CHAPTER - IV

AMENDMENT OF THE CHARTER:
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"Twice in our life time", the scourge of war has brought untold sorrow to mankind and, after each war, mankind pledged to establish conditions which would ensure a better world-order—a world in which violence could be reduced significantly; peace and security could be ensured; and conditions for economic welfare, social justice and respect for human rights and fundamental freedoms could be created. Thus, the League of Nations came into existence after the first World War, which unfortunately, failed and then came the United Nations -- a revised version of the League — undoubtedly improved in many respect and representing a fresh approach to the world problems with the purpose "to maintain International peace and security; to develop friendly relations among nations", and to cooperate internationally in solving "international problem of economic, social, cultural or


humanitarian character, and in promoting respect for human rights and fundamental freedoms for all.

The Charter of the United Nations was established as a consequence of the United Nations Conference on International organization held at San Francisco and was brought into force on 26 June 1945. It is a truism that the text of the Charter gives a quite misleading picture of the United Nations as it is today. Those provisions of the Charter which were claimed by its authors to provide the new organization with teeth that the League of Nations did not have, either have never been used or have in practice been of little importance. New emphasis and new methods have been developed through the liberal interpretation of Charter provisions. There have not always been acceptable to all members; however, the process of adoption and development continues.

The goal of the organization has been "to save succeeding generations from the scourge of war" but Hammerskjold noted that its ability to realize this goal of peace was dependent upon its

3. Brownlie, I., op. cit., p. 3.
4. Ibid., p. 1.
its ability to promote five principles or objectives which are contained in purposes and principles of the Charter. Hammerskjold defined these objectives as the prevention of armed conflict through negotiation, the prohibition of the use of force "save in the common interest", equal economic opportunity, political equality, and the rule of Law or justice.

Dag Hammerskjold made it quite clear that these principles are interdependent principles of a total approach to the relationship of human beings - whether between individuals in a state or between people grouped into states. He viewed the attempt on the part of the international community to establish its relations along the lines of these principles as an extension of a movement which had been taking place for centuries to realize the principles of western civilization in the World. Politically they were the standards of liberal democracy which had been gaining ascendancy within many states over the past several centuries. He viewed their adoption by the United Nations as "the first step towards the establishment of an international democracy of peoples, bringing all nations - irrespective of history, size or wealth - together on an equal

an equal basis of pastness in the vast venture of creating a true world community.

To a large extent, the rules reflect standards accepted as binding for life within states. Thus, they appear, in the main, as a projection into the international arena and international community of purposes and principles already accepted as being of national validity. In this sense the Charter takes a first step in the direction of organized international community.

Andrew W. Cordier, the former executive Assistant to the Secretary-General remarked that Hammerskjold “had almost a religious respect for the Charter” and by a statement of his own that the United Nations represented “a secular ‘Church’ of ideals and principles in international affairs.

Hammerskjold’s other three goals of equal economic opportunity, political equality, and the rule of law are directed at removing the underlying causes of international conflict and

8. Ibid., p. 23.
9. Ibid.
at building a more peaceful world order. Their realization is sought inter alia in order to help eliminate the concurrence of international disputes and violence and hence the need for employing means of easing tensions, settling disputes and controlling the use of force. The operational meaning of these three principles are quite clear in that there respective purposes are:

(1) to promote greater equality in economic standards among the peoples of the world;

(2) to secure a voice for all nations in international decision making in addition to protecting the political independence of all nations; and

(3) to expand the number of questions of international concern which are covered by international agreements and to promote the settlement of disputes and the creation of cooperative endeavours in accordance with legal procedure and substantive law.

Furthermore, the responsibilities which the Charter requires of the member states are bases of power of the organization in that, as obligations, they can be invoked by the members or one of the principal organ to include certain members
to conform to a certain time of action. The most basic responsibility incumbent upon the members was that they act in accordance with the principles and purposes of the Charter. The other responsibility was that the members comply with those decisions of the United Nations organ which were meant to be binding in the Charter and that they give serious consideration to those decisions which were only recommendations.

A responsibility that states assumed in adhering to the Charter was to submit conflicts and tensions to the organization for solution, sometimes even when these were alternative methods for solving them. From the above points Hammerskjold thought that states had an obligation use it as much as possible in order to strengthen the United Nations effectiveness. Hammerskjold once wrote:

"to fail to use the United Nations machinery on these occasions when the Charter plainly means that it should be used, to improvise other arrangements without overriding practical and political reasons — this may tend to weaken the position of the organization and reduce its influence and effectiveness, even when the ultimate

purpose is a United Nations purpose**. Hammerskjold also said that there was an "interest of the member Governments in strengthening the institutions which they have endowed with a primary responsibility for world peace ...".

However, the members would led to a gradual atrophy of and loss of respect for the United Nations as an instrument for cooperation and peace— and the confrontation had developed between the East and the West — particularly between the Soviet Union, United States and the United Kingdom — and this was hardly conducive to the fall implementation and carrying out of the Charter provision for keeping the peace. The two power blocs of conflicting ideologies trying for world domination terribly shook the very cornerstone of the United Nations. Every international problem that arose was judged by the two power blocs in the process of world strategy and they took their guard in the arena of United Nations accordingly. The real issue dwindled into insignificance and the United Nations

12. Ibid., p. 27.
13. Ibid.,
Itself became the pawn of the world strategy and failed to deal with the situation effectively.

However, the United Nations is the beginning of a world community and its Charter the beginning of world law. It is, in fact, "our only hope", certainly our only present hope for achieving the grand objectives of peace, economic well-being and social advancement. At the same time, the community is riven with dissension, the law fragmentary, and the underlying international situation fraught with conflict.

Consequently, the United Nations has broad purposes and principles which have been mentioned in the Charter. The first two articles of the Charter state the principles and aims to which the United Nations and its members are dedicated. The primary objective of the United Nations is to maintain International peace and Security which was built up around the concept of collective security - that security of one nation is the concern of all, that the nations breaking the law will be resisted.


collectively by the armed forces of all member states, such military operations being conducted by the Security Council through its military staff committee (Art. 41 to 49).

