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THE CHANGING CHARTER

A Study in the Reform of The United Nations

Also by Andrew Martin

A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS

(in association with Norman Bentwich)

Routledge and Kegan Paul, London, 1950

COLLECTIVE SECURITY: A PROGRESS REPORT

UNESCO, Paris, 1952

THE CHANGING CHARTER

*A Study in the Reform
of The United Nations*

by

ANDREW MARTIN

and

JOHN B. S. EDWARDS

Sylvan Press London
in association with
*The David Davies Memorial Institute of
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Preface

AT THE time of writing it is still uncertain whether a conference of all members of the United Nations will be called to review the Charter. The subject is on the agenda of the Tenth General Assembly which is due to begin in September 1955. On a balance of probabilities there is some reason to believe (we dare not put it higher than that) that the verdict of the Assembly will be in favour of holding such a conference. Whether it is likely to do more good than harm is a highly controversial question. In an atmosphere of general tension, large-scale diplomatic initiatives which result in failure leave the world more despondent than initiatives which are not taken at all. For reasons which we have tried to explain in this little book, it is difficult to believe that, without some dramatic improvement of the present relations between the Great Powers, agreement can be reached on any major proposal concerning the reform of the United Nations.

In one respect, however, the Review Conference and the preparations for it are bound to be wholly beneficial. It might be too optimistic to hope that the preparatory work, or the Conference itself, will push the United Nations once more into the focus of public attention throughout the world. But there is every reason to hope that it will stimulate the revival of genuine popular interest in the Organization, and the intelligent discussion of its achievements and failures, potentialities and defects.

For years past it has been fashionable to talk of the "crisis"

of the United Nations or of its "eclipse". Possibly, and even probably, there would have been no crisis and no eclipse if throughout the past ten years the United Nations had enjoyed that degree of popular support which seemed attainable on the morrow of the San Francisco Conference of 1945. It has not been forthcoming. Nowhere has public opinion revolted against the failure of Governments to implement some of the most vital provisions of the Charter. In most countries a curiously complacent and self-contradictory attitude has developed. On the one hand there has been almost uniform acquiescence in trying to run a World Organization on a shoestring. On the other, there has been a show of pained surprise at the inability of the United Nations simultaneously to safeguard peace and to build up universal prosperity on a budget which has been running at less than one twentieth of one per cent. of the current annual expenditure on rearmament.

It is an ubiquitous human weakness to try to find fault with machines before admitting the fault of those who operate them. Round about 1945 there was a healthy inclination to confess that the League of Nations had failed to maintain world peace not because of defects in its constitution but because of the lack of courage and foresight which determined the attitudes of Governments to their obligations under the Covenant. This tendency has not been maintained. In the second quinquennium of the United Nations it has yielded to a quest for faults in the Charter which is somewhat disturbingly reminiscent of similar quests during the second (and final) decade of the League of Nations.

We do not argue that the Charter is a perfect instrument. It patently is not, and in the following pages attention will be drawn to a number of its anomalies. Many more might have been picked out for demonstration and dissection, but we have had to resist that temptation. An analysis of all the defects, textual or otherwise, of the Charter would have been impossible within the limits of a short study. The more we had

tried to achieve completeness within these limits, the less could we have hoped to discharge the real burden of our argument.

In essence, we argue three points—two of them explicitly, and the third by implication.

In the first place, during the first decade of the United Nations the Charter has changed in many more ways and to greater effect than is generally believed. We have devoted the longest section of this study to a demonstration of these changes.

Secondly, some of the most exasperating difficulties arising from the Charter are capable of being overcome without the cumbersome process of constitutional amendment; for instance, by the Great Powers agreeing among themselves not to use the veto on applications for membership, or on proposals connected with the pacific settlement of disputes.

Our third point concerns the wider political perspective in which the technical problems of constitutional reform should be viewed. It appears to us that the vital issues on which the world is so dangerously divided are not rooted in defects of the Charter. The decision to divide Germany into separate zones of occupation was taken outside the United Nations; indeed, it had to be, for the Organization was not as yet in legal or physical existence when that decision fell to be taken. Again the conflict between the United States and Communist China has not arisen from whatever deficiencies may be detected in the rules of procedure which govern the scrutiny of credentials in the various organs of the United Nations; the wrangle about the proper representation of China in the Organization is a symptom, not a cause. Above all, it is not the fault of those who drafted the Charter that the world is engaged in a re-armament race on a quite unprecedented scale. The cost is such that unless we put a curb on this runaway expenditure we cannot begin to hope to tackle another grave danger to peace: the destitution and despair of large populations living in underdeveloped territories.

Our view that these are not in essence problems which could be solved by revising the Charter requires a word of explanation. It is a view based on the present conception of the United Nations as an association of sovereign States. If the Organization were differently conceived, for instance on a confederate or federal pattern, the main political issues which are now constitutionally outside the United Nations would become capable of legal regulation within the Organization. In section 3 of this study we have given some illustrations of these long-term plans for structural reform.

The David Davies Memorial Institute of International Studies, by which this little book was commissioned, left us completely free to speak as we wished. Thus, in the pages which follow, we speak for ourselves and not for the Institute ; and needless to say, the responsibility for the inadequacies of our effort rests solely with ourselves.

In the collection of documentary material we have had much valuable help from Miss M. Noble of the United Nations Information Centre in London and from Miss Margaret Haferd of the American Library in London ; to both we are greatly indebted and we thank them for their invariable patience and kindness.

A. M.
J. B. S. E.

Middle Temple,
London, July 1955.

1 How the Charter Can be Changed

THE STATESMEN who brought the United Nations into being meant it to be a living organism, one that would grow with the changing world it was designed to protect. Constitutionally, this expectation of growth and change is expressed, near the end of the Charter, in a short chapter of two articles joined together under the heading "Amendments".¹ This latter word is used in the Charter to connote two different conceptions of change and two (or even three) different procedures.

The first of these envisages piecemeal changes—the modification of this or that Article as and when it becomes necessary to recast the rights and duties, the functions and powers, which it regulates. No "General Conference" of the San Francisco type is required for this kind of amendment. It is effected in two stages: first, by a vote in the General Assembly and, second, by a process of ratification. In the General Assembly the amendment must be adopted by a two-thirds majority of *all* Member States (and not merely of those whose delegates are present and voting when the question is put). The second hurdle is even more formidable. The amendment, once adopted by the General Assembly, must be ratified in accordance with their respective constitutional processes by two-thirds of all Member States, including all the permanent Members of the Security Council. Thus each of the five permanent Members (the United Kingdom, the United

¹ Chapter XVIII. Articles 108, 109.

States, France, the Soviet Union, and China) has it in its power to prevent any amendment from coming into force ; all that a Great Power need do is withhold its own ratification. On the other hand, if an amendment is ratified by the requisite majority, it becomes binding on *all* Members, not excepting those who voted against it in the General Assembly or have withheld ratification. But if an amendment adopted by the Assembly fails to secure the necessary number of ratifications, or if amendment comes into force despite the opposition of one or more Members, no dissatisfied State has any other remedy than to withdraw from the Organization. Although the Charter contains no express proviso for withdrawal, the appropriate Committee of the San Francisco Conference made it clear that in such circumstances

“it would not be the purpose of the Organization to compel a Member to remain in the Organization”.

The second method of changing the Charter is by a comprehensive review of the document as a whole. There is no constitutional guarantee that such a review will ever take place ; conversely, there is no constitutional impediment to such reviews becoming a regular feature in the life of the Organization. At San Francisco it was the expectation of the great majority of delegations that sooner or later such a review should take place ; only on this understanding (which, however, has no legally binding force) were certain delegations willing to accept the many uneasy compromises which are reflected in the present text of the Charter, notably those relating to the privileged position of the Great Powers.

Unlike piecemeal amendments, the review of the Charter as a whole is not the business of the General Assembly. It is the business of a “General Conference” of all Members of the United Nations, a kind of constituent assembly which may be called to continue, as it were, the work of the San Francisco Conference.

We find in the Charter two different procedures for convening such a conference. Under the ordinary procedure¹ it can be convened at any time if and when the General Assembly and the Security Council so decide. The decision requires a ~~two-thirds~~ majority vote of all Members of the General Assembly (here again, not only of those present and voting) and the vote of any seven Members of the Security Council. There is no veto.

But a special procedure applies if no conference has been called before the tenth annual session of the General Assembly. This condition is now fulfilled and consequently the special procedure will come into operation at the Tenth Assembly, which is due to begin in September 1955. The Charter provides² (and this is already part of what we have just called the "special procedure") that, whether or not any particular delegation wishes to move the calling of a General Conference, a proposal to this effect must be placed on the agenda of the Tenth Assembly. It is further provided that, in order to carry the proposal, a simple majority vote of all Members will be sufficient. The "special procedure" thus dispenses with the two-thirds rule, but still requires a separate vote in the Security Council. The veto will not operate—any seven affirmative votes will suffice.

Let us now suppose that a General Conference (henceforth in this study we will call it a "Review Conference") is called and held: how can it revise the Charter? The procedure is similar to that which governs piecemeal amendments. Any revision (or as the Charter calls it, "alteration") must be approved by a two-thirds majority of the Conference, and thereafter ratified by two-thirds of the total membership, including all the permanent Members of the Security Council. Any one of the Big Five can thus obstruct the revision of the Charter, just as it can obstruct isolated amendments.

¹ Article 109(1).

² Article 109(3).

On purely logical grounds it can be, and has been argued¹ that, where a constitution contains rules of amendment, those rules can never apply to themselves. It would follow from this argument that no part of the Charter can be changed without a two-thirds vote of the total membership or against the veto of a Great Power, *except* those two articles which set up these requirements ; the Charter does not say how *these* two articles can be altered, and the way to alter them (so the argument goes) must be discovered by reference to other sources and to the interpretative rules of public law. To put it bluntly : first eradicate the veto from the procedure of amendment and then proceed with the rest. The argument is ingenious, but of purely academic interest. Apart from the difficulty of discovering any alternative procedure of amendment by logical means, the transactions of the San Francisco Conference leave little or no room for doubt that the procedure of amendment was not intended to be changed without the consent of two-thirds of all Members, including the Five Great Powers. It may be possible to defeat that intention in the sphere of logic, but no such exercise can succeed in the field of practical politics. One may feel that the procedure of amendment, as regulated in the Charter, is far too rigid and exacting ; but short of demolishing the existing structure of the United Nations and starting afresh, there is no way of circumventing that procedure.

On the other hand, all that has been said so far applies only to *formal* changes of the Charter—to such amendments and revisions as would alter the text itself. Formal change, however, is not the only method of keeping a constitution up to date, and adapting its institutions to unexpected crises in human affairs. Few periods in the history of the United States, for instance, have seen more profound changes than the last two decades, yet only once during this period was

¹ e.g. by Professor Hans Kelsen and Professor Alf Ross ; see Preliminary Report of the Committee on the Review of the Charter of the United Nations of the International Law Association, London, March 1954, p. 13.

resort to the slow and complex process of amending the Constitution found to be inevitable.¹ The necessary adjustments proved possible through ordinary legislation passed by Congress, by the interpretation of the Constitution by the courts, and by developing certain constitutional customs and practices.

So far, the history of the United Nations covers less than one decade. And yet, even in so short a time, its constitution has undergone notable changes in various ways. With these processes of "informal amendment" and their results the following pages will be concerned.

¹ This was the Twenty-second Amendment, limiting Presidential terms of office (1947).

2 How the Charter has Changed

THE TEXT of the Charter is exactly the same today as it was on 26 June, 1945, the day when the Heads of the 50 delegations assembled at San Francisco solemnly affixed their signatures to it. But in its practical application the constitution of the United Nations is not the same as it was then. Some of its gaps have been filled. Some provisions which, ten years ago, seemed to be of very minor importance, have rather unexpectedly come to life. Other provisions, which then seemed to usher in a brave new world, have become dead letters. The relative importance of organs and functions has changed in more than one instance. More important still (and this is a depressing feature), in the wider perspective of world politics, the size and weight of the United Nations has diminished in relation to other concentrations of power. The analysis of the cause and effect of this development is beyond the scope of the present study. We can attempt no more than a brief survey of the main groups of those provisions in the Charter which have been affected by what we may call informal changes.

* * *

Beyond doubt the most important group of articles so affected is that which concerns the military preparedness of the Organization. This part of the Charter was born of the conviction, held almost universally throughout World War II,

that the political frustration of the League of Nations—its inability to cope with Japanese aggression in Manchuria, with Italian aggression in Ethiopia, and finally with Hitler's aggression in Austria, Czechoslovakia and Poland—was due to a fundamental defect in its constitution. In accordance with the concept of a World Organization which inspired the statesmen of 1919, participation in military sanctions was left purely optional for Members of the League of Nations.

Even if that option had ever been exercised (and it was not), the resulting armed forces would not have been in any sense the armed forces of the League. They would have remained at the disposal of whichever Government or Governments may have decided to use their armed forces "to protect the covenants of the League". The League itself might or might not have been entrusted with some co-ordinating functions, but there was no question of Members undertaking in advance to raise and train and equip forces specifically earmarked for safeguarding collective security.

The United Nations was to be very different. It was to have "teeth". Its covenants were to be protected not at the option of Members, but by armed forces which these latter *must* make available for use against aggressors; and those forces were to be placed under the immediate strategic direction of an international Military Staff Committee subordinated to the Security Council. The idea was that the military resources thus available to the Security Council should represent a concentration of power so overwhelming that, once it was mobilized, no aggressor should be able to hold out for long; and even while this force was being mobilized, the Security Council could rely on an international air striking force which was to be immediately available to it at all times for the purpose of urgent military measures.

This whole impressive structure rests on a fundamental obligation which is laid down in Article 43 of the Charter. By that Article, all Members are placed under the duty to make available to the Security Council, on its call, armed

forces, assistance, and facilities. No Member can contract *out* of that obligation ; but (and here is a tragic paradox) so that the obligation may become effective, a Member must first enter *into* a special contract with the Security Council. The Charter itself does not indicate, let alone specify, the numbers and types of forces, their degree of readiness and general location, or the nature of facilities and assistance to be provided by each Member ; all these matters are reserved for "special agreements". As long as a Member has not entered, either individually or as part of a group, into a special agreement with the Security Council, it is under no obligation to make positive contributions (other than, possibly, the grant of rights of passage) to the military preparedness of the United Nations.

If all had been going according to plan, by now all 60 Members of the Organization would be under binding obligation to make these positive contributions. In fact, none of them is. Out of a possible total of 60 special agreements, not a single one has been negotiated, let alone concluded. As far back as 1947, the Great Powers disagreed even on the general principles to be embodied in the network of special agreements. As a result the Military Staff Committee, which consists exclusively of representatives of the Great Powers, has never come near to discussing their details. That is why Article 43 has become a dead letter—as dead for practical purposes as if it had never been written into the Charter. Equally dead are some further articles relating to the military preparedness of the Organization: Article 44, which gives a say to individual Member States in all those decisions of the Security Council which concern the employment of that Member's armed forces ; Article 45, which provides for an immediately available air striking force ; and Article 46, which entrusts to the Security Council and the Military Staff Committee the task of making plans for the application of armed force. Although this latter Committee is in being, or at least in a state of suspended animation, what

good could it do by making plans for the application of an armed force which does not exist?

Under the heading "Transitional Security Arrangements" there is, however, a pair of articles (106 and 107) which were meant to cover the relatively short interregnum anticipated before the making of the "special agreements" which would give the United Nations the right to call for armed forces.

