also See M.O. HUDSON, *Permanent Court of International Justice, 1920-1942*, p. 513. His article, " The Effect of Advisory opinions of the World Court ", *A.J.I.L.*, Vol. 42, No. 3, July 1948. McNAIRE, A.D., " The Council's Request for an Advisory Opinion from the P.C.I.J. ", *B.Y.B.I.L.*, 1946. CORNWELL-EVANS, T.P., *The League Council in Action* (London 1929), 170-174.

advisory opinion was not approved. Therefore if under any method, a binding force is to be given to an advisory opinion of the Court, what would be the difference, in practice, between a judgment of the Court and an advisory opinion backed by a certain treaty? It seems that if such a practice developed, it would weaken the use of the Court to render judgment. It might be argued that there is a difference between the procedure according to which a judgment is rendered and the procedure which applies to rendering an advisory opinion. The important matter in the discussion of advisory opinions and rendered judgments is not the procedure but rather the effect they produce.

If we accept the existence of this conflict between the provision of the Charter and the said treaties and conventions with regard to the legal force of the advisory opinions, that part of the treaties and conventions, concluded among Members of U.N., which provide such legal force becomes doubtful because of the existence of Article 103 of the Charter which reads :

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.

Moreover, the development of this principle might tend to make the World Court an advisory body rather than a "judicial branch" of the general World Organization. The Court's very characteristic must be that its judgments are binding *per se* and not on account of another agreement which gives them force.

Both before and after the establishment of P.C.I.J. and its practice to render advisory opinion, there were several international bodies which possessed competence to give opinions which were advisory in nature.³⁶ But it is to be noted that these international units and

³⁶ Such as International Bureau of the Universal Postal Union, Article 15 of the Convention of October 9, 1874, *Résumé alphabétique et méthodique des Documents de l'Union Postale*, 1932, p. 78; International South American Postal Bureau, Article 12 of the Montevideo Convention of February 2, 1911, *Mera, Convenios Diplomaticos* (2d Ser.), p. 567; The International Commission for Air Navigation, Article 34 of its Convention of October 13, 1919; League of Nations Advisory and Technical Committee for Communications and Transit, whose advisory function was provided as a condition precedent to resort to the Court; and similar provisions in the Geneva Statute on Railways (1923), the Geneva Statute on Maritime Ports (1923), the Convention on Transmission in Transit of Electric Power (1923), and the Opium Convention of February 19, 1925. For a detailed examination of these provisions see HUDSON, *Op. cit.*, 484-486.

conventions were somewhat technical in character and their field of activities was very different from that of a "Court" of Justice.

Another related question, that may arise, is whether or not an advisory opinion of the World Court is binding on the Court itself when a case which was previously the subject of a rendered advisory opinion returns to the Court as a contended case, or in cases related to that matter.

It might be said that the advisory opinion of the Court is not binding on the Court's future action on the same case because of the general principle that the Court should consider and act upon each case on its own merits. This is especially true with regard to the provision of Article 59 of the Court's Statute to the effect that :

The decision of the Court has no binding force except between the parties and in respect of that particular case.

However, it should be noted that if a case is submitted to the Court twice this does not make for two different cases, but rather the same case is brought before the Court at two different times. How can the same law be applied differently by the same Court on the same case ?

If such an advisory opinion were binding on the future action of the Court, it would impair the actual competence of the Court as a judicial organ of U.N. Once the opinion of the Court is known to the parties, the party against whom the advisory opinion is issued would never agree to go to the same Court to obtain judgment which is already known and would have, the second time, binding force upon the parties.

This situation becomes more complicated when it is seen that according to Article 57 of the Statute "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." According to Article 56 (2) the judgment "shall contain the names of the judges who have taken part in the decision", and according to Article 55 (1), "all questions shall be decided by a majority of the judges present." Therefore, an advisory opinion stated by the Court may contain the names of the judges in favour of the opinion as well as the names of judges who are against it, and may include stated reasons. Considering this list in view of an approaching election of judges which might bring a new composition to the Court (Article 13 of the Statute),

especially if the opinion is rendered by a small majority, it might impair to a great degree the voluntary acceptance of the advisory opinion by one party or by the organs of U.N.

Also, an advisory opinion of I.C.J. may be rendered by a small majority leaving a possible total of up to seven judges in the minority. This relative composition of the majority and minority, especially if there are judges of high standing among the minority, could diminish considerably the moral and doctrinal value of the advisory opinion thus rendered. The recently rendered advisory opinion of I.C.J. on the question of the admission of new members to U.N. offers a vivid example for this argument. In this connection the Delegate from Sweden stated in 175th Plenary Meeting of the General Assembly on 8 December, 1948 that:

In the case of the advisory opinion given by the Court as to the question of the admission of new members, however, we had a feeling that it would, from a legal point of view, be very difficult to choose between the opinions of the various groups of the Court.³⁷

The Delegate from U.S.S.R. explained his view in the following words :

There are, in fact, several advisory opinions—an opinion rendered by one group, an opinion rendered by another group—and there are many nuances of interpretation and meaning in each group. There are always a number of nuances—legal, political, philosophical, and so on. But basically, there are eight persons who, regardless of their own differences of opinion, disagree with the seven or the nine who signed the opinion. That is the way it is, not from the theoretical point of view, but from a functional or actual point of view.³⁸

It is important to note that the non-acceptance of an advisory opinion raises the possibility of its subject matter becoming a contended case before the Court and thus raises the above-discussed problem of the relation of an advisory opinion to a rendered judgment. These problems do not arise out of the judgments rendered by the Court on contended cases, because once delivered they will have binding force and become decisive regardless of the number of judges in effective "majority" and regardless of the number and reasons of the judges in the minority.

³⁷ U.N., Doc. A/PV. 175, p. 51.

³⁸ U.N., Doc. A/PV. 176, p. 86; also in the same document see pages 22 and 31 for a similar view expressed by some of the other delegates.

This deliberation brings up two points :

1) The fruitful results obtainable from the possibility of getting advisory opinions of a judicial organ on legal aspects of certain types of cases.

2) The difficulties related to this type of function, if assigned to I.C.J., the principal judicial organ of U.N.

Under the provisions of Article 36 (6) of the Statute, which also apply to the advisory opinion (Article 68), the Court itself has the power to determine " in the event of a dispute " whether the Court has jurisdiction or not. This provision may serve the Court in safeguarding the proper use of requests for advisory opinion, and enables it to refrain from rendering an advisory opinion which might complicate the matter.

SECTION 5

The Advisory Opinion and the Interpretation of the Charter

The question of determination of a proper authority to interpret the Charter when necessity arose, was raised in Committee 11/2 of the San Francisco Conference and was referred to Committee IV/2³⁹

The following suggestions were presented :⁴⁰

1) The General Assembly should be the competent Organ of U.N. for this purpose, because of the fact that such a power was tantamount to the power to legislate, and this was the function of the General Assembly, as the most democratic body of the new organization.

2) I.C.J. should be given such authorization to enable it to interpret the Charter. But it was pointed out that the Statute of the Court was to form a part of the Charter and the Court would be only competent to interpret its own Statute.

3) I.C.J. should be called upon to render advisory opinions in this kind of matter.

4) Either a joint conference should be called along the lines provided in Article 12 of the Statute of the Court, or a Committee of experts be nominated to determine questions of interpretation.

³⁹ For this subject see :

POLLUX, " The Interpretation of the Charter, " in *B.Y.B.I.L.*, 1946, pp. 54-82 ; KOPELMANAS, T., *L'Organisation des Nations Unies* (Paris, 1947), 274-278.

⁴⁰ S.F., Doc. 664, IV/2/33, pp. 1-3.

5) A certain organ should be constituted to give official interpretation of the Charter.

During the consideration of the said Committee IV/2, it was pointed out that the day by day needs for interpretation in the application of the provisions of the Charter by each respective Organ must be distinguished from the particular difficulties calling for an authentic constitutional interpretation. It was suggested that the former category be handled by each respective Organ itself, and that the second category be handled by the same procedure used in amending the Charter, since this latter might be tantamount to the revision of the Charter.

Some members had felt that there was no need for any such provision in the Charter, and that the future practice would determine the method, perhaps one analogous to that under the Covenant of the League of Nations.

The matter was referred (by a vote of 16 to 13) for more deliberation to a subcommittee composed of the Delegates of the United Kingdom, the United States, Norway, Yugoslavia, Belgium and France.⁴¹

The subcommittee's report approved the above-mentioned principle with regard to the day by day interpretative needs of the various Organs to the effect that no reference in the Charter should be made to this category of interpretations and the matter should be left to the normal practice of each Organ.⁴²

With regard to the second category of cases, the following view was expressed which was also accepted by the Committee IV/2⁴³ and Commission IV, and was reflected in the report of Commission IV to the Plenary Session of the Conference.⁴⁴

This report stated :

The Committee approved the report on interpretation of the Charter which suggested that if two member States are at variance concerning the interpretation of the Charter, they are free to submit the dispute to the Court, and that if two

⁴¹ *Ibid.*, 3.

⁴² S.F., Doc. 750, IV/2/B/1, p. 1.

⁴³ S.F., Doc. 933, IV/2/42(2), pp. 7-8. Also see, S.F., Doc. 873, IV/2/37(1), p. 1, according to which a Belgian Delegate's suggestion to the effect that disagreements with regard to the interpretation of the Charter between the Principal Organs be referred to the I.C.J., was rejected in Committee IV/2.

⁴⁴ S.F., Doc. 1171, IV/13.

organs are at variance concerning the correct interpretation of the Charter they may either ask the Court for an advisory opinion, establish an *ad hoc* committee of Jurists to examine the question and report its views, or have recourse to a joint conference.

With regard to the legal value of this method the above-mentioned report further stated that :

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.

During the Committee's discussion it was pointed out that the Court's role would be to decide disagreements of a serious nature where time is not a factor, and the proposed committee of jurists would decide every day routine disagreements where time is a factor.⁴⁵

This method was actually employed in 1947 when the General Assembly, having a different view from the Security Council on the method of admission of new members to U.N., decided to request an advisory opinion of the Court on that matter. Certain delegates opposed the competence of the Court to handle this matter. In reply, reference was made to the records of the San Francisco Conference. In fact, I.C.J. did entertain the request and rendered its opinion.⁴⁶

In this connection a further step was taken by the General Assembly on November 14, 1947, by recommending to the "organs of the United Nations and the specialized agencies" a greater use of I.C.J. for its advisory opinion on 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 or the constitutions of the specialized agencies" ⁴⁷ The

⁴⁵ S.F., Doc. 873, IV/2/37(1), p. 1.

⁴⁶ During the debate in the Sixth Committee and the Plenary Session of the General Assembly (Second regular Session) on Resolution 171(11) extensive discussion took place about the authority of the I.C.J. to interpret the Charter. Particular reliance was placed on the San Francisco Conference records by both sides, see U.N., Docs: A/C. 6/SR.52, 55 ; and A/PV/113.

⁴⁷ See Resolution 171(11) (A). For the discussion on this matter see O.R.G.A., Second Session, 112th and 113th Plenary meeting.

Sixth Committee of the General Assembly, which proposed the draft resolution to the General Assembly, rejected a Polish amendment (which obtained only six votes) to the effect that all references of this resolution concerning the interpretation of the Charter be deleted on the ground that the Court has no competence to interpret the Charter.⁴⁸

However, it seems that since any principle of law may have more than a single application when applied to different organs, it would be preferable to refer such questions by the respective agencies to the Economic and Social Council in their regular annual report. This Council might under its own authorization request the opinion of I.C.J. on the matter, and present the result not only to the initiating agency but to all of them.

But, aside from what is recorded in the San Francisco Conference documents, and subject to the legal requirements, the competence of the International Court of Justice to handle the interpretation of the Charter, whenever there is a difference of views between two or more Members, may be derived from :

- 1) The very existence of I.C.J. as a World Court, and a Principal Organ of U.N., with an acknowledged jurisdiction to handle disputes between two or more States.
- 2) The very nature of the Charter which is an international treaty concluded among the Members and subject to general international law.

⁴⁸ See U.N., Doc. A/459.

CHAPTER VII

THE OVERALL FUNCTIONING AND RESPONSIBILITIES OF THE GENERAL ASSEMBLY

SECTION I

The Position of the General Assembly and the Security Council within the United Nations Organization

As already discussed in this study, the functions of U.N. in the different fields are arranged in a decentralized manner and each field is entrusted to a special Organ. In fact, the authority of U.N. varies according to the different subject matters.

It is also shown here, however, that in spite of this decentralization, the General Assembly is in various degrees concerned with these different fields of the activities of U.N.

Moreover, the General Assembly possesses other general and specific authorities with regard to the general purposes and principles and also with regard to the component elements of U.N. Organization. These authorities are not in most cases obligatory upon the Members ; nevertheless, they provided this most representative body of U.N. with a leading position within the whole machinery of the Organization.

An important point in this connection is that the consideration of any given issue, including the report and activities of any of the Organs of U.N., in the platform of the General Assembly calls the attention of the public opinion of the world. The public opinion of the world carries very effective influence upon the matter, and upon the execution of the subsequent recommendation of the General Assembly on the issue by the Members.

This chapter will deal mainly with these aspects of the functioning and responsibilities of the General Assembly under the following headings : the deliberative, the supervisory, the elective, the budgetary, and the constituent authorities.

However, it should be noted that on certain occasions these responsibilities of the General Assembly have been shared constitutionally by the Security Council on a co-operative basis. The reason for such a joint action may be cited as the maintenance of international peace and security, the most important task of the Organization for which the latter body has "primary responsibility"; therefore, its opinion on the relevant questions must be taken into consideration. Moreover in the case of constituent functions of the General Assembly, the safeguard of the special composition and structure of the Security Council may be said to be another reason for such a bilateral action on the part of two bodies with different composition.

