CHAPTER I

THE CHARTER

ORIGIN AND PROVISIONS:

The failure of the League of Nations to avert a Second World War did not destroy the belief of many that only by some form of General Organisation of States could a system of collective security be achieved which would protect the international community from the scourge of war. "Paradoxically, as with the League before it, war provided the impulse for creating a new organization for peace."1

When Hitler attacked Poland, the League of Nations had almost become a defunct body. There was practically no hope of getting the League back to life. Both in magnitude and intensity, idea of establishing a new world organisation which could inspire hope and confidence in the teeming millions of everlasting peace gained importance.

On January 6, 1941, President F.D. Roosevelt in his annual message to the Congress referred to the celebrated Four Freedoms which had been the casualties of the War. These are, Freedom of speech and expression, Freedom of every person to Worship God in his own way, Freedom from fear and Freedom from want

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On August 9, 1941, the President suggested to the British Prime Minister, Winston Churchill, that "it would be well if they could draw up a joint declaration laying down certain broad principles which should guide our policies along the same road." This suggestion was accepted by the British Prime Minister and on the following day he outlined a tentative declaration which provided "the substance and spirit of what came to be called the 'Atlantic Charter.'"\(^2\)

On August 12, 1941, President Roosevelt and Prime Minister Winston Churchill on board the 'Prince of Wales' in the Atlantic Ocean signed the Charter which embody "certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world."\(^4\) The Atlantic Charter had contributed to the "establishment of a wider and permanent system of general security,"\(^5\) pending which the aggressor nations must be disarmed; and this reference obtained the approval of some forty five nations upon the adoption of the Declaration of United Nations on

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January 1, 1942. The Moscow Declaration contained a more specific pledge, that the four governments participating in the conference recognized "the necessary of establishing at the earliest practicable date a general international organisation, based on the principles of the sovereign equality of all peace-loving states, and open to the membership by all such states, large and small, for the maintenance of international peace and security."

Following up this pledge, delegates of Great Britain, the United States, and the Soviet Union met at Dumbarton Oaks in Washington, August 21 to September 28, 1944, and adopted proposals for the establishment of a general institutional organization, known as "The Dumbarton Oaks proposals."

The proposals were then submitted to the four governments for their approval, and were subsequently communicated to other states which had signed the declaration by United Nations. On April 25, 1945, the United Nations Conference on International Organization met at San Francisco, and on June 26, after two months of labour, the states representatives at the Conference adopted the 'Charter of the United Nations' as a formal international treaty.


The Preamble of the United Nations begins words modeled upon the opening words of the constitution of the United States "We the people of the United Nations." No special juridical character is to be attached to the phrase, in as much as the various delegations were appointed by their respective governments, a number of which could with difficulty be said to be legal equivalent of "the peoples." nor is any special juridical character to be attached to the various obligations proclaimed in the preamble since these are set forth in more specific terms in the opening articles of the Charter itself.

According to Eichelberger, it is not by accident that the Charter of the U.N. begins with the phrases, "we the Peoples of the United Nations," instead of beginning with the phrase of the League Covenant, "The high contracting parties." In the final analysis, he says, it is up to the statesmen and the people they represent to make a success of the U.N.10

According to Schuman, however, the phrase, "we the peoples of the United Nations" is misleading, since those

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U.N. The First Twenty Years, (Sterling Publishers Delhi, 1966),
who drafted it spoke for governments, not peoples and established not a federation of peoples but a league of States. Fulfilment of the hopes of its founders required continuing cooperation among great powers. With the advent of 'cold war', these hopes faded.11

Whatever the interpretation of the Preamble might be, the fact remains that millions of people all over this world are pined for a world organisation which will ensure peace and security and that the charter reflects the prevailing mood of mankind in spite of the many failures and frustrations which the organisation suffered from time to time.

The purposes of the United Nations are set forth in Article I under four heads: (1) To maintain peace and security, which is to be attained by "collective measures" to prevent acts of aggression and by bringing about the peaceful settlement of international disputes; (2) To develop friendly relations "based on respect for the principle of equal rights and self-determination of peoples", (3) to achieve cooperation in solving international problems 'of an economic, social, cultural, or humanitarian character' and in promoting 'respect for human rights and for fundamental freedoms'; and (4) to be a centre for harmonising the actions of nations in the attainment of these common ends.