At all times the organization is to develop friendly relations among nations based on respect for principle of equal rights and self-determination of people. Paragraph 3 of Article 1 spells out additional aims of the United Nations. Economic equality and social progress are not only conditions favourable to a durable peace but are themselves worthy objectives of an international organization. Thus the members of the United Nations are pledged to cooperate not only in solving international problems of an economic, social, cultural or humanitarian character but also in promoting and encouraging respect for human rights and fundamental freedoms for all without distinctions as to race, sex, language, or religion. To be a centre for harmonizing the actions of nations in the attainment of the common ends.

Immediately following the primary statement of purposes, the Charter, in Article 2, establishes the basic rules of conduct or principles upon which the United Nations is founded and, it is hoped upon which it will operate. The first and probably the most fundamental principle is the sovereign equality of all members. However, it is a cornerstone upon which the United Nations is constructed. After the postulate of the sovereign equality of all members is express, each is reminded of the importance of honouring its obligations assumed through membership in the United Nations. A fundamental stipulation is the use of pacific settlement for all disputes of an international character. Once a dangerous conflict develops, each member must utilize peaceful means to resolve it, even if the problem concerns a non-member of the organization. In the case of non-members, the United Nations 'shall ensure that they act in accordance with those principles so far as may be necessary for the maintenance of international peace and security. Although the threat or use of force is not eliminated by the Charter, due to the possible use of collective measures and self-defence, all members are obliged to forego such action that is 'in consistent with the purposes of the United Nations'.

the Charter concludes with a severe limitation upon United Nations authority. This limitation is the "domestic jurisdiction" clause which forbids the United Nations "to intervene in matters which are essentially within the domestic jurisdiction of any state. Whether it is a member of the organization or not". But an exception to the application of the domestic jurisdiction principle is granted in the last clause of Article 2 in which the Security Council is authorized to take enforcement action under Chapter VII of the Charter without restriction by the domestic jurisdiction rule. Chapter VII deals with the most drastic measures that the Security Council may apply with respect to threat to peace, breaches of peace, or act of aggression.

In addition to this list of article 2, several other general rules are scattered throughout the Charter particularly those with respect to the preservation of peace. Although the principles of justice and self-determination are specifically referred to as objectives, they are not covered in any article.

Consequently, however, for the fulfilment of these purposes and principles, the unity of the Great Powers is essential

22. A.L. Bennett, op.cit., p. 50.
23. Ibid., p. 48.; also see Goodspeed, S.S., op.cit., p. 112.
as it is the key to the success of a universal international organization composed of sovereign states joined together by voluntary decision.

But the United Nations was unable to exercise these purposes and principles effectively due to the confrontation between East and West and other problems such as veto problem, increasing number of membership, question of Domestic jurisdiction, lack of compulsory jurisdiction in ICJ and increase in the United Nations Peace force. Hence, there is a need for the amendment of the charter in such a way as to satisfy all. Goodspeed wrote in his book that "many people who have watched the organization muddle along on a serious problems are convinced that the only way out of apparent impass is to adopt amendments that would, in their view, strengthen the Charter provisions and bring them into with existing conditions, in the world. It is argued that the development of nuclear weapons altered the traditional concepts of peace and security upon which the United Nations was built. Most of them thinking along these lines involves the reconstitution of the United Nations into some form of world government.

25. Ibid., p. 611.
Goodspeed also wrote that the other suggestions for revision include those that would limit its present authority in economic and social questions and in the field of collective security or drastically change the nature of the organization by eliminating certain of its members and joining the remainder into a huge military alliance. Then there are proposals which seek to improve the functioning of the Charter on certain matters by expanding mechanisms for the maintenance of peace and overhauling some of its existing machinery. But after all it is suggested that the Charter of the United Nations should be amended. Clark and Sohn also proposed a comprehensive plan for the amendment of the Charter.

Hence, any written document, however, carefully drafted is bound to require a change in the course of the time and in the light of its working experience. Thus, the UN Charter, too cannot escape amendment and procedure of revision laid down in the Charter itself. At San Francisco Conference two methods of amending the Charter were argued upon. One is Article 108 and the other in Article 109.

However, the most important specific features of the proposal for the amendment of the Charter are as follows:

After the outbreak of the Cold War the world finds itself divided not into two blocs but into three: the uncommitted world—the part of the world which has stood out boldly and stubbornly for its independence inspite of political, economic and military pressures - is at least as large as either of the two power blocs. However, it is the most significant development in the United Nations is the emergence of what might be called a "Third World". Almost all of them are neutral. They do not join any of the bloc - the East and the West. Hence a great danger exists in a bipolar world, with all countries linked up on opposing sides in the East West conflict. Such a situation involves two gigantic blocs, mutually hostile to each other and with little room for the operation of conciliating influences. If, however, these are members of the United Nations which would throw their weight against any aggressor, a better chance may be achieved.

The United Nations however, as states in the Charter itself is based on "the sovereign equality of all its members" and as stated in the preamble, is established to reaffirm faith

27. BrownLio, I., op. cit., p. 3.
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 desired goal of the organization is therefore to achieve universal membership. Consequently, frequent references in the debates of the General Assembly and the Security Council, in favour of universal membership has been made. A number of resolutions in favour of universality too, have been adopted. It is evident from the debates that it was never intended to make the United Nations a club of like-minded states; neither was it intended to prevent membership of states having different (and undesirable) ideologies and different economic and political systems.

"Universality" not "selectivity" was to guide the principle of admission into the United Nations. The principle of "like-mindedness" is applicable "only to the extent that all must support the purposes and principles of the Charter and fulfil their obligations thereunder. According to Article 4(1) "Membership of the organization is open to all peace-loving states, which accept the obligations contained in the Charter and in the


judgement of the organization, are able and willing to carry out these obligations.

A state which fulfills the criteria stated above, is free to seek, and would be and has been generally admitted to the United Nations. Consequently, no application for the United Nations membership, has been rejected on the ground that the applicant country, though independent, is too small or poor to support the burdens of the membership. Naturally, there is an enormous increase in the membership of the United Nations. It has grown from a body of 51 members to one fifty nine; the majority of which are the product of decolonization process; many of them are microstates and underdeveloped. Owing to their colonial past, their attitudes in most of the cases but definitely not in all the cases, are anti-Western. However, the United Nations is about to achieve total universality in the near future if the criteria for the membership remained unchanged. It is expected that in the near future the remaining colonial territories mostly small and insular will gain independence and apply for admission ...".


