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## Recent Proposals in the United Nations to Amend the Charter

by Michael M. Gunter\*

*In 1975 the United Nations General Assembly reconstituted its Charter Review Committee, requesting that it make suggestions concerning the U.N. Charter and the strengthening of the role of the Organization in world affairs. This article analyzes the recent major proposals of that Special Committee. The proposals deal with such topics as peace mechanisms, the ICJ, the Security Council, human rights, economic development, and the deletion of anachronisms in the U.N. structure. The author concludes that none of the proposals are likely to be adopted because, although they have the support of Third World states, the "Big Four" members of the Security Council oppose them. Nevertheless, changes in the U.N. Charter will continue to occur through informal processes, such as reinterpretation of Article provisions and adaptation to changing political conditions.*

### I

THE UNITED NATIONS Charter became partially obsolete even before it entered into force. This was because the explosion of the first atomic bomb and the breakdown of Soviet-American cooperation, occurrences which radically altered the world in which the Charter was to operate, both took place soon *after* the document was signed in San Francisco.<sup>1</sup> Today, more than thirty years after its creation, the continually altering international situation and the tripling of the Organization's membership have resulted in a change in the very ethos of the United Nations. Certainly, such anachronisms in the Charter as the reference to an "enemy state" in Articles 53 and 107, and the existence of the Trusteeship Council as one of the Organization's six "principal organs" starkly testify to the need for at least selective amendment. Yet, with a few minor exceptions to be noted below, comprehensive Charter review, as well as simple amendment,<sup>2</sup> have proved impossible to achieve.

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<sup>1</sup> On these two points, see I. CLAUDE, *THE CHANGING UNITED NATIONS* 3-47 (1967).

<sup>2</sup> The definitive study on Charter amendment in general is R. ZACKLIN, *THE AMENDMENT OF THE CONSTITUTIVE INSTRUMENTS OF THE UNITED NATIONS AND*

The general reason for this impasse centers upon the political impossibility of achieving the necessary support for amending the Charter. As David Abshire, then Assistant Secretary of State for Congressional Relations, told a U.S. Congressional Subcommittee hearing on Charter Review:

Any fundamental changes that might attract the necessary absolute two-thirds vote . . . for example, abolition of the veto or giving the Assembly mandatory powers, would almost certainly fail in the [Security Council] ratification process; while those that might be considered desirable by the larger powers, some system of weighted voting in the Assembly, for example, could not realistically be expected to obtain the requisite [two-thirds] vote [in the Assembly] for adoption.<sup>3</sup>

Recently, however, a number of amendments have been proposed in the General Assembly's Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The main purpose of this article is to analyze these proposals. First, however, a brief survey of the events which led up to the present situation is necessary.

## II

The Chapter prescribes two alternative methods of proposing amendments: a case-by-case procedure for suggesting individual amendments (Article 108) and a conference procedure for carrying out a comprehensive review of the entire Charter (Article 109). Both establish, however, a similar set of numerical requirements.

Article 108 simply declares that an amendment comes into force when adopted by a vote of "two-thirds of the members of the General Assembly,"<sup>4</sup> while Article 109 envisions the possibility of a "General Conference of the Members of the United Nations for the purposes of reviewing the present Charter."<sup>5</sup> Such a Conference "may be held at a

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SPECIALIZED AGENCIES (1968). See also F. WILCOX & C. MARCY, PROPOSALS FOR CHANGES IN THE UNITED NATIONS (1955); Schwelb, *The Amending Procedure of Constitutions of International Organizations*, 30 BRIT. Y.B. INT'L L. 49 (1954).

<sup>3</sup> *Review of U.N. Charter and Establishment of a Commission on U.S. Participation in the United Nations: Hearings on H.R. Con. Res. 80, 258 and Similar and Identical Resolutions, and H.R. J. Res. 1143 and 1144 and Similar and Identical Resolutions Before the Subcommittee on Int'l Organizations and Movements of the House Comm. on Foreign Affairs*, 92nd Cong., 2d Sess. 3 (1972).

<sup>4</sup> U.N. CHARTER art. 108.

<sup>5</sup> *Id.* art. 109, para. 1.

date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council."<sup>6</sup> Again, "a two-thirds vote of the Conference" in which "[e]ach Member of the United Nations shall have one vote" is sufficient to propose an amendment.<sup>7</sup>

Once an amendment has been proposed in either of the two manners outlined above, it then must be "ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council."<sup>8</sup> Thus, any amendment to the Charter must not only be supported by the Third World states which constitute the majority in the General Assembly, but also is subject to the veto power of any one of the five permanent members of the Security Council.

Despite these difficult requirements, the amendment process detailed in Article 108 already has been employed successfully. During the 1960's, to reflect the growth in U.N. membership, the size of the Security Council was increased from eleven to fifteen members and that of the Economic and Social Council from eighteen to twenty-seven, an occurrence which necessitated the amendment of Charter Articles 23, 27, 61,<sup>9</sup> and eventually 109.<sup>10</sup> Then in 1971, the size of the Economic and Social Council was again increased, this time to fifty-four.<sup>11</sup> These amendments constitute at least a partial precedent and practice that may be looked to in the future.

In addition to the procedures for calling a general review conference, Article 109 provides that: "If such a conference has not been held before the tenth [1955] annual session of the General Assembly . . . the proposal to call such a conference shall be placed on the agenda

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* paras. 1, 2.

<sup>8</sup> *Id.* para. 2.

<sup>9</sup> For scholarly analyses of these events, see R. ZACKLIN, *supra* note 2, at 121-29; Schwelb, *Amendments to Article 23, 27 and 61 of the Charter of the United Nations*, 59 AM. J. INT'L L. 834 (1965); and Schwelb, *The 1963/1965 Amendments to the Charter of the United Nations: An Addendum*, 60 AM. J. INT'L L. 371 (1966).