The principles set forth in Article 2 bear chiefly upon the first of the purposes of the United Nations, the maintenance of peace and security. The members of the organisation pledge themselves to settle their disputes by peaceful means; they agree to refrain from the use of force against the territorial integrity or political independence of any state; and they pledge themselves to give every assistance to the United Nations in measures taken for the maintenance of peace and to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action. Lest there be any misunderstanding as to the effect of these principles upon the fundamental relationships of the members of the United Nations under existing international law, the list of principles begins with the statement that 'The Organisation is based on the principle of the sovereign equality of all its members.' This principle is further strengthened by the provision of the last paragraph of the Article, which provides

12. Whether the principle of "the sovereign equality" of the members of the United Nations is the same as the principle of "the sovereignty and equality" of the members is more than a matter of words. But for the present it is only an academic interest. The term "Sovereign equality" was interpreted at the conference to include: (1) that the states are juridically equal (2) that each state enjoys the right inherent in full sovereignty (3) that the personality of the state is respected, as well as its territorial integrity and political independence; (4) that the state should under international order comply faithfully with its international duties and obligations. See United Nations Conference, pp. 483, 497, 548.
that "Nothing contained in the present Charter shall authorise
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", but this
far-reaching provision is qualified to the extent that it shall
not prejudice the application of enforcement measures under
Chapter VII.

The Charter of the United Nations makes a distinction
between original members of the United Nations and States
subsequently admitted to membership. Original members are states
which, having participated in the Conference at San Francisco or
having previously signed the Declaration by United Nations of
January 1, 1942, have signed and ratified the Charter. Provision
is made that membership shall be open to all other "peace-loving
states" which accept the obligations of the Charter and which in
the judgement of the organization, are able and willing to carry
out these obligations. The determination of these conditions

13. This is a highly debatable provision, and it was
adopted only after long discussion and the compromise
of conflicting opinions. See Stettinius Report, pp.42-45
Goodrich and Hambro, op. cit., p. 72. See United

14. The original condition laid down in the Dumbarton Oaks
proposals was that membership should be open "to all
peace-loving states." The condition obviously had
political rather than legal connotations. It may be
observed that at the meeting of the Security Council on
August 29, 1946, when the admission of Portugal, Eire,
and other States was refused, the reason given had no
relation to the "peace-loving" Character of those states
is to be by decision of the General Assembly upon recommendation of the Security Council. Membership in the organization is thus qualified and limited, and it is therefore, for the time being not coterminous with the membership in the community or family of nations, although the Charter clearly prospect that in due time all states will become members of the Organization.

In accordance with the first principle of sovereign equality of all states, members have been accorded equal representation in the General Assembly and are entitled to equality of votes. But the preponderant role of the Big Five in the Security Council arising out of their veto power compromises to a great extent the principle of sovereign equality of all states. As Nicholas observes: "The veto in the Security Council still protects the Great Powers but at the expense of heightening the disparity between them and the other members, not only of the General Assembly but of the Security Council itself."15

The working of the United Nations during the last thirty years has revealed that the commitments of the members to fulfil in good faith their obligations as set forth in the Charter has been and is a pious hope. Members have shown scant regard to this obligation being more interested in the struggle for power and in establishing strategic frontiers.

However, the Charter has drawn certain methods for the pacific settlements of disputes among Member-States. These are 'negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.' For developing friendly relations among nations it is essential that the Member-States should make a solemn pledge not to use force in order to settle a dispute in a particular way. It is also very necessary for the members to respect the territorial integrity and political independence of any state.

The immediate and most urgent; and in that sense the primary objective of international, as of municipal law, must consist in the prevention of act of violence. Without that condition all progress in cooperation for preservation and promotion of common interests must remain at a standstill. Hence, in case of the World Peace and security, the Charter of the United Nations placed such primary responsibility upon the Security Council. The members of the United Nations which are not members of the Security Council agree that the latter, in carrying out its duties in this respect, acts on their behalf. The Charter meets the problem of peace and security first by detailed provisions for the pacific settlement of disputes, and secondly by equally detailed provisions for action by the Security Council in the events of threats to or breach of the peace. The parties to any

17. Art. 34.
dispute, the continuance of which is likely to endanger the peace, agree first of all to seek a solution by one or other of the various procedure available. On its part, the Security Council has the right to investigate any dispute in order to determine whether its continuance is likely to endanger the peace and it has also the right at any stage of dispute, to recommend appropriate procedures or methods of settlement. In the event of a failure of the parties to a dispute to settle it by any of the various peaceful procedures, they agree to refer it to the Security Council; and the Security Council may, if it considers that the continuance of the dispute is likely to endanger the peace, intervene and either recommend appropriate procedure or such terms of settlement as it may consider appropriate under the circumstances.

Failing a settlement of a dispute between the parties, it remains for the Security Council to determine whether the situation constitutes a threat to the peace, and so, what measures must be taken to maintain the peace? Provisional measures may be agreed upon and the Security Council may call upon the parties to comply with them. These failing, the Security Council may decide upon measures not involving the use of armed

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18. Art. 34.
19. Art. 36.
22. Art. 40.
forces; but if these should prove inadequate the Security Council may then 'take such action by air, sea, or land forces as may be necessary to maintain or to restore international peace and Security.' In this latter case the members of the United Nations agree to make available to the Security Council, on its call in accordance with special agreement or agreements, the armed forces, assistance and facilities necessary to maintain the peace. The agreements referred are to govern the specific details of the forces, assistance and facilities to be provided; and they are to be negotiated as soon as possible on the initiative of the Security Council and when so negotiated they shall be subject to ratification by the signatory states, in accordance with their respective constitutional procedures. National air force contingencies are to be held immediately available for urgent military measures.