A suggestion that a distinction be made between the right of independence and the question of full membership of ministates in the United Nations also could not materialize because of constitutional difficulties. A committee of Experts (The Ministate Committee) to study the problem was established. Two substantive proposals, one by the United States for the establishment of a category of associate membership, enjoying all rights except to vote and hold office and bearing the obligation of a member except the obligation to pay financial assessments, and the other British proposal, advocating for voluntary renunciation of certain rights and obligations upon admission as full member (renunciation) of the right to vote and to hold office and understanding that the assessment of the financial contribution would be at minimal level), when referred to the UN Legal Counsel were rejected on the ground that the US proposal needs amendment of the Charter as Article 4 of the Charter, which defines conditions for admitting new members to the UN, makes no reference to associate membership and the British proposal, the Council contended, though does not need amendment of the Charter, is against the spirit of the article 18 which asserts that "Each member of the General Assembly shall have one vote". Furthermore, equality is the principle of the UN and a member renouncing its right to vote
voluntarily may remain "sovereign" but hardly remains "equal" the problems remain unsolved. However, the membership of the United Nations should be for all intense and purposes universal. Politics should not enter into the question of the new members — whether they are under-developed or ministates. Consequently, the Charter is to be amended in such a way as to remove hindrance in the way of admission of the peace-loving nation.

A radical revision is proposed in the major organs of the United Nations — the Security Council and the General Assembly.

The United Nations however was built up around the concept of collective security — that security of one nation is the concern of all, that the nations breaking the law will be resisted collectively by the armed forces of all member states; such military operations being conducted by the Security Council through its military staff committee (Article 41 to 49). The important function which the Security Council has been assigned to discharge "gives the impression that it is the central organ of the United Nations". However, the frequent inability of the Security Council to decide matters relating to international


peace and security owing to excessive use of veto the importance of the Security Council had been lowered in the eyes of the nations. The veto power which gives the privileged position of the permanent members in the Security Council, has come to sharp criticism. The 'veto' implies that no decision by the United Nations against the wishes of anyone of the Big Five, can be taken even if the power is an aggressor.

Throughout the history of the United Nations, the prestige of the Security Council has fluctuated greatly. In fact, due to excessive use of veto important matters are often "frozen" in the Security Council agenda. For example the Communist coup in Czechoslovakia (February 1948) the Soviet Blockade of Berlin (September 1948) and many other issues which were brought before the Security Council but they were vetoed by the Big Five particularly by Soviet Russia. Only once the Security Council was able to take action when North Korea attacked on the Republic of Korea on June 25, 1950. It may be pointed out that the "creation of the unified command in Korea by the Security Council was possible solely because of the fortuitous absence

of the Soviet representative. Hence, it was realized by the General Assembly that to prevent matters relating to peace and Security from being "frozen" on the Security Council Agenda which reduced to impotence the organization as a whole, should assume some of the responsibility of the Council. Consequently, the General Assembly adopted three closely connected resolutions, the first of which is usually termed the 'uniting for peace resolution. Under the uniting for Peace resolution the responsibility of maintaining peace and Security has been transferred from the Security Council to the General Assembly.

The frequent exercise of the "veto" by the Soviet Union was technically consistent with Charter provisions but was claimed by the West to be an "abuse" since according to the Four-Power statement at San-Francisco, it was not to be "assumed—that the permanent members, any more than the non-permanent members, would use their 'veto' power wilfully to obstruct the operation of the Council.

Consequently, there has been general resentment against the use of veto on questions of peace and Security and this led


to demand for its abolition or limitation. It would however, be logical to except the veto to be limited when the Security Council is seeking to bring about the peaceful settlement of disputes. But the abolition of veto would add little to the power of the UN because it would still be virtually impossible for the United Nations to take enforcement action against nuclear power (all the Big Five are nuclear power).

There is a proposal presented by Clark and Sohn for the abolition of the Security Council and to substitute for its an executive council. Composed of seventeen representatives elected by the General Assembly itself from its own membership. In this way no nation would be entitled to appoint any member of the new council and the council would consist solely of persons well known to the Assembly and enjoying its confidence. This new and highly important organ would not only be chosen by the Assembly, but would also be responsible to and removable by the Assembly; and the Council would serve for the four year terms. That the General Assembly would have the "primary responsibility" for the maintenance of peace, so that the new executive council would not have the basic responsibility in this respect possessed

44. Clark and Sohn, *op.cit.*, p. xxii.
by the Security Council and the Executive Council would function in all important fields as "the agent of the General Assembly", subject to at all times to the Assembly's supervision and direction. But despite of this different status, the proposed executive council would be an organ of great authority and importance.

The Plan of Clark and Sohn also provides that while no member Nation would be entitled to "Permanent" representation on the Council, special provision would be made for the representation of the larger nations, whereby the four largest nations (China, India, the USA and the USSR) would each be entitled at all times to have one of its representatives on the Council; and four of the eight next largest nations (Brazil, France, West Germany, Indonesia, Italy, Japan, Pakistan, and the United Kingdom) would in rotation also be entitled to representation, with the provision that two of these four shall always be from nations in Europe and the other two from nations outside Europe. The remaining nine members would be chosen by the Assembly from the representatives of all the other member nations and the non-self governing territories, under a formula designed to provide

47. Clark and Sohn, op.cit., p. 71.
fair representation, for all the main regions of the world and to ensure that every member nation, without, exception, shall in due course have a representative on this all important council.

In contrast to the voting procedure of the present Security Council, whereby anyone of the Five nations entitled to "Permanent" membership has a veto power in all non-procedural matters. But no provision is made corresponding to the "veto" power of anyone of the "Big Five" contained in the Clark and Sohn proposal, it is clear that in the new executive council, no decision, great or small, should be blocked by any single vote. On the other hand, it is suggested that all decisions of the Council shall be by a substantial majority of its members, and it is of the utmost consequence that every important decision shall command a clear majority of members from both the main groups of nations, i.e. from the group comprising the largest and medium-sized nations and also from the more numerous group of smaller nations. It is believed that the proposed requirement of a minimum majority of twelve of the seventeen council members for any decision, together with the requirement that on "important matters" this majority shall include a majority of

48. Clark and Sohn, op.cit., p. xxiii
council members from the nations entitled to fifteen or more Representatives in the General Assembly and also a majority of the members from the smaller nations, meets these tests.

