

THE CHARTER OF THE UNITED NATIONS

At the United Nations Conference on International Organization which met in San Francisco from April 25 through June 26, 1945, the Charter of the proposed world security organization, to be known as the United Nations, was formulated. This Charter of the United Nations was signed by the delegates of the 50 countries represented at the Conference and must now be formally ratified by the governments of China, France, U.S.S.R., United Kingdom, and the United States and by a majority of the remaining signatory states before coming into force.

The major problem facing the nations which met in San Francisco was that of the relationship between the great and small powers. There has been criticism of the dominant position the Big Five are to have in the Organization. However, it was clearly recognized that in the present state of the world the maintenance of peace does depend upon the accord of the great powers. All questions related to furthering friendly relations and cooperation between nations and establishing the conditions of peace are to be participated in equally by all nations in the General Assembly while, in all enforcement action, the Big Five have a dominant position, having permanent seats and the veto right in the Security Council.

In the first part of this memorandum will be discussed the primarily political and judicial aspects of the Charter: the General Assembly, the Security Council, Regional Arrangements, the Trusteeship System, the International Court of Justice, and the Secretariat. The arrangements which have been made for the interim period between the end of the Conference and the coming into operation of the Charter are also discussed in this part. In the second part, the Economic and Social Council and other economic aspects of the Charter are discussed with special emphasis on the relationship of the United Nations Organization to the Bretton Woods Agreements.

Part IPurposes and principles of the United Nations

The Charter of the United Nations is essentially a declaration of the purposes and principles which will bind the Organization and its members and a constitution of the Organization which sets forth the instruments by which the purposes will be attained. The purposes and principles are the expression of the ideal aims of the nations which met together. The United States delegation, among others, was particularly interested in defining the aims specifically and in including justice and the promotion of and respect for human rights. The purposes of the United Nations to which member nations are committed are the maintenance of international peace and security, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character, together with the promotion and encouragement of respect for human rights and fundamental freedoms for all.

In the furtherance of these purposes of the United Nations the Charter states the principles which member nations accept as binding. The first of these principles is the sovereign equality of member states which is the basis of the Organization and the association of members with each other. Fulfillment in good faith of the obligations assumed by members in accordance with the Charter is pledged by members in order to ensure to all members the rights and benefits of membership in the Organization. All members are also obligated to settle their international disputes by peaceful means in such a manner as not to endanger international peace and security and justice, and to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations. Members bind themselves further to give the United Nations every assistance in any action it takes and to refrain from giving assistance to a nation against which the United Nations is taking preventive or enforcement action. The United Nations in turn accepts the principle of non-interference in matters essentially within the domestic jurisdiction of any state.

Branches of the Organization of the United Nations

To achieve the purposes of the United Nations the Charter establishes six principal organs. These organs are the General Assembly or forum for discussion and debate, the Security Council or enforcement agency, the Economic and Social Council, the International Court of Justice, the Trusteeship Council, and the Secretariat. Between the Assembly, the Security Council and the Court there are clear lines of demarcation while the Economic and Social Council, the Secretariat and the Trusteeship Council are under the General Assembly.

General Assembly

The General Assembly of the United Nations consists of all members of the United Nations, each of which may have up to five representatives in the Assembly. In voting, each member of the General Assembly has one vote, regardless of the number of representatives. All decisions are taken by a majority vote with the exception of certain important questions which require a two-thirds vote. These questions include recommendations with respect to the maintenance of international peace and security, election of non-permanent members of the Security Council, election of members of the Economic and Social Council, questions relating to the trusteeship system.

The powers of the General Assembly are limited to discussion, debate and recommendation, and election of members of other branches of the Organization. Within this important limitation the Assembly is free to act. The smaller nations pushed to enlarge the scope of the General Assembly and the Russian delegation was anxious to limit its range of discussion. The compromise reached permits the Assembly to discuss any matter within the scope of the Charter or relating to the powers or functions of other instruments of the Organization and to make recommendations on any such matter to member nations or to the Security Council except that the Assembly is forbidden to make any recommendations to the

Security Council on a dispute being considered by the Council unless the Council so requests. In general, the Assembly may discuss any questions relating to the maintenance of international peace and security, make recommendations on that subject to the state concerned or to the Security Council and may call the Council's attention to situations likely to endanger peace. The Assembly may recommend measures for the peaceful adjustment of any situation likely to impair the friendly relations of nations. It will receive and consider reports from the Security Council and from other branches of the Organization.