<sup>10</sup> For a scholarly analysis of the amendment to Article 109, see Schwelb, *Entry into Force of the Amendment to 109 of the Charter of the United Nations*, 17 INT'L & COMP. L.Q. 1009 (1968).

<sup>11</sup> For a scholarly analysis, see Schwelb, *The 1971 Amendment to Article 61 of the United Nations Charter and the Arrangements Accompanying It*, 21 INT'L & COMP. L.Q. 497 (1972); and Schwelb, *Entry into Force of the Second Amendment to Article 61 of the United Nations Charter*, 68 AM. J. INT'L L. 300 (1974).

of that session of the General Assembly. . . ."<sup>12</sup> In preparation for this event, the General Assembly adopted a resolution requesting the Secretary-General to prepare and circulate among Member States the following: (1) a systematic compilation of the documents of the United Nations Conference on International Organization, *i.e.*, the San Francisco Conference; (2) a complete index of the documents of that Conference; and (3) a repertory of the practice of United Nations organs.<sup>13</sup>

In 1955, however, "recognising that such a review should [only] be conducted under auspicious international circumstances," the General Assembly decided that, although "it is desirable to review the Charter in the light of experience gained in its operation," the review conference should be postponed until "an appropriate time." In its place, the Assembly created a committee consisting of all the Members of the United Nations, "to consider, in consultation with the Secretary-General, the question of fixing a time and place for the Conference, and its organization and procedures."<sup>14</sup> "[V]irtually moribund from the start of its inauspicious career"<sup>15</sup> this Committee on Arrangements for a Conference for the Purpose of Reviewing the Charter met intermittently over the years, the last time in 1967. Although it is still theoretically in existence, in case any member might request its services, no one has sought any further meetings.

The question of Charter review surfaced again in 1969, when it was included late in the agenda of the General Assembly at the suggestion of Columbia.<sup>16</sup> The matter was postponed until the following year when the General Assembly asked the Secretary-General to invite U.N. Members to communicate to him their views and suggestions on the matter.<sup>17</sup> When little response resulted, the Secretary-General was requested to repeat his invitation.<sup>18</sup> Finally, under General Assembly Resolution 3349 of December 17, 1974, the Assembly established a forty-two member Ad Hoc Committee on the Charter of the United

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<sup>12</sup> U.N. CHARTER art. 109, para. 3.

<sup>13</sup> G.A. Res. 796, 8 U.N. GAOR, Supp. (No. 17) 51, U.N. Doc. A/2630 (1953).

<sup>14</sup> G.A. Res. 992, 10 U.N. GAOR, Supp. (No. 19) 49, U.N. Doc. A/3116 (1955).

<sup>15</sup> R. ZACKLIN, *supra* note 2, at 121.

<sup>16</sup> See *General Assembly: New Agenda Item*, U.N. MONTHLY CHRONICLE, Jan. 1970, at 70.

<sup>17</sup> G.A. Res. 2697, 25 U.N. GAOR, Supp. (No. 28) 127, U.N. Doc. A/8028 (1970).

<sup>18</sup> G.A. Res. 2968, 27 U.N. GAOR, Supp. (No. 30) 116, U.N. Doc. A/8730 (1972).

Nations to: (1) discuss the observations received from U.N. Members; (2) consider additional proposals for enhancing the U.N.'s ability to achieve its purposes; (3) review suggestions, not requiring Charter amendment, for the more effective functioning of the U.N.; and (4) list any other propositions that aroused particular interest.<sup>19</sup> U.N. Members were invited to submit or bring up to date their suggestions concerning Charter review by May 31, 1975.<sup>20</sup> The Secretary-General was invited to submit to the Ad Hoc Committee his views on the Secretariat's experience acquired in the application of Charter provisions, as well as to prepare an analytical paper for the Committee on the relevant views of the U.N. Members.<sup>21</sup> Finally, the Committee itself was asked to report back to the General Assembly at its Thirtieth Session.<sup>22</sup>

Resolution 3349, which established the Ad Hoc Committee, was adopted by a contentious rollcall vote of 82 to 15, with 36 abstentions. Four of the permanent members of the Security Council (the United States, the Soviet Union, the United Kingdom, and France) voted against the Resolution, a factor which hung heavily over its work. The Committee's first session, for example, revealed "a fundamental divergence of opinion on the necessity for carrying out a review of the Charter."<sup>23</sup>

To help reconcile some of these differences, the General Assembly decided in late 1975 to broaden (and therefore make less controversial) the Ad Hoc Committee's mandate by reconstituting it as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.<sup>24</sup> The renamed Charter Review Committee was to examine observations received from govern-

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<sup>19</sup> G.A. Res. 3349, para. 1, 29 U.N. GAOR, Supp. (No. 31) 148, U.N. Doc. A/9631 (1974).

<sup>20</sup> *Id.* para. 2.

<sup>21</sup> *Id.* paras. 3, 4.

<sup>22</sup> *Id.* para. 5.

<sup>23</sup> *Committee Members Differ on Need to Review U.N. Charter*, U.N. MONTHLY CHRONICLE, Aug.-Sept. 1975, at 21.