23. Art. 41.
25. Art. 43. Art. 44. Attempts to assure states which are not members of the Security Council that their contingents will not be improperly employed by requiring that the Council, before calling upon the member to provide armed forces, shall invite it to participate in the decisions of the Council concerning the employment of the contingents.
A novel feature of the enforcement provisions of the Charter is the creation of a Military Staff Committee which is to advise and assist the Security Council on all questions relating to the armed forces placed at the disposal of the latter. It consists of the chiefs of staff of the permanent members of the Security Council, although other members of the United Nations may be invited to attend when the efficient discharge of the committee's responsibilities so requires. The committee is given power to establish regional sub-committees, subject to the approval of the Security Council and after consultation with appropriate regional agencies.

While the general obligations of all of the members of the United Nations concerning enforcement measures are the same, provision is made that the Security Council may determine in each case which particulars are to carry out its decisions. Action may be taken directly or through an international agency of which the states are members. In case the enforcement measures should entail economic hardship for a particular member, it may consult with the Security Council with regard to a solution of its problems. Finally, the Charter reserves to the members of the

27. Art. 47.
28. This provision was accepted as an amendment to the Dumbarton Oaks proposals, and it gives recognition to the role of regional groups, which, in accordance with Article 53, are to be utilized by the Security Council for enforcement action where appropriate.
30. Art. 50. This article had its inspiration in the experience of the League of Nations in connection with the sanctions applied against Italy in 1935.
United Nations 'The inherent right of individual or collective self-defence' if an armed attack should occur against them, until such time as the Security Council has taken the necessary measures to maintain peace and security. Any measures were taken must be reported to the Security Council, and must not in any way limit or qualify its responsibility to take such action as it may deem important.31

International cooperation in the economic, social and other similar fields is referred to in general terms in the Chapter (IV) dealing with the General Assembly and again more specifically, in the Chapter (IX) dealing with "international economic and social cooperation." Here the primary condition is laid down that such cooperation shall be directed to the maintenance of peaceful and friendly relations among nations 'based on respect for the principle of equal rights and self-determination of peoples'.32 The condition is a broad one and it is assumed

31. Art. 51. It may be compared the detailed provisions of Chapter VII of the Charter with the summary provisions of Article 16 of the Covenant of the League. While the Charter does not contain a specific guarantee to protect the territorial integrity and political independence of the members of the United Nations against aggression as in the case of Article 10 of the Covenant, it assures such protection indirectly, first by the pledge of the individual members of the United Nations to refrain from the use of force and secondly by the measures which the Security Council is empowered to take to meet violations of these pledges. See Goodrich and Hambro, op. cit., pp. 151-181.

32. Art. 55.
that it reaffirmed both the principle of the 'sovereign equality of states' proclaimed in Article (2) and the principle of non-intervention 'in matters which are essentially within the domestic jurisdiction of any state'.

Responsibility for the discharge of functions relating to the fields of economic and social cooperation is, as has been seen, vested in the General Assembly, and, under its authority, in the Economic and Social Council. The function of the Economic and Social Council parallel those of the General Assembly in respect to the initiation of studies and reports and the making the recommendations.

Specific provision is made that the Council may prepare draft conventions for submission to the General Assembly, and that it may call an international conferences on matters falling within its competence. The preparation of these draft conventions is further evidence that the recommendations of the General Assembly are not to have the force of law-making agreements, but that in all matters which involve the assumption of new legal obligations the procedure will be favoured of submitting the proposed agreement to the ratification of the members of the United Nations in their character as separate states.

33. This would seem to confirm the inference that all recommendations of the General Assembly which have the effect of changing the rules of International law must be approved by the individual members of the United Nations.

34. Art. 62.

35. No provision is made in the Charter for determining the number of ratifications necessary to bring a particular convention into effect, thus leaving the Assembly free to decide that question according to the particular character of the convention.
The functions of the United Nations concerning the trusteeship agreements, to be entered into for all areas not designated as "strategic", are to be exercised by the General Assembly, which is to be assisted by the Trusteeship Council operating under its authority. Detailed provisions are set forth in the Charter with respect to the various trusteeship agreements, the territories to be placed under the trusteeship system, the manner of their administration and the duties of the administering authority. Both the General Assembly and the Council are authorized to supervise the administration of the trust territories, while the council is called upon to formulate questionnaires on the status of the inhabitants of each trust territory, upon the basis of which the administering authorities are to make annual reports to the General Assembly for the trust territories within the competence of the Assembly.