The proposed Executive Council would constitute the executive arm of the strengthened United Nations, holding much the same relation to the General Assembly. Subject to its responsibility to the Assembly, the new council would have broad powers to supervise and direct the disarmament process and other aspects of the whole system for the maintenance of peace.

Moreover, a radical revision is proposed as to the powers, composition and method of voting of the General Assembly. The plan calls for imposing the final responsibility for the maintenance of peace upon the General Assembly itself, and gives the assembly adequate powers to this end. These powers would however, be strictly limited to matters directly related to the maintenance of peace.

A more basic change is the grant to the General Assembly of new power to legislate within certain limits and new power to deal directly not only with disputes and situations but also

49. Clark and Sohn, op.cit., p. 80 to 82.
50. Ibid., p. xxiii.
51. Ibid., p. xix.
with threats to the peace, breaches of peace and acts of aggression. Hence, the proposed plan of Clark and Sohn embodies two fundamental changes: (1) The transfer of the primary responsibility for the maintenance of peace from the Security Council to the General Assembly; and (2) the grant to the Assembly of certain powers to make binding laws as distinguished from mere recommendations. These new legislative powers are strictly limited, and yet would, it is believed, prove sufficient to enable the United Nations to fulfil its basic purpose of preventing war— not merely minor wars, but any armed conflict between nations, small or great.

The principle is followed that all the main features of the whole plan shall be included as a "constitutional legislation", having in mind that the nations will be more likely to accept the plan if all its principal provisions are clearly set forth in the constitutional document itself. The effect would be binding the nations in advance not only to all the fundamentals but also to many important details, and thus to leave for the General Assembly a more limited legislative scope than might be supposed.

52. Clark and Sohn, op. cit., p. 35 to 41
53. Ibid., p. xix
Since, however the General Assembly, even with elaborate "constitutional legislation", would need to have some definite legislative powers, the plan calls for a revision of the system of representation in the Assembly. Hence, for the survival of the United Nations one nation one vote formula has to be changed and to substitute more equitable system - the idea of weighted voting has been suggested.

However, the strengthened position of the General Assembly with its increased membership, almost all of them being underdeveloped (including the ministates) has made the super powers reluctant to entrust real power to a body where they do not have a veto. To avoid a confrontation with the majority within the General Assembly, the idea of weighted voting have been suggested to arrest or reverse the voting behaviour in the General Assembly which worries the Western powers and makes the Third-World happy. But this would raise many questions without, perhaps, solving the problems and, as pointed out by Claud Inis, adequate answers have to be found to queries such as, "what shall be weight?. What factors - population, literacy, wealth, industrial production military strength, budgetary contribution,

54. Clark and Sohn, op.cit., p. xx
etc. - should be included, and it in what proportion, in a formula for a weighted voting?" For the purpose of weighted, the population - accentuating and power-accentuating formulae have been suggested.

The scheme for weighted voting are especially relevant to the workability of the "Uniting for peace Resolution" and the other peace-keeping approaches. Naturally, the States which contribute most of the materials, men and money are likely want to have a greater say in how the operation is set up and carried out and it was thought that the Super powers being heavily populated and contributing the major portion to all the UN operations, however, the Clark and Sohn proposal for weighted voting will be acceptable to them as the Clark and Sohn plan was the most fully developed and comprehensive of the various proposals concerning weighted voting. Small states that retain some voting power and that are not faced by a veto might also be willing to accept such a scheme, especially if they were given a real stake in the venture, such a significant relief in the terms of


international trade or greatly increased help with economic development.

The principles governing the proposed representation plan are:

(1) that every member Nation, however small, should be entitled to some representation;

(2) that there should be a reasonable upper limit upon the representation of even the largest member Nation; and

(3) that, subject to these provisions, representation should be apportioned by groups of nations according to their relative populations without attempting to reflect any such factors as relative natural resources productive capacity, trade or literacy.

In harmony with these principles, the concrete proposal is that all nations recognized as independent states and therefore, eligible for membership, shall be divided into following six.

58. Clark and Sohn, *op.cit.*, p. 25
categories, "each comprising a group of nations in accordance with their populations":

The 4 largest nations ... 30 Representatives each = 120
The 8 next largest nations ... 15 Representatives each = 120
The 20 next largest nations ... 06 Representatives each = 120
The 30 next largest nations ... 04 Representatives each = 120
The 34 next largest nations ... 02 Representatives each = 68
The 3 smallest nations (under 1,000,000) ... 1 Representative each = 3

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      99 nations
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      551 Representatives

(The authors of the plan divided only 99 nations into different categories which they thought would be there in 1965).

The authors of the plan proposed that all the member Nations would be divided into categories measured by their relative populations; all the nations within a particular category would have a specified equal representation; and every nation without exception, would have some representation while a reasonable limit would be put upon the representation of the largest nations. However, the same maximum representation were
allotted to the United States and the Soviet Russia taking into consideration the fact that "neither could possibly accept a plan under which the other was given a larger voice". The same maximum representation were allotted "to the two great Asian nations - mainland China and India - which by tremendous margins have the largest populations in the world". France, West Germany, Italy, the United Kingdom, Brazil, Indonesia, Japan and Pakistan, were treated as middle-sized states and equal representation was allotted to them. In the same way, the principle of equal representation, as the basis of population, was applied to the other four categories. The plan was, however, not acceptable to the big powers for various reasons. The small states, on the other hand resentful "of the great Powers' predominance elsewhere in the organization", regarded the General Assembly "as a necessary and proper stronghold of egalitarianism", are unlikely to favour a proposal which would undermine their advantageous position in the organization. It was a "comprehensive plan for world peace under world law which

59. Clark and Sohn, op.cit., pp. 25 to 27.


could have been ever formulated and, must have been adopted; if not, considered at least it would have been seriously debated throughout the world".