<sup>24</sup> G.A. Res. 3499, 30 U.N. GAOR, Supp. (No. 34) 152, U.N. Doc. A/10034 (1975). See *Enlarged Charter Review Committee to Study Strengthening United Nations Role*, U.N. MONTHLY CHRONICLE, Jan. 1976, at 71. The second part of the Committee's name, "The Strengthening of the Role of the Organization," had its origin in a General Assembly item to that effect originally submitted by Romania in 1972. See G.A. Res. 2925, 27 U.N. GAOR, Supp. (No. 30) 5, U.N. Doc. A/8730 (1972). The Committee's mandate was renewed by G.A. Res. 31/28, 31 U.N. GAOR, Supp. (No. 39) 180, U.N. Doc. A/31/39 (1976).

ments concerning: (1) "suggestions . . . regarding the Charter" and (2) proposals for the "strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States."<sup>25</sup> In performing its mandate, the Committee was requested to accord "priority to the consideration of those areas on which general agreement is possible."<sup>26</sup> Its size was increased to forty-seven by adding five new members.<sup>27</sup> In addition, the Secretary-General was requested to prepare an analytical study of the various proposals, including those dealing with Charter amendments, submitted by the governments.<sup>28</sup> It is to the recommendations emanating from this Committee that the present article will now turn.

### III

It should be clear from the outset that we are dealing here with mere proposals, not formal amendatory submissions. These proposals, in the main, have been proffered by certain Third World states plus Romania and Yugoslavia. With the exception of China, the permanent members of the Security Council have opposed the trend, seeking to divert the Special Committee to more innocuous pursuits.<sup>29</sup>

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<sup>25</sup> G.A. Res. 3499, *supra* note 24, at para. 1.

<sup>26</sup> *Id.* para. 2.

<sup>27</sup> *Id.* para. 3.

<sup>28</sup> Issued as *Analytical Study Submitted by the Secretary-General Pursuant to General Assembly Resolution 3499 (XXX)*, 31 U.N. GA, Special Committee on the Charter of the United Nations and on Strengthening of the Role of the Organization [hereinafter cited as Charter Comm.], U.N. Doc. A/AC.182/L.2 (1976). This document, together with other documents of limited circulation and the summary reports of the 15th to 20th meetings of the Charter Committee, can be found in Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, 32 U.N. GAOR, SUPP. (NO. 33), U.H. DOC. A/32/33 (1977).

<sup>29</sup> See, e.g., the statement by the U.S. representative in 31 U.N. GA, Charter Comm. (8th mtg.) 6-8, U.N. Doc. A/AC.182/SR.8 (1976). China, on the other hand, has taken a position of general support for many of these amendatory proposals in an effort to cast herself as the only great-power friend of the Third World. Speaking solely in generalities, for example, the Chinese delegate declared that "truth was on the side of countries which were in favour of a review and revision of the Charter." 30 U.N. GAOR, C.6 (1578th mtg.) 267, U.N. Doc. A/C.6/SR.1578 (1975). For statements on the opposition to Charter review by the other four permanent members of the Security Council, see *id.* at 267-68.

These contrary purposes came to a head during the spring of 1977 in acrimonious debate over whether or not to annex a document<sup>30</sup> containing proposals for amending the Charter to the Special Committee's report to the General Assembly.<sup>31</sup> With the breakdown of the heretofore utilized consensus procedure, an Algerian motion to annex the document in question was carried by a vote of 30 to 8, with 5 abstentions. Four of the permanent members of the Security Council were numbered in the opposition; only China supported the majority which, contended the Soviet delegate, "was illegally imposing its will," attempting "to confer on the document a status which it did not have and to give the impression that it had been approved by the Special Committee, thus prejudging the latter's future work."<sup>32</sup>

#### A. *Peace Mechanisms*

Possibly the most frustrating failure of the United Nations has been its inability to maintain international peace and security. Chapter VI of the Charter deals with the "Pacific Settlement of Disputes." A proposed amendment here to Article 33 would "provide a specific procedure for moving sequentially from two-party negotiations to higher levels of third-party involvement in intractable disputes." Thus, "parties to a dispute should agree in advance to accept arbitration or judicial settlement where negotiation, inquiry, mediation or conciliation may prove insufficient." If these procedures prove unavailing, disputes "containing adjudicable legal elements . . . will . . . be referred automatically to the International Court of Justice [ICJ] for judicial settlement." Article 36(1) of the Statute of the ICJ "should be amended to make this responsibility explicit." Finally, Charter Article 37 should "be revised to provide for the creation of a conciliation and arbitration commission which should be composed of a small group of persons universally accepted, such as past presidents of the General Assembly."<sup>33</sup>

In retort to these suggestions, however, one representative argued that it "would not be necessary to amend the Charter in order to provide for third-party involvement" because the "United Nations could

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<sup>30</sup> Finally issued as Suggestions and Proposals Regarding the Charter of the United Nations and the Strengthening of the Role of the Organization, 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1 (1977).

<sup>31</sup> For a summary of this debate, see *id.* (18th and 20th mtgs.), U.N. Docs. A/AC.182/SR.18 and A/AC.182/SR.20 (1977).

<sup>32</sup> *Id.* (20th mtg.) 15, U.N. Doc. A/AC.182/SR.20 (1977).