Nevertheless, this co-operative manner of discharging certain of the said responsibilities does not seem to be a reason for putting the General Assembly and the Security Council on the same level of responsible position as far as the whole Organization is concerned. Because, as will be mentioned later, this discharging of the responsibilities of the Security Council itself is also subject to the general supervisory authority of the General Assembly.

SECTION 2

The Deliberative Powers of the General Assembly

In the San Francisco Conference the principles of the Dumbarton Oaks Proposals with regard to the authorities of the General Assembly were considerably elaborated not only through the widening of the functions of U.N. Organization, especially in the economic and social fields, but also directly by enlarging the competence of the General Assembly to discuss and recommend, which was finally crystalized in Articles 10-14 of the Charter.

According to the provisions of 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". This phraseology of Article 10 is the result of a lengthy consideration of the Committee II/2. Its original principle was formulated as a question (9) to be decided upon by the said Committee. This question read that "subject to any exceptions specifically provided, should the Assembly have general

power to discuss and make recommendations in respect of any matters affecting international relations ? ”¹ However, in order to safeguard the domestic jurisdiction of the Members against this broad principle and to protect the General Assembly's forum from being overloaded by business, it was proposed to add a qualifying phrase to the end of the question, “ to discuss any matter within the sphere of international relations which affects the maintenance of international peace and security.”² The Committee II/2 voted in favour of the original question (9) without any qualifying phrase.³ Again upon the request of the Steering Committee, the Committee II/2 reconsidered the issue and after a lengthy discussion it approved the present formula of Article 10 by a vote of 38 to 0.⁴ This formula was proposed by Dr. Evatt following the discussion of the case in a sub-Committee of the Executive Committee composed of Mr. Stettinius, Mr. Gromyko, and Dr. Evatt himself.⁵

With regard to the scope of the application of this principle, Dr. Evatt gave the following important comment during the discussion of Commission II of the San Francisco Conference :

That scope will include every aspect of the Charter, everything contained in it, 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.⁶

Under the provision of Article 11(1) the General Assembly “ may ” consider the general principles “ of co-operation 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 these principles to the Members as well as to the Security Council or to both.

Although the provision of Article 11 (1), by the use of the term “ may ”, seems to be permissive for the General Assembly, the provisions of Article 26 is mandatory—it “ shall ”. This latter deals

¹ S.F. Doc. 235, II/2/A/1.

² S.F. Doc. 624, II/2/B/2, p. 2. Also see Summary Report of 7th meeting of Steering Committee. S.F., Doc. 1061, ST/17.

³ S.F. Doc. 686, II/2/34.

⁴ S.F. Doc. 1121, II/2/59, p. 3 ; 1121, II/2/52(1), pp. 3-4.

⁵ S.F. Doc. 1116, II/2/57.

⁶ S.F. Doc. 1151, II/17, p. 19.

with the responsibility of the Security Council with regard to "formulating" plans to be "submitted" to the Members for the establishment of a system for the regulation of armaments.

According to Article 11 (2) the General Assembly may "discuss" and make "recommendations" with regard to any "questions relating to the maintenance of international peace and security". The specific applications of this paragraph have already been discussed in this study.

Nevertheless, it should be noted that according to Article 11 (4) this specification of the competence of the General Assembly through Article 11 does not limit the general scope of Article 10.

Article 13 provides the general authority of the General Assembly to promote international co-operation in the political, economic, social, cultural, educational, and health fields with specific reference to human rights and to encourage the progressive development of international law and its codification.

Article 14 is especially important in view of the fact that, according to its provision (subject to the provision 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". During the drafting of this Article, different important proposals were considered with regard to the authority of the General Assembly in connection with the revision of the treaties,⁷ the making of laws to be binding upon the Members,⁸ the submission of conventions,⁹ and the prevention of economic aggressions.¹⁰ However, none of them was accepted to be expressly included in the language of this Article. Nevertheless, the general provision of this Article with the said background, especially in connection with the principles of Article 10, 11 and 13, leaves a broad scope of subjects to be dealt with by the General Assembly, particularly in connection with the "measures" to be recommended with regard to the necessary change

⁷ S.F. Doc. 790, II/2/42.

⁸ S.F. Docs: 416, II/2/A/3; 507, II/2/22, p. 2.

⁹ S.F. Docs: 571, II/2/27, pp. 1-3.

¹⁰ S.F. Doc. 536, II/2/24, p. 1.

of *status quo*. The term "measures" as the subject of the recommendations of the General Assembly under the provision of Article 14, is not used in the other Articles referring to the powers of the General Assembly. The use of this exceptional term in this Article calls for special attention. It is a term which is used in Articles 39-42, 45, 49-51 of the Charter dealing with strong and forceful action to be taken by the Security Council for the maintenance of peace and security. Thus, it might be said, by the use of this term in Article 14, the authors of the Charter, while not seeing expediency for including expressly the above-mentioned subjects (revision of treaties, etc.) have called for more specific and serious consideration of the related matters by the General Assembly and for more emphasis upon the acceptance and execution of the relevant recommendations by the Members.

It should be noted that the General Assembly's functions under Articles 10, and 11 (2), 14 are subject to the limitations envisaged in Articles 11 (2) and 12.¹¹ However, such limitations do not apply to the authority derived from Articles 11 (1), and 13. In this connection attention may be called to Article 13 (2) which refers to the "further responsibilities, functions and powers of the General Assembly" set forth in Chapters IX and X of the Charter.¹² These matters are also excluded from the said limitations.

In discussing the important functions and responsibilities of the General Assembly—the most representative body of U.N.—within the community of Nations as well as within U.N. Organization itself, however, one should be aware of a dangerous practice that the platform of the General Assembly might be used as a sounding board for political antagonism and rivalry. It also might permit the emergence of blocs and the practice of "horse-trading". One should admit that, unfortunately, some blocs are already well known in the General Assembly's hall. The Principles and Purposes of the Charter—the observance of which is so much emphasised by the General Assembly itself—apply also to the General Assembly as well as to the other Organs, and there is no provision to identify regionalism with bloc-making. The main aim of regionalism is to solve regional problems in a similar way.

¹¹ See page 49.

¹² See Chapter III.

SECTION 3

The Supervisory Powers of the General Assembly

The text of the Charter with regard to the " Powers and Functions " of the General Assembly embodies two important references to the supervisory authority of this body over the entire U.N. Organization. These two references, both the product of the San Francisco Conference, are recorded in Articles 10 and 14.

Article 10 states that 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 Charter ", and make " recommendations " on the said questions.

Article 14 includes any " situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations " among the kind of situations, regardless of origin, which may be discussed and be the subject of recommendation by the General Assembly. The important point in this connection is that the Purposes and Principles of the Charter apply to the Members as well as to the Organization itself ; therefore, the actions taken by the component Organs of U.N. as well as those of the Members are covered by this stipulation of Article 14.

The specific application of this accountability of the Organs to a world forum—the General Assembly—" town meeting of the world "—is provided in the Article which immediately follows Article 14. This Article—15—provides that :

- 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.

This principle was approved by Committee II/2 by a vote of 34 to 0.¹³ The same Committee failed to accept a principle ¹⁴ stating

¹³ S.F. Doc. 613, II/2/29, 1-2 ; also Docs : 677, II/2/B/9 ; 2, G/14/(1), 2-3 ; 2, G/7(e) (1), 2 ; 2, G/14(e) (1), 1 ; and Sec. 8, par. 8, Chapter V of the Dumbarton Oaks Proposals.

¹⁴ S.F. Doc. 392, II/2/17, 3-4.

that should the Security Council have a free hand in acting on certain functions independently, the General Assembly should be authorized to summon the members of the Security Council to appear before the Assembly to report on any measures the Security Council had taken up.¹⁵ Also the said Committee rejected a principle by which the Security Council would be required to submit periodic and special reports to the General Assembly with a detailed account (with reasoning) of all of its "acts" and "decisions".¹⁶ Thus the use of the word "account" again in this Article calls for special reference to the origin of the text. Moreover, it is to be noted, that the Security Council itself must submit the report whenever it is due.¹⁷ The wording of the opening sentence of the paragraph—"The General Assembly shall receive"—seems to make it mandatory upon the Security Council to submit such a report, especially the "special reports", whenever the General Assembly so desires.¹⁸ This provision of Article 15 is once more emphasized in Article 24 (3).

The important aspect of receiving such "reports" by the General Assembly is its competence to "consider" them. The word "consider" employed in Articles 15 and 24 (3) was intended to secure the right of the General Assembly to "discuss" and to "recommend" *in toto* or in part on the submitted reports.¹⁹ However, the question of the approval or disapproval of the cases, as far as the report of the Security Council is concerned, was not accepted.²⁰ Nevertheless, such a lack of reference does not seem to limit the scope of the prov-

¹⁵ See in this connection the Mexican Proposal, S.F. Doc. 2.G/7(c)(1), 1, 6-7; also see Inter-American Judicial Committee, "Report on the Dumbarton Oaks Proposals...", *A.J.I.L.*, Vol. 39, 1945, Suppl., 68.

¹⁶ See the Ecuador's proposal, S.F., Doc. 2, G/7(p), 38.

¹⁷ S.F., Doc. 613, II/2/29, 1-2.

¹⁸ There was a motion by the French Delegate in Committee II/2 to the effect that this point be made clear in the text, but the submission of the report be in the interest of the maintenance of peace and security. The motion was not carried, S.F., Doc. 613, II/2/29, p. 2.

¹⁹ See the affirmed text of the question formulated in this connection by Subcommittee (S.F. Doc. 476, II/2/A/4) in Committee II/2. Also see, S.F.: Doc. 652, II/2/33, p. 2; Doc. 920, II/2/B/12; the comments of the Delegates from the United States and U.S.S.R., Doc. 971, II/2/50; Report of Rapporteur of Commission II to the Plenary Session, Doc. 1180, II/18(1), p. 3.

²⁰ See the statements of the Delegate from U.S.S.R. in 14th and 22nd meetings of Committee II/2, S.F., Doc. 652, II/2/33, pp. 1-2, and Doc. 971, II/2/50; also the statements of the Delegates of China and United Kingdom in the 8th meeting of the Executive Committee, S.F. Doc., 860, EX/22.

isions of Articles 10 and 14 with regard to the subject and the nature of the discussion and recommendations of the General Assembly. Though the General Assembly receives the "reports" under the provision of Article 15, its competence to consider them may be covered not only by Article 15 itself but also through Articles 10 and 14.

SECTION 4

The Elective Powers of the General Assembly

Some members of the Security Council are permanent ; some members of the Trusteeship Council are chosen automatically ; and the Secretary General and the members of I.C.J. are chosen by a partnership of the General Assembly and the Security Council. The elective powers of the General Assembly for these and remaining seats, gives this body a great discretionary force through which it can carry its general voice and sentiments into other Organs. Such indirect transfer of the feeling and the voice of the General Assembly is extremely important especially in matters in which it has no direct voice e.g., enforcement actions taken by the Security Council.

The provisions of the Charter with regard to the method of the electing the members of each Organ and the respective criteria to be observed are so different, owing to their function and position, that separate consideration must be given to each one.

a. The Election of the Non-Permanent Members of the Security Council

It has already been shown in another Chapter of this study that the permanent representation of the five Big Powers was introduced as one of the cornerstones of the United Nations. Under the provision of Article 23 the non-permanent members of the Security Council (six in number) are to be elected for a term of two years,²¹ with three retiring each year ; therefore, in the first election (which took place on January 12, 1946), three members were elected for only one year.

²¹ Among the different amendments to the Dumbarton Oaks Proposal in favour of the two year term, the Egyptian amendment had proposed a three years term, S.F., Doc. 2, G/7(q)(1), 5. The New Zealand's amendment had put it at the discretion of the General Assembly, S.F., Doc. 2, G/14(f), 3 ; this proposal was defeated in Committee III/1 by a vote of 2-33, S.F., Doc. 380, III/1/17, 2.

A retiring member is not eligible for immediate re-election.²² It is to be noted that the existence of eligibility for re-election to the Council of the League of Nations led to the creation of a sort of semi-permanent member in that body.²³ The provision of non-eligibility for immediate re-election will be useful for a more varied representation of members in the Council, and will reflect more adequately the feeling of the General Assembly in it. However, owing to the election of three members each year, the limitation on the eligibility of re-election is a period of one year and not two.

The Criterion for the Election

The membership in the Security Council, as well as in the other Organs must not be considered as just a privilege or prize. Membership should be regarded with respect to qualifications and responsibilities. In the case of the Security Council, the Dumbarton Oaks Proposals were silent on this last point.

The San Francisco Conference revealed a great concern of the participating States on this matter. The four Sponsoring Powers introduced a proposal to the effect that in the election of the non-permanent members of the Security Council, due regard should be given to the "contributions" of members to the "maintenance of international peace and security", and to "equitable geographical distribution".²⁴ Many other criteria were proposed, such as ability and willingness to contribute to the maintenance of peace;²⁵ the performance of obligations as a contribution to the causes of the peace;²⁶ relative population, industrial and economic capacity;²⁷ performances in the last War;²⁸ and determination to enter into the special agreements provided in Article 43.²⁹

²² Australia proposed (S.F., Doc. 2, G/14(1), 8) the General Assembly to permit immediate re-election, this was defeated in Committee III/1 by a vote of 2-35, S.F., 380, III/1/17, 2. See also New Zealand Delegation's view, S.F., Doc. 120, III/1/3, 3.

²³ For the membership in the Council see RAPPARD, W. "Small States and the League of Nations", *Political Science Quarterly*, vol. XLIX, No. 4, (1934), 560.

²⁴ S.F., Doc. 2, G/29, 3.