The United Nations is an association of sovereign states, each of which is determined to protect its own interest when they are challenged. However, Article 2(7) protects the sovereign rights by forbidding the intervention of the United Nations 'in matters which are essentially within the domestic jurisdiction of any state'. This clause however, overemphasizes this principle of sovereignty but it is extremely difficult when a particular problem seizes to be a matter of national concern and becomes the concern of International society.

However, Article 2(7) of the Charter is the most controversial, and therefore the most-quoted provision of the Charter in the deliberations of United Nations organs. This is so because:

Firstly, on account of its indifferent drafting the text of Article is amendable to varied interpretations.

Secondly, the domestic jurisdiction provision of the Charter, because of its wide scope, the ambiguous phraseology used and certain other reasons is more diffuse in its meaning than the like provision in the covenant.

Thirdly, the provision (very much like the veto provision incorporated in Article 27(3) of the Charter) being essentially a great power imposition on the other members of San Francisco Conference, what discussion there was on it at the Conference is largely unreal and unavailing for the purposes of interpretation ....

Fourthly, the Charter being both a multilateral treaty, to which a large number of sovereign states are signatories, as well as the constitution of a world organization, there is apparent in its implementation a continuous struggle between the inherent rigidity of a treaty and the unavoidable suppleness of a constitution; the former quality follows from the residuary sovereignty of the signatories, and the latter from the need for effectiveness. Also, the domestic jurisdiction principle of the Charter seeks to be a limitation on the functions and powers of an organization whose competence includes quite a few subjects traditionally falling within the domestic jurisdiction of states, and these powers and functions are minutely described in the
Charter than in any other multipartite treaty of a comparable nature. The ostensible divergence between the purposes of the Charter, which are necessarily worded in general terms, and the principles of the Charter, which are comparatively more specifically worded, has only accentuated this differential approach to the interpretation of the text of Art. 2(7).

However, the provision of Art. 2(7) has not had in the working of the United Nations organs the exaggerated impact that it might have been expected to have - anyhow it has been a source of abuse, obstruction or at least confusion in the deliberations of the United Nations.

So in view of all these considerations, it is suggested that the operation of Domestic Jurisdiction principle Art. 2(7) in the Charter be amended. M.S. Rajan suggested that Art. 2(7) could be made more satisfactory by following possible actions:

(i) "By it outright deletion from the Charter of non-application of the provision in practice;

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65. Ibid., p. 394.
(ii) by verbal or substantial change in the text of the provision;

(iii) by limiting the extent of the principle; and

(iv) an authoritative interpretation of the relevant terms and phrases of the text of the provision.

But all these attempts for changing the term of "Domestic Jurisdiction" principle or deleting it together is impracticable in the present temper of International relations. M.S. Rajan said that only course left is to let the United Nations organs continue to take adhoc decisions. Hence, the attempts at any formal revision of the domestic jurisdiction might well be postponed to some indefinite future when the precedents and conventions established by adhoc decisions .... Further, in numerous concrete cases in which the issue of domestic jurisdiction was raised by the members, the crippling effect that 'juristic pessimist' might warrant. The charge that this would constitute 'amendment by interpretations' or a back-door amendment of the Charter. Consequently, after discussions M.S. Rajan said that the best course is to leave the divergence of interpretation

of the provision of Art. 2(7) to be decided by each concerned organ, in each concrete case and whenever the issue of jurisdiction is pressed. In any case that is what United Nations Organizations have done and would in all probability doing in future.

Furthermore, Clark and Sohn proposed that the present unqualified prohibition in Art. 2(7) against intervention in matters of domestic jurisdiction of any state is plainly inconsistent with the plan for universal, enforceable and complete disarmament and various new powers relating to the prevention of war which the United Nations would possess. For example, while it is now taken for granted that a nation's right to maintain military forces is wholly within its domestic jurisdiction, this right would be entirely eliminated by the disarmament plan which requires not merely the reduction but the gradual abolition of the military forces of each and every nation in the world.

To remove this contradiction and other inconsistencies which would exist by reason of the enlarged powers for the prevention of war, it is proposed to qualify the present restriction by stating that the prohibited intervention in matter of

68. Clark, G. and Sohn, B. Louis, op. cit., p. 10.
"domestic jurisdiction" shall "not prejudice such action as may be necessary to maintain International peace and Security". In addition it has been thought wise to add the further qualification that the making of non-binding recommendations as "hereinafter authorized" shall not be construed as a forbidden intervention in matters of "domestic jurisdiction".

However, it should be emphasized that the proposed text by Clark and Sohn retains the broad principle that the national authority over traditionally domestic affairs is to be disturbed only when United Nations authority is clearly required to prevent the clamity of modern war. Thus, while the revision contemplates greatly enlarged powers in matters directly related to the prevention of war, including disarmament, it does not contemplate the creation of a supernational authority with compulsory powers to interfere in any domestic matters whatever unless, and to the extent that International peace is endangered. In short, the purpose is to provide the United Nations with effective powers to prevent the nations from "murdering each other".

The development of an International order which is enshrined in an accepted code of world Law and guaranteed by the effective world police force, has long been a human aspiration.

70. Ibid., p. 11.
The central problem of world order is the extent to which the organized international community possesses the actual and potential capacity to prevent war, or more precisely, to decrease substantially the likelihood that principal nations would for whatever reason, have recourse to major violence. Consequently, the World Peace through world law is essential for a happy, healthy and prosperous International Order. Hence, the United Nations has established a system of collective security under Chapter VII of the Charter. The language of Article 43 through Article 49 makes it clear. It is the more realistic idea of peace-keeping. The idea that conventional military methods - or to put it bluntly war - can be used or on behalf of the United Nations to counter aggression and secure the peace, seems now to be rather impractical.

Since 1948, there has never been a time in which, in one or several parts of the world, a group of force comprising military personnel was not operating in the name of the United Nations. Whether in the form of observer groups, or of a military force such as that in Korea or of a "peace-keeping" force like UNEF in the Middle East or ONUC in the Congo - and whether

200 or 20,000 strong - United Nations Military forces have in fact played a not insignificant part in maintaining the peace and security of the world. But after all the present writers have been forced that the problems can be properly solved except by establishing a permanent "United Nations Military Force" for peace-keeping purposes.