A separate chapter of the Charter deals with a number of miscellaneous relations between the members and the Organisation. In the first place, provision is made for the

36. Art. 85.
37. Art. 75-84.
registration of treaties with the Secretariat.\(^{39}\) Instead of the provision in the Covenant of the League of Nations that a treaty should not be binding unless so registered, the Charter provides that a party to a treaty or agreement that has not been registered may not 'invoke that treaty or agreement before any organ of the United Nations.' Secondly, in the event of a conflict between the obligations of members under the Charter and their obligations under any international agreement, the obligations of the Charter are to prevail.\(^{40}\) Thirdly, the organisation is to enjoy in the territory of each of its members 'such legal capacity as may be necessary for the exercise of its function and the fulfilment of its purposes', as well as such privileges and immunities are fundamental for the fulfilment of its purposes, the latter provisi being extended to the representatives of the different members and to the staff officers of the World Body.\(^{41}\)

The provisions of the Charter in accordance with which membership in the Organisation is separate and distinct from membership in the community of nations are accompanied by provisions for the suspension from the exercise of the rights and

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40. Art. 103.
privileges of membership in the case of members against which preventive or enforcement action has been taken by the Security Council. Suspension is effected by action of the General Assembly upon the recommendation of the Security Council. The exercise of rights and privileges which have been suspended may be restored by the Security Council. Moreover, it is further provided that a member which has 'persistently violated' the principles contained in the Charter may be expelled from the Organisation by the General Assembly upon recommendation of the Security Council. This is a far reaching provision, in as much as the principles set forth in Article (2) are phrased in general terms, leaving much latitude of interpretation. Protection against abuse of provision, however, is to be found in the voting majorities necessary in the Security Council and in the General Assembly. 43

The Charter is, of course, a multilateral treaty establishing the rights and duties of the signatory states, it

42. Art. 5.

43. The provisions for the expulsion of members met with sharp opposition from a number of the delegations at San Francisco. Mere suspension would still leave the member subject to the obligations of the Charter, whereas expulsion would leave to the state complete freedom of action, and measures to control its conduct would have to be taken outside the frame work of the Charter. Moreover, the necessity of expulsion in a particular case would suggest that the organisation did not have within itself the means to secure the observance of its obligations. See United Nations Conference, 507, 527.
is not, however, subject to reservation or denunciation, although, despite the absence of a 'withdrawal' clause, it may be assumed that legally a State can withdraw subject to its fulfilment of any outstanding obligations, such as budgetary commitments. A withdrawal could, however, be politically more difficult than in the case of the League and it is probably true that exclusion from the United Nations is politically disadvantageous, this is symptomatic of the relatively more important role which the United Nations plays in international relations than did the League. The Covenant of the League of Nations had made provision for the withdrawal of a member after two years notice of its intention to do so; and it was further provided that while amendments to the Covenant were not binding upon a particular member which signified its dissent from the amendments, in such case it should cease to be a member of the League. At the San Francisco Conference a number of delegations sought to prohibit withdrawal absolutely, others sought to permit withdrawal in the event of the adoption of amendments which they found it impossible to accept; others held that in the latter case the right of withdrawal could be implied from the kind of organisation that was being established.

It was finally agreed that no express provision should be made in the Charter either to permit or to prohibit withdrawal from the organisation, and a formal statement was made to that effect by the committee. The statement recognizes that 'exceptional circumstances' might make a member feel constrained to withdraw. On the other hand withdrawal or some other form of dissolution would be obviously inevitable if the organisation 'was revealed to be unable to maintain peace or could do so only at the expense of law and justice.'

More serious from a legal standpoint, is the right of withdrawal recognised in the event of the adoption of amendments to the Charter in which the particular state has not occurred and which it finds itself unable to accept, or in the event that an amendment duly adopted fails to ensure the ratification necessary to bring the amendment into effect. These serious structural weaknesses in the Charter are to be explained by the paradoxical circumstances under which it was drawn up, the general recognition of the need of establishing an organisation while public opinion in certain countries was still influenced by the disastrous effects of the war, and on the other hand the mutual lack of confidence in an organisation established under conditions of urgency which precluded clarification of certain basic issues.

The Charter is also the basic constitutional document of the organisation and, as such, it has an inherently dynamic character quite unlike the normal multilateral treaty. The Organisation created by the Charter is not a 'super state' or anything resembling a world government. It is first and foremost a collective security system for more centralised than the League. The Security Council can take decisions binding on the members, but in the main, the Charter provides special forms of cooperation between sovereign states, supplementing the traditional methods of inter-state intercourse and extending into fields of social and economic affairs which lie outside a system of collective security. This reliance on cooperation can be regarded as a limitation on the powers of the Organisation but it is at the same time be regarded as a characteristic of any organisation to which sovereign powers are not delegated by members.