²⁵ Australia, Doc. 2, G/14(I), 8; France, Doc. 2, G/7(o), 3; Canada, Doc. 2, G/14(t), 1; India, Doc. 2, G/14(h), 3-4. (S.F.)

²⁶ Canada, *Op. cit.*, 1.

²⁷ India, *Op. cit.*, 3-4.

²⁸ India, *Loc. cit.*

²⁹ India, *Loc. cit.*, Australia, *Loc. cit.*

As far as the geographical distribution was concerned—the second proposed criterion—a defined regional³⁰ and continental³¹ distribution of the membership in the Security Council was brought up. In one of the proposals the observance of a rotation system among the States of each region was suggested³² in order to prevent a bargaining atmosphere.³³ The continuous representation of so called middle powers,³⁴ and also the use of the alphabetical order were proposed.³⁵ These conditions, if they had been definitely expressed in the Chapter, would have impaired the very principle of an Organ which should be regarded as a trustee of the whole community of Nations, not as representative of particular regions of the world. It would put the member States on a different footing because of the present under representation of some regions and continents (especially Europe) in the Organization.

After a lengthy discussion, the present vague formula of Article 23 (1) was adopted in Committee III/1 by a vote of 25-9 :³⁶

... 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.

This vague formula leaves the following points to be carefully considered :

1) Who should pay the " due regard " ? The General Assembly itself by approving certain regulations and methods, or every individual Member ? The Rule of Procedure of the General Assembly forbids any nomination or withdrawal in favour of a specified country.³⁷ Then it is left to any individual Member to take into account

³⁰ Egypt had proposed grouping the states into nine zones each to be represented by one member in the Security Council, S.F., Doc. G/7(q)(1), 5. The Philippines proposed six regions, S.F., Doc. 2, G/14(k), 3.

³¹ Many Latin American States had expressed their desire to secure a fair representation of Latin American States ; see : Chile (Doc. 2, G/7[i], 5) ; the Dominican Republic (Doc. 2, G/14[o], 11) ; Ecuador (Doc. 2, G/7[p], 13) ; Guatemala (Doc. 2, G/7[f][1], 3) ; Honduras (Doc. 2, G/7[m], 3) ; Mexico (Doc. 2, G/7[c][1], 10) ; Venezuela, Doc. 2, G/7[d][1], 13).

³² Uruguay, S.F., Doc. 2, G/7(a)(1), 13.

³³ Summary Report of 7th Meeting of Committee III/1 S.F., Doc. 338, III/1/14, 3.

³⁴ Netherlands, S.F., Doc. 2, G/7(j), 10.

³⁵ Liberia, S.F., Doc. 2, G/14(a), 2.

³⁶ S.F., Doc. 233, III/1/9, 1-2.

³⁷ See page 161.

the existence of such a provision ; thus, there may exist, in any concrete case, as many interpretations as the number of the Members present and voting. However, besides the outside consultation among the Members a practice has been developed by which in the case of necessity the President of the General Assembly calls upon the voting Members to take into consideration the existence of the above mentioned provision.³⁸

2) The relation between the two general criteria of this paragraph (a) " contribution to the maintenance of peace and security and to the other purposes of the Organization ", and b) " equitable geographical distribution "). If the first was the only criterion, then the small nations could hardly be represented in the Council. But, as it is not the only one, the existence of both criteria provides a more adequate way for fair representation. In comparing these two criteria with each other, it seems that the existence of the words " in the first instance ", after a comma,³⁹ at the head of the first criterion gives more force to the first one. However, the existence of the words " and to the other purposes of the Organization " within the first criterion strengthens the position of the second one. Because the purposes of the Organization, as per Article 1 of the Charter, are so various that every Member of U.N.; regardless of its size and its location, can contribute somehow to the promotion and maintenance of these purposes.

3) The axiom of " contribution to the maintenance of international peace and security " is to be considered from the point of view of time. Does it apply to the past, or to the present and future, or to both ? First should be analysed the exact meaning of the word " contribution " in this sentence. It may apply to both " ability " and " willingness ", with " ability " conveying " material " and " spiritual " ability. As far as " material ability " is concerned, of course no time factor, except the present, can be considered, because the past material ability is not important and the future will tell its own. As far as the " spiritual ability " is concerned, the time factor may play a role, because the spiritual ability cannot be created

³⁸ As was the case in the election of seven Vice Presidents of the Committees during the 3rd Session of the General Assembly, U.N., A/PV. 137, 3.

³⁹ This comma was added in Committee III/1, upon a suggestion of the Coordination Committee, S.F., Doc. 1048, III/1/57, 1 ; Doc. 668, III/1/35, 2-3 ; Report of the Rapporteur of Committee III/1, Doc. 1050, III/1/58, 3-4.

overnight. Decades are needed to present the "spiritual ability" of a Nation. But from the point of view of "willingness", it must be admitted that the purpose was, and should be, the present "willingness". Otherwise, many difficult questions arise. How far back does its effect apply? From what century and what year? What would be the position of new Members of the United Nations, namely the States who fought against the "United Nations" during the last War? This last question even applies to the neutral States. On the other hand, it is known that under the provision of Article 2 (1) of the Charter, all member States, regardless of the date of their admission, are entitled to equal rights and privileges. Moreover, one of the conditions of their admission is the recognition of being a "peace loving" State (Article 4). Therefore, the conclusion may be drawn that apart from "spiritual ability", all other meanings of the word "contribution" are to be considered from the point of view of present and future time.

No personal qualification is designed for the representatives of the members in the Security Council, nevertheless Article 28 (2) provides that each of the Security Council's members may, if it so desires, be represented by a member of the government or by some other specially designed representative. This provision facilitates the attendance of high officials of member States in the Council,⁴⁰ which, in the light of the importance of the issues under consideration, may be called a sound principle and which may carry some weight in solving problems.

The Membership in the Military Staff Committee and Two Other Commissions

Besides the provision of Article 47 (2) which provides that the Military Staff Committee "shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives", a new development with regard to the members represented in the Security Council may be found. This development is contained in a Resolution of the General Assembly concerning the establishment of a Commission to deal with the problems raised by the discovery

⁴⁰ Rule of Procedure of the Security Council (13) provides that "the Head of Government or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials."

of atomic energy, adopted on 13 February 1946.⁴¹ This resolution provides that the Commission "shall be composed of one representative from each of those States represented on the Security Council, and Canada when that State is not a member of the Security Council".

There is also the Commission for Conventional Armaments consisting of "representatives" of the members of the Security Council itself, following the Resolution of the General Assembly on the "principles governing the general regulation and reduction of armaments".⁴²

b. The Election of the Members of the Economic and Social Council

Article 61 (1) of the Charter, as found in the Dumbarton Oaks Proposals⁴³ provides that the Economic and Social Council "shall consist of eighteen Members of the United Nations elected by the General Assembly".

The size of the Council may be appreciated by considering the great diversity and complexity of the economic and social problems, the need for providing adequate geographical distribution, and the necessity of strengthening the force of the decisions—recommendations—of the Council upon the Members. It may be stated that a decision taken by a great number of the States is more likely to be universally accepted than recommendations of a few Members. Even the recent Argentinian proposal to increase the number of members to twenty-four⁴⁴ was based on the same type of reasoning.⁴⁵

The Charter does not provide a criterion either for the election of the members of the Economic and Social Council,⁴⁶ or permanency for the seats—the latter exists in both of the other Councils.⁴⁷ How-

⁴¹ U.N., A/64, 1 July 1946, 9.

⁴² U.N., A/64/Add.1, 31 January 1947, 65.

⁴³ Chapter IX, Section B.

⁴⁴ 3rd Session of the General Assembly, A/586; its proposed resolution, A/C, 283/74.

⁴⁵ This proposal led to the adoption of a recommendation by the General Assembly to the member States to consider the question and to communicate their views to the Secretary-General. A/PV.161, 46.

⁴⁶ For the proposals on the criteria for the election of the members of this Council see Report of Rapporteur of Committee II/3 to Commission II, S.F., Doc. 861/II/3/55(1), 9.

⁴⁷ There were also proposals at the S.F. that permanent seats be given in this Council to the permanent members of the Security Council, see Egyptian amendment, Doc. 2, G/7(q)(1), 10.

ever, eligibility for immediate re-election, as provided in Article 61 (2), and the political, economic and financial positions of the five Big Powers ⁴⁸ eliminate, in practice, the existence of this difference, at least for the time being. In all elections that have so far taken place, the membership of the five Big Powers has been secured.

In Article 61 (2), it is provided that six members of the Economic and Social Council shall be elected each year for a term of three years, and the detail of this arrangement is left to the General Assembly itself (Article 61 [3]).

c. The Election of Some of the Members of the Trusteeship Council

Owing to the fact that no provision was envisaged in the Dumbarton Oaks Proposals with regard to the Trusteeship Council, all arrangements for the composition of this Council were worked out at the San Francisco Conference.

The main general principle, in this connection, must be that some Organ, independent of the administering authorities, should consider the activities of the administering Powers in their respective trust territories. However, adequate opportunity must be given for the administering Powers to participate in such an arrangement in order not to be judged unheard.

Article 86 (1) of the Charter provides that the Trusteeship Council shall consist of the following Members of U.N. :

- 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 years 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.⁴⁹

⁴⁸ The Report of Committee II/3 to Commission II states as follows :

" It was agreed that for the Council to be a success it was essential that the important countries should be members, but that this matter could much better be left to the judgment of the General Assembly. To make it clear that continuing membership of some countries is anticipated." S.F., Doc. 861, II/3/55(1), 9.

⁴⁹ The composition of the Trusteeship Council in the United States (Doc. 2, G/26[c], par. 9), Chinese, (Doc. 2, G/14[i], par. 12) and French (Doc. 2, G/26[a]) drafts, was proposed to be consisted of (a) one each by the States administering trust territories, and (b) one each by an equal number of other States named (in French draft "appointed") for three years term by the General Assembly ; but the Russian amendment to the United States' proposed draft proposed the Council to consist of

There is no reference to the question of re-election of the elected members of this Council, therefore, it is left to the General Assembly to decide upon re-election when it comes up (Article 86 [2]).

The nature of the function of this Council and the personal qualifications necessary in the representatives justify their relatively long period of office—three years—and their eligibility for re-election. This secures the use of personal experience in a field which is practically a new one in international relations.

It should be noted that regardless of which Organ of the United Nations is competent to approve the Trusteeship Agreement—the General Assembly or the Security Council (for strategic areas)—the respective administering State is included among the members of the Trusteeship Council.

With regard to the last part of Article 81 which states that “ such authority, hereinafter called the administering authority, may be one or more states or the Organization itself ”, it is often interpreted that this permits also a non-member State to be an “ administrative authority ”. If this be so, the question arises as to how such an administering authority can be included among the members of the Trusteeship Council ? For in Article 86 twice, once in paragraph (1) and once in sub-paragraph (c), there is reference to the members of the Trusteeship Council as “ Members of the United Nations ”.

However, it appears that these two views are not inconsistent, because it is not definite, in the text of Article 86, whether all the “ administering authorities ” must be represented in the Council ; in fact, when the Organization itself, under Article 81, becomes an “ administering authority ” no one represents it in the Council. Moreover, the right of representation in the Council is not a right derived from being an administering authority, but, rather, it is one of the privileges of membership in the Organization itself.

Some General Aspects of the Question of Representation

Although the election of members of each of the three Councils was discussed separately, nevertheless, there are some general principles relating to all of them which should be noted in passing :

- (a) one each by the States administering trust territories, and
- (b) one each by the permanent members of the Security Council not administering trust territories, Doc. 2, G/26(f).

I) In the composition of the Organs of U.N. a general principle may be observed that there is to be no discussion without representation of the Member of U.N. concerned. The existence of this principle throws light on the principle of the limited membership in the Councils and subsidiary organs of U.N. Article 31⁵⁰ provides :

Any Member of the United Nations which 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.

While this Article, — by employing the word “may”, — leaves it to the discretion of the Security Council to accept such a participation, Article 32 makes it mandatory upon the Security Council if the State is “a party to a dispute under consideration”.⁵¹

This principle, as far as the activities of the Security Council are concerned, is once more specially provided in Article 44 which deals with the use of force. This formula, as stated by Mr. Paul Boncour, Rapporteur of Committee III/3, in Commission III of the San Francisco Conference, was a compromise formula between the view of those who advocated the power of the General Assembly to intervene in the decision of the Security Council with regard to the use of armed force and those who were against such intervention on the ground of effectivity.⁵²

Article 69 provides that “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”.⁵³ However, the Rules of Procedure of the Economic and Social Council do not include any such relevant provision except Rule (14) which provides that :

A Member of the United Nations, a specialized agency or a non-governmental organization in Category A, which has requested the inclusion of an item in the

⁵⁰ See also the Rules (37 and 38) of Procedures of the Security Council.

⁵¹ Article 47(2) provides that the Military Staff Committee “shall” invite any Member of the United Nations not permanently represented on 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”. Also see Rules of Procedure of Atomic Energy Commission (Rules 28, 29) and Rules of Procedure (28, 29) of Commission for Conventional Armaments.

⁵² S.F., Doc. 943, III/5, 9-12.

⁵³ This principle of representation has been also extended, in certain cases, to non-member States (Article 32), specialized agencies (Article 70), and, even to some non-governmental organizations (Article 71).

provisional agenda, shall be entitled to present its views through its representative at any meeting of the Agenda Committee at which the question of the inclusion of the item is discussed.

If this is merely an application of Article 69, it must be said that it is a very restricted interpretation. This might be defended on the ground that owing to the nature of the economic and social questions, too many Members may consider themselves concerned with a good many questions. However, the present formula still seems to be too restrictive.

While no similar provisions exist in the articles of the Charter relative to the procedure of the Trusteeship Council, the Rule (12) of Procedure of the Trusteeship Council provides for such a participation, without vote, if such a Member has proposed that the given item be included in the agenda.