However, there is no scarcity of plans for "international Police Forces" or "United Nations Peace Forces" or however a Force for the United Nations may be called. Clark and Sohn also made a proposal for a world police to be organized and maintained by the United Nations and to be called the "United Nations Peace Force" and shall consist of two components: a full-time standing force partially trained individual reservists subject to call for service with the standing force in case of need. Clark and Sohn said that "this plan rests on two basic assumptions. The first is that in order to provide the nations of the world with adequate protection, a permanent and indubitably effective supernational force must be provided to take the place of national armaments. The second basic assumption...

73. Clark, G. and Sohn, B. Louis, op.cit., p. 314.
is that it would not be feasible to maintain an adequate world police force unless national disarmament is not only universal but also complete. While a world Police Force can and should be moderate in numbers, it must be strong enough to provide reliable protection against any foreseeable violation of world peace*.

Thomas C. Schelling is quite pessimistic about the Clark and Sohn approach. Schelling seems to assume higher requirement of military effectiveness for the Police Force. He entrusts a far less ambitious role to such a force than do Clark and Sohn. Schelling thinks of the force as an "army", whereas Clark and Sohn conceive of it as a "police establishment". A police department doesn't need a strategy of a foreign policy in Schelling's sense to carry on its business, whereas an army does. Schelling raises many problems connected with defining the mission of the Police force in a world of continuing conflict. He projecting the existing world of tensions and hostility into a disarmed world, is of the opinion that the Police Force will either have to remain aloof from dangerous situations of violence, or take sides in the world power struggle and thereby alienate an important segment of the world community. But

inspite of this critical evaluation the proposal for the establishment of Permanent International Military Force is essential which might be to help "innocent" states to rearm in time to take on the "aggressor". For the purpose the Charter needs amendment. For the maintenance of the rule of law in the field of war prevention is to provide the judicial and quasi-judicial institutions of the United Nations. It is proposed to accomplish this through the establishment of institutions and machinery for the adjustment of or adjudication of disputes between nations or a sort likely to endanger peace, and also by providing institutions and machinery for the application both to individuals and nations of the Charter and laws of the United Nations in respect of the maintenance of Peace.

However, a separate chapter of the Charter deals with the international court of justice. It is declared that the Court shall be the principal judicial organ of the United Nations", and the statute of the Court is to form an integral part of the Charter. The Court's unique Character as a principal organ of the United Nations stems primarily from the fact that it is a

"judicial" rather than a "political" organ. The Charter specifically declares that all members of the United Nations are ipso facto parties to the statute of the international court.

As the principal judicial organ, the Court, has two major functions: first, it renders advisory opinions on legal questions at the request of the Security Council, the General Assembly and other organ or agencies authorized by the later to request opinions; second, it decides contentious case between states. With respect to those international disputes which are susceptible of settlement upon legal principles, it is proposed to empower the General Assembly to direct the submission of any such dispute to the international court of justice. Whenever the Assembly finds that its continuance is likely to endanger international peace. In case of such submission, the court would have compulsory jurisdiction to decide the case, even if one of the parties should refuse to come before the Court. Compulsory jurisdiction would also conferred upon the court in certain other respects as, for example, any dispute relating to the interpretation of the treaties or other international agreement alleged to conflict with the Charter.

81. Clark, G. and Sohn, B. Louis, op.cit., pp. xxxiii and xxxiv
But however, one of the deficiencies of the international legal system as compared with national system is the lack of compulsory jurisdiction. States still being very jealous of their national sovereignty, will not normally consent for compulsory jurisdiction to be enjoyed by the Court, more so, the powerful nations, no one can expect, would accept the compulsory jurisdiction of International Court of Justice.

This has been (the problem of compulsory jurisdiction) a source of controversy at San Francisco Conference and Article 36(2) which is known as "optional clause" emerged as compromise between the advocates and opponents of the compulsory jurisdiction. The Article 36(2) runs as follows:

The states parties to the present statute may at any time declare that they recognize as compulsory ipsofacto and without special agreement, in relation to many other states accepting the same obligation, the jurisdiction of the court in all legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international Law;
(c) the existence of any fact which, if established, would constitute a breach of international obligation;
(d) the nature or extent of the separation to be made for the breach of international obligation.

Despite of working of Article 36(2) which refers to the jurisdiction of the court in "all disputes" enumerated in clause (a) to (d) it well-settled that state may attach reservations to their acceptance of the optional clause. What remains unsettled are the limits, if any to such reservations.

These declarations, Starke explains may be made: (a) unconditionally; (b) on conditions of reciprocity on the part of several states or certain states; or (c) for a certain time only.

According as such declaration are made, and providing that the dispute is of legal character and that it falls within the categories specified the Courts jurisdiction becomes compulsory.

The Court is empowered to decide whether a particular dispute is or is not one of the kind mentioned in the optional clause.

However, Article 36, section 2, was an attempt to build a bridge between the principle of sovereignty and that of compulsory jurisdiction. The aim was to open an area in which a degree of international order could be established through the judicial process. There is also a provision for enlarging the compulsory jurisdiction of the Court (Article 36).

Starke explains that to preserve continuity, as before, with the permanent court, Article 36 paragraph 5 of the statute provides that the declaration made under the "optional clause" in earlier statute, to be acceptance of the compulsory jurisdiction of the present court for the period which they still have to run, and in accordance with their terms. This provision has been the subject of interpretation by the present court.

At the San Francisco Conference, some delegation had urged that the statute should provide for some compulsory jurisdiction of the Court over legal disputes but others hoped that

this result could be practically obtained through more widespread acceptance of the "optional clause". This expectations has not been fulfilled to date. The majority of the present declarations in force are subject to the condition of reciprocity. Many of them also include reservations, excluding certain kind of disputes from compulsory jurisdiction. The reservations as to jurisdiction are to some extent standardised, covering interalia the exclusion of:

(i) past disputes, or disputes relating to prior situation or facts;

(ii) disputes for which other methods of settlements are available;

(iii) disputes as to questions within the domestic or national jurisdiction of the declaring state;

(iv) disputes arising out of war or hostalities; and

(v) disputes between memberstates of the British Commonwealth. Too many of the reservations are, however, merely escape clauses or consciously designed loopholes. Such a system of "optional" or compulsory jurisdiction verges on absurdity. 89

Furthermore, a number of points affecting the operation of the "optional clause" have been settled by the present Court:

(a) Where a declaration, subject to a condition of reciprocity, has been made by a state seeks to invoke compulsory jurisdiction by the Court by taking advantage of any wider reservations, including the "automatic" or "self-judging" form of reservation made by the state in its declaration as in the Norwegian Loans case.