The Assembly may also initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and in the economic, social, cultural, educational and health fields. It is responsible for the discharge of all functions of the United Nations relative to international economic and social cooperation. The Economic and Social Council acts under this general authority of the Assembly. The powers of the General Assembly on economic and social matters are discussed in more detail in Part II of this memorandum.

The Assembly is empowered to perform certain functions with respect to other branches of the United Nations Organization. With respect to the international trusteeship system it approves the trusteeship agreements for areas not considered strategic. It elects the non-permanent members of the Security Council and all members of the Economic and Social Council. It will consider and approve the budget of the Organization and apportion the share of expenses to be borne by each member.

The Security Council

The Security Council is charged with the principal responsibility and empowered to take the necessary action for the maintenance of peace and security. It is to function continuously. In its composition and voting procedure the predominant responsibility of the great powers in matters relating to peace and security is recognized. The five big powers, the United States, the United Kingdom, the U.S.S.R., China, and France are to have permanent seats and six other members are to be elected for two-year terms by a two-thirds vote of the General Assembly. To ensure rotation among the other nations, none of the elected members is eligible for immediate reelection.

The voting procedure of the Security Council was the most controversial issue of the Conference. The formula agreed upon by the Big Three at Yalta and which was finally accepted requires an affirmative vote of seven members, including, on all questions except those of procedure, the five permanent members. Thus, unlike the old League procedure, under which a decision required a unanimous vote and any member alone could veto action, in the new Organization it is only the five permanent members who can individually veto action. A party to a dispute, however, may not vote on questions relating to the pacific settlement of the dispute, on the determination of whether the dispute is likely to endanger the peace or on the use of regional agencies in pacific settlement of the dispute. This means that a permanent member cannot veto attempts to bring about a peaceful settlement of a dispute to which it is a party though it

can veto enforcement action against itself. Although the Russian demand that the Yalta formula be interpreted to include the right to veto discussion of disputes almost broke up the Conference at one point they were persuaded to leave discussion free. As a concession to them, it was agreed that the veto right should apply on questions as to whether a matter is procedural or substantive.

In the performance of its duty of maintaining the peace, the Security Council is empowered to determine when a situation or dispute is likely to endanger the peace and to take whatever steps are necessary to maintain or restore peace and security. Member nations are pledged to accept and carry out the decisions of the Security Council. The primary responsibility of the Security Council is to induce peaceful solutions of international disagreements. It is the responsibility of the members to seek a peaceful solution to a dispute by means of their own choice. When the continuance of the dispute is likely to endanger the peace, the Security Council is to call upon the parties to settle their dispute by such means. The Council may, at any stage of a dispute, recommend appropriate procedures or methods of adjustment or terms of settlement.

The Charter does not obligate parties to a dispute subject to pacific settlement to act upon the recommendations of the Council. However, the Council could declare the dispute a threat to the peace and could decide to take punitive measures.

In the case of threats to the peace, breaches of the peace, or acts of aggression, as determined by the Council, the Council is to make recommendations or decide what measures shall be taken to maintain or restore peace. The measures which the Council may resort to are economic, diplomatic or military; armed action would be taken only when the Council considered other measures would be or had proved to be inadequate. While the Council is deliberating on the action to be taken it may call upon the parties to the dispute to comply with provisional measures to prevent any aggravation of the situation.

The armed forces and facilities to be used by the Council are to be provided by members according to the terms of special agreements between members and the Security Council. Member nations are thus bound to make definite commitments as to the size, kind and degree of readiness of the armed forces which they will place at the disposal of the Security Council. In order to enable the United Nations to take urgent military measures national air force contingents are to be held immediately available for enforcement action.

A Military Staff Committee composed of the Chiefs of Staff of the five permanent members is to assist the Council on all questions relating to the Council's military requirements, the employment and command of forces placed at its disposal, the regulation of armaments and possible disarmament and shall be responsible for the strategic direction of any forces placed at the disposal of the Council. Provision is made for member nations not included in the Military Staff Committee to participate in decisions regarding the use of their forces.

The Security Council is also directed to formulate plans for the establishment of a system for the regulation of armaments.