II) The holding of the regular annual Session of the General Assembly and the time of its convening is closely linked with the term of office of the members of the three Councils.

As far as the First Session of the General Assembly was concerned, the General Assembly had elected the respective members of the Councils in January 1946, during its First Session. When it decided to hold its next Session in September 1946, two alternatives were open, namely : that the next Session be the Second Session of the General Assembly, or it be considered as the Second Part of the First Session. In the former case the question could arise that in spite of the text of Article 23 (1), could the General Assembly hold two regular Sessions during one year—1946 ? In the latter alternative the question was whether the General Assembly could elect twice, during one year, the members of the Councils to the same office to be effective at a different time ? The General Assembly chose the second alternative as a “ lesser evil ”.

Another question was whether the elected members of the Council should immediately take office, or should an interval exist between the election and the actual filling of posts in the respective Councils ? So far as this question was related to the First Session, if such an interval were not provided for, the term of office of the members elected in January, 1946, would have to be either six months more or six months less than was originally provided, i.e., one, two and three years.

It was argued that if such an interval period existed, there would be a "lame duck" period during which the members of the Councils, (except the Security Council in which no immediate re-election is provided) in the case of non-re-election, would be aware of their end of office. During this interval period members of the Council might be forced to consult with those who had been elected, but whose term of office had not yet begun. Therefore, it was stated that the existence of such an interval might not give the best results.⁵⁴ Against this argument, it was stated that such an interval might be all advantageous for both the members and U.N. by allowing time, especially to the small nations, to arrange the necessary representation at the headquarters of U.N.⁵⁵ It was even stressed from the constitutional point of view that some of the countries, like the United States of America, needed certain constitutional procedure for such an appointment.⁵⁶

The General Assembly, in the end, unanimously approved ⁵⁷ the following text of Rule 87 to be inserted in its Rules of Procedure :

Rule 87. The term of office of members shall begin on 1 January following their election by the General Assembly, and shall end on 31 December following the election of their successors.

From an organizational point of view, this rule seems to be a sound one, but it does need improvement in practice. In election of the members of the Councils, the General Assembly exercises a great discretionary and guiding power in regard to the general policy and direction of the respective Councils. If the elections take place during the early part of the Session—held in September so far—a period of 3 to 4 months will elapse before the new members take office. This long period is neither necessary nor expedient from the point of view of the General Assembly. During the Session of the General Assembly many debates take place and many resolutions are adopted which are devoted mainly to the future events and

⁵⁴ See Reports of the Sixth Committee on the "Terms of Office of Members of Councils", U.N., Doc. A/38, First part of First Session of the General Assembly; also U.N., Doc. A/182, Second Part of First Session of the General Assembly.

⁵⁵ The view expressed by the Delegate from New Zealand, 28th Meeting, O.R.G.A., 388.

⁵⁶ The view expressed by the Delegate from the U.S.A., *Ibid.*, 465.

⁵⁷ O.R.G.A., Second Part of First Session, Vol. 4, 964. With regard to the members of the Councils who were elected during the First Part of First Session, the supplementary Rule (J) was approved.

policies of the Organization rather than to the past. Through these debates and continuous exchanges of views among the Members, the feelings and policies of each Member become better known and understood by the others than during an inactive period preceding the opening of the General Assembly's Session. Thus in any election in the late part of a Session the representatives can be better enlightened to choose a suitable member for a given post.

Of course it may be said that early election of the Members of the Council in each Session offers certain practical advantages such as to relieve the Delegates from electoral jockeying. However, it seems that more can be gained for both the Organization and the member States by postponing the election of members of the Councils to the latter part of the General Assembly's September Session, in order that a question be appropriately treated. The following table shows the times of the election of the members of the Councils during the first three regular Sessions of the General Assembly.

The Session, 1946, October 23rd to December 15th				
Council	Number of elected members	Date	Number of ballots	Days before taking office
Security Council ⁵⁸	3	Nov. 19	1	42
Economic and Social Council ⁵⁹ . . .	5	Nov. 19	—	42
	1	Dec. 12	9	18
Trusteeship Council ⁶⁰	2	Dec. 14 ⁶¹	1	—
The Session, 1947, September 16th to November 29th				
Security Council	2	Sept. 30	1	92
	1	Nov. 13	12	47
Economic and Social Council	4	Oct. 1	1	90
	1	Oct. 1	2	90
	1	Oct. 1	4	90
Trusteeship Council	1	Nov. 13	8	—
	1	Nov. 13	10	—
The Session, 1948, September 21st to December 12th				
Security Council	3	Oct. 8	—	82
Economic and Social Council	6	Oct. 8	—	82

III) The Charter does not provide for any nomination for the election of the members of the Councils, and the Rules of Procedure of the General Assembly provide for the use of the secret ballot and forbid any nomination in the election of the members of the Councils.⁶² This general principle applies also to any withdrawal in favour of

⁵⁸ For 1946 see O.R.G.A., Second Part of 1st Session, p. 976.

For 1947 see O.R.G.A., Second Session, pp. 321-329, 337, 749.

For 1948 see Resolutions of the General Assembly.

⁵⁹ For 1946 see O.R.G.A., Second Part of 1st Session, pp. 978, 979, 1000-1006, 1222-1231.

For 1947 see O.R.G.A., Second Session, pp. 332-333.

For 1948 see Resolution of the General Assembly.

⁶⁰ For 1946 see O.R.G.A., Second Part of 1st Session, p. 1322.

For 1947 see O.R.G.A., Second Session, pp. 334-337, 751-753.

⁶¹ The relevant trusteeship agreements were approved on December 13th, 1946 —Resolution 63(11).

⁶² This Rule (82) was adopted by the General Assembly, upon the recommendation of the 6th Committee, by a vote of 25-18 with 8 abstentions, O.R.G.A., 1st Part of 1st Session, p. 296.

a specific country.⁶³ However, it appears that there exists an inconsistency between this principle and Rule 84 of Rules of Procedure of the General Assembly, for the latter stipulates :

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot the majority required in Rule 78 or 79 shall be elected. If the number of candidates obtaining such majority is less than the number of persons or members to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, the number of candidates being not more than twice as many as the places remaining to be filled.

One may ask why in the second ballot the voting is to be restricted to a certain number—"twice as many as the places remaining to be filled"? Is not that a nomination? It is a nomination not by one but by several. It may be said, as a matter of fact that it is more severe than a nomination. Because that number of States—"twice as many as the places remaining to be filled"—which receive the highest number of votes in the first ballot, immediately after those which received the required number of votes to be elected, automatically become, under this rule, the only States eligible for being elected in the succeeding ballots. The gravity of the matter becomes more clear when there exists only one more member to be chosen—a case which often occurs. Then, the General Assembly can make no other choice than one out of the two. Sometimes, it is embarrassing for a representative to choose one of two members especially when both are almost equally respected. There are several such examples—(see the case of Australia and Canada,⁶⁴ the case of Yugoslavia and New Zealand,⁶⁵ both of the cases happened on one day, the case of Ukrainian S.S.R. and India,⁶⁶ and the case of Norway and Costa

⁶³ The Remark of the President, O.R.G.A., 2nd part of 1st session, Vol. 4, p. 979.

⁶⁴ During the election of the members of the Security Council at the beginning of the First Session of the General Assembly, Australia and Canada were both, under Rule (84), candidates for the last remaining seat of the Security Council. Different balloting did not give either side the required vote until Canada voluntarily withdrew its candidacy, with Australia then receiving the necessary vote. O.R.G.A., 82-86.

⁶⁵ A deadlock was reached when Yugoslavia and New Zealand, having received the highest number of votes on the first ballot had both become candidates for the 18th seat of the Economic and Social Council. After a series of balloting to overcome the deadlock, New Zealand withdrew its candidacy and, consequently, Yugoslavia was elected; *Ibid.*, 89-97.

⁶⁶ After 12 ballots were cast India withdrew its candidacy for the seat in the Security Council. O.R.G.A., Second Session, 321-327, 329, 337 and 749.

Rica).⁶⁷ In order to overcome such a deadlock, one of the members has to withdraw, as has already frequently happened, causing an indirect nomination. Sometimes the solution has been sought through the postponing of the election, a practice which, considering the interdependence among the membership in the different Organs, is not a sound solution. In fact at one time the General Assembly itself pronounced its opposition to this practice⁶⁸ during the election of a member to the Security Council.

Thus, it seems that the formula embodied in Rule of Procedure (84) of the General Assembly is in contradiction to the principle of Article 18 of the Charter which provides for the election of members of the Councils by a two third majority vote.⁶⁹

d. The Appointment of the Secretary-General

The importance of the office of the Secretary-General within U.N. Organization⁷⁰ gives especial significance to the method of his appointment.

Moreover, his political functions are mainly concerned with two important Organs of U.N.—the General Assembly and the Security Council. Therefore, it seems natural that the Security Council should show a keen interest in the election of such an officer.

The Dumbarton Oaks Proposals provided in Chapter X, paragraph (1) that :

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.

When the matter was under consideration at the San Francisco Conference, some doubt was expressed about the desirability of having the authority of the General Assembly dependent upon the recom-

⁶⁷ After 10 ballots were cast, Norway withdrew its candidacy for the seat in the Trusteeship Council, with Costa Rica becoming the only candidate. O.R.G.A., Second Session, 334-337, 751-753.

⁶⁸ O.R.G.A., Second Session, 322-324.

⁶⁹ A practice is followed according to which abstention (expressed by a blank ballot) should not be counted among the votes cast, whereas non-valid ballots should be. Thus a delegate may, in appearance, cast his vote without voting. See the 65th and 66th Plenary Meetings, O.R.G.A., Vol. 4, 1418-1420.

⁷⁰ See Chapter V.

mendation of the Security Council.⁷¹ It was proposed that this election should take place in the General Assembly from a panel of three candidates submitted by the Security Council.⁷² With the aim of excluding the possible use of the veto and of emphasising the responsibility of the Secretary-General to the different Organs which he is to serve, it was also proposed that the Secretary-General be elected by the General Assembly with confirmation necessary from a majority of seven members of the Security Council, and a majority of ten members of the Economic and Social Council.⁷³

However, the main objection to the present system was focused upon the application of the rule of unanimity among the Big Powers in the Security Council for the approval of the Security Council's recommendations in this matter. The application of this rule had appeared to a number of delegates to be a limitation on the appropriate division of powers.⁷⁴ Many other arguments were advanced claiming that the Secretary-General should be immune from the veto power of one State if he is to serve not merely the Security Council, but also the other Organs.⁷⁵ In the case of such a requirement, it was feared, a nonentity might be chosen rather than a man of outstanding talent.⁷⁶ On the other hand, it was stated that the nomination of the Secretary-General was not a procedural matter, but rather a substantial one.⁷⁷ It was considered a vital issue for the Secretary-General to have the confidence of those members who would be especially responsible for the maintenance of peace.⁷⁸ Also, the gaining of such confidence of the permanent members would be in the interests of the Secretary-General's authority, and in the interest of the successful prosecution of his duties.⁷⁹ Moreover, it was pointed out that the continuity of the term of office of the permanent members places them in a better

⁷¹ Comments of Honduran Government.

⁷² Uruguayan proposal, S.F., Doc. 238, 4.

⁷³ Australian proposal, S.F., Doc. 2, G/14(1), 4.

⁷⁴ Summary Report of 4th Meeting of Committee II/1, Doc. 295, II/1/11.

⁷⁵ Australian Delegate's view, S.F., Doc. 975, III/1/50, 5 ; Belgian Delegate's view, *Ibid.*, 4.

⁷⁶ Netherland delegate's view, *Ibid.*, 4.

⁷⁷ U.S.S.R. Delegate's view, S.F., Doc. 666, II/1/26(1)(a), 2 ;

French Delegate's view, Doc. 975, III/1/50, 4 ;

U.K. Delegate's view, *Ibid.*, 5.

⁷⁸ U.K., *Loc. cit.*

⁷⁹ U.S.S.R. Delegate's view, *Ibid.*, 5.

position than the non-permanent members to judge the work of the Secretary-General.⁸⁰ Finally, although the Security Council would nominate the Secretary-General, the General Assembly could still exercise a veto over the choice.⁸¹

After a long debate the question was transferred from Committee II/1, which had adopted a formula under which a majority of seven members of the Security Council would suffice to adopt its recommendation on the matter,⁸² to the Steering Committee. The latter, in its turn, referred the case to Committee III/1 which was dealing with the authority and functions of the Security Council, and was therefore considered a more competent body to decide upon the question than Committee II/1.⁸³

After the approval of the principle proposed in the Dumbarton Oaks Proposals by Committee II/1 (Art. 97),⁸⁴ the length of the term of office of the Secretary-General and his eligibility for re-appointment took on special importance. The Charter does not make any provision on these two important questions—although there had been a proposal on them. The Preparatory Commission of U.N. recommended in its report the following principles :⁸⁵

5. The terms of the appointment of the Secretary-General should be such as to enable a man of eminence and high attainment to accept and maintain the position.

6. The first Secretary-General should be appointed for five years, the appointment being open at the end of that period for a further five-year term.

7. The General Assembly and the Security Council should discuss both the nomination and the appointment of the Secretary-General at private meetings, and a vote in either body, if taken, should be by secret ballot.

These two—the fifth and seventh—general principles and the particular one—the sixth—were approved by the General Assembly on January 24, 1946.⁸⁶ On February 1, 1946, Mr. Trygve Lie was appoint-

⁸⁰ Indian Delegate's view, S.F., Doc. 984, III/1/52, 1-2.

⁸¹ U.S. Delegate's view, *Ibid.*, 2.

⁸² Report of Rapporteur of Committee II/1, S.F., Doc. 666, II/1/26(i)(a), 2.