It follows, therefore, that since each member remains sovereign, the organisation as such has no competence in matters within the domestic jurisdiction of a state. Thus Article 2 (7) provides:

"Nothing contained in the present Charter shall authorise 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 appreciation of enforcement measures under Chapter VII."
In reviewing the practice under the above referred article one finds the indication of the bitter controversies which have arisen over the question of competence. The Assembly's recommendation in December 1946 that Spain be debarred from membership of any international organisation or conference under the auspices of the United Nations, the discussion on the treatment of Indians within the Union of South Africa, or on the policy of apartheid pursued by the government of the Union, the discussion of the Tunisian, Moroccan and Algerian questions, and eventually of the Cyprus question, have given forward strong protests from the governments concerned. However, it may, of course, be argued that discussion as such can never constitute 'intervention' and this therefore, not prohibited by the article. Certainly an issue which threatens international peace and security would, ipso facto, cease to be a matter of domestic affairs: that is clearly recognised by the proviso to Article 2 (7) regarding enforcement measures. Equally where a state has assumed treaty obligations with respect to a certain matter it can no longer maintain that the matter is exclusively within the domestic jurisdiction. But beyond this, the applicati


48. As in the Congo, the Security Council orders "Provisional measures" under Art. 40, since these do not have the character of "enforcement action." The proviso to Art. 2 (7) does not apply the principle of non-intervention constitutes a limit upon the power of the Organisation.
of the article is more a matter for political judgement than legal interpretation. Action by the Assembly which might drive members out of the Organisation is of questionable value although, it must be said frankly, the Assembly should never decline to do its responsibility in taking up the matter simply because to do so would incur the displeasure of a particular state. The need here is a proper balance to be adopted between the duties of the Assembly in order not to become a forum in which once state may seek to embarrass another with which it has political differences.

Another general limitation on the powers of the Organisation appears from the normal principle of the law treaties, the Charter, as a treaty, can not bind non-members. Generally speaking, the Organisation must proceed on the basis that the Charter obligations, where there go beyond the obligations of general international law, do not bind non-member. However, in Article 2 (6) it is provided that:

"The Organisation 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."

Although this does represent a technical variation from the maxim stated above, the political justification for asserting the primacy of the interests of the Organisation in maintaining world peace and security is a recognised fact which should not be denied.
REVISIION OF THE CHARTER:

Another feature of the Charter which deserves to mention is, the provision for its revision by a General Conference of the members of the Organisation. This provision was included for meeting the belief of some of the delegates to the San Francisco Conference that the difficulty of creating an international organisation under the circumstances then existing made it favourable for re-examination as a whole at a later date in the light of experience that might be found in the transitional stage. The Assembly may call such a conference upon vote of two-thirds of its members and by a vote of any seven members of the Security Council. Alterations in the Charter must be voted by two-thirds of the members of the Conference, and when so adopted they must be submitted for ratification under the same conditions as amendments adopted by the Assembly itself. In order to meet the desire of certain delegations to fix a specific date for the calling of a conference to revise the Charter, provision was made that if such a conference should not be held before the tenth annual session of the Assembly, a proposal to call it should be placed on the agenda of the Assembly and the decision to call it should be by a majority vote instead of the two-thirds vote needed on other occasions.

Article of the Charter provides for the amendment of the Charter. It says:

"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."

But, the fact of the possibility of making a radical change to alter the Charter, is very difficult because issues are not judged on their own merits in this respect but are viewed according to the interests of the rival blocs especially between the Super-powers. Therefore, it is said that amending procedure of the Charter is to be amended first before any general revision of the Charter. Even at this stage; it needs complete understanding and full agreements among the 'Big Five' who have the veto powers. However, since the Charter was signed on 26 June 1945, the following minor amendments were adopted:

Amendments to Articles 23, 27, 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. The amendment to Article 109, adopted by the General Assembly on 20 December 1965 and came into force on 12 June, 1968.
The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members (formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61 enlarges the membership of the Economic and Social Council from eighteen to twenty-seven and later amendment to fifty-four.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the 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 nine members (formerly seven) of the Security Council. Paragraph 3 of the Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a 'vote of any seven members of the Security Council', the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

However, owing to the admission of many states from the Third World as members of the United Nations after they succeeded to achieve their national independence from colonial rule, the idea of reviewing the Charter of the United Nations gains more support which made the General Assembly to pass resolution 3349 (XXIX). In it decides to establish an Ad Hoc Committee on the Charter of the United Nations, consisting of 42 members to be appointed by the president of the General Assembly with due regard for the principle of equitable geographical distribution, with the following aims:

"(a) To discuss in detail the observations received from Governments;
(b) To consider any additional, specific proposals that Government may make with a view to enhancing the ability of the United Nations to achieve its purposes;
(c) To consider also other suggestions for the more effective functioning of the United Nations that may not require amendments to the Charter;
(d) To enumerate the proposal which have ensure particular interest in the Ad Hoc Committee."51

The resolution 3349 (XXIX) of 17 December 1974 invited the Secretary General to submit to the Ad Hoc Committee

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his view as appropriate on the experience acquired in the application of the provision of the Charter. The Assembly also requested the Ad Hoc Committee to submit the report on its work to the General Assembly at its thirtieth session.