As things have turned out, these articles, on a strict interpretation of the Charter, must be deemed still valid. According to ~~Article 106~~, in an emergency the duty lies with the Great Powers to consult together, and as occasion requires with other U.N. Members, to take necessary joint action on behalf of the Organization. Clearly, these articles take it for granted that in the face of a genuine threat the Great Powers will act in harmony. But they do not say what shall be the next step if the consultations of the Great Powers end in deadlock. And yet, that is the crux of the matter. If there is a deadlock, none of the Great Powers is entitled to take action alone or jointly with others, disregarding the opposition of one or more of the remaining Great Powers; for the Charter requires "joint action" and it is clear from the context that the Great Powers must be agreed on the necessity of such action. It is small wonder that this article, based as it is, on the false assumption of harmony among the Big Five, has had no part to play in the solution of the many ugly situations with which the United Nations has had to cope during the past decade.

Hardly more life is left in the second Article in this "Transitional" group. It is concerned with those States which emerged in defeat from the Second World War and envisages a situation where action may have to be taken against such a State in order to secure its compliance with any Act of Surrender or Armistice Agreement or Peace Treaty which it may have contravened. Such action, says the Charter in effect, is the responsibility of those particular States among the United Nations which, under the acts, agreements or treaties

concerned, have assumed powers to enforce terms against the defeated enemy ; and the United Nations as an organization cannot seek to interfere with the exercise of these powers of enforcement. In theory this principle remains applicable as long as the ex-enemy States remain outside the Organization ; and, for the time being, all of them are still outside it. But could the Organization really stand aloof if, say, Russia, basing herself on the Potsdam Agreement, tried to enforce its provisions for demilitarization and disarmament against the Federal German Republic, a full member of NATO ; or, conversely, if the United States tried by force of arms to secure the compliance of Hungary, Roumania, and Bulgaria (all of them allies of the Soviet Union and of each other) with those provisions of the Peace Treaties of 1947 which guarantee the full enjoyment of political freedoms to all nationals of these countries?

With the sole, and purely nominal, exception of the East German Republic, all the ex-enemy States belong either to the one or to the other of the two great rival military blocs, and any attempt to "discipline" them in defiance of their respective protectors would be bound to lead to an eminently dangerous situation. It would be inconceivable for the United Nations to sit back and watch the ensuing conflagration ; and that being precisely what Article 107 of the Charter would require the Organization to do, it is obvious that in such an eventuality that Article would have to be, and would be, treated as another dead letter.

The Articles dealing with self-defence and regional arrangements (Articles 51-54) are another group of provisions the meaning and relative importance of which has changed considerably ; and here again the change is the inevitable result of the frustration of the original project whereby the United Nations was to have very substantial military resources at its disposal. These resources were to be the mainstay of international security in the post-war world, but not as yet its only bulwarks. Collective security was, in a manner of

speaking, on trial ; and in any event, time, possibly a longish time, was required to develop the Organization's military machine and power. Meanwhile, the Charter granted two exceptions to the general rule that the United Nations must have a monopoly in employing coercive measures and, in particular, armed force. Firstly, the Charter recognized the inherent right of States to defend themselves individually or collectively against armed attack ;¹ secondly, it declared that membership of the United Nations was not incompatible with adherence to "regional arrangements or agencies"² dealing with security—a modern phrase which is supposed to be less ominous than the old term "military alliance".

Politically and psychologically these two exceptions reflected even in 1945 a measure of doubt in the ability of the United Nations to guarantee the safety of its Members ; at the same time the limitations with which the exceptions were hedged about expressed a definite hope that these "peripheral" arrangements grafted on the system of collective security at the centre would never become more important than collective security itself. Thus by Article 51, measures of individual or collective self-defence were to cease as soon as the Security Council itself had taken control of the situation, and, in any event, they did not "in any way affect the authority and responsibility" of the Council. Similarly, by Article 53, no "enforcement action" under any military alliance must be taken without the authorization of the Security Council. The only exceptions to this strict rule are measures to be taken against a former belligerent on the Axis side, pertinent to an act of surrender, armistice agreement, peace treaty, and the like, or under an alliance specifically directed "against renewal of aggressive policy on the part of any such State". Moreover, the Security Council must at all times be kept fully informed not only of activities under-

¹ Article 51.

² Article 52.

taken under regional alliances, but also of activities "in contemplation", e.g. still at the stage of planning.

Setting all these rules in the perspective of what has actually happened during the past ten years, one is struck by their markedly anachronistic appearance. There is a threefold difference between the present situation and that which the Charter contemplated. Firstly, since the inception of the United Nations, there has been a steady increase in the number and stringency of alliances. Secondly, the Big Five who were meant to join together in carrying the main burden of the collective system are split in two opposing groups; and each Great Power now is a party to regional arrangements with other Great and smaller powers. Thirdly, the regional system is not as yet fully comprehensive in the sense of every State belonging to at least one regional arrangement; all those geographical areas, however, which are of outstanding strategic importance are now covered by at least one such arrangement and the coverage is still in the process of being extended. Taken together, these three facts disclose a marked shift since San Francisco from a collective to a regional conception of security.¹ This shift is still continuing but even if we were to disregard it and consider only facts which are already accomplished, it is clear that the safeguards written into the Charter have become inoperative.

All efforts to make available armed forces to the Security Council have come to a standstill; no serious suggestion has been made in recent years to resume the negotiation of the "special agreements"² envisaged by Article 43. What can be, in such a situation, the practical significance of a rule which solemnly requires an organization for collective self-defence, such as NATO, to cease acting in an emergency the moment the Security Council takes control? If the mainland of China were invaded in force tomorrow, could it be seriously expected that the Soviet Union would hold in abeyance its obligations

¹ Martin, A., *Collective Security*, UNESCO, 1952, p. 172 *et seq.*

² *Supra*, p. 18. See also *infra*, p. 81.

under the Sino-Soviet Treaty of 1950 pending the receipt from the Security Council of an authorization to act? Is it likely that, in the case of the Soviet Union and all or some of its allies in Eastern Europe attempting to intervene by force to stop the rearmament of Western Germany, on the argument that this intervention was "directed against the renewal of aggressive policy" on the part of a defeated Axis State, the United Nations would remain inactive until such time as it were asked by the Soviet Union and its allies to take over sole responsibility "for preventing further aggression" by Germany? And finally, is it likely that the signatories of the Balkan Pact or of the Covenant of the League of Arab States would respond positively if the Security Council suddenly requested them (as on a strict interpretation of the Charter it is entitled to do) to disclose what activities they had "in contemplation" for the eventuality of an armed, attack on, say, Greece or Egypt?

There can hardly be two opinions about the answer to any one of these questions. Whether the ascendancy of regional over collective security arrangements is a good thing or a bad thing, is a moot point; but it is hardly open to doubt that those provisions of the Charter which were meant to treat the former as a mere extension of the latter, an appendage placed under strict control from the centre, have become inoperative.

* * *

So much for changes in what may be termed the military aspects of the Charter. Next in importance to them rank certain shifts in the balance between the functions and influence of the General Assembly in relation to the Security Council. The effects of this shift will be considered in a later part of this study.¹ In the present context we are more concerned with the nature of the process by which this change has been effected, stage by stage. •

¹ *Infra*, pp. 67,68.

In the first stage the matter in issue was the transformation of the General Assembly from a periodical to a permanent forum for the discussion of international problems of all kinds. In defining the functions and powers of the Security Council the Charter had already expressed, in unequivocal terms, the "primary responsibility" of this body for the maintenance of international peace and security;¹ to accentuate it further, it had provided that, unlike the two other Councils² and the General Assembly, the Security Council was to be so organized as to be able to function continuously.³ Alone among the political organs of the United Nations the Security Council was to symbolize that eternal vigilance over the safety of the world which is the highest duty of the Organization as a whole.

By the autumn of 1947 it became painfully evident that the vigilance of a disunited Security Council was not sufficient to impart any sense of safety to a troubled world. A pressing need was felt for the permanent accessibility, in one way or another, of that wider forum, not paralysed by the dissensions of the Great Powers, which only the General Assembly was able to offer.

To this need the General Assembly responded by setting up a subsidiary organ, known officially as the "Interim Committee" and unofficially as the "Little Assembly". When the General Assembly was not in session certain questions within its jurisdiction were to be dealt with by the Little Assembly. These questions included (and this was the gist of the matter) such disputes or situations involving a danger to international peace as may have been proposed for inclusion in the agenda of the General Assembly and, in the view of the Little Assembly, were important matters requiring preliminary study. In such cases the Little Assembly had power to conduct its own investigations, appoint commissions of inquiry, and

¹ Article 24(1).

² i.e. the Economic and Social Council and the Trusteeship Council.

³ Article 28(1).

to advise the Secretary-General to summon a special session of the General Assembly.

Each Member of the General Assembly has the right to appoint one representative to the Committee but no such appointments have ever been made by the Soviet bloc. This latter challenged the constitutionality of the Little Assembly from the very beginning, partly on the ground that it was designed to circumvent the authority of the Security Council, and partly because it had broader powers than were appropriate to a mere "subsidiary organ", such as the General Assembly was entitled to create under the express authority given to it by the Charter.¹

The Soviet bloc persisted in its boycott of the Little Assembly even after its powers were so curtailed as to exclude any trespass on the field of activity reserved for the Security Council. The Little Assembly has not met since 1952, but there is no constitutional reason why it should not be revived. Although originally it was established only for a year and then continued for another year, in November 1949 it was re-established without any limitation in point of time. If the Little Assembly played no spectacularly successful part in the life of the Organization as a whole and has not been greatly missed since its virtual eclipse in 1952, that was due rather to the increasing length of the General Assembly's regular sessions, and not to the failure of the experiment itself. The technique of filling gaps in the machinery of the United Nations by the relatively simple device of creating appropriate "subsidiary organs" has been successfully employed in many fields of activity; and although its most appropriate application is in the sphere of economic, social, humanitarian, legal, and other "technical" problems, subsidiary organs have a wide scope in the political field as well. Apart from the Little Assembly—the Special Committee on the Balkans, the Commission for the Unification and the Rehabilitation of Korea, the Palestine Conciliation Commission, and the Com-

¹ Article 22.

mission for India and Pakistan, are noteworthy cases in point.

Now for the second stage of the change in the General Assembly's functions and powers: this occurred in 1950 and we think it may be useful to say a few words about the historical and legal background. At the end of June 1950, South Korea was invaded by forces of the North Korean People's Republic. In such cases it is always very difficult to determine whether the attack amounts to an act of aggression (the term implies an illegal resort to force, and the attacker will nearly always argue that he was not acting unlawfully but merely in self-defence) or only to a breach of the peace (a term which leaves the question of rights and wrongs open for the time being). It was one of the most hopeful innovations of the Charter that (unlike the League Covenant, which required an act of aggression or an act of war) it declares a mere breach of the peace to be sufficient reason for bringing into operation the whole machinery of sanctions. The determination of whether a breach of the peace (or an act of aggression) has occurred or is threatened, and the decision concerning what sanctions are to be called for—these are functions which the Charter entrusts to the Security Council¹ and to no other organ.

When South Korea was invaded, the Council discharged these responsibilities with wholly unexpected speed. An emergency meeting was convened immediately on the outbreak of hostilities and it was determined there and then that a breach of the peace had occurred. Within a matter of days military operations against the invaders were proceeding under a Unified Command. But the spectacular speed of the Council's action was largely due to two accidental factors. One was the presence in Korea of a United Nations Commission which had been able to observe and report the outbreak of hostilities. The other (and more important) was the absence of the Soviet representative from the crucial meetings

¹ Article 39.

of the Council. This was the result of a policy which the Soviet Union was then following of boycotting certain organs of the United Nations in which they had raised unsuccessfully the Peking Government's right to represent China. In August 1950, the Soviet delegate resumed his functions in the Security Council and his attempts to impeach the resolutions which had been passed in the Korean case left no room for doubt that all of them would have been vetoed if the Soviet Union had been represented at the meetings concerned.

In these circumstances urgent consideration had to be given to the question of what was to happen if further breaches of the peace should occur either in conjunction with the Korean war or in some other area. The Security Council could not be relied upon to act ; could the General Assembly step into the breach?

The answer depended to a considerable extent on the interpretation which could be legitimately placed on a somewhat ambiguous rule in the Charter.¹ It reads as follows :—

“ While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests ”.

There could be no doubt that any dispute or situation actually degenerating into an armed clash was within the primary responsibility of the Council and could not with any propriety be omitted from its agenda. It was equally beyond question that the presence of a dispute or situation on that agenda was *prima facie* evidence that the Council was “ exercising the functions assigned to it in the Charter ”. But was it conclusive evidence, such as would debar the General Assembly from action so long as that particular conflict remained on the Council's agenda? Did it make no difference that, owing to the use of the veto, the Council was unable to

¹ Article 12(1).

act? In the Soviet view, the Council's ability or inability to decide was immaterial ; in the view of the majority, it was not, and a paralysed Council could not be allowed to stand in the way of the General Assembly if the latter was able and willing to deal with the matters in issue.

Effect was given to this view of the majority in a set of important rules known as the " Uniting for Peace Resolutions ". They were passed by the Fifth Assembly on 3 November, 1950 (two days before the Unified Command in Korea officially reported the intervention of Chinese forces in the war) and they may be properly regarded as the most massive, though informal, constitutional development in the history of the United Nations so far.

After affirming in its Preamble that " failure of the Security Council to discharge its responsibilities on behalf of all the Member States . . . does not relieve the Member States of their obligation or the United Nations of its responsibility under the Charter to maintain international peace and security ", the Resolution (Section A) provides that, if in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the Security Council is unable to act because of a veto, it falls to the General Assembly to make appropriate recommendations for collective measures, including the use of armed force when necessary. If the Assembly is not in session at the time, an emergency special session must be convened within 24 hours should the majority of the Members of the Organization, or the Security Council (on the vote of any seven Members) so request.

Another part (Section B) of the Resolution sets out to turn into a permanent institution what had been a helpful accident in the Korean case. It establishes a Peace Observation Commission, to " observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security ". This Commission is always at the disposal of the Security Council ; but (and this is the real

point) the General Assembly (or between sessions, the Little Assembly) may also utilize it, provided there is no objection from the State into whose territory it is proposed to send the Commission. About this, and also about the Collective Measures Committee (another subsidiary organ established by the Uniting for Peace Resolution) a little more will be said in a later section of this study.¹ What deserves attention in the present context is Section C of the Resolution which asks Member States to earmark certain of their armed forces "so trained, organized, and equipped that they could be promptly made available for service as a United Nations unit or units, upon recommendation by the Security Council or General Assembly". The last three words signify a remarkable departure from the original scheme of the Charter which never contemplated the use of armed force by recommendation of the General Assembly.

"Recommendation" is indeed the word upon which any attempt to assess the value of the Uniting for Peace Resolution must focus. The Resolution covered the maximum ground short of formal amendment of the Charter. It could legitimately assert the Assembly's authority to speak on questions of aggression and sanctions, and to create and employ subsidiary organs solely concerned with matters of security. It could not and did not attempt to endow the Assembly with the right to speak in the mandatory form of "decisions" instead of the non-compulsory form of "recommendations"; for only by formal amendment of the Charter is it possible to expunge the Security Council's monopoly to make binding decisions and call for definite action that does not leave Members their right to disobey.

It follows that if the General Assembly purports to determine the existence of a breach of the peace or of an act of aggression (as it did in the case of China's intervention in the Korean war)² its finding, however strong may be the language

¹ See *infra*, pp. 68, 86.

² By Resolution of 1 February 1951.

in which it is couched, has no greater force in law than a mere recommendation. Legally, any Member State is at liberty to disregard it. Thus if a Member State does in fact choose to disregard the Assembly's finding of aggression (as the Soviet bloc, and also India did in the case of China), that Member would not violate the letter of the Charter if it were to stand aloof from any sanctions that might be taken against the reputed aggressor ; for the obligation of Members to join in collective measures of enforcement is contingent upon the existence of a breach of peace or act of aggression, so found by the Security Council. There is not even a contingent obligation to join in measures taken, or about to be taken, solely on the Assembly's authority ; its call for assistance, whatever else the language may suggest, is a mere recommendation. Thus, the Uniting for Peace scheme can work successfully only on the assumption that the majority of Member States will respond to the Assembly's recommendation even in matters of such far-reaching consequence as a finding of aggression or a call for sanctions.