⁸³ Report of Rapporteur of Committee III/1, S.F., Doc. 1050, III/1/58, 18. Also see Report of Rapporteur of Commission II to the Plenary Session, S.F., Doc. 1180, II/18(1), 2.

⁸⁴ It should be noted that the word "election", proposed in the Dumbarton Oaks Proposals, has been changed to the word "appointment" in the text of the Charter.

⁸⁵ U.N., Doc. P.C./20, 23 Dec. 1945, 81.

⁸⁶ Resolution, Doc. A/64, 1 July 1946, 14.

ed ⁸⁷ by the General Assembly, upon nomination by the Security Council, as the first Secretary-General of the United Nations.

At the same time the General Assembly approved a principle presented in the report of the Preparatory Commission,⁸⁸ by which the General Assembly and the Security Council, instead of the General Assembly alone, "are free to modify the term of office of future Secretaries-General".⁸⁹ The General Assembly also approved the stand of the Preparatory Commission ⁹⁰ by which this appointment and its renewal would require only a simple majority of the members of the General Assembly present and voting, "provided that this should be made clear when the original appointment is made".⁹¹ Moreover, the Resolution reads that :

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. Both nominations and appointment should be discussed at private meetings, and a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot.⁹²

Of course, the "recommendation" of the Security Council on this matter, actually a "nomination", leaves the General Assembly free to accept or to reject it. If the latter body rejects it, the Security Council has to make a further recommendation until both bodies come to an agreement.⁹³

Although no personal qualifications for the candidate for this office are provided for in the Charter, owing to the political importance of the duties of the Secretary-General, it seems very advantageous that he be chosen from among Statesmen.⁹⁴

An important aspect of the nomination for the post of Secretary-General by the Security Council is the relationship between this

⁸⁷ *Ibid.*, 2.

⁸⁸ *Op. cit.*, p. 87.

⁸⁹ Resolution, *Op. cit.*, par. 4(a).

⁹⁰ Resolution, *Op. cit.*, par. 20-21.

⁹¹ Resolution, *Op. cit.*, par. 4(c).

⁹² Resolution, *Op. cit.*, par. 4(d).

⁹³ See a similar interpretation given by the President of Commission 11 at the San Francisco Conference, Verbatim Minutes of First Meeting of Commission 11, Doc. 719, 11/8, pp. 6-7.

⁹⁴ Mr. RANSHOFEN-WERTHEIMER has also supported this view, *The International Secretariat* (New Haven, 1945).

nomination and the use of veto by any of the permanent members of the Council. Since the Charter definitely provides for the appointment of a Secretary-General, therefore, the Security Council and the General Assembly must come to an agreement on this appointment within a reasonable time. This presupposes that no permanent members of the Council persistently block the recommendation of the Security Council on the issue. Consequently, it may be assumed that this is a specific legal restriction upon the use of veto in this Council in connection with the appointment of the Secretary-General.

The development of this principle in other fields may be very useful to modify possible evils of the so-called absolute "veto" power. One may say that the Resolution of the General Assembly on 3 November, 1948, with regard to the conduct of the Big Powers is a step in this direction.⁹⁵

e. The Election of the Judges

The importance of the election of the Judges may be appreciated fully if one considers that the success of the Court is very closely related to the quality of the Court. In the last analysis the quality of the Court is determined by the quality of its members, as well as by the laws and principles it applies.

The present I.C.J., even though recognized as a Principal Organ of the general international Organization, has jurisdiction only in cases that are voluntarily submitted to it by the States themselves. This weak stage in the development of the judicial machinery of the world may be corrected to some extent by setting up a highly qualified Court in order to gain the confidence and respect of as many Nations as possible.

In connection with the election of the judges two different steps must be considered, namely : the nomination of the judges, and the election of the judges from among the nominees.

Nomination of the Judges

The Statute of P.C.I.J. had employed a nomination system for membership used by the Permanent Court of Arbitration. This

⁹⁵ Resolution 190 (III).

procedure asked for nomination from national groups rather than direct nomination from the respective Governments.

During the consideration of this question in the United Nations Committee of Jurists and at the San Francisco Conference, two different principles were considered at length, namely: should the previous system of the nomination of the judges, as exercised in P.C.I.J., be retained, or should a new system be provided? The new system could allow the nominating power to be exercised directly by the respective Government of each country, with or without a previous consultation with certain national groups.

The latter principle, if it was accepted, would have provided that each Government which was a party to the Statute of the Court should nominate a candidate. This candidate would be a national and would automatically, by virtue of his nomination, become a "member" of the Court. Out of the "members" of the Court, nine persons would be elected as judges of the Court by the ordinary machinery of election. Those members not elected as judges would be available at all times to serve as additional or supplementary judges or to serve as *ad hoc* judges in cases in which their countries were involved as litigants but did not have one of their nationals as a regular judge on the Court.⁹⁶

Two main reasons were given for this proposal:

- 1) To reduce the number of regular judges of the Court without prejudicing the principle of geographic representation.
- 2) To give full provision for the possibility of judges being absent through illness, leave or other causes.

This method of nomination of the judges directly by the respective governments was favoured by a vote of 5 to 4 in the Sub-Committee of the United Nations Committee of Jurists.⁹⁷ However, the vote in the Committee itself was equally divided—16 to 16, with 8 abstentions and one absence, with two Big Powers, France and the U.S.A., being in favour of the retention of the present system and three others,

⁹⁶ As explained by Mr. Fitzmaurice (U.K.) in the Sub-Committee of the United Nations Committee of Jurists, Jurist 32, G/24, 1-2; for the text of the proposal see S.F., Jurist 14, DP/4. Also see the Report of the Informal Inter-Allied Committee of Jurists, *A.J.I.L.*, Vol. 39, 1945, Supplement, 1-42, (Par. 129-131).

⁹⁷ S.F., Jurist 32, G/24, 5.

the United Kingdom, China and U.S.S.R., being in favour of direct nomination by the governments.⁹⁸

In the United Nations Committee of Jurists as well as in the Committee IV/I of the San Francisco Conference, preference for the existing system of nomination over the direct nomination was argued for on the grounds that :⁹⁹

- 1) It increases the respect of peoples towards the Court.
- 2) It permits the nomination of nationals of countries other than their own.
- 3) It has a broader basis of consultation.
- 4) It had worked out satisfactorily in the past.
- 5) Judges nominated by governments would be more likely to be influenced by them.

Meanwhile a compromise plan, introduced by the Delegate from Turkey to the United Nations Committee of Jurists, was transmitted by the Committee's report to the Committee IV/I at San Francisco.¹⁰⁰ According to this compromise suggestion, any government would be empowered to rule on the transmission of the nomination of candidates decided upon by the national groups. In case of a rejection, however, such act would disqualify that country from nominating a candidate for the election in question.¹⁰¹

In the end, the Committee IV/I of the San Francisco Conference, having no definite proposal from the Committee of Jurists on the issue, affirmed the maintenance of the principle of the existing system of nomination of the judges by a vote of 32 to 8.¹⁰²

The Size of the Court

The question of the size of the Court was also discussed at length in the San Francisco Conference.

The number of judges in P.C.I.J. had been raised to 15 by 1929. The report of the United Nations Committee of Jurists preferred the same number of judges for I.C.J.¹⁰³

⁹⁸ S.F., Jurist 57, G/45, 6-7.

⁹⁹ See S.F. Jurists : 32, G/24, 4-6 ; 57, G/45, 3-5. Also S.F., Doc. 581, IV/1/44, 3.

¹⁰⁰ S.F., Jurist 86, G/73, 4.

¹⁰¹ S.F., Jurist 57, G/45, 9.

¹⁰² S.F., Doc. 418, IV/1/32, 1-2.

¹⁰³ S.F., Jurist 86, G/73, 3.

The size of the Court was considered, in the San Francisco Conference, from the point of view of avoiding any possible large number of dissenting opinions, obtaining quality decisions, providing access to highly qualified judges, establishing fair representation of the different legal systems of the world as well as fair representation of great and small Nations.¹⁰⁴

At the San Francisco Conference, the view of the United Nations Committee of Jurists to keep this number at fifteen,¹⁰⁵ no two of whom to be nationals of the same States, was affirmed. There was a provision that no member of the Court could exercise any political or administrative function, or engage in any other occupation of a professional nature.¹⁰⁶ It was also provided that the elected judges should be personally qualified and also as a whole should represent the main forms of civilization and the different principal legal systems of the world.¹⁰⁷

The Election of the Judges from the Nominees :

As has been seen previously, the second step towards filling judgeship seats is the election of the judges from among the nominees. The former step is carried out on the national level and is less concerned with international affairs, while the second step is directly exercised by the State parties to the Statute of the Court in a collective way through the general world Organization.

The election of the members of P.C.I.J. according to Article 8 of its Statute, was held by the Assembly and the Council of the League of Nations, independently of one another.

The Dumbarton Oaks Proposals referring to the functions of the General Assembly provided that :

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.¹⁰⁸

¹⁰⁴ See S.F., Jurists : 32, G/24 ; 57, G/45. Also see : the Report of Informal Inter-Allied Committee of Jurists, *Op. cit.*, par. 123 ; Sir CECIL J.B. HURST, "Permanent Court of International Justice", the *Law Quarterly Review*, Oct. 1943, 325 ; HUDSON, M.O., *The Permanent Court of International Justice, 1920-1942*, 148.

¹⁰⁵ Article 3 (1) of the Statute of I.C.J.

¹⁰⁶ Article 16 (1) of the Statute of I.C.J.

¹⁰⁷ Article 9 of the Statute of I.C.J.

¹⁰⁸ Chapter V, Section B, par. 4.

It did not mention anything about the participation of the Security Council in such an election. However, the report of the United Nations Committee of Jurists stated it observed such a participation from what seemed to be the " spirit of the Dumbarton Oaks Proposals ".¹⁰⁹

But, the voting procedure of the Security Council, with the veto power granted to each one of the five Big Powers, had a great influence on the subject.¹¹⁰

The second method which was concurrence of the General Assembly and the Security Council on the election of the judges was supported on the following ground.¹¹¹

1. The system had operated successfully with regard to P.C.I.J.

2. It offered a desirable system of checks and balances and an additional guarantee of the election of competent judges.

3. As the Security Council would have the responsibility for the maintenance of peace and security, it should participate in the election of the judges.

4. There could be no derogation of the principle of democracy since no judge could be appointed unless elected by the General Assembly.

5. It would strengthen the position of the Court in both the General Assembly and the Security Council.

Upon the suggestion of the Sub-Committee, to which the issue was referred for further consideration,¹¹² a compromise plan was approved by Committee IV/1 of the San Francisco Conference and embodied in Articles 8-12 of the Statute of the Court. According to this plan the members of the Court are to be elected by the General Assembly and the Security Council by " an absolute majority of votes in the General Assembly and in the Security Council ", and as far as the Security Council is concerned, it " shall be done without taking into consideration any distinction between permanent and non-permanent members of the Security Council ".¹¹³

According to the provision of Article 4 (3) of the Statute of the Court :

¹⁰⁹ See its reports, S.F. Jurist 86, G/73, 1.

¹¹⁰ For the Delegates advocating the different principles on the methods of the election see S.F., Jurist 32, G/24, 14 ; Doc. 418, IV/1/32, 2-3 ; Doc. 451, IV/1/33, 1-2.

¹¹¹ See S.F., Jurist 32, G/24, 15 ; and Doc. 451, IV/1/33, 1.

¹¹² S.F., Doc. 451, IV/1/33, 1-2.

¹¹³ S.F., Doc. 495, IV/1/B/1 ; Doc. 548, IV/1/42, 1-2.

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 special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Furthermore, the prevailing idea of not re-electing members to an international organ all at once is applied also to the election of the judges of the Court ¹¹⁴—five judges to be elected every three years.¹¹⁵

In Practice, a question arose with regard to the interpretation of Article 11 of the Statute which reads as follows :

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.

Does the word “meeting” employed in Article 11, mean a meeting to be held the next day or any meeting after the first one ? ¹¹⁶

In the latter part of the First Session of the General Assembly, the General Assembly approved the present Rule of Procedure (99a) on the basis of the opinion expressed by the Sixth Committee. This rule was also approved by the Security Council.¹¹⁷ This opinion read as follows :

5. The Sixth Committee is of opinion that, in each of the successive “meetings” referred to in Article 11, balloting should continue until the electoral body concerned has completed a full list for all seats to be filled. The concurrent “meetings” of the General Assembly and the Security Council will then be followed by comparison of the lists of judges thus independently elected. If three such meetings, followed by these comparisons, do not result in the election, by agreement between the General Assembly and the Security Council, of judges for all the seats to be filled, a joint conference may then be held pursuant to Article 12. ¹¹⁸

With regard to the provisions of Article 12 of the Statute another question arises. Does this Article make it mandatory upon the

¹¹⁴ See Mr. Fitzmaurice's view (U.K.), S.F., Jurist 19, G/14, 5 ; proposed plan in the U.S. proposal, Jurist 57, G/45, 10 ; the report of the United Nations Committee of Jurists, Jurist 86, G/73, 7.

¹¹⁵ Article 13 (1, 2) of the Statute. However, on the merit of this method see the view of the Belgian Delegate, S.F., Jurist 64, G/51, 3.

¹¹⁶ See O.R.G.A., First Part of First Session, 344-345.

¹¹⁷ U.N., Doc. A/314, 1947.

¹¹⁸ Report of the Sixth Committee, U.N., Doc. A/191.