The Charter states that none of its provisions impairs the right of nations to act in self-defense in case of attack until the Security Council has taken the measures necessary to maintain international peace and security. Any measures taken in self-defense are to be immediately reported to the Council.

Regional Arrangements

One of the major problems confronting the Conference was that of the relationship of regional arrangements to the world organization. The United States and the Latin American countries were particularly interested in the effect of the United Nations Organization on the Act of Chapultepec and the French were hesitant to accept any provisions which would limit their agreement with Russia. The provisions on regional arrangements are summarized below.

The Charter states that nothing in it precludes the existence of regional arrangements or agencies for dealing with matters relating to maintenance of international peace, provided they are consistent with the purposes and principles of the United Nations. Members are to make every effort to settle local disputes through such regional arrangements and the Security Council is to encourage them. The Security Council is directed, when appropriate, to utilize such regional arrangements for enforcement action under its authority. No enforcement action is to be taken under regional arrangements without the authorization of the Council. An exception is made in the case of action against present enemy states.

The Trusteeship Council

In the Declaration Regarding Non-Self-Governing Territories the United Nations accept the principle of international responsibility for these territories and agree that the interests of the inhabitants of these territories are of primary importance and that the territories should be administered in a manner to promote political, economic and social advancement and the progressive development toward self-government or independence and to provide equal economic opportunity for all nations. At the same time requirements of security are realistically faced. Areas which are militarily necessary to the security of any country can be either annexed or placed under the trusteeship of that nation.

The trusteeship system applies to (a) territories now held under mandate, (b) territories which may be detached from enemy states as a result of this war, and (c) territories voluntarily placed under the system by states responsible for their administration.

Which territories are to be placed under the trusteeship system and the terms of the arrangements are left for later agreement by the states directly concerned. In the case of strategic areas, the agreement is subject to the approval of the Security Council and, in the case of

non-strategic areas, by the General Assembly. A broad freedom of action is thus left for the future policy of the United States regarding any strategic bases in the Pacific or elsewhere.

The Trusteeship Council is set up to aid the General Assembly in these matters. It is to be composed of equal numbers of representatives of the nations administering trusteeships and nations who do not. The five permanent members of the Security Council are to have seats in one of the two capacities. Each member shall have one vote and decisions are by a majority of those present.

The powers of the Trusteeship Council include consideration of reports submitted by the administering authority, acceptance and examination of petitions and periodic visits to trust territories. The administering authority for each trust territory is required to submit an annual report on the political, social and educational advancement of the inhabitants upon the basis of a questionnaire formulated by the Trusteeship Council.

International Court of Justice

The International Court of Justice is to be the judicial branch of the United Nations Organization. Joining the Organization automatically includes membership in the Court. The statute setting up the Court follows very closely the pattern of the World Court which functioned under the League of Nations, but it is an entirely new body to avoid the question of membership in the old Court by nations who were not members of the United Nations Conference. Such nations may apply to the General Assembly for admission to the Court. All members agree to comply with the decisions of the Court. In case of non-compliance, decisions of the Court can be enforced by the Security Council which makes it much stronger than the old Court.

The Court is authorized to hear cases which are referred to it by the individual nations in a dispute and will have jurisdiction in cases where a specific treaty has designated the Court to decide any controversy arising under its provisions. Nations also may, if they choose, accept an optional clause giving the Court general compulsory jurisdiction over all disputes covered by international law in which they may become involved.

In addition to deciding cases, the Court may give advisory opinions on any legal question presented to it by the General Assembly or Security Council and by the other agencies of the Organization or by specialized agencies authorized by the United Nations Organization to ask legal advice on questions within the scope of their activities. The Bretton Woods agreements provide for the appointment by the International Court of Justice of an arbitration umpire in case of a dispute between the Fund or Bank and a member which has withdrawn or between the Fund or Bank and any member during liquidation of the Fund or during the permanent suspension of the Bank.

The Secretariat

The administrative work of the United Nations Organization will be performed by a Secretariat under the direction of a Secretary-General. The Secretary-General is to be appointed by the General Assembly upon the recommendation of the Security Council. As chief administrative officer of the entire organization the Secretary-General will hold a position of great importance. Among his powers is specific authority to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

A permanent staff is to be employed by the Secretary-General according to highest standards of efficiency, competence and integrity and on as wide a geographic basis as possible. Appropriate staffs are to be permanently assigned to the Economic and Social Council, the Trusteeship Council and, as required, to other organs.