In the only instance when this assumption could be put to the test, it was substantially vindicated. Following the Assembly's formal condemnation, by the resolution passed on 1 February 1951, of Chinese aggression in Korea, on 18 May 1951, another resolution was passed calling for an embargo on the shipment of war materials to Communist China and North Korea. By the end of June 1951, 31 Member and three non-member States reported that they had implemented the resolution and in due course the list of those taking part in the embargo comprised some 45 countries. In all the circumstances, this was an encouraging response.

* * *

The third main group of provisions in the Charter which may be said to have changed without being altered formally concerns certain matters of organization and procedure,

some of which are important. One of these changes, by no means the most important, has received a great deal of publicity and is usually cited as the typical example of a *de facto* constitutional amendment. It concerns a minor detail of a vitally important subject. In the Charter the voting procedure of the Security Council is so framed that, with the exception of procedural matters, all decisions must be made "by an affirmative vote of seven Members, including the concurring votes of the permanent Members".¹ This gives each of the Great Powers the veto. But can the representative of a Great Power exercise the veto by such simple devices as not attending a meeting, or walking out before the vote, or just abstaining from the vote? On a strict interpretation of the text, he can; for taking words in their ordinary meaning, nobody can cast a "concurring vote" by failing or refusing to vote at all. And yet, in certain constellations a Great Power may have a considerable diplomatic or propaganda interest in taking upon itself neither the odium of blocking a motion which has unanimous or overwhelming support, nor conversely, the embarrassment of voting for a motion which may be injurious to, for instance, a present or future ally.

Already in the first year of the United Nations this problem of interpretation was resolved by the Security Council in the sense that the abstention or absence of a permanent Member did not amount to a negative vote. The problem was so resolved without formal decision, simply by the continuous practice of not counting an absence or an abstention as a negative vote. The practice was not challenged until August 1950, when, after abruptly ending its boycott of the Security Council, the Soviet Union sought to invalidate the momentous decisions which the Council had taken in respect of the Korean conflict in the absence of the Soviet representative. This challenge was rejected by the majority of the Council and, after some desultory attempts to reopen the question, the

¹ Article 27(3).

Soviet Union allowed the issue to peter out. As a result, it is fairly safe to say that, long and deliberate practice has by now brought about a virtual amendment of the Security Council's voting procedure: decisions on non-procedural matters are now validly passed by an affirmative vote of seven Members, including the concurring vote of the permanent Members *present and voting*.¹

Somewhat less easily definable, but hardly less noticeable has been a change affecting the composition of the Security Council. Of its 11 Members, five are permanent, while six are elected by the General Assembly and hold office for two years. In electing them, says the Charter, due regard should be specially paid

“ in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution ”.²

These criteria do not necessarily converge. First, the distribution must be fair to the Organization by affording representation to those Member States or groups of them which, owing to their strategic location, manpower, or economic resources, can make a valuable contribution to security. Secondly, distribution must be fair to the general Membership: as far as possible, there should be adequate representation not only for all continents, but also for groups of States which form distinct geographical units within a continent. In practice, the first consideration has been largely disregarded by the General Assembly: the pattern of elections has hardened into a somewhat rigid formula which normally awards two seats to Latin America, one to the British Dominions, one to the Near and Middle East as a single unit, and one seat each to Western and Eastern Europe. The choice between possible

¹ See also *infra*, pp. 76 *et seq.*

² Article 27(1).

candidates from the same area seems to have been guided by considerations of prestige and political affiliation rather than actual or potential ability to make a positive contribution to security, even though the almost automatic award of the Eastern European seat to a member of the Soviet bloc has been abandoned in later years. But the anomaly of the Far East having no more adequate representation on the Council than a single permanent seat still continues, and is aggravated by the bitter controversy concerning the rival claims to that seat asserted by two different Chinese Governments. Legally, the General Assembly's continuous disregard of the factor of a State's ability to help maintain peace and security and attain the other purposes of the United Nations does not rank as an anomaly ; the Charter does not strictly require, but merely expresses a preference for, the observance of this factor. But the indication of that preference is nevertheless part of the Charter, and it seems legitimate to say that this provision has been erased from the document by deliberate non-observance.

Different techniques have been employed to adapt to the conditions of the Cold War two Articles concerned with the organization of the Secretariat. The less important of these changes affects Article 97, which provides that the Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. By a somewhat paradoxical inconsistency of the two voting procedures, the recommendation of the Security Council is treated as a matter of substance on which the Great Power veto operates, while the appointment by the General Assembly is not listed as an important question and does not require more than a simple majority vote.

No fixed term of office is prescribed by the Charter. The first Secretary-General, Mr. Trygve Lie, was chosen by unanimous resolution in the Assembly in February 1946, the appointment being made for five years, but it ~~was~~ provided that at the end of the period he could be reappointed for a

further term of five years. By the end of the first term, Mr. Trygve Lie had fallen out of favour with the Soviet Union, and the Great Powers were unable to agree on either his reappointment or the choice of another candidate. The General Assembly resolved this deadlock by so interpreting the Charter that, irrespective of any fixed term for which the Secretary-General's original appointment may have been made, the General Assembly has power to grant a temporary extension of his tenure of office in order to prevent an inter-regnum.¹

More important and far more controversial has been the weakening in practice of those safeguards which were written into Article 100 of the Charter for the purpose of protecting the independence of the staff. By that Article the staff were prohibited from seeking or receiving instructions from any Government or from any other authority external to the Organization, and were also required to refrain from any action which might reflect on their position as international officials responsible only to the Organization. On the other hand, Member States undertook to respect the exclusively international character of the responsibility of the staff, and not to seek to influence them in the discharge of their responsibilities. In recent years these rules have been exposed to unexpectedly heavy strain by the combined effect of two facts: firstly, the Headquarters of the United Nations is in the United States, and secondly, the United States has been passing through a crisis of confidence in the effectiveness of existing safeguards against Communist subversion. As a result, through the instrumentality of administrative arrangements made by the Secretary-General, his acceptance of interpretative rules laid down by an *ad hoc* Committee of Jurists,² and through amendment of the Staff Rules approved by the General Assembly, the immunity of the staff from

¹ In this instance the extension was granted for a further three years. See Assembly Resolution of 1 November 1950.

² The report of this Committee was published on 30 November 1952.

governmental interference has been weakened considerably. The Organization has accepted the demand of the United States that no United Nations post shall be awarded to a United States citizen who has not been cleared by the Federal Bureau of Investigation. A number of employees of American nationality were dismissed on the strength of the conclusion reached by the Committee of Jurists that the United Nations must offer no further employment to persons who were convicted of a criminal offence involving national disloyalty—or who, in the course of any authorized national investigation into espionage or subversion, exercised their constitutional privilege against self-incrimination. The U.N. Administrative Tribunal has thereafter awarded compensation for wrongful dismissal to a number of staff members whose employment had been terminated on such grounds. In its turn the International Court of Justice has declared in an Advisory Opinion¹ that the General Assembly had no power to annul such awards.

Meanwhile, in December 1953, the Eighth Assembly, by approving certain amendments to the Staff Regulations, authorized the Secretary General to terminate the permanent appointment of any staff member if his or her conduct indicates that “the highest standards of integrity required by Article 101, paragraph 3, of the Charter” are not met with, or if facts anterior to his or her appointment and relevant to his or her suitability come to light; facts which had they been known at the time of the original appointment, could have rendered the individual unsuitable “under the standards established in the Charter”. It has been rightly said² that in the hands of a strong Secretary General these powers will be good protection for the independence of the staff; in the hands of a weak one, they might be the opposite. None of these arrangements, interpretations, and regulations (and

¹ Given on 13 July 1954.

² See Professor W. Friedmann in *The Annals of the American Academy of Political and Social Science*, issue of November 1954, p. 135.

there can be little doubt that in their combined effect they amount to a *de facto* revision of the Charter) has helped to strengthen the morale of the Secretariat or through it the efficiency of the Organization.

Although these somewhat disturbing developments are closely related to the location of the Organization's Headquarters in United States territory, the Headquarters Agreement as such is an admirable document which has gone a long way to substantiating the vague terms in which the Charter has asserted the Organization's claim to an independent legal personality of its own. Article 104 of the Charter merely laid down the principle that the United Nations could enjoy on the territory of each Member State

“such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes”.

The Headquarters Agreement of 26 June 1947 bears witness to the remarkable generosity with which the United States interpreted that phrase and welcomed the Organization onto its own territory. The Agreement created a “Headquarters District” in the borough of Manhattan, New York State, and placed it under the control and authority of the United Nations. The Federal, State, or local laws of the United States are only applicable so far as they are not inconsistent with regulations made by the Organization. Except with the consent of the Secretary General, no United States personnel can enter to perform any official duties in the District, while on the other hand the American authorities must provide police for the preservation of law and order as and when the Secretary General so requests. Moreover the United States waived the right to impose any impediments (e.g. by the refusal of visas) upon the transit to or from the district of persons travelling on United Nations business, and promised not to apply its Aliens' Regulations in any way that might interfere with persons who are staying on such business in the District.

The legal capacity of the Organization outside the Headquarters District is regulated by the "Convention on the Privileges and Immunities of the United Nations" (the so-called General Convention). Since February 1946, when it was approved by the General Assembly, this instrument has been ratified by more than two-thirds in number of the total membership. Its first article recognizes without qualification or reservation the legal personality of the United Nations and invests it with capacity to contract, to acquire and to dispose of property and to institute legal proceedings. Following the assassination of Count Bernadotte in 1948, the International Court of Justice handed down an Advisory Opinion directed to the specific question, whether the capacity of the Organization to litigate also covered a case where an agent of the United Nations suffered death or injury in the performance of his duties. The Court found that in such an event the Organization could bring a claim against the Government whose responsibility was involved and demand compensation for the damage which had been caused to the United Nations, to the victim, or to the persons entitled through him¹.

* * *

The conclusions which may be drawn from this brief survey of developments since 1945 are fairly obvious. In many respects the institutions created and the functions regulated by the Charter have already been adapted to changing conditions, and in particular to the conditions of Cold War. This adaptation has been carried out partly through the failure of Member States to implement certain provisions of the Charter ; partly through the conclusion by them of bilateral or multilateral treaties which either fill up gaps in the Charter or overlap with it ; partly through the redistribution of functions between existing organs of the United Nations ; partly through the creation of subsidiary organs ; and finally, through the interpretation of the Charter itself.

¹ Advisory Opinion of 11 April 1949.

As a result, many words that appear in cold print in the text of the Charter have no more effect than if they had never been written into that instrument ; other passages carry a different meaning in practice from that which the plain meaning of the words conveys.

3 Further Change : A Survey of Attitudes

MANY ANSWERS are possible to the twin questions concerning the desirability and feasibility of revising the Charter. Diverse and multifarious indeed are the answers currently propounded by different groups and individuals, and perhaps the simplest way to set them in perspective is to state the two extreme attitudes which mark the width of the ground.

One extreme is the complete denial of a case for change. The proponents of this attitude fall into two groups. First there are those who say that it is a mistake to overestimate the importance of international machinery. They add that even machinery as imperfect as that of the Charter could work well if it were operated in the right spirit, just as machinery of far better design would fail so long as the disunity of the Great Powers continues. Secondly there are those who maintain that there is nothing much wrong with the machinery of the United Nations and that its critics are bent upon destroying the Organization and with it all hope of enduring peace.

It is scarcely possible to overestimate the impact of this second argument on the present chances of revising the Charter ; for the argument is backed by the whole diplomatic weight of the Soviet bloc, with its plain threat to frustrate all attempted amendments through withholding the necessary ratification of the Soviet Union. The Soviet attitude to the whole question of revision was tersely put by Mr. Vyshinsky

at an early stage of the debate on revision in the Eighth Assembly :

“ All information indicates that the campaign for the revision of the Charter is to be transformed into one of true cold war in order to stimulate reactionary trends and to use them to intensify international tension”.¹

Other spokesmen of the Soviet bloc who took part in the same debate merely echoed Mr. Vyshinsky's views with a varying degree of emphasis on the several elements of the Soviet thesis. The thesis itself rests firmly on the proposition that, in so far as the record of the United Nations is unsatisfactory, this is the result not of the principle of Great Power unanimity enshrined in the Charter, but of the attempts, mainly of the United States, to circumvent that principle. In the judgment of the Soviet leaders, all proposals for revision, even those not specifically directed to abolition or curtailment of the *veto*, are really designed to undermine or to circumvent it, and must be resisted. So far, Soviet resistance has been total and uncompromising. But so it also seemed in the early stages of the San Francisco conference of 1945, when the Soviet delegation hotly resisted certain departures from the Dumbarton Oaks draft—and yet in the end accepted them. Whether this experience will be repeated at any Review Conference which may be called is quite unforeseeable. The answer must depend on the further course of the *détente* which seemed to begin in the spring of 1955.

In contrast to those who deny the existence of any need for change, the other extreme is a school of thought which regards a mere association of fully sovereign States (such as the Charter set out to create) as a wholly unsatisfactory answer to the needs of our time. Nothing short of a super-State will do, and the revision of the Charter must aim at transforming the United Nations into genuine World Government.

Many such plans have been propounded, and to give a

¹ 21 September 1953.

summary of them all would go far beyond the scope of this study. Two of them, however, might be given more than a passing reference, for owing to the eminence of their authors and sponsors, they have had a considerable impact upon public opinion.

The first project, known as "Peace through Disarmament and Charter Revision" (1953) is the joint work of two outstanding American lawyers, Mr. Grenville Clark and Professor Louis B. Sohn of the Harvard Law School. They regard disarmament as the crux of the problem of world order. The disarmament which they propose would be universal and it would be carried out by stages over a twelve-year period, subject to rigid United Nations inspection. At the end of that period all nations would stand wholly disarmed (save for limited internal police forces) and with no armament factories of any sort. Only the United Nations would have a sizeable military force (a minimum of 300,000 and a maximum of 700,000 men) composed entirely of volunteers.

The Organization, which would thus have a monopoly of armed strength in the world, should be entrusted with genuine legislative powers, but only over matters directly related to the prevention of war. Since these legislative powers would operate on the whole world, no nation could be permitted to remain outside the United Nations, or to withdraw from it. Member States would retain their sovereignty in domestic matters and generally in all spheres not directly related to the prevention of war. Their nationals would possess United Nations citizenship as well.

Only slightly less ambitious than this is a second prototype solution looking ahead to genuine world government. It is promoted by the World Movement for World Federal Government jointly with the World Association of Parliamentarians for World Government. The present form of the project was approved at the Fourth World Parliamentary Conference held in London in September 1954. It contains a number of Interim Recommendations designed to strengthen

the present structure of the United Nations and even these are ambitious, for among other things they set forth universal membership, weighted representation in the General Assembly, an international police force, and a "World Development Agency" for economic planning on an immense scale. These Interim Recommendations, however, serve only to prepare the ground for the transformation of the United Nations into a full World Federation. Unlike the Clark-Sohn proposals, the Federalist scheme does not insist upon the compulsory membership of all States, but merely gives them an option to join. The powers of the World Legislature (which is to take the place of the present General Assembly) are defined on lines similar to those of the Clark-Sohn proposals. Another common feature is the compulsory reference of all legal disputes to the International Court of Justice and the creation of a "World Equity Tribunal" to mediate in political disputes. Disarmament and the setting up of a United Nations Police Force are important features of the Federalist plan also, but for the time being these plans are rather vaguely drawn.