<sup>33</sup> *Id.* U.N. Doc. A/AC.182/L.12/Rev.1, at 9 (1977).



provide for a third-party procedure in the multilateral conventions it produced and could also formulate a declaration laying down the details and modalities of third-party procedure." Tellingly, this representative then noted that: "If Member States were not willing to take such action, amendments to the Charter would not help, and, if they were willing to do so, there would be no need to amend the Charter." He, therefore, concluded: "Rather than considering controversial amendments to the Charter, the Committee should concentrate on practical methods for improving the dispute settlement procedure of the United Nations."<sup>34</sup>

The breakdown in great power unanimity after 1945 has prevented the implementation of many of Charter Chapter VII's provisions concerning "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Consequently, a different, more modest role for the United Nations developed. The procedure for interposing troops from non-great powers between contesting states has been variously defined as "peace-keeping" or "preventative diplomacy."<sup>35</sup> Given this development, the Philippines has suggested that an addition to Article 40 is necessary to delineate the details of what some have referred to as "Charter Chapter VI½." This amendment would state:

In particular, the Security Council, in order to prevent an aggravation of the situation, may, whenever it deems necessary, establish United Nations peace observation teams and a United Nations interposition force (UNIForce) to arrest or prevent violence, and permit settlement of disputes by the peaceful means delineated in Chapter VI.<sup>36</sup>

The guidelines for implementing UNIForce would embody such principles as (1) "instant-ready" contribution of troops by all U.N. Members; (2) acceptance of these troops by all states; and (3) financial support through the regular budget of the U.N. To obviate a repetition of the events which occurred in May 1967 when UNEF was summarily withdrawn upon the demand of Egyptian President Nasser, "recall of UNIForce contingents shall require a decision of the Security Council."<sup>37</sup>

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<sup>34</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.3, at 3 (1977).

<sup>35</sup> For an able analysis of "the concept of preventative diplomacy which is not to be found in the theoretical substructure of the Charter," see I. CLAUDE, *SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION* 312 ff. (4th ed. 1971).

<sup>36</sup> 36 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 10 (1977).

<sup>37</sup> *Id.*

To further these general purposes, argued another representative, "the definition of aggression (annex to General Assembly resolution 3314 (XXIX) of December 1974) should be included in the Charter in some form."<sup>38</sup> Finally, "through disarmament, the great Powers should provide funds for the maintenance of [UNIForce]."<sup>39</sup>

In opposition to these ideas, one representative declared that: "If the political will existed, the existing provisions of the Charter relating to peace-keeping operations should be sufficient." He further observed that "the absence of specific agreements on peace-keeping operations was more a function of the fact that States were not prepared to enter into them."<sup>40</sup> Another representative felt that "it would be wrong to encroach on the mandate of the Special Committee on Peace-Keeping Operations."<sup>41</sup>

### B. *Strengthening the ICJ*

The World Court has been a disappointment to even its most ardent supporters. The immediate reason for this situation is its inability to maintain a full docket. Although this failure arises primarily from political rather than procedural causes,<sup>42</sup> many still feel that positive, procedural adjustments might have a beneficial effect.<sup>43</sup>

Under the present Charter, the United Nations can only seek advisory opinions from the ICJ; the Organization is prohibited from initiating contentious cases. An amendment to Charter Article 94 would alter this situation: "The United Nations and any member may at any time agree to submit to the International Court of Justice legal aspects of disputes between them concerning the interpretation or application of the Charter."<sup>44</sup> Similarly, Article 34(1) of the Statute of the ICJ

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<sup>38</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 36 (1976).

<sup>39</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 11 (1977).

<sup>40</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.1, at 6 (1977).

<sup>41</sup> *Id.*

<sup>42</sup> "It was . . . recognized that there were disputes which could best be settled . . . by other means than judicial settlement." 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 59 (1976). In addition, "the role of the Court depended largely on the attitude of States whose political will was instrumental in making the existing system work." *Id.* at 60.

<sup>43</sup> See generally Schwelb, *The Process of Amending the Statute of the International Court of Justice*, 64 AM. J. INT'L L. 880 (1970).

<sup>44</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.181/L.12/Rev.1, at 13 (1977).

would be altered to read: "States and the United Nations may be parties in cases before the Court."<sup>45</sup>

"Serious doubts were however expressed as to the wisdom of this proposal. . . ." The rule that only states could bring cases before the Court "gave expression to a fundamental principle of international law, namely the principle of State sovereignty. . . ." Granting "the same prerogative to international organizations would be tantamount to equating them with States and recognizing the existence of supra-national subjects of international law. . . ."<sup>46</sup>

Charter Article 96, along with Article 65 of the Statute, currently permit only the General Assembly, the Security Council, and other U.N. organs and specialized agencies so authorized by the General Assembly to request advisory opinions. Access to advisory opinions is thus "too restrictively drawn with the result that little use has been made of [the] Court in this respect."<sup>47</sup> The Court's role might be made more effective if, in addition, regional organizations, individual States, and the Secretary-General were added to the list of those eligible.<sup>48</sup>

Objections were made to this suggestion, however, because of the "risk that a State might try to use the Court for its own purposes by submitting questions which the other State concerned would have no possibility of objecting to." Furthermore, "a State which was not prepared to bring a dispute to the Court under the contentious procedure might find itself compelled to go to the Court under the advisory procedure." This would be "in violation of the principle that a State could not be subjected to any type of third-party settlement without its consent."<sup>49</sup>

To expedite the Court's proceedings, "it was proposed that Article 29 of the Statute should specify time-limits within which the cases were to be heard and determined."<sup>50</sup> In addition, "it was suggested that the chambers which the Court may form in accordance with Article 26 and 29 of the Statute should be made permanent bodies under the Statute." Along similar lines, "there should be chambers dealing with

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<sup>45</sup> *Id.* Their sponsor, the Philippines, concluded: "These amendments if adopted would add substantially to the effectiveness and prominence of the International Court of Justice in upholding the observance and implementation of international legal justice. . . ." *Id.*

<sup>46</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.4, at 3 (1977).

<sup>47</sup> *Id.* U.N. Doc. A/AC.182/L.12/Rev.1, at 13 (1977).

<sup>48</sup> *See id.*

<sup>49</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.4, at 5 (1977).

<sup>50</sup> 31 U.N. GA, Charter, Comm., U.N. Doc. A/AC.182/L.2, at 61 (1976).