Most of the Committee members expressed their views on the document A/AC 175/L.3 "views of the Secretary General on the experience acquired in the application of the provisions of the Charter with regard to the Secretariat", prepared in accordance with paragraph 3 of resolution 3349(XXIX) establishing this committee, "is more of an inventory of work carried out than an official view of the Secretariat on the way in which its structures operate in serving the community of semi countries and achieving the lofty aims of the Charter. It is therefore an inadequate and neutral document which neither reaffirms or suggests the best means of achieving the best results."


More than thirty years now passed since the signing of the Charter. During these years the United Nations and the world which it reflects and in which it functions have undergone vast changes. First of all the expansion of the United Nations from an organisation of 51 Member States to one of more than 140 Member States has been accompanied by an important change in the character of the Organisation. The new Members who joined the United Nations after 1945 are of two main categories: Liberated Colonial territories, and the so-called "enemy states" of the Second World War. The admission of these two categories of states has made the United Nations a universal Organisation, not one whose main roots are in Europe and the Western hemisphere. Thus, the aspect of the United Nations as an alliance against so of the members of the international community has lost its relevancy.

Secondly, the world which the United Nations reflects and in which it functions has become increasingly interdependent. Today not only are peace and security indivisible, but the problems of economic development, inflation, environment and resources, which have become matters of global concern, require global solutions in the context of the United Nations. These two factors, the universalization of the United Nations and the expansion of the relevancy of the United Nations to the new situation, necessitate the adoption of the United Nations to the new situation and demonstrate the need for added strength for the Organisation, without which the United Nations may be bound to
failure. Thus, the advocates of reviewing the Charter think it is time now to do positive reappraisal.55

The States opposing the review plead that despite the possibility of abuses in the application of its rules, the Charter has nevertheless proved to be a crucial bulwark in the defense of peace. In any case the Charter needs necessarily to be amended in order to create machinery to achieve its purposes. Such matters having been done by means of legal instruments such as covenants, declarations, definitions, treaties etc. They (opposing states) further pleaded that the only resolution lies in establishing genuine cooperation among nations, and this cooperation can, of course, come about through the "political will of states."57

However, the following points in the Charter are considered by many states either of Ad Hoc Committee or

55. Among the staunch supporters in the Ad Hoc Committee are Algeria, Argentina, China, Columbia, Congo, Iran, Japan, Kenya, Spain, Nigeria, Philippines, Rwanda, Sierra Leone, Tunisia, Yugoslavia Zambia (See General Assembly Official Records: Thirtieth Session Supplement No. 33 (A/10033), United Nations.

56. As those on decolonization 1514 (XV), Friendly relations 2625 (XXV), strengthening of International Security 2734 (XXV) and more recently, the definition of aggression 3314 (XXIV) and the strengthening of the role of the United Nations 3282 (XXIX).

57. Ibid, Among the opposers are: Czechoslovakia, France German Democratic Republic, Germany (Federal Republic Italy, Mexico, Poland, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.
the General Assembly, inherent defects which almost cripple
the organization to function for preserving international peace
and security:

1. Chapter IX, on International Economic and
Social Cooperation, does not reflect the new awareness of
global inter-dependence and can not be an adequate means of
dealing with ecological deterioration, energy crisis or
protection of the prices of raw materials and manufactured goods.
In this chapter, international cooperation is vaguely defined.
Experience has also shown that Chapter X, on the Economic and
Social Council must be reviewed so that it can become a far more
effective instrument of action.

2. Chapters XI and XII of the Charter are falling
into disuse as a result of the general phenomenon of decoloniza-
tion and the emergence of the new nations, although there are
articles, such as Article 73, which are continually flouted by
racist mentality of asarthied. It is, however, obvious that the
Trusteeship Council is a moribund organ which could be changed
into a different forum that cover activities which are now beyor
the capacity of the Economic and Social Council.

3. Chapter XIV leads many countries to consider
that it would be possible and advisable for the International
Court of Justice to play a much more active role and have great
enforcement powers in the settlement of disputes.
4. Chapter XV, relating to the Secretariat, suggests that if this body is to have a more direct on the coordination and execution of economic and social programmes of international assistance and cooperation, as advised by the group of experts which recently studied a new structure for the United Nations, such a change would have to be incorporated in the Charter itself.