The proposals on citizenship are, as in the Clark-Sohn proposals, based on the principle that every national of a Member State must also be a citizen of the United Nations. But while in the Clark-Sohn proposals this principle would give United Nations citizenship to every individual in the world, in the Federalist proposals it would have no application to the nationals of States which have not exercised their option to join.

The resulting gap is filled, to some extent, by a specific proposal in the Federalist project whereby all colonies and protectorates (and not only "trust territories" which are at present a rather limited category) would come under the jurisdiction of the U.N. Trusteeship Council.

* * *

Between the two extremes of *status quo* and World Government stand certain proposals which would not change the

character of the United Nations as an association (as distinct from an integration) of independent States, but would alter certain "fundamental" features of the present set-up. The focus, primarily, is upon the position of the Big Five, and in particular the power vested in each of them to frustrate the will of the majority. In 1945 this power was conferred in the name of diplomatic realism, the argument then being that the United Nations could work on the assumption of continued co-operation between the Great Powers.

But experience has shown that the co-operation of the Big Five cannot be secured through the device of thrusting upon them a requirement of unanimity; and conversely, that their lack of unanimity will not necessarily bring about the collapse of the Organization, not even at a time of exceptional strain such as was created by the Korean war. In the light of this experience the time is ripe, it is argued, to abolish—or at least to curtail seriously—the operation of the veto.

The "fundamental" reformers further declare that the time has come for a radical reform of the manner in which the immunity of domestic jurisdiction from intervention by the United Nations is at present guaranteed.¹ They say that the present confines of that immunity have been shown to be far too wide. They tend to disable the United Nations from asserting an indisputable jurisdiction in cases which, by the strict standards of public law, may have to be classified merely as civil wars or rebellions, though they may involve a real danger to international peace. Similarly, the same widely drawn prohibition of intervention in domestic affairs puts too heavy a brake on one of the noblest functions of the Organization: its tasks as guardian and promoter of respect for the human rights of individuals and for the right of peoples to

¹ By Article 2 (7) the United Nations must not intervene in matters "which are essentially within the domestic jurisdiction of any State" and Members need not submit such matters to settlement under the aegis of the United Nations. The field of "domestic jurisdiction" is not, however, inviolate in case of collective action against an aggressor.

self-determination. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other Governments and other peoples. The historical evidence suggests clearly that there is a close connection between domestic oppression and external aggression. That being so there is a strong case for narrowing the limits of domestic jurisdiction in order to widen the scope of collective security.

Moreover it may be argued with considerable force that the Charter ought to re-define not only the borderlines of domestic jurisdiction, but also some of the attributes of territorial sovereignty. The exceedingly hard-fought debates on disarmament have shown that, particularly in the field of atomic weapons, no effective control is conceivable without taking into international ownership and under international management mines, mills, dumps, refineries, research laboratories, and manufacturing plants concerned with the extraction, storage and processing of the source materials, fuels and products connected with the production and use of atomic energy.

The Charter has already created machinery for the international administration and supervision of certain *territories* ("Trust Territories"), but has rigidly excluded from the operation of this system "territories which have become Members of the United Nations", i.e. have attained sovereign status. It has been suggested that this restriction should be removed and the system of trusteeship regulated by the Charter be made applicable not only to the administration of territories, but also to the international control of certain materials, services and technological processes which require to be placed under such control in the interests of international security.¹

Clearly distinct from the attitude of those who thus advocate

¹ See Professor Paul de la Pradelle in Appendix 4, p. 65 of the *Report of the Committee on the Review of the Charter of the United Nations to the Edinburgh Conference of the International Law Association, 1954.*

a fundamental revision of the Charter is the position of a number of eminent experts who would, for the time being, confine the formal amendment of the Charter to minor textual changes, which would express more adequately what the draftsmen of the Charter failed to express without ambiguity or inconsistency. Some of these proposals go further and seek to ratify by formal amendment of the Charter those changes, or some of them, which have already occurred *de facto* in the course of the past ten years.¹

From this last attitude it is important to distinguish the position of those who would not be content merely with the *de facto* revision which has been attained so far, but hope to make further progress through interpretation and usage. There are many possible variants of this position ; some would involve the formal ratification of changes from time to time, others would dispense with formal amendments altogether and rely solely on the effects of general acquiescence in whatever revisions may be adopted in the practice of the United Nations.

It is a somewhat unprofitable mental exercise to try and guess which attitude or which combination of them is likely to prevail at the Review Conference—if, indeed, such a Conference is held.

It may be predicted with tolerable certainty that, of the two extremes, the federal solutions have no chance of being adopted at such a conference, even though in the long run the transformation of the United Nations into genuine World Government may prove to be inevitable. It would be rash to rule out with an equal degree of conviction the victory of the other extreme. Soviet intransigence cannot prevent the holding of a Review Conference, but it can altogether wreck any prospect of results.

As regards the "fundamental" revision of the Charter, e.g. by the abolition of the veto or the restriction of domestic

¹ For fuller details see International Law Association, *Report, op. cit.*, particularly Appendix 5 by Dr. B. Cheng and Mr. L. C. Green.

jurisdiction: this seems a remote possibility at the present initial stage of the *détente* between East and West. On the other hand, it may easily happen that Charter revision will prove to be a useful bargaining counter in the high-level negotiations seeking to reduce general tension. If so, the negotiations might well yield agreement in a number of technical or drafting amendments, and even on the thorny problem of how the procedure for the admission of new Members should be made more serviceable. This last subject is typical of those which admit of a satisfactory readjustment of the present rules without formal amendment. No revision of the Charter would be necessary, but only an agreement between the Great Powers to exempt applications for membership from the operation of the veto.

Apart from the Soviet bloc which has (so far, at any rate) opposed the revision of the Charter in any shape or form, none of the Great Powers and no grouping of the smaller ones has committed itself to any particular line of approach. About the deliberate character of this reserve there can be no doubt. When, at the Eighth General Assembly (1953) it was suggested that Member States might greatly assist the deliberations of the Tenth Assembly (which will have to decide on calling a Review Conference) by submitting "preliminary views" on the subject of revision, this idea met with overwhelming opposition. The debates¹ made it quite clear that, in the view of the majority, it was better to wait and see whether the general atmosphere changed for the better between 1953 and 1955, and formulate views in the light of any change. Similarly, the majority was in no mood to accept an alternative proposal, which would have established a technical advisory committee of 15 Member States to assist the Secretary General of the United Nations in carrying out the preparatory work necessary for a possible revision of the Charter. Although under this proposal the veto and other

¹ The debates took place during the autumn of 1953 in the VIth (Legal) Committee and in Plenary Sessions of the General Assembly.

questions of high-grade political delicacy would have been excluded from that list of subjects on which Member States were to be invited to state preliminary views, even this mild attempt to pin them down in advance of the Review Conference was doomed to complete failure. In the event, the long and acrimonious debate in the Eighth Assembly yielded no more than agreement on the special documentation to be prepared by the Secretariat.¹ This documentation includes a systematic compilation of all those documents of the San Francisco Conference which have not as yet been published ; a complete index of the San Francisco documentation ; and (a most useful project) an appropriately indexed repertory of the practice over the past ten years of the various organs of the United Nations.

Besides the preparatory work of the U.N. Secretariat, Governmental and non-governmental organizations directly or indirectly concerned with the future of the United Nations have in many countries launched research projects of their own.² Some of these projects cover the full range of the substantive and textual problems of the Charter. Within the narrow compass of the present study no attempt can be made to survey so wide a ground, many sections of which are of no particular interest except to the specialist.

The problems which are directly relevant to the revision of the Charter and are both vital and topical are relatively small in number. It has seemed to us that they can be conveniently grouped under three principles of organization (universality, equality and efficiency) all of which are, in one way or another, controversial in the case of the United Nations.

¹ See U.N. Document A/Resolution/133(VIII) for the full text.

² A most valuable collection of documents and short monographs (to which the present authors are much indebted) has been prepared by the Staff of the Sub-Committee on the United Nations Charter of the U.S. Senate Committee on Foreign Relations.

4 “*Universality*”

THERE ARE two broad approaches to the problem of recruiting members for an association of sovereign States. One starts from the premise that the strength of any such organization depends on its including the greatest possible number of States ; the fewer the States outside it, the greater will be the number of the members pledged to carry out its discipline and to perform the duties which it imposes. This doctrine tends towards universal membership, i.e. the adherence to the organization of all such communities as will pass the tests of independent statehood. In its milder form, the “principle of universality” (as it is usually called) will not go beyond giving all States an option to join ; but a somewhat extreme variant would leave them no freedom to contract out, and make membership compulsory for all States.

The second approach is from a different premise. Its advocates maintain that, as a rule, the strength of a public international organization depends not on its including the greatest possible number of States, but on its including the greatest possible number of “like-minded” States, such as can be trusted to work together harmoniously and therefore efficiently. Organizations based on this method of recruitment are usually said to have adopted the “principle of selectivity”.

It is clearly impossible to choose between the two rival principles on their theoretical merits alone. The choice must depend on the function of the particular organization for which the choice must be made in practice. Where the

function obviously makes efficiency dependent on universal membership, selectivity has little to commend it. The world would be ill served by a postal union which did not guarantee that letters reached their place of destination regardless of the historical record, political colour, and social system of the State where that place may be situated ; and by and large the same considerations would apply to most organizations of a technical (or, as they are sometimes misleadingly called, “ non-political ”) type.

These considerations, however, cease to be dominant once it is sought to apply them to an organization which shoulders responsibilities of a mainly political nature ; and what could be more so than the task of safeguarding world peace and security—by collective sanctions if need be? At the birth of the League of Nations, and again at the birth of the United Nations, the question whether the principle of universality could be usefully adopted was considered at length and with every care. In each case the question received a negative answer from the majority.

The arguments and counter-arguments of 1920, belonging as they do to a closed chapter of history, need not, with one exception, be reproduced here. The exception concerns one of the main arguments which the Argentine delegation put forward in support of universal membership :

“ The non-admission of a number of States might lead to dangerous antagonisms, be the cause of the formation of a league of States outside the League in rivalry to it, and lead to constant anxiety for the peace of the world ”.

Between the wars this danger did not quite materialize ; what did lead to portentous antagonisms and rival alliances was not the refusal of membership to any State, but the withdrawal from the League of such aggressive malcontents as Japan, Fascist Italy, and Nazi Germany. The warning is much timelier today when States which have been refused admission to the United Nations are taking their seats as full

Members of rival military alliances, such as NATO and the Soviet-led organization of the recent (May 1955) Warsaw Pact.

In the case of the United Nations, the rejection of universality took place in two stages. In the Dumbarton Oaks proposals the chapter headed "Membership" consisted of a single brief paragraph :—

- " 1. Membership of the Organization should be open to all peace-loving States ".

Subject to a liberal interpretation of " peace-loving ", the above text, if read in isolation, seemed to lean in the direction of universality. But, of course, the text was not to be read in isolation ; it had to be read in conjunction with another rule (Chapter V, Section B, 2) which empowered the General Assembly to admit new Members to the Organization upon recommendation of the Security Council. The two rules, read together, were tantamount to adopting a principle of selectivity which, even at first glance, was more severe than that which the League had adopted. In the League it was sufficient for a candidate to pass muster in the Assembly ; in the United Nations the Security Council in addition had to confer its approval. It is important to note that at this stage of the preparations the long shadow of the veto had not as yet fallen on the procedure of admissions ; the voting procedure in the Security Council was still unsettled and so remained until the Yalta Conference of February 1945.

At the San Francisco conference, in the teeth of the sponsoring Powers' obvious resolve to see the principle of selectivity prevail, a group of Latin-American States reopened the battle for universal membership. Their proposals ranged from the extreme demand that the membership of all national communities should be obligatory (without any nation having an option not to join or to withdraw) to compromise solutions, such as would bar from membership the Axis States and those

whose regimes had been established with the help of Axis forces—an unmistakable pointer to Franco Spain. From the outset this was a losing battle. Even France, the only Great Power which had not been represented at Dumbarton Oaks, and which, by tradition, had no definite leanings towards a restrictive regulation of membership, insisted on conditions which would

“ ensure a community of political principles and an ideal shared in common among those who are already Members and any new Members of the Organization ”.

Some went even further and wanted admission limited to States which had already proved their respectability not only by behaviour, but also by the adoption of certain institutions. The majority at San Francisco firmly refused to implement, at any rate for the time being, the principle of universality in any shape or form ; the only concession it was prepared to make was to recognize universality as “ an ideal toward which it was proper to aim ”.

The result of these debates is a group of four Articles (Articles 3-6) in the present text of the Charter. The first of these defines the original membership of the United Nations ; this comprises the 51 States which became “ founder Members ” (as it were) by reason of having participated at the San Francisco conference or (as in the case of Poland) by having previously signed the Declaration by United Nations of 1 January 1942. The next Article regulates the recognition of additional Members. The remaining two Articles deal with disciplinary measures against Member States (suspension and expulsion) and the procedure to be followed in such cases. No such proceedings have ever been taken and, accordingly, there is no material on which the Review Conference could find that the relevant two Articles of the Charter have in practice proved to be inadequate. By its nature, ~~the~~ Article defining the original Members was incapable of giving rise to

practical difficulties. The only Article in this group of four which is shown to be obnoxious by the historical record, and not only by arguments *a priori*, is the one which regulates the admission of new Members. The observations which follow will be concerned mainly, though not exclusively, with this Article.

The text is relatively simple :—

“*Article 4.* (1) Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

(2) The admission of any such State to Membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.”

Thus, there are five objective qualifications for Membership : statehood ; “ peace-lovingness ” ; acceptance of the obligations contained in the Charter ; ability to carry out these obligations ; and, finally, willingness to carry them out.

In border-line cases these qualifications—or at least some of them, such as statehood and “ peace-lovingness ”—may obviously cause genuine difficulties of interpretation. These, however, could assume first-rate importance only if applications were adjudicated upon by an impartial tribunal. In the United Nations, they are adjudicated upon by two organs which are, in composition and function, political : first, by the Security Council and, thereafter, by the General Assembly. Both of these organs decide by majority votes, but in the Security Council the majority, however massive it may be, can always be stultified by a single negative vote coming from a Great Power. In this situation, it is a matter of secondary importance whether a given application for Membership does or does not satisfy the five substantive requirements laid down

in the above text ; for practical purposes, the decisive test will be whether the candidate is or is not acceptable to all the Great Powers at the moment when the application arises for decision. The answer will depend, in each case, on the state of the wider diplomatic game. Needless to say, an unwelcome application need not be blocked by an outright veto ; it is equally effective to prevent the casting of seven affirmative votes in the Security Council. This latter method is not open to the Soviet Union, as it cannot hope to influence that number of votes. Hence its monotonous resort to the veto.

What are the net results so far? Since October 1945, when the Organization came into being with 51 original Members, only nine States have been admitted ;¹ a glance at the list will show that, although some of these are strategically important, none of them could (at the time of admission) be said to make a great difference to the relative strength of the rival protagonists, within the United Nations or outside it.

There have been 21 more applications for admission, all of them unsuccessful ; but some more spectacularly so than others. The 14 candidates² supported by the Western Powers have secured seven or more affirmative votes in the Security Council ; only the Soviet veto stood between these States and Membership. The remaining seven candidates,³ all of them Soviet-sponsored, simply failed to receive the requisite minimum of seven votes ; no veto was necessary to block their success. Two candidates in this group (North Korea and the Republic of Vietnam) have not even passed the preliminary hurdle of having their applications referred by the Security Council to its appropriate investigating committee.

¹ Afghanistan, Iceland, Sweden, Thailand, Pakistan, Yemen, Burma, Israel, Indonesia.

² Jordan, Portugal, Ireland, Italy, Austria, Finland, Ceylon, Republic of Korea, Nepal, Libya, Japan, Vietnam, Cambodia, Laos.