General Assembly and the Security Council to hold the joint conference ? President Spaak, during the First Part of the First Session of the General Assembly, ruled upon the permissive interpretation of this Article, when, after a third " meeting " was over, still one seat of the Court was unfilled.¹¹⁹

SECTION 5

The Budgetary Power of the General Assembly

The General Aspect of the Question

One of the most important functions and powers of the General Assembly, with regard to U.N. Organization as a whole and to the individual Organs, is its unshared budgetary " power " ¹²⁰ as provided for in Article 17 (1, 2) of the Charter in the following language :

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.¹²¹

The Charter nevertheless says very little more on this subject. It may be said that it consciously leaves the door open for development in practice.¹²²

The importance of this point can be seen more clearly, if the history of the development of national institutions is noted. These evolutions have led to the stage that the most representative bodies are generally found in control of the purse. And whichever body controls the purse rules the others. In the League of Nations also the Assembly had controlled the purse, though both the Council and Assembly has almost an identical jurisdiction.¹²³

¹¹⁹ O.R.G.A., First Part of the First Session, 348.

¹²⁰ See BRIERLY, J.L. "The Covenant and the Charter", *B.Y.B.I.L.*, 1946, 83-94.

¹²¹ In the Dumbarton Oaks Proposals the contents of both of these two paragraphs were written as follows :

" The General Assembly should apportion the expenses among the members of the Organization and should be empowered to approve the budgets of the Organization." (Par. 5, Section B, Chapter V.)

¹²² See Wilfred JENKS, "Some Constitutional Problems of International Organizations", *B.Y.I.L.*, 1945, p. 60-61.

¹²³ See pages 12-15.

The General Assembly, in possessing these exclusive powers, takes on a characteristic feature of a national Parliament within the community of Nations.

However, the importance of this power should not be overestimated because of the fact that U.N. is completely dependent upon the financial contribution of its Members, similar to the budgetary status of its precedent ¹²⁴—the League of Nations—and to the Confederation of the American States before the adoption of the Federal Constitution.

Policy-Making Authority and Budgetary Power

As far as the Organs of U.N. themselves are concerned, there exists a very important relation between policy-making authorities and budgetary power. The Charter decentralizes the policy-making power among the different Principle Organs while it entrusts the purse to only one Organ, the General Assembly.

Though, so far, the rules of conduct for financial and budgetary questions do not tend to show up the day by day difficulties which might arise because of this position, one day it might be a matter of grave concern to the Organization.¹²⁵ On certain occasions the General Assembly has exercised this authority openly. For example, in the case of the payment of the travelling expenses and daily subsistence allowances to members of the Economic and Social Council's Commissions and Sub-Commissions, the recommendation of this Council was rejected by the Fifth Committee of the General Assembly on November 13, 1946.¹²⁶ Moreover, the schedule of meetings of the Economic and Social Council's Commissions, prepared by its Interim Committee,¹²⁷ was critically reviewed by the Fifth Committee of the General Assembly, owing to the heavy budgetary implications. The acting President of the Council, reminding the Committee of the previous careful studies of the proposed item, expressed his view that the Council had constitutional authority within the limit

¹²⁴ On this question see "How can the United Nations Have Its Own Sources of Income : Report by Commission to Study the Organization of Peace...", *Changing World* (February 1949).

¹²⁵ See Report of the 5th Committee to the Second Session of the General Assembly, U.N. Doc., A/493, which refers to a statement of the Assistant Secretary-General for Administrative and Financial Services, on behalf of the Secretary-General, that the constitutional basis of the Councils' demands be clarified.

¹²⁶ U.N., Doc. A/C. 5/67, par. 68.

¹²⁷ U.N., Doc. A/C. 5/161.

of its functions. Finally the Fifth Committee accepted a proposal from the United States Delegate that only a global figure should be approved for the meetings of the Council and its Commissions. Meanwhile, the Council should be allowed, by reviewing its programme for 1948, to keep the relevant expenditures within that limit.¹²⁸

In order to discuss this question briefly, two general principles which are clearly observable may be pointed out. The first principle is that whoever is duly authorized to make policy and to act is also, legally and logically, entitled to have access to the necessary ways and means to discharge this responsibility. This is the position of the individual Organs of U.N. The second principle is that whoever is duly authorized to "consider" and to "approve" a budget is also entitled, legally and logically, to consider and approve the financial implications of that policy in order to make sure that such implementation is made in the most effective and economic way. This is the position of the General Assembly under the provisions of Article 17 (1) of the Charter. However, the General Assembly is also entitled to have access to the necessary ways and means to discharge its responsibilities adequately under this provision. This binds the policy-making bodies to make their assistance available to the General Assembly on this matter in so far as the essential purposes of the Organizations are not in danger.¹²⁹

The two above-mentioned principles with regard to the budgetary aspect of the decisions of policy-making authorities, apply, of course, also to the Organization's relation to its Members. This emphasises the obligatory character of the provision of Article 17 (2) in connection with the contribution of the Members to the budget of the U.N. as appropriated by the General Assembly.¹³⁰ This point takes on an

¹²⁸ Report of the Fifth Committee to the General Assembly's Second Regular Session, U.N., Doc. A/498. Also see the case of holding the Conference on Conservation and Utilisation of Resources in a place outside the interim headquarters, Report of the 5th Committee, A/798, December 10, 1948, pp. 6-7.

¹²⁹ See the Report of the Preparatory Commission of U.N. which states : "Financial consideration should be given full weight in the formulation of policy, but financial controls ought not to be used to frustrate or hinder the execution of policies duly agreed. These controls are intended to assist in the orderly and economical conduct of the affairs of the United Nations, and should not be regarded as negative in character." U.N., PC/20, 23 December 1945, p. 106.

¹³⁰ See Wilfred JENKS, *Op. cit.*, 62.

Second Report of Rapporteur of the Committee II/I to Commission II of San Francisco Conference states in this connection that in approving this formula the

extreme importance with regard to the financial implications of some Commissions and Committees set up by the General Assembly as subsidiary organs of that body.¹³¹

Returning to the requirement of the policy-making bodies to make their assistance available to the General Assembly in order to facilitate the consideration and the approval of the budgetary implications of any concrete project within the whole U.N. budget, the Rules of Procedure of the General Assembly (112), of the Economic and Social Council (Rule 30), and of the Trusteeship Council (Rule 65) provide that before any proposal involving expenditure from U.N. funds is approved by the respective bodies, a summary report of the financial estimate of the project must be made available to that Organ.¹³² However, no similar rule is provided in the case of the Security Council. The lack of this rule for the Security Council might be a result of the nature and the urgency of the questions brought before this Council. But the general Rule (38) of the Financial Regulations of U.N., approved by the General Assembly, does not provide any exception to its generality.¹³³ Nevertheless, Rule (39) of the Security Council's Rules of Procedure may serve this purpose. It provides for the possibility of supplying the Council with "information, or to give other assistance in examining matters within its competence" by any "members of the Secretariat or other persons".

Formulation, Consideration and Approval of the Budget

There are three stages in making a budget: to "formulate", to "consider", and to "approve" it.

Committee took into account the view of the Advisory Committee of Jurists that this obligation should be clearly stated in the Charter, S.F., Doc. 1092 II/1/39, 2. Also see the approved Report of the Rapporteur of Commission II to the Plenary Session, S.F., Doc. 1180, II/18(1), 2.

¹³¹ See the debate in the Plenary Meetings of the General Assembly with regard to the financial implications of the Korean and the Balkan Commissions, and with regard to the Interim Committee which were set up by the General Assembly and were challenged as being unconstitutional, A/PV 186, 11 December 1948, pp. 161, 166.

For a similar position in 1947, see O.R.G.A., Second Session, 1205-1206, and Reports of the Fifth Committee: Docs: A/415, A/461, A/463, and A/747.

¹³² According to the Resolution (175, VII) of the Economic and Social Council, adopted at its 7th Session, any project entailing expenditures which cannot be met within the current budget will not be begun within the current financial year, except in the case of "exceptional urgency", and "a specific indication to the Secretary-General to that effect shall be included in the resolution approving such a project", U.N., Doc. A/625,

¹³³ For the authority of the Secretary-General on this matter see Chapter V.

The General Assembly has exclusive authority to "consider" and "approve" the budget of U.N. The Charter is silent about the said first stage of making a budget—to "formulate"—but this responsibility is implied by the title of the Secretary-General as "the Chief Administrative Officer of the Organization" (Article 97).¹³⁴

The second step, "to consider" the formulated and presented budget, is still technical. Neither the General Assembly nor its Fifth Committee (for Administrative and Financial affairs), owing to their size and the short period of their Session are able to handle this task adequately. Therefore, the General Assembly, upon the recommendation of the Preparatory Commission of U.N.,¹³⁵ has "appointed" an Advisory Committee on Administrative and Budgetary Questions (hereinafter called the "Advisory Committee") with a membership of nine (each serving three years), including at least two financial experts of recognized standing.¹³⁶ The advisory Committee is responsible "for expert examination of the budget" submitted by the Secretary-General. After its examination, it must give to the General Assembly "a detailed report" on the budget for the next financial year and on "the accounts of the last financial year".¹³⁷

The task of "control" over the items for which spending is proposed, and over the items for which obligations have already been incurred is entrusted to a Board of Auditors which is "appointed" by the General Assembly with a membership of three (each serving three years).¹³⁸ This Board, subject to certain conditions, "may conduct the audit" in "such a manner as it thinks fit",¹³⁹ and must submit its report to the Secretary-General who is to make the report "available to the Advisory Committee no later than 1 June following the end of the financial year to which the accounts relate".¹⁴⁰

¹³⁴ To this effect see Regulation (5) of Provisional Financial Regulations adopted by the General Assembly on November 20, 1947.

¹³⁵ *Op. cit.*, 107.

¹³⁶ Rules of Procedure (30-40) of the General Assembly.

¹³⁷ Regulations (7-9) *Op. cit.*

¹³⁸ Regulation (34), *Ibid.*

¹³⁹ Regulation (34, C), *Ibid.*

¹⁴⁰ Regulation (34, C), *Ibid.*

It is to be noted that these two bodies—the Advisory Committee and the Board of Auditors—are independent of the Secretariat. The members of the former are “selected on the basis of broad geographical representation, personal qualifications and experience”.¹⁴¹ Each auditor should be “the Auditor-General (or officer holding equivalent title) of a Member Government”.¹⁴²

However, this normal course of budgetary arrangement (which the following page illustrates) has certain important exceptions, with regard to the authority of the Secretary-General.

The Secretary-General's Authority with Regard to the Annual Budget

The General Assembly ordinarily meets once a year,¹⁴³ whereas budgetary requirements must be adaptable to changing conditions and must be able to cover unforeseen expenses. Therefore, the following arrangements have been approved by the General Assembly in the annual budgetary provisions :

1) The Secretary-General is authorized to transfer the approved credits from some specified “parts” to such other “parts” of the budget as are appropriate. Moreover, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, he is authorized to transfer credits between any “sections” of the annual budget¹⁴⁴—the budget of the United Nations is divided into different “parts” and each “part” into different “sections”. The changes that occurred in the 1948 budget under this authorization were about 3.2% of the total budget.¹⁴⁵

2) The Secretary-General is authorized to submit supplementary estimates for every financial year,¹⁴⁶ which, for example in 1948 amounted to about 18% of the budget that was approved in 1947 as the annual budget of 1948.¹⁴⁷

¹⁴¹ Rule (38) of Procedure of the General Assembly.

¹⁴² Regulations (34), *Op. cit.*

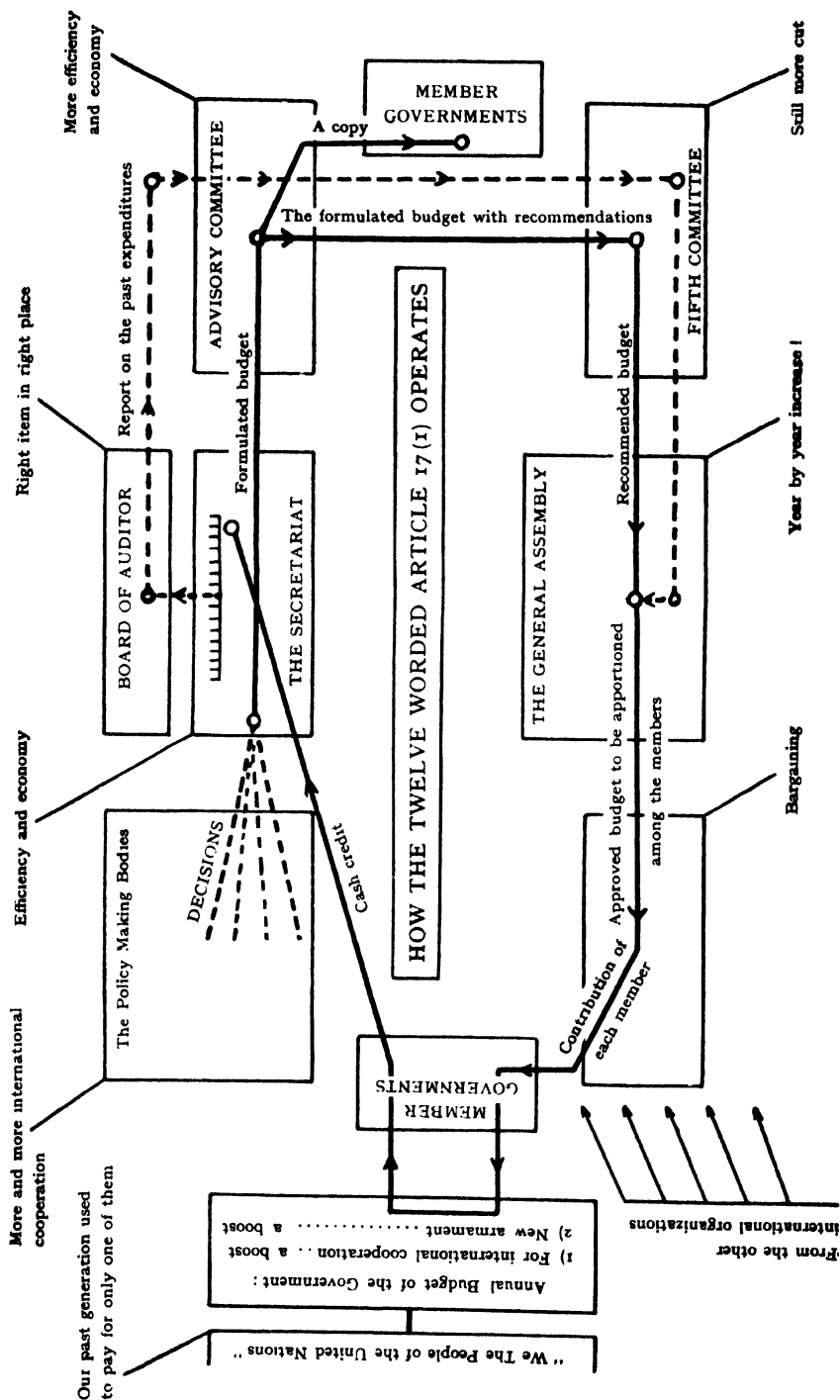
¹⁴³ The budget of the United Nations is to be submitted only to the regular annual Session of the General Assembly, see Regulations (5), *Ibid.*

¹⁴⁴ See Resolutions 166 (11), A., par. 4, and Resolution 252 (III), A., par. 4.