*inter alia* the law of the sea, . . . air and financial law." "[R]egional chambers or courts as legal forums to reflect the law and traditional usage of the geographical and cultural areas of the world" were also proposed."<sup>51</sup> In reply, however, another "representative said that the formation of special chambers would have the effect of dismembering the Court rather than increasing its effectiveness."<sup>52</sup>

### C. Security Council

The veto power of the five permanent members of the Security Council has been a bone of contention since the beginning.<sup>53</sup> Given the ever increasing voting strength of the Third World states in the General Assembly and most other U.N. organs, it was almost inevitable that renewed attacks would be made on this citadel of great power privilege.<sup>54</sup> These attempts have taken two principal, inter-related paths: (1) the abolition or at least diminution of the veto itself, and (2) increasing the number of permanent, as well as non-permanent, members in the Security Council. Numerous variations of each have been recommended.

Regarding the veto itself, suggestions have been made, as mentioned above, either to eliminate it entirely or at least to exclude it in such matters as, for example, admission, suspension, or expulsion of Members; the appointment of commissions of inquiry; and decisions concerning matters other than conflicts endangering peace.<sup>55</sup> In retort, a "number of representatives recognized that one could not realistically expect the veto to be abolished." It "was the price which had to be paid in order to ensure the creation of the Organization."<sup>56</sup> As another representative pointed out: "The unanimity principle [*i.e.*, the veto] was designed to preclude the use of the organization for the interests of any one particular group of States."<sup>57</sup> In addition, "[i]t was questioned

<sup>51</sup> *Id.* See generally Jessup, *Non-Universal International Law*, 12 COLUM. J. TRANSNAT'L L. 415 (1973).

<sup>52</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14/Add.3, at 6 (1977).

<sup>53</sup> See R. RUSSELL, *A HISTORY OF THE UNITED NATIONS CHARTER: THE ROLE OF THE UNITED STATES, 1940-1945*, at 713-49 (1958).

<sup>54</sup> As the Secretary-General's analytical study put it: "Some States were of the opinion that the right of veto was, *inter alia*, undemocratic, monopolistic, anachronistic, and contrary to the sovereign equality of States. . . ." 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 45 (1976).

<sup>55</sup> See these and numerous other proposed areas in *id.* at 46-47.

<sup>56</sup> *Id.* U.N. Doc. A/AC.182/L.8, at 18 (1976).

<sup>57</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14/Add.1, at 20 (1977).

whether the . . . veto was any more discriminatory than the system of voting [in the General Assembly] which bore no relation to the size and population of Member States or to other such factors."<sup>58</sup>

Another interesting suggestion concerns the "creation of a new class of semi-permanent seats." These positions "would be created for each major world region, to be held alternatively by the major non-permanent members in the region."<sup>59</sup> In reply, however, others argued "that an extension of the right to veto . . . would run the risk of further paralysing the work of the Security Council."<sup>60</sup> Regarding specifically "a shifting permanent seat," some felt that it "would be dangerously destabilizing as the fundamental balance of the Council would shift from year to year, producing inconsistent results."<sup>61</sup> Furthermore, additional permanent members or the creation of a semi-permanent status "would impair still further the principle of the sovereign equality of States. . . ."<sup>62</sup> Enlarging the Security Council might also reduce the efficiency of a "body which had to make decisions rapidly. . . . There was an optimum size which should not be exceeded and 15 was somewhere in the range of the optimum."<sup>63</sup>

Indicative of the continuing frustration, yet increasingly felt strength of many small and medium-sized states was a Romanian proposal for "the confirmation by the Charter of the existence of a single category of States, *i.e.*, equal Member of the United Nations, a category which must include all the countries of the world without distinction as to size, economic or military potential or social system."<sup>64</sup> Indeed, "[s]ome States believed that . . . the role or powers of the General Assembly should be broadened or extended with the General Assembly playing a greater role than the Security Council."<sup>65</sup>

Giving specificity to these general beliefs were such suggestions as the one which would give the General Assembly more power under Ar-

<sup>58</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 48 (1976).

<sup>59</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 8 (1977).

In an interesting, but probably unrealistic, reversal of the customarily presumed requirements, the Japanese have suggested that a criterion for becoming a permanent member of the Security Council be "a positive attitude towards the universal prohibition of nuclear weapons." 27 U.N. GA, Report of the Secretary-General: Need to Consider Suggestions Regarding the View of the Charter of the United Nations, Agenda Item 89 (XXVII) 36, U.N. Doc. A/8746, (1972).

<sup>60</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 48 (1976).

<sup>61</sup> *Id.* U.N. Doc. A/AC.182/L.8, at 18-19 (1976).

<sup>62</sup> *Id.* U.N. Doc. A/AC.182/L.2, at 31 (1976).

<sup>63</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14, at 12 (1977).

<sup>64</sup> *Id.* U.N. Doc. A/AC.182/L.12/Rev.1, at 6 (1977).

<sup>65</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 39 (1976).

title 97 to choose the Secretary-General: "[T]he Security Council should submit a list of three candidates from which the General Assembly could select the person to hold the office of Secretary-General."<sup>66</sup> A proposal made by Ecuador would provide that:

Any Member of the United Nations which is not a member of the Security Council, may participate without vote, in the discussion of any question brought before the Security Council, whenever such Member considers that its sovereignty and its territorial integrity and national security are specially affected or are in danger.<sup>67</sup>

Still another proposal would:

Supplement the provisions of the Charter [Article 15] so as to uphold the right of the General Assembly to request from the Security Council substantive reports on all major problems concerning international peace and security, and also the right of the General Assembly to formulate . . . specific proposals concerning the practical activities of the Security Council.<sup>68</sup>

Suggestive of the smaller states' frequent frustration with meaningless paper victories was a recommendation to: "Include in the Charter [Article 18] provisions stipulating that the resolutions adopted by consensus or by a unanimous vote constitute firm commitments for all Member States."<sup>69</sup> What is more, Romania requested that provisions be added to the Charter "stipulating . . . the procedures, machinery or bodies responsible for overseeing the implementation of the resolutions adopted. . . ."<sup>70</sup> So that smaller states would not be shut out of important committees, Romania also recommended that the membership write "into the Charter the principle of the regular rotation of seats in all subsidiary bodies of the United Nations with limited membership."<sup>71</sup>

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<sup>66</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 14 (1977).