³ Albania, Mongolian People's Republic, Hungary, Roumania, Bulgaria, Democratic People's Republic of Korea, Democratic Republic of Vietnam.

The process which has led to this plainly unsatisfactory result started almost immediately after the United Nations was established. Within a few months, applications for Membership were received from eight countries: Albania, the Mongolian People's Republic, Jordan, Afghanistan, Ireland, Portugal, Iceland, and Sweden. The United States proposed that the Security Council recommend the admission of all eight applicants, "to accelerate advancement of the universality of Membership". This was, in effect, a "package proposal", such as the Soviet Union has put forward time and again since the autumn of 1947. However, in 1946 the Soviet delegation set its face firmly against the admission of any number of States *en bloc*; it insisted upon a consideration of each application individually. The result was the admission of Afghanistan, Iceland, and Sweden; a Soviet veto against Ireland, Jordan, and Portugal; and the failure of Albania and Mongolia to secure the required minimum of seven votes in the Security Council.

This precedent set the pattern for the future, save that henceforth it fell to the Soviet Union to propose admission *en bloc*, and to the Western Powers to demur. The first Soviet "package proposal" came after the coming into force of the Peace Treaties with Italy, Finland, Hungary, Roumania, and Bulgaria in September 1947; the Soviet contention being that the United Nations must either admit all these ex-enemy States, or none of them. True to pattern, Italy and Finland were blocked by Soviet veto, and the three East European "People's Democracies" failed to secure the required minimum of votes. In 1949 the Soviet Union repeated its proposal; by then it covered, in addition to the five ex-enemy States, eight others. In 1952, with the addition of one more controversial applicant, the list attained its peak of 14 countries, at which it still stands today.¹ Invariably, the majority of the Council led by the Western Powers has rejected these

¹ Albania, Outer Mongolia, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Roumania, Bulgaria, Finland, Ceylon, Nepal, Libya.

bargains, claiming that they were contrary to the letter and spirit of the Charter.

An early opportunity was taken to test the legal validity of this argument. In November 1947 the General Assembly requested the International Court of Justice for an advisory opinion directed to the question whether a member of the Security Council voting on an application for Membership was

“ juridically entitled to make its consent to the admission dependent on conditions not expressly provided by (Article 4). In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to Membership in the United Nations together with that State? ”

The Court rendered its advisory opinion in May 1948, by a majority of 9 : 6. The majority view was that once a Member of the Security Council considered (as the Soviet Union had done in the cases of Italy and Finland) that an applicant, on its own merits, met the requirements of the Charter, it was wrong to subject the vote on admission of that applicant to the additional condition that other States should also be admitted. In the last analysis this opinion did not amount to more than saying that, had the Soviet Union simply vetoed the applications of Italy and Finland, without assigning reasons, this would have been legally unassailable ; the violation of the Charter consisted in the Soviet Union giving reasons which were legally bad. This, precisely, was the point where the six dissenting judges parted ways with the majority : in their view a Member of the Security Council was, or should be, free to be frank about the reasons for its vote, otherwise the proceedings would be open to the charge of hypocrisy. That the Soviet Union readily accepted the view of the dissenting judges was only to be expected and it may be fairly said that the reference of this issue to the Court

has proved to be a wholly ineffective way of solving the deadlock.

Equally ineffective has been the series of attempts to argue that the admission of Members is outside the orbit of the veto. One way or another, all these arguments relied on the absence of any reference to the admission of new Members in that Statement concerning the field in which the veto applied which the Great Powers had made in answer to a questionnaire presented to them at the San Francisco Conference.¹ Thus, as far back as 1946, the Australian delegate in the Security Council maintained that the initiative for the admission of new Members rested with the General Assembly and the Security Council's recommendation must be confined to whatever questions of security might be involved in any particular application ; this view, however, did not commend itself either to the Council or to the General Assembly. Later a group of States, mainly Central American, urged the General Assembly to consider an application as having received a favourable recommendation if approved by any seven Members of the Security Council. An interesting variant of this argument came from Argentina : since Article 4 of the Charter left the final verdict on admissions to the General Assembly without expressly stipulating a favourable recommendation from the Security Council, the Assembly was just as free to admit a candidate who had found no favour with the Council, as it was free to reject one whom the Council had positively recommended. Yet another proposal, of Peruvian origin, would have so interpreted the Charter that if seven Members of the Security Council, including the permanent Members, had ever recognized by word or act that an applicant fulfilled the qualifications for Membership, such word or act amounted to "a recommendation which no subsequent veto was able to defeat".

In 1950 the General Assembly sought another advisory opinion of the Court, this time on the validity of the conten-

¹ As to which, see *infra*, pp. 77 *et seq.*, also p. 89.

tion which underlies all the above proposals. It asked, in effect, whether the General Assembly had power to admit a candidate for whose admission the Security Council had made no positive recommendation. By a vote of 12 : 2, the Court gave a negative answer. On the more deeply controversial question whether Membership was within the orbit of the veto, the Court refused to pass, apart from saying that “ nowhere has the General Assembly received the power to change to the point of reversing the meaning of a vote of the Security Council ”. For this evasive treatment of the fundamental controversy the blame cannot, in fairness, be laid at the door of the Court. The question put by the Assembly was formulated in a manner which amounted to assuming that the veto did validly operate, and the Court was clearly entitled to regard further scrutiny of that assumption as lying outside its terms of reference.

In 1951 a group of Central American States tried to make the General Assembly and the Court grasp the nettle by proposing a request for a further advisory opinion, directed to the precise question whether or not an application for Membership could be vetoed at all. It is significant of the majority's disinclination to provoke an answer from the Court that the request for such a further advisory opinion has never reached the stage of a vote in the General Assembly.

A similar reluctance to crack open the hard core of the controversy has characterized the proceedings of a special committee of 19 States that the General Assembly established in December 1952. Its function was to examine all the proposals which had so far been directed to resolving the deadlock by “ interpretation ” of the relevant provisions of the Charter. The committee considered these proposals, gave a comprehensive account of them in its report, but submitted no recommendation to the General Assembly. It would be an exaggeration to say that the United Nations has been afforded either comfort or assistance in the shape of the committee's main finding, that

“generally speaking, the proposals and suggestions . . . envisaged the solution of the problem along the line of interpretation of the Charter based on the views that . . . (the veto) did not apply to the admission of new Members and that . . . it was for the Council to make recommendations, but for the General Assembly to decide. The discussion . . . made it apparent, however, that such an approach was not generally acceptable, principally on the grounds that the unanimity rule in the Security Council applied to the admission of new Members and that the provisions of Article 4 did not allow the General Assembly to admit new Members in the absence of a favourable recommendation by the Council”.

If the view that the veto did not apply had been “generally acceptable” at any relevant time, the veto would not have been used and the deadlock would not have arisen.

Time and again since 1947 attempts have been made to find a political, as distinct from a legal, solution for the problem. Exhortations to this effect addressed to the Security Council as a body have led to the same negative results as appeals to the permanent Members as a group. As a rule, the “political solution” was envisaged in the form of a more for less comprehensive package deal; but the permanent Members, except the Soviet Union, have consistently declined to negotiate any such bargain. In October 1953, the General Assembly set up a small Committee of Good Offices “with the object of exploring the possibilities of reaching an understanding”. It has been stated authoritatively that this Committee “has held a number of meetings and has been engaged in investigating ways in which the task entrusted to it by the General Assembly might be carried out”;¹ but the rest, alas, is silence.

* * *

The present situation is plainly unsatisfactory. If there is

¹ Report of the Secretary-General, 1954, p. 7.

one inescapable lesson to be learnt from the unhappy history of the League of Nations, it is the imperative need for a world organization always to include all the major Powers. “ Major ” does not, in this context, refer solely or even primarily to military resources, but rather to size of population and, in particular, of over-population. The effectiveness of a world organization will be measured not only in terms of the resources which support it, but also of the economic and social problems with which, sooner or later, it will be called upon to cope. A glance at the list of countries whose membership has so far been blocked will reveal a disquieting number of countries with pressing political and economic problems: Italy, Japan, the two Korean Republics, and the two Vietnamese Republics are obvious cases in point. No application has as yet been made by either of the two German Republics, but the time when one or both of them will do so is rapidly approaching. Applications can always be staved off ; but a purely negative solution of the problem of membership can never turn the United Nations from a nominal into a real world organization.

Whether, in order to remedy this situation, it is necessary to alter the Charter is a more than usually controversial question. Clearly, if that document had been differently formulated, the proportions of the present evil would also be different. For instance, if the veto did not apply to membership, the list of unsuccessful applications would comprise no more than seven countries instead of 21 ; and if the General Assembly had been left in sole charge of admissions (such was the case in the League), it may well be that the list would be even shorter. On the other hand, the provisions of the Charter as they now stand have never been given a fair chance ; had they been operated not in conditions of a cold war, but in an atmosphere of harmony among the Great Powers, the Organization might have achieved more universality by now and held in abeyance only those applications which involve genuine doubts as to the independent statehood of the countries concerned.

However that may be, most if not all proposals for the

revision of the Charter envisage alteration of the Articles regulating membership. The radical reformers who believe in the desirability and also the possibility of immediate progress towards "world government" postulate universal membership for the United Nations. In its more extreme form, the demand is for the membership of "all nations which now exist as independent States and any nation which may become an independent State in the future", whether or not any such State wishes to become a Member; milder versions would merely admit all States as a matter of right subject to their accepting the terms of the Charter.

At the peak of the cold war it looked as though the adherents of selectivity might also evolve their own extreme stand. The most influential exponent of this movement was Mr. Herbert Hoover, former President of the United States, who, in a much publicized pronouncement made in 1950, went on record with the view that

"the United Nations should be re-organized without the Communist nations in it. If that is impractical, then a definite New United Front should be organized of those peoples who disavow Communism, who stand for morals and religion, and who love freedom. This is specifically not a proposed extension of a military alliance or any colour of it . . . It is a proposal to redeem the concept of the United Nations to the high purpose for which it was created. . . ."

Almost exactly five years later, Mr. Hoover had occasion to testify before the Senate Foreign Relations Committee on the general problem of revising the Charter and emphatically withdrew his previous counsel that either the Russians or the free world should "retire" from the United Nations. Such a course, he said, was not feasible in a dangerous world.¹

That would seem to leave the choice at the Review Con-

¹ *New York Times*, Continental Edition, 22 April 1955, p. 1.

ference between two schools of thought: the universalists, and those who wish merely to mitigate the rigours of the Charter's present selective procedure. Many proposals have already been made by the adherents of this second school and more, no doubt, will be forthcoming. These proposals fall almost naturally into four categories.

Firstly, it can be and has been suggested that of the five substantive conditions laid down in the present text of Article 4 only two are essential: statehood, and the acceptance of the obligations of the Charter. The remaining three conditions (peace-lovingness, ability to carry out the obligations of Membership, and willingness to do so) would always be open to controversial interpretation and, consequently, do more harm than good. All or some of these conditions, it is argued, should therefore be dropped. This solution would have the advantage of clearing the atmosphere in future debates on admissions of open attacks on the historical record and present political system of the candidate, and of counter-attacks on the critics; and yet the doors would not be thrown open to undesirable candidates because a competent organ or organs of the United Nations would still be free to reject an application, albeit they would have to do so without assigning specific reasons.

Secondly, there are proposals which would establish a type of “associate membership”, while leaving intact the present requirements for full Membership. These proposals are put forward either for the benefit of countries which by traditional policy or by treaty are precluded from assuming the full burden of membership, notably in the matter of military sanctions; or for the benefit of applicants barred by the veto who might, in suitable cases, be seated in the General Assembly but not in other organs. The first variety of associate membership would, if adopted, have the effect of enabling e.g. Switzerland to join; whether the second variety would appeal to any Government jealous of its international prestige is open to considerable doubt.

Thirdly, there are those proposals which would leave unaltered the present substantive conditions of membership, but give the Security Council no say in the admission of new Members. Supporters of this radical change of the present procedure can justly point to the precedent of the League, its success in recruiting a more universal Membership (save for the tragic aloofness of the United States), and its good record in keeping the procedure of admission reasonably free from acrimony and recrimination. It is, however, difficult to see how the Soviet Union could be persuaded to accept such an amendment which (unless the general conflict between East and West yielded to a system of well regulated co-existence) would be calculated to let in the *protégés* of the Western Powers, while keeping out the candidates of the Soviet bloc.

Fourthly and finally, it has been urged in many quarters that the procedure of admission must be freed from the operation of the Great Power veto. To give effect to this proposal would require no amendment of the Charter, but only an agreement between the Great Powers henceforth to treat motions concerning the admission of new Members as procedural matters which can be decided by any seven affirmative votes. Such an agreement could be made for a trial period to begin with ; and simply because, in such a form, agreement would not involve the final surrender by the Soviet Union of an acquired right, the easiest way out of the present urgent difficulties may well lie in this direction. Although the framing of such a limited agreement between the permanent Members of the Security Council would not be the function of a Review Conference, the precedent of San Francisco suggests that the Conference would at least provide the natural occasion and framework for negotiating the proposed re-definition of the field in which the veto can properly operate.

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5 “*Equality*”

IN THE WORDS of Article 2 of the Charter “the Organization is based on the principle of the sovereign equality of all its Members”. But to the man in the street the principle thus stated makes no sense ; a fleeting glance at any school atlas will remind him that Members of the United Nations are anything but equal in territory, population, economic resources, and any other factor by which one can measure the power and influence of a State. In effect, the principle of equality as proclaimed in the Charter will have no tangible meaning for anybody except the student of political theory and international law. To him, the formula will convey no more and no less than that all States are equal before the law : the violation of the rights of the smallest State must be taken as seriously as the violation of the rights of the mightiest. From this equality before the law it follows that, in deciding on disputes between Members, the Organization must act impartially, unmoved by considerations of power. Another thing which follows is that each Member is entitled to immunity from interference with those affairs which are essentially its own concern.

An association of States based on the sovereign equality of its Members need not necessarily treat them as equals for all purposes. In the League of Nations the Great Powers were, in the Orwellian phrase, “more equal than others” in that ~~they had permanent seats on the Council. Again, Members~~ made unequal contributions to the League’s budget, due

account being taken of their financial resources ; also, in the recruitment of staff for the Secretariat, great care was taken that each Member State should have a fair share of posts—not an equal share. But on the cardinal issue of voting power, there was complete equality : all substantive decisions in the Assembly and the Council had to be unanimous. To put it differently, in the League each Member State had a right of veto, in Council and Assembly alike.

This is not so in the United Nations. Here the discrimination in favour of the Big Five is more marked—or at least appears to be. They, and they alone, have permanent seats in the Security Council and (by operation of a somewhat tortuous formula) also in the Trusteeship Council. They alone have a veto ; but it operates only in the Security Council. They alone, and each of them, by withholding ratification, are able to frustrate a constitutional amendment adopted and ratified by the majority of the membership at large ; in the League, they shared this right with the non-permanent Members of the Council. Apart from these privileges enjoyed by the Big Five (and apart from the “ weighted ” participation of Members in financing the budget and filling vacancies in the Secretariat—not real privileges at all), equality reigns supreme in the United Nations. It is, on the face of it, an equality more democratic than that which prevailed in the League. The anomaly of each Member, large and small alike, having a virtual veto has been abolished. All organs of the United Nations decide by majority vote ; and only in the Security Council can the will of the majority be frustrated by the solitary opposition of a Great Power.

In 1945 this “ democratization ” of equality was hailed as a triumph and extolled as a remarkable progress from the constitutional ideas of the League. In the General Assembly, we were told, a real “ town meeting of the world ” had been created. In it each Member State had one vote and none had a veto.* No resolution, however important, required more than a majority of votes. That is to say, a simple majority

was prescribed for questions not classified as important ; a “ qualified ” majority of two-thirds of those present and voting for important questions ;¹ and a two-thirds majority of *all* Members of the Organization for amending the Charter. No State, however powerful, was entitled to more than a maximum of five principal representatives—the same number that even the smallest State was allowed to send.