¹⁴⁵ It was \$1,106,222⁰⁰, see U.N., Doc. A/C.5/247/Rev. 1, Annex C, p. 31.

¹⁴⁶ See Regulations (5), *Op. cit.*

¹⁴⁷ It amounted to \$6,482,121⁰⁰, see U.N., Doc. A/C.5/247/Rev. 1, p. 2 ; the budget of the United Nations for 1948, as it was approved in 1947, was \$34,826,195⁰⁰, see Resolution 166 (II).



Drawn by the Author

3) The Secretary-General, with the prior concurrence of the Advisory Committee, and subject to the financial regulations of U.N., is "authorized to enter into commitments to meet unforeseen and extraordinary expenses",¹⁴⁸ provided that the concurrence of the Advisory Committee shall not be necessary for "such commitments not exceeding a total of \$2,000,000, if the Secretary-General certifies that they relate to the maintenance of peace and security or to an urgent economic rehabilitation",¹⁴⁹ and for certain other specified cases. The exercise of this authority of the Secretary-General is subject to his report to the Advisory Committee and to the forthcoming regular Session of the General Assembly. The report must include a statement of the circumstances related thereto.¹⁵⁰ During 1948, up to September 30th, the total amount committed by the Secretary-General under this authorization was equal to about 12% of the total approved budget of the year.¹⁵¹

Close attention to the above-mentioned percentages of the budget which are spent through the authority of the Secretary-General, reveals the importance of the legal capacity of the Secretary-General with regard to the budgetary arrangement of U.N. The importance of this question, especially from the Members' point of view, may be better appreciated if it be borne in mind that the expenses of this kind must be considered and passed upon by the General Assembly or by its Fifth Committee when the obligations have already been incurred,¹⁵² pursuant to the policies laid down by the different Organs.

During the discussion of the General Assembly on the term of reference of the Interim Committee, as well as in the Interim Committee itself, some Delegates strongly advocated the principle of extending the competence of this body to examine the reports of and to give advice to the Secretary-General and the Advisory Committee on administrative and budgetary questions. Other delegates found

¹⁴⁸ For the extent of the meaning of the words "unforeseen" and "extraordinary" see U.N., Doc. A/798, Dec. 10, 1948, p. 18.

¹⁴⁹ An Australian proposal to the effect that the words "if the Secretary-General certifies..." be deleted was rejected in the 5th Committee in 1947, by a vote of 23 to 5 with 9 abstentions, see U.N., Doc. A/498.

¹⁵⁰ See Resolutions 166 (11) B, and 252 (III) C.

¹⁵¹ It amounted to \$4,150,000⁰⁰, see U.N., Doc. A/598, p. 4.

¹⁵² See the discussion of the 157th and 158th meeting of the 5th Committee, U.N., Docs: A/C.5/SR 157, Nov. 6, 1948, and A/C.5/SR 158, Nov. 9, 1948; also see Report of the 5th Committee, U.N., Doc. A/C.5/W. 121.

such an authorization neither expedient, from an organizational point of view, nor constitutional.¹⁵³

The "Working Capital Fund"

An interesting budgetary development of U.N. Organization is the creation of the so-called Working Capital Fund. The report of the Preparatory Commission states that :

The need for working capital is not limited solely to the provisional period. Working Capital Fund should form an essential feature of the permanent financial arrangements of the Organization in order to insure means for financing various contingencies.¹⁵⁴

This fund was established in the First Part of the First Session of the General Assembly,¹⁵⁵ and it was maintained in the succeeding years at a \$20,000,000 (U.S.) level, consisting of advances by Members in accordance with the scale adopted by the General Assembly for contributions of Members to the annual budget.¹⁵⁶ The existence of such a cash credit relieves the Organization of possible financial difficulties, and enables it to meet any financial necessities, such as unforeseen or extraordinary expenses, pending the including them in the supplementary budget of the year and receiving the contributions from the Members.

The Apportionment of the Expenses of the Organization by the General Assembly

As previously noted, the General Assembly, under the short provision of Article 17 (2), apportions the expenses of the Organization among the Members. Thus the scale of this apportionment becomes an important matter for the respective Members. The General Assembly, in order to discharge this duty, has appointed a Committee on Contributions,¹⁵⁷ consisting of ten members, to "advise" the

¹⁵³ See : Report of Sub-Committee IV to the Interim Committee, Doc. A/AC.18/74, July 19, 1948, par. 32-43 ; the debate in the Interim Committee, Doc. A/AC.18/SR, 25, 26, 27 ; and the Report of the Interim Committee, Doc. A/606, pars 50-66 ; also see annexes I and II to Doc. A/606 with regard to the view expressed on behalf of the Secretary-General and by the Chairman of the Advisory Committee on Administrative and Budgetary Questions on inadvisability of such a method.

¹⁵⁴ *Op. cit.*, 110.

¹⁵⁵ U.N., A/64, July 1, 1946, pp. 2-3.

¹⁵⁶ For 1947 see A/64/Add. 1, January 31, 1947, p. 129 ; for 1948 see A/519, 8 January, 1948, p. 88.

¹⁵⁷ Rules of Procedure of the General Assembly, 41.42.

General Assembly on apportionment of expenses "broadly according to capacity to pay".¹⁵⁸

Another important assignment of the Committee on Contributions is in connection with the application of Article 19 of the Charter. This Article provides that a Member which is in arrears in the certain amount of its financial contributions to the Organization "shall" have no vote in the General Assembly. However, according to the said Article, the General Assembly "may" 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. The General Assembly, upon the recommendation of the Preparatory Commission of U.N.,¹⁵⁹ has assigned the Committee on Contributions to "advise" the Assembly "on the action to be taken with regard to the application of this Article".¹⁶⁰

The Expenses Related to the Enforcement Measures

It is to be noted that as far as the relation between the General Assembly and the Security Council is concerned, the expenses for the "preventive" or "enforcement" actions of the Security Council (Chapter VII of the Charter) generally, the expenses related to the carrying out of any one agreement (referred to in Article 43) particularly, and their apportionment among the Members, may present some difficulties in the budgetary arrangements of U.N. The authors of the Charter did not neglect to note this point; however, it does not as yet seem to be sufficiently cleared up. Article 50 provides:

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.

During the discussion of the respective Committees at the San Francisco Conference on Article 50, the United States Delegate, opposed an amendment¹⁶¹ which would charge the expenses related

¹⁵⁸ *Ibid.*, Rule 43. See Resolution 69 (I) and 151 (II) on the scale of the apportionment.

¹⁵⁹ See the report of the Commission, *Op. cit.*, 108. Also see the report of its Executive Committee, U.N., PC/EX/113/Rev. 1, p. 99.

¹⁶⁰ Rule (43) of Procedure of the General Assembly.

¹⁶¹ It was proposed by the Delegate from the Union of South Africa, S.F., Doc. 2. G/14(d)2, p. 1. Also see KEEN, F.N., *A Better League of Nations* (London, 1934), p. 102.

to an act of aggression to the aggressor State on the ground that a further obstacle would be created to the satisfactory operation of the enforcement machinery. He pointed out that Article 50 already had provided for the relief of economic hardship which might happen to some States as a result of their participation in enforcement measures.¹⁶² Then Committee III/3 taking note of the explanations thus given unanimously approved the provisions of Articles 49 and 50.¹⁶³

However, it seems that the application of the principle of charging the Organizations expenses arising out of an act of aggression against the aggressor, if it was accepted, would not have constituted an obstructing principle ; because, such principle would cause an aggressor to think about the possible result of its action and might encourage the peaceful settlement of a conflict. In addition, this principle might diminish possible hesitation on the part of some of the Members to act in favour of the victim of the aggression.

It might also be added here that the charging of the expenses against the aggressor itself is a part of a general question of charging the whole or a part of a certain type of direct expenses of U.N. upon the respective parties. Such a practice, if it become established, under the present conditions, would correspond to the wide potential functions of the United Nations Organization, and would encourage the development of the activities of this Organization as a central organ of the community of Nations. Another example in applying this general principle, besides the case of an aggressor party, is the charging of the direct expenses incurred by the United Nations in dealing with internationalized areas or cities upon these territories themselves which may be, in fact, economically in a better position than some of the Members. Nevertheless, the provision of Article 17 (2) seems permissive provision in these respects.

Coming back to the main subject, the provision of Article 50,

¹⁶² Summary Report of 15th meeting of Committee III/3 S.F., Doc. 649, III/3/34, p. 3.

Also see : The Canadian Delegate's opinion expressed in Committee III/3 on the desirability of " sharing the costs of enforcement action among the Members " and the Secretary's observation that the question is already included in the U.S. Delegate's explanation, S.F., Doc. 782, III/3/41, p. 5. Report of Rapporteur of Commission III to the Plenary Session, S.F., Doc. 11/70, III/13, p. 3.

¹⁶³ Report of Rapporteur of Committee III/3 to Commission III, S.F., Doc. 881, III/3/46, p. 12.

it is to be noted that the existence of Article 49 strengthens and emphasises the content of the provision of Article 50 as interpreted above. However, a question arises regarding the reference of Article 50, which proposes bringing the problems to the attention of the Security Council, a body which has no connection with the budget and the apportionment of expenses. These powers are, exclusively, according to Article 17, given to the General Assembly. It is even doubtful whether the Security Council is competent to give any recommendation on this matter to the General Assembly.

Therefore, if the expenses related to the agreements referred to in Article 43 come under the category of "special economic problems" (Article 50), there may be seen two alternative methods of handling this question :

1) Spécial reference must be made in the respective agreements, and expenses arising from that obligation to be included within the general budget of the United Nations. Such an "agreement" would need ratification by the General Assembly as well as by the Security Council, especially with regard to the method of the control of expenditures.

2) Certain provision must be made in any "agreement" obliging the respective governments to make a cash contribution, besides the others which are listed in Article 43 (2), whenever the Security Council finds it necessary. Of course, such a cash contribution may be included among other items, because the meaning of the words "the facilities and assistance" is sufficiently broad. But, such a procedure presupposes the Security Council's authority to apportion the expenses, and also presupposes the existence of a machinery to control incurred obligations on behalf of the Security Council or the paying Members. Such an arrangement would need new financial machinery.

It is also to be noted that Article 50 refers to both "preventive" and "enforcement" measures, and the use of the words "shall have the right" makes obligatory the entertainment of any request for consultation on the part of the Security Council. Moreover, the word "arising" gives to the nature of these "especial economic problems" a more flexible meaning, especially with regard to the time element. If applicable to the especial economic problems of the period after the end of hostilities, the General Assembly and the Economic and Social Council should be considered more appropriate bodies to take

over the questions, because they are constitutionally and materially better equipped to do so than is the Security Council which is a completely political organ.

SECTION 6

The Constituent Powers of the General Assembly

The General Assembly has no direct authority to amend the Charter. However, in this connection the General Assembly, and in some respects the Security Council, play important roles.

The Charter makes a distinction between the process of reviewing the Charter and proposing any amendment, and actual ratification of such a proposed amendment.

The proposal for amending the Charter may come from the General Assembly (Art. 108), or from a General Conference (Art. 109) which might be held for this purpose. But in order that such a proposed amendment be legally binding, and thus become a part of the Charter (including the Statute of I.C.J.), it must be ratified by two-thirds of the Members including the five permanent members of the Security Council, according to the respective constitutional requirement of each member State (Art. 108 and 109). Of course, as far as all other Members but the permanent members of the Security Council are concerned, this principle of amending the Charter is an important departure from the traditional conception of the sovereignty of States according to which a State would not be bound to any commitment without its own consent. Under the League of Nations system, a Member would be bound to accept any ratified amendment to the Covenant by the permanent members of the Council and by a majority of the Members of the League. The refusing State, however, would have ceased to be a member of the League (Art. 26 of the Covenant). As far as U.N. system is concerned, a similar provision was advocated in the San Francisco Conference to the effect that in the absence of any reference in the Charter for the withdrawal of membership from U.N., the Members should be allowed to withdraw if they did not find themselves in a position to continue their partnership in U.N. as a result of a new amendment. This principle, though not accepted to be written in the Charter, has been referred to

in the report of Rapporteur of the respective Committee of the San Francisco Conference.¹⁶⁴

Coming back to the composition of the General Conference for the purpose of reviewing the Charter, according to Article 109 this Conference is composed of all the Members of U.N., and every Member has one vote in it. The Conference 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" (Art. 109 [1]). However, if such a Conference has not been held before the tenth annual Session of the General Assembly, "the proposal to call such a conference will be placed on the agenda of that Session of the General Assembly and the conference shall be held if so decided by a simple majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council" (Art. 109 [3]).