Other Important Aspects

One important provision is that every treaty or international agreement entered into by a member nation must be registered with the Secretariat and published by it and that a party to a treaty who has not registered it may not invoke that treaty or agreement before any organ of the United Nations.

The amendatory process provides that an amendment to the Charter will come into force when it has been adopted by a two-thirds vote of the members of the General Assembly and ratified by the governments of two-thirds of the members, including all the permanent members of the Security Council. The procedure for amending the statute of the Court is the same. A general conference for the purpose of reviewing the Charter may be held by a two-thirds vote of the General Assembly and a vote of any seven members of the Security Council. If such a conference has not been held before the tenth annual session of the General Assembly, the question of calling a conference is to be placed on the agenda of that session to be decided by a majority vote of the General Assembly and by a vote of any seven members of the Security Council.

The Preparatory Commission

In the Charter is included a transitional security arrangement which places the responsibility jointly on the Big Five for any action of a military nature which may be necessary to maintain peace and security until such time as the agreements are made between the individual nations and the Security Council as to the armed forces which each will make available.

In order to bridge the gap between the signing of the Charter in San Francisco and the convening of the first sessions of the principal organs of the United Nations, an informal interim arrangement was signed creating a Preparatory Commission.

The Preparatory Commission consists of one representative of each signatory country. An Executive Committee is set up which is composed of the same states as those which made up the Executive Committee of the Conference, namely: Australia, Brazil, Canada, Chile, Czechoslovakia, France, Iran, Mexico, Netherlands, U.S.S.R., United Kingdom, United States, and Yugoslavia. The Commission will be located in London.

The principal tasks of the Commission are, first, to study and make recommendations on certain questions which could not be handled at San Francisco and, second, to expedite the work of the new Organization by thorough preparation for its initial meetings. The first task includes: (1) consideration of taking over some of the functions, activities and assets of the League of Nations; (2) examination of problems involved in the establishment of the relationship between specialized intergovernmental agencies and the United Nations; and (3) study and recommendations as to the location of the permanent headquarters of the United Nations.

The second major task includes (1) convening the first session of the General Assembly, (2) preparing the provisional agenda for the first session of the principal organs of the United Nations, and preparing documents and recommendations relating to the matters on the agenda, (3) arranging for the nomination of candidates for the International Court, (4) preparation of recommendations concerning arrangements for the Secretariat.

The Commission will cease to exist upon the election of the Secretary-General of the United Nations, and its property and records will be transferred to the United Nations.

Part II

Economic and Social Aspects of the Charter and Its Relationship to Bretton Woods

The Charter of the United Nations gives an important place to economic and social cooperation and makes definite provision for dealing with economic and social problems before they become political problems. While the League of Nations performed many valuable functions in this field, its charter did not establish an economic council as a basic organ and only one article was devoted to economic and social problems as compared with two chapters in the new Charter. One of the major accomplishments of the San Francisco Conference was strengthening the position of the Economic and Social Council and elevating it from a "subsidiary body," as outlined in Dumbarton Oaks, to one of the principal organs of the United Nations. It is hoped that the work of the Economic and Social Council will diminish the need for action by the Security Council.

The aims of the United Nations in the economic and social field are the promotion of higher standards of living, full employment, and conditions of economic progress and development; solutions of international economic, social, health and related problems; international

cultural and educational cooperation; and universal respect for, and observance of human rights and the fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Economic and Social Council

Responsibility for carrying out the economic and social aims of the United Nations is vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council. While the Economic and Social Council is established to carry out the economic functions of the United Nations, some powers are specifically granted to the General Assembly in this field which are not granted to the Council. Those powers of the General Assembly relate to the relationship of the Organization to specialized intergovernmental agencies and will be considered below in the discussion of these agencies.

No special position is granted the great powers in the Economic and Social Council which is composed of eighteen members elected for three-year terms by the General Assembly. While no member is given a permanent seat, the importance of participation by the countries most important economically is recognized in the provision that a retiring member is eligible for immediate reelection. Thus the United States, for instance, could be elected each time and, in effect, have a permanent seat if the Assembly so desired. Each member has one vote and decisions are by a majority of those present and voting.