5. Amending Article 4 by deleting the words "Peace Loving", since it is assumed that all States which seek membership in the legal community of the United Nations ipso facto express their acceptance of the goals of the organisation and the principles on which it is based. And it is obvious that the most important of all these, is the maintenance of peace. The Charter itself in Article (2) requires "good faith" in the fulfilment of the obligations accepted by the Members of the Organisation. Articles (5) and (6) are adequate to safeguard the principles and rules against violations of the Charter or disruptive influence which might endanger the organisation.

6. Elimination of Article 18, namely, that of a two-thirds majority vote in the General Assembly and unanimity among the permanent members of the Security Council required for the admission of a new State, since membership is neither a gift nor a favour, but a full right of a country which becomes a state joins the organisation and accepts its principles and rules.
(7) Chapter VII of the Charter deals with the various steps and measure to be taken by the Security Council in the event of threats to the peace, breaches of peace and acts of aggression. But practice shows these provisions have been inadequate. The establishment of a "permanent peace-keeping force" is very much needed. This will necessitate the drafting of an additional Statute to form part of the United Nations Charter. The definition of aggression should be included in the Charter either verbatim or in summary form.

(8) As a result of loss of applicability and rapid historical developments, Chapters XI, XII, XIII of the Charter have become irreparable anachronistic. The Trusteeship Council should be converted into a new body to be called the Human Rights and Trusteeship Council.

(9) Deletion of Article 53, which refers to "enemy states", because the term no longer has any real justification. It is also necessary to eliminate Article 106, which refers to a transitional situation and establishes machine for consultations which has become obsolete as a result of developments and the amendments which are being proposed. Article 107 should also be deleted for similar reasons and because it constitutes an undesirable link with the circumstances prevail in 1945. Paragraph 3 of Article 109 should also be deleted because it refers to an event which was due to occur 17 years ago.
(10) Chapter IV on advisory opinion (Articles 65 to 68), there should always be assessors and that the Statute should provide for the establishment of time-limits for summary procedures in the case of advisory opinions on urgent matters, at the discretion of parties requesting an opinion.

(11) Article 27 of the Charter either be abolished or modified. It is time for the Five Permanent Members to give up the 'veto' power in the interests of world peace and security. Total democracy would prevail in the United Nations system without the veto, because without it the Security Council would cease to be the notorious grave yard of United Nations General Assembly resolutions.

Though the stated points suggested for amendments in the Charter are sound, the fundamental problem facing the Organization is the lack of political will on the part of many of its Members to comply strictly and in good faith with the obligations they assume on gaining admission to the United Nations as it is expressed in the words of the Government of Mexico. 58

THE COVENANT AND THE CHARTER

Though the Charter considers in a wide sense the spirit and heart of a world Organization which the 'diversity as well as the unity of mankind has gone into its making', the obvious fact to state that it is resembling in objectives and

methods, of plan and structure the Covenant. The Charter inspires to make the Organization a sound machinery stronger than its predecessor for maintaining and preserving peace and security. The goals are the same but the means to fulfil them are to some extent different. The sovereign state is still the unit of membership. The General Assembly, in composition resembles the League Assembly over again, the forum which all the members are represented with equal right of speech and vote.

Schuman in this respect has expressed the opinion that U.N. "is the League in a new guise, despite the several respects in which it differs from its predecessor." However, there is an established fact that the Charter is an improvement upon the Covenant. It clearly defines the obligations of members who "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." The Charter provides for establishing

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61. Art. 43.
an international armed force which shall function under the
direction of the Security Council with the assistance of a
Military Staff Committee in accordance to Article 47 of the
Charter. The League machinery for the maintenance of
international peace and security was weak because it lacked
armed force and it did not have a clear definition concerning
the obligation of the member states.

The Covenant had rather sweepingly allowed the
League Assembly, like the Council, 'to deal .... with any
matter within the sphere of the League or affecting the peace
of the world' (Article III, paragraph 3), the Charter in this
respect gives the General Assembly equally wide powers of
discussion but sharply puts restrictions in the making of
recommendations. On matters concerning peace and security, the
Security Council has the priority, and the General Assembly may
make recommendations only when the Security Council is not dealing
with the question or when, for any reason, the Security Council
requests the General Assembly to recommend.

The Charter enlarged the powers of the Assembly
due to the creation of two specialised councils, the Economic
and Social Council and the Trusteeship Council, with authority
in their own spheres, and also owing the enormous expansion of
international activity in the social and economic fields which
contribute soundly in making the United Nations to undertake much
responsibility in promoting world economic and social welfare.
The Covenant in other hands entrusted principal responsibility regarding this matter to its Council, changing it with the direction of the League's technical bodies and the supervision of the Mandates Commission.