The pride and elation with which the democratic constitution of the General Assembly was greeted and expounded in the early days of the Charter has by now given way to second thoughts in many quarters. In most countries the main concern of public opinion is still with the veto in the Security Council, and the problem of voting in the General Assembly has received relatively little attention. With the approach of the Tenth Assembly, and potentially of a Review Conference, the somewhat paradoxical problems posed by the principle of “ one State—one vote ” in the General Assembly have begun to move into focus.

The chief problem is simply stated : can the United Nations afford to run the risk of the system of “ one State—one vote ” degenerating into a system of power without responsibility? It is equally simple to demonstrate that, on the relevant statistical facts,² the risk is a genuine one.

In the General Assembly there are seated representatives of 60 Member States. Of these only nine States have a population of 40 million or more. Not less than 26 States have a population of five million or under ; four of these have

¹ As defined by Article 18, the following are important questions : recommendations regarding the maintenance of peace and security ; elections to the three Councils ; the admission, suspension, and expulsion of Members ; questions relating to the operation of the trusteeship system ; and budgetary questions.

By a simple majority of the Members present and voting the General Assembly can create additional categories of “ important ” questions. This power has not so far been used.

² The statistical facts here reproduced are taken from Staff Study No. 4, published under the auspices of the U.S. Senate Sub-Committee on the U.N. Charter, Washington, 1954.

a population of less than one million. On the other hand, three countries (China, India, and the Soviet Union) contain more than half the total population of the United Nations. With regard to territory similar inequalities exist ; suffice it to point out that the total area of the U.S.S.R. is more than 1,000 times the area of El Salvador. As for economic resources, in the year 1953, when the gross national product of the United States was estimated at \$363 billion, that of the U.S.S.R. at \$100 billion, and that of the United Kingdom at \$45 billion, there were six Member States with a gross national product of less than \$200 million.

It is not necessary to take all these inequalities into consideration in order to show how inequitably the equality of votes might work out in practice ; it will be quite sufficient to relate voting strength to population. There are seated in the General Assembly 31 States which represent only a little over 5 per cent. of the population of all Members ; but their combined votes also represent an absolute majority. Of these 31 countries, 21 are so small that in the aggregate they represent only about 2.3 per cent. of the U.N. population ; and yet their combined votes could prevent a positive decision on any of those numerous issues for which the Charter stipulates a two-thirds majority. Conversely, 40 of the smallest nations with a combined population representing only about 11 per cent. of the grand total could, if they were so minded, muster a two-thirds majority of votes on any issue.

The operative words are "if they were so minded". It may be, and no doubt will be, argued with considerable force that the danger of the small States banding together and holding to ransom their larger partners in the United Nations is purely hypothetical, and that in the light of the voting record so far the probability of any such thing happening is infinitesimally small. This may be true though it happened on one occasion that the Latin American bloc and the Arab League, with the aid of some supporting votes, succeeded in defeating the combined votes of all European Members, the

United States, China, and three of the British Dominions. The motion then was for the adoption of Spanish as one of the working languages of the United Nations, and it was carried by 32 votes to 20, with five abstentions.¹ It would be foolish to exaggerate the importance of this incident, but it would be equally unwise not to draw from it the lesson that “ bloc votes ” can easily arise not only on regional issues, but also on matters which, at any given moment, are chosen as a suitable testing ground of the relative influence of large States and small States in the Organization.

Nor should it be forgotten that, if the 22 States now on the waiting list for Membership were admitted, this would entail a further—and considerable—increase of the relative voting strength of small States in the General Assembly.

It may be justly argued that the risks of the “ one State—one vote ” principle must have been foreseen and deliberately accepted by the major Powers in 1945. They undoubtedly were. What the delegates at San Francisco did not foresee was the radical shift in the relative importance of the Security Council and the General Assembly in favour of the latter ; or, to put it differently, the rapid widening of the Assembly’s functions and responsibilities.

In that concept of the United Nations which received expression in the Charter, the General Assembly was primarily a forum for discussion and debate. Apart from its budgetary powers, it was not meant to wield real political power, let alone military might. In the pacific settlement of disputes it was to play second fiddle to the Security Council, and no part at all in operating the machinery of sanctions. It was to assemble once a year, possibly for a longish session ; but between these annual sessions the business of the Organization was to be conducted by the three Councils² and the Secretariat.

¹ This occurred during the Third Session (October 1948).

² The Security Council, the Economic and Social Council, and the Trusteeship Council.

Under the strains and stresses of the cold war all that has changed almost out of recognition. First, by the creation of the Little Assembly,¹ and later by other means, ways have been found to keep the General Assembly in a state of constant readiness ; in a warlike emergency it may, under the Uniting for Peace Resolution,² be convened in twenty-four hours. As a forum for the consideration and settlement of political issues, at any rate since the second half of 1949, the General Assembly has been gaining ground constantly from the Security Council. In 1948 the Council was still fully occupied ; it held 168 meetings in a single year. In 1951, 1952 and 1953 the annual average dropped to 41 meetings. During the same period the number of political issues considered by the General Assembly rose from nine in the year ending 30 June 1948 to an annual average of 20 in the years 1951-53—more than double the number with which the Security Council was concerned. True, the General Assembly is still devoid of power to make decisions—it can make only recommendations. But since the Uniting for Peace Resolution of 1950, these recommendations may cover the whole field of collective security, including a finding that aggression has been committed, or a specific recommendation for sanctions.³ The significance of these advances of the General Assembly into the erstwhile forbidden field of collective action has been accentuated by the creation of two important subsidiary organs : a Collective Measures Committee to report on the methods which might be used to strengthen international peace and security, and a Peace Observation Commission to report on any situation which might endanger peace and security.

Viewed against this background of developments which were not predictable in 1945, the adequacy of the "one State—one vote" principle is open to some doubt. It is only

¹ See *supra*, pp. 24, 25.

² See *supra*, pp. 27-30.

³ See *supra*, p. 28.

fair to say that so far it has worked satisfactorily on all major issues directly relevant to security. Apart from a certain number of motions which, after securing comfortably enough the simple majority required at the committee stage, failed to secure the two-thirds majority prescribed for that type of motion in plenary session, the system has worked also without shocks or surprises. Indeed, the complaint should rather be of monotony: the five Soviet Communist States are found invariably on the same side, the seven Arab delegations can be trusted to vote as a unit whenever a motion aims at the Colonial Powers or Israel, and the twenty Latin-American countries also tend to “ harmonize ” their votes.

Satisfactory as the working of the system may have been so far, suggestions for its reform are being pressed from many quarters.

These suggestions fall into two main groups. Those in the first group are part of more ambitious schemes which involve a re-valuation of national sovereignty and the transformation of the United Nations into some form of supra-national authority; those in the second group would maintain the present character of the Organization, but re-cast the system of voting somewhat drastically.

The most fully developed plan of the first variety is contained in the Clark-Sohn proposals.¹ It rejects any system of weighted representation based on economic resources, productive capacity, educational standards, and the like, and relies exclusively on the population factor. Each Member State would be entitled to one representative for each five million population (or major fraction thereof), with an upper limit of 30 representatives for any Member. States with more than 100,000 but less than two-and-a-half million inhabitants would be entitled to one representative, and those with a population of less than 100,000 would have no voting rights in the Assembly, although they could send a delegate to participate in the discussion. The formula would be adjusted

¹ *Supra*, pp. 41, 42.

from time to time to take account of increases in the world population and to ensure that the number of representatives should never exceed 400. The representatives would be chosen by popular vote or by a vote of the national legislature.

Rather more complex is the concept of a "World Legislature" which the World Movement for World Federal Government and the World Association of Parliamentarians for World Government would like to see in place of the General Assembly of the United Nations. This would be a bicameral body, with an Upper House of Senators appointed by the Member States, and a Lower House of Deputies "the number of whom shall be determined for each Member State on the basis of population and other relevant factors". All legislation would be passed by a two-thirds majority of those present and voting in each House.

Bicameralism, with a Lower House elected on a popular vote is a common feature of most federal proposals, notably those advanced by the Federal Union and the Atlantic Union Committee. They also advocate the principle that all representatives elected by popular suffrage should vote as individuals and not as instructed by Governments. The Clark-Sohn proposals, although they do not envisage a world federation properly so called, also favour individual voting in the reconstructed General Assembly.

An interesting variant on the federal proposals is the regional solution advocated by a body connected with the University of Chicago, the Committee to Frame a World Constitution. They propose a federal convention, consisting of delegates elected directly by Member States, one delegate for each million of population. This convention would then subdivide into electoral colleges corresponding to nine regions of the world,¹ and the Members of the World Council or Legislature would be nominated and elected by these colleges. Representation in the Legislature would be weighted

¹ Somewhat fancifully delineated as Eurasia, Europa, Atlantis, Afrasia, Africa, India, Asia Major, Austrasia, Columbia.

in favour of those countries with the richest experience in democratic government: the three regions of the Western world, with about a fifth of the world's population would be given one-third of the representation, while “ Asia Major ” (China, Japan, Korea) with about 25 per cent. of the world's population would receive no more than 11 per cent. of the total number of seats.

These examples of the supra-national approach to the reform of the General Assembly could be multiplied. Those already given should, however, suffice to show that they all involve a fundamental change in the character of the United Nations. As a result, their chance of being seriously considered at a Review Conference such as Governments envisage at the present moment, is infinitely small.

As a matter of logic, the chances of the second group of proposals should be better, even though (as the present writers think) as a matter of practical politics they are likely to fare no better. These proposals seek to introduce the principle of “ weighted ” voting into the machinery of the General Assembly without changing its structure or functions.

The simplest proposal of this kind, and perhaps the most ingenuous, would allot to each Member a voting power roughly equal to the proportion which its financial contribution to the United Nations bears to the total of all contributions. A tentative suggestion to this effect was made by the New Zealand delegation in 1950. Not even in this somewhat crude form would such a system be without precedent ; as far back as 1905 it was adopted in the Convention by which an International Institute of Agriculture was established in Rome. It is obvious, however, that, unless the present rates of national contributions to the budget of the United Nations were changed radically so as to attenuate their glaring inequality, all schemes tending to relate voting strength in the Assembly solely or mainly to financial contributions would lead to politically unacceptable results. In 1954 the five Great

Powers contributed nearly 70 per cent. of the total. Among them the United States alone contributed $33\frac{1}{2}$ per cent.—more than twice the contribution of the Soviet Union, more than three times that of the United Kingdom, and six times that of France and China. On the other side of the picture, 44 Member States contributed less than one per cent. each of the budget. On the basis of these rates of contributions, the United States alone could block any important resolution in the General Assembly, while, conversely, the United States, the United Kingdom, and France would command a simple majority of votes on any issue—and with the aid of a relatively small group of allies or sympathizers also a two-thirds majority. Neither the Soviet bloc nor the several groups of small States in the present General Assembly could be reasonably expected to support a reform leading to such or similar results.

A rather more complicated but somewhat more attractive plan was advanced in 1950 by Mr. John Foster Dulles,¹ now United States Secretary of State ; and in a statement made in his latter capacity to the Senate Foreign Relations Committee early in 1954, Mr. Dulles has reaffirmed his support of the plan. The idea is to achieve the results of a bicameral system without its traditional machinery. The way to do that is to take two votes in the General Assembly on each question of substance. In the first poll, each Member of the General Assembly would have one vote, as at present. In the second poll, additional votes would be awarded to Members, depending upon their ability to contribute to the maintenance of world peace. In awarding these additional votes, account would be taken of population, productive capacity, armed strength, and other relevant factors. A simple majority in each poll would be required for a valid decision of the General Assembly.

The effect of this plan would be to increase the relative importance of the larger States in the General Assembly,

¹ In his book "War or Peace".

without at the same time turning the small States into negligible quantities. On what may be conveniently called “ the first vote ” the small States would command a comfortable simple majority ; on the “ second vote ” the larger States could easily block any motion which, in their view, reflected “ irresponsibility ” on the part of small nations. That being so, the project would pave the way to the curtailment of the Security Council’s present functions, notably in such fields as the admission, suspension, and expulsion of Members, the nomination of Secretary-General, and other organizational matters.

The field in which a single-Power veto operates could thus be reduced ; but it is obvious that the same evil could easily emerge in the General Assembly unless the additional votes to be awarded to the Soviet Union and its friends were, in the aggregate, too small to block a simple majority in the “ second ” poll. It is most improbable that, even if we were to witness a steady improvement of East-West relations between now and the Review Conference, the Soviet Union would accept any system of weighted voting which would tend to reduce it and its allies to the status of a perennial minority. It might not object to a weighting based on population ; that would give India and China nearly one-half the voting power in the General Assembly. Likewise, military strength might be an acceptable standard, because it would give roughly equal voting strength to the Soviet Union and the United States, and the two between them would control about half the total number of votes in the General Assembly. But if the additional votes were to be awarded by taking into account national wealth, existing productive capacity, participation in world trade, or past financial contributions to the United Nations, the Soviet Union and its allies would be at a disadvantage. Nor would opposition come only from those quarters. The existing blocs of small States, the Latin Americans and the Arabs, are practically certain to oppose any such readjustment in favour

of the larger States—which is the clear purpose of Mr. Dulles's proposals.

Similar considerations apply to a variant of Mr. Dulles's plan, which was put forward tentatively by the Chief of Staff of the U.S. Senate Foreign Relations Sub-Committee in September 1954.¹ "Additional" votes would be awarded on the basis of two criteria: a State's population and its contribution to the United Nations. Each State would be awarded from 2 to 10 votes. For population, States under one million inhabitants would receive one vote; 1 to 5 million, two votes; 5 to 20 million, three votes; 20 to 100 million, four votes; and over 100 million, five votes. For budgetary contributions, the scale would be: less than \$20,000, one vote; \$20,000 to \$100,000, two votes; \$100,000 to \$500,000, three votes; \$500,000 to \$2,000,000, four votes; and over \$2,000,000, five votes. On this basis of population and rates of contribution, the result would be to reduce the voting strength of the Latin American and Arab States (by some six per cent. in the aggregate); to increase the voting strength of the five Communist States (by approx. three per cent.) and of the "neutralist" group of India, Indonesia, and Burma; to maintain the present control by the twelve NATO States (other than the U.S.A.) of about 20 per cent. of all votes; and to increase the total of the British Commonwealth countries by slightly over three per cent. On the reasonably safe assumption that the present trend of the Latin American States to support United States policy on all major political issues will continue for a long time, this particular plan, with its sharp cut in the voting strength of Latin America, can hardly be attacked on the grounds of bias towards American leadership. It has not so far hardened into anything like an "official" United States platform, nor is it, on a balance of political probabilities, likely to do so.

Altogether, the difficulties of working out a general voting formula for the Assembly are so formidable that the possibility

of surmounting them in the near future must be regarded with the utmost reserve. On the past record, the issue is not from the point of view of the non-Communist world a burning one. The future record is unpredictable.

Conjectures as to whether or not the pattern of voting will remain substantially unaffected by the admission of some or all of the 22 States at present on the waiting list, or of Germany, are necessarily speculative. Compared with such real issues as disarmament, the colonial problem, and the movement away from collective towards regional security arrangements, it may even be said that the problem of voting in the General Assembly is an artificial issue. The Communist world is content to leave it alone, and the chances are that the free world will not in the end insist on reopening this debate.