<sup>67</sup> *Id.* at 8. If implemented, this motion would alter the present procedure laid down in Article 31 which permits only the Security Council to allow such non-member participation.

<sup>68</sup> *Id.* at 7.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 16.

<sup>71</sup> *Id.*

## D. Deletion of Anachronisms

### 1. Enemy States

Since the Charter was written while the Second World War still raged, provisions were inserted into it to allow members of the anti-Hitler alliance to deal with their enemies, unencumbered by their new obligations as Members of the United Nations. Article 53, for example, exempts "measures against any enemy state" from having to be authorized by the Security Council, and Article 107 declared that: "Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action."

These references to an "enemy state" are particularly disturbing to West Germany,<sup>72</sup> Japan, and Italy, three present Members of the organization. Accordingly, many support "the deletion from the Charter of provisions referring to 'enemy States,' " believing them to be "anachronistic and obsolete in view of the . . . admission of the so-called 'enemy States' to the United Nations as peace-loving States and the conclusion of peace treaties and other instruments among those concerned."<sup>73</sup> As another representative argued: "In order to avoid confusion and eliminate any pretext for undue intervention in the internal affairs of Member States, such clauses should be deleted from the Charter."<sup>74</sup>

Those who opposed deletion of the references to an "enemy state," however, maintained that they "represented the confirmation and endorsement in international law of the sanctions . . . taken during the Second World War by the main victorious Powers against the former enemy States. . . ."<sup>75</sup> Another representative declared that "asking the

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<sup>72</sup> The Soviet Union had hinted in the past that the "enemy states" clause gave it a special right to intervene unilaterally in a revanchist Germany. For an analysis of this claim see D. FRENZKE, J. HACKER & A. USCHAKOW, DIE FEINDSTAATENARTIKEL UND DAS PROBLEM DES GEWALTVERZICHTS DER SOWJETUNION IM VERTRAG VOM 12. 8. 1970 (1971).

<sup>73</sup> 31 U.N. GAOR, Supp. (No. 33) 11, U.N. Doc. A/31/33 (1976). See also the comment of the West Germany delegate supported by the Italian delegate in 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/SR.14/Rev.1, at 7 (1976); and that of the Japanese government in U.N. Doc. A/8746, *supra* note 59, at 37 (1972).

<sup>74</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14/Add.8, at 3 (1977).

<sup>75</sup> *Id.* at 4. "Eliminating the references to 'enemy States' would be undermining one of the historic foundations of the Organization." 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.8, at 8 (1976).

countries which had been members of the anti-Nazi coalition to agree to delete the clauses in question could be compared to asking the former colonial countries to agree that the Declaration on the Granting of Independence to Colonial Countries and Peoples was no longer topical since colonialism had been eliminated."<sup>76</sup>

## 2. Trusteeship Council

Although it was established as one of the six principal organs of the United Nations, the Trusteeship Council (which never played the major role in decolonization that was originally envisioned for it) has "virtually lost its *raison d'être*."<sup>77</sup> As the Guinean delegate once explained: "No one can conceive of a Trusteeship Council when there are no more Trust Territories."<sup>78</sup> Since this will be the very situation when Micronesia, the last Trust Territory, enters into its new relationship with the United States, many might support the Mexican delegate's recommendation to strengthen the General Assembly's Special Committee on Decolonization, possibly "elevating it to the rank of a Council, to replace the Trusteeship Council, whose existence was no longer called for."<sup>79</sup>

Related to this general matter is another proposal for "the deletion from the Chapter of . . . [Articles 73-74] referring to *de facto* acceptance and recognition of the rights of a State . . . to have colonies . . . and . . . the proclamation by the Charter of the full and final abolition of colonialism, neo-colonialism and racism. . . ."<sup>80</sup> In reply to this, however, others "pointed out that the Charter had very effectively contributed to the process of decolonization and the achievement of independence by a great many States. . . ." Thus, there "was no reason . . . to delete the relevant parts of the Charter."<sup>81</sup>

## 3. Other Matters

Some felt Charter Chapter XVII, "Transitional Security Arrangements," which in Article 107 contains the previously mentioned

<sup>76</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14/Add.8, at 5 (1977).

<sup>77</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 75 (1976). For several years now, it has been impossible to even obtain a constitutional membership in the Trusteeship Council due to the decline in the number of members administering trust territories. For an able analysis of this anomalous situation see Blum, *The Composition of the Trusteeship Council*, 63 AM. J. INT'L L. 747 (1969).

<sup>78</sup> 14 U.N. GAOR, (857th plen. mtg.) 785 (1959).

<sup>79</sup> 31 U.N. GAOR, Supp. (No. 33) 26, U.N. Doc. A/31/33 (1976).

<sup>80</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.8, at 7 (1977).