The required vote for adopting a proposal, for amending the Charter, in the General Assembly is clearly defined in Article 108 to be "two thirds of the members of the General Assembly". As far as the adoption of such proposal in the General Conference is concerned Article 109 (2) determines it as to be "two-thirds vote of the conference". Then a question may arise whether a majority of "two-thirds vote of the conference" means two-thirds vote of all Members of U.N. (all represented in the Conference) or two-thirds votes of members of the Conference present and voting? This question might arise owing to the possibility that a conference might hold its meeting with less than the full number of its members according to its rule of procedure. Moreover, the word conference is not capitalized in the phrase "two-thirds vote of the conference" of Article 109 (2); does it mean that it refers to every meeting of the General Conference? It seems presumable that the said "two-thirds majority of the conference" means two-thirds of all members of the Conference—all Members of U.N. Because, firstly Article 109 (1) refers to this body as a "General Conference of the Members"; secondly the corresponding required majority in the General Assembly is also a vote of two-thirds of all Members; and thirdly in other cases, whenever the Charter refers to a majority of votes out of a less number of all members of an Organ, it plainly states it as in Articles 18, 67 and 89.

¹⁶⁴ See, S.F., Doc. 1178, I/II/76(2), pp. 4-6.

It is to be noted that owing to the fact that the General Assembly itself possesses the competence to review the Charter and to propose concrete amendments to it, the provision for holding a General Conference for this purpose seems to have no great practical importance, though it might call for some similarity of the system to the method of amending the constitutions of the different countries, also it might be said that the proposed amendments by a special Conference would carry more moral force and gain more public support.

To be added here that any amendment to the present Statute of the I.C.J. will be effective in the same manner as for the Charter itself. However, the General Assembly, upon the recommendation of the Security Council may adopt conditions concerning the participation of States which are parties to the present Statute but are not Members of U.N. in the amending of the Statute (Article 69 of the Statute). The Court itself may also propose any amendment to the Statute through written communication to the Secretary-General for consideration in conformity with the above mentioned procedure (Article 70).

SECTION 7

The Authority of the General Assembly and the Security Council on the Membership in the Organization

1. The Admission of New Members

The General Assembly decides on any application for membership in U.N. "upon the recommendation of the Security Council" (Article 4 [2]). The provision for this recommendation was justified by some Delegates at the San Francisco Conference by referring to the primary responsibility of the Security Council for the maintenance of peace and security,¹⁶⁵ especially in view of the fact that all enemy Nations of the world War II were outside of the United Nations. Also other proposals were submitted to the San Francisco Conference concerning a possible different method of participation of the Security Council in the admission of new members, such as: to require a recommendation of the Security Council in cases where "questions

¹⁶⁵ See Summary Report of 3rd Meeting of Committee II/1, S.F., Doc. 236, II/1/7.

of security were involved"; the Security Council to recommend to the General Assembly in the case when the applicant country had been at war with any of the "United Nations" at any time since September 1939, or which had given military assistance to any such enemy State;¹⁶⁶ the General Assembly should take the "advice" of the Security Council on the matter, and not necessarily the "recommendation".¹⁶⁷ On the other hand it was advocated that the General Assembly would have sole power to decide upon the applications for membership.¹⁶⁸ Finally the Committee II/I approved the present principle of Article 4 (2) by a vote of 22 to 9.¹⁶⁹

The present formula, however, has been interpreted at the present time in different ways.¹⁷⁰ From the point of view of this study the relevant points at issue may be listed as following:

1) Is such a recommendation of the Security Council legally necessary? Of course, there can be no doubt of this because it is expressly provided for in Article 4 (2).

2) Can the General Assembly discuss the matter and give recommendation on the qualifications (Article 4 [1]) of the applying States before receiving the recommendation from the Security Council? It seems that the answer is negative, because otherwise the applying State might be able to come before the Security Council with a certificate in its hand from the General Assembly—"town meeting" of the world—to the effect that it possesses the necessary qualifications. If this happened, it would be very embarrassing for the Security Council in its discussion or in making its decision; therefore, such a possibility neither is expedient nor is it in accordance with the letter or the spirit of the Charter.

3) Does the Charter, by employing the term "recommendation" mean only favourable recommendation, or any recommendation

¹⁶⁶ The view of the Australian Delegate, S.F., Doc. 204, II/1/5; also Doc. 211, II/1/6, p. 2.

¹⁶⁷ The Egyptian proposal, S.F., Doc. 2, G/7(q)(1).

¹⁶⁸ See the proposals of Paraguay (Doc. 2, G/7[1]), Venezuela (Doc. 2, G/7[d][I]) and Ecuador (Doc. 2, G/7[p]), (S.F.).

¹⁶⁹ See Summary Report of 3rd Meeting of Committee II/1, Doc. 236, II/1/7, p. 2.

¹⁷⁰ See the Discussion of 47th, 49th, 118th, 175th, 176th and 177th Plenary Meetings of the General Assembly; Report of the Security Council, U.N., Doc. A/617; Resolution 113 (II) of the General Assembly; the Advisory Opinion of the International Court of Justice, U.N., Doc. A/5-7; and the Report of the *ad hoc* Political Committee A/761, Dec. 3, 1948.

regardless of its nature ? It is not clear, at least to us, whether the advocacy of both these principles—the term of “ recommendation ” conveys a positive recommendation, or a positive and a negative as the case may be—intends to give these meanings to this term throughout the Charter, or only in the case of Article 4 (2). If the former meaning is the case, then its determination is a question important for the entire Charter. But if the purpose is the latter interpretation, no express reference has been given to this specification in the Charter. There is, nevertheless, a comment in the Second Report of the Rapporteur of Committee II/I to Commission II,¹⁷¹ which was approved also by Commission II, reading : ¹⁷²

The Committee was advised that the new text did not in the view of the Advisory Committee of Jurists, weaken the right of the General Assembly to accept or reject a recommendation for the admission of a new member, or a recommendation to the effect that a given State should not be admitted to the United Nations.

The report goes on by adding that :

The Committee agreed that this interpretation should be included in its minutes as the one that should be given to this provision of the Charter, and on this basis approved the text as suggested by the Coordination Committee.

Thus it seems that the intention of the authors of the Charter was to secure the recommendation of the Security Council with regard to such admission, leaving the ultimate decision to the General Assembly.

At the present time, the new Rule (126) of Procedure of the General Assembly, in this connection, is :

If the Security Council does not recommend the applicant state 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 Assembly, for further consideration and recommendation or report.¹⁷³

4) What will be the method of voting in the Security Council with regard to such a decision ? Of course, from the point of view of this study this is a matter constitutionally left to the Security

¹⁷¹ Verbatim Minutes of 4th Meeting of Commission II, S.F., Doc. 1151, II/17, 4.

¹⁷² See S.F., Doc. 1092, II/1/39, 2.

¹⁷³ See also Rules 123-25 and 127, U.N., Doc. A/520, January 8, 1948.

Council itself (Article 27) to decide upon, subject to the provision of Articles 10 and 14.¹⁷⁴

2. *The Suspension of Rights and Privileges*

The Charter provides that a "Member of U.N. 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" (Article 5). Two important principles are embodied in this provision :

- a. If a Member is subject to a certain kind of sanction by an Organ of U.N., it should not be allowed to use its privileges and its rights inherent in the membership in the other Organs of U.N.
- b. The suspending of the rights and privileges of membership *per se* provides a punishment. Therefore, in this connection two Organs—the General Assembly and Security Council—should work together because of the gravity of the matter.

At the San Francisco Conference, there was a great divergence of opinion on the question of sharing the authority of the General Assembly to suspend the rights of privileges of a Member with the Security Council. The relevant proposals and suggestions may be summarized as follows :

- 1) A vote of two-thirds of the members of the General Assembly should be required, with or without any recommendation from the Security Council.¹⁷⁵
- 2) Only the General Assembly should decide upon the issue.¹⁷⁶
- 3) The Security Council could act upon such a decision alone only if the General Assembly were not in session, subject to the submission of a report to the forthcoming session of the General Assembly for ratification.¹⁷⁷
- 4) Any Member against which preventive or enforcement measures were to be taken should have been prevented from exercising the rights and privileges of its membership in U.N.¹⁷⁸

¹⁷⁴ See pages 145-150.

¹⁷⁵ See the proposal of Ecuador, S.F., Doc. 2, G/7[p], 32.

¹⁷⁶ See the proposal of Venezuela, S.F., Doc. 2, G/7[d][1], 9. Also see the proposal of Mexico (S.F., Doc. 2, G/7[c][1], 8).

¹⁷⁷ S.F., Doc. 416, II/2/A133, p. 2.

¹⁷⁸ See the proposal of Egypt, S.F., Doc. 2, G/7[q][1], 4.

Nevertheless a proposal formulated by the Sub-Committee of Committee II/2 by which the General Assembly alone should be authorized to suspend the rights and privileges of membership was rejected in the said Committee by a vote of 0 to 23.¹⁷⁹ In this connection, due attention should also be paid to the provisions of Article 19 of the Charter.¹⁸⁰

3. *Restoration of Suspended Rights and Privileges*

While the suspension of rights and privileges is in the hands of the two Organs to act together, the restoration of such suspended rights and privileges has been left to the Security Council (Article 5). On this matter, different solutions had been advocated at the San Francisco Conference: action alone by the General Assembly by a two-thirds majority vote, with or without the Security Council's recommendation ;¹⁸¹ action by the General Assembly after taking the "advice" of the Security Council ;¹⁸² action by the General Assembly alone when the causes of the suspension ceased to exist ;¹⁸³ action by the Security Council, subject to a report to the General Assembly with a statement of reasons ;¹⁸⁴ and action by the General Assembly upon the recommendation of the Security Council.¹⁸⁵ Finally, the present formula, authorising the Security Council alone to restore what both the General Assembly and the Security Council had taken away, was accepted for the following probable reasons : the General Assembly does not have continuous session ; the Security Council might use such a power as an incentive for the revision of the Member's policy ; this method would avoid delay and be convenient ; finally, the Security Council does not grant anything but the restoration of rights which were suspended.¹⁸⁶

¹⁷⁹ See Summary Report of the 16th Meeting of Committee II/2, S.F., Doc. 707, II/2/36, 2.

¹⁸⁰ See page 182.

¹⁸¹ See the proposal of Ecuador, S.F., Doc. 2, G/7[p], 33.

¹⁸² See the proposal of Egypt, S.F., Doc. 2, G/7[q][1], 4.

^{*183} See the proposal of Mexico, S.F., Doc. 2, G/7[c][1], 8, and the comment of the Delegate of Venezuela, S.F., Doc. 2, G/7[d][1], 9.

¹⁸⁴ See the proposal of Uruguay, S.F., Doc. 2, G/7[a][1], 5.

¹⁸⁵ See the proposal of New Zealand, S.F., Doc. 2, G/14[f], 2.

¹⁸⁶ See Summary Report of 16th Meeting of Committee II/2, S.F., Doc., 707, II/2/36, 2-5.

4. *The Expulsion of a Member*

The Charter has provided for the expulsion from U.N. of a Member which has "persistently violated the Principles contained in the present Charter" by "the General Assembly upon the recommendation of the Security Council" (Article 6).

This provision of the Charter has a true punitive character. Such an important action was exercised only once by the League of Nations.¹⁸⁷ It is to be noted that the use of the word "persistently" in this Article seems to refer to the gravity of the question.

SECTION 8

The General Assembly and "Public Opinion"

It is a generally accepted view that the most important and effective force thus far behind the execution and the observance of the laws and the maintenance of morality on the international level, is the public opinion of the world. This view applies also to U.N. Organization, since in the preamble of its Charter and in its high Purposes and Principles it has crystallised great ideas and ideals to which the peoples of the world, regardless of where they live, have attached great weight.

For this reason, attention is called to the competence of the General Assembly, and under its authority the Secretariat in the field of Public Information.

It is important to tell the peoples of the world what U.N. Organization really is, what its aims and its purposes are and what are its general short-comings. The opening paragraph of the recommendations of the Technical Advisory Committee on Information concerning the policies, functions, and organization of the Department of Public Information states :

The United Nations cannot achieve the purposes for which it has been created unless the peoples of the world are fully informed of its aims and activities...¹⁸⁸

¹⁸⁷ See Cross, L. "Was the Soviet Union Expelled from the League of Nations ? " *A.J.I.L.*, 39, 1945, 35-44.

¹⁸⁸ See Recommendations of this Committee, Annexe to the Report of the Preparatory Commission of U.N., Doc. PC/20, p. 102.

The report of the Secretary-General (1948) presents a similar view, undoubtedly expressing a conclusion supported by his experience of three years in the office :

The United Nations can only be effective to the extent that the peoples understand its functions, its possibilities and its limitations, and in so far as with knowledge they implement and support its decisions.¹⁸⁹

Unfortunately, owing to the lack of sufficient information about the purposes and possibilities of U.N., there are many people in the world who expect too much from U.N. and many who give it too little credit.

It has been suggested that " during these critical years of grappling with unsolved problems the less said about them the better". This is the view which is mentioned in the Report of the Secretary-General, while he himself, in referring to it, justly states that "experience shows that exactly the opposite is the right policy".¹⁹⁰

It is to be known that the United Nations Organization will be neither the best nor the last in the history of human endeavoring for peaceful living; however, it has been so far a great possible accomplishment under the existing conditions. It is capable of growth and betterment, and the " people of the United Nations " must better it, complete it, and enjoy it.

.¹⁸⁹ O.R.G.A., Third Session, Supplement No. 1(A/565), p. 144.

¹⁹⁰ *Ibid.*, 115.

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