A compromise might possibly be reached by leaving intact the present system of voting in the General Assembly and adopting a different principle for the management and control of certain special programmes. Financial contributions to such programmes as, for instance, the emergency relief projects authorized by the General Assembly have always been unequal in the past. It would not be unfair to give a greater say in their running to those who bear a greater part of the financial burden. The chances of even a limited compromise of this kind should not, however, be viewed with any optimism. In the past all these special programmes have had to rely on the financial support of the United States to an extent which, had it been expressed in votes, would have made them predominantly American ventures. For its future success the United Nations depends not only on its effective power, but also on its prestige as an *international* organization ; and while it may be just, it is hardly wise to identify any of its projects and achievements with one particular State, however generous and indispensable the contributions of that State may be.

6 “*Efficiency*”

THROUGHOUT the past ten years, and in most countries, public opinion has been led to overrate the impact on world politics of such defects as there are in the machinery of the United Nations. As a broad generalization one could say that the valuable services rendered by the Organization in the economic, social and humanitarian fields have been universally, though somewhat grudgingly, admitted, while its performance in the political field has been underrated with astonishing constancy. The “political frustration” of the United Nations is even now being treated as axiomatic and, at least for the purpose of what may be called “the public debate”, there is a remarkable measure of agreement in ascribing this frustration to the virtual paralysis of the Security Council.

To put it quite bluntly: the man in the street believes that the United Nations could and would have proved itself a far more efficient guardian of international harmony and security if only the architects of the Charter had adopted a different voting procedure for the Security Council. To this procedure brief references have been repeatedly made in the preceding sections of this study; it will now be examined in somewhat fuller detail.

The dominant feature of this voting procedure is the distinction drawn between procedural matters on the one hand and matters of substance on the other. A valid decision on procedural matters requires seven affirmative votes, out of a possible total of eleven. The composition of this majority

does not matter. The vote of a Great Power has no greater value than the vote of a small power. In matters of substance however, the concurring votes of the Big Five are essential. Seven votes are enough to carry any motion, provided they include the votes of the Big Five (or those of them who are present and voting) ;¹ but not even ten votes out of a possible eleven are sufficient to carry a motion if a negative vote is cast by a Great Power.

This formula was not the product of the San Francisco Conference. Indeed, it was bitterly attacked there by many of the smaller powers as being a violation of the sovereign equality of States. These attacks were ineffective in the face of the unyielding insistence of the Great Powers on the argument that, since they would carry by far the greatest responsibility in enforcing any decisions of the Security Council, they must individually as well as collectively have a controlling voice in making them.

The Great Powers had been agreed on this principle since the earliest stage of planning the United Nations, though the details of the formula were not approved by them until the Yalta Conference of February 1945. Prior to that Conference China and the United Kingdom had proposed a qualified majority of eight votes out of eleven ; the Soviet Union had contended for a simple majority of six. The acceptance of a majority of seven was one of several compromise solutions. In fact, the compromise was such an uneasy one that not until a fairly late stage of the San Francisco Conference were the Great Powers able to reach a unanimous interpretation of their own voting formula.

One crucial problem of interpretation is the line of demarcation between procedural matters (upon which the veto does not operate) and matters of substance. The text of the Charter defines neither of these two categories, and only under strong pressure from the appropriate technical committee of the San Francisco Conference did the Great Powers commit them-

¹ See *supra*, pp. 31, 32.

selves to a set of interpretative rules. They did so in the form of an agreed Statement¹ answering a questionnaire of 23 items. The Conference took no formal action on this Statement ; consequently, it is not a document which could be said to be legally binding on any organ of the United Nations. But it is binding in practice. The Soviet Union insists rigidly on the application of the Statement, and the other permanent Members can raise no legal (as distinct from political) objections to the Soviet veto as long as it is used within the limits of the agreed interpretation.

On the other hand, there is nothing in the Statement which would make it an agreement binding in perpetuity. It was based on certain assumptions which the Western Powers can rightly say have not been proved correct by later developments. That is particularly true of a vital passage in the Statement which says

“ it is not to be assumed . . . that the permanent Members . . . would use their veto power wilfully to obstruct the operation of the (Council). . . . ”

The Statement also declared it to be “ unlikely that there will arise in the future any matters of great importance on which decision will have to be made as to whether a procedural vote would apply ”—another assumption not borne out by events.

It is difficult to foresee what would happen if a departure from the interpretative rules laid down in the Statement were attempted against the opposition of the Soviet Union. If the departure were sufficiently important, one could not rule out the possibility of the Soviet Union withdrawing from the United Nations, with all the dire consequences that such a schism might entail. Western diplomacy is aware of this danger, and accordingly its declared objective is to explore the possibility of securing Soviet agreement for certain departures from the rules agreed in 1945.

¹ See also *supra*, p. 56, and *infra*, p. 89.

Meanwhile, however, the range of those matters which, as typically procedural, are not subject to the operation of the veto is uncomfortably narrow. It includes the organizational steps which are necessary to enable the Security Council to function continuously ; the time and place of meetings ; the setting up of subsidiary organs ; the adoption of rules of procedure and their variation ; and invitations to Members of the United Nations not represented on the Council, and to States outside the Organization, to participate in certain circumstances in the discussions of the Council. In listing these subjects as “ procedural ”, the Interpretative Statement did not lay it down that no other matter is exempt from the operation of the veto. Indeed, the Statement makes it quite clear that the veto can never prevent the consideration and discussion by the Council of a dangerous dispute or situation which has been brought to its attention in the proper way, even though these vitally important activities of the Council do not figure in the list of procedural matters. But to this apparent flexibility of the list a severe limit is set by the unhappy rule whereby, in borderline cases, the preliminary question whether a matter is procedural is itself subject to the veto. In fact, this rule turns the veto into what has been rightly called a “ double veto ” : first a negative vote is cast to prevent the Council from treating a question as procedural, and a vote is then cast for the second time to defeat the substance of the motion. The Soviet Union has more than once used this device to stultify the majority, the most memorable instance being the Communist *coup* in Czechoslovakia, when the double veto effectively prevented the Security Council from setting up a sub-committee to hear evidence.¹

The perplexities of the double veto prompted serious efforts in 1948 to restrict its operation by lengthening the list of procedural decisions expressly recognized as such by the Big Five. The result of these efforts was a recommendation from the General Assembly to the Security Council to accept the

¹ At the meeting of the Council held on 24 May 1948.

procedural character of at least 45 types of decision. Had the Council accepted this recommendation (which it did not), this would have lifted the veto from a few procedures of potentially high political colour, such as the reference to the General Assembly of questions relating to peace and security (including disputes and situations still present on the Council's own agenda), the approval of credentials of representatives and the establishment of subsidiary organs of a certain type. It would also have facilitated the establishment of procedures for the hearing of disputes or situations. There was nothing revolutionary but much that was helpful in these proposals, and given a slightly better international atmosphere than that prevailing in 1948 they may yet prove a useful bargaining counter.

For the time being then, the veto can be lawfully cast in every field outside the short list of questions which were deemed procedural by the Interpretative Statement of June 1945. It has two main fields of operation, and very different considerations apply to each of these.

Firstly, one must bear in mind that the responsibilities of the United Nations in safeguarding security are partly preventive, partly repressive. The former are extremely wide and embrace world-wide social, economic and cultural planning to eradicate the root causes of discontent and violence ; but for the purposes of the present enquiry we must concentrate on that range of the Organization's responsibilities which the Charter calls the "pacific settlement of disputes".

The repressive functions are listed and regulated in the Charter under the somewhat cumbrous heading "Action with respect to threats to the peace, breaches of the peace, and acts of aggression" ; but measures of this kind are also known by the shorter phrase "enforcement action", and are most commonly called "sanctions". The Charter knows three types of sanctions: diplomatic, economic and military, and it is for the Security Council to decide whether these different

types of measures should be applied singly or in combination, immediately or successively, against a State which has disturbed the peace of the world by resorting to armed violence or by making a palpable threat to do so.

The argument by which the Great Powers justified their insistence on a right of veto applies with full force here. Without the support of one or more of the Great Powers no conceivable sanction is likely to be effective. Conversely, even measures falling short of military action may lead to major conflagrations if they involve one or several of the Great Powers. No Great Power was prepared in 1945 to allow its armed forces to be committed to immediate or potential hostilities without its own concurrence. The same is true to-day. Far apart as the Soviet Union and the United States may be on many issues of international organization, they have never wavered in their complete agreement on this. Although in recent years the pronouncements of the remaining three Members of the Great Power-group have been less clear-cut, there is no reason to believe that the United Kingdom, France, or China (by whichever of the two rival Governments it may be represented) would accept the abolition of the rule of unanimity in any matter which involves action against an aggressor.

The attitude of the Great Powers might well be different if, by formal revision of the Charter, the nature of the Security Council's powers were altered. At present, on this all-important question of sanctions, the Council is entrusted with the right to *command*. Once it “decides” that sanctions are necessary and “calls upon” any Member to join in applying them, no Member State can disobey without violating a fundamental legal obligation.¹ Admittedly, at the present time, the positive military content of the obligation is nil, because none of the special agreements contemplated by Article 43 of the Charter² has been concluded. But even today, no Member

¹ Articles 25 and 48.

² *Supra*, pp. 18, 22.

could lawfully deny rights of passage through its territory to a foreign army marching against an aggressor branded as such by the Council ; and the grant of rights of passage can easily lead to retaliatory action by the aggressor, such as would sooner or later involve the Member in active hostilities.

Far more important for practical purposes, if the Council were to order the membership at large, or any given section of it, to sever diplomatic relations with the aggressor or enforce against him a complete or partial economic or financial boycott, no Member State could even today lawfully refuse to comply. Here again, compliance might not only involve a Member in serious diplomatic and economic difficulties, but could easily lead, through the chain reaction of retaliation and reprisal, to a state of complete involvement in hostilities.

As long as the Security Council retains these wide powers of command, the veto remains an essential corollary, an indispensable shield for the protection of a Great Power's legitimate interest not to be committed to warlike complications against its own better judgment. But this argument would lose all or much of its force by a reform of the Charter which, instead of postulating the surrender of the veto, were to postulate the surrender of the Council's powers of *command* and their reduction to a mere power to *recommend*. In that case, no Member State, great or small, would violate any obligation by refusing to comply ; and hence the need for a device (such as the veto) to forestall obligations that might lead to undesired entanglements would disappear.

It may be argued in favour of reform on these lines that, for practical purposes, the United Nations would be left in no worse position than it is to-day. As long as the Great Powers remain disunited, there is no conceivable combination of aggressors and victims in which the call for sanctions would not be blocked by this or that veto in the Security Council, so that the only hope for action lies with the General Assembly. Under the Uniting for Peace resolution, the Assembly may indeed call for action, but its " call " has no binding force ;

it is legally a mere recommendation which every Member State is free to disregard. That being the position, it has been suggested that it would be better to abolish the present wide (and inoperative) powers of the Security Council and give it the same recommendatory powers which the General Assembly now possesses under the Uniting for Peace scheme. This would bring several advantages. Firstly, these powers could be used more efficiently by the Security Council, which is a small body capable of swift action at any time, than by the General Assembly which is large, unwieldy, and not in continuous session. Secondly a reform on these lines (if it were acceptable to the Soviet Union) would put an end to the present state of uncertainty caused by the Soviet contention that the “ Uniting for Peace ” resolution was an impermissible *de facto* revision of the Charter, incapable of conferring validly upon the General Assembly the powers that it purports to confer. Thirdly, the Security Council, freed at last from the incubus of the veto, would move out of its present state of paralysis and regain at least an appearance of efficiency and with it a capacity to earn genuine prestige.

However attractive this argument may seem, it is open to criticism from two angles. For one thing, it should not be assumed too easily that the abolition of the veto, even if it were coupled with a severe trimming of the Security Council's powers, would be acceptable to the Soviet Union and to China (which sooner or later is bound to be represented in the United Nations by the Peking Government). To the Government of a Great Power it will always make a great difference whether its position of permanent minority in the Organization (and in the case of the two Communist Great Powers there can be little doubt of its permanency) is or is not mitigated by the privilege of being able to bring about a deadlock on any subject through the simple device of casting a negative vote.

Again, would not the world pay too heavy a price for that appearance of efficiency which the proposed reform would

impart to the Security Council? Possibly at the present moment of its history the United Nations would not be worse off with a Security Council deprived of its powers of command than it is with a Security Council which the veto disables from making the most effective use of them. But the cleavage between the Communist and non-Communist Powers would not thereby be cured ; the use of the veto is one of the symptoms of the cleavage, not its cause. For the sake of eliminating a mere symptom it would be a fateful decision to erase from the Charter the one truly revolutionary feature of the world's progress from the concepts of 1919. The reduction of the powers of the Security Council from command to recommendation would stultify that historic and voluntary reduction of State sovereignty which is enshrined in Article 24 of the Charter. By that article every Member has delegated to the Council so much of its sovereign rights as is necessary to enable the United Nations to assume responsibility for the maintenance of peace. Stripping the Security Council of these delegated powers would be tantamount to a return to the half-way house of the League, where it was left for each Member Government to decide, according to its own conscience and interests, whether it ought to take sanctions against a reputed aggressor, and indeed whether military sanctions were necessary at all. It took a second World War to convince Governments that there was no point in building another expensive façade of collective security merely for the sake of concealing a vacuum of power. The Security Council's powers of command were born of that conviction at a unique moment of close accord between the 'Big Five'. If during the first ten years of the United Nations it has proved impossible to make good use of these powers, that is regrettable, but not as yet a disaster ; tragedy might however ensue if, in its disappointment at the frustrations of a whole decade, the world persuaded itself to put the clock back to 1919 and inaugurate afresh a purely voluntary system of collective security.

The relative success of the United Nations in coping with the grave emergency in Korea provides no conclusive argument either for or against the theory that a purely voluntary system is workable. All the military operations undertaken in Korea were conducted by authority of the Security Council. We shall never know with certainty whether these operations would have been undertaken at all, or with the concurrence of so many nations, if the authority of the Security Council had not been obtainable. The economic sanctions which at a later stage were enforced against China had never been authorized by the Security Council, but received nevertheless considerable support from the membership at large. But here again, we shall never know with certainty whether these economic sanctions would ever have been authorized by the General Assembly, or if they would have brought forth the same response, had not these measures been a mere sequel to military sanctions which had been taken under the umbrella of the Security Council's binding authority. There is good reason to believe that there would have been some form of collective intervention in Korea even if in the critical days of June 1950 the Security Council had been immobilized by the veto. But the circumstances were unique and the precedent is inconclusive.

The uniqueness of the Korean situation is not, however, the only reason for treating with caution the theory that a purely voluntary and non-automatic system of collective security is an acceptable alternative to the original scheme of the Charter. Nearly five years have passed since the Uniting for Peace resolution, by one of its most important sections, invited the membership at large to maintain within their national armed forces elements so trained, organized and equipped that they could promptly be made available for service as United Nations units “ *upon recommendation* by the Security Council or General Assembly ”.

Here was a real opportunity for Members to demonstrate their support of the voluntary principle. A massive demon-

stration seemed all the more appropriate as the resolution had made it abundantly clear that the earmarking of military elements for United Nations use would be without prejudice to their employment within the framework of defensive alliances outside the Organization.

The response has not been encouraging. Of the 38 Member States which replied (out of a possible total of 60) the majority expressed themselves in support of the *principle*. But despite entreaties from the Collective Measures Committee and from the General Assembly itself, practically no concrete progress has been made in obtaining binding undertakings for the supply of armed forces. The greatest caution has been displayed even by those Members who have supported the Uniting for Peace resolution from the outset, and their attitude leaves little room for doubt that they regard preparations for collective action within the framework of regional alliances as being entitled to high priority over planning under the aegis of the United Nations.

Thus, in the field of sanctions, the problem of the veto presents a clear-cut issue. The reasons why the Great Powers had to insist on this privilege ten years ago are still valid. The submission by any one of them to a majority vote in matters which are pregnant with the danger of warlike complications (indeed, military sanctions *are* warlike complications) is still unthinkable. Aggression by a Great Power, and the need for sanctions of all kinds against it, is not unthinkable. But the world was given ample warning both before and during the San Francisco Conference that the United Nations had not been designed to cope with an emergency of that order. In the context of the United Nations, the phrase "collective security" has always been understood to mean "collective security—except against a Great Power bent on aggression".