(b) If a dispute between states relates to matters exclusively within the category of "legal disputes" referred to in Article 36 paragraph 2.

(c) A declaration made almost immediately before and for the purpose of any application to the Court is not invalid, nor an abuse of the process of the Court.

(d) If a matter has properly come before the Court under Article 36(2), the Court jurisdiction is not divested by the unilateral act of the respondent state in terminating its declaration in whole or in part. Since 1950, however, increasing use has been made of its facilities and by the end of 1957 more than a dozen cases had come before it. For example Corfu Channel case between Albania and United Kingdom. Case concerning the Areal
Incident case of July 27, 1955 (Preliminary objection)
The Preach Vihar Temple Case (preliminary objections) etc. have been settled by the International Court of Justice and the other above mentioned conditions have also been occurred in these conditions.

The effect of the exercise of the compulsory jurisdiction by the Court is clarified by the provision of Article 94 of the United Nations Charter. Under this Article each member of the United Nations undertakes to comply with the decision of the Court in any case to which it is a party. Further, if any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may make recommendations or decide upon measures to be taken to give effect to the judgement. There are no provisions whereby the Court may enforce its decisions, and this of course serious weakness. Therefore, there is little traffic in ICJ.

Consequently, an international legal order through the judicial process is difficult to give the Court compulsory jurisdiction and to make it an authoritative interpreter of

90. J.C. Starke, op.cit., pp. 373 to 376.
91. Ibid., p. 376.
the Charter, the Charter needs amendment. So however, a comprehensive plan is proposed by Clark and Sohn which includes the grant to the existing international Court of Justice of compulsory jurisdiction in certain categories of legal disputes; the creation of an entirely new tribunal - to deal with non-legal disputes; and the creation of a new conciliation agency - the world conciliation Board - to deal through conciliation and mediation with any international disputes whether of a "legal" or "non-legal" character. They also proposed that there should be a system of United Nations regional Courts subordinate to the international Court of Justice, in order to provide adequate machinery for dealing with offences against the charter or laws of the United Nations and adequate safeguards against possible abuse of power by any organ or official of the United Nations itself.

In order to strengthen the authority and independence of the international Court of Justice Clark and Sohn proposed to make the following principal changes in the statute of the Charter because it is the essential for world peace:

(1) The judges of the Court would be elected, not by concurrent action of the General Assembly and the

Security Council, but by the General Assembly alone, from a list of candidates prepared by the Executive Council on the basis of nations received from the members of the highest courts of justice of member Nations, from national and international associations of international lawyers and from professors of International Law. The Council shall present three candidates for each vacancy.

(2) To ensure greater independence for the judges of the Court, the judges would be elected not for nine-year terms, as provided by the present statute, but for life. This life tenure would, however, be subject to the possibility of dismissal if, in the unanimous opinion of his colleagues, a judge is no longer able properly to perform his functions or, as now provided, has in their unanimous opinion "ceased to fulfil the required conditions" of his tenure.

(3) In contrast to the provision of the present statute that "only states may be parties in cases before the Court", access to the court would also be granted: (a) to the United Nations; (b) to its specialized agencies; (c) to regional international organizations when authorized
by the General Assembly; (d) to individuals and private and public organizations in certain cases of appeal from the regional courts of the United Nations.

(4) The jurisdiction of the Court (which, apart from special agreement, is merely optional under the present statute) would be made compulsory with respect to the following categories of disputes between any nation and the United Nations, between two or more nations, between one or more nations and one or more international organizations and between two or more international organizations:

(a) any disputes relating to the interpretation or application of the revised Charter;

(b) any dispute relating to the constitutionality of any law, regulation or decision made or adopted under the revised Charter, and any dispute relating to the interpretation or application of any such law, regulation or decision;

(c) any dispute relating to legal questions involved in an international dispute or situation if the General Assembly (or the Executive Council, when acting in the matter
pursuant to authority from the Assembly) should decide that the continuance of that dispute or situation is likely to endanger the maintenance of international peace and security and should direct that such legal questions be submitted to the Court pursuant to Article 36 of the revised Charter;

(d) any dispute relating to the interpretation of application of the constitutions of specialized agencies;

(e) any dispute relating to the interpretation or application of treaties and other international agreements or instruments registered with the secretariat of the United Nations under Article 102 of the revised Charter

(f) any dispute relating to the validity of a treaty or other international agreement or instrument, or of a constitution or law of any member Nations, which is alleged to be in conflict with the revised Charter (or with any law or regulation enacted thereunder);

(g) any other dispute where recourse to the Court against the United Nations is specifically provided for in the revised Charter or in any law or regulation enacted thereunder.
(5) The international Court of Justice would retain all its jurisdiction under treaties and conventions, and under declarations made pursuant to paragraph 2 of Article 36 of the present statute of the Court, as such jurisdiction exists at the time the revised Charter comes into force.

(6) The International Court of Justice would also hear appeals from decisions of the regional Courts of the United Nations in those cases in which such appeals are permitted by laws enacted by the General Assembly.

(7) The International Court of Justice would have a general power of supervision over the administration of the regional Courts.

(8) The judgements of the International Court of Justice would be enforceable by measures to be adopted by the General Assembly under paragraph 2 of Article 94 of the revised Charter.

Clark and Sohn said that "the intention is not dispensed with anything which has proved useful, but rather to revise, supplement and strengthen the existing structure so that the United Nations will be fully and unquestionably equipped to accomplish its basic purpose - the maintenance of international peace".