In procedural matters the Charter of the United Nations introduced an important novelty. It abandoned unanimity principle which the League practiced to follow that caused it in more cases of international disputes failed to take any decision. The U.N. Assembly was empowered, by contrast, to make decisions by majority vote and in case of important matters, by two thirds majority. Similarly, the Security Council reserves its veto for its Permanent Members; if they concur an affirmative vote of nine out of its fifteen members.

In the structural side, the Security Council closely parallels its League predecessor, with its core of permanent Great Powers members and its elected non-permanent members. It is said that the League Council is more flexible to be changed in the composition. The Security Council can only be changed by amending the Charter as it was done in 1965 by the amendments of Article 23 and 27 in order to enlarge its membership from eleven to fifteen.

62. Art. 18.
63. Art. 63.
Though the Charter resembles the Covenant in matters concerning the Secretariat which to serve all the United Nations bodies and provisions, but one significant exception deserves to mention it by referring to Article 99, which gives the Secretary-General an explicit political role to bring to the attention of the Security Council any matter which might threaten peace and security.

The Permanent Court of International Justice was established in 1920 in accordance with direction given in Article 14 of the Covenant but as Laski said "that it has been unduly restricted in its competence by the powers conferred on the Council and the Assembly." The San Francisco Conference felt the inability of the Court and decided to improve on the original model by formally recording that the new Court's Statute was based on its predecessor's. It seems the significant difference is that the new International Court of Justice is an integral part of the Organisation. All United Nations members are automatically enjoying its membership though the non-members are able to join if they wish.

"Peace settlement of disputes" in Chapter VI of the Charter is devoted to an elaboration of the processes which give effect to what the League had incorporated. The Charter does not, of course, any more than the Covenant, give

to the world organisation wide and strong power to impose a
calisation of its members disputes despite it contains provisions
sufficient enough to create adoptable machinery, but the fact is
that there is no organ of the United Nations, not even the
Security Council, is empowered to impose a decision. The
Security Council can only act when serious threat exists against
world peace, but again not to impose a decision. The United
Nations in fact, is not a world government and most cases it
stands helpless to do any thing specially when differences among
the Big Five Powers exist which close the door for any hope to
stop the aggression.

The Charter, by contrast, provides a clear
Declaration concerning Non-self-Governing Territories
(Chapter XI) which is considered more enforceable than the
Covenant's article and at the same time revealed the development
of the concept of International responsibility for dependent
people since 1914.

The Preamble to the Charter of the United
Nations reaffirms "faith in fundamental human rights, in
the dignity and worth of human person, in the equal rights
of men and women and of nations, large and small." The
Charter, by contrast with Article XXIII in the League Covenant
sounds off widely the importance of preserving human rights and
Article (68) provided to sit up a separate commission for
promoting human rights.

65. See also Article 1 and Articles 55, 56 of the
Charter.
The system of collective security under the United Nations Charter goes far beyond anything in the Covenant of the League of Nations. Under the later, nations could decide individually whether the Covenant of the League has been violated.\textsuperscript{66} In contrast, under the Charter, 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 which measures shall be taken ....... to maintain or restore international peace and security."\textsuperscript{67}

The Covenant of the League provided for voluntary withdrawal of membership, with the result that the members could withdraw at any time they wish as Japan did in 1932, Germany in 1933 and Italy in 1935. The Charter does not provide such a right which makes withdrawal legal though it is not possible to force a member to remain with the organization as it is clarified later on in the San Francisco formal statement 'exceptional circumstance' might make a member feel constrained to withdraw. This was demonstrated by the withdrawal of Indonesia in January 1965.

One term, however, very significant to the character of the Charter. This is the term "organisation" which says "we the people of the United Nations ..... do here

\textsuperscript{66}. Art. 16.
\textsuperscript{67}. Art. 39.
by establish an international organisation to be known as the United Nations." The emphasis is thus shifted from the High contracting Parties of the League to the people of the United Nations. In Article (2) it is 'the Organisation and its Members' who are to 'act in accordance with the following principles' and the 'Organisation' which 'shall ensure' the non-member states act in accordance with them as well. Eichelberger observes: "It is not by accident that the Charter of the United Nations begins with phrase 'we the people of the United Nations .... instead of beginning with the phrase of the League of Nations' covenant', the High Contracting parties ..... In the final analysis it is up to the states-men and the people they represent to make a success of the United Nations."68

It is an indisputable fact that during the last thirty two years since the United Nations inception, the Charter has played a positive role and has demonstrated its vitality and its great possibilities for the extension and intensification of cooperation between states with different social systems. But one can not say it is perfect, it is in fact as Nicholas observes, "The Charter is in fact an imperfect blue-print for an imperfect structure. As such, it invites, and deserves, criticism. But first of all it has a right to be understood."69