The Economic and Social Council is given no coercive powers; its tools and procedures are those of study, discussion, report and recommendation. It may initiate studies, report and make recommendations on social and related matters to the General Assembly, to member nations or to intergovernmental organizations. A significant change made at San Francisco to strengthen the Economic and Social Council gives it the right to report directly to the Security Council concerning any economic or social situation which threatens the peace of the world. In the Dumbarton Oaks proposals such reports could only be made through the General Assembly or at the request of the Security Council. It is anticipated that the Security Council will consult with the Economic and Social Council on matters relating to economic sanctions and other economic aspects of security. The Economic and Social Council may also call international conferences on economic and social problems and prepare draft conventions for submission to the Assembly. In order to perform its functions, it is directed to set up commissions in economic and social fields and for the promotion of human rights.

Relationship of the Organization to Specialized Intergovernmental Agencies and Bretton Woods

While the Economic and Social Council is directed to set up commissions in economic and related fields it is also clearly the intention of the United Nations to rely on and cooperate with already existing or proposed specialized intergovernmental organizations having wide international responsibilities in economic, social and related fields. This

would include the International Monetary Fund and the International Bank for Reconstruction and Development as well as the International Labor Office, the United Nations Relief and Rehabilitation Administration, the Food and Agricultural Organization, and such other agencies as may be set up in international trade, health, educational and other fields. Non-governmental agencies operating in these fields on a national or international basis are not to be brought into relationship with the Organization but the Economic and Social Council may make arrangements for consultation with such agencies.

There was considerable discussion in committee on the relationship of these specialized agencies to the United Nations Organization and the question as to whether they should be named in the Charter was debated. The Charter specifically states that these agencies are to be brought into relationship with the United Nations but it was agreed not to mention the agencies by name and to leave the nature of their relationship to the Organization for later individual agreements with the agencies. This means that these agencies, such as the International Fund and International Bank, will be able to maintain a large degree of independence, if they so desire, while still functioning in close relation to the larger organization.

It is the responsibility of the Economic and Social Council to make these agreements with the specialized intergovernmental agencies defining the terms on which they are brought into relationship with the United Nations, subject to the approval of the General Assembly. The General Assembly is responsible for initiating negotiations among the nations for the creation of any new specialized agency required for the accomplishment of the economic, social and related aims of the United Nations.

Other functions of the Economic and Social Council in relation to these agencies include making arrangements for regular reports from these agencies and special reports on the steps taken to carry out its recommendations or the recommendations of the General Assembly. It may also arrange to participate in the deliberations of the specialized agencies and reciprocally for representatives of the agencies to participate in deliberations of the Council. With the approval of the General Assembly, the Council may perform services at the request of the specialized agencies.

The General Assembly is given the power of approving any financial or budgetary arrangements concluded with specialized intergovernmental agencies. A more important provision in relation to the International Fund and the International Bank, which (presumably) will not receive funds from the Organization, is that the Assembly is to examine the administrative budgets of intergovernmental agencies with a view to making recommendations thereon to the agencies concerned. It is not absolutely clear from the text of the Charter (Article 17, paragraph 3) whether this provision refers only to those specialized agencies having a financial or budgetary agreement with the Organization or to any

specialized agency brought into relationship with the Organization but the intention of the Conference was that the provision should apply to any agency.

The distinctions between the powers of the General Assembly and those of the Economic and Social Council in relation to these agencies brought out so far in the discussion are simply those inhering in the organizational structure which places the Economic and Social Council under the authority of the General Assembly and responsible to it. A distinction of another nature is apparently intended in the provision that the Organization (through the General Assembly) "shall make recommendations for the coordination of the policies and activities of the specialized agencies" while the Economic and Social Council "may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to members of the United Nations." What this distinction between coordination of policies and coordination of activities will mean in actual practice is not clear.

Although the bearing of some of these provisions on the autonomy of the International Bank and Fund and the other specialized agencies is not clear, the very fact that the terms of the relationship of these agencies to the Organization are to be set forth in separate agreements between the individual agencies and the Economic and Social Council would indicate that the agencies will be able to retain a large degree of independence in their fields. Perhaps the most effective pressure that could be brought to bear on an agency which the Organization felt was not cooperating or whose policies were at variance with those of the Organization would be the creation of a commission of the Economic and Social Council to deal with problems related to those of the recalcitrant agency. For example, a full-employment commission of the Economic and Social Council might find the policies of the International Fund to be in conflict with those of the commission.

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