Furthermore, it does not necessarily follow that the United Nations would work more satisfactorily if the textual shortcomings and defects are remedied. The success of an international organization in the present stage of international society depend upon the perfection of its constituent instrument. As John Foster Dulles has well observed: "it is never possible to achieve great goals, such as peace, justice, and human freedom, by mechanistic devices. It is easy to write a Charter or constitution that proclaims noble ends, but their achievement is not merely a matter of organization; fulfilment depends more on the will, the preservance, and the capacity of the members in support of the organization. The United Nations is a living organization made up of member states. It is, it will be, what they make it".

However, Wilcox, F. and Marcy, C.M. assuming continued cooperation among the Five major powers, and the likelihood of the early conclusion of the peace treaties, suggest that even if a Conference to review the Charter is to be held in the near future, the basis of the different assumptions that might include at least the following:

(1) that, for a substantial period in the future, there may be continued tensions between the free and the communist world;

(2) that there exist the possibility that these tensions might lead to war; and

(3) that atomic and hydrogen weapons, if used in war, might be expected to place in jeopardy the very survival of mankind.

Whether assumption of this kind would justify seeking changes in the United Nations system is one of the questions that must be considered frankly.

There are few who blame the United Nations for the post war deterioration in International Relations and for existing tensions. On the other hand, there are many who believe that the United Nations could be a more effective instrument than it has been for reducing tension, or at least for preventing tensions from increasing to the point where peace might be threatened. It is the belief that has inspired many of the proposed changes in the United Nations system. An examination of the proposals reviewed in this study indicates that they can be grouped, for the most part, into four broad categories: First are numerous suggestions that more power and authority be given to the United Nations by such changes as abolishing the veto, establishing an International police force, and, in general, by moving towards the creation of some kind of supranational organization. Second are proposals that would not substantially alter the nature of the system but would seek to improve its operations by giving life to articles of the Charter that have lain dormant, developing mechanism for the maintenance of the Charter but related thereto, and, in general, overhauling some parts of the existing machinery of the United Nations. Third are the plans calling for reducing the authority of the United Nations by limiting its activities in the field of enforcement action or in economic social and humanitarian matters. Finally, there are the far-reaching suggestions to alter radically
the nature of the present organization, not by moving in the
direction of supernationality but rather by changing the
composition of the United Nations through the expulsion of
certain states or the withdrawal of others.

However, changes in the United Nations system may come
about in a variety of ways other than by amending the Charter.
The Charter has been profoundly influenced by interpretation,
custom and usage, the failure on the part of member states to
implement certain articles, the conclusion of various treaties or
agreements including regional defense pacts, and by the changed
conditions in the international situation. Furthermore, if the
United Nations Charter is viewed as a "constitution" that creates
a "government", it may be interpreted, gradually changed by
custom, and subject to a process of growth similar to that which
has taken place with respect to the constitution of the most
sovereign states. But if the Charter is viewed as a "treaty" or
a "contract" it is not a flexible instrument and is not subject
to the informal change in a fundamental sense. It is of course,
virtually impossible, to draft any instrument whether it be called
a treaty, a contract, or a constitution, that does not have some

element of flexibility about it. A document such as the United Nations Charter is unavoidably more flexible in nature than many other written instruments.

Consequently, if the United Nations is to develop without amendment to the Charter, it is necessary to strike a balance somewhere between the extreme positions of loose and strict construction. The idea that the Charter is an instrument so flexible that, if an amendment is not feasible, the same result may be obtained by interpretation or by the passage of special resolution, may be dangerous not only for individual member states but for the organization itself. Even within the area of balance between two extremes of loose and strict construction, there is considerable room for gradual growth and development. But this must be an evolutionary process accepted by the great majority of members. It is essential in considering the proposals that the techniques of change not endanger the proposals themselves.

However, from the above arguments we reach to the conclusion that the amendment of the Charter, is not the course likely to

98. Ibid., p. 461.
further the cause of world peace at present time. Since the
nations of the world are certainly not ready now anymore than
in 1945, to turn the United Nations into a Super-national body,
endowed with the military and economic power to enforce its
decisions upon unwilling members, it would be pointless to make
alterations in the legal structure which did not correspond
to the realities of the world community.

Any amendment of the Charter cannot prove a helpful method
for strengthening the United Nations. Any change in the func-
tions and operations of the United Nations should come about by
way of convention and precedent. This is a slow process and
in many ways an unsatisfactory limitations beyond which it cannot
be used effectively; and to the extent that it creates a diver-
gence between what the Charter actually says and what in practice
the members presume it means, it makes for uncertainly, if not
actual dishonesty, and weakens the effectiveness of the Charter
as the fundamental law. Nonetheless, it is a process with which
all constitutional states are familiar, and which indeed is
essential if the constitution is to process the necessary flexi-
bility, in adoption to the changing need of modern international
society. So long as the process enables the United Nations to

carry out more effectively its basic purposes, it will be a
method through which its evolution can proceed in harmony with
the development of world opinion, the ultimate foundation on
which the United Nations must rest.

Hence, no analysis of the United Nations Charter and
its operation in practice and no positive suggestions can lead
to any substantial improvement in the work of the organization
so long as there is suspicion and lack of good will and
understanding among its members particularly amongst major powers.
Even if the member states were able to reach agreement on impor-
tant matters such as the limitation of armaments, world stability
will remain precarious until there is a change of heart. But
the member states forget that under the provision of the Charter;
it is the duty of the members of the United Nations to endeavour
to remove causes of International friction; not to increase them
by answering one unjustified threat to the peace with another.
Moreover, it should be at once help to ease tension and reduce
bitterness in the United Nations now proceeding, and give real
cause for hope that cooperation between all powers, great or
small, will be achieved on a basis not of mere tolerance, but of
real comradeship. So that the United Nations could be in a

100. Prasad, Krishna, op.cit., p. 152.

101. Evatt., H.V., The United Nations, Oxford University Press,
position to work effectively for peace and progress and there will be a healthy, happy and prosperous International Society.

Fortunately the present international situation is very hopeful. For the super powers, owing to statmanship of Reagan and Gorbachev, the U.N. is no more a talking shop or debating club. The U.N. is acknowledged, once again, an instrument of peace rather than a platform of dissention. Therefore, any amendment, if necessary, could be made with the consent of the two Super-powers, of course necessarily to the satisfaction of third-world states, who, undoubtedly need the U.N. more than anyone else.