But for this gap in the system, it would have been neither necessary nor reasonable to leave in the Charter such a wide scope for bilateral and multilateral alliances as its relevant

articles allow.¹ It is the task of high-level diplomacy and not of Charter revision to bring about such a *modus vivendi* among the Big Five as will arrest the lopsided development of alliances at the expense of the collective system. There is good reason to fear that a reform of the United Nations which bought the abolition of the veto at the price of returning to a purely voluntary principle would lead to the final atrophy of collective security.

* * *

It is far more difficult to justify the retention of the veto in that sphere of the Security Council's activities which is concerned with the pacific settlement of disputes.² These activities are rigidly circumscribed by the Charter, and even in their sum total do not constitute the Security Council a particularly powerful arbiter of world politics. The Council may call upon the parties to a dispute to settle it by negotiation, mediation, arbitration, and similar peaceful means ;³ it may investigate disputes, and situations which might lead to friction or dispute, in order to determine whether their continuance is really dangerous to peace.⁴ It may, at any stage of such a dispute or situation, recommend appropriate procedures or methods of adjustment.⁵ In the last resort it may even recommend specific terms on which the dispute ought to be settled.⁶ But the Council has no power to compel the parties to engage in this or that (or indeed any) procedure or method of adjustment, let alone compel them to settle the dispute on the Council's own terms.

A comparison of this state of affairs with that which prevailed in the League of Nations discloses no progress at all. On the contrary, one may feel that the change from the

¹ Articles 51 and 52.

² Chapter VI of the Charter.

³ Article 33.

⁴ Article 34.

⁵ Article 36.

⁶ Article 37(2)

arrangements of the Covenant has not been a change for the better. The Covenant at least encouraged the disputants to bring their differences before the Council or Assembly of the League at the earliest possible moment, so that mediation should begin without undue delay ; and the League itself aspired to the role of mediator.

In contrast, the bias of the Charter is against mediation at the centre except as a last resort. The parties are encouraged to settle their disputes by diplomatic negotiation and other procedures *outside* the Organization. This bias is all the more remarkable as the authors of the Charter obviously intended the Security Council to be equipped with the physical power necessary to enforce decisions of all kinds. Yet they left the Council wholly devoid of legal authority to impose binding terms of settlement, however dangerous to peace an inter-State dispute may be. It has been rightly said that, unlike the League, the United Nations has never aspired to the rôle of the mediator, only to the rôle of policeman.

It has always seemed anomalous that the use of the Security Council's very limited powers in this field should be hampered by requiring the unanimous consent of the Big Five. Indeed, the Great Powers themselves felt that here the rule of unanimity required some mitigation and at Yalta added a proviso to the main voting formula adopted, whereby in those decisions of the Security Council which concern the pacific settlement of disputes, a party to the dispute must abstain from voting.¹ Textually this exceptional rule applies to permanent and non-permanent Members alike, but this is appearance rather than reality. If a Great Power which is alleged to be a party to a dispute denies the existence of the dispute altogether or at least contends that it is not a party concerned, the rule requiring abstention will not come into operation until the Security Council has found that there is a dispute and that the Member is a party to it. But to make such a finding, the Council must pass at least one substantive

¹ Article 27(3).

decision—and this the Great Power concerned is able to veto.

At San Francisco the Great Powers were sharply challenged to justify their refusal to exempt the procedure of pacific settlement from the operation of the unanimity rule. A large part of their Interpretative Statement¹ of 7 June 1945 was dedicated to explaining their attitude. The main argument rested on the concept of a “ chain of events ”, meaning that an unwary decision in the stage of pacific settlement might set into motion a sequence of actions and reactions which could in the end leave the Council with no alternative but to proceed to sanctions. The legitimate interest of a Great Power to prevent the taking of measures which, against its better judgment, might land it in a state of belligerency was hardly open to challenge ; but (so the Interpretative Statement argued) the safeguarding of that interest must begin long before the peace is actually broken. It must begin when the Council is about to decide to make an investigation into the circumstances of a dispute or situation, or is about to determine that the time has come to call upon States to settle their differences by peaceful means.

This line of reasoning provoked bitter criticism at San Francisco and elicited from Dr. Evatt, the leader of the Australian delegation, what still remains the pithiest assessment of the resulting position :

“ Without veto, the Council can only discuss whether a dispute can be discussed, and can only investigate whether it should be investigated ”.²

In fact the Security Council has slightly improved that position by treating as procedural certain questions which were not expressly placed in that category by the Interpretative Statement. As a result, the veto has never, for instance, operated on motions to invite interested States to be heard,

¹ *Supra*, pp. 77, 78; also p. 56.

² See U.N.C.I.O. Documents, XI, pp. 230-235.

or on motions calling for a general and full discussion of disputes, or on motions to inaugurate fact-finding studies ; in at least one instance the Council even heard a witness despite the adverse vote of the Soviet Union.

So far, in decisions concerned with the pacific settlement of disputes the veto has been used ten times—once by France, and on the remaining occasions by the Soviet Union. It is a matter of opinion whether this represents a relatively heavy incidence of the veto in this field, considering that the total number of occasions when the veto was used over the past ten years is near sixty. What really matters is that, contrary to a widespread belief, the veto has not disabled the Security Council from establishing a very creditable record in the settlement of disputes.

Of the many conflicts which were referred to the Security Council during the first ten years quite a few were settled. These included the Iranian-Soviet dispute over alleged Soviet interference with the internal affairs of Iran (1946) ; the complaint of the Republics of Syria and Lebanon about the refusal of Great Britain and France to withdraw their troops (1946) ; the several disputes which attended the birth of an independent republic in Indonesia during the first few years after the war ; the Berlin blockade (1948-49) ; the long-drawn-out quarrel between the United Kingdom and Egypt over the evacuation of the Canal Zone and the revision of their treaty of alliance (1947-54) ; and the controversy concerning the establishment of a Chinese protectorate over Tibet (1950). In some other instances ugly situations were skilfully nursed until eventually they petered out, as in the case of Greece's complaints about the support insurgent forces were receiving from Communist neighbours in the North (1946-49).

Finally, there was a group of conflicts where the outbreak of major hostilities could not be prevented, but, under the aegis of the United Nations, a truce or armistice was finally brought about. The cases in point are the Arab-Israeli war (1948), the intractable troubles in Kashmir (1948), and that

most dramatic chapter of all in the history of the United Nations—the Korean war (1950-53).

It would be an exaggeration to say that in all these instances, or even in the majority of them, the settlement or localization of the conflict was the direct outcome of the Council's mediation, exhortations, or interventions. Direct negotiation between the parties invariably played a major part. It is difficult to estimate what course these conflicts would have ultimately taken if the services of the Security Council had not been available ; but all the evidence tends to show that its services were invariably valuable and, in some of the cases, vitally important.

A closer examination of the record tends to show that the veto, far from disabling the Council altogether, has made relatively little difference to the course pursued by the majority. It caused delays, it compelled different ways of setting about questions, but it failed to stultify the solutions against which it had been directed. At one stage of the troubles in Indonesia the French vetoed a motion to send a commission, to be specially chosen by the Council, to observe the cease-fire. The Council was forced to entrust this task to an *ad hoc* committee of career consuls at Batavia, and they completed the job well enough. When Greece first complained that her northern neighbours gave aid and comfort to guerillas, the Soviet Union vetoed a resolution to appoint an investigating commission. Three months later a commission was appointed by agreement. In March 1947, after two British destroyers were damaged and 44 sailors killed by mines in the Corfu Channel, the Soviet veto prevented the Council from calling on Britain and Albania to settle the affair on the basis that the Albanian Government was to blame. Thereupon the Council called upon the parties to refer the matter to the International Court. In due course, the Court disposed of the complaint and awarded heavy damages against Albania.

These examples could be multiplied, but they would hardly

justify the retention of the unanimity rule in the discharge of the Security Council's duties as mediator. At the least, the veto is liable to cause delay where speed is of the essence of the matter, because every wasted day may involve the dangerous aggravation of a conflict.

It is axiomatic that the value of a global organization for peace will always be measured by its success in preventing aggression, and not by the efficacy of its repressive measures. There is no cogent reason why the efficiency of the United Nations should be impaired in the realm of its preventive functions by a rule of unanimity which, in that particular realm, is not necessary for the protection of its sponsors and has been of no real benefit to any one of them during the past decade. As far back as 1948 the United States Senate placed on record¹ its willingness to eliminate the veto during the pacific settlement stage and there is at present no reason to believe that its position will change before or in the course of a Review Conference. The attitude of Great Britain and France is also likely to be positive. But there is as yet no portent of any change in the categorical opposition of the Soviet Union to this—or indeed to any other—change that might enhance the effectiveness of the United Nations in promoting a more stable international order.

¹ By the so-called Vandenberg Resolution of 11 June 1948.

7 *Appendix*

Charter of the United Nations

PREAMBLE

We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and value of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom, and for these ends

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

by the accepting of principles and the institution of methods to insure that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of economic and social advancement of all peoples have resolved to combine our efforts to accomplish these aims.

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

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The purposes of the United Nations are :

1. To maintain international peace and security, and to that end : to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace ;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace ;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The organization and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles :—

1. The organization is based on the principle of the sovereign equality of all its members.
2. All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.
5. All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The organization shall ensure that States which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

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

CHAPTER II

MEMBERSHIP

Article 3

The original members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the declaration by United Nations of January 12, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

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

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

Article 5

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

Article 6

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

CHAPTER III

ORGANS

Article 7

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

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

Article 8

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

CHAPTER IV

THE GENERAL ASSEMBLY—

COMPOSITION

Article 9

1. The General Assembly shall consist of all the members of the United Nations.
2. Each member shall have not more than five representatives in the General Assembly.

FUNCTIONS AND POWERS

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided in the present Charter, and, except as provided for in Article 12, may make recommendations to the members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of 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 such principles to the members or to the Security Council or both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any member of the United Nations, or by the Security Council, or by a State which is not a member of the United Nations in accordance with Article 35, paragraph two, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set out in this article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General

Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

(a) Promoting international co-operation in the political field and encouraging the progressive development of international law and its codification ;

(b) Promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council ; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII

and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the organization.

2. The expenses of the organization shall be borne by the members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

VOTING

Article 18

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A member of the United Nations which is in arrears in the payment of its financial contributions to the organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its president for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

THE SECURITY COUNCIL—

COMPOSITION

Article 23

1. The Security Council shall consist of 11 members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance, to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

FUNCTIONS AND POWERS

Article 24

1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

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

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's

human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments.

VOTING

Article 27

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members ; provided that, in decisions under Chapter VI and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

PROCEDURE

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the organization.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its president.

Article 31

Any member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that member are specially affected.

Article 32

Any member of the United Nations which is not a member of the Security Council or any State which is not a member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute.

The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENTS OF DISPUTE

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

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

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any member of the United Nations may bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or of the General Assembly.

2. A State which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party, if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this article the Security Council should also take into consideration that legal disputes should as a general

rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33-37 the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such actions may include demonstrations, blockade, and other operations by air, sea or land forces of members of the United Nations.

Article 43

1. All members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a

special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and members or between the Security Council and groups of members and shall be subject to ratification by the signatory States in accordance with their constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that member, if the member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities required the participation of that member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measure necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.

2. The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangement or by regional agencies without the authorization of the Security Council with the exception of measures against any enemy State, as defined in Paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such State, until such time as the organization may, on request of the governments concerned, be charged with the responsibility for preventing further aggression by such a State.

2. The term "enemy State" as used in Paragraph 1 of this Article applies to any State which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote :—

- (a) Higher standards of living, full employment, and conditions of economic and social progress and development ;
- (b) solutions of international economic, social, health and related problems ; and international cultural and educational co-operation ; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56

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

Article 57

1. The various specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as “specialized agencies”.

Article 58

The organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the organization set forth in this chapter shall be vested in the General Assembly and, under the authority of the General Assembly in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

ECONOMIC AND SOCIAL COUNCIL COMPOSITION

Article 61

1. The Economic and Social Council shall consist of 18 members of the United Nations elected by the General Assembly.
2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.
3. At the first election, 18 members of the Economic and Social Council shall be chosen, the term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.
4. Each member of the Economic and Social Council shall have one representative.

FUNCTIONS AND POWERS

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational health and related matters and may make recommendations with respect to any such matters to the General Assembly, to the members of the United Nations, and to the specialized agencies concerned.
2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connexion with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

VOTING

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.

Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the member of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its president.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on request of a majority of its members.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end :

(a) To ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment, and their protection against abuses ;

(b) To develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement ;

(c) To further international peace and security ;

(d) To promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article ; and

(e) To transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good neighbourliness due account being taken of the interests and well-being of the rest of the world, in social, economic and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an International Trusteeship System for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as Trust Territories.

Article 76

The basic objectives of the Trusteeship System, in accordance with the purposes of the United Nations laid down in Article 1 of the present Charter, shall be :

- (a) To further international peace and security ;
- (b) To promote the political, economic, social and educational advancement of the inhabitants of the Trust Territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement ;
- (c) To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world ; and
- (d) To ensure equal treatment in social, economic and commercial matters for all members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The Trusteeship System shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements :

- (a) Territories now held under mandate ;
- (b) Territories which may be detached from enemy States as a result of the Second World War ; and
- (c) Territories voluntarily placed under the system by States responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the Trusteeship System and upon what terms.

Article 78

The Trusteeship System shall not apply to territories which have become members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the Trusteeship System, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the mandatory power in the case of territories held under mandate by a member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79 and 81, placing each territory under the Trusteeship System, and until such agreements have been concluded, nothing in this chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the Trusteeship System as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the Trust Territory will be administered and designate the authority which will exercise the administration of the Trust Territory. Such authority, hereinafter called the Administering Authority, may be one or more States or the organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the Trust Territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the Trusteeship System relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the Administering Authority to ensure that the Trust Territory shall play its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities, and assistance from the Trust Territory in carrying out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within the Trust Territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL COMPOSITION

Article 86

1. The Trusteeship Council shall consist of the following members of the United Nations :—

- (a) Those members administering Trust Territories ;
- (b) Such of those members mentioned by name in Article 23 as are not administering Trust Territories ; and
- (c) As many other members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those members of the United Nations which administer Trust Territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

FUNCTIONS AND POWERS

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may :—

- (a) Consider reports submitted by the Administering Authority ;
- (b) Accept petitions and examine them in consultation with the Administering Authority ;
- (c) Provide for periodic visits to the respective Trust Territories at times agreed upon with the Administering Authority ; and
- (d) Take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a *questionnaire* on the political, economic, social, and educational advancement of the inhabitants of each Trust Territory, and the Administering Authority for each Trust Territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such a *questionnaire*.

VOTING

Article 89

- 1. Each member of the Trusteeship Council shall have one vote.
- 2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules procedure, including the method of selecting its president.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A State which is not a member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the organization.

2. Each member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the members of the United Nations under the present Charter and obligations under any other international agreement their obligations under the present Charter shall prevail.

Article 104

The organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the members of the United Nations and officials of the organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other members of the United Nations with a view to such joint action on behalf of the organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any State which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A general conference of the members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory States in accordance with their respective constitutional processes.
2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory States of each deposit as well as the Secretary-General of the organization when he has been appointed.
3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory States.
4. The States signatory to the present Charter which ratify it after it has come into force will become original members of the United Nations on the date of the deposit of their respective ratifications.

Article 111

The present Charter, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory States.

In faith whereof the representatives of the United Nations have signed the present Charter.

Done at the City of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