<sup>81</sup> *Id.* at 9-10.



reference to "enemy states," might be deleted in its entirety because it "described a transitional situation which had been superseded by other proposals,"<sup>82</sup> namely the United Nations system itself. Other representatives, however, "recalled that no peace treaty had been signed by all States involved in the Second World War and that the Allies had taken certain decisions that were still in effect." Specific "[r]eference then was made to . . . the Allied forces . . . stationed in Berlin in accordance with the Articles of the Charter [106-07] mentioned. . . ."<sup>83</sup>

Some felt Article 109(3), which calls for a General Conference to Review the Charter by the Tenth Session (1955) of the General Assembly to be placed on the agenda of that session, is also obsolete "since . . . it dealt with something that was already supposed to have taken place."<sup>84</sup> Finally, declared another delegate, "the use in Article 38, paragraph 1(c), of the ICJ Statute of the word 'civilized,' " constitutes "another anachronism . . . on the elimination of which a consensus could . . . be easily arrived at."<sup>85</sup>

### E. Human Rights

Presently, the United Nations deals with the question of human rights at a variety of different points, including ECOSOC's functional commissions on Human Rights and the Status of Women, as well as the General Assembly's Third (Social, Humanitarian and Cultural) Committee and regular plenary session. To integrate all these steps and, in general, give the subject more prominence, some have proposed the creation of a Human Rights Council as one of the principal organs of the United Nations. This recommendation might be implemented in one of two manners: (1) "the functions of the Trusteeship Council should be expanded . . . [to] protecting human rights in general . . . so that it would become a 'Human Rights and Trusteeship Council,' incorporating some of the committees [now] dealing with those subjects;"<sup>86</sup> or (2) ECOSOC's "Commission on

<sup>82</sup> *Id.* at 9.

<sup>83</sup> *Id.* U.N. Doc. A/AC.182/L.14 Add.8, at 4 (1977).

<sup>84</sup> 31 GA, Charter Comm., U.N. Doc. A/AC.182/L.8, at 9 (1976).

<sup>85</sup> *Id.*

<sup>86</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 13 (1977). Although it was not unanimous in its recommendation, a prominent U.N. report recently mentioned the possibility of adopting a Charter amendment which would transform the Trusteeship Council into a Human Rights Council. See U.N. Social and Economic Council, A New United Nations Structure for Global Economic Cooperation: Report of the Group of Experts on the Structure of the United Nations System, U.N. Doc. E/AC.62/9, at para. 62 (1975).

Human Rights should be elevated to a full Council. . . ."<sup>87</sup>

Several representatives objected to the first option "on the ground that the structure of the Trusteeship Council was fairly rigid and that it was difficult to see how its terms of reference could be changed to enable it to deal with questions concerning the protection of human rights." Some showed skepticism because "there were already several bodies active in this field and . . . what was needed was more action and not more bureaucracy." These representatives also mentioned "the danger that the bureaucratic procedures adopted with regard to human rights would create illusions while camouflaging reality."<sup>88</sup> Others noted that since it was an organization consisting of sovereign Member States, "ensuring the actual implementation of human rights posed a difficult task for the United Nations."<sup>89</sup>

#### F. *Economic Development*

Given the influx of impoverished, Third World states into the United Nations during the past two decades, it seems almost inevitable some would find "that in the economic and social fields the Charter . . . anachronistically defined international co-operation in vague terms as a charitable and minor activity."<sup>90</sup> There certainly is truth to such assessments. After all, the Charter basically was written by the great power victors of World War II. While they did list "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character" as one of the purposes of the United Nations in Article 1(3), as well as devoting Charter Chapter IX to "International Economic and Social Co-Operation" and Charter Chapter X to the establishment of "The Economic and Social Council," there is no doubt that they felt the primary purpose of the United Nations was to "maintain international peace and security" (Article 1(1)).

Critics of the present situation, therefore, have sought to make economic development more salient in the Charter. Mexico, for example, has suggested that "international co-operation for development" and "collective economic security" be added to the purposes and principles of the United Nations enunciated in Charter Chapter I,<sup>91</sup> while

<sup>87</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 17 (1977).

<sup>88</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.5, at 7 (1977).

<sup>89</sup> *Id.* at 3.

<sup>90</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 67 (1976).

<sup>91</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 12 (1977).

Iran and numerous other states have recommended that "the salient elements of the new international economic order should be incorporated into the Charter."<sup>92</sup> Furthermore, to provide the necessary leadership and coordination to achieve economic development, some felt that ECOSOC had to be given a new mandate with sufficient authority. The Philippines thus proposed the following amendment to Article 63(2): "It [ECOSOC] shall co-ordinate the activities of the specialized agencies and make the decisions subject to General Assembly approval on over-all policies, direction, allotment of tasks, scope, content and size of programmes and interrelationship of agencies."<sup>93</sup>

Other representatives, however, "stressed that the United Nations was essentially a political organization whose primary role . . . was to maintain international peace and security." The U.N. was "not an international economic organization or a world planning commission where mandatory rules could be established for the economic, social and technological development of all Member States."<sup>94</sup> Also, "there was no reason for revision of the Charter in the field under consideration" because "many of the relevant proposals submitted by Governments, such as the idea of collective economic security, were [already] contained implicitly or explicitly in the Charter."<sup>95</sup> Furthermore, "the adoption of the Charter of Economic Rights and Duties of States and the results of the sixth and seventh special sessions of the General Assembly showed that the United Nations was [already] in a position to take effective decisions corresponding to the special requirements of developing countries, particularly in the economic field."<sup>96</sup> Finally, it "was noted in this connexion that the changes proposed in the report of the Group of Experts on the Structure of the United Nations [for Economic Cooperation], although broad in scope, did in no instance necessitate amendment of the Charter."<sup>97</sup>

### G. *Disarmament*

Although Charter Articles 11 and 26 specifically confer, upon the General Assembly and Security Council respectively, special respon-

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<sup>92</sup> 31 U.N. GA, Charter Comm. (12th mtg.) 11, U.N. Doc. A/AC.182/SR.12 (1976).

<sup>93</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 12 (1977).

<sup>94</sup> *Id.* U.N. Doc. A/AC.182/L.14/Add.4, at 5 (1977).

<sup>95</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 68 (1976).

<sup>96</sup> *Id.* at 68-69.

<sup>97</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.14/Add.4, at 8 (1977).

sibilities in the field of disarmament, many have long felt a sense of failure in what the United Nations has been able to accomplish. Nevertheless, the "view was expressed that disarmament was the cornerstone of the edifice of the United Nations and that any revisions of the Charter required or presupposed that condition."<sup>98</sup> To give this feeling substance, Mexico suggested that "general and complete disarmament under effective international control" be added as one of the principles and purposes of the Charter listed in Chapter I.<sup>99</sup> Another representative "stressed" the "necessity . . . of providing for a disarmament organ of the United Nations."<sup>100</sup> A third delegate, however, pointed out that the amendatory "proposals relating to disarmament had been limited in scope in view of the negotiations regarding the convening of a special session of the General Assembly to consider the question."<sup>101</sup> Still another representative observed that the present Charter "offered many possibilities for the discussion and solution of the problems of disarmament," adding that "no less than 29 resolutions . . . had been adopted on disarmament by the General Assembly at its last (1975) session. . . ." This representative concluded: "[T]here was therefore no need to envisage other forums for the discussion of the problems in question." Indeed, "in his view, revision of the Charter could not contribute to and would in fact hamper efforts aiming at disarmament."<sup>102</sup>

#### IV

This article has analyzed the major amendatory proposals to the United Nations Charter which recently have been advanced in the General Assembly's Special Committee on the Charter of the United Nations and on the Strengthening of the Organization. Although they are numerous and in many cases strongly supported by their

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<sup>98</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 26 (1976).

<sup>99</sup> 32 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.12/Rev.1, at 5 (1977).

<sup>100</sup> 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.2, at 27 (1976).

<sup>101</sup> 32 U.N. GA, Charter Comm. (16th mtg.) 2, U.N. Doc. A/AC.182/SR.16, (1977). Illustrating the resentment some felt against the superpower domination of the field, the Mexican delegate declared: "It should be clearly understood . . . that as long as the discriminatory United States and USSR co-Chairmanship of the Conference of the Committee on Disarmament continued, the effectiveness of any measures would be limited." *Id.* On this point, see also 31 U.N. GA, Charter Comm., U.N. Doc. A/AC.182/L.8, at 21 (1976).

<sup>102</sup> *Id.* U.N. Doc. A/AC.182/L.8, at 24 (1976).

adherents, none are likely to be adopted in the near future because four of the five permanent members of the Security Council oppose them.

The reasons for this opposition appear varied at first, but upon closer analysis largely boil down to a desire on the part of the United States, the Soviet Union, the United Kingdom, and France to prevent the Third World majority from bending the United Nations even more to its will, which is the likely result of most of these proposed amendments. As disagreeable as the present situation may be at times, a United Nations altered along some of the lines suggested above probably would prove intolerable for the Big Four. Due to the fear of setting off "a chain reaction of new proposals,"<sup>103</sup> although the amendments enlarging the Security Council and ECOSOC "had had no destabilizing effect,"<sup>104</sup> even innocuous sounding suggestions, such as the deletion of the references to "enemy state" in Articles 53 and 107, have met with almost impassioned opposition.

This impasse, however, does not mean that the Charter slowly will become obsolete. In the first place, informal or *de facto* amendment already has occurred through (1) reinterpretation of various Articles; (2) non-application of certain Articles; and (3) the conclusion of supplementary agreements or declarations which interpret and thus, in effect, amend the Charter.<sup>105</sup>

In addition, one suspects, as the Egyptian delegate put it, that: "The need was not so much to revise the Charter, which had proved to be a flexible instrument capable of adaptation to changing conditions in the world, as to modify the behavior of certain States which violated its provisions."<sup>106</sup> Indeed, an analysis of the documents produced by the Special Committee on the Charter reveals again and again an innate feeling that what is needed is the "political will" to implement the Charter. As one representative asserted: "No improvements of the provisions of the Charter and no structural changes in the Organization would replace the political will of Member States to discharge their obligations under the Charter and implement its provisions."<sup>107</sup>

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<sup>103</sup> *Id.* U.N. Doc. A/AC.182/L.2, at 16 (1976).

<sup>104</sup> *Id.* at 17.

<sup>105</sup> For a discussion of these informal amendment possibilities see F. WILCOX & C. MARCY, *supra* note 2, at 10-23.

<sup>106</sup> 31 U.N. GA, Charter Comm. (8th mtg.) 2, U.N. Doc. A/AC.182/SR.8 (1976).

<sup>107</sup> *Id.* U.N. Doc. A/AC.182/L.10, at 9 (1976). For additional references to this "political will" to implement the Charter, see *id.* U.N. Docs. A/AC.182/L.2, at 11

Nevertheless, the above analysis of recently proposed amendments to the U.N. Charter holds more than merely academic interest. Not only does it reflect the current mood of many Members, but it may even contain a preview of future amendments to the Charter. After all, what is impossible today does not have to remain so forever.

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(1976); (12th mtg.) 4, 11, A/AC.182/SR.12, (1976); and 32 U.N. GA, Charter Comm., U.N. Docs. A/AC.182/L.14, at 3 (1977); A/AC.182/L.14/Add.2, at 9 (1977); and A/AC.182/L.14/Add.1, at 6, 8 (